

Getting the Count Right

Key Context for the 2020 Census

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Census Day is rapidly approaching, and efforts to get out the count are proceeding despite severe headwinds. The stakes are significant: the once-per-decade enumeration of everyone in America will determine how congressional seats and hundreds of billions of dollars in federal funding get distributed among the states. This primer answers some basic questions: Will the Census Bureau keep your data safe? How well — or poorly — have past censuses done at counting everyone? How will the results of the Census affect the distribution of political power? How might litigation and the courts influence the count or how the numbers are ultimately used? And how might the coronavirus affect the Census process and the final numbers? Along the way, we highlight resources that offer a deeper dive on these and other census issues.

Confidentiality

Participating in the census is safe. Yet in today's environment, trust in the federal government is at an extreme low. Many people — and especially communities of color — fear that the Census Bureau will share their answers with other government agencies or that

the Trump administration will use their answers against them.¹ These concerns are real and threaten to depress the count if not adequately addressed.² But in fact, federal law offers strong and detailed protections against anyone — including in the federal government — abusing the personal information that the Census Bureau collects. A national network of attorneys has mobilized to uphold these laws.

Laws protecting the confidentiality of census responses are strong.

Robust legal protections prohibit the Census Bureau or any other part of the federal government from using census data against the people who supply it.³ These laws bar census responses from leaving the four walls of the bureau except as aggregate, anonymous statistics.⁴

The laws that safeguard the confidentiality of census data make clear that, among other things, the Census Bureau cannot disclose census responses in any way that would personally identify anyone.⁵ The laws also bar other federal agencies from using census data for any nonstatistical purpose, such as enforcing immigration or other laws.⁶ Federal employees attempting to misuse census data would expose themselves to serious legal consequences.⁷

These protections apply equally to any data that the Census Bureau gathers from other federal agencies or the states.⁸ So, once an individual's personal information gets into the bureau's hands — however it gets into the bureau's hands — it's guarded by strong legal protections.

The president cannot change or eliminate the confidentiality protections.

The confidentiality protections for census responses are an established part of federal statutory law.⁹ As a result, neither the president nor any federal agency can change or eliminate these protections. The only way to weaken them would be through new legislation passed by majorities in both the U.S. Senate and the House of Representatives. Barring major electoral upheavals, no such majorities are likely to exist anytime soon.

Community leaders and lawyers will guard against confidentiality breaches.

Many community leaders are working to promote census participation and protect their communities from overreach. Meanwhile, scores of lawyers are mobilizing to defend census data from any abuses.

Attorneys have put a significant infrastructure in place to protect census confidentiality. Multiple hotlines have been established to permit census respondents and grassroots leaders to report any suspected confidentiality problems, as well as other issues.¹⁰ These hotlines are the work of the Lawyers' Committee for Civil Rights Under Law, the National Association of Latino Elected and Appointed Officials (NALEO), Asian Americans Advancing Justice, and the Arab American Institute. The Mexican American Legal Defense and Educational Fund (MALDEF) and the Leadership Conference on Civil and Human Rights have organized attorneys to support any necessary legal action. And the Brennan Center has supplied the legal analysis for any litigation.

The commitment to protecting confidentiality is long running and nonpartisan.

Confidentiality has been a bedrock feature of the census for well over a century and a half. In 1850, even before federal law formally required that census responses remain confidential, the U.S. secretary of the interior — who was then tasked with conducting the enumeration — decreed it official bureau policy that individual census takers could not publicly reveal any information they collected.¹¹ By 1929, Congress had expanded this constraint to a blanket ban on the Census Bureau's sharing that data.¹² The 1929 Census Act also included prohibitions on the bureau's disclosing personally identifiable data, using census data for nonstatistical purposes, and using census data to the detriment of census respondents.¹³

In keeping with this long-running commitment to confidentiality, both Republican and Democratic administrations have for decades publicly affirmed that no one may be harmed by giving information to the census and that collected information cannot be used to enforce immigration law or any other federal, state, or local law or ordinance.¹⁴ These prohibitions, customs, and norms set the baseline against which any action by the Trump administration should be judged.

