

“Social justice should be the underlying goal of all humanity.”

-Alan V. Lowenstein, Institute Founder



November 15, 2022

Robert L. Santos
Director
U.S. Census Bureau
4600 Silver Hill Rd.
Washington, DC 20233

Re: Comments on the Design and Improvement of the 2030 Census, Docket ID: 220526-0123

Dear Director Santos:

The New Jersey Institute for Social Justice (the “Institute”) is pleased to have the opportunity to provide comment and feedback on the design and improvement of the 2030 Census.

Established in 1999 by Alan V. and Amy Lowenstein, the Institute’s cutting-edge racial and social justice advocacy seeks to empower people of color by building reparative systems that create wealth, transform justice and harness democratic power – from the ground up – in New Jersey.

Any census changes that may discourage participation must be understood against the backdrop of an already disquieting undercount of people of color and foreign-born individuals.¹ The results of the 2020 Census showed that the Black, African American, American Indian, Hispanic and Latino populations had statistically significant undercounts,² including an estimated 3.30% net undercount of the Black population and a 4.99% net undercount of the Latina/Latino population, up from 2010 when the net undercount of the Black population was 2.06% and the Latina/Latino population was 1.54%.³

When already-marginalized communities are undercounted in the census, they go unrepresented in the government as a whole. In return, they lose representatives in Congress and state legislatures,⁴ life-sustaining federal funds like Medicaid and Supplemental Nutrition Assistance Program (SNAP)⁵ and visibility in research that relies on census data to measure racial and gender inequities.⁶

Additionally, any census count that engages in prison gerrymandering — a practice that inaccurately shifts political representation away from the homes and communities in which people normally reside⁷ — must be remedied. Nationally, for example, although rural communities make up only about 20% of the U.S. population, it is estimated that 40% of all incarcerated persons are held in facilities located in rural areas.⁸ When the census continues to follow its policy of counting incarcerated individuals as

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residents of their prisons instead of their home districts, it gives disproportionate power to areas where the population does not normally or naturally reside.⁹ As Black and other people of color are disproportionately incarcerated by the criminal justice system, the voting and political power of their communities are disproportionately weakened by this policy.¹⁰ Given that the vast majority of incarcerated people do not have the right to vote in this country, prison gerrymandering is a modern-day Three-Fifths Compromise¹¹ and we urge the Census Bureau to stop engaging in this practice.

An inclusive and safe survey is integral to an accurate census count, and an accurate census count is vital to the Institute's work of guaranteeing equal political representation for individuals and communities of color that otherwise experience deep societal inequity in resources and power.

For this purpose, the Institute strongly urges the Census Bureau to adopt these three substantive suggestions for the 2030 census: *first*, the Bureau should stop the practice of counting incarcerated people as residents of a prison rather than their home addresses; *second*, the Bureau must not include a citizenship question to its survey; and *third*, the Bureau should affirmatively include a ("MENA") category to the census.

I. The Practice of Counting Incarcerated People as Residents of a Prison Rather Than Their Homes (Prison Gerrymandering) Unfairly and Inaccurately Shifts Political Representation Away From Their Home Communities

Prior to ending prison gerrymandering in 2020, one of the most important criminal legal system disparities in New Jersey had long been difficult to decipher: Which communities did incarcerated people come from? In New Jersey, as in the majority of states across the country, people in prison had long been counted not as residents of the communities where they came from and planned to rejoin after release, but as residents of where they were incarcerated. This counting method, known as prison gerrymandering, disproportionately impacts Black and Latina/Latino communities — who are disproportionately incarcerated by the criminal justice system¹² — siphoning their voices from their home communities to the mostly rural, predominantly white regions where prisons tend to be located.¹³

New Jersey provided a stark example of the unequal impacts of prison gerrymandering. In New Jersey, six counties across the state account for only 26% of the state's population, but hold more than 50% of the state's imprisoned population.¹⁴ Because prison gerrymandering counts incarcerated individuals — who cannot vote in New Jersey and will likely leave the area once they have served their time — as members of the counties they are incarcerated in and not the counties they will return to, the imprisoned population count inflated the voices of the remaining residents of those six counties.¹⁵

For example, at the time of the 2010 Census, although only 3% of people in New Jersey prisons were from Cumberland County, a rural county in southern New Jersey that holds three state prison facilities, the county held over 45% of the state's incarcerated population.¹⁶ The Census' practice of prison gerrymandering added an additional 42% of the prison population to the

county's count, despite the fact that those individuals were not from Cumberland County.¹⁷ Counting the incarcerated population as residents of the county instead of their home counties, artificially and unfairly increased the population count in Cumberland County and, subsequently, unfairly increased the representation of that county in the state legislature.

