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KRIS KOBACH

October 29, 2026

Department of Commerce
Census Bureau
4600 Silver Hill Road
Suitland, MD 20746

**RE: RIN No. 0607-AA75, Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions**

To Whom It May Concern:

The State of Missouri, the State of Kansas, and the twenty other undersigned States are pleased to write in support of the Department of Commerce's and the Census Bureau's proposed reforms to the Census and apportionment of representation in Congress. For the past few decades, the federal government has wrongfully weighed illegal aliens and other temporary foreign visitors equally to U.S. citizens and lawful permanent residents when performing the apportionment calculations for Congress. This has resulted in States that encourage illegal immigration—like California—inappropriately gaining congressional seats at the expense of law-abiding States, like Missouri and several of the undersigned States. The Constitution prohibits counting individuals who lack *domicile*—like illegal aliens and temporary foreign visitors—in the congressional apportionment. At a minimum, the federal government has *discretion* to include only citizens and lawful permanent residents in the apportionment calculation. Doing so is essential to preserve the integrity of our republican form of government.

## I. The Constitution prohibits giving congressional representation to non-domiciled illegal aliens and temporary foreign visitors.

The third sentence of the Declaration of Independence summarizes the cornerstone of American political theory: "[T]o secure [unalienable] rights, Governments are instituted among Men, deriving their just powers *from the consent of the governed*." Declaration of Independence (July 4, 1776) (emphasis added). In America, *the People*—that is, the members of the social compact—are the only legitimate source of the government's power. In maintaining the American social compact between the People and their government, nothing is more sacred than the People's right to representation. After all, the United States "is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

For the past few decades, the federal government has allowed illegal alien trespassers and temporary foreign visitors to force their way into America's social compact. Since the Carter Administration, the federal government has intentionally counted illegal aliens as part of the Census and included them in the apportionment counts that determine how federal representation is divided among the States. President Trump tried to end this profoundly antidemocratic practice in 2020, but he ran out of time to do so. The undersigned States are pleased that the President is restarting that important work.

The Carter Policy violates the U.S. Constitution and, indeed, basic principles of representative government. Section 2 of the Fourteenth Amendment requires that "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 (emphasis added). This same rule—expressed with materially similar text—also governed when the Constitution was first ratified. *See* U.S. Const., art. I, § 2, cl. 3.

At the time of the founding and the adoption of the Fourteenth Amendment, this language was understood to mandate the counting of all people *domiciled* in a State. *See Franklin v. Massachusetts*, 505 U.S. 788, 804–05 (1992). That concept reached citizens and non-citizens *legally* permitted to remain indefinitely in the United States. As the Supreme Court explained in 1898, individuals could be deemed to have a "permanent domicile and residence" only "so long as they are *permitted* by the United States to reside here." *Wong Kim Ark v. United States*, 169 U.S. 649, 694, 705 (1898) (emphasis added); *accord Elkins v. Moreno*, 435 U.S. 647, 665 (1978) (temporary visitors, such as non-citizens with student visas, cannot establish domicile in the United States); *Castellon-Contreras v. I.N.S.*, 45 F.3d 149, 153 (7th

Cir. 1995) ("In order to have a 'lawful domicile,' then, an alien must have the ability, under the immigration laws, to form the intent to remain in the United States indefinitely. Thus, an alien who enters the country illegally cannot have a 'lawful' intent to remain here.").

The Census Bureau has long *partially* applied this understanding. It does not count temporary sojourners—foreign citizens who come to the United States on business or vacation. Like temporary sojourners, illegal aliens cannot be domiciled in a State because they have no right to permanently remain where they are. Illegal immigrants are mere trespassers who "never" "enter[] the United States within the meaning of the law." *Kaplan v. Tod*, 267 U.S. 228, 231 (1925). Foreigners here on a student visa or a temporary work visa likewise have no right to permanently reside in the United States. "Congress expressly conditioned admission for [those] purposes on an intent not to abandon a foreign residence or, by implication, on an intent not to seek domicile in the United States." *Elkins*, 435 U.S. at 665; *see* 8 U.S.C. § 1011(a)(15).

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It's important to keep the bigger picture in mind. The relevant constitutional provisions are about who is entitled to *representation* in Congress. There is no coherent theory of representative government where illegal alien trespassers and temporary foreign visitors should be *represented* in the American People's Congress. The proposed rule appropriately recognizes that reality.

## II. At a minimum, the federal government has *discretion* to exclude illegal aliens and temporary foreign visitors from congressional apportionment, and the Census Bureau is wise to use that discretion here.

As the proposed rule recognizes, the Census Bureau has substantial *discretion* in defining where someone's "usual residence" is for purposes of congressional apportionment. *See Franklin*, 505 U.S. at 806.