Congress has strengthened census confidentiality protections in the wake of past abuses.

One distinct but serious departure from these historical norms and statutory protections took place during World War II, when the federal government used census data to intern Japanese Americans in camps. During the war, the Census Bureau complied with the federal government's requests to release block-level census data that identified neighborhoods in seven states where Japanese Americans were living.¹⁵ The bureau also provided the addresses of individual Japanese Americans to the U.S. Treasury.¹⁶ A contemporaneous government report called census data "the most important single source of information prior to the evacuation."¹⁷

That kind of census data use is not legal today. The bureau shared the data that supported internment only because Congress had temporarily permitted it to do so through the Second War Powers Act of 1942.¹⁸ But Congress let the Second War Powers Act expire in 1947, reaffirmed the confidentiality protections as part of the Census Act of 1954, and since then has only strengthened the safeguards for census data. For example, in 1962, Congress amended the Census Act to prevent census records from being used as evidence in any legal or administrative proceeding.¹⁹ Both the Privacy Act of 1974 and the Confidential Information Protection and Statistical Efficiency Act of 2002 provide additional protections for census data.

For more on the safeguards against abuse of census information, explore the Brennan Center's primer [Federal Laws that Protect Census Confidentiality](#).

Census Quality

The 2020 Census faces many potential complications. This year's head count is the first in which the bureau will attempt to collect most responses over the internet, raising the possibility of technological problems, such as website failures, that could derail the process. Meanwhile, the Trump administration's efforts to introduce a citizenship question to the 2020 Census, although ultimately blocked by the Supreme Court, have stoked fears that could dampen response rates. These and other challenges

raise significant concerns that this year's Census could be severely inaccurate.²⁰

When wading into debates over the 2020 Census's performance, it's useful to have some familiarity with measurements of "census quality," a term that encompasses, among other things, how well the census measures the size and characteristics of the nation's population, including the age, sex, race, ethnicity, and geographic location of each person.²¹ Background of this kind can help identify trends and recurring problems.

The census has been getting better at measuring the size of the nation's population.

According to statistics that the Census Bureau and its employees have reported, the census has been doing increasingly well along at least one dimension of census quality: accurately measuring the total number of people in the country.

To assess the quality of the census's national population count, the bureau prepares benchmarks that can serve as points of comparison. Two main methods are used to produce the benchmarks. One, called demographic analysis, combines data from birth, death, migration, and Medicare enrollment records to create an expected population total.²² The other, called dual system estimation, generates a population estimate based on data gathered from a survey of a representative sample of households.²³ This method uses a postenumeration survey (PES), so called because it happens after census data collection has been completed. The bureau can match people's responses to this postenumeration survey with their responses to the census on a case-by-case basis to determine the demographic characteristics of those it counted correctly and those it missed.

The bureau finds the differences between the final census count and each of the two benchmark estimates to assess the accuracy of the census. The resulting statistics are called either "net national undercounts" or "net national overcounts," depending on whether they suggest that the census undershot or overshot the total population. Net undercounts and overcounts can be expressed as numbers of people or as percentages.

Table 1 (see page 4) illustrates these rates as percentages over time, with negative values indicating an undercount and positive ones an overcount. As table 1 suggests, the national-level undercount rate has over time been approaching zero. This suggests that the census has been getting better at gauging the size of the entire population, only slightly undercounting or overcounting the population in 2000 and 2010.

The bureau has said that it will release its latest population estimates based on the demographic analysis method in December 2020 and its estimates based on the dual system estimation method in June 2021.²⁴

Historically, the census has not counted all demographic groups equally well.

Crucially, while the census's count of the total national population appears to have grown more accurate over time, other aspects of the count have encountered persistent problems.

For example, it is no secret that the census has long struggled to count communities of color — especially Black and Latino communities — as accurately as it counts others.²⁵ This problem can be masked in the national population statistics, because those metrics only measure the nation as a whole. Under those metrics, for instance, a white person with two residences in New Jersey whom the bureau inadvertently counts twice could "offset" a Black person with one residence in Alabama whom the bureau does not count at all.

