



**United States Commission on Civil Rights  
Public Briefing  
“Federal Civil Rights Enforcement Efforts in the United States”  
Friday, November 2, 2018 in Washington, D.C.**

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In light of the tragic events of the past week – the murder of two African Americans at a grocery store in Kentucky, multiple mail bombs sent to members of the media and political figures who have voiced opposition to the current administration, and the mass murder of Jewish people at worship in their synagogue in Pennsylvania – we begin this testimony by speaking of one of the core functions of government agencies tasked with civil rights enforcement: addressing hate crimes. We urge our government leaders to speak out unequivocally to denounce hate-based violence based on race, national origin, religion, sex, and gender identity; prioritize the investigation and prosecution of hate crimes; and increase investment in preventing hate crimes and supporting vulnerable communities. With hate crimes and hate incidents on the rise in the United States, the federal government must act to halt this rising tide of hatred.

This testimony will provide data on the Asian American, Native Hawaiian, and Pacific Islander population in the United States; detail immigrants’ rights, voting rights, affirmative action, and hate crimes as priority areas for civil rights enforcement; and discuss the importance of data collection and data disaggregation for civil rights enforcement.

**About Asian Americans Advancing Justice | AAJC**

Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) is a national non-profit, non-partisan organization founded in 1991. Advancing Justice | AAJC’s mission is to advance the civil and human rights of Asian Americans, and build and promote a fair and equitable society for all. Our wide-ranging efforts include promoting civic engagement, forging strong and safe communities, and creating an inclusive society.

Advancing Justice | AAJC is part of Asian Americans Advancing Justice, a national affiliation of five independent nonprofit organizations in Los Angeles and San Francisco, California; Chicago, Illinois; Atlanta, Georgia; and Washington, D.C. who joined to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders and other underserved communities. Additionally, over 160 organizations are involved in Advancing Justice | AAJC’s community partners network, serving communities in 32 states and the District of Columbia.

## Asian Americans, Native Hawaiians, and Pacific Islanders in the United States

According to the last census, Asian Americans are the fastest growing racial group in the United States, growing 46% between 2000 and 2010.<sup>1</sup> As of the 2010 Census, there are over 17.3 million Asian Americans living in the United States, comprising 6% of the population.<sup>2</sup> The Native Hawaiian and Pacific Islander population grew 40% between 2000 and 2010, and, as of the 2010 Census, there are over 1.2 million NHPI living in the U.S.<sup>3</sup> Asian American communities are expanding beyond states with historically high concentrations, such as California and New York, to states with emerging immigrant populations.<sup>4</sup> The fastest growing Asian American communities by state were Nevada, Arizona, North Carolina, and Georgia, with Nevada's Asian American community more than doubling between 2000 and 2010.<sup>5</sup> While NHPI live in every state in the country, with a majority living in Hawai'i and California, the fastest-growing populations are in Arkansas, Nevada, and Alaska.<sup>6</sup>

Much of this growth has been fueled by immigration. Immigrants from Asia account for approximately one-quarter of all immigrants who have arrived in the United States since 1965.<sup>7</sup> The vast majority of Asian Americans, 92%, are immigrants or the children of immigrants.<sup>8</sup> Immigration to the U.S. from Asia has surpassed Hispanic immigration every year since 2010, and Asians are projected to become the nation's largest immigrant group in 2055.<sup>9</sup>

### Importance of Outreach, Community Education, and Language Access

As a majority immigrant population, Asian Americans are less likely to be well-informed about civil rights laws and the enforcement roles of federal agencies. Effective civil rights enforcement for this community requires that outreach and community education are prioritized.

In addition, language access is key to reaching and serving Asian American populations. Approximately 32% of Asian Americans experience difficulty communicating in English and are considered to be limited-English proficient (LEP).<sup>10</sup> When we look at disaggregated data, we see

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<sup>1</sup> Asian Pacific American Legal Center & Asian American Justice Center, *A Community of Contrasts: Asian Americans in the United States: 2011*, 16, [https://advancingjustice-aajc.org/sites/default/files/2016-09/Community\\_of\\_Contrasts\\_US.pdf](https://advancingjustice-aajc.org/sites/default/files/2016-09/Community_of_Contrasts_US.pdf) [hereinafter Community of Contrasts Asian American Report].

<sup>2</sup> *Id.* at 6.

<sup>3</sup> Asian Americans Advancing Justice & Empowering Pacific Islander Communities, *A Community of Contrasts: Native Hawaiians and Pacific Islanders in the United States, 2014*, 5, [http://empoweredpi.org/wp-content/uploads/2014/06/A\\_Community\\_of\\_Contrasts\\_NHPI\\_US\\_2014-1.pdf](http://empoweredpi.org/wp-content/uploads/2014/06/A_Community_of_Contrasts_NHPI_US_2014-1.pdf). [hereinafter "Community of Contrasts NHPI Report"]

<sup>4</sup> Community of Contrasts Asian American Report at 8.

<sup>5</sup> *Id.*

<sup>6</sup> Community of Contrasts NHPI Report at 5.

<sup>7</sup> Pew Research Center, *Key facts about Asian Americans, a diverse and growing population* (September 8, 2017), <http://www.pewresearch.org/fact-tank/2017/09/08/key-facts-about-asian-americans/>.

<sup>8</sup> Pew Research Center, *Second-Generation Americans: A Portrait of the Adult Children of Immigrants*, 34, (2013) [http://www.pewresearch.org/wp-content/uploads/sites/3/2013/02/FINAL\\_immigrant\\_generations\\_report\\_2-7-13.pdf](http://www.pewresearch.org/wp-content/uploads/sites/3/2013/02/FINAL_immigrant_generations_report_2-7-13.pdf).

<sup>9</sup> Pew Research Center, *Key Findings about U.S. Immigrants* (September 14, 2018), <http://www.pewresearch.org/fact-tank/2018/09/14/key-findings-about-u-s-immigrants/>.

<sup>10</sup> Community of Contrasts Asian American Report at 27.

that over half of Vietnamese and nearly half of Bangladeshi Americans are LEP.<sup>11</sup> Further, even among the Asian American ethnic groups with the highest levels of proficiency in English, including Japanese and Filipino Americans, nearly one in five are LEP.<sup>12</sup> Asian Americans Advancing Justice | AAJC continually advocates for improved language access to ensure that the information and services available through federal agencies are accessible to individuals with limited proficiency in English. Language assistance, through bilingual staff, trained interpreters, and high-quality translated materials, is critical for effective civil rights enforcement.

We must note the tremendous challenges we face as the current administration has taken actions and enacted policies that vilify immigrants and other minority communities. This climate of hostility toward immigrants and other vulnerable communities has undermined trust in government and made many reluctant to engage with federal agencies. While Asian Americans Advancing Justice | AAJC and other civil rights organizations continue to conduct outreach and engage in community education, including holding “Know Your Rights” sessions for the communities we serve, the animus toward immigrants exhibited by the Trump Administration has had its intended chilling effect, making many immigrants fearful of asserting their rights and reluctant to come forward to file complaints and initiate investigations. Civil rights enforcement will become increasingly difficult so long as government agencies themselves continue to use rhetoric and act in ways that violate and undermine, rather than uphold and protect, civil rights and community trust.

### **Priorities for Civil Rights Enforcement**

We expect civil rights enforcement offices to investigate complaints of civil rights violations and act to enforce civil rights laws, not selectively but across the board. This also includes working to ensure that government agencies themselves are in compliance with civil rights laws at all times. Here we will focus on two areas in which Advancing Justice | AAJC has a long history of advocacy: immigrants’ rights and voting rights.

