



## STATE OF FLORIDA

**JAMES UTHMEIER**  
**ATTORNEY GENERAL**

August 11, 2025

The Honorable Howard Lutnick  
Secretary of Commerce  
U.S. Department of Commerce,  
1401 Constitution Ave. NW  
Washington, DC 20230

Secretary Lutnick,

In light of President Trump's recent census directive,<sup>1</sup> I write regarding the disastrous 2020 Census. In addition to skewing the data by utilizing dubious "differential privacy"<sup>2</sup> and irregularly delaying the publication of state population counts,<sup>3</sup> the 2020 national headcount erroneously overcounted or undercounted the populations of fourteen States. Florida was among those egregiously undercounted, which deprived Florida of an additional House seat that its citizens deserved to ensure fair representation in Congress and the Electoral College. Not only that, but this under-enumeration also cost Florida financially, given the census's role in "allocate[ing] federal funds to the States." *Dep't of Com. v. New York*, 588 U.S. 752, 759–60 (2019). Worse still—but perhaps unsurprising given that the census results were finally published during the Biden Administration—these errors almost uniformly benefited Blue States and punished Red States.<sup>4</sup>

Indeed, prior to the Biden Administration, Florida was projected to receive two additional Congressional seats. But when the data was finally published, Florida received only one. And as described below, the Census Bureau has since conceded the undercount failures that resulted in Florida's loss of a second seat to which it was entitled, as well as the additional electoral votes and federal funding.

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<sup>1</sup> See <https://x.com/RapidResponse47/status/1953416856309477756>.

<sup>2</sup> See Jeffrey Mervis, *The U.S. has a new way to mask census data in the name of privacy. How does it affect accuracy?* SCIENCE (May 3, 2024), <https://tinyurl.com/27rrf6xj>.

<sup>3</sup> See Mike Schneider, *EXPLAINER: What the release of 2020 census numbers means*, ASSOCIATED PRESS (Apr. 9, 2021), <https://tinyurl.com/286vy3dn>.

<sup>4</sup> See *House Oversight Hosts Census Bureau Director Rob Santos*, COSSA (Dec. 10, 2024), <https://tinyurl.com/5h66h66b>; see also Blog Post, 2020 Census Count Errors & Congressional Apportionment, THE AMERICAN REDISTRICTING PROJECT (June 13, 2022), <https://tinyurl.com/4m6rezjw>.

As you know, the Constitution provides that Representatives “shall be apportioned among the several States ... according to their respective Numbers.” U.S. Const., art. I, § 2, cl. 3. And “[t]he number of persons in each State is to be calculated by ‘actual Enumeration,’ conducted every 10 years, ‘in such Manner as [Congress] shall by Law direct.’” *Franklin v. Massachusetts*, 505 U.S. 788, 791 (1992) (citing U.S. Const., art. I, § 2, cl. 3.); U.S. Const., amend. XIV, § 2. Congress has specified that an actual count—not sampling—must be undertaken to determine “population for purposes of apportionment of Representatives in Congress among the several States.” 13 U.S.C. § 195; *Dep’t of Com. v. U.S. House of Representatives*, 525 U.S. 316, 343 (1999).

Yet the Census Bureau did a poor job counting—ultimately undercounting populations in six States and overcounting populations in eight States. For Florida, the 2020 census undercounted the State “by 761,094 individuals while it only needed around 171,500 more residents to gain an extra seat.”<sup>5</sup> None of this is controverted. In fact, the Census Bureau admitted to these mistakes in its 2022 Post-Enumeration Survey (PES).<sup>6</sup> By contrast, the 2012 PES identified *no* statistically significant undercounts or overcounts.<sup>7</sup>

The harms from the miscount persist—Florida suffers underrepresentation in Congress and receives less than our fair share of taxpayer-generated federal program monies. While we celebrate President Trump’s call for a newly conducted census that will rightly apportion electoral power and federal assistance in this country, it is possible for the Census Bureau to address the injuries suffered by Florida and other undercounted states in a timelier fashion *prior* to the 2026 mid-term elections.