Figuring out whether a census has counted all groups with the same degree of accuracy requires comparing one group's net undercount rate to another's. Table 2 (see page 4) contains net undercount rates for seven major racial or ethnic groups from the past three censuses, expressed as percentages, as generated through the bureau's dual system estimation method.

Once demographers have these net undercount rates, they can identify the differences in the rates between groups and in that way compare how well a given racial or ethnic group has been counted vis-à-vis other groups. (Geographic areas can be compared in a similar way.)

Table 3 (see page 5) shows differentials in the estimated percent net undercount rates for six major racial or ethnic groups as compared with Non-Hispanic Whites in each of the last three censuses, using the data in table 2. These statistics show persistent — and in some cases severe — differences in accuracy along racial and ethnic lines.

Census population statistics can conceal significant numbers of people that the bureau misses.

There's also a problem with the net undercount rates: the bureau can completely miss some substantial subset of people. These rates can obscure this issue with "omissions," because the undercount rates include people whom the bureau counted but shouldn't have, such as people counted twice, as well as people whom the bureau has imputed, or inserted into the count, based on some evidence that they exist, such as signs that their housing unit is occupied.

For example, according to results generated through the dual system estimation method, the 2010 Census had a net national overcount (0.01 percent) that was not statistically different from zero, causing the bureau to declare the 2010 Census "outstanding."²⁶ Yet the bureau's dual system estimation method suggests that the 2010 Census effectively failed to count 5.3 percent of the population, or 16 million people.²⁷

TABLE 1

Net National Undercount/Overcount Rates, 1940–2010

	1940	1950	1960	1970	1980	1990	2000	2010
Demographic analysis	-5.38	-4.14	-3.08	-2.71	-1.22	-1.65	-0.12	0.13
Dual system estimation	-	-	-	-	-0.8 to -1.40†	-1.61*	0.49*	0.01

Note: Positives and negatives are reversed from the source reports where necessary to reflect the intuition that undercounts are more easily grasped as negative numbers.

* Mule concluded that these percent net undercounts were “statistically significant from zero.” Devine advises that any errors in demographic analysis estimates “are generally not subject to sampling error,” making “a statistically-based confidence interval . . . difficult to develop using conventional statistical techniques.”

† The 1980 Post-Enumeration Program reported 12 different sets of estimates. The range cited in table 1 is consistent with a restricted set of estimates in National Research Council, *Coverage Measurement in the 2010 Census* (Washington, DC: National Academies Press, 2009), 53, table 2-3. <https://www.nap.edu/read/12524/chapter/4#53>.

Source: 1940–2000 demographic analysis estimates are published in Jason Devine et al., *The Development and Sensitivity Analysis of the 2010 Demographic Analysis Estimates*, U.S. Census Bureau, Population Division Working Paper No. 93 (2012), 49, table 1, <https://www.census.gov/content/dam/Census/library/working-papers/2012/demo/POP-twps0093.pdf>. 2010 demographic analysis estimate is published in Howard Hogan et al., “Quality and the 2010 Census,” *Population Research and Policy Review* 32, no. 5 (2013), 640, table 1, <https://doi.org/10.1007/s11113-013-9278-5>. 1990–2010 dual system estimates are published in Thomas Mule, *2010 Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States*, DSSD 2010 Census Coverage Measurement Memorandum Series, #2010-G-01, U.S. Census Bureau, 15, table 7, https://www.census.gov/coverage_measurement/pdfs/g01.pdf, and consistent with Hogan.

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TABLE 2

Percent Net Undercount/Overcount Rates for Racial and Ethnic Groups, 1990–2010

	1990	2000	2010
Non-Hispanic White	-0.68*	1.13*	0.84*
Non-Hispanic Black	-4.57*	-1.84*	-2.07*
Non-Hispanic Asian	-2.36*	0.75	-0.08
American Indian on Reservation	-12.22*	0.88	-4.88*
American Indian off Reservation	-0.68*†	-0.62	1.95
Native Hawaiian or other Pacific Islander	-2.36*	-2.12	-1.34
Hispanic	-4.99*	-0.71	-1.54*

Note: Positives and negatives are reversed from the source reports to reflect the intuition that undercounts are more easily grasped as negative numbers. To construct these numbers, the bureau assigned people to one of seven mutually exclusive race/Hispanic origin categories. This method allowed comparisons of undercount data across the 1990, 2000, and 2010 Censuses.