#### ***Immigrants’ Rights***

The Trump administration has issued a series of new policies and proposals attacking our immigration system, lowering the number of immigrants and refugees welcomed into the United States, deporting as many people as possible, and preventing permanent residents from naturalizing. These policies are actively violating immigrants’ civil rights by reducing due process protections and scaring immigrants, who are predominantly people of color, away from accessing immigration status, naturalizing, or receiving other benefits for which they qualify. Some policies more specifically target particular religions or national origins. Many of the administrative changes have made U.S. Citizenship and Immigration Services an active component of the administration’s immigration enforcement apparatus. In establishing a denaturalization taskforce, compromising due process for applicants for immigration benefits, and cutting off paths to safety for victims of domestic violence and gang violence, these changes have contributed to an atmosphere of mistrust that is terrifying immigrants from interacting with the government, not only jeopardizing but actively undermining civil rights enforcement.

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<sup>11</sup> *Id.* at 28.

<sup>12</sup> *Id.*

## ***Separating and Incarcerating Families Seeking Protection at the U.S. Border***

Since fall 2017, the administration has separated families seeking protection at the U.S.-Mexico border. In May and June 2018, the administration's policy of criminally prosecuting parents and forcibly separating them from their children at the border was significantly scaled up. Affirming that asylum seekers have the legal right to seek protection from persecution and violence under both U.S. and international law, and should not be detained for seeking refuge, communities across the nation called on the administration, the Department of Homeland Security (DHS), and the Department of Justice to terminate immediately its family separation and "zero tolerance" prosecution policies that were tearing families apart.

In July, a federal judge temporarily blocked the administration from deporting parents and children that it forcibly separated, over concerns that the government would quickly deport, without oversight or due process, the separated families. Courts intervened to order the immediate reunification for the class of 2,654 family members that had been separated. Since mid-August, however, reunifications have continued at a very slow pace. At this time, more than 100 parents remain separated from their children, and nearly half of these parents have already been deported with no clear plan for reunification.

It has been reported that staff members within the DHS Office for Civil Rights and Civil Liberties raised serious concerns about the legality of the family separation policy that was enacted in order "to deter Central American asylum seekers from coming to the United States in search of humanitarian protection."<sup>13</sup> A report from the DHS Inspector General released this month references false claims made by DHS and pervasive incompetence in the agency's management of family separation.<sup>14</sup> The administration's actions connected to its "zero tolerance" and family separation policies clearly do not constitute effective civil rights enforcement but the opposite – deliberate action by the government seemingly in contravention of, or at least flagrant disregard for, the law, specifically the rights of asylum seekers.

Further, the Trump Administration is trying to change the rules that governing the treatment of immigrant children in government custody. In the 1990s, a court ordered the government to follow basic rules to ensure the well-being of migrant children in government custody, who had come to the United States seeking safety but were instead locked up in abusive, prison-like conditions. The rules, called the *Flores* agreement, require the government to release children from its custody as soon as possible and, if it cannot, to hold children in state-licensed and child-appropriate facilities, and in the least restrictive setting possible. The Trump administration now is trying to gut these rules through proposed regulations.

Advancing Justice | AAJC has opposed and will continue to oppose policies that separate immigrant families and violate the rights of asylum seekers.

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<sup>13</sup> Scott Shuchart, "Careless Cruelty: Civil servants said separating families was illegal. The administration ignored us," Washington Post (October 25, 2018).

<sup>14</sup> *Id.*

## ***Muslim Ban and Extreme Vetting Policies***

The Muslim bans are a series of discriminatory executive orders and proclamations issued by the Trump administration. President Trump signed the first version on January 27, 2017, and significant portions of the ban, as well as later versions of it, were immediately blocked by federal courts, which found each iteration to be blatantly anti-Muslim, unconstitutional, and an abuse of the President's power. The U.S. Supreme Court opinion issued on June 26, 2018, allowed the third iteration of the ban to remain in place permanently. Recognizing the blatant Islamophobia motivating it and the devastating impact of this decision that separates American families and endangers vulnerable populations, we continue to oppose the Muslim ban.

On May 23, 2017, the Office of Management and Budget approved the discretionary use of "extreme vetting" forms, including inquiries into social media accounts and extensive biographical and travel information from the last fifteen years. Consular officers give these forms to anyone applying for a visa whom they determine may pose a "threat to national security" (an undefined standard). We know that these forms are given predominantly to nationals of Muslim majority countries. The policy has resulted in a dramatic decline in visa applications, further delays in visa issuance to nationals of Muslim-majority countries, and discriminatory practices while issuing visas.

## ***Increased Immigration Enforcement through Immigration Courts***

Advancing Justice | AAJC is gravely concerned about changes to legal processes and legal precedent that are impacting due process and violating the rights of immigrants.

*Attorney General Sessions is Pressuring Immigration Courts to Strip Due Process from Immigrants:* The Executive Office of Immigration Review has announced new case completion quotas and pressured judges not to issue continuances, which are often requested so that an immigrant can obtain a lawyer. As noted by the American Immigration Lawyers Association, these changes infringe on due process, jeopardize judicial independence, and are not likely to result in greater efficiency.<sup>15</sup> Further, these policy changes contradict recommendations from a year-long independent evaluation commissioned by the Justice Department.<sup>16</sup>

*Attorney General Sessions is Single-handedly Rewriting Immigration Case Law:* Since assuming his role as Attorney General, Sessions has plucked five immigration cases from the immigration courts and re-written them in order to make it harder for immigrants to obtain immigration relief. One of the cases he has rewritten, *Matter of A-B*, significantly narrows the ability of people to seek asylum based on domestic violence or gang-based violence. USCIS recently issued a policy memorandum implementing this opinion.<sup>17</sup>

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<sup>15</sup> American Immigration Lawyers Association, *AILA Policy Brief: Imposing Numeric Quotas on Judges Threatens the Independence and Integrity of the Courts*, October 13, 2017, AILA Doc. No. 17101234, <https://www.aila.org/infonet/aila-policy-brief-imposing-numeric-quotas-judges>.

<sup>16</sup> American Immigration Lawyers Association, *AILA Policy Brief: Recommendations from Independent Study of Immigration Courts Contradict DOJ Policy Changes*, April 23, 2018, AILA Doc. No. 18042303, <https://www.aila.org/infonet/independent-study-of-courts-contradict-doj-policy>.

<sup>17</sup> U.S. Citizenship and Immigration Services, *Policy Memorandum: Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with Matter of A-B*, July 11, 2018,

## *Turning U.S. Citizenship & Naturalization Services into an Enforcement Agency*

Additional changes to USCIS processes are contributing to deep fears in immigrant communities and having the effect of preventing immigrants from applying for adjustment of status and seeking other forms of immigration relief.

*USCIS is Calling ICE When Applicants Appear for Immigration Interviews:* Media reports indicate that since the start of the Trump administration, USCIS has been increasingly calling ICE when applicants appear for immigration interviews, including those for green cards.<sup>18</sup> This practice is emblematic of USCIS's transformation into an enforcement agency, causing anxiety and heartache for people going through the process of obtaining immigration benefits to which they are entitled.

