

1140 Connecticut Ave NW
Suite 1200
Washington DC 20036

TELEPHONE
202 296-2300

FACSIMILE
202 296-2318

WEBSITE
www.napale.org

January 31, 2000

The Honorable Eric Holder, Jr.
Deputy Attorney General
U.S. Department of Justice
Washington, D.C. 20530

**VIA FACSIMILE
HARD COPY TO FOLLOW**

Dear Deputy Attorney General Holder:

I am writing to you on behalf of the National Asian Pacific American Legal Consortium to follow up on a conversation we had during a recent meeting. I had mentioned to you our concern that the Immigration and Naturalization Service is not adequately developing or publicizing a policy regarding the suspension of raids during Census 2000.

I am enclosing the letter we sent to the INS in September of 1999 and the response we recently received from the agency. The letter indicates that there will not be a suspension of all enforcement activity at any point during the census, although neighborhood and random workplace raids will be discontinued. We believe that the INS must do more to ensure that its enforcement activities do not compromise the census count.

First, we believe that the INS must consider a complete suspension of enforcement activity during the most critical time period of the census count. The INS could elucidate a policy, as it did during the 1990 Census. During that census, the INS issued a directive to its agency offices that required *high-level agency clearance* for employment-related and non-criminal searches. The policy also required *advance headquarters approval* for high visibility operations that could affect participation in the census. Unlike criminal activity where lives may be at stake, it is clear that the INS can wait to act on tips; there is no immediate threat to health or safety.

We believe that the INS should issue a similar directive for this year's census, indicating that there will be no neighborhood or random workplace raids, and that high-level agency clearance or advance headquarters approval should be sought prior to enforcement activities that could jeopardize participation by immigrants in Census 2000.

AFFILIATES
Los Angeles
Asian Pacific American
Legal Center

New York
Asian American Legal
Defense & Education Fund

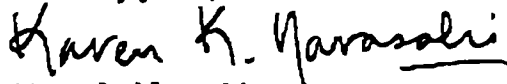
San Francisco
Asian Law Caucus

An INS directive, tailored to agency offices and the immigrant community, will encourage greater participation in Census 2000. Our experience in advocating for a public policy confirming that census responses would not be shared of census responses with other agencies including the INS has proven that immigrants were more likely to be convinced when the INS confirmed. Indeed, Commissioner Meissner's public statement regarding the strict confidentiality of census responses aided us in convincing our community that it need not fear disclosure of census responses to the INS. A well-publicized statement directly from the INS regarding the suspension of raids is equally important in addressing the concerns of noncitizens.

Second, it is imperative that the INS specifies a time frame for the period of restricted enforcement activity. Past history shows that many noncitizens will not respond to the census form they receive in the mail but may participate during the non-response follow-up period when census enumerators visit their homes. It is important then that noncitizens are not fearful of responding when census enumerators visit nonresponsive households between the months of April and July.

We would be glad to work with your office, the INS and the Census Bureau to resolve this issue. We would appreciate a meeting with your office and INS officials to further discuss the matter. In the meantime, please do not hesitate to contact Deepa Iyer, Staff Attorney, at (202) 296-2300 for further information.

Sincerely yours,



Karen K. Narasaki
Executive Director

cc: Representative Carolyn Maloney
Representative Janice Schakowsky
Karen Tramantano, Office of Chief of Staff, White House
Laura Efurd, Deputy Assistant to the President and Deputy Director of Public Liaison
Marisa Demeo, Census 2000 Advisory Committee
Catherine Tactaquin, National Network for Immigrant and Refugee Rights
Chung-Wha Hong, National Korean American Service and Education Consortium
Glenn Magpantay, Asian American Legal Defense and Education Fund
Susan Nakaoka, Asian Pacific American Legal Center
Sally Kinoshita, Asian Law Caucus

The National Asian Pacific American Legal Consortium is a nonprofit, non partisan civil rights organization dedicated to advancing and preserving the civil and legal rights of Asian Pacific Americans through public policy development, litigation, legislative advocacy and community education. The Consortium is affiliated with the Asian American Legal Defense and Education Fund in New York, the Asian Law Caucus in San Francisco and the Asian Pacific American Legal Center in Los Angeles.