* Mule concluded that these percent net undercounts were “statistically significant from zero.”

† Hogan et al. reported no available undercount data for American Indians off Reservation in 1990. As Mule noted, American Indians off Reservation were included in the Non-Hispanic White domain; for that reason, Mule treated the percent net undercount for that domain as equal to the Non-Hispanic White undercount.

Source: Mule, *2010 Census Coverage Measurement Estimation Report*, 15, table 7, https://www.census.gov/coverage_measurement/pdfs/g01.pdf; Hogan et al., “Quality and the 2010 Census,” 647, table 6, <https://doi.org/10.1007/s11113-013-9278-5>.

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TABLE 3

Differentials in Percent Net Undercount/Overcount Rates Between Non-Hispanic Whites and Racial and Ethnic Groups, 1990–2010

	1990	2000	2010
Non-Hispanic Black	3.89	2.97	2.91
Non-Hispanic Asian	1.68	0.38	0.92
American Indian on Reservation	11.54	0.25	5.72
American Indian off Reservation	0.00†	1.75	-1.11
Native Hawaiian or other Pacific Islander	1.68	3.25	2.18
Hispanic	4.31	1.84	2.38

* Hogan et al. reported that “the difference is statistically significant *typically* only for the comparisons with non-Hispanic Blacks, Hispanics, and American Indians living on reservations” (emphasis added).

† Hogan et al. reported no available differential for American Indians off Reservation in 1990. Following Mule, there is no difference between the Non-Hispanic White percent net undercount rate and the American Indian off Reservation rate, because they are identical.

Source: Mule, *2010 Census Coverage Measurement Estimation Report*, 15, table 7, https://www.census.gov/coverage_measurement/pdfs/g01.pdf. Consistent with Hogan et al., “Quality and the 2010 Census,” 647, table 7, <https://doi.org/10.1007/s11113-013-9278-5>.

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When such omissions cluster in particular areas or within particular demographic groups, those communities and groups are vulnerable to being estimated less accurately than others, in terms of both their raw numbers and their particular characteristics, such as sex or age. Clustered omissions are also an indicator that the bureau’s census-taking methods have not reached every community equally and that the census data does not adequately represent our country in all its diversity.

Early indicators of 2020 Census progress may provide warnings about ultimate census quality.

Over the course of the spring, the Census Bureau will publicize an indicator of the Census’s progress: the share of all housing units in the bureau’s address list that responded to the Census online, with a paper form, or over the phone.²⁸ This statistic, called the “self-response rate,” tracks the percentage of *housing units* on the bureau’s master list that have responded, not the percentage of *people* who have responded.

Self-response rates can help flag problem areas that will require more attention to be counted accurately. Experts have also observed that geographic areas with low self-response rates have historically experienced “higher rates of omissions, erroneous enumerations, and net undercount.”²⁹ Thus, this data may give insights into the ultimate quality of the Census before the demographic analysis and dual system estimation numbers become available.

The Census Bureau will report self-response rates starting on March 20.³⁰ The bureau will update the rates daily. An expert with several decades of census oversight experience suggests that stakeholders use the 2010 self-response rates, which the bureau has published on its website, as the benchmark for evaluating the Census’s progress through the end of the self-response period on April 30. Stakeholders should keep in mind that the characteristics of any given area might have changed, sometimes significantly, over the past decade, thereby affecting the likelihood of self-response in this year’s count.³¹

Effects on the Distribution of Political Power

The results of the Census will have broad political ramifications: they determine how seats in the House of Representatives will be allocated among the states and how states will draw their congressional and legislative districts. Important work has already been done to project how seat allocations might shift after the Census. A major study by Election Data Services concluded that 10 states will each lose a House seat and 7 states will gain one or more under any of a series of population projections for 2020.³² The Urban Institute recently released a report projecting risks that could affect each state’s final population totals, noting that its high-risk

scenario could influence seat changes beyond those that Election Data Service’s 2018 report anticipates.³³ Another crucial but less often discussed ramification of the Census is its impact on the representation of communities of color.

