

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM

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December 10, 2020

The Honorable Wilbur L. Ross, Jr.  
Secretary  
U.S. Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Dear Secretary Ross:

For the reasons set forth below, the Committee issued a subpoena today compelling you to produce all of the documents first requested by the Committee last month relating to grave data problems with the 2020 Census and the delays these problems have caused. The subpoena requires you to produce a full and unredacted set of these documents by December 21, 2020.

This is not the first congressional subpoena you have received relating to your execution of the 2020 Census. As you know, in July 2019, the House of Representatives held you in contempt for refusing to produce documents revealing the real reason that you tried to add a citizenship question to the Census—an effort the Supreme Court ruled was illegal and based on a pretext.<sup>1</sup>

As you conclude your term as Secretary of Commerce, I urge you to depart your position on a more cooperative and constructive note. You may have little personal regard for your own ignominious legacy as Secretary of Commerce, but a complete and accurate census is critical for the health and well-being of hundreds of thousands of American families in red states and blue states alike. They do not want political machinations to jeopardize their fair representation in Congress and their share of \$1.5 trillion in federal funds over the next decade for programs that provide healthcare, education, job training, transportation, and many other services.

On March 14, 2019, you appeared before the Committee and testified under oath: “The Department of Commerce is fully committed to administering as complete and accurate a decennial census as we can.”<sup>2</sup> The Committee now urges you to fulfill this solemn commitment.

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<sup>1</sup> Committee on Oversight and Reform, *Press Release: House Holds Attorney General and Commerce Secretary in Contempt* (July 17, 2019) (online at <https://oversight.house.gov/news/press-releases/house-holds-attorney-general-and-commerce-secretary-in-contempt>).

<sup>2</sup> Committee on Oversight and Reform, *Hearing with Commerce Secretary Wilbur L. Ross, Jr.*, (Mar. 14, 2019) (online at <https://oversight.house.gov/legislation/hearings/commerce-secretary-wilbur-l-ross-jr>).

### **Previous Refusal to Produce Documents on Census Problems and Delays**

On November 19, 2020, the *New York Times* reported that “Census Bureau officials have concluded that they cannot produce the state population totals required to reallocate seats in the House of Representatives until after President Trump leaves office in January.” The report added: “the Census Bureau told the Commerce Department that a growing number of snags in the massive data-processing operation that generates population totals had delayed the completion of population calculations at least until Jan. 26, and perhaps to mid-February.”<sup>3</sup>

After the story became public, the Census Bureau Director, Dr. Steven Dillingham, issued a statement confirming that “anomalies have been discovered” during data processing, but he provided few details.<sup>4</sup>

Since none of these problems had been reported to the Committee, I sent a letter to the Census Bureau on November 19, 2020, seeking documents relating to these anomalies, the predicted delays they would cause, and their potential impact on the accuracy of the Census count. The letter asked for these documents by November 24, 2020.<sup>5</sup>

No documents were provided to the Committee in response to this letter. On November 24, 2020—the date the documents were due—Committee staff received a bipartisan telephone briefing from Director Dillingham and other top Census Bureau officials. These officials reported that documents responsive to the Committee’s request had been submitted to your General Counsel at the Department of Commerce, but had not been cleared for release due to “concerns about ongoing litigation.” When asked whether the Bureau had an expected date by which production might be possible, the officials could not provide one.

### **Demand for Documents After Committee Obtained New Internal Records**

On December 2, 2020, I sent a letter requesting that you immediately cease your efforts to obstruct the Committee’s investigation and produce the documents requested by the Committee on November 19, 2020.<sup>6</sup>

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<sup>3</sup> *Census Officials Say They Can’t Meet Trump’s Deadline for Population Count*, New York Times (Nov. 19, 2020) (online at [www.nytimes.com/2020/11/19/us/2020-census-data.html](http://www.nytimes.com/2020/11/19/us/2020-census-data.html)).

<sup>4</sup> U.S. Census Bureau, *Press Release: Statement from Census Bureau Director Steve Dillingham* (Nov. 19, 2020) (online at [www.census.gov/newsroom/press-releases/2020/statement-post-collection-processing.html](http://www.census.gov/newsroom/press-releases/2020/statement-post-collection-processing.html)).

<sup>5</sup> Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Director Steven Dillingham, U.S. Census Bureau (Nov. 19, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-11-19.CBM%20to%20Dillingham-Census%20re%202020%20Census%20Count.pdf>).

