Petition for Rulemaking to the Census Bureau, U.S Department of Commerce

by the State of Florida

Table of Contents

SUMMARY OF PETITION

1. This petition for rulemaking is submitted pursuant to 5 U.S.C. § 553(e), which grants any interested person the right to petition a federal agency for the issuance, amendment, or repeal of a rule. The 2020 Census was historically terrible—the results were inaccurate and skewed in favor of Democrats under the watch of the Biden-Harris Administration.[1] None of this is controversial; Biden's own officials admitted the pervasive flaws in their 2020 Census effort.[2] The State of Florida therefore respectfully requests that the Census Bureau (the "Bureau") adopt new regulations requiring the following: (1) that the decennial census inquire as to the citizenship and immigration status of all persons; (2) that children born to alien parents who are unlawfully or temporarily present in the United States are not U.S. citizens;[3] (3) that the only aliens who may be included in the apportionment population are aliens with lawful permanent resident status; (4) that "Group Quarters Imputation" (hereinafter the "Group Quarters Method") is an unlawful statistical sampling process that may not be

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[1] Blue states Delaware, Hawaii, Massachusetts, Minnesota, and New York were overcounted. D'Vera Cohn & Jeffrey S. Passel, *Key Facts About the Quality of the 2020 Census*, Pew Research Center (June 8, 2022), https://perma.cc/4B5Q-2VQC. Two red states were overcounted. *Id.* Meanwhile, six solidly red states, including Florida, were undercounted. *Id.* The Census Bureau confirmed this inaccurate counting. Press Release, U.S. Census Bureau, *U.S. Census Bureau Releases 2020 Undercount and Overcount Rates by State and the District of Columbia* (May 19, 2022), https://perma.cc/VSN8-5U4S. "By contrast, in the 2010 census, the Census Bureau estimated that no states had over counts or undercounts." Cohn, *supra*. Unsurprisingly, states have filed lawsuits, attempting to prevent this from happening again. *E.g.*, *State of Missouri, et al., v. U.S. Dep't of Commerce, et al.*, 4:26-CV-00131 (E.D. Mo. Jan. 30, 2026).

[2] *See U.S. Census Bureau Releases 2020 Undercount and Overcount Rates by State and the District of Columbia* (May. 19, 2022), https://perma.cc/VSN8-5U4S.

[3] *Infra* n.13.

used in the decennial census; and (5) that the Differential Privacy noise injection system is an unlawful statistical process that may not be used in the decennial census.

STATEMENT OF INTEREST

2. Florida has substantial and compelling interests in the accurate and lawful conduct of the decennial census. The census determines the number of seats Florida receives in the United States House of Representatives, directly affecting the State's political representation and voice in the federal government. As the nation's third-most populous State, Florida gained only one additional House seat after the 2020 census, bringing its total to 28, despite substantial population growth that warranted greater representation. The post-enumeration survey following the 2020 census revealed that Florida suffered an undercount of approximately 3.5%, representing around 761,000 overlooked residents.[4] This undercount cost Florida additional congressional representation and substantial federal funding.

3. Beyond apportionment, census data guides the distribution of approximately $2.8 trillion in federal spending annually.[5] Census figures determine how hundreds of billions of dollars in federal funding for critical programs such as Medicaid, infrastructure, education, economic development, and childcare are allocated to States.[6] An inaccurate census count directly harms Florida's residents by depriving them of federal resources to which they are entitled based on the State's actual

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[4] U.S. Census Bureau, *2020 Census Undercount and Overcount Rates by State, Post-Enumeration Survey* (May 19, 2022), https://perma.cc/ YA7F-JXK7.

[5] U.S. Census Bureau, *Census Bureau Data Guide More Than $2.8 Trillion in Federal Funding in Fiscal Year 2021*, (June 14, 2023), https://perma.cc/6JNR-KAK5.

[6] *See*, *e.g.*, *id.* and Ceci Villa Ross, *Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021*, U.S. CENSUS BUREAU (June 2023), https://perma.cc/37PN-WS4A.

resident population. When illegal aliens artificially inflate the apportionment base and distort census data, federal spending adjusts, benefiting illegal aliens at the expense of citizens and lawfully present aliens in law-abiding States. Florida can take action it deems appropriate to remedy this malfeasance.

4. Florida also has a sovereign interest in ensuring that the federal government complies with constitutional and statutory requirements when conducting the census. The Constitution mandates an "actual Enumeration" of persons for apportionment purposes, and federal law prohibits the use of statistical sampling methods for congressional apportionment. Florida would have legal standing to vindicate these legal requirements, which protect the integrity of representative government and ensure equal representation among the States. It therefore has sufficient interest to file this Petition for Rulemaking.

5. Furthermore, Florida has a direct interest in obtaining accurate data regarding the immigration status of persons within its borders. Such data is essential for the State to exercise its constitutional prerogatives, including the power to exclude aliens from local apportionment bases for State and local redistricting purposes, as recognized by the Supreme Court in *Burns v. Richardson*, 384 U.S. 73, 92 (1966). Without reliable census data on citizenship and immigration status, Florida cannot make informed policy decisions regarding State representation, public services, and resource allocation.

6. But for the use of the challenged statistical methods, Florida would have gained at least one additional House seat and Electoral College vote beyond the 28 seats it received following the 2020 census.[7] Such

[7] *See* 2020 Census Count Errors & Congressional Apportionment, AM. REDISTRICTING PROJ. (June 13, 2022), https://perma.cc/7FZJ-S8M8; Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Announces Effort to Correct Census Undercount* (Aug. 20, 2025), https://perma.cc/ASV2-28ZG.

undercounting deprives Florida of representation in Congress and dilutes the voting power of Floridians in Presidential elections by depriving the State of electoral college votes to which it is entitled.

7. Moreover, the constitutional violations in the 2020 census cascaded downward to corrupt redistricting at the intrastate level. Florida, like other states, adopted the 2020 Census Report as the legal and demographic foundation for redistricting state legislative districts, county commission districts, school board districts, and other local governmental bodies.[8] State legislative districts throughout Florida were drawn based on population data that included fictitious persons created through the Group Quarters Method and systematically distorted counts produced by Differential Privacy.

8. Florida, therefore, has a demonstrated, concrete interest in ensuring that future censuses are conducted lawfully and accurately, free from the constitutional and statutory violations that marred the 2020 census.

PETITION

I. The Bureau has the authority to adopt the proposed regulations.

9. The Constitution and Congress have vested the Census Bureau with broad authority to conduct the decennial census and adopt regulations governing its implementation. As the Supreme Court has explained, "[t]he Enumeration Clause of the Constitution ... vests Congress with virtually unlimited discretion in conducting the decennial actual Enumeration and Congress has delegated its broad authority over the census to the Secretary [of Commerce]." *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019); *see also Wisconsin v. City of New York*, 517 U.S.

[8] Fla. Stat. § 11.031(1); Fla. Const. art. 10, § 8(a) ("each decennial census of the state taken by the United States shall be an official census of the state").

1, 19 (1996) ("Through the Census Act, Congress has delegated its broad authority over the census to the Secretary [of Commerce].").

10. This "virtually unlimited discretion" encompasses the power to determine the manner and methodology of counting the population, subject only to constitutional constraints and statutory limitations that Congress itself has imposed. *See Wisconsin,* 517 U.S. at 19. The Constitution's text uses the general term "enumeration," which refers to a counting process without specifying the methodological details of the count. This broad delegation reflects the Framers' recognition that census-taking requires technical expertise and administrative flexibility to adapt to changing circumstances and evolving demographic realities.

11. Congress has exercised its enumeration power by enacting comprehensive legislation governing the decennial census, codified at 13 U.S.C. § 141 *et seq.*, which delegates substantial authority to the Secretary of Commerce to conduct the census. The Secretary, in turn, acts through the Census Bureau, which possesses the technical expertise and administrative capacity to implement census operations.

12. This delegated authority includes the power to prescribe regulations establishing the criteria for determining who should be counted, where persons should be counted, and what questions should be asked. 13 U.S.C. §§ 4, 5, 141. The Bureau's rulemaking authority thus extends to defining key terms such as "usual residence" and establishing procedures for data collection and processing. The regulations proposed in this petition fall squarely within the Bureau's delegated authority and, indeed, are necessary to ensure that the Bureau complies with constitutional and statutory requirements.

13. The Bureau's authority to adopt the proposed regulations is not merely permissive—it is mandatory to the extent necessary to ensure compliance with the Constitution's requirement of an "actual Enumeration" and Congress's prohibition on statistical sampling for apportionment purposes. Where existing regulations or practices violate

these requirements, the Bureau has both the authority and the obligation to adopt corrective regulations.

II. The Bureau should adopt a rule requiring the decennial census to inquire about the citizenship and immigration status of all persons and establish that only aliens with lawful permanent resident status may be included in the apportionment.

A. The Bureau has the authority to inquire about citizenship and should include a question on the decennial census that inquires about the immigration status of each individual.

14. The Bureau should adopt a regulation requiring that every decennial census include questions about citizenship and immigration status. The Bureau possesses clear constitutional and statutory authority to include such questions on the census questionnaire. As the Supreme Court has held, the "expansive grant of authority" in "the Enumeration Clause ... permits Congress, and by extension the Secretary, to inquire about citizenship on the census questionnaire." *Dep't of Com.*, 588 U.S. at 768, 770.