The Supreme Court's decision in *Franklin v. Massachusetts* proves this point. There, the Census Bureau exercised its discretion to assign soldiers stationed overseas to the States in which the soldiers were domiciled. *Id.* at 804–05. Even though those soldiers were not physically present in those States when the Census was conducted, the Supreme Court recognized that the Census Bureau's approach was "consonant with . . . the text and history of the Constitution." *Id.* at 806. That was so, the Court recognized, because the federal government has historically not looked only to "mere physical presence" in a State on Census day—but also at whether an individual has "some element of allegiance or enduring tie to a place." *Id.* at 804. For example, in the 1790 Census, George Washington was counted in Virginia (where

he was domiciled) even though he was actually living in Pennsylvania at the time. *Id.*

The proposed rule appropriately looks to history and adopts an understanding of "usual residence" that is—at a minimum—consistent with the Constitution. What's more, this approach is the only one that appropriately respects U.S. citizens and those who comply with American laws to become lawful permanent residents.

For a long time, the Carter Policy's contrary approach might have been less offensive because counting illegal aliens did not make much of a difference. Indeed, it was not until 1875 that Congress barred certain classes of illegal aliens from entering the United States. *See Fed'n for Am. Immigr. Reform v. Klutznick*, 486 F. Supp. 564, 567 (D.D.C. 1980) (citing Act of March 3, 1875, 18 Stat. 477); *Kleindienst v. Mandel*, 408 U.S. 753, 761 (1972) ("Until 1875 alien migration to the United States was unrestricted."). And even then, unauthorized border crossing did not become a crime until 1929. Act of March 4, 1929, 45 Stat. 1551. Because it was so easy to legally immigrate to the United States, very few migrants crossed the border illegally for most of the twentieth century.

This question, however, has taken on increased urgency in the past couple of decades as "at least 15 million people are in the United States illegally" and "[m]any millions illegally entered (or illegally overstayed) just in the last few years." *Noem v. Vasquez Perdomo*, 146 S. Ct. 1 (2025) (Kavanaugh, J., concurring in grant of application for stay). Illegal immigrants now make up substantial percentages of the population for some American States—with California being the most notable example. For example, in Los Angeles alone, there are "about 2 million" illegal aliens that make up "10 percent" of the city's population. *Id.* For reference, that is roughly one-third of Missouri's population and over two-thirds of Kansas's population.

States like California thus have a strong political incentive to encourage illegal immigration and oppose federal attempts to stall it. *See, e.g.*, *City of San Jose, California v. Trump*, 497 F. Supp. 3d 680 (N.D. Cal. 2020) (California arguing that illegal aliens have a right to federal representation). Indeed, an expert retained by Missouri concluded that California gained three extra congressional seats in the 2021 congressional apportionment because illegal aliens and temporary foreign visitors were counted. *See Missouri v. Dep't of Comm.*, No. 4:26-cv-00131, Doc. 1 at 30 (E.D. Mo. Jan. 30, 2026). If such individuals had not been counted, Missouri—which has a small number of illegal aliens—would have gained a seat. *Id.* The proposed rule thus takes a crucial step to eliminate the incentives for States like California to encourage illegal immigration.

Even more importantly, the proposed rule treats U.S. citizens and lawful permanent residents fairly. U.S. citizens are, of course, the constituents of American's social contract. Lawful permanent residents *follow the social compact's*

*rules* for joining it. Those two groups of people deserve representation in Congress. Temporary foreign visitors and illegal alien trespassers should not be allowed to *force* their way into the American social compact without following the rules for doing so.

## III. The Census Bureau must ask about citizenship and lawful-permanent-resident status to ensure that illegal aliens and temporary foreign visitors are not counted for apportionment purposes.

The proposed rule invites comments on the inclusion of a legal-status question on the short-form decennial census questionnaire. The Census Bureau's authority to inquire into citizenship and permanent-resident status is undisputed. Congress has "virtually unlimited discretion in conducting the decennial 'actual Enumeration'" and it has delegated that authority to the Secretary of Commerce. *Wisconsin v. City of New York*, 517 U.S. 1, 19 (1996). This authority, consistent with the Enumeration Clause, "permits Congress, and by extension the Secretary, to inquire about citizenship of the census questionnaire." *Dep't. of Commerce v. New York*, 588 U.S. 752, 770 (2019).

As explained above, the Constitution requires counting only U.S. citizens and lawful permanent residents. Any Census rule that does not use the best available methods to exclude illegal aliens and temporary foreign visitors from the count used to apportion congressional seats among the States is unconstitutional. Therefore, in order to ensure that such aliens are not counted, the undersigned States propose including the following questions, with respect to each person in a household, on the 2030 and subsequent Censuses:

1. Is this person a United States Citizen?

2. If this person is not a United States Citizen, is this person a lawful permanent resident of the United States?

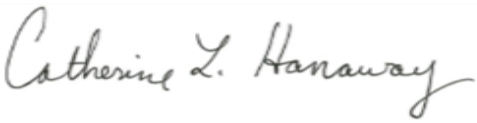
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The Census Bureau's proposed rule is the only way to facilitate representative government in an age when many millions of illegal aliens and temporary visa holders reside in the United States. Only American citizens and legal permanent residents are part of "the People," with a right to representation in Congress. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990). But illegal aliens and temporary visa holders are not entitled to representation. Temporary visa holders cannot live in the United States permanently. And illegal aliens do "not become one of the people … by an attempt to enter, forbidden by law." *U.S. ex real. Turner v. Williams*, 194 U.S. 279, 292 (1904). The undersigned States therefore strongly support the Census Bureau's proposed rule, which will restore constitutional representation of the States in Congress.

Sincerely,



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