*Stricter Guidance on Application Denials:* On July 13, 2018, USCIS instructed adjudicators to stop issuing a Request for Evidence (RFE) or Notice of Intent to Deny (NOID), which provide applicants the opportunity to correct their applications or provide more information, and instead immediately deny incomplete applications.<sup>19</sup> USCIS officers are now granted full discretion to deny applications or petitions for an immigration benefit – without having to request that the petitioner provide additional evidence supporting their case. This instruction would impact individuals, families, and employers who are applying for immigration benefits – including citizenship, green cards, and family – and employment-based visa petitions.

For many years, USCIS has been using RFEs and NOIDs for cost and resource efficiencies for both the government and the applicant and to ensure due process. It gives the applicant the opportunity to correct an application error caused either by the government or the applicant without having to go through an entire re-application with a new fee. With this new memo, adjudicators are authorized to deny applications for even simple errors, curtailing due process and creating inefficiencies for the government and the applicant, who will be forced to reapply with a new fee or request a motion to reopen due to USCIS error, which is costly for USCIS.

*USCIS will Refer More People for Deportations:* In July 2018, USCIS published new guidance, dated June 28, 2018, regarding the issuance of Notices to Appear (NTA).<sup>20</sup> An NTA is a charging document that is issued to foreign nationals who are deemed “removable” from the United States. People who receive NTAs must appear before an immigration judge to determine whether they should be removed from the United States (which carries significant penalties), or

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<https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-18-PM-602-0162-USCIS-Memorandum-Matter-of-A-B.pdf>.

<sup>18</sup> Shannon Dooling, “ICE Arrests Green Card Applicants in Lawrence, Signaling Shift in Priorities,” WBUR News (March 30, 2017), <http://www.wbur.org/news/2017/03/30/green-card-ice-arrests-lawrence>.

<sup>19</sup>U.S. Citizenship and Immigration Services, *Policy Memorandum: Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM), Chapter 10.5(a), Chapter 10.5(b)*, July 13, 2018, [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM\\_10\\_Standards\\_for\\_RFEs\\_and\\_NOIDs\\_FI\\_NAL2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FI_NAL2.pdf).

<sup>20</sup>U.S. Citizenship and Immigration Services, *Policy Memorandum: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*, June 28, 2018, <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>.



whether they are entitled to some type of relief from removal, allowing them to remain in the United States legally.

The new policy shifts more of the enforcement function to USCIS and mandates USCIS, except in very limited circumstances, to issue an NTA upon denial of an immigration benefit request where the applicant, beneficiary, or requestor is removable. Perhaps most significantly, NTAs will be issued to every person who is “not lawfully present” in the United States at the time an application, petition, or request for an immigration benefit is denied. These changes will undoubtedly have a chilling effect on individuals who may be lawfully and legally entitled to immigration benefits but who will forego applying out of fear and will remain in the shadows.

In the past, immigration agencies used prosecutorial discretion when deciding under what circumstances to issue NTAs. Past leaders of USCIS have issued memos against the practice of widespread NTA issuance, noting it was impractical, would divert scarce resources, create longer wait times, and clog the immigration courts. We anticipate that this latest policy will result in thousands more people being put into proceedings unnecessarily, including individuals who have complied with immigration law and have lived and worked lawfully in the U.S. for years.

### *Attacks on Naturalization*

Contrary to what some may believe, these attacks are not limited to individuals seeking to immigrate to the U.S., but are also impacting permanent residents and naturalized citizens.

*Naturalization Delays:* The backlog of pending naturalization applications has skyrocketed,<sup>21</sup> with processing times in certain areas projected to exceed two years.<sup>22</sup> While the administration blames bureaucracy as the cause of these delays, it is imperative to consider them in the context of Trump’s anti-immigrant, pro-voter suppression agenda, which seeks to empower white supremacy and severely curtail immigration to the United States.

*Denaturalization Task Force:* The administration has created a “denaturalization task force” to strip away citizenship from thousands of U.S. citizens. In the past, individuals were targeted for denaturalization were only in extreme circumstances, such as Nazis and other war criminals trying to escape prosecution.<sup>23</sup> Now, the administration is attempting to strip citizenship from individuals based upon old removal orders, discrepancies in applications, and allegations of crimes that they were not even charged with at the time of their naturalization.<sup>24</sup> U.S. citizens are entitled to investigation and due process when accused of committing a crime. Naturalized Americans should not be treated differently and threatened with revocation of citizenship over allegations of crimes or errors in their applications for citizenship.

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<sup>21</sup> National Partnership for New Americans, *Building a Second Wall: USCIS Backlogs Preventing Immigrants from Becoming Citizens*, July 2018, <http://partnershipfornewamericans.org/portfolio/npna-report-building-a-second-wall-uscis-backlogs-preventing-immigrants-from-becoming-citizens/>.

<sup>22</sup> As of October 31, 2018, the processing times listed on the USCIS website for the Form N-400 are 15.5-24.5 months for Minneapolis-Saint Paul, and 12.5-25.5 months for Atlanta. <https://egov.uscis.gov/processing-times/>

<sup>23</sup> American Civil Liberties Union and Immigration Legal Resource Center, *Factsheet: The Trump Administration’s Plan to Strip Citizenship from Thousands of Americans*, available at <https://www.aclu.org/fact-sheet/trump-administrations-plan-strip-citizenship-thousands-americans>.

<sup>24</sup> *Id.*

While these could be seen as procedural or administrative matters not related to civil rights enforcement, these actions – or in the case of the increasing naturalization processing backlogs, inaction – must be viewed as part of a larger attack by the administration on immigrant communities. The longer processing timeframes and re-opening the files of already-naturalized citizens are creating barriers to immigrants’ interaction with the government, making it less likely that they will assert their rights or claim benefits to which they are entitled.

### ***Public Charge***

In addition, proposed changes to the “public charge” test are causing harm to immigrant families and further contributing to a climate of fear and mistrust of the government.

Public charge is the term used by immigration officials to refer to people who rely on government assistance to primarily support their cost of day-to-day living. It is a ground of inadmissibility for denying both immigrant and nonimmigrant visas to enter the United States. Under current law, officials look at a variety of factors in deciding whether a person is likely to become a public charge, but the only public benefits that are currently considered are cash assistance programs, such as Temporary Assistance for Needy Families, and long-term nursing home care paid for by the government. Since 1997, consular officials have accepted the sponsor’s affidavit of support as the primary – and often the only – form of evidence necessary for the immigrant visa applicant to satisfy the public charge test.

The Department of Homeland Security (DHS) has published a new proposed public charge test, which would add health, nutrition and housing programs to the list of benefits considered under the rule. These include non-emergency Medicaid, Medicare Part D Low-income Subsidy (which helps low-income seniors afford prescription drug coverage), Supplemental Nutrition Assistance Program (SNAP) or food stamps, Section 8 housing vouchers and subsidized public housing.

In addition to whether someone is currently using public benefits, the rule looks at whether a person is likely to become a public charge in the future. The test weighs factors such as age, income, health conditions, and English language proficiency much more heavily than in the past. This is likely to mean that older or disabled family members will be denied green cards as well as low-wage workers and people with chronic illnesses.

In January 2018, the State Department issued new public charge guidance in the Foreign Affairs Manual (FAM) adding tougher requirements for people applying for lawful permanent residence from outside the United States.<sup>25</sup> The new guidance diminishes the role of the affidavit of support in public charge determinations and has led to an increasing number of visa denials based on public charge at consulates abroad.