The Census will affect the political power of communities of color in Congress.

How well the Census counts communities of color will directly affect their ability to have their voices heard in the House of Representatives. Take, for example, Section 2 of the Voting Rights Act, which seeks to provide communities of color with electoral districts where they can elect candidates of their choice. In order to activate Section 2’s protections, members of a given community must show that they are numerous and geographically clustered and that they vote as a bloc in elections.³⁴ If the Census misses a meaningful percentage of a state’s residents of color — in other words, if the Census makes them appear less numerous than they actually are — then their case for Section 2 protection becomes harder to make. An undercount of communities of color could result in those communities losing seats in their state’s congressional delegation, because lawmakers may be led to believe that they are no longer legally obligated to draw districts for those communities.

The Census will affect the political power of communities of color at the state and local levels.

These problems at the congressional level can replicate themselves all the way down the political scale. State, county, and local governments all rely on census numbers to draw their electoral districts, and Section 2’s protections extend to those jurisdictions as well. If the Census undercounts communities of color, they risk going underrepresented — or unrepresented entirely — in bodies ranging from state legislatures to local school boards.

The Census in the Courts

Federal courts have long been involved in the census, tackling issues like the right way to count overseas military personnel and the legality of using statistical sampling.³⁵ The courts have already weighed in on the 2020 Census, preventing the Trump administration from asking about citizenship status on the questionnaire. The courts could well remain involved long after the Census ends if there are concerns about the quality of the count or its independence from political manipulation.

Federal courts helped protect the Census by ensuring that there will be no citizenship questions.

In its June 2019 decision blocking the citizenship question, the Supreme Court ruled that the administration had acted illegally by lying to the American public about its real reason for wanting the question to appear.³⁶ The Court’s decision means that the 2020 Census cannot contain questions about citizenship. While other cases against the Census Bureau are ongoing, none of them could result in such a question appearing this year.

With the court’s ruling, the Census — and our democratic system more broadly — dodged a bullet. The citizenship question threatened to create extreme undercounts by depressing participation; its absence means that more people will feel safe filling out the Census.³⁷ (Reports from the field do, however, suggest that more work will need to be done to eliminate completely the defeated citizenship question’s chilling effect.)³⁸ By barring the question, the court blocked one major part of an apparent scheme to skew political power in favor of “Republicans and non-Hispanic whites” during the upcoming redistricting cycle, in the words of the deceased Republican redistricting consultant Thomas Hofeller. (Hofeller advised the administration in its push to add the question. His correspondence came to light when his daughter uncovered his files after his death.)³⁹ In short, having no citizenship question increases the likelihood that everyone will be counted correctly in 2020 and receive their fair share of political power.

Litigation may lead to more helpful changes to the 2020 Census.

Two ongoing cases related to the Census Bureau’s preparedness could boost the Census before its completion. Lawsuits filed by the National Association for the Advancement of Colored People (NAACP) and the Center for Popular Democracy Action point to inadequacies in the bureau’s preparations and resources for 2020.⁴⁰ Both suits ask the courts to require the bureau to take concrete steps to ensure that populations that have historically been undercounted are fully counted this year. If these suits are successful, they could improve the accuracy of the count by, for example, prompting the bureau to expand its outreach efforts in undercounted communities.

Litigants are pushing back against attempts to politicize the Census and use the count to hurt immigrants.

Two other pending cases relate to efforts at politicizing the national head count and wielding it against immigrants and their communities.

The first is a federal lawsuit that the State of Alabama has filed against the Department of Commerce and the

Census Bureau seeking to change the population basis for reapportioning seats in Congress. Alabama is asking the trial court to order the Census Bureau to exclude undocumented persons from the population totals used for apportionment despite the Constitution's clear command that everyone be included.⁴¹ State and local governments, nonprofits, private individuals, and legal advocates have all joined this lawsuit to stop Alabama's push.