15. The Supreme Court's holding in *Department of Commerce v. New York* definitively establishes that asking about citizenship falls within the Bureau's constitutional authority. *See* 588 U.S. at 768–69. The Court emphasized that the Enumeration Clause grants broad discretion over census methodology, including the content of census questionnaires. This discretion encompasses decisions about what demographic information to collect, provided that such collection serves legitimate governmental purposes. *See also, e.g.*, *McCulloch v. Maryland*, 17 U.S. 316, 421 (1819) (Congress has power under the Necessary and Proper Clause to deploy any "means which are appropriate" and "plainly adapted" to carry into execution any of the powers vested by the Constitution in the government).

16. Far from being a novel intrusion, inquiring about citizenship has deep historical roots in American census practice. As Justice Thomas observed in his concurrence in *Department of Commerce v. New York*, there has been "a nearly unbroken practice of asking a question relating to citizenship." 588 U.S. at 786 (Thomas, J., concurring in part). The historical record demonstrates that "[b]etween 1820 and 2010, every decennial census questionnaire but one asked some segment of the population a question related to citizenship. The 2010 census was the first since 1840 that did not include any such question." *Id*. at 788.

17. This longstanding practice reflects a consistent understanding across more than a century and a half that citizenship information serves important governmental functions and falls within the scope of permissible census inquiries. The nearly universal inclusion of citizenship questions in historical censuses demonstrates that such questions are not only constitutionally permissible but also have been deemed necessary and appropriate by policymakers across different eras and political administrations.

18. The abandonment of citizenship questions in the 2010 and 2020 censuses represents an aberration from historical practice, not the restoration of constitutional norms. The Bureau's authority to inquire about citizenship is well-established. Restoring such questions would return the census to its traditional practice of collecting information essential for informed policymaking and faithful execution of federal law.

19. The Census Bureau should, therefore, adopt regulations requiring the decennial census to include questions inquiring about the citizenship and immigration status of each person. Such questions serve multiple compelling governmental interests and are essential for providing States and the federal government with accurate information necessary for informed policymaking. Three of these interests are particularly relevant.

20. *First*, collecting citizenship and immigration status data is necessary to enable States to exercise their constitutional prerogative to exclude aliens from apportionment bases for State and local redistricting. The Supreme Court has expressly recognized this State authority. In *Burns v. Richardson*, the Court acknowledged that, when States draw the lines to create voting districts for State and local offices, they are not required to "include aliens, transients, short-term or temporary residents" "in the apportionment base," noting that "[t]he decision to include or exclude any such group involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere." 384 U.S. 73, 92 (1966).

21. Even though Florida, like the other States, possesses significant autonomy in determining its apportionment base for purposes of drawing State legislative districts and local government districts, the State can only exercise this authority meaningfully if it possesses accurate data regarding the citizenship and immigration status of persons residing within their borders. Without such data, States are effectively deprived of their constitutional prerogative to make informed decisions about the composition of their apportionment bases.

22. Florida must be able to obtain reliable information about the presence of aliens within its boundaries to exercise its sovereign powers over State and local representation. The Census Bureau's failure to collect citizenship and immigration data imposes an unjustifiable burden on State sovereignty by denying States the information necessary to implement their chosen representational policies. That failure not only injures Florida and other States as sovereigns, it also injures Floridians: including illegal or fleetingly temporary aliens in the apportionment base distorts representation and dilutes voting power of citizens.

23. *Second*, the federal government lacks reliable, comprehensive statistics regarding the population of illegal aliens in the United States. Current estimates are based on indirect methodologies, sampling tech-

niques, and extrapolations that produce widely varying and often conflicting figures.[9] The absence of accurate data hampers federal policymaking across numerous domains, including immigration enforcement, border security, public benefit administration, and appropriations decisions.

24. Having reliable statistics about the presence and distribution of illegal aliens is essential for policymakers and lawmakers to understand the magnitude and geographic distribution of unlawful immigration and to make informed decisions about resource allocation, enforcement priorities, and legislative reforms. Direct enumeration through the census would provide the most accurate and comprehensive data available, enabling evidence-based policymaking rather than speculation based on incomplete or unreliable estimates. *See*, *e.g.*, *Negron v. City of Miami Beach, Fla.*, 113 F.3d 1563, 1569 (11th Cir. 1997) (noting that, when "citizenship information ... is extrapolated from [a] smaller sample population," and "is based upon a sample population, it cannot be as precise as the census data, which is based upon the entire population").

25. The Bureau's authority to collect demographic information necessary for governmental functions is well-established. Information about citizenship and immigration status serves critical federal interests in understanding the composition of the population and allocating resources appropriately. The collection of such data falls squarely within the Bureau's mission to provide accurate demographic information to

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[9] *See*, *e.g.*, Jennifer Van Hook, *et al.*, *Uncertainty About the Size of the Unauthorized Foreign-Born Population in the United States*, 58 Demographic Research 1397 (Dec. 2021), https://perma.cc/HLC8-ZY97; Robert Warren, *et al.*, *A New Residual Approach for Estimating Undocumented Populations*, 59 International Migration Review 949 (Aug. 2023), https://perma.cc/R9QZ-6AZD; Mohammad M. Fazel-Zarandi, *et al.*, *The number of undocumented immigrants in the United States: Estimates based on demographic modeling with data from 1990 to 2016*, 13 PLoS ONE e0201193 (Sep. 21, 2018), https://perma.cc/QF44-LBWN.

support governmental decision-making. Indeed, the Bureau cannot be "the nation's leading provider of quality data about its people and economy" if it continues to exclude data points on citizenship and lawful status.[10]

26. *Third*, and most fundamentally, questions about citizenship and immigration status are necessary to ensure that the census complies with constitutional requirements governing which persons should be included in the apportionment population. As explained in detail below, aliens who are temporarily or unlawfully present do not meet the constitutional and statutory requirements for having their "usual residence" in the United States because they lack the requisite allegiance and enduring ties to the United States that have historically defined the concept of residence for census purposes.

27. The Supreme Court has established that "usual residence" "include[s] some element of allegiance or enduring tie to a place," *Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992), not mere physical presence. Aliens who are present unlawfully or only temporarily authorized to remain in the country do not possess such allegiance or enduring ties. They remain subject to the jurisdiction of their home countries, which often claim them as citizens and impose obligations upon them. They are present in the United States either without permission or with only temporary authorization, and they may be removed at any time upon detection by immigration authorities or upon the termination of their temporary status.

28. Such aliens, therefore, should not be included in the apportionment population used to allocate congressional seats among the states. Asking questions about citizenship and immigration status is necessary to identify such aliens and exclude them from the apportionment base, ensuring that congressional representation reflects the population of persons who possess genuine allegiance and enduring ties to the states

[10] *About the Bureau*, U.S. Census Bureau, https://perma.cc/W9Q8-48NC (last visited March 18, 2026).

in which they are counted, consistent with constitutional requirements and historical practice.

29. The collection of citizenship and immigration data thus serves the essential function of enabling the Bureau to conduct an "actual Enumeration" as required by the Constitution—an enumeration of those persons who constitutionally should be counted for apportionment, not merely all persons who happen to be physically present on census day.

B. The Census Bureau's current definition of "usual residence" contradicts the requirements of the Constitution, and aliens who are unlawfully present in the United States or who lack allegiance to the United States should not be included in the apportionment population in the Census.

30. The Census Bureau's current definition of "usual residence" fails to comply with the Constitution's requirements and Supreme Court precedent. This failure has resulted in the unconstitutional inclusion in the apportionment population of aliens who lack the requisite allegiance to the United States, thereby distorting congressional representation, violating fundamental principles of republican government, and ignoring the original meaning of persons and federal apportionment. In short, the Census Bureau's current definition of "usual residence" led to errors in the proper "counting" of the "whole number of persons in each State" needed for apportionment under the Fourteenth Amendment.

31. In 2018, the Bureau adopted its "Final 2020 Census Residence Criteria and Residence Situations," in which it determined that, for the 2020 decennial census, it would "[c]ount people at their usual residence, which is the place where they live and sleep most of the time." 83 Fed. Reg. 5,525, 5,533 (Feb. 8, 2018). This definition reduces "usual residence" to a simple matter of physical presence—where a person happens to eat and sleep most frequently. In doing so, it strips the concept of its constitutional and historical meaning, which has always encompassed considerations beyond mere physical location.

32. The Constitution requires "a periodic census to ensure *fair* representation of the people." *Wesberry v. Sanders*, 376 U.S. 1, 13 (1964) (emphasis added) (internal quotation marks and citation omitted). Reducing usual residence to physical location does not ensure fairness. That reduction does the opposite and reduces apportionment itself to political power-grabbing: gather as many warm bodies as possible on census day to gain more representation in the House by including them in the apportionment base.

33. The Founders were also fearful of an inverse possibility: rotten boroughs. *Id.* at 14. James Madison warned against "vicious representation" or the rotten boroughs of Great Britain whereby "one man could send two members of Parliament . . . while London's million people sent but four." Fair representation drove the apportionment debates: "equal representation in the House for equal numbers of people." *Id.* at 14. "Usual residence" is built off this backdrop and must embody the guiding principles and common understandings of the Founders and Framers to avoid the problems of either extreme when it comes to fairly counting and apportioning representation.

