

2020 Census Litigation and What It Means for Asian American Communities

After the U.S. Supreme Court blocked the administration from adding a citizenship question to the 2020 Census, the administration pursued other means to undermine the 2020 Census and prevent historically undercounted communities from being fully and accurately counted and represented in our political process. Learn more about the 2020 Census and why it is important for our communities at www.CountUsIn2020.org.

Key Takeaways:

1. According to the Constitution, the census is meant to count everyone. Everyone in our communities should be counted, regardless of immigration status.
2. The census impacts the federal funding and resources our communities receive and our political representation and voice for the next ten years. We need a full and accurate count to receive our fair share of resources.
3. Now that the 2020 Census count is over, the Census Bureau must have enough time to process the data it collected and identify any errors. Rushing the data processing to report the final numbers by December 31 will likely result in an inaccurate count for our historically undercounted communities.

What's at stake in the ongoing litigations over the 2020 Census?

- A number of lawsuits are making their way through the courts in the continued fight for a complete and accurate census. The three main issues being litigated are: (1) the truncation of counting and data processing; (2) the Presidential Memorandum to exclude undocumented immigrants from congressional apportionment; and (3) the creation of a data file (called the Citizen Voting Age Population or “CVAP” file) to exclude non-U.S. citizens from the state-redistricting process. Asian Americans Advancing Justice | AAJC (“Advancing Justice-AAJC”), along with MALDEF (Mexican American Legal Defense and Educational Fund), are currently challenging these attempts to undermine the census in federal court.
- **Timeline Truncation:** When the Census Bureau was forced to shift its operational plan due to the COVID-19 pandemic, the Census Bureau determined that it needed to continue counting until October 31, 2020, to ensure a complete and accurate count and continue processing the data through April 30, 2021. However, in August, the Census Bureau abruptly announced that it would cut short the necessary time to conduct the census by ending the count on September 30, 2020 and process the data and report the final count to the President by December 31, 2020.
- **Presidential Memo:** Everyone is meant to be counted in the decennial census, regardless of immigration status. However, on July 21, 2020, President Trump issued a [memo](#) to exclude undocumented immigrants from the census count used to reallocate congressional seats among states. The Constitution mandates that congressional seats must be allocated based on the “whole number of persons in each State” so that states are represented in proportion to their population. Removing undocumented immigrants from

the apportionment count is unprecedented and unconstitutional and will shift political representation away from places with large immigrant communities.

- **CVAP file:** In July 2019, merely days after the Supreme Court blocked the addition of a citizenship question, President Trump issued an [Executive Order](#) directing the Census Bureau to collect citizenship data from federal and state agencies so that states can exclude non-U.S. citizens from the population counts used to draw state legislative districts. Using the CVAP file with citizenship-only data at the block level will disproportionately diminish the political power of Latinos and Asian Americans, who may live in immigrant communities.

What is the current landscape?¹

- Enumeration for the 2020 Census ended on October 15, 2020. The Supreme Court cut the count short when it put on hold an order from a lower court that had directed the Census Bureau to continue counting through October 31, as the Census Bureau had originally planned since the COVID-19 pandemic.
- Now that enumeration has ended, the Census Bureau has to process the data it collected and prepare the numbers for reporting. This “post-data collection processing” is critical to identify any errors and ensure an accurate count.
- The current deadline for the Census Bureau to submit the final 2020 count to the President is December 31, 2020. However, the Census Bureau has previously stated repeatedly that there is not enough time to meet this deadline, and that it needed through April 30, 2021 to ensure that it can conduct all the necessary data processing steps.
- Several lawsuits have urged that the December 31 deadline must be set aside. A federal judge in California agreed and reinstated the April 30, 2021 deadline for reporting. The government appealed that decision, and the ruling has been put on hold while the decision is on appeal. This means that, as of now, the Census Bureau is tasked with reporting the apportionment count by December 31, 2020, and conducting the post-processing in less than half the time as they had planned.
- As to the Presidential Memo, on September 10, 2020, a panel of three federal judges in New York ruled that excluding undocumented immigrants from the congressional apportionment count was unlawful. The Trump administration has appealed the ruling, and the Supreme Court is scheduled to hear the case on November 30.

What does this mean for Asian American, Native Hawaiian, and Pacific Islander communities?

- Today, roughly one in five Asian Americans and one of three Native Hawaiians and Pacific Islanders live in hard-to-count neighborhoods and are historically undercounted in the census. A complete and accurate count is needed for everything from healthcare and education to housing and transportation for the next ten years.

¹ Last updated October 26, 2020. As litigation proceeds there will be changes in circumstances on the ground.

- Even though the census count has closed, our efforts to ensure that our communities are fully represented in the census, and to secure the funding and political power that flow from it, are not over. Rushing the data processing to report the final numbers by December 31 will likely result in an inaccurate count for our historically undercounted communities.
- The Constitution is quite clear in that the census should count “the whole number of persons in each State.” Excluding the undocumented members of our community from the number to allocate congressional seats will disproportionately affect the political representation of immigrant communities and many communities of color.
- Advancing Justice-AAJC, in partnership with MALDEF, continues to fight these issues in court to ensure that our communities are represented.