In January 2020, after advocacy from various state and national partners, led by the New Jersey Institute for Justice, New Jersey passed a law to end prison gerrymandering in legislative redistricting.¹⁸ New Jersey then ended prison gerrymandering for all redistricting, including congressional and local redistricting in August 2021.¹⁹ In doing so, it joined about twelve other states who have similarly ended the inaccurate counting practice.²⁰ In the case of New Jersey, after census data was reallocated to count incarcerated people at their home counties instead of where they were incarcerated, per the new law, Cumberland County's population count decreased by over 7,000 people.²¹

Likewise, the Census Bureau's practice of counting incarcerated people as residents of a prison instead of their home communities shifts political representation across the country to people who happen to live near correctional facilities, at the expense of residents who live further away.²²

Although advocates have been asking the Census Bureau to end the practice of prison gerrymandering, the Bureau often cites its interpretation of its "residence rule" to count people where they "eat and sleep most of the time" as the reason to continue its current policy.²³ This rule, however, does not account for the modern realities of incarcerated people. Between short sentences and frequent transfers between facilities, many people in prison do not actually live and sleep most of the time in the place they are incarcerated on Census Day.²⁴

In fact, according to a 2018 study conducted by the U.S. Department of Justice,²⁵ 20% of those serving time in state prison served less than six months and 42% served less than one year, meaning they did not live and sleep in prison most of the time.²⁶ Even among those serving longer sentences, approximately three-quarters serve time in more than one prison facility — including approximately 12% who serve time in five or more prison facilities — before release.²⁷ This means that even for those with longer sentences, it often makes little sense to count them as long-term residents of the particular facility they are detained on Census Day. Overall, this data indicates that the Bureau's residence rule is out of step with the largely transitory realities of many who are incarcerated.

Further, as shown by the example in New Jersey, continuing the practice of prison gerrymandering weakens the voting strength of people of color and transfers political power from communities of color to predominantly white areas across the country. For example, although Black people comprise about 15% of the population of New Jersey,²⁸ they comprise 61% of the state prison population.²⁹ Black individuals are incarcerated in state prisons at nearly five times the rate of white individuals, and Latina/Latino individuals are incarcerated at state prisons at 1.3 times the incarceration rate of white individuals.³⁰ The practical consequence of these unequal and unjust incarceration rates is that counting prison populations away from their home communities disproportionately impacts the political power of certain racial groups over

others. Not only is this an unfair policy, it raises substantial concerns under both Section 2 of the federal Voting Rights Act (“VRA”) and the United States Constitution.³¹

As the Census Bureau begins to plan for 2030, there are, therefore, strong reasons for it to change how it counts incarcerated people.

Not only is the Bureau’s interpretation of its residence rules out of date, its practice of counting incarcerated people at prison fails to keep the Bureau up to date with evolving redistricting data needs. As of March 2022, about a dozen states have ended prison gerrymandering.³² As a result, nearly half of the country now lives in a city, county or state that has ended the practice.³³ However, because the Bureau still uses prison gerrymandering in its national count, the burden of correcting the gerrymandered data for the purpose of redistricting falls to states and localities. Where the Census is supposed to provide data fit for use in redistricting, these states and municipalities must now use time and resources they do not have to readjust the data they receive from gerrymandered to non-gerrymandered.³⁴ Often, these states and local governments do not have access to the same levels of data for incarcerated persons that the Bureau has access to; consequently, the adjusted data often does not have the same robust categories as the census, which creates additional hurdles for redistricting.³⁵ Ending this practice for the national count would thus lead to better and more accurate data that meet the evolving needs of states and localities for modern redistricting.