February 1, 2000

TO: Eric Liu

From: Irene Bueno

RE: INS Guidance on the Census

Introduction

This memorandum summarizes the draft INS guidance on their enforcement activities during the Census period and discusses the issues raised in a letter from the National Asian Pacific American Legal Consortium (NAPALC) to Eric Holder dated 1/31/00 regarding this guidance. I am seeking approval on this guidance pending resolution of one issue.

Background

Many immigrant communities fear participating in the Census because they fear the INS. In 1990, the INS issued a statement to its field offices directing them to minimize their enforcement activities during the peak Census period when census workers go to homes to conduct follow-up on those who have not submitted their census forms. INS is planning to issue similar guidance this year for Census 2000. The attached guidance has been cleared by the INS, Census Bureau and awaiting White House approval.

On January 31, 2000 NAPALC sent a letter to Eric Holder expressing their concern that the proposed INS Guidance does not go far enough to assure immigrant communities that INS officers will not be in their community during the Census follow up period for two reasons: (1) it does not provide a moratorium on INS enforcement activities and (2) does not include a specific time frame when the INS guidelines are effective (I will fax you the letter). I believe at some point during the clearance process, this document was leaked to groups and prompting this letter.

While NAPALC raises important issues, INS has considered these issues and has struck the right balance with the exception of the timeframe issue that is discussed below.

INS GUIDANCE

The proposed INS Guidance states that all individuals living in the United States are to be enumerated in the Census and that INS supports the Census. While the INS will continue to enforce immigration laws during the Census period, it will minimize the adverse effects of INS enforcement activities on census activities. Also, the INS guidance clarifies that census information is not shared with the INS.

To this end, the INS will issue guidelines to its field offices directing that:

- INS officers shall not inhibit or deter any person from participating in the Census.
- INS will minimize visibility in primarily residential areas during the “peak period” of Census 2000 which is defined as a period during which census takers will visit the homes of those who did not respond by mail. The peak period varies but starts as early as end of March to late July but the main period is May and June. Census Bureau regional representatives will establish relationship with local INS to advise as to when the peak period is determined.
- In residential areas, INS enforcement operations that may result in large number of arrests should not be planned during the Census 2000 with some exception such as INS officers may enter residential area in follow up to ongoing investigations (serious criminal aliens, smuggling rings, etc.).
- In any high visibility interior operations (e.g. workplace raids) that may get press and therefore may have a significant impact on census participation, INS Regional Directors must approve these operations in advance.
- Also, the guidance reiterates that Census records are confidential and the Census Bureau may not give the INS access to any info.

RESPONSES TO NAPALC CONCERNS

In the letter to Eric Holder, NAPALC requests the following:

1. INS must consider a complete suspension enforcement activities during the most critical time period of the count.

For a number of obvious reasons, INS cannot suspend its enforcement or other activities during the peak Census period. However, INS is issuing guidance that states that enforcement operations that may result in high number of arrest in residential areas should not place during the census peak period. In addition, a Regional Director must approve high visibility enforcement actions. I think that INS has attempted to go as far as it can to minimize its presence during the peak Census period. Going beyond their current position would put INS in an untenable political position.

2. It is imperative that the INS specifies a time frame for the period of restricted enforcement activity. They propose April –July.

I understand NAPALC concerns about the importance of designating a firm period of time that the immigrant community should be certain that Census workers will be knocking on their door and not the INS. However, I recommend designating May-July, which is the main time during which Census workers will be going to homes. . The risk is that if you designate

the 4 month period as proposed by NAPALC, it could be subject to considerable criticism as too long.

As mentioned earlier, because the peak periods vary from each area, INS has not set forth a period that this guidance is effective. INS prefers to have a targeted time period when their activities are minimized that will be determined at some point when local Census officials inform INS officials when they will be in certain areas

I am recommending that INS and Census agree to a specific timeframe of May –June for several reasons. First, the 1990 INS directive had a specific timeframe. Second, the absence of a specific time frame undermines the purpose of this guidance which to assure immigrant community during a certain period of time rather than a date that will be determined later. When this date is designated, the immigrant communities will not know the date that is determined unless INS and Census does substantial outreach. I think it's easier and clearer to have a national timeframe that is set forth in this guidance.

I am awaiting a response from INS and Census on my recommendation and will let you know.