The second is an effort by La Unión Del Pueblo Entero (LUPE) and others to block President Trump's July 11, 2019, executive order commanding the Census Bureau to collect citizenship data from other federal agencies and state governments. LUPE's suit argues that the executive order and the Commerce Department's directive implementing it are part of a deliberate, racially discriminatory scheme to reduce Latino political representation.⁴²

Neither case will directly affect this year's census-taking process, but both could have significant implications for how the numbers ultimately are used. Court rulings blocking Alabama's request and sidelining the administration's push for citizenship data would shut down two ways that the Census could be abused to undercut the political power of immigrant communities.

The Supreme Court has long warned against political manipulations of census numbers.

The 2020 Census could also land in court if elected officials or political appointees try to manipulate its final

numbers for political or partisan advantage. The Supreme Court has never directly addressed this issue, but for decades, justices up and down the bench have committed to the view that the Constitution requires a census free from such manipulation.

Just this past term, Justice Stephen Breyer — joined by Justices Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan — warned in the citizenship question case that “the Framers required an actual count of every resident to ‘limit political chicanery’ and to prevent the census count from being ‘skewed for political . . . purposes.’”⁴³ Breyer's concurrence was quoting Justice Clarence Thomas. In *Utah v. Evans* (2002), Thomas and retired Justice Anthony Kennedy asserted that Congress's “principle [*sic*] concern” in drafting the Census Clause “was that the Constitution establish a standard resistant to manipulation.”⁴⁴ Concern about “partisan manipulation” of the census was also a major theme of deceased Justice Antonin Scalia's 1999 argument against permitting the Census Bureau to use statistical sampling for the decennial head count, a position joined by Thomas, Kennedy, and former Chief Justice William Rehnquist. Scalia warned against “giv[ing] the party controlling Congress the power to distort representation in its own favor.”⁴⁵

For more on pending and past cases involving the 2020 Census, visit the Brennan Center's tracker “[2020 Census Litigation](#).”

The Census and the Coronavirus

>> The self-response period for the 2020 Census opened just as the coronavirus pandemic began to wreak havoc on the patterns of daily life throughout the country.

The pandemic is already affecting the counting process. The Census Bureau has announced plans to temporarily delay and modify several aspects of its operations.⁴⁶ More alterations are likely, particularly if the pandemic extends into May, the bureau's currently scheduled time for beginning its nationwide door-knocking operation.

Meanwhile, state and local governments, nonprofits, and philanthropies are retooling their methods for driving public participation in the Census, shifting from in-person meetings to digital organizing. It is too soon to determine the ultimate impact that the pandemic will have on the count, but there is no question that it is placing a heavy burden on all stakeholders at a particularly crucial time in the process.

>> The coronavirus's potential long-term disruptions to the 2020 Census only heighten the importance of encouraging self-response in the short term. Self-response will be a major determinant of how expensive and time-consuming the Census ultimately becomes. Door knocking is an extraordinarily resource- and labor-intensive process, even under ideal conditions. The bureau estimates that if 60.5 percent of households self-respond, it will require 320,000 door knockers to adequately canvass holdouts. If that rate drops to 55 percent, the bureau may have to hire an additional 180,000.⁴⁷ The surest way to limit the likelihood of the worst-case scenarios is a robust campaign to promote self-response through the internet, phones, and the mail.

>> The Brennan Center will continue to track this developing situation and update the public through its 2020 Census webpage, “[A Fair & Accurate Census](#).”