Furthermore, the practice of prison gerrymandering also treats incarcerated people differently than many other similarly situated groups. Ending prison gerrymandering in the U.S. Census is vital to gathering an accurate count of where all individuals, particularly Black and brown persons, consider their home communities within each state and locality, and — perhaps just as importantly — doing so would shift political power and priorities back to the communities from which people in prison actually come and plan to return.³⁶

At a minimum, it is harmful to multiple communities for the Census to base its count on inaccurate methods that will impact political power and policy for the next ten years.

The Census Bureau must, therefore, end the practice of counting incarcerated people as residents of their prison, and begin counting them as residents of the home communities they come from.

II. Adding a Citizenship Question to the U.S. Census Would Result in an Inaccurate and Systematic Undercount of Immigrant Communities

In a harmful and chilling move in late 2017, the Department of Justice (“DOJ”) under then-Attorney General Jeff Sessions requested that the Census Bureau incorporate a question on citizenship status into the 2020 Census.³⁷ The DOJ argued that more granular data allowed by the census would be useful in enforcement of Section 2 of the VRA, which prohibits racial discrimination against the right to vote.³⁸

In 2018, fourteen states opposed the addition of the citizenship question, arguing that a question of citizenship goes against the constitutional requirement to “count each person in our country – whether citizen or noncitizen - ‘once, only once, and in the right place.’”³⁹ Over 125 civil rights

groups, grassroots, advocacy, labor, legal services, and other organizations, including the New Jersey Institute for Social Justice, submitted an amicus curiae in support of the lawsuit.⁴⁰ In the amicus brief, we argued that the inclusion of a citizenship question would result in a systematic undercount of communities of color and immigrant communities — which would then result in their districts suffering a loss of federal funding and resources — and that, furthermore, the citizenship question is not and has not been required to effectively enforce the VRA.⁴¹

Although the Supreme Court rejected the primary reason behind the plan to ask the citizenship question and the DOJ ultimately lost its efforts to add it to the 2020 census,⁴² the Bureau must not reinstate the question for the 2030 or any future census.

Not only have questions on citizenship status not been the practice of the modern census since 1950,⁴³ inclusion of such a question would inevitably lead to a differential undercount of historically underrepresented communities. This is not a hypothetical prospective: pre-testing for the 2020 citizenship question showed that the mere possibility of a citizenship question diminished response rates and increased anxiety over participation in the census among communities of color and immigrant communities.⁴⁴

A statistical, predictive analysis conducted by the Census Bureau in June 2019 on the potential 2020 citizenship question confirmed the negative impact on response rates that such a question would have.⁴⁵ The report predicted that should the citizenship question be added to the 2020 census, the self-response rate would likely drop an overall 2.2 percentage points, which would then increase costs and reduce the quality of the population count.⁴⁶

In fact, for over seventy years, the Census Bureau has long opposed adding a citizenship question precisely because it would lead to an undercount, which would “impact hard-to-count populations disproportionately.”⁴⁷ In 1980, for example, the Bureau wrote that “any effort to ascertain citizenship will inevitably jeopardize the overall accuracy of the population count” because “[q]uestions as to citizenship are particularly sensitive in minority communities” and “inevitability trigger hostility, resentment and refusal to cooperate.”⁴⁸ The Director of the Bureau later confirmed this in 1990, explaining the citizenship question would lead the Bureau to being “perceived as an enforcement agency” which would have a “major effect on census coverage.”⁴⁹

Adding a citizenship question now or in the future would lead to these very same effects and harm already chronically undercounted communities. For this reason, the Census Bureau must commit to not adding a citizenship question to the 2030 census.

III. Citizens of Middle Eastern and North African Backgrounds Will Continue to Be Systematically Undercounted Without the Addition of a MENA Category

According to a report from the Census Bureau itself, the 2020 census continued its longstanding trends of undercounting Black and other people of color, while overcounting those who identified as white and not Latino.⁵⁰ People who identified as white and not Latino were overcounted at a net rate of 1.64%, almost double the rate in 2010.⁵¹ This overcount may be related to the lack of a MENA category on federal forms and the census.