The public charge test could be viewed as unrelated to civil rights enforcement, but the changes proposed to the public charge test also are part of this administration’s broad-based attack on immigrants. The administration leaked an earlier version of the public charge rule that was retroactive and encompassed a broader list of benefits, including benefits received by an applicant’s permanent resident and U.S. citizen family members. The leaked draft led to much

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<sup>25</sup> <https://fam.state.gov/fam/09FAM/09FAM030208.html#M302> 8



confusion, and many immigrants, including individuals who would not be impacted by the proposed rule, withdrew themselves and their family members from public benefits they are legally entitled to receive. The result is a disparate impact on immigrant communities, mostly people of color, in their use of benefits. We have not seen the Departments of Health and Human Services or Agriculture do anything to reassure immigrants and mixed status families who qualify for benefits that they should accept them.

The proposed change to the public charge test, like many of immigration policy changes enacted by this administration detailed above, will drive people further into the shadows, jeopardizing community safety and community trust. Further, many of these policies violate immigrants' civil rights and create fear and mistrust, making immigrants less likely to assert their rights or claim benefits to which they are legally entitled.

### ***Voting Rights***

Enforcement of the Voting Rights Act of 1965 (VRA) has been critical in preventing actual and threatened discrimination aimed at Asian Americans in national and local elections, and for increasing the community's access to the ballot. This testimony will detail barriers Asian Americans face in accessing the ballot, the laws that help to overcome these barriers, and the enforcement of the Voting Rights Act of 1965 (VRA) on behalf of Asian Americans. While Asian Americans are the nation's fastest growing racial group and are quickly becoming a significant electoral force, the community will not be able to maximize its political power without the protection of their voting rights.

As the Asian American population has grown, we have seen a corresponding increase among Asian American voters, from 2 million voters in 2000 to over 5 million in 2012.<sup>26</sup> In fact, there was an average increase of 747,500 voters per presidential election cycle from 2000 to 2016.<sup>27</sup> This growth will continue, with Asian American, Native Hawaiian and Pacific Islander voters making up five percent of the national electorate by 2025 and 10 percent of the national electorate by 2044.<sup>28</sup>

Although there is an increase in voter engagement by Asian Americans, voter discrimination, language barriers, lack of access to voter resources, and unfamiliarity with the voting process challenge Asian Americans' ability to reach their full potential when it comes to civic engagement. Despite a doubling of Asian American voters in just over a decade nationally, there continues to be a consistent gap with White voters of 15-20% less in voter registration and turnout, election after election.<sup>29</sup>

We have raised language access as a concern for Asian Americans generally. Since voting can be intimidating and complex, even for native English speakers, it can be that much more difficult

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<sup>26</sup> See Table 2. Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2012, U.S. Census Bureau, [https://www2.census.gov/programssurveys/cps/tables/p20/568/table02\\_5.xls](https://www2.census.gov/programssurveys/cps/tables/p20/568/table02_5.xls).

<sup>27</sup> Advancing Justice | AAJC's calculations of U.S. Census Bureau data available on voter turnout in presidential elections through its Current Population Survey.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

for citizens whose first language is not English. Voting materials are written for a twelfth grade level of comprehension, which is much higher than that required for naturalization, making voting more challenging for voters with language barriers.<sup>30</sup>

Unfortunately, the persistent racist stereotype of Asian Americans as “outsiders,” “aliens,” and “foreigners” drives much of the discrimination faced by Asian Americans in voting.<sup>31</sup> Asian Americans were denied the ability to vote for most of the country’s existence as Asian immigrants were barred from becoming citizens via federal policy until 1943 and subject to racial criteria for naturalization until 1952.<sup>32</sup> In fact, many legislative efforts prevented Asian immigrants from even entering the country and becoming citizens.<sup>33</sup> Asian immigrants also were prohibited from voting and owning land as they were legally identified as aliens “ineligible for citizenship.”<sup>34</sup> The “perpetual foreigner” stereotype is embedded in the political process. Insidious manifestations of the stereotype can be found in the verbal attacks levied against Asian American candidates and voters, negative political ads that use the misconception of “Asia” as an enemy to the U.S., and manipulation of images of candidates to trigger negative stereotypes of minority candidates.

The Voting Rights Act of 1965 (VRA) has proven to be an effective tool in breaking down barriers and helping Asian American voters access the ballot across the country. Unfortunately, as a result of the Shelby decision, one of its more powerful enforcement tools, the Section 5 preclearance provision, has been rendered useless, and we are seeing more states take advantage

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<sup>30</sup> Ana Henderson, English Language Naturalization Requirements and the Bilingual Assistance Provisions of the Voting Rights Act, 2-4 (2006) (unpublished manuscript) (on file with Advancing Justice | AAJC).

<sup>31</sup> See, e.g., Claire Jean Kim, The Racial Triangulation of Asian Americans, 27 *Pol. & Soc’y* 105, 108-16 (1999) (describing history of whites perceiving Asian Americans as foreign and therefore politically ostracizing them). Racial stereotyping of Asian Americans reinforces an image of Asian Americans as “different,” “foreign,” and the “enemy,” leading to stigmatization of Asian Americans, heightened racial tension, and increased discrimination. Spencer K. Turnbull, Comment, Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes, 7 *UCLA Asian Pac. Am. L.J.* 72, 75 (2001); Terri Yuh-lin Chen, Comment, Hate Violence as Border Patrol: An Asian American Theory of Hate Violence, 7 *Asian L.J.* 69, 72, 74-75 (2000); Cynthia Kwei Yung Lee, Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J., 6 *Hastings Women’s L.J.* 165, 181 (1995); Note, Racial Violence Against Asian Americans, 106 *Harv. L. Rev.* 1926, 1930-32 (1993); see also Thierry Devos & Mahzarin R. Banaji, American = White?, 88 *J. Personality & Soc. Psychol.* 447 (2005) (documenting empirical evidence of implicit beliefs that Asian Americans are not “American”).

<sup>32</sup> See Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58-61 (prohibiting immigration of Chinese laborers; repealed 1943); Immigration Act of 1917, ch. 29, 39 Stat. 874, 874-98; Immigration Act of 1924, ch. 190, 43 Stat. 153 (banning immigration from almost all countries in the Asia-Pacific region; repealed 1952); Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 *UCLA L. Rev.* 405, 415 (2005).

<sup>33</sup> See, e.g., Philippines Independence Act of 1934, ch. 84, 48 Stat. 456, 462 (imposing annual quota of fifty Filipino immigrants; amended 1946); Immigration Act of 1924, ch. 190, 43 Stat. 153 (denying entry to virtually all Asians; repealed 1952); Scott Act of 1888, ch. 1064, 25 Stat. 504 (rendering 20,000 Chinese re-entry certificates null and void); Naturalization Act of 1790, ch. 3, 1 Stat. 103 (providing one of the first laws to limit naturalization to aliens who were “free white persons” and thus, in effect, excluding African-Americans, and later, Asian Americans; repealed 1795).

<sup>34</sup> *Ozawa v. United States*, 260 U.S. 178, 198 (1922); see, e.g., Cal. Const. of 1879 art. II, § 1 (1879) (“no native of China . . . shall ever exercise the privileges of an elector in this State”); *Oyama v. California*, 332 U.S. 633, 662 (1948) (Murphy, J., concurring) (noting that California’s Alien Land Law “was designed to effectuate a purely racial discrimination, to prohibit a Japanese alien from owning or using agricultural land solely because he is a Japanese alien”).

by enacting laws that have increased barriers to voting and diluted minority voting strength.<sup>35</sup> We continue to utilize other provisions of the VRA to assist Asian American voters and safeguard their access to the polls.