3. NAPALC also request a meeting with DOJ and INS to discuss.

I do not know the status of this meeting. Given that DOJ has cleared this guidance, I doubt that DOJ will meet with NAPALC prior to issuance of this guidance but I will check with DOJ.

RECOMMENDATION

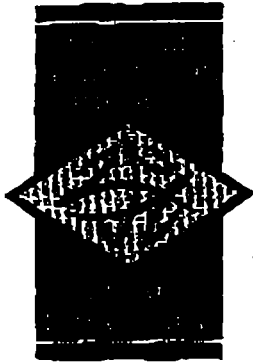
I recommend that we approve the INS guidance with the exception of the timeframe issue. On that issue, I recommend that the INS specify the timeframe in which this guidance will be effective.

NEXT STEPS

I will continue to work with INS and Census on the timeframe issue.

I will give a heads up to Karen Tramentano and Maria that we are reviewing this guidance and the issues raised by NAPALC and that we are trying to work through these issues.

I will also make sure that INS and Census has a rollout strategy given that this guidance may raise some concerns on both sides – it does not far enough and it goes to far.



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WEBSITE
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January 31, 2000

Honorable Carolyn Maloney
14th Congressional District, New York
1651 Third Avenue, Suite 311
New York, NY 10128

Dear Congresswoman Maloney:

Thank you for traveling through the harsh weather conditions on Tuesday, January 28, 2000, to attend and speak at our Census 2000 video press conference. Your leadership to ensure that Asian Pacific Americans are fairly and accurately counted in the census is very much appreciated by us and our community.

Despite the weather, we received considerable press coverage, including from the Sing Tao Daily News, World Journal, Ming Pao, Korea Times, Sae Gae Times and the Korea Central Daily. In addition, the radio stations Sinocast and Chinese Radio Network and television stations Sinovision and Sino TV aired stories of the press conference in their local news broadcasts. We will forward your office a copy of all the news clippings.

I also wanted to raise an issue that you and I spoke briefly about during the press conference. The Consortium is concerned that absent a moratorium on raids by the Immigration and Naturalization Service during Census 2000, many immigrants will be wary of participating. I am enclosing a letter that we have sent to Deputy Attorney General Eric Holder, requesting a meeting to speak about this issue. Your efforts to bring about a resolution to this issue would be greatly appreciated.

We look forward to working together with you on the census and other issues this year.

Very Truly Yours,

Karen K. Narasaki
Executive Director

cc: Benjamin Chevat

Enclosure

AFFILIATES
Los Angeles
Asian Pacific American
Legal Center

New York
Asian American Legal
Defense & Education Fund

San Francisco
Asian Law Center



Dissem of Bruce



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VIA FACSIMILE

September 28, 1999

The Honorable Doris Meissner
Commissioner
Immigration and Naturalization Service
U.S. Department of Justice
Washington, D.C. 20536

Dear Commissioner Meissner:

On behalf of the National Asian Pacific American Legal Consortium, I am writing to urge that the Bureau of the Census and the Immigration and Naturalization Service work together to ensure that INS raids are suspended while crucial activities of Census 2000 are being conducted.

The National Asian Pacific American Legal Consortium and our affiliates, the Asian American Legal Defense and Education Fund in New York, the Asian Pacific American Legal Center in Los Angeles and the Asian Law Caucus in San Francisco, have launched an extensive outreach and education campaign to inform Asian Pacific American communities about the importance of participating in the census.

One of the primary challenges we have faced thusfar is to convince immigrants and undocumented to participate in the census without fear. The advisory opinion from the Department of Justice regarding the apparent conflict between the Census Act and provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 has helped in our efforts.

However, there is still great concern regarding the possibility of raids by the INS during the time of census enumeration. It is vitally important that there be a well-publicized message from the INS about a moratorium on INS raids. Past history shows that many noncitizens will not respond to the census form which arrives in the mail. It is important then that noncitizens are not fearful of responding when census enumerators visit nonresponsive households during the nonresponse follow-up period.

We suggest that the moratorium take place during the entire time of the most intense census activity – when census enumerators are in the field to conduct nonresponse follow up. Census enumerators are expected to visit neighborhoods between mid-April and mid-July; a suspension of INS raids during this time would be the most effective way of encouraging noncitizens to participate in the census.