34. The concept of "usual residence" has constitutional origins and a specific historical meaning that the Bureau's current definition ignores. "[T]he first census conducted in 1790 required that persons be allocated to their place of 'usual residence.'" *Franklin*, 505 U.S. at 803. Because "the interpretations of the Constitution by the First Congress are persuasive," *id.*, the originally understood meaning of the term "usual residence" clarifies and explains the meaning of the Census Clause of the Constitution and thus how the decennial census must be conducted. The Supreme Court has explained that "'[u]sual residence' was the gloss given the constitutional phrase 'in each State' by the first enumeration Act and has been used by the Census Bureau ever since to allocate persons to their home States." *Franklin*, 505 U.S. at 804. Historically, "[u]sual residence" was *not* reduced to physical presence

"and has been used broadly enough to include some element of allegiance or enduring tie to a place." *Id.*

35. Allegiance means "[a] citizen's or subject's obligation of fidelity and obedience to the government or sovereign in return for the benefits of the *protection* of the state." ALLEGIANCE, Black's Law Dictionary (12th ed. 2024) (emphasis added).[11] In exchange for protection, persons owe allegiance to the jurisdiction's sovereign. This "reciprocal nature of the bond [between allegiance and protection] is unquestionable." Ilan Wurman, *Jurisdiction and Citizenship*, 49 Harv. J.L. & Pol'y 316, 330 (2025).

36. However, not every person owing some sort of allegiance to the United States is countable for the apportionment base. Those with "natural" allegiance, *id.* at 336, should count—that is, those who are citizens, those on the path toward citizenship, and those lawfully and lastingly residing within the United States. They are subject to the "complete jurisdiction" of the United States, and it appears at the founding and at the ratification of the Fourteenth Amendment that "subject to the jurisdiction" meant "a full and complete jurisdiction." *Id.* at 323 (citing Cong. Globe, 39th Cong., 1st Sess. 2895 (1866) (statement of Sen. Howard)); *see also id.* at 390 (explaining that Indians were not subject to complete jurisdiction because they were allegiant to another sovereign: their tribes). Those with "local" or "temporary" allegiance, *id.* at 336, are not countable toward the apportionment base because they are not subject to the complete jurisdiction of the United States and, therefore, lack the requisite allegiance-and-protection relationship with the United States.[12] Given that the animating

[11] "Allegiance and protection are . . . reciprocal obligations. The one is compensation for the other; allegiance for protection and protection for allegiance." *Minor v. Happersett*, 88 U.S. 162, 165–66 (1874).

[12] Travelers, ambassadors, temporary visa holders, and other fleetingly present persons make up this category. While they are physically present

feature of apportionment is *fair* representation in the House of Representatives, *supra* ¶ 33, it makes sense to include only those within the complete jurisdiction of the United States. Their reciprocal relationship with the United States—between allegiance and protection—affords them political privileges and obligations that the Founders and Framers envisioned for such persons.

37. Illegally present aliens, representing a category of persons lacking any allegiance, are not citizens of the United States. Nor do they owe obligations of fidelity to the government. Their very presence in this country demonstrates a distinct lack of allegiance to the United States by being *un*faithful and *dis*obedient to its laws. They do not make up any part of the apportionment base.

38. The Founders and Framers of the Constitution understood this doctrine of allegiance to be "imbedded within the Constitution itself." Patrick J. Charles, *Representation Without Documentation?: Unlawfully Present Aliens, Apportionment, The Doctrine of Allegiance, and the Law,* 25 BYU J. Pub. L. 35, 74 (2011). Take the Naturalization Clause, U.S. Const. art. 1, § 8, cl. 4, which demonstrates who the Founders intended to include in the apportionment base. Charles, *supra* ¶ 38, at

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in the United States, they owe allegiance to another sovereign. Practically, it makes little sense to apportion membership of the House based on persons who have no stake in the system.

Consider this wartime example of those who would not be part of the apportionment base yet still physically present in what we know as the United States. During the War of 1812, the British occupied Maine. *United States v. Rice*, 17 U.S. 246, 254 (1819). Residents of Maine during that time, "were not subject to the jurisdiction of the United States." Wurman, *supra* ¶ 35, at 376. In other words, by the British occupation, Maine did not have a stake in the American system, save for the American rights upon reconquest. During that time, Maine and its residents were subject to the jurisdiction of another sovereign and, thus, excluded from the apportionment base.

74. James Madison explained that the Naturalization Clause allowed the federal government to fix periods of residence and impose conditions on enjoying the privileges of citizenship. *Id.* at 75. Madison warned that any other view of the Naturalization Clause could "confer the full rank of citizens on meritorious strangers." *Id.* (quoting 5 Debates on the Adoption of the Federal Constitution in the Convention Held at Philadelphia in 1787, at 398 (Jonathan Elliot ed., 1845)). The goal was to place *lawful* aliens on the path toward citizenship, and a prerequisite to taking that path was a duty of allegiance to the United States. In other words, the Founders did not want those meritorious strangers who *lacked* a duty of allegiance to the United States to gain unwarranted political traction within the fledgling nation. It is no surprise then that the first Naturalization Act incorporated allegiance and fidelity to the United States as a condition of naturalization. *Id.* The Founders baked allegiance into the founding documents that they drafted. Given this history, the apportionment base must include only persons who owe complete (not temporary) allegiance to the United States.

39. Writing about apportionment, roughly 80 years after the ratification of the Constitution, Judge Farrar explained, "persons does not really, in this place, mean everybody." Timothy Farrar, Manual of the Constitution of the United States, § 240 at 237 (1867) (internal quotation marks omitted). Persons, Judge Farrar continued, "must bear some relation to the State in which they are enumerated." *Id.* The relation? Allegiance. This must be so, for apportionment and citizenship are conceptually linked. In this country, apportionment—accomplished through the census—determines each citizen's share of the sovereign power. And no persons who owe no allegiance or only temporary allegiance to the United States can rightfully claim a share in that republican sovereignty.

40. The history of the Constitution's drafting bears this out. At the Constitutional Convention, the Committee of Style replaced the phrase

"citizens and inhabitants, of every age, sex, and condition" in the Census Clause with "persons," but that change was semantic rather than substantive. Charles Wood, *Losing Control of America's Future—The Census, Birthright Citizenship, and Illegal Aliens*, 22 Harv. J.L. & Pub. Pol'y 465, 476–77 (Spring 1999). James Madison explained that "a census of *inhabitants*" is to be repeated every ten years. The Federalist No. 58 (James Madison) (emphasis added). This was to ensure that the representative body of the people remained proportional and fair toward the citizens of the United States as a whole. *Id.* The Supreme Court further elaborated on the historical understanding of usual residence by examining terminology used in the First Census Act and related constitutional provisions. "The first enumeration Act use[d] other words as well to describe the required tie to the State: 'usual place of abode,' 'inhabitant,' 'usual reside[nt].'" *Franklin*, 505 U.S. at 804. In the related context of congressional residence qualifications, U.S. Const., Art. I, § 2, James Madison interpreted the constitutional term 'inhabitant' to include 'persons absent occasionally for a considerable time on public or private business.'" *Id.* at 804–05 (citations omitted). These alternative formulations—"inhabitant, usual place of abode, usual resident"—all point to a concept richer than mere physical presence. An "inhabitant" of a place is one who dwells there with some degree of permanence and commitment (or allegiance), not merely someone who happens to be physically present.

41. This founding era understanding of "inhabitance," then, informed what "persons" made up the apportionment base. To be an inhabitant, one must "have a habitation for some time or permanence." Wood, *supra* ¶ 40, at 478 (collecting Founding-era definitions of "inhabitant"). And by permanently or lastingly residing in a State, that resident must be subject to the laws of the State to enjoy the privileges of that lawful residence. Charles, *supra* ¶ 38, at 82–83. This subject-to-laws relationship involves reciprocity between protection and allegiance. *Id.* at 83. Citizens are certainly included in this count. By virtue of their citizenship, they owe complete allegiance. While *lawful* residents remain within the sovereign borders of a nation, those residents must

be subject to the nation's laws. It is this subjection that affords a lawful resident political privileges. These groups make up the apportionment base. It follows, as James Madison explained, that illegal aliens cannot be entitled to protection or privilege because their presence defies the law and is contrary to the doctrine of allegiance. *Id.* Moreover, those temporarily present, like foreign diplomats, tourists, or education visa holders, do not owe the same allegiance to the United States because they do not have an intent to remain. They should be equally excluded from the apportionment base.

42. Eighteenth century immigration law confirms this conclusion. Admitted aliens were required to announce their intent to settle as a prerequisite to naturalization. *See id.* 78. Inherent in this announcement is the presumption that lawful aliens subjected themselves to the laws of the nation in which they were residing. *See id.* (citing The City Gazette and Daily Advertiser (Charleston, SC), August 14, 1793, at 2, col. 2). Without subjection, aliens could not enjoy the full protection of the laws of the land. Aliens that did not comport to the laws of the nation were considered vagrants (illegal aliens). *Id.* A vagrant (lacking allegiance) could not claim full protection under the law of the land or take up "usual residence" to be counted for federal apportionment. Therefore, it is certainly permissible—and constitutionally sound—to exclude illegal aliens from the federal apportionment base. In other words, those who "usually reside" in the United States owe complete (not temporary) allegiance to the United States and are within its protection, including citizens and lawful residents.

43. The Fourteenth Amendment did not alter this Founding era understanding of the apportionment base. The doctrine of allegiance was "alive and well" when the Fourteenth Amendment was ratified. Charles, *supra* ¶ 38, at 82; *see also id.* at 41 (concluding that Congress has the authority to exclude illegal aliens from federal apportionment without a constitutional amendment). Indeed, when discussing apportionment surrounding the ultimate passage of the Fourteenth Amendment, many Framers were concerned with foreign influence. *Id.* at 55.