Endnotes

- 1 U.S. Census Bureau, *2020 Census Barriers, Attitudes, and Motivators Study Survey Report*, 2019, 38–50, <https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2020-report-cbams-study-survey.pdf>.
- 2 U.S. Census Bureau, *2020 Census Operational Plan: A New Design for the 21st Century*, 2018, 173–174, <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf>.
- 3 These protections arise from several laws relating to census data, including the Census Act of 1954, as amended, 13 U.S.C. § 1 et seq. (1954); the Confidential Information Protection and Statistical Efficiency Act of 2002, 44 U.S.C. § 3501, Note (2002); the Privacy Act of 1974, 5 U.S.C. § 552a (1974); and the Internal Revenue Code, 26 U.S.C. § 1 et seq. (1954).
- 4 The Census Bureau is a component of the U.S. Department of Commerce. All laws discussed here that apply to the Census Bureau also bind the Commerce Department, and all references to the Census Bureau incorporate the Commerce Department.
- 5 13 U.S.C. § 9(a)(2).
- 6 13 U.S.C. § 9(a)(1).
- 7 13 U.S.C. § 214; 18 U.S.C. §§ 3559, 3571.
- 8 See Kelly Percival, “Strong Confidentiality Laws Protect All Data the Census Bureau Collects,” Brennan Center for Justice, December 5, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/strong-confidentiality-laws-protect-all-data-census-bureau-collects>; Kelly Percival, “Strict Confidentiality Laws Limit Trump Administration Search for Citizenship Data,” Brennan Center for Justice, October 11, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/strict-confidentiality-laws-limit-trump-administration-search-citizenship>.
- 9 See note 3 above.
- 10 Stanley Augustin, “Civil Rights Groups Launch Multilingual Census Hotlines, Lawyers’ Committee for Civil Rights Under Law,” February 11, 2020, <https://lawyerscommittee.org/civil-rights-groups-launch-multilingual-2020-census-hotlines>.
- 11 George Gatewood et al., *A Monograph on Confidentiality and Privacy in the U.S. Census*, U.S. Census Bureau, 2001, 6, <https://www.census.gov/history/pdf/ConfidentialityMonograph.pdf>.
- 12 Reapportionment and Census Act of 1929 §§ 8, 11, Pub. L. No. 71-13, 46 Stat. 21 (1929).
- 13 Reapportionment and Census Act at §§ 11, 18.
- 14 See, e.g., Proclamation No. 8488, 75 Fed. Reg. 17837, 17837 (March 31, 2010) (President Obama affirming that census information “is never used against [census participants] or shared with other government or private entities”); Proclamation No. 6105, 55 Fed. Reg. 8897, 8897-8898 (March 6, 1990) (President George H. W. Bush affirming that “individual information collected will not be used for purposes of taxation, investigation, or regulation, or in connection with military or jury service, the compulsion of school attendance, the regulation of immigration, or the enforcement of any other Federal, State, or local law or ordinance”); Proclamation No. 3973, 35 Fed. Reg. 5079 (March 26, 1970) (President Nixon affirming that census information cannot be used “for the purposes of taxation, investigation, regulation, or for any other purpose whatsoever affecting the individual”).
- 15 J.R. Minkel, “Confirmed: The U.S. Census Bureau Gave Up Names of Japanese-Americans in WW II,” *Scientific American*, March 30, 2007, <https://www.scientificamerican.com/article/confirmed-the-us-census-b>.
- 16 Minkel, “Confirmed: The U.S. Bureau Gave Up Names.” See also William Seltzer and Margo Anderson, “Census Confidentiality under the Second War Powers Act (1942–1947)” (paper, Population Association of America Annual Meeting, New York, 2007), <https://margoanderson.org/govstat/Seltzer-AndersonPAA2007paper3-12-2007.doc>.
- 17 John L. DeWitt, *Final Report: Japanese Evacuation from the West Coast 1942*, U.S. Government Printing Office, 1943, 352, <https://archive.org/details/japaneseevacuat00dewi/mode/2up>.
- 18 Second War Powers Act of 1942 §§ 1401–1402, Pub. L. No. 77-507, 56 Stat. 176 (1942). In addition to authorizing census data disclosures, the Second War Powers Act, in combination with the First War Powers Act of 1941, Pub. L. No. 77-354, 55 Stat. 838 (1941), gave the president sweeping authority to reorganize the executive branch, condemn property, and censor mail — among other powers — in support of the war effort.
- 19 Pub. L. No. 87-813, 76 Stat. 922 (1962) (amending 13 U.S.C. § 9(a)).
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The Brennan Center’s Democracy Program encourages broad citizen participation by promoting voting and campaign finance reform. We work to secure fair courts and to advance a First Amendment jurisprudence that puts the rights of citizens — not special interests — at the center of our democracy. We collaborate with grassroots groups, advocacy organizations, and government officials to eliminate the obstacles to an effective democracy.

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