### *Section 203*

Section 203 has been one of the most critical provisions in ensuring Asian Americans are able to cast their ballot. Section 203 was enacted during the 1975 reauthorization of the VRA because Congress recognized that certain minority citizens, specifically Latinos, Asian Americans, American Indians, and Alaska Natives, due to limited English speaking abilities, experienced historical discrimination and disenfranchisement. Under the Section 203 coverage formula, language minority populations that comprise 5% or 10,000 limited-English proficient voting-age citizens in a county or equivalent political subdivision trigger coverage. Covered jurisdictions are obligated to provide all materials related to the electoral process, including ballots, in the language of the applicable minority group. As of 2016, 45 Asian American populations comprised of 7 Asian ethnic groups located in 27 counties, boroughs, census areas or cities are covered under Section 203.<sup>36</sup>

The promise of Section 203 in helping LEP citizens to vote has yet to be fully realized because of varying degrees of compliance by different jurisdictions. For example, we have found that polling sites did not provide adequate notice of language assistance available; poll workers often failed to properly display, or were even unaware of the availability of, translated materials; and there was a lack of bilingual poll workers.

When properly implemented, Section 203 increases civic engagement among Asian American citizens. DOJ's Section 203 enforcement helped increase voter registration and turnout. After DOJ filed a Section 203 lawsuit in San Diego County, California, voter registration among Hispanics and Filipinos rose by over 20 percent and Vietnamese registrations increased by 40 percent; the County agreed to voluntarily provide additional language assistance to Vietnamese who had just missed the Section 203 threshold mark.<sup>37</sup> And in Harris County, Texas, the turnout among Vietnamese eligible voters doubled following the DOJ's efforts in 2004.<sup>38</sup> That same year, Harris County elected the first Vietnamese American to the Texas state legislature after the county began fully complying with Section 203.

Section 203 also led to an increase in political representation by "candidates of choice" as a direct result of the increased civic engagement of these groups. During the last reauthorization of the VRA in 2006, Congress noted a sharp rise in the number of Asian American elected officials

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<sup>35</sup> Brennan Center for Justice, Webpage on New Voting Restrictions in America, <http://www.brennancenter.org/new-voting-restrictions-america>.

<sup>36</sup> The breakdown for Asian ethnic groups was: Chinese American populations in 18 jurisdictions; Filipino American populations in 8; Vietnamese American populations in 9; Korean American populations in 4; Indian American populations in 3; Bangladeshi American populations in 1; and Cambodian American population in two. <https://advancingjustice-la.org/sites/default/files/2016-Section-203-Fact-Sheet.pdf>

<sup>37</sup> Alberto R. Gonzales, Prepared Remarks of Attorney General Alberto R. Gonzales at the Anniversary of the Voting Rights Act, The United States Department of Justice (Aug. 2, 2005), <http://www.justice.gov/archive/ag/speeches/2005/080205agvotingrights.htm>.

<sup>38</sup> *Id.*

in federal, state, and local offices. As noted in the House report, the total number of elected officials in 2004 was 346, up from 120 in 1978. The VRA and particularly the passage of Section 203 have been instrumental in these gains. For example, the vast majority of Asian American elected officials at the time of the study, 75%, were elected in jurisdictions covered by Section 203 of the VRA.<sup>39</sup>

The Department of Justice has prosecuted Section 203 violations on behalf of Asian Americans, including Alameda County, California, in 2011, for failing to provide effective access to Spanish- and Chinese-speaking citizens; and New York, New York, in 2013, for failing to provide assistance in Asian Indian languages over four elections. Information on other section 203 cases that have been brought by DOJ on behalf of Asian Americans can be found in the report, “The Persistent Challenge of Voting Discrimination: A Study of Recent Voting Rights Violations by State.”<sup>40</sup>

As far as we are aware, no Section 203 enforcement actions have taken place under the current Administration.

### ***Section 208***

Section 208 has been an important complement to Section 203 for Asian American voters. Congress added Section 208 to the VRA in 1982 to ensure that “blind, disabled, or illiterate voters could receive assistance in a polling booth from a person of their own choosing[.]”<sup>41</sup> Since Section 203 does not apply in all jurisdictions, not all LEP voters can take advantage of its benefits. All citizens who have difficulty with English, no matter where they live or what their native language is, have the right through Section 208 to an assistor of their choice to help them in the voting booth.<sup>42</sup> The only limitation is that the assistor cannot be one’s employer or union representative.

Although Section 208 does not obligate state or local governments to provide any language assistance, it does provide for a method of enforcement. It is a violation of the VRA if election officials obstruct or deny a voter’s right to use an assistor of choice.<sup>43</sup> The Justice Department has authority to enforce voting rights laws and ensure that voters’ rights are protected in federal elections.<sup>44</sup> DOJ has filed lawsuits against localities for violations of Section 208, including Miami-Dade County, Florida, in 2002, for preventing Haitian American voters from having

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<sup>39</sup> *Id.* at 17.

<sup>40</sup> The Leadership Conference on Civil and Human Rights, *The Persistent Challenge of Voting Discrimination: A Study of Recent Voting Rights Violations by State* (2014), <http://archives.civilrights.org/press/2014/Racial-Discriminationin-Voting-Whitepaper.pdf>.

<sup>41</sup> 6 S. Rep. No. 97-417 at 2 (1982).

<sup>42</sup> Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections*, 5 (2013), <http://advancingjusticeaajc.org/sites/default/files/2016-10/Voices%20of%20Democracy.pdf> [hereinafter *Voices of Democracy*].

<sup>43</sup> Angelo N. Ancheta, *Language Accommodation and the Voting Rights Act in Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation, and Power*, 293, 304 (Ana Henderson ed., 2007).

<sup>44</sup> 52 U.S.C. §10308(d).

assistors of choice and Berks County, Pennsylvania, in 2003, for denying Spanish-speaking voters the right to assistors of choice in the voting booth.<sup>45</sup>

As far as we know, no enforcement actions have been brought under Section 208 since 2009.

## ***Section 2***

Section 2 of the VRA applies nationwide and mandates that all jurisdictions avoid implementing any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of their race, color, or membership in a language minority group.<sup>46</sup> Section 2 has been utilized in “vote dilution” challenges to at-large election systems and redistricting plans, “vote denial” challenges to restrictive voting practices, and language discrimination challenges.

Language assistance Section 2 has also been utilized to protect the voting rights of language minorities who do not reside in Section 203-covered jurisdictions, as well as language minority voters who fall outside of the four protected language groups (i.e., Latinos, Asian Americans, American Indians, and Alaskan Natives).

For example, the Department of Justice brought a Section 2 case against the City of Boston on behalf of Chinese- and Vietnamese-speaking voters.<sup>47</sup> In July 2005, DOJ filed a complaint under Sections 2 and 203 of the VRA and alleged that the City abridged the right of LEP members of language minority groups to vote by treating LEP Latino and Asian American voters disrespectfully; refusing to permit LEP Latino and Asian American voters to be assisted by an assistor of their choice; improperly influencing, coercing or ignoring the ballot choices of LEP Latino and Asian American voters; failing to make available bilingual personnel to provide effective assistance and information needed by minority language voters; and refusing or failing to provide provisional ballots to LEP Latino and Asian American voters. On October 18, 2005, the court issued an order that, among other requirements, mandated the provision of language assistance to Chinese and Vietnamese voters.<sup>48</sup>

DOJ also used Section 2 on behalf of language minority voters whose language is not covered under Section 203. For example, DOJ brought a Section 2 action on behalf of Arab American voters in Hamtramck, Michigan.<sup>49</sup> In 1999, an organization called “Citizens for Better Hamtramck” challenged voters (including Bengali Americans) who “looked” Arab, had Arab or Muslim sounding names, or had dark skin. The harassment included pulling voters from voting

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<sup>45</sup> These claims have often been sought in conjunction with enforcement of other provisions on behalf of language minority voters. See generally [http://www.justice.gov/crt/about/vot/litigation/recent\\_208.php](http://www.justice.gov/crt/about/vot/litigation/recent_208.php). See also Consent Order, *United States v. Miami-Dade County* (No. 02-21698, S.D. Fla., June 17, 2002), [http://www.justice.gov/crt/about/vot/sec\\_2/miamidade\\_dcd.php](http://www.justice.gov/crt/about/vot/sec_2/miamidade_dcd.php), *U.S. v. Berks County, PA*, 277 F. Supp. 2d 570, 577 (E.D. Pa 2003).