As one Framer explained, if apportionment was based on eligible voters, then suffrage would inevitably be unlimited. Cong. Globe, 39th Cong., 1st Sess. 357 (1866). Apportionment would be reduced to political power-grabbing as states would have been incentivized to enfranchise anyone to gain more seats in the House. Those who do not owe complete allegiance to the United States could then be enfranchised to be countable for apportionment, giving way to the very foreign influence of which the Founders were fearful. Ultimately, Section 2 of the Fourteenth Amendment was adopted as follows, using the term "persons" for apportionment: Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. U.S. Const. amend. XIV, § 2.

44. Textually, "persons" is not unbounded as that term relates to the apportionment base. *See Biden v. Nebraska*, 600 U.S. 477, 517 (2023) (Barrett, J., concurring) ("[T]he meaning of a word or phrase may only become evident when placed in context." (internal quotation marks omitted)). For apportionment, "[a]ll persons does not really . . . mean everybody." Farrar*, supra* ¶ 39, at § 240, at 237 (1867). The apportionment base includes persons who "bear some relation to the State in which they are enumerated." *Id.* As explained, the history of apportionment points back to the doctrine of allegiance. *E.g.*, Charles, *supra* ¶ 38, at 39–40, 62–63. Those who should influence American politics through apportionment and representation are those who owe complete (not temporary) allegiance to the United States of America and are within its protection.

45. The framers of the Fourteenth Amendment took to the floor to explain allegiance and apportionment: lawful residents on the path to citizenship owe complete allegiance and includable for the apportionment base. *Id.* Naturally, citizens were still included in the apportionment base. But unlawful or illegal aliens are not (and should not be) lumped into the same category. If they were, the census would produce the result that the Founders and Framers feared: apportionment

based on foreign influence. And the States would be incentivized to round up all physically present persons—regardless of citizenship or residency status—to gain more seats in the House. The Founders never intended apportionment to be distorted by unprincipled pursuits of political clout. *Id.* at 54–55.

46. All said, the Fourteenth Amendment confirmed the status quo: States could not infringe on the basic civil liberties of life, liberty, or property without due process. *Id.* at 82. It did not change apportionment and the historical understanding of countable persons. It follows that those who owe complete allegiance to the United States could be counted for federal apportionment.

47. Most famously, the Fourteenth Amendment helped ensure that former slaves enjoyed their inalienable rights as citizens of the United States. Former slaves, born or naturalized in the United States, were subject to the laws of the United States, citizens, and included in the apportionment base. U.S. Const. Amend. XIV, § 2 ("Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed."). Section 2 also imposed a penalty for those States that unconstitutionally denied eligible voters (at the time, those male voters above age 21) of the right to vote, reducing the offending State's apportionment in proportion to the number of denied eligible voters to the whole number of eligible voters. *Id.* This penalty was aimed at the Southern States in an effort to ensure black males' eligibility to vote. If former slaves were to be included in the apportionment base (and rightfully so), then they must also gain from the corresponding apportionment. Clearly, the same considerations of the Founders were still at play: fair representation for citizens and lawfully present persons—i.e., those who owe complete allegiance to the United States.

48. The *Franklin* Court also discussed a concrete historical example illustrating how the concept of usual residence operated in practice:

> This understanding was applied in 1824, when a question was raised about the residency qualifications of would-be Representative John Forsyth, of Georgia. Mr. Forsyth had been living in Spain during his election, serving as minister plenipotentiary from the United States. His qualification for office was challenged on the ground that he was not an inhabitant of the State in which he was chosen. The House Committee of Elections disagreed, reporting: "There is nothing in Mr. Forsyth's case which disqualifies him from holding a seat in this House. The capacity in which he acted, excludes the idea that, by the performance of his duty abroad, he ceased to be an inhabitant of the United States; and, if so, inasmuch as he had no inhabitancy in any other part of the Union than Georgia, he must be considered as in the same situation as before the acceptance of the appointment." Representative Bailey, supporting the qualification of Mr. Forsyth, pointed out that if "the mere living in a place constituted inhabitancy," it would "exclude sitting members of this House."

Franklin, 505 U.S. at 805.

49. This historical episode demonstrates several crucial principles. *First*, physical presence is not the sole or even primary determinant of usual residence or inhabitancy. Representative Forsyth was physically absent from Georgia, yet remained an inhabitant of that state. *Second*, allegiance is essential to that determination. Representative Forsyth, though physically in Spain, owed his political allegiance to the United States and specifically to Georgia. *Third*, the concept of inhabitancy necessarily implies a lasting tie to a place. Representative Forsyth, though lawfully admitted into Spain, had not been granted permission to remain there permanently.

50. Just as Representative Forsyth remained an inhabitant of Georgia even while temporarily residing overseas, aliens who only have permission to remain temporarily in the United States or who lack permission of any sort to be in the country remain inhabitants of their

home countries and are not inhabitants of the U.S. states in which they temporarily find themselves.

51. Unlawfully present aliens owe their political allegiance to their countries of origin, not to the United States. They remain citizens of foreign nations, subject to the claims and jurisdiction of those nations. They are forbidden by law from voting in U.S. elections or holding office. Indeed, many foreign countries—including Latin American nations from which substantial numbers of unlawful immigrants arrive—claim birthright citizenship for children born to their nationals abroad and impose ongoing obligations on their citizens, such as military service and obligatory voting, regardless of where those citizens physically reside.

52. Moreover, unlawfully present aliens lack allegiance and any enduring tie to the United States. By definition, they are present without authorization. Their presence is contrary to American law, and they are subject to removal at any time upon detection by immigration authorities. Their connection to any particular state is contingent and temporary, lasting only as long as they evade detection and removal. Temporarily present aliens are much the same. Their presence is fleeting and unmoored to the fabric of American society. These groups represent the antithesis of an "enduring tie," permanence, and any semblance of allegiance.

53. The Supreme Court in *United States v. Wong Kim Ark* emphasized that allegiance is a reciprocal relationship. 169 U.S. 649 (1898). The Court held that foreigners who are permanently domiciled in the United States "are entitled to the protection of and owe allegiance to the United States, *so long as they are permitted* by the United States to reside here." *Id.* at 694 (emphasis added). In other words, "[i]n exchange for permission to settle and stay, aliens were bound to the society by their residence, subject to the laws of the state[,] and obliged to defend it, because it grants them protection." Charles, *supra* ¶ 38, at 77 (quoting 1 Vattel, The Laws of Nations, § 213 (1787)) (internal

quotation marks omitted). This language establishes that the reciprocal relationship of allegiance and protection depends on the sovereign's permission for the alien to reside in the United States. When an alien is present unlawfully, however, the United States has not "permitted" that alien to reside here. To the contrary, the alien's presence defies American law. The alien has not received the sovereign's consent, and therefore, the reciprocal relationship necessary for usual residence does not exist.

54. During the Founding and Reconstruction eras, it was presumed that lawful residents would be on the path toward citizenship by fulfilling the laws of the United States and subjection to the same. "It is arguably outside the bounds of constitutional logic for a class of foreigners to be entitled to the full protection of the Constitution, especially the political privilege of apportionment, if they do not subject themselves fully to the laws." Charles, *supra* ¶ 38, at 63. Put differently, absent consent or subjection, there is no allegiance. In turn, the person lacking a duty of allegiance is not entitled to the complete protection of the State.

55. Unlawfully present aliens and temporarily present aliens owe their political allegiance to their countries of origin, not to the United States. They remain citizens of foreign nations, subject to the claims and jurisdiction of those nations. They are forbidden by law from voting in U.S. elections or holding office. Indeed, many foreign countries—including Latin American nations from which substantial numbers of unlawful immigrants arrive—claim birthright citizenship for children born to their nationals abroad and impose ongoing obligations on their citizens, like military service and obligatory voting, regardless of where those citizens physically reside.

56. Therefore, the Bureau should adopt a rule defining "usual residence" to mean the place where a person owes complete allegiance, consistent with the Constitution's original meaning, the original

meaning of the Fourteenth Amendment, and Supreme Court precedent. This definition should clarify that any alien who is unlawfully or temporarily present does not owe complete allegiance to the United States and should therefore not be counted in the apportionment base in the decennial census.

57. The question that presents itself today, in other words, is whether illegal aliens and temporarily present aliens owe complete allegiance within the understanding of usual residence. Considering the history of apportionment and the Framers' understandings of the same, the meaning of "persons" as quoted in the Census Clause and Section 2 of the Fourteenth Amendment, and the doctrine of allegiance that informs this entire issue, the answer is no. Originally understood, the Constitution requires the counting of citizens (inherently allegiant) and lawful residents (necessarily allegiant) for federal apportionment purposes. Both groups together making up the apportionment base under Census Clause and Section 2 of the Fourteenth Amendment. Illegal aliens lacking such allegiance have no place in federal apportionment. Neither do temporarily present aliens with no intention of becoming citizens. Including them in the apportionment base would undermine the structure our Founders and Framers established by injecting unwarranted foreign influence into our republican form of government.

C. The children of illegal or temporary aliens also do not owe complete allegiance to the United States and should not be included in the apportionment population in the Census.

58. The Fourteenth Amendment's Citizenship Clause provides that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. Const. amend. XIV, § 1. The language has sometimes been interpreted to mean that children born in the United States automatically acquire citizenship regardless of their parents' immigration status. However, this interpretation rests on a

misunderstanding of the phrase "subject to the jurisdiction thereof." It is inconsistent with the original understanding of the Citizenship Clause, historical practice, and the doctrine of allegiance that underlies constitutional residence requirements.

