

**TRUMP ADMINISTRATION
ACCOUNTABILITY
PROJECT**



**Report on the Trump Administration’s Efforts to Interfere
in the 2020 Census**

Introduction

The United States Census is legally mandated by Article I, Section 2 of the Constitution to “enumerate” the population of each state every ten years by counting “the whole number of persons.”¹ Empowered by Title 13 of the United States Code, the Census Bureau is responsible for executing and overseeing the decennial event.² While the constitutional command requires the Census to secure accurate data on state populations to guide apportionment—the process by which House seats are divided among the fifty states—Congress has also permitted the Census to be used as an opportunity to collect crucial statistical data that fuels countless studies and impacts not only political positions, but also resourcing and representation for the decade to come.³ The 2020 Census has been officially underway since April 1st, 2020; however, behind the scenes, the Trump Administration has long been engaged in deliberate activities that have interfered with the 2020 Census.⁴ Primarily, this interference has taken the form of attempts to warp the results by shortening the length of time available to the Bureau to complete the Census and attempting to impermissibly exclude undocumented immigrants from apportionment counts. The legality of these hindrances range from dangerously imprudent to illegal, however, regardless of legitimacy, the actions of the Trump Administration are likely to have long-lasting, negative effects on the U.S. political and economic realm for the next ten years to come.

What is the Census, and how does it operate?

The Census is nothing less than a massive civic-engagement effort. In addition to the Constitutional requirement, the Census is put forward because of its ability to deeply and formatively shape the landscape of American politics at every level, every decade. The average Census operates on a nearly yearlong timetable, beginning on Census Day (April 1st) and ending with the publication of the results in December, punctuated only by a shift in July from data collection to data analysis. This has occurred every 10 years since the founding of the United States.⁵ While data collection typically ends in July, after a thorough data cleaning, the results are finally published for the states and the reapportionment of House seats, the drawing of congressional districts, and doling out of Electoral votes occurs.⁶ To calculate these numbers, the Census Bureau engages a scientifically rigorous process to produce accurate apportionment counts and redistricting information. This process is projected to affect nearly a trillion dollars in government funding decisions.⁷ Overtime, additional data is also reported pertaining to the population information of smaller geographic areas. This scaled data directs billions of dollars in both public and private sector spending by way of zoning, city planning, resource distribution, and countless other state and local processes.⁸ Only the collection of accurate census data allows such complex political reorganization and government spending to occur seamlessly from decade to decade.

How has the Trump Administration interfered?

1. The Trump Administration placed pressure on the Census Bureau to accelerate the timeline to the detriment of the count's accuracy.

Traditionally, the implementation of the U.S. census has not been an overtly political process.⁹ However, the Trump Administration has set an unprecedented number of barriers in the path of the successful completion of the 2020 Census. These barriers layered over the extraordinary circumstances posed by COVID-19 and have rendered the ongoing 2020 Census not just an unusual effort, but one wrought with potential transgressions by the federal government. In mid-April, 2020, Census Bureau Director Steven Dillingham and Department of Commerce Secretary Wilbur Ross published a statement outlining adjustments to the Census due to the COVID-19, including the temporary suspension of field data collection activities in March.¹⁰ That publication stated that closed field offices would begin to reopen June 1, 2020, with the resumption of collection shortly to follow once health and safety guidance had been determined for Bureau staff and the public.¹¹ Concluding their statement on COVID-19, the two officials requested that Congress permit the Bureau to extend data-collection and analysis by an additional 120 days, pushing statutory deadline of the report from December, 2020 to April, 2021.¹² This request was made as Census Bureau officials remarked that they would not be able to produce an accurate count *and* make the statutory December deadline, given the delays caused by COVID-19.¹³

Initially, the decision to adjust the timeline was made with apparent support from President Trump.¹⁴ However, a short four months later, on August 3rd, 2020, Director Dillingham announced that in contrast to its statement in April, the Census Bureau now planned to end counting efforts a full month early, in order to “accelerate the completion of data collection and apportionment counts by our statutory deadline of December 31, 2020.”¹⁵ At the time of the announcement, an estimated four out of every ten households had not yet been counted.¹⁶ Moreover, while the plan raises numerous logistical concerns, the most alarming potential ramification is that the final populations left to count, which are often difficult to reach, may remain uncounted. These communities are likely to be households that consist primarily of young people of color.¹⁷ The consequences for excluding such minority populations are manifold, but would be particularly harmful in terms of the resource division that will occur based on the census data. Given this, getting the numbers wrong could mean leaving already vulnerable and difficult to reach populations out.