<sup>6</sup> Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Dec. 2, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-12-02.CBM%20to%20Ross-Commerce%20re%202020%20Census%20Count.pdf>).

In my letter, I explained that the existence of separate litigation is not a valid reason to withhold documents from Congress.<sup>7</sup> The Constitution provides Congress with the responsibility to conduct oversight of, and to pass laws relating to, the Census, and the Committee has authority that is separate and independent from any litigation being pursued in civil courts.<sup>8</sup> I noted that the Department’s insistence on withholding documents due to “ongoing litigation” raises questions about whether the Administration is seeking to conceal information not only from Congress, but from the Judiciary. As you know, the Supreme Court heard oral arguments on November 30, 2020, in a challenge to President Trump’s order to exclude undocumented immigrants from the Census count.<sup>9</sup>

In my letter, I also explained that, despite the Trump Administration’s efforts to withhold documents sought by the Committee, we obtained three internal documents from another source that not only confirm reports that the Census Bureau will take several additional weeks to resolve data anomalies and produce an accurate count as required by the Constitution, but also indicate that these anomalies are more serious than first reported. These three documents are:

- A November 19, 2020, presentation for senior Census Bureau officials, describing 13 anomalies that impact more than 900,000 census records, warning that addressing these data anomalies “impacts overall end date by 20 days,” and anticipating that the population count will not be complete until between January 26, 2021, and February 6, 2021.<sup>10</sup>
- A document providing an update on data anomalies one week later—as of November 27, 2020—showing that, since the first document was produced, career

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<sup>7</sup> *Hutcheson v. United States*, 369 U.S. 599 (1962) (“But surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, *Sinclair v. United States*, supra, at 295, or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135, 179-180.”); *Sinclair v. United States*, 279 U.S. 263 at 295 (1925) (“It may be conceded that Congress is without authority to compel disclosure for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.”).

<sup>8</sup> U.S. Const. art. 1, sec. 2 (the decennial census “shall be made ... in such manner as [Congress] shall by law direct”); *Trump v. Mazars USA*, 590 U.S. \_\_\_ (2019) (the “power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function”) (quoting *McGrain*, 273 U. S. at 174); *Id.* (“The congressional power to obtain information is ‘broad’ and ‘indispensable.’”) (quoting *Watkins v. United States*, 354 U. S. 178 (1957)); House Rule X clause 1(n) (granting jurisdiction to the Committee on Oversight and Reform over issues including “population and demography generally, including the Census” and the “overall economy, efficiency, and management of government operations”); House Rule X clause 4(c)(2) (the Oversight Committee “may at any time conduct investigations of any matter”).

<sup>9</sup> Transcript of Oral Argument, *Trump v. New York* (Nov. 30, 2020) (No. 20-366) (online at [www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2020/20-366\\_k537.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/2020/20-366_k537.pdf)).

<sup>10</sup> U.S. Census Bureau, *Post-Collection Processing—DRF-1: Current Anomalies Requiring Patches* (Nov. 19, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Document%201.pdf>) (Document #1).

officials identified two additional errors, including one that impacts more than 240,000 records and risks causing a “significant overcount” in certain areas.<sup>11</sup>

- A document setting forth an updated schedule as of the same date, November 27, 2020, showing that career officials will deliver the “Final Apportionment Transmittal Package” to the Department of Commerce on January 23, 2020, and that the “Apportionment Counts” will be sent to the President on the same day.<sup>12</sup>

In response to the Committee’s release of these internal documents, the Trump Administration sought to cast doubt on their accuracy. On December 2, 2020, the same day the Committee sent its letter to you, the Administration issued the following public statement:

Internal tracking documents would not convey the uncertainty around projected dates and may fail to reflect the additional resources employed to correct data anomalies. The anomalies affect less than seven-tenths of one percent of records and are being resolved as expeditiously as possible.<sup>13</sup>

In order to obtain accurate information about these anomalies and resulting delays, I asked you to produce all of the documents requested by the Committee, which include but are not limited to documents prepared for you, Director Dillingham, or other Trump Administration officials regarding data processing anomalies, data accuracy, or potential delays, including briefings on November 18 or 19, 2020. I asked you to produce a complete and unredacted set of these documents by yesterday, December 9, 2020, or inform us whether the Committee should instead issue a subpoena to compel their production.