<sup>46</sup> 52 U.S.C §10301.

<sup>47</sup> *United States v. City of Boston, MA* (D. Mass. 2005). DOJ also brought a Section 203 enforcement claim against the City of Boston for noncompliance in providing language assistance in Spanish.

<sup>48</sup> Consent Order, *United States v. City of Boston, Mass.*, (No. 05-11598, D. Mass., Oct. 18, 2005), [http://www.justice.gov/crt/about/vot/sec\\_203/documents/boston\\_cd2.pdf](http://www.justice.gov/crt/about/vot/sec_203/documents/boston_cd2.pdf).

<sup>49</sup> *United States v. City of Hamtramck, Michigan* (E.D. Mich. 2000).

lines and forcing them to show passports or citizenship papers before they could vote, as well as forcing some of them to take an oath of allegiance even though they had appropriate citizenship documentation. As the result of an agreement with DOJ, the city agreed to appoint at least two Arab Americans or one Arab American and one Bengali American election inspector to provide language assistance for each of the 19 polling places where the voter challenges occurred.<sup>50</sup>

No Section 2 claim has been brought on behalf of language minority voters since 2005.

To summarize, despite the clear benefits of enforcing provisions intended to assist minority and LEP voters, there have been no enforcement actions brought by the Department of Justice under the Voting Rights Act and no enforcement actions on behalf of Asian Americans or language minorities from fiscal year 2016 through fiscal year 2018.

In addition to immigrants' rights and voting rights, we raise two more areas of concern: affirmative action and hate crimes.

### ***Affirmative Action***

Asian Americans Advancing Justice has long supported affirmative action policies. Advancing Justice has filed briefs in the *Grutter*<sup>51</sup> and *Gratz*<sup>52</sup> cases in support of affirmative action at the University of Michigan, and in the *Fisher* cases<sup>53</sup> supporting affirmative action at the University of Texas. We currently are involved in the litigation involving Harvard University's affirmative action policy. Asian Americans Advancing Justice – Los Angeles is part of the legal team representing a group of students, including Asian American and Pacific Islander students, arguing in support of Harvard's use of holistic admissions program and right to consider race to the full extent allowed by law. The consideration of race as a factor in college admissions has been upheld by the Supreme Court through multiple legal challenges over the last forty years, and litigation to remove consideration of race in college admissions should not be a priority for the Justice Department.

Further, a recent survey conducted by APIAVote and AAPI Data, found that the majority of Asian American registered voters support affirmative action. Specifically, 58% of Asian Americans believe that "affirmative action programs designed to increase the number of black and minority students on college campuses are 'a good thing,'" and 66% favor affirmative action programs designed to help African Americans, women, and other minorities get better access to higher education.<sup>54</sup> The current position of the Department of Justice runs counter to the views of the majority of Asian American voters on affirmative action.

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<sup>50</sup> *Id.*

<sup>51</sup> *Grutter v. Bollinger*, 539 U.S. 306 (2003).

<sup>52</sup> *Gratz v. Bollinger*, 539 U.S. 244 (2003).

<sup>53</sup> *Fisher v. University of Texas at Austin*, 570 U.S. 297 (2013) and 579 U.S. \_\_\_\_ (2016).

<sup>54</sup> AAPI Data and APIA Vote, 2018 Asian American Voter Survey, October 9, 2018, <http://www.apiavote.org/research/2018-asian-american-voter-survey>.



## *Hate Crimes*

As stated in the introduction to this testimony, one of the primary mandates of government agencies tasked with civil rights enforcement is addressing discrimination, including hate crimes. Hate crimes and hate incidents are on the rise in the United States. According to its recent report, in 2017 the Council on American-Islamic Relations (CAIR) recorded a 15% increase in hate crimes targeting American Muslims and a 17% increase in anti-Muslim bias incidents nationwide.<sup>55</sup> CAIR also documented 144 anti-mosque incidents.<sup>56</sup> Further, 35% of the anti-Muslim bias incidents documented by CAIR were instigated by government agencies.<sup>57</sup> Many of these incidents were in connection with the Muslim Ban, and the federal agencies implicated include Customs and Border Protection, the FBI, the Transportation Security Administration, U.S. Citizenship and Immigration Services, and Immigration and Customs Enforcement.<sup>58</sup> In its recent report, South Asian Americans Leading Together (SAALT) documented a 45% increase in reports of hate violence and xenophobic political rhetoric in 2017.<sup>59</sup> Approximately 20% of the perpetrators of hate incidents documented by SAALT referenced President Trump, a policy of the Trump administration, or a Trump campaign slogan.<sup>60</sup>

Government officials and federal agencies must reverse discriminatory policies and unequivocally denounce hate violence based on race, national origin, religion, sex and gender identity. We urge that the investigation and prosecution of hate crimes be made a higher priority, and also call for greater investment in entities like the Department of Justice Community Relations Service, which works to prevent and resolve community conflicts arising from differences of race, color, and national origin.

In addition, we recommend greater support for legal services. Legal services organizations, including those funded by the Legal Services Corporation (LSC), engage in outreach and community education, and can be the front line of receiving complaints of discrimination. Greater capacity for LSC providers would enable them to augment the enforcement efforts of government agencies.

Similarly, community-based organizations (CBOs) can be valuable partners for federal agencies in preserving and protecting civil rights. CBOs often are in the best position to provide critical information – and combat misinformation – to vulnerable communities. As such, CBOs can serve as the entry point into the legal system for individuals who otherwise may not be aware of their rights or how to access assistance. Robust civil rights enforcement should involve partnerships with community-based organizations.

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<sup>55</sup> Council on American-Islamic Relations, *Targeted: 2018 Civil Rights Report*, 11, <http://islamophobia.org/reports/224-2018-civil-rights-report-targeted.html>.

<sup>56</sup> *Id.* at 15.

<sup>57</sup> *Id.* at 13.

<sup>58</sup> *Id.* at 14.

<sup>59</sup> South Asian Americans Leading Together, *Communities on Fire: Confronting Hate Violence and Xenophobic Political Rhetoric*, 3 (2018), <http://saalt.org/wp-content/uploads/2018/01/Communities-on-Fire.pdf>.