Significantly, a number of political and social advocates have spoken out against the decision. Since the announcement accelerating the timeline was made, four past Census Bureau Directors, who worked under both Republican and Democratic administrations, have stated that the accelerated timeline is problematic.¹⁸ In an August 5th letter addressed to eight key Senate leaders, the President of the American Statistical Association, Robert Santos, argued against the decision, stating, “there is no scientific rationale to curtail the data-collection period for this constitutionally mandated activity.”¹⁹ Even more pointedly, in an August 4th letter, Senator Jeanne Shaheen of New Hampshire wrote to Director Dillingham expressing numerous concerns over the change, articulating a fear that the Census Bureau is not “free of political meddling” and asking for additional clarification.²⁰ Finally, in mid-August, a coalition of various cities and civil rights organizations filed a lawsuit against Trump Administration in the Northern District of California over the shifted deadline, claiming that there was a political motivation for the change and that it will harm the Census’s accuracy.²¹ The claim specifically underscores their belief that the directive was tied to the continued efforts by the Trump Administration to exclude undocumented immigrants from the count for purposes of apportionment. The federal judge in that case, Judge Koh, issued a preliminary injunction on the Census Bureau, temporarily stopping

them from winding down any data collection efforts. Judge Koh has also signaled that she will rule before the end of October, 2020 on her decision for the census deadline.

In a year already marred by the effects of a global pandemic, the Trump Administration's involvement in the accelerated timeline of the Census merits continued investigation. Such scrutiny is necessary to examine and account for any consequences that the decision to accelerate might have on the results of the Census. Further, in addition to the ongoing litigation, additional review should be given to the political motivation underpinning the move to rush the completion of the Census.

2. The Trump Administration has impermissibly attempted to exclude undocumented immigrants from apportionment counts.

With a split decision in a late-June 2019 ruling, the Supreme Court held that the Trump Administration would not be able to move forward with a citizenship question on the census form, rejecting stated reasoning for the inquiry.²² While the Supreme Court's decision did not squarely answer the question of whether the federal government can legally ask people if they are American citizens as part of the 2020 Census, it dismissed the Administration's initial justification on the grounds that "accepting contrived reasons would defeat the purpose" of judicial review.²³ The inclusion of a question about resident citizenship on the 2020 Census has been a topic of discussion since late 2017, when the Department of Justice sent a letter to the Census Bureau requesting citizen data for the purpose of enforcing the Voting Rights Act.²⁴ Secretary of Commerce Wilbur Ross stated in a testimony before Congress that the 2017 letter from the DOJ was the sole reason the question regarding citizenship was added to the census form.²⁵ However, Chief Justice Roberts, writing the opinion for the majority, noted that based on the evidence, the Voting Rights Act seemingly "played an insignificant role in the decision-making process," and that Secretary Ross "was determined to reinstate a citizenship question from the time he entered office."²⁶

Following the Supreme Court's opinion, it remained unclear whether the Trump Administration would take the door left ajar by the Court's decision and attempt to return with a better justification for including the citizenship question. In response, President Trump signaled a resounding "no" via his July 21st, 2020 Presidential Memorandum.²⁷ The memorandum, officially titled the "Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census," puts into explicit terms what many had inferred from the Administration's early steps: the President intended to weaponize the U.S. Census in an effort to totally exclude undocumented immigrants from apportionment counts.²⁸ With no intention of clarifying its justification for a question of citizenship on the 2020 Census, by directing the memorandum squarely at the Census Bureau, the Trump Administration articulated its intention to move forward with the policy of exclusion.

A mere three days after the publication of the memorandum, an assembly of civil and immigrant rights organizations filed suit against President Trump in the Southern District of New York.²⁹ Led by the New York Immigration Coalition, the group's complaint alleges that the attempt to exclude undocumented immigrants is a "xenophobic effort to deny basic humanity of undocumented immigrants," in violation of the Constitution's Article I mandate to count all persons, the Fourteenth Amendment, Supreme Court precedent, the Administrative Procedure Act, and the Census Act, among other things.³⁰ The special three-judge panel presiding over the case blocked the memorandum in early September, stating that the President's action ran afoul of federal statutes and constitutional separation of powers.³¹ Their decision also blocked the Census Bureau from including any data on the number of undocumented immigrants in the final report. However, given the magnitude of the issue, it is likely that the Government will appeal this issue to the Supreme Court.

So why does any of this matter, and what are the consequences of federal government determining citizenship status? To support its actions, the Trump Administration has continually argued that both the inclusion of a citizenship question on the Census and the exclusion of undocumented immigrants from the apportionment count is a defensible effort to protect the Voting Rights Act.³² However, critics note the ramifications of pursuing such policies are far more insidious.³³ Specifically, the inclusion of a citizenship question on the Census would likely deter many immigrants and their families, both legal and undocumented, from filling out and returning their census forms, resulting in a severe undercounting of the population.³⁴ In turn, the resulting outcome of leaving immigrants and associated minority communities out of the count might result in the shifting of political power among the states through apportionment and redistricting to the benefit of the Republican Party. Many argue that this is the real purpose behind the President's efforts – to undercount and undercut politically blue states, where many of these undocumented immigrants reside.³⁵ Notably, the Trump Administration's endeavors have run parallel to the ongoing efforts to cut short the data collection, a coincidence that serves to highlight the concerted and systematic efforts of the President to alter the U.S. Census for political purposes.