### **Document Productions Are Woefully Inadequate**

Although you have now made two document productions to the Committee, they are woefully inadequate, fail to provide even the most basic documents requested by the Committee about the recent anomalies and their resulting delays, and instead includes reams of non-responsive and outdated documents.

On December 3, 2020, and on December 9, 2020, your office produced 1,772 and 3,800 pages, respectively, writing that the productions were made “pursuant to the Committee’s November 19, 2020 letter to Census Bureau Director Dillingham, and its December 2, 2020

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<sup>11</sup> U.S. Census Bureau, *DRFI Anomaly Summary* (Nov. 27, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Document%202.pdf>) (Document #2).

<sup>12</sup> U.S. Census Bureau, *2020 Census Post-Collection Processing* (Nov. 27, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Document3.pdf>) (Document #3).

<sup>13</sup> U.S. Census Bureau, *Press Release: Update on 2020 Census Data Processing* (Dec. 2, 2020) (online at [www.census.gov/newsroom/press-releases/2020/update-2020-data-processing.html](http://www.census.gov/newsroom/press-releases/2020/update-2020-data-processing.html)).

letter to Secretary Ross.”<sup>14</sup> However, the documents in your productions are insufficient and not responsive to the request. For example:

- The productions include an official copy of only one of the three internal Census Bureau documents described in the Committee’s letter to you on December 2, 2020.
- The productions do not include any additional documents regarding the anomalies identified on or after November 19, 2020, or the delays they are causing, which are the primary areas of focus for the Committee’s inquiry.
- The productions do not include any documents relating to additional anomalies identified by Census Bureau experts since the Committee first requested information on these topics, despite recent press reports that significant additional problems have been discovered.
- Instead, the productions include hundreds of pages of documents from well before any of these anomalies were identified, including some documents dating as far back as 2012 and other documents from June and July 2020—before the Trump Administration announced that it was slashing the schedule for field operations and data processing in half.
- Finally, the productions include extensive redactions of information directly prior to November 19, 2020, when reports of the anomalies first became public. For example, one document includes redactions of entire columns of information, such as “Previous Status” and “Status,” obscuring information relating to delays.<sup>15</sup>

### **New Reports Show Even More Problems and Delays**

On December 4, 2020, the *New York Times* reported that the Census Bureau has now identified additional problems that will delay the delivery of Census data even further. The report warns:

Census Bureau experts have uncovered serious flaws in a section of the 2020 head count that potentially affect the enumeration of millions, according to people familiar with the

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<sup>14</sup> Letter from Anthony Foti, Performing the Duties of the Assistant Secretary of Commerce for Legislative and Intergovernmental Affairs, Department of Commerce, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Dec. 3, 2020).

<sup>15</sup> See, e.g., U.S. Census Bureau, *2020 Census Post Collection Processing as of Nov. 16, 2020* (online at [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DOC\\_0021603%20%28Schedule%2011-16%29.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DOC_0021603%20%28Schedule%2011-16%29.pdf)).

census operations, delaying still further the completion of state-by-state population totals that the White House has demanded before President Trump leaves office next month.<sup>16</sup>

Yet again, neither you nor the Census Bureau informed the Committee about these latest problems before they appeared in the press. This report continues:

Census experts told the Trump administration last month that data-processing delays were making it impossible to meet that schedule, but the agency's political appointees have continued to press for shortcuts in an attempt to deliver on the White House's demand. On Friday, people involved with the census but not authorized to make official comments said the latest delay—adding 10 to 14 more days to a process that was already set to end well beyond the Dec. 31 statutory deadline—appeared to doom that last-ditch rush.

The extent of the additional problems—relating to the count of residents of group quarters like prisons, college dormitories or homeless shelters—effectively means that “that isn't going to happen,” one official, who declined to be named for fear of retribution, said of meeting the deadline.<sup>17</sup>

Your recent production to the Committee included no documents relating to these additional data problems, and your office's cover letter transmitting the documents included no indication whatsoever that these new problems have been identified.

### **Trump Administration Also Withholding Census Documents from GAO**

In addition to withholding documents from the Committee, your office is also blocking the production of documents to Congress' independent investigative arm, the Government Accountability Office (GAO). On December 3, 2020, the Committee held a hearing on “Ensuring the 2020 Census Count is Complete and Accurate.” During that hearing, J. Chris Mihm, the Managing Director of Strategic Issues Team at GAO, testified that GAO has requested a host of information from the Census Bureau, but that the Department of Commerce is withholding these documents from GAO. He stated: “We have asked them for quite a bit of documentation. We haven't received it yet.”<sup>18</sup>

GAO has explained to the Committee that some of its requests date back to August 5, 2020. GAO provided a list of these requests, and they include documents relating to anomalies the Census Bureau has identified, the schedule for data collection and processing, and the risks associated with truncating or rushing that schedule.

