

VIA CM/ECF

May 22, 2019

Mark Langer  
Clerk of the Court  
United States Court of Appeals for the D.C. Circuit  
333 Constitution Avenue N.W.  
Washington, D.C. 20001

**Re: *Elec. Privacy Info. Ctr. v. U.S. Dep't of Commerce*, No. 19-5031**

Dear Mr. Langer,

Appellant Electronic Privacy Information Center (“EPIC”) hereby submits this response to the Government’s May 13, 2019 letter to the Court.

The Census Bureau’s prior collection of citizenship data for the American Community Survey (“ACS”) has no bearing on EPIC’s entitlement to a preliminary injunction in this case.

First, the decennial census is required by the U.S. Constitution. U.S. Const. art. 1, § 2, cl. 3. The ACS was established at the discretion of the Census Bureau. The American Community Survey, Fed. Reg. 56,318 (Nov. 8, 1995).

Second, the decennial census and the ACS are conducted for two different purposes. The decennial census is a complete-count survey intended to produce a headcount for apportionment. The ACS is a demographic survey intended to provide information about “jobs and occupations, educational attainment, veterans, whether people own or rent their homes, and other topics.” *About the American Community Survey*, U.S. Census Bureau (June 17, 2018).<sup>1</sup>

Third, collecting data for the decennial census, as compared with the ACS, has far different consequences for privacy. “Complete-count data collections may raise privacy concerns from respondents who ask whether their responses will be linked to other government data and systems,” as experts in the misuse of census data recently

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<sup>1</sup> <https://www.census.gov/programs-surveys/acs/about.html>.

explained in a related federal court proceeding. Br. of Historians and Soc. Scientists Margo Anderson, et al. at 30, *Dep't of Commerce v. New York*, No. 18-966 (U.S. filed Apr. 1, 2019).

Fourth, the citizenship data collected for the 2020 Census would be processed and disseminated in materially different ways than the data collected for the ACS. Citizenship data collected for the 2020 Census would be transferred at the *block level* to the Department of Justice for law enforcement purposes. JA 53, 60. By contrast, the citizenship data collected for the ACS is released only at the *block group level*—a higher level of generality that provides superior privacy protection. JA 96.

Fifth, the Census Bureau's collection of citizenship information for the 2020 Census is far more extensive—38 times larger, according to the Bureau—than the collection of citizenship information for the annual ACS.

EPIC's motion for a preliminary injunction turns on the failure of the Census Bureau to conduct, review, and publish Privacy Impact Assessments before initiating a new collection of personal information, as section 208 requires, for the 2020 Census. The Bureau's prior assessments regarding the ACS, a distinctly different collection activity, do not satisfy that obligation.

EPIC respectfully requests that this letter be made available to the panel.

Sincerely,

/s/ Marc Rotenberg

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