<sup>60</sup> *Id.*

## Improving Data Collection and Disaggregation

Finally, Advancing Justice | AAJC has long advocated for improved data collection and access to more disaggregated data across agencies. The collection of detailed data is particularly critical for Asian Americans and NHPI, who are among our nation's most diverse racial groups. Often viewed as homogenous, these communities include more than 50 detailed race groups that can differ dramatically across key social and economic indicators. For example, while only 6% of Filipino Americans nationwide live below the poverty line, approximately 26% of Hmong Americans are poor.<sup>61</sup> Similarly, about 49% of Marshallese live below the poverty line, while only 5% of Fijians are poor.<sup>62</sup> Roughly 73% of Taiwanese Americans hold a bachelor's degree, yet only 12% of Laotian Americans do.<sup>63</sup> Similarly, about 18% of NHPI adults have a bachelor's degree, compared to about only 3% of Marshallese.<sup>64</sup> Another example is pay equity. While AANHPI women are paid an average of 86 cents for every dollar a white man is paid, disaggregated data demonstrate that, for example, Native Hawaiian women are paid only 66 cents for every dollar a white man is paid; for Vietnamese, Laotian, and Samoan American women, 61 cents; for Burmese American women, 53 cents; and for Bhutanese American women, only 38 cents.<sup>65</sup> Finally, a Department of Labor report on The Economic Status of Asian Americans and Pacific Islanders shows the necessity of disaggregated data in understanding Asian American and NHPI populations.<sup>66</sup> Without accurate data by detailed race group, some of the most disadvantaged in our communities are rendered invisible to policymakers, leaving their critical needs unmet. Furthermore, data users need detailed NHPI race data because each NHPI community strives to improve the health, education, and welfare of its people; has different political relationships, language, cultural practices, and identities; and has a different path for achieving equity.

Detailed data are also critical to our ability to break down the stereotype of the “model minority,” which has been used to erase the history of exclusion and discrimination against Asian Americans and NHPI. This stereotype is also used to obscure our concerns—failing to recognize critical differences and priorities between Asian American and NHPI subgroups—and therefore to excuse the lack of government resources and philanthropic investments in our communities. Finally, the lack of disaggregated data and the “model minority” myth create a wedge between Asian Americans and NHPI and other communities of color by pitting the so-called “model minority” against communities that are “not models.” To combat the “model minority” stereotype and to provide sufficient information for policymakers to address the priorities and concerns of the Asian American and NHPI community, the data collected and reported for Asian American and NHPI must be disaggregated by ethnicity as much and as often as possible. Only then can we build the solid foundation necessary for public policy, ensure that

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<sup>61</sup> *Id.* at 36.

<sup>62</sup> Community of Contrasts NHPI Report at 18.

<sup>63</sup> Community of Contrasts Asian American Report at 31.

<sup>64</sup> Community of Contrasts NHPI Report at 11.

<sup>65</sup> Miriam Yeung, American Association of University Women, Overcoming the “Model Minority” Myth: AAPI Women Are Not Paid Equally (Mar. 15, 2016), <http://www.aauw.org/2016/03/15/aapi-equal-pay-day/>.

<sup>66</sup> U.S. DEPT. OF LABOR & THE ECONOMIC STATUS OF ASIAN AMERICANS AND PACIFIC ISLANDERS (2016), [https://www.dol.gov/\\_sec/media/reports/AsianLaborForce/2016AsianLaborForce.pdf](https://www.dol.gov/_sec/media/reports/AsianLaborForce/2016AsianLaborForce.pdf).

the right programs are reaching the right communities, and dismantle the conscious and unconscious beliefs that there is a racial hierarchy in our nation.

In closing, Advancing Justice | AAJC raises deep concerns about the addition of an untested, and unnecessary, question about citizenship on the Census 2020 decennial form.

Article I, sec. 2, clause 3 of the Constitution requires a count every ten years of all persons living in the country, not just citizens. In fact, every census since the first enumeration in 1790 has included citizens and non-citizens alike, with the 1950 Census being the last to collect citizenship data from the full population.

In December 2017, the Department of Justice sent a letter to the Census Bureau requesting a new citizenship question be included on the 2020 decennial Census form. In March 2018, Secretary of Commerce Wilbur Ross announced that he had directed the Census Bureau to add a question on citizenship status to the 2020 Census form.

The proposed collection of citizenship information on the 2020 decennial census form is not necessary. Since 1960, the Census Bureau has collected citizenship data from a representative sample of households – previously through the long form and now through the American Community Survey (ACS). DOJ and voting rights advocates have effectively used existing data from the ACS (and the long form, which was replaced by the ACS) to help implement and enforce the Voting Rights Act. In fact, since the VRA was enacted in 1965, the citizenship question has never been asked on the census form sent to all households. Thus, DOJ’s claim that it needs this question on the decennial census form in order to determine violations of the Voting Rights Act and to permit more effective enforcement of the VRA is a claim without merit. The lack of need for this data for VRA enforcement is further demonstrated by the fact that the request for this data did not originate from the Justice Department but rather from the Secretary of Commerce himself. In a supplemental memo from Secretary Ross, he made clear that “[a]s part of that deliberative process [on whether to reinstate a citizenship question], my staff and I consulted with Federal government components and inquired whether the Department of Justice would support, and if so would request, inclusion of a citizenship question as consistent with and useful for enforcement of the Voting Rights Act.”<sup>67</sup> As documents uncovered during the litigation on the addition of the citizenship question show, there was never an actual need from DOJ for this level of data, and this was simply a fabrication to reverse engineer and justify Secretary Ross’ efforts to add the question.<sup>68</sup>

Secretary Ross’s claim that there is no evidence that this decision will harm participation in the census is unfounded.<sup>69</sup> Dr. Abowd acknowledges that the “difference between citizen and noncitizen response rates and data quality will be amplified during the 2020 Census compared to

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<sup>67</sup> Supplemental Memorandum by Secretary of Commerce Wilbur Ross Regarding the Administrative Record in Census Litigation (June 21, 2018) (on file with Department of Commerce).

<sup>68</sup> Paul Walderman, The Trump Administration’s Deception on the Census Should be a Major Scandal, Washington Post: The Plum Line (July 25, 2018).

<sup>69</sup> The responsibility of rigorous research and testing to prove that the addition of the citizenship question would not affect accuracy of the census falls squarely on Secretary Ross and his department. It is incumbent on the Bureau to test the question further before adding it, especially when its research has shown this to be a concern.

historical levels.”<sup>70</sup> In fact, the Census Bureau itself has provided evidence that residents are fearful of responding to government surveys because of the current anti-immigrant environment. Noting “a recent increase in respondents spontaneously expressing concerns about confidentiality,” Census Bureau researchers found “an unprecedented ground swell in confidentiality and data sharing concerns, particularly among immigrants or those who live with immigrants” across communities and geographies.<sup>71</sup> More specifically, Census Bureau researchers “heard respondents express new concerns about topics like the ‘Muslim ban,’ discomfort ‘registering’ other household members by reporting their demographic characteristics, the dissolution of the ‘DACA’ (Deferred Action for Childhood Arrival) program, repeated references to Immigration and Customs Enforcement (ICE),” and so forth.<sup>72</sup> In one case, an immigrant respondent stopped responding to questions about citizenship status during a survey interview and walked out of their own apartment, leaving the interviewer alone.<sup>73</sup>

In a recent memo, the Census Bureau also noted that “several Chinese-speaking focus group respondents stated that the Chinese community’s main fear or concern was immigration status and how the data are used. They also expressed concern about opening the door to a government official and not wanting to be ‘investigated.’”<sup>74</sup> This aligns with what was learned in focus groups of Asian Americans conducted by the Census Bureau prior to the 2010 Census.<sup>75</sup> In that research, many focus group participants found the census confusing, invasive, and potentially threatening, with the misguided belief that the census was linked to immigration enforcement or the IRS. Despite living in the U.S. during the 2000 Census, very few had previously participated in the census, citing language barriers, lack of interest, and misunderstanding about who could participate (believing only citizens could participate) as reasons for not participating.<sup>76</sup> The citizenship question, as the Bureau itself recognized, could present a barrier to participation in the 2020 Census, impact data quality, and would have a disproportionate impact on hard-to-count populations.