59. The Citizenship Clause's requirement that persons be "subject to the jurisdiction" of the United States derives in part from English common law principles regarding allegiance and jurisdiction. In *Calvin's Case*, Lord Coke explained that "it is *nec cœlum*, *nec solum*, neither the climate nor the soil, but *ligeantia* [allegiance] and *obedientia* [obedience] that make" one "subject" to the laws of the country. (1608) 77 Eng. Rep. 377, 385.

60. This principle established that jurisdiction in the relevant sense does not turn simply on whether a person is physically present within a territory or subject to its laws in some respect, but rather on whether the person owes complete allegiance to the sovereign. As the D.C. Circuit explained in *Tuaua v. United States*, *Calvin's Case* means "[t]hose born 'within the King's domain' and 'within the obedience or ligeance of the King' were subjects of the King, or 'citizens' in modern parlance." 788 F.3d 300, 304 (D.C. Cir. 2015).

61. More precisely, the test at common law was not mere birth on soil, but rather birth on the sovereign's soil to parents who were under the protection of—and therefore owed allegiance to—the sovereign. *See generally* Wurman, *supra* ¶ 35, at 320, 336, 372. As Justice Joseph Story explained the rule: "Nothing is better settled at the common law than the doctrine that the children even of aliens born in a country, while the parents are resident there under the protection of the government, and owing a temporary allegiance thereto, are subjects by birth." *Inglis v. Trustees of Sailor's Snug Harbor*, 28 U.S. 99, 164 (1830) (Story, J., concurring).

62. At common law, aliens were not "under the protection of the government" unless they had received a grant of safe-conduct permitting

them to enter and extending the king's protection. As Blackstone explained, "during the continuance of any safe-conduct, either express or implied, the foreigner is under the *protection* of the king and the law."[13] The statutes of the realm could also extend permission and protection to aliens. *See, e.g.*, 27 Edw. III, Stat. 2, 1 Statutes of the Realm 333 (1353) (providing that, "to give Courage to Merchant Strangers to come with their Wares and Merchandises into the Realm," that they "may safely and surely under our Protection and safe-conduct come and dwell in our said Realm").

63. *Calvin's Case* also cited a prior case that illustrated the principle that mere physical presence did not create allegiance or jurisdiction. In *Perkin Warbeck's Case*, cited by Lord Coke, a Dutchman declared himself the rightful heir to the English throne and traveled to England in an attempt to seize it. He was captured, but the English court concluded he "could not be punished by the common law" because he was not subject to the civil courts' jurisdiction. *Calvin's Case*, 77 Eng. Rep. at 384. Despite his physical presence in England, Warbeck "had never been under the protection of the King, nor ever owed any manner of ligeance unto him." *Id.*

64. As Professor Samuel Estreicher has explained, "Warbeck's very setting foot on English soil as a pretender to the throne made him a criminal in the eyes of English law, one who had never claimed the protection of the king by virtue of his lawful presence in the realm. Thus, it was the illegality of Warbeck's presence that placed him outside of the ordinary jurisdiction of English law."[14]

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[13] 4 William Blackstone, Commentaries on the Laws of England *68–69 (George Sharswood ed., Philadelphia: George W. Childs 1866) (emphasis added).

[14] Samuel Estreicher & David Moosmann, *Birthright Citizenship for Children of Unlawful U.S. Immigrants Remains an Open Question*, Just Sec. (Nov. 20, 2018), https://perma.cc/QZ6G-3LAW.

65. Similarly, in America, a lawful residence was required to be under the protection of the government—and to be subject to the government's jurisdiction. As Chancellor Kent explained in a case arising out of the War of 1812: "A lawful residence implies protection, and a capacity to sue and be sued." *Clarke v. Morey*, 10 Johns. 69, 72 (N.Y. 1813).

66. The phrase "subject to the jurisdiction thereof" was deliberately chosen by the drafters of the Fourteenth Amendment to incorporate this concept of protection and allegiance, i.e., political jurisdiction, not mere subjection to laws by geographic happenstance. The Citizenship Clause constitutionalized the Civil Rights Act of 1866, which had declared that "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States." Ch. 31, 14 Stat. 27, 27 (1866).

67. While the Citizenship Clause and Civil Rights Act of 1866 differ slightly in the phrasing of their jurisdiction clauses, history demonstrates that both bear the same meaning: "subject to jurisdiction" meant subject to complete jurisdiction, not owing allegiance to anybody else. *See, e.g.*, Cong. Globe, 39th Cong., 1st Sess., 2890–93 (1866) (statements of Senators Jacob Howard and Lyman Trumbull, explaining that jurisdiction meant "complete" jurisdiction—"the same jurisdiction [that] . . . applies to every citizen" under the 1866 Act). In fact, there appeared to be a general consensus among the Framers of the Fourteenth Amendment that its jurisdictional clause was the same as the 1866 Act's clause in that both referred to complete or political jurisdiction.

68. Senator John Bingham, a principal author of the Fourteenth Amendment, explained that the jurisdictional provision meant that "every human being born within the jurisdiction of the United States of parents *not owing allegiance to any foreign sovereignty*" would be a citizen. Cong. Globe, 39th Cong., 1st Sess. 1291 (1866) (emphasis added).

69. Senator Jacob Howard, a sponsor of the Fourteenth Amendment, proposed a new clause for the amendment that invoked the historic term of art "jurisdiction": "[A]ll persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside." *Id.* at 2890. Importantly, Howard explained that "[t]his will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of embassadors [sic] or foreign ministers accredited to the Government of the United States, but will include every other class of persons." *Id.* This express, separate reference to "aliens" demonstrates that even the drafter believed it would exclude foreigners beyond the class of ambassadors' children.

70. Senator Lyman Trumbull, Chair of the Senate Judiciary Committee and the leading Senate expert on the Civil Rights Act of 1866, was asked what "subject to the jurisdiction of the United States" meant. He replied: "What do we mean by 'subject to the jurisdiction of the United States?' *Not owing allegiance to anybody else.* That is what it means." *Id.* at 2893. He further stated that the phrase means "subject to the *complete* jurisdiction thereof." *Id.* (emphasis added).

71. And James Wilson, chair of the House Judiciary Committee, explained that the citizenship clause of the Civil Rights Act would exclude "children born on our soil to temporary sojourners *or* representatives of foreign Governments." *Id.* at 1117 (emphasis added).

72. To these Framers, the status of the child's parents appears to be of some importance. Wurman, *supra* ¶ 35, at 419. If the child's parents owed the requisite allegiance to the United States, then that child could be a birth-right citizen. Those born of parents who were within the complete jurisdiction of the United States were citizens upon birth under this historical view.

73. Historically, the original meaning of the Citizenship Clause requires complete political allegiance to the United States, not merely partial subjection to its laws by virtue of geographic presence. Any

person who owes allegiance to a foreign sovereign—whether by birth, descent, or continuing citizenship—does not meet the "complete jurisdiction" requirement.[15]

74. In the years immediately following ratification of the Fourteenth Amendment, government officials and legal scholars understood the Citizenship Clause to exclude children born to aliens. In 1872, just four years after ratification, the Supreme Court noted in the *Slaughter-House Cases* that "[t]he phrase, 'subject to its jurisdiction' was intended to exclude from its operation children of ministers, consuls, and *citizens or subjects of foreign States born within the United States*." 83 U.S. 36, 73 (1872) (emphasis added).

75. In 1873, the U.S. Attorney General, who had been a Senator during the debates over the Fourteenth Amendment, issued a formal opinion explaining that "the word 'jurisdiction' must be understood to mean absolute or complete jurisdiction, such as the United States had over its citizens before the adoption of this amendment." 14 Op. Att'ys Gen. 295, 300 (1873). "Aliens, among whom are persons born here and naturalized abroad, dwelling or being in this country, are subject to the jurisdiction of the United States only to a limited extent. Political and military rights and duties do not pertain to them." *Id.*

76. In 1884, the Supreme Court decided *Elk v. Wilkins*, and held that Indians were not citizens under the Fourteenth Amendment because they owed allegiance to their tribes. 112 U.S. 94 (1884). The Court held

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[15] Generally, "[t]he objective was to make citizens of everybody born in the United States who owe allegiance to the United States." Wurman, *supra* ¶ 35, at 416. Allegiance was at the heart of citizenship. *Id.* (quoting Cong. Globe, 39th Cong., 1st Sess, 572 (1866) (statement of Sen. Trumbull). Consider the Indian Tribes. They were not subject to the United States's jurisdiction in the "complete" sense and, thus, lacked allegiance and protection. While born within the territorial jurisdiction of the United States, they were not considered citizens at the time of the ratification of the Fourteenth Amendment. *Id.* at 423; *see also id.* at 429 (explaining that protection is key to complete jurisdiction).

that the "evident meaning" of the Citizenship Clause was that a person must be "not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their *political* jurisdiction, and owing them direct and immediate allegiance." *Id.* at 102 (emphasis added). Moving beyond the context of Indians, the Court explained that citizenship would be conferred only on children whose parents are "owing no allegiance to any alien power." *Id.* at 101. But "an emigrant from any foreign state cannot become a citizen of the United States without a formal renunciation of his old allegiance, and an acceptance by the United States of that renunciation through such form of naturalization as may be required [by] law." *Id*.

77. In *Wong Kim Ark,* the Supreme Court held that a person born in the United States to alien parents who, at the time of the child's birth, "enjoy[ed] a permanent domicile and residence" in the United States with the government's permission, "becomes at the time of his birth a citizen of the United States." 169 U.S. 649, 652, 705 (1898). Critically, *Wong Kim Ark* repeatedly emphasized that Wong's parents were *lawfully* present and that the United States had "permitted" them to reside here. The Court held that foreigners present in the United States "are entitled to the protection of and owe allegiance to the United States, *so long as they are permitted* by the United States to reside here." *Id*. at 694.