Conclusion

The 2020 Census will likely result in data that is skewed due to the actions taken by the Trump Administration over the past year. The Administration's shortening of the collection period and fixation on excluding undocumented immigrants have intersected to create an unparalleled potential for distortion in census data. Due to this, further investigation into the Trump Administration's interference with 2020 Census, in addition to the pending litigation, is warranted.

¹ U.S. Const., art. I, § 2; U.S. Const. amend. XIV, § 2.

² 13 U.S.C. § 11

³ *United States v. Moriarity*, 106 F. 886, 891 (S.D.N.Y. 1901) (Holding that the Constitution's census clause is not limited to a headcount of the population and "does not prohibit the gathering of other statistics, if 'necessary and proper,' for the intelligent exercise of other powers enumerated in the constitution, and in such case there could be no objection to acquiring this information through the same machinery by which the population is enumerated").

⁴ HanSi Lo Wang, *How Trump Officials Cut The 2020 Census Short Amid The Pandemic*, National Public Radio, <https://www.npr.org/2020/09/18/911960963/how-trump-officials-cut-the-2020-census-short-amid-the-pandemic>, (Sept. 18, 2020).

⁵ Admittedly, there have been a few decades with hiccups, such as 1920 Census, the results of which were ignored for apportionment due to the enormous number of immigrants that had come to the country by way of New York and California. See Zack Stanton, *A Brush with Catastrophe: Inside the 2020 Census Meltdown*, Politico, <https://www.politico.com/news/magazine/2020/09/10/census-2020-trump-pandemic-problem-miscount-412040>, (Sept. 9, 2020).

⁶ Stanton, *supra*.

⁷ Tracy Gordon, *The Census Is About Nearly \$1 Trillion In Federal Spending, Not Just Elections*, Tax Policy Center, <https://www.taxpolicycenter.org/taxvox/census-about-nearly-1-trillion-federal-spending-not-just-elections>, (June 27, 2020).

⁸ Stanton, *supra*; U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19, U.S. Census Bureau, <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=100000011751624>, (April 13, 2020).

⁹ *Id.*

¹⁰ U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19, U.S. Census Bureau, <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=100000011751624>, (April 13, 2020).

¹¹ *Id.*

¹² *Id.*

¹³ Tara Bahrapour, *Civil rights groups, cities sue Trump administration over new Census deadline*, Washington Post, https://www.washingtonpost.com/local/social-issues/census-lawsuit-deadline/2020/08/18/620f371a-e192-11ea-8dd2-d07812bf00f7_story.html, (Aug. 18, 2020).

¹⁴ In a Coronavirus Task Force press briefing on April 13th, 2020, the same day that the Census Bureau announced the initial delays, in a statement supporting the proposed timeline, President Donald Trump noted: “This is a situation called [sic] they have to give in. I think 120 days isn’t nearly enough.”

¹⁵ *Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count*, U.S. Census Bureau, <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>, (Aug. 3, 2020).

¹⁶ Hansi Lo Wang, *Census Cuts All Counting Efforts Short by a Month*, National Public Radio, <https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30>, (Aug. 3, 2020).

¹⁷ Stanton, *supra*.

¹⁸ *Id.*

¹⁹ Letter from American Statistical Association President Robert Santos to Senate Leaders (Aug. 5, 2020).

²⁰ Letter from Senator Jeanne Shaheen to Census Bureau Director Steven Dillingham (Aug. 4, 2020).

²¹ Tara Bahrapour, *supra*.

²² Adam Liptak, *Supreme Court Leaves Census Question on Citizenship in Doubt*, New York Times, <https://www.nytimes.com/2019/06/27/us/politics/census-citizenship-question-supreme-court.html>, (June 27, 2020).

²³ *Department of Commerce et al. v. New York et al.*, 588 U.S. __ (2019).

²⁴ Letter from U.S. Department of Justice to U.S. Census Bureau (Dec. 13, 2017).

²⁵ Liptak, *supra*.

²⁶ *Department of Commerce, supra*.

²⁷ President Donald Trump, *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, White House, <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>, (July 21, 2020).

²⁸ *Id.*; Bahrapour, *supra*.

²⁹ Complaint, *New York Immigration Coalition, et al. v. Trump, et al.*, No. 20-cv-05781, (S.D.N.Y. July 24, 2020).

³⁰ *Id.* at 1, 5.

³¹ *Too soon for Census Bureau to stop counting, judge rules*, Politico, <https://www.politico.com/news/2020/09/06/census-bureau-counting-409396>, (Sept. 6, 2020).

³² Trump, *supra*.

³³ Timothy Williams, *What You Need to Know About the Census Citizenship Question*, New York Times, <https://www.nytimes.com/2019/06/27/us/citizenship-question-census.html>, (June 27, 2019).

³⁴ *Id.*

³⁵ *See, e.g.* Stanton, *supra*; Williams, *supra*.