Asian Americans will be particularly harmed by this decision. The research to date has shown that our communities, as well as immigrant communities, are distrustful and fearful of sharing data with the federal government, particularly as it relates to citizenship. Additionally, Asian Americans are significantly immigrant, with over two-thirds of the population being foreign-born (*See Table below*). More than a quarter of Asian Americans are not citizens, and another quarter of immigrants are recent immigrants. Furthermore, different Asian American subgroups are more immigrant than others, with those communities being even more susceptible to being missed due to concerns about the addition of the untested citizenship question.

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<sup>70</sup> Abowd Memo.

<sup>71</sup> Memorandum for Associate Directorate for Research and Methodology (ADRM) on Respondent Confidentiality Concerns from Center for Survey Measurement (Sept. 20, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> U.S. Census Bureau, Ethnic and Racial Sub-Population Focus Group Research (2007), available at <http://www.phila.gov/phillycounts/pdfs/Ethnic%20and%20Racial%20Sub-Population%20Focus%20Group%20Research%20-%20Asian%20&%20Arab%20Americans.pdf> [*hereinafter* “Asian Focus Groups Report”].

<sup>76</sup> Several participants mistakenly confused the census questionnaire with other telephone or mail surveys conducted by private businesses or government agencies. *Id.*

**Table: Asian American Immigrants**<sup>77</sup>

	<b>Total population</b>	<b>Foreign-born</b>	<b>Not a Citizen</b>	<b>Percentage of Immigrants who are “Recent Immigrants”</b> <sup>78</sup>
<b>Asian American</b>	<b>17,556,935</b>	<b>66.2%</b>	<b>27.7%</b>	<b>24.6%</b>
Asian Indian	3,813,407	71.3%	37.1%	32.9%
Bangladeshi	175,592	74.7%	34.8%	37.5%
Burmese	153,262	82.5%	59.3%	51.8%
Cambodian	259,554	54.2%	13.3%	10.5%
Chinese	4,214,856	69.3%	30.6%	27.1%
Filipino	2,811,885	65.1%	19.5%	16.1%
Hmong	278,871	36.2%	8.0%	7.4%
Indonesian	76,516	73.6%	45.0%	19.4%
Japanese	789,830	41.7%	28.3%	30.8%
Korean	1,438,915	71.6%	27.3%	14.9%
Laotian	205,131	56.8%	12.8%	7.0%
Nepalese	155,573	85.2%	65.0%	56.2%
Pakistani	460,515	66.3%	25.3%	26.5%
Thai	202,744	76.9%	33.1%	23.5%
Vietnamese	1,803,575	67.4%	16.3%	15.8%

*Source: Table S0201: SELECTED POPULATION PROFILE IN THE UNITED STATES, 2016 American Community Survey 1-Year Estimates*

Today’s political climate and the public’s perception of the government and where its priorities lie also influence the impact of the addition of a citizenship question. Immigrant<sup>79</sup> and Muslim<sup>80</sup> communities already have been shown to fear the census because of the increase in virulent anti-immigrant and anti-Muslim rhetoric, and now, the addition of a citizenship question. In fact, we have seen reports of immigrants shunning common activities out of fear of reprisal from the government. For example, journalists have noted stories of parents “keeping their children home from school [and] ... suspend[ing] after-school visits to the public library”<sup>81</sup> as well as immigrants avoiding attending church service.<sup>82</sup> In our own community engagement, we have heard from our community groups that immigrant community members are not applying for food stamps and other government services. In this sort of climate, undocumented immigrants, legal

<sup>77</sup> The data presented here is for the “alone” population.

<sup>78</sup> Recent immigrants are those who entered the country in 2010 or later. The percentage is of the population that is born outside of the United States, and not of the entire population.

<sup>79</sup> Chrisina Isabelli, Yuling Pan & Stephen Lubkemann, Illinois Wesleyan University, Observing Census Enumeration of Non-English Speaking Households in the 2010 Census: Spanish Report (Survey Methodology #2012-06, Aug. 10, 2012), <https://www.census.gov/srd/papers/pdf/rsm2012-06.pdf>.

<sup>80</sup> Tara Bahrapour, *Some Muslims, Fearing Backlash, Worry About Intent of Census*, Washington Post (Mar. 10, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/09/AR2010030901688.html?sid=ST2010031600020>.

<sup>81</sup> Ray Sanchez, *After ICE Arrests, Fear Spreads Among Undocumented Immigrants*, CNN (Feb. 12, 2017), <http://www.cnn.com/2017/02/11/politics/immigration-roundups-community-fear/>.

<sup>82</sup> *Immigrants Wait in Fear Over Raids; Trump Takes Credit*, The Associated Press (Feb. 12, 2017), <http://www.cbsnews.com/news/immigrants-wait-in-fear-over-raids-trump-takes-credit/>.

permanent residents, and even U.S. citizens who live in households where family members have varying immigration status, were already disinclined to answer the Census.<sup>83</sup> The last-minute addition of the citizenship question will exacerbate fears and will harm confidence in the confidentiality of the Census. It has, and will continue to, promote the belief among many residents that the Bureau will use the information they provide in a detrimental manner. This is likely to generate disparate racial and ethnic impacts and undermine the validity of the data.

The reality is asking every household and every person in the country about their citizenship status in the current political environment – when there is no need to do so – may cause hundreds of thousands of people in our communities to avoid the census out of fear that they will be targeted by this administration. Lower response rates result in less accurate and timely statistics that can only be summarized at highly aggregated levels and preclude detailed information at the geographic and subpopulation levels, with small and minority populations, including Asian Americans and NHPI, being underrepresented by official statistics, particularly at the disaggregated levels. This likely would intensify the effects of previous decreases in response rates, leading to unsustainable increases in costs and higher risks of bias in published results.

The current proposed citizenship question has not been properly tested in a 2020 Census-like environment. Without the proper testing, the Census Bureau cannot measure the detrimental impact of adding this question and thus cannot properly prepare for the upcoming census, which will result in a less accurate census. A less accurate census negatively impacts civil rights enforcement, and will do so for at least the next decade.

## **Conclusion**

Asian Americans Advancing Justice | AAJC calls on the federal government to step back from policies and actions that discriminate, infringe on due process, and violate civil rights, particularly in the areas of immigration and hate crimes. The vilification of Muslims and immigrants, and relentless attacks on these communities, must end.

Advancing Justice | AAJC urges federal government agencies to recommit to civil rights enforcement and work to protect the rights of all, including immigrants, limited-English proficient individuals, and racial and religious minorities. This includes taking steps to foster an environment where people are not fearful of applying for benefits to which they are entitled or coming forward to file complaints.

Finally, since an undercount of immigrant populations will result in great harm and be detrimental for civil rights enforcement, Advancing Justice | AAJC calls for improved data collection, reporting, and disaggregation, including an accurate census.

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<sup>83</sup> Maya Advertising and Communications & Garcia Research Associates, Preparation for the 2010 Census Hispanic Community Focus Group Qualitative Research Report (2007), <http://www.phila.gov/phillycounts/pdfs/Hispanic%20Community%20Focus%20Groups%20Qualitative%20Research%20Report.pdf> [hereinafter “Latino Focus Groups Report”].