78. The Court further emphasized that "the jurisdiction of every nation within its own territory is exclusive and absolute" and may only be qualified by the "consent, express or implied," of the sovereign. *Id*. at 686. This language establishes that presence without the sovereign's consent—i.e., unlawful presence—does not create the reciprocal relationship of allegiance and protection necessary for citizenship or usual residence.

79. Professor Estreicher has observed that *Wong Kim Ark* "by its facts (and some of its language) is limited to children born of parents who at the time of birth were in the United States lawfully and indeed were

permanent residents."[16] The decision does not address, and therefore does not resolve, the citizenship status of children born to aliens who are present unlawfully or only temporarily.

80. The D.C. Circuit has similarly recognized that "birthright citizenship does not simply follow the flag." *Tuaua*, 788 F.3d at 305. Rather, "the evident meaning of the words 'subject to the jurisdiction thereof' is, not merely subject in some respect or degree to the jurisdiction of the United States, but *completely* subject to their political jurisdiction, and owing them direct and immediate allegiance." *Id*. (cleaned up) (emphasis in original).

81. Children born in the United States to parents who are citizens of foreign countries inherit their parents' citizenship under the laws of most nations. This is particularly true for Latin American countries, which typically grant citizenship based on descent (*jus sanguinis*) regardless of the place of birth. As a result, such children possess, from birth, citizenship of their parents' countries of origin.

82. This foreign citizenship creates divided allegiance, which was understood at the time of the Fourteenth Amendment's ratification to be inconsistent with U.S. citizenship. As a House Report from 1874 stated, "[t]he United States have not recognized a 'double allegiance.' By our law a citizen is bound to be 'true and faithful' alone to our Government." H.R. Rep. No. 43-784, at 23 (1874).

83. Children born to alien parents owe allegiance to their parents' countries through the bond of descent and citizenship. Even more fundamentally, children born to aliens who are unlawfully present in the United States are born to parents who have not received the sovereign's consent to be here. Their parents' presence is in active defiance of American law. Under the test of the common law, such children were not born to parents under the "protection" of the government.

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[16] Estreicher, *supra*, n.14.

84. Under these circumstances, the reciprocal relationship of allegiance and protection described in *Wong Kim Ark* does not exist and cannot be imputed to the children of illegal aliens. The parents are present without permission, remain subject to removal at any time, and owe their primary political allegiance to their countries of origin. They cannot be "completely subject to" the "jurisdiction" of the United States, nor can they owe "direct and immediate allegiance" to the United States, *Elk*, 112 U.S. at 102, when they and their parents simultaneously owe allegiance to foreign sovereigns. This divided allegiance and lack of sovereign consent disqualify them from birthright citizenship under the proper understanding of the Citizenship Clause.

85. For these reasons, children born in the United States to parents who are unlawfully present do not meet the Fourteenth Amendment's requirement that they be "subject to the jurisdiction" of the United States. They are not citizens under a proper interpretation of the Citizenship Clause, and therefore, they should not be counted in the census apportionment base. Like their parents, they lack the complete political allegiance and enduring ties that the Constitution requires for usual residence and for citizenship. And their continued inclusion dissipates the political power and benefits due to American citizens.

III. The Constitution and federal law prohibit statistical methods in the decennial census.

86. Using statistical sampling processes in the decennial census for the purpose of apportionment violates the U.S. Constitution. *See* Article I, Section 2, Clause 3 of the U.S. Constitution (U.S. Const. Art. I, § 2, Cl. 3) (the Actual Enumeration Clause) and Section 2 of the Fourteenth Amendment to the U.S. Constitution (U.S. Const. Art. XIV, § 2). They also violate federal law. Federal law allows the use of statistical sampling "*[e]xcept* for the determination of population for purposes of apportionment of Representatives in Congress among the several States." 13 U.S.C. § 195 (emphasis added). This statute authorizes the Secretary to use sampling in assembling demographic data collected

in connection with the census, but it maintains the longstanding prohibition on using sampling to calculate the population for congressional apportionment. Furthermore, it is unlawful to "use ... any statistical method, in connection with a decennial census, for the apportionment or redistricting of Members in Congress," Pub. L. No. 105-119, § 209(i). A "statistical method" includes "any other statistical procedure, including statistical adjustment, to add or subtract counts to or from the enumeration of the population as a result of statistical inference"). *Id*. § 209(h)(1).

87. The two methodologies criticized below—the Group Quarters Method and Differential Privacy—were used in the 2020 census, and they violated this statutory prohibition by creating population estimates through regression analyses and statistical inferences rather than actual enumeration of persons and by applying statistical adjustments that add and subtract counts from populations in census tracts.

88. The U.S. Constitution requires an "*actual Enumeration*" of the population every ten years "in such Manner as they shall by Law direct." U.S. Const. Art. I, § 2, Cl. 3 (emphasis added).

89. The Founders "understood the difference between an enumeration and a mere estimate," and they "accepted an enumeration as the constitutionally prescribed 'method' of determining the population for purposes of apportionment." Thomas R. Lee, *The Original Understanding of the Census Clause: Statistical Estimates and the Constitutional Requirement of an 'Actual Enumeration,'* 77 Wash. L. Rev. 1, 5 (2002). This is evident both in the text and in longstanding practice.

90. The Constitution's text leaves no ambiguity. It requires an "actual Enumeration." "Dictionaries roughly contemporaneous with the ratification of the Constitution demonstrate that an 'enumeration' requires an actual counting, and not just an estimation of number." *Dep't of Com. v. U.S. House of Representatives*, 525 U.S. 316, 346–47 (1999) (Scalia, J., concurring) (discussing Noah Webster's 1828 American

Dictionary of the English Language, Samuel Johnson's 1773 Dictionary of the English Language 658 (4th ed.), and Thomas Sheridan's 1796 Complete Dictionary of the English Language (6th ed.)).

91. Moreover, the founders prescribed that the enumeration be an "actual" enumeration, emphasizing that the requirement is not a mere estimate. *See Utah v. Evans*, 536 U.S. 452, 492 (2002) (Thomas, J., concurring in part and dissenting in part). An actual enumeration, as understood at the time of the founding, "requires an actual counting, and not just an estimation of number." *Dep't of Com.*, 525 U.S. at 346–47 (Scalia, J., concurring in part). Thus, the Supreme Court has recognized that the actual enumeration requirement "suggests that the Framers expected census enumerators to seek to reach each individual household." *Evans*, 536 U.S. at 477 (2002).

92. This distinction was not merely semantic. During debates over the first Census Act, James Madison noted that the census required by the Constitution would provide "an exact number of every division" as compared to "assertions and conjectures."[17] Similarly, in describing the results of the first census, Thomas Jefferson distinguished "actual returns" from those "added in red ink by conjectur[e]."[18]

93. Aware of these linguistic distinctions, the Framers consciously required an "actual Enumeration." This requirement, as the Supreme Court has recognized, "suggests that the Framers expected census enumerators to seek to reach each individual household." *Evans*, 536 U.S. at 477.

94. Section 2 of the Fourteenth Amendment provides that "Representatives shall be apportioned among the several States according to their respective numbers, counting the *whole number of persons* in each State." (emphasis added).

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[17] 2 The Founders' Constitution 139 (P. Kurland & R. Lerner eds. 1987).
[18] 8 The Writings Of Thomas Jefferson 229 (A. Lipscomb ed. 1903).

95. "From the very first census, the census of 1790, Congress has prohibited the use of statistical sampling in calculating the population for purposes of apportionment." *Dep't of Com. v. U.S. House of Representatives*, 525 U.S. at 335. The tradition continued for "over 200 years during which" the relevant federal statutes have consistently "prohibited the use of statistical sampling where apportionment is concerned." *Id.* at 339–40.

96. The Supreme Court has emphasized this unbroken historical tradition, noting that early census acts explicitly required "actual inquiry at every dwelling-house, or of the head of every family," and that the requirement for enumerators to visit each home appeared in statutes governing the first fourteen censuses following 1790. *Id.* at 335. Even when Congress enacted the precursor to § 195 in 1957—allowing the Secretary to use sampling for purposes other than apportionment, *id.* at 335–37—and the 1976 amendment to § 195—which made sampling mandatory for other demographic data collection if feasible, *see* Pub. L. No. 94-521, § 10, 90 Stat. 2459, 2464 (Oct. 17, 1976) (codified at 13 U.S.C. § 195)—Congress maintained the prohibition on sampling for apportionment itself.

97. The Executive Branch consistently accepted this interpretation of the Census Act until 1994. The Census Bureau itself concluded in 1980 that the amended Census Act "clearly" continued the "historical precedent of using the 'actual Enumeration' for purposes of apportionment, while eschewing estimates based on sampling or other statistical procedures, no matter how sophisticated." 45 Fed. Reg. 69,366, 69,372 (Oct. 20, 1980). The Solicitor General argued this same position before the Supreme Court in 1980. *See U.S. House of Reps.*, 525 U.S. at 340–42 (citing Application for Stay in *Carey v. Klutznick*, O.T. 1979, No. A-354, p. 10). It was not until 1994 that the Executive Branch claimed for the first time that statistical sampling for apportionment would be consistent with the Census Act—a position the Supreme Court rejected in 1999. *U.S. House of Reps.*, 525 U.S. at 343.