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<sup>16</sup> *Flaws in Census Count Imperil Trump Plan to Exclude Undocumented Immigrants*, New York Times (Dec. 4, 2020) (online at [www.nytimes.com/2020/12/04/us/census-trump.html](http://www.nytimes.com/2020/12/04/us/census-trump.html)).

<sup>17</sup> *Id.*

<sup>18</sup> Committee on Oversight and Reform, *Hearing on Ensuring the 2020 Census Count is Complete and Accurate*, (Dec. 3, 2020) (online at <https://oversight.house.gov/legislation/hearings/ensuring-the-2020-census-count-is-complete-and-accurate>).

## Issuance of Subpoena

Article I of the Constitution gives Congress sweeping power to carry out the Census “in such manner as they shall by law direct.”<sup>19</sup> The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X, and the Committee has jurisdiction over “Population and demography generally, including the Census.”<sup>20</sup>

One of the Committee’s primary responsibilities is to ensure that the 2020 Census is accurate, is complete, and meets the fundamental requirements set forth in the Constitution. In addition, the Committee is responsible for legislation governing the execution of this and future Censuses, including but not limited to requirements for reporting operational changes, ensuring the accuracy of data, collecting and processing complete data, and disclosing when actions by political appointees or third parties may contradict the advice of career staff.<sup>21</sup>

Your approach to Congress’ oversight responsibilities has been abominable. You have repeatedly withheld documents that should have been produced as a matter of course to your Department’s oversight committee. You have withheld them not only from Congress, but from the independent Government Accountability Office and, according to Census Bureau officials, the federal Judiciary as well. You also have repeatedly failed to inform the Committee on a timely basis of grave problems with the Census, forcing us time and time again to read about them in the press rather than from the agency you lead.

Based on this record, it appears that you are intentionally seeking to obstruct the Constitutional function of Congress as it relates to the 2020 Census. By blocking the production of documents requested by the Committee, you and others in the Trump Administration are preventing Congress from verifying the scope of these anomalies, their impact on the accuracy of the Census, and the time that professionals at the Census Bureau need to fix them.

For all of the reasons described above, the Committee issued a subpoena today compelling you to produce all of the documents first requested by the Committee last month. The subpoena, which was shared with the Ranking Member more than 48 hours ago, requires you to produce a full and unredacted set of these documents by December 21, 2020.

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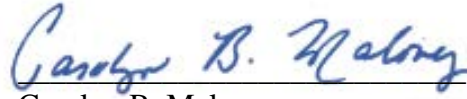
<sup>19</sup> U.S. Const., art. 1, sec. 2. Statutes governing the census are codified in Title 13 of the U.S. Code. *See* U.S. Const., art. I, § 2; *United States v. Rumely*, 345 U.S. 41 (1953) (Congress has the authority to inform the public about the conduct of federal officials as they administer government); *Watkins v. United States*, 354 U.S. 178 (1957) (“The public is, of course, entitled to be informed concerning the workings of its government.”); *id.* (the informing function allows “Congress to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government”).

<sup>20</sup> House rule X, clause 1(n)(8).

<sup>21</sup> *See, e.g.*, H.R. 732 (prohibiting the Department of Commerce from making changes to the decennial census without adequate testing and notice to Congress); H.R. 1734 (prohibiting questions regarding “citizenship, nationality, or immigration status” on “any decennial census,” excluding the American Community Survey); H.Amdt. 401 to H.R. 3055 (providing that “no Census Bureau funds may be used in violation of the Bureau’s confidentiality policies”); S. 2068 (prohibiting the Census Bureau from “including citizenship data in the legislative redistricting data prepared by the Bureau”).

The Honorable Wilbur L. Ross, Jr.  
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Sincerely,

A handwritten signature in blue ink that reads "Carolyn B. Maloney". The signature is written in a cursive style and is positioned above a horizontal line.

Carolyn B. Maloney  
Chairwoman

Enclosure

cc: The Honorable James R. Comer, Ranking Member