We should not have to wait for the next complete, fifty state census hoping that—this time—the bureau will get it right and allocate the congressional seats and federal funding allocations to which they are entitled. Steps must be taken now to right these wrongs. Toward that end, President Trump has now called for the Census to be corrected, and we offer some proposals to remedy the well-documented problems before the 2026 midterms. These remedial solutions are available to you; the Supreme Court has made clear that, under current law, the Department can issue a “correction of a certificate found to rest upon a serious error” and that federal “statutes do not bar the substitution of a newer, more accurate version.” *Utah v. Evans*, 536 U.S. 452, 462 (2002). The Commerce Department should exercise this discretion.

## **1. Supplement the 2020 Decennial Census to correct the now-discovered errors.**

While current law prevents the Census Bureau from using the sampling in the 2022 Post-Enumeration Survey for allocation of House seats, *see* 13 U.S.C. § 195, nothing in the statutory or constitutional framework prevents the Census Bureau from using the *knowledge* gained from the 2022 PES to conduct a tailored and streamlined manual recount, utilizing

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<sup>5</sup> Hans von Spakovsky, *Census Bureau Errors Distort Congressional Representation for the States*, THE HERITAGE FOUNDATION (Aug. 2, 2022), <https://tinyurl.com/7fdap8xb> (quotation marks omitted).

<sup>6</sup> *See* Courtney Hill et. al, *Census Coverage Estimates for People in the United States by State and Census Operations: 2020 Post-Enumeration Survey Estimation Report* at 1, UNITED STATES CENSUS BUREAU (June 2022), <https://tinyurl.com/ye4ze9ya>.

<sup>7</sup> *See* Press Release, *Census Bureau Releases Estimates of Undercount and Overcount in the 2010 Census*, UNITED STATES CENSUS BUREAU (May 22, 2012), <https://tinyurl.com/4t3drtzb>.

technological tools and interagency resources as needed, within the relevant geographical portions of the affected States. As Census Bureau Director Santos explained, “the PES allow[ed] us to become more informed about the 2020 census by estimating what portion of the population was correctly counted, *where* we missed people and *where* some people were counted that shouldn’t have been.”<sup>8</sup>

This targeted, supplemental enumeration—coupled with all the other non-errant 2020 Decennial Census data—would constitute the “actual Enumeration” used to allocate House seats and federal funding. And on our read, nothing in the Constitution or the relevant statutes prevents the use of a targeted re-enumeration to remedy known errors. *See generally* 13 U.S.C. § 141(a) (authorizing the Secretary to conduct the census “in such form and content as he may determine”).

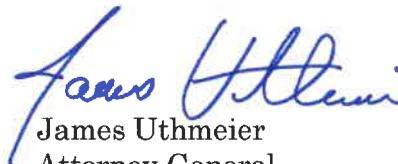
**2. Immediately update the 2020 Decennial Census Report using the 2022 PES and present that report to the President for transmission to Congress for purposes of federal funding.**

At a minimum, the Commerce Department should immediately update the 2020 Decennial Census Report using the 2022 PES sampling data for purposes of correcting the errant federal funding calculations that are currently based off the 2020 Decennial Census. Unlike determining the apportionment of House seats, current statutes allow for the use of sampling for other purposes—including federal funding. *See* 13 U.S.C. § 195; *see also* *U.S. House of Representatives*, 525 U.S. at 339.

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These problems are serious, but they are not irreversible. We are energized by President Trump’s leadership, and we look forward to hearing from you and working together to resolve these issues.

Sincerely,

  
James Uthmeier  
Attorney General

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<sup>8</sup> Rob Santos, *Understanding the Count: A Discussion on the Latest 2020 Post-Enumeration Survey Results* (May 19, 2022), <https://tinyurl.com/yc2d3k2s> (emphasis added).