Although many groups have advocated for decades for a separate MENA category to be added to the census in order to collect more detailed data on people with MENA backgrounds, the federal government still officially recognizes people with MENA roots as white.⁵² This is despite the fact that the Census Bureau has considered adding MENA as a category in the past. In a 2015 Census Bureau study, for example, researchers concluded that “it is optimal to use a dedicated Middle Eastern or North African category” for the 2020 census.⁵³ The Bureau’s researchers found that “[t]he inclusion of a MENA category significantly decreased the overall percentage of respondents reporting as White.”⁵⁴ While the administration of former President Barack Obama considered introducing a MENA category as a part of an updated census question about race and ethnicity, these efforts eventually stalled.⁵⁵ In 2018, officials from the Bureau announced that the agency needed to conduct more research and testing before adding MENA as a category and, accordingly, the 2020 census did not include MENA as an option.⁵⁶

This continued oversight of an entire racial group must not be repeated. It is thus imperative that the Bureau revive the efforts to add MENA as a category to the 2030 census.

Importantly, the categorization of persons with MENA backgrounds as white is not only inaccurate, but it also does not reflect the lived experiences of people within those communities. MENA individuals encompass a variety of racial identities and classifying them as white has not matched the discrimination in housing, at work and other parts of daily life that they say they have experienced.⁵⁷

In fact, a study published in January 2022 offers evidence that the majority of people with MENA origins do not see themselves as white, and that a substantial percentage of white people who do not identify as MENA do not perceive MENA people as white either.⁵⁸ When given the option, most MENA individuals self-identify as MENA or as MENA and white.⁵⁹ Similarly, in the 2020 American Community Survey (“ACS”), the ACS found that New Jersey was home to 97,154 people who identify as being Arab, despite the fact that the ACS also has no explicit option for identifying MENA as an ethnicity or race.⁶⁰ The findings from both the ACS and the 2022 study provide evidence that a separate MENA label for race or ethnic identification in the census would be appropriate and more inclusive — especially for those MENA individuals whose lived experiences do not reflect the same lived experiences as white individuals.⁶¹

Further, because the census has never allowed for a MENA category before, the full breadth of the MENA community is unknown and likely undercounted. Although the population of immigrants from the MENA region doubled from 596,000 to 1.2 million between 2000 and 2019,⁶² and although there are an estimated 3.7 million Arab Americans living within the U.S.,⁶³ there is little official empirical data on this growing subset of the population. And despite the fact that individuals from MENA backgrounds are categorically classified as white for the federal government and the census, these communities do not reap the material benefits of being white, despite being counted as such.⁶⁴

Not allowing a separate MENA category robs MENA communities of federal funding and resources and disadvantages their political voice, voting power and opportunity to elect candidates that represent them and their community needs.⁶⁵

To fully understand the experiences of MENA people and to gather accurate, empirical data about this rapidly growing population across the country, the Census Bureau must revive its previous efforts and add an additional MENA category during its 2030 count.

As discussed above, an inclusive and safe survey is integral to an accurate census count, and an accurate census count is vital to guaranteeing equal political representation for individuals and communities of color. The Census Bureau must design the 2030 census in a way that promotes an accurate count that does not intimidate or exclude communities from answering based on their lived experiences, and that counts people in the communities they consider their homes.

If you have any questions or would like any additional information, please contact Nuzhat Chowdhury, Associate Counsel, by email at nchowdhury@njisj.org.

Sincerely,

Nuzhat Chowdhury
Associate Counsel
New Jersey Institute for Social Justice

¹ See *Census Self-Response Rates Mapped: 2000, 2010 and 2020*, CTR. FOR URBAN RESEARCH, CITY UNIV. OF N.Y. (CUNY) (Mar. 16, 2020), <https://help.gc.cuny.edu/center-urban-research/research-projects/census-maps>.

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⁴ Alicia Parlapiano, *Are You a U.S. Citizen? How a 2020 Census Question Could Affect States*, N.Y. TIMES, Apr. 3, 2018, <https://www.nytimes.com/interactive/2018/03/30/us/impact-of-citizenship-question-on-census.html>.

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