98. Congress has enacted comprehensive legislation governing the decennial Census, codified at 13 U.S.C. § 141 *et seq.*, delegating authority to the Secretary of Commerce to conduct the decennial Census. The Permanent Apportionment Act, 2 U.S.C. § 2a, fixes the House of Representatives at 435 members and establishes the method for allocating seats based on state populations determined by the Census.

99. In 1997, Congress enacted Pub. L. 105-119, § 209, which expressly stated that "the use of statistical sampling or statistical adjustment in conjunction with an actual enumeration to carry out the Census with respect to any segment of the population poses the risk of an inaccurate, invalid, and unconstitutional Census."

100. Section 209(h)(1) defines "statistical method" as "an activity related to the design, planning, testing, or implementation of the use of representative sampling, or any other statistical procedure, including statistical adjustment, to add or subtract counts to or from the enumeration of the population as a result of statistical inference." Section 209(i) further provides: "Nothing in this Act shall be construed to authorize the use of any statistical method, in connection with a decennial Census, for the apportionment or redistricting of Members in Congress."

101. Congress enacted Section 209 to prevent statistical manipulation of the census in response to the Clinton Administration's proposal to use sampling for the 2000 Census. The legislative history reflects deep concern that statistical methods would open the door to political manipulation of population counts, thereby undermining the integrity of congressional apportionment and redistricting. Congress explicitly found in the statute itself that the use of sampling or statistical adjustment "poses the risk of an inaccurate, invalid, and unconstitutional Census." § 209(a)(7).

102. The concern about political manipulation that motivated Section 209's enactment was rooted in the reality that statistical methods—unlike actual enumeration—inherently involve discretionary choices

about sampling frames, adjustment algorithms, and demographic assumptions that could be exploited for partisan advantage. During congressional debate over census methodology, Speaker Newt Gingrich articulated this concern, urging his colleagues: "Please do not ask the people of the United States to rely on politicians controlling pollsters to invent virtual people to get a grossly inaccurate count on behalf of some political party, because that undermines the Constitution and that undermines the very political process." 144 Cong. Rec. H7211 (daily ed. Aug. 5, 1998) (statement of Speaker Gingrich).

103. In producing the U.S. Census Bureau report for purposes of apportionment ("report") based upon the 2020 decennial Census (the "2020 Census"), the Bureau implemented two fundamentally flawed data collection methods. The first was the "Group Quarters Method," a statistical sampling process that created fictitious persons without actual enumeration. The second was "Differential Privacy," a noise injection system that systematically distorted Census data by *adding* statistical errors to purportedly protect confidentiality ("statistical methods"). The 2020 Census report thus erroneously determined the electoral apportionment population for Florida and all other States.

A. The Group Quarters Method is an illegal statistical sampling process that may not lawfully be used in the decennial census.

104. On Census Day, April 1, 2020, due to the COVID lockdown, individuals who might otherwise have resided in short-term institutional living arrangements, such as college students who had been residing in dormitories, were instead residing at their permanent household, located elsewhere. To attempt to estimate the number of such persons, the Bureau created a statistical method which it misleadingly called Group Quarters Imputation. This Petition refers to it using the more neutral term "Group Quarters Method." This technique had the effect of creating a fictitious population at these institutions. According to former U.S. Census Bureau employee Adam Korzeniewski, the Group Quarters Method used "linear regression analysis based off estimates

from the Group Quarters themselves, yielding a ratio by which Census analysts would impute the population of each facility."[19]

105. The Group Quarters Method had a significant practical impact on the results of the 2020 Census report. For example, by the end of March 2020, because of the COVID-19 pandemic, virtually all colleges and universities had closed their dormitories and sent students elsewhere. Consequently, by Census Day 2020, most college and university students had vacated their group quarters and were residing in a different location.

106. Consistent with the instructions provided by the U.S. Department of Commerce and the U.S. Census Bureau, these persons were to be counted in the households in which they resided on Census Day. After the 2020 Census data collection for group quarters had closed, the responses were reviewed, and the U.S. Department of Commerce and the U.S. Census Bureau determined that thousands of presumably occupied group quarters lacked any population count. Thereafter, an ad hoc group within the U.S. Census Bureau, known as the "GQ Count Imputation Team," was created. In February 2021, it developed and deployed the Group Quarters Method to insert fictitious persons in many group quarters through imputation.[20]

107. In fact, contravening the statutory mandate, the GQ Count Imputation Team actually instructed group quarters contacts to provide population counts for their institution as of a point before the COVID-19 closures of the institution.[21] This effectively moved Census Day for some group quarters from April 1, as expressly required by 13 U.S.C. § 141(a), to an unknown prior date. It also virtually guaranteed that

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[19] Adam Korzeniewski, *Fictive Counting*, The American Mind (May 14, 2021), https://perma.cc/9K6R-X482.

[20] Timothy Kennel et al., *Results from the 2020 Census Group Quarters Count Imputation*, U.S. Census Bureau (May 1, 2023), https://perma.cc/FKV8-R8F2.

[21] *Id.*

persons who had resided in group quarters before COVID-19 would be double-counted: first at home, and then fictitiously by the Group Quarters Method as if they had been at their college or university on Census Day.

108. The Group Quarters Method was also used on group facilities like nursing homes, many of which were already shuttered or experiencing lower-than-historical occupancy on April 1, 2020.

109. The Group Quarters Method constituted statistical sampling (prohibited for congressional apportionment), rather than actual enumeration, because it ascribed fictional people to facilities that were actually empty on Census Day 2020 using mathematical models rather than counting real residents. Because the Group Quarters Method constituted statistical sampling, it was a statistical method forbidden by federal law for Census enumeration. The Group Quarters Method violates 13 U.S.C. § 195's and Section 209's prohibitions on statistical sampling for congressional apportionment and redistricting by creating population estimates through regression analysis rather than enumerating actual persons.

B. The Differential Privacy noise injection system also should not be used in the decennial census.

110. Another flawed and potentially unlawful method used in the 2020 Census Report was Differential Privacy. The Bureau implemented "differentially private (DP) algorithms to protect the confidentiality of tables in 2020 Census data products through injecting noise into almost every cell," which was intentionally "detrimental to data quality" according to the National Academies of Sciences' final report.[22]

111. To protect the privacy of individuals whose data is reported in the census results, the Census Bureau previously used a technique known as swapping. When very granular data (such as age, race, or household

[22] Nat'l Acads. of Scis., Eng'g & Med., *Assessing the 2020 Census: Final Report* 252 (2023), https://perma.cc/7HN7-6VPM.

characteristics) is reported at the smallest geographic level ("census blocks"), it would sometimes become possible to match the data to individuals. To prevent this, the Census Bureau would "swap" block-level data—take an answer from one block and exchange it for a similar answer from a different block. While the details of how swapping was applied were not made public, most experts "assumed that swapping was used on people with unusual demographic characteristics that make them more vulnerable to being identified."[23] In any case, swapping did not affect the count of people in any given block. The block population counts were kept consistent with the real-world count. *Id*. Differential Privacy is a failed attempt to address the same privacy problem, but using means that alter the final census counts.

112. The Bureau's own characterizations of Differential Privacy confirm that it constitutes a statistical method, describing Differential Privacy as a "scientific framework" and admitting that the Census Bureau "added ... variations from the actual count."[24]

113. The Census Bureau has also admitted that Differential Privacy works by "adding statistical noise—small, random additions or subtractions—to every published statistic" and that "this process requires balance" because "[i]f too much noise is introduced, the data will be of no use"[25] and that the method involves an inherent "tradeoff between privacy and accuracy."[26]

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[23] Jeffrey Mervis, *The U.S. has a new way to mask Census data in the name of privacy. How does it affect accuracy?*, Science (Dec. 2, 2023), https://perma.cc/MB62-WPV3.

[24] *Understanding Differential Privacy*, U.S. Census Bureau, https://perma.cc/4F4P-YRPM.

[25] CONG. RESEARCH SERV., IF12957, *Census Bureau Data: Selected Access, Privacy, and Penalty Issues* (2024), https://perma.cc/LY3D-N7JG

[26] Simson l. Garfinkel, et al., Differential Privacy at the US Census Bureau: Status Report 2, https://perma.cc/3TSJ-UDKV (presentation to Nat'l Inst. of Standards & Tech., Jan. 27, 2020).

114. The Differential Privacy technique uses algorithms to intentionally distort the numbers reported in individual cells of data (adding "noise"). Differential Privacy implements a statistical adjustment to the enumeration by drawing values from the discrete Gaussian distribution—the integer-valued analog of the normal (bell-curve) distribution, adapted for use with whole-number count data—to determine the magnitude and direction of statistical noise to inject into and thereby add to or subtract from each census data cell. The discrete Gaussian distribution is a statistical tool designed for adding noise to random samples or statistical estimates and assumes all variables are independent and identically distributed—assumptions not true for census data. Census counts are deterministic facts about actual persons, not random variables or statistical estimates with inherent variance.[27] Applying discrete Gaussian noise transforms these concrete counts into statistical estimates, adding and subtracting from the actual enumeration as a result of a statistical procedure, in direct violation of the prohibition on "any other statistical procedure, including statistical adjustment, to add or subtract counts to or from the enumeration of the population" under Section 209(h)(1).

115. The methodology adjusts actual enumeration results by injecting statistical noise after enumeration has been completed. It modified census data through post-processing algorithms and altered the population figures that the actual enumeration count had generated. Unlike traditional disclosure avoidance methods that protected privacy without changing aggregate counts, Differential Privacy fundamentally adjusts those counts through statistical procedures.