AFFILIATES

Los Angeles
Asian Pacific American
Legal Center

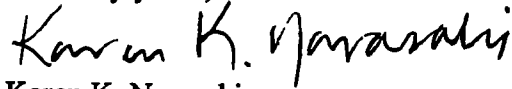
New York
Asian American Legal
Defense & Education Fund

San Francisco
Asian Law Caucus

We understand that it is difficult to balance obligations to enforce immigration laws with the government's desire to conduct a complete, accurate census. However, we believe that the scales should be tipped in favor of an accurate census count. The suspension of raids on businesses, factories and neighborhoods for at least that portion of time during which Census 2000 activities are most intensive will ensure that more minorities participate, and in turn, that their communities receive their fair share of much-needed benefits and services.

We would be glad to work with you on this issue. Please do not hesitate to contact Deepa Iyer, Staff Attorney, at (202) 296-2300 if we can assist in any manner.

Sincerely yours,



Karen K. Narasaki
Executive Director

cc: Dr. Kenneth Prewitt, Director, Bureau of the Census
Secretary William Daley, Secretary of Commerce
Karen Tramontano, Office of the Chief of Staff
Laura Efurd, Deputy Director of White House Office of Public Liaison
Representative Jose Serrano
Representative Carolyn Maloney
Representative Robert Underwood

Irene Bueno
02/01/2000 08:13:08 PM

Record Type: Record

To: Barbara.L.Strack@usdoj.gov
cc:
bcc: Irene Bueno/OPD/EOP@EOP, Records Management@EOP
Subject: Re: Census Field Guidance 

I hope I did not get you too worried about my questions but I have to make sure that I understand what the guidance says and to be aware any potential minefields but I am committed to get this cleared as soon as possible. The NAPALC letter that was sent to Eric Holder raised an issue that I had not focused on in previous drafts of the guidance that I would like to follow up and that' the timeframe issue that I think is an important issue and I think could be easily resolved. In fact, I have mentioned my idea to Census contact.

For several reasons I think the guidance should have a specific effective date and propose the time of May 1- June 30.

First, the absence of a specified time period undermines the purpose of this guidance which is to assure immigrant communities that they should participate in the Census and they should respond to census workers that come to their home. I checked the 1990 guidance and it was effective from the date it was issued until June 1. The dates are different for Census 2000 but the point is that the 1990 guidance had a specific timeframe. In this case, I think the INS guidance could be clearer if it included a statement that this policy is effective during between May 1 and June 30.

Second, INS could face criticism either way for this guidance and the way it's written now, it looks like the guidance could be effective for up 4 months (April - July). By designating May 1 to June 30, INS can make the argument that Census has advised INS that this is the peak time and therefore this policy is targeted and limited. On the other hand, the groups will want the 4 month period for the effective date but I think May-June is a good compromise.

Third, while Census would probably wanted a longer effective date period too, I think they would agree that a clear simple message to the immigrant community would do more to get immigrants to participate in the Census than the current message which is that it is up to the local Census official to advise when the peak period is for that particular area. From an outreach standpoint, it is easier to send the message to the immigrant community that they should respond to Census workers who come to their home without fear of the INS during the period of May 1- June 30 rather than some vague period to be determined at some later date and then there is an issue how this period would be communicated to the immigrant communities.

Sorry for the long message but please let me know what you think. Thanks.

PS - I'll fax you a copy of the NAPALC letter.

Barbara.L.Strack@usdoj.gov



Barbara.L.Strack@usdoj.gov

01/31/2000 10:31:00 AM

Record Type: Record

To: Irene Bueno/OPD/EOP

cc:

Subject: Census Field Guidance

Here's the field guidance that's at DOJ for clearance. Census has signed off on this.



- census8b.DOC



*United States Department of Justice
Immigration & Naturalization Service
Office of the Executive Associate Commissioner
Policy and Planning*

*425 I Street, NW
Washington, D.C. 20536
Phone: 202-514-3242 / Fax: 202-305-0134*

Fax Cover Sheet

To: Irene Bueno From: B. Strack
Fax: _____ Pages: 6
Phone: _____ Date: _____
Re: _____
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

*Here's the '90 Census material. Unfortunately,
I don't have a better copy of the 1st page.*

IMMIGRATION & NATURALIZATION SERVICE PRIORITY UNCLASSIFIED

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CO 287-P/CO 703-P
CO 659-P

Robert H. Reed
Deputy Asst. Commr. Inv.