116. The discrete Gaussian mechanism adds noise of similar absolute magnitude across geographic levels regardless of population size. Because the noise injected is calibrated to the sensitivity of the query rather than scaled to the local population, small populations receive

[27] John M. Abowd, *The 2020 Census Disclosure Avoidance System TopDown Algorithm*, HARVARD DATA SCIENCE REVIEW, 2022, https://perma.cc/RZ2A-6LSF.

proportionally far greater distortion than large ones. The more granular the geographic unit, the greater the relative distortion: numbers reported for census blocks, tracts, and other small geographies carry considerably more noise and less accuracy than those reported for counties or states. This disproportionate impact falls hardest on rural communities and racial or ethnic minority populations, systematically degrading the accuracy of the very data most critical to their political representation and federal funding allocations.[28]

117. Unlike swapping, Differential Privacy did not maintain consistent counts in each block. The added noise could change the numbers in a given block. "It can also produce such illogical results as a negative number of residents, groups of children living without an adult, or occupants on a block with no recorded housing units."[29] This poses risks of distorting population counts for particular localities. But it gets worse. Census officials eliminated the most egregious impossible situations before releasing results to the public—taking measures "such as by changing negative numbers to zero," but those adjustments only increased the distortion in the final results.[30] The net result is that Differential Privacy is not more accurate than the older swapping method, but in some contexts is significantly more distorted.[31]

118. While there can be no justification for using Differential Privacy because it is unlawful and unconstitutional (as explained below), aca-

[28] *Id.*; Christopher T. Kenny, et al., *The use of differential privacy for census data and its impact on redistricting: The case of the 2020 U.S. Census*, Science Advances (Oct. 6, 2021), https://perma.cc/KMT4-NMT8.
[29] Mervis, *supra*, n.23.
[30] *Id.*
[31] *Id.*

demic analysis has concluded that the Bureau's justification for Differential Privacy was fundamentally flawed.[32] For example, Differential Privacy created systematic bias and geographic disparities.[33] At the Census block level, Differential Privacy "resulted in larger errors and greater variation" with "impact ... most severe among Hispanic residents and multiracial populations, with the magnitude of the error occasionally exceeding the total number of minorities."[34] A study in the journal Science Advances documented specific quantitative accuracy failures: "For example, a block with three Hispanic residents might appear to have zero or six Hispanic people after statisticians applied differential privacy."[35] The methodology produced negative population values and created inconsistencies across millions of tabulations. The Federal-State Cooperative Committee identified "illogical and implausible values" in demonstration products and documented systematic problems with data processing under the new system.[36]

119. Even worse, Differential Privacy did not achieve its stated objective of better protecting privacy. Differential Privacy "does not prevent accurate prediction of sensitive attributes any more than the swapping methodology used in the 2010 Census."[37] So the system sacrificed enumeration accuracy to achieve a purported statistical privacy metric without delivering enhanced privacy protection.

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[32] Steven Ruggles, *When Privacy Protection Goes Wrong: How and Why the 2020 Census Confidentiality Program Failed*, 38 J. Econ. Perspectives 201, 201 (2024), https://perma.cc/32C8-MLYP.
[33] J. Tom Mueller and Alexis R. Santos-Lozada, *The 2020 US Census Differential Privacy Method Introduces Disproportionate Discrepancies for Rural and Non-White Populations*, 41 Population Rsch. & Pol'y Rev. 1417, 1417 (2022), https://perma.cc/65NJ-Y3KT.
[34] Mervis, *supra*, n.23.
[35] *Id*.
[36] Letter from the Federal-State Cooperative Program for Population Estimates, to the Members of the Data Stewardship Executive Policy Committee (Nov. 23, 2020), https://perma.cc/E7JZ-CAJE.
[37] Kenny, supra, n.28.

C. The statistical methods used in the 2020 census resulted in systematic miscounts and directly harmed Florida, other States, and millions of Americans.

120. The combined effect of these methodologies resulted in systematic population miscounting. For example, the Group Quarters Method likely contributed to the addition of approximately "2.5 million persons to blue states above the December population estimate," creating artificial geographic redistribution of political representation.[38] And Differential Privacy "leads to a likely violation of the 'One Person, One Vote' standard" because it creates inaccurate population counts within precincts and legislative districts, causing redistricting authorities to create state and federal legislative districts that contain unequal numbers of persons.[39]

121. Additionally, continued use of the Differential Privacy technique will make it more difficult, or in some instances impossible, to accurately count aliens should states seek to exclude them from the totals for apportionment.

122. The 2020 Census report erroneously determined Florida's electoral apportionment population. For example, the Census Bureau has admitted the State of Florida was undercounted by at least 3.48%.[40] If its population had been accurately counted, Florida would have gained at least one additional House seat and Electoral College vote.[41] Other

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[38] Korzeniewski, *supra*, n.19.
[39] Kenny, *supra*, n.28.
[40] Courtney Hill et al., *Census Coverage Estimates for People in the United States by State and Census Operations*, U.S. Census Bureau 16 (June 2022), https://perma.cc/K7Q4-WFZ7.
[41] *2020 Census Count Errors & Congressional Apportionment*, Am. Redistricting Proj. (June 13, 2022), https://perma.cc/7FZJ-S8M8; *see also* Press Release, the Hon. Ron Desantis, Gov. of Fla., Governor Ron DeSantis Announces Effort to Correct Census Undercount (Aug. 20, 2025), https://perma.cc/ASV2-28ZG.

States also lost House seats and Electoral College votes to which they were entitled.

123. Such undercounting deprives Florida of representation in Congress and dilutes the voting power of Floridians in Presidential elections by depriving the State of electoral college votes to which it is entitled.

124. The inaccuracy of the Census Bureau's unlawful methods also causes inaccurate state-level districting and resource allocation and a violation of the constitutional requirement of "one-person, one-vote."

D. The Group Quarters Method and Differential Privacy are both unlawful methods.

125. Differential Privacy's documented rural/urban bias and the Group Quarters Method's geographic preferences resulted in systematic undercounting in rural areas and overcounting in urban regions, thereby distorting congressional apportionment and federal funding allocations. The intentional injection of statistical noise and the creation of fictitious persons undermined the constitutional principle that representation should be based on actual population counts, rather than statistical estimates or statistically manipulated data.

126. Even though the Constitution requires an "actual Enumeration" of the population for apportionment purposes, the Bureau's use of statistical methods in the 2020 Census report means the apportionment was not based solely on an actual and complete enumeration. Instead, the Bureau substituted statistical estimation and data manipulation for direct population counting.

127. Additionally, the Fourteenth Amendment's reference to "whole number of persons" must be interpreted consistently with the Constitution's structure and the Amendment's purpose. The Bureau's use of statistical methods in the 2020 Census report means the apportionment was not based solely on counting whole persons.

128. Both statistical methodologies also violated federal statutory requirements for accurate, actual enumeration under 13 U.S.C. § 141 and 13 U.S.C. § 195. The Census apportionment must be accurate and based on reliable, high-quality data, rather than relying on statistical methods.

129. The Group Quarters Method does not have the features of permissible imputation. Even when it adopted a very permissive reading of the statute, 13 U.S.C. § 195, the Supreme Court, at a minimum, held it to be necessary to distinguish "sampling"—forbidden by the statute—from imputation. Sampling, the Court said, involved "extrapolation of the features of a large population from a small one." *Evans*, 536 U.S. at 467. Permissible imputation, on the other hand, is the "filling in of missing data as part of an effort to count individuals one by one." *Id*. The Group Quarters Method, however, is not mere gap-filling for specific housing units where enumeration proved incomplete. It took numbers from the designated units of group housing, used a regression analysis, and reconstituted "an entire population." *Id*. As a result, the Group Quarters Method is not a mere imputation technique. It is a sampling technique, and as such, it is prohibited by law for use in apportionment.

130. Additionally, redistricting using data subjected to Differential Privacy violates the "One Person, One Vote" standard by distorting population counts within precincts and legislative districts, leading redistricting authorities to establish state and federal legislative districts with unequal populations.[42]

131. These statistical methods add counts to the enumeration based on inference about who qualifies as a constitutional "person" rather than the actual enumeration of lawful inhabitants. They also make assumptions and inferences that add to or subtract from the counted persons.

[42] Kenny, *supra*, n.28.

The use of either for apportionment violates the Constitution and federal law.

CONCLUSION

132. For the foregoing reasons, the State of Florida respectfully requests that the Census Bureau adopt regulations:

A. Requiring the decennial census to inquire as to the citizenship and immigration status of all persons;
B. Providing that only citizens and aliens with lawful permanent resident status may be enumerated in the apportionment population;
C. Defining "usual residence" to require allegiance, and thus excluding from the apportionment population any aliens who are unlawfully or temporarily present;
D. Excluding from the apportionment population children born in the United States to parents who were unlawfully present or present only on a temporary basis at the time of birth;
E. Prohibiting the use of the Group Quarters Method or any similar statistical sampling process in the decennial census; and
F. Prohibiting the use of Differential Privacy or any similar noise injection or statistical adjustment process in the decennial census.

133. These regulations are necessary to ensure that the Bureau conducts the decennial census in compliance with the Constitution's requirement of an "actual Enumeration," federal statutory prohibitions on statistical sampling for apportionment purposes, and the constitutional principles of allegiance and usual residence that have governed census enumeration since 1790.

Respectfully submitted this 13th day of April, 2026,

The State of Florida

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