633-3050

X

ALL REGIONAL COMMISSIONERS (ROCOM) (ROOPS)
ALL DISTRICT DIRECTORS (DIDIR) (DIINV)
ALL OFFICERS IN CHARGE
ALL REGIONAL COUNSELS
ALL DISTRICT COUNSELS
ALL SECTOR COUNSELS

ALL REGIONS
ALL DISTRICTS

ALL SHCPA

ALL OIC'S
REGIONAL COUNSELS
DISTRICT COUNSELS
DISTRICT COUNSELS

FROM: OFFICER OF THE EXECUTIVE COMMISSIONER, HQINS
PRIORITY.

SUBJECT: REVISED GUIDELINES FOR THE CONTINUATION OF ENFORCEMENT
OPERATIONS DURING THE 1990 CENSUS

THIS CABLE MODIFIES AND UPDATES MY CABLE OF 2/9/90, ON THE SAME
SUBJECT.

TO REITERATE THE 2/9/90 CABLE, THE POSITION OF THE SERVICE WITH
REGARD TO THE CENSUS IS THAT INS INTERIOR ENFORCEMENT ACTIVITIES
MUST BE PLANNED AND EXECUTED IN A MANNER DESIGNED TO MINIMIZE ANY
POSSIBLE NEGATIVE IMPACT ON THE CENSUS. SERVICE EMPLOYEES ARE
REMINDED THAT THEY MUST BE SENSITIVE TO THE POSSIBLE ADVERSE
EFFECTS THAT INS OPERATIONS MAY HAVE ON THE CENSUS AND THAT THEY
ARE NOT TO INTENTIONALLY ENGAGE IN CONDUCT THAT WOULD INHIBIT OR
DETER ANY PERSON OR GROUP OF PERSONS FROM THE FULLEST POSSIBLE
PARTICIPATION IN THE UPCOMING 1990 CENSUS.

*Date
certain*
THE FOLLOWING PROCEDURES SUPPLEMENT THE 2/9/90 CABLE AND ARE
EFFECTIVE IMMEDIATELY. THESE INSTRUCTIONS, AS WELL AS THOSE
CONTAINED IN THE PRIOR CABLE, ONLY APPLY DURING THE PERIOD OF THE
CENSUS UNTIL JUNE 1, 1990, AFTER WHICH TIME THEY EXPIRE.

WHERE ACCESS TO A PLACE OF EMPLOYMENT FOR THE PURPOSE OF A CONSENT
SEARCH REQUIRES ADVANCE PLANNING (E.G., ASSISTANCE OF SEVERAL
AGENTS, OTHER INS PROGRAMS OR OTHER AGENCIES), OR WHERE ANY NON-
CRIMINAL SEARCH WARRANT WILL BE REQUESTED, SUCH OPERATIONS MUST BE
REVIEWED IN ADVANCE OF THE ACTIVITY BY THE OFFICE OF THE GENERAL
COUNSEL FOR LEGAL SUFFICIENCY. REVIEW WILL BE ACCOMPLISHED BY THE
DISTRICT OR SECTOR COUNSEL. HOWEVER, THIS REQUIREMENT DOES NOT
EXTEND TO REGULARLY SCHEDULED GENERAL ADMINISTRATIVE PLAN (GAP)
VISITS FOR EMPLOYER SANCTIONS (WHERE 72 HOURS ADVANCE NOTIFICATION
OF EMPLOYERS IS REQUIRED) NOR DOES IT APPLY TO ROUTINE, IMPROMPTU,
SMALL-SCALE CONSENT SEARCHES.

HEADQUARTERS ENFORCEMENT PROGRAM MANAGERS MUST BE NOTIFIED OF, AND
CONCUR IN, IN ADVANCE OF POTENTIALLY HIGH VISIBILITY INTERIOR
OPERATIONS WHICH MAY BE PERCEIVED TO HAVE A SIGNIFICANT IMPACT ON
CENSUS PARTICIPATION (E.G., WHERE THE SIZE, SCOPE OR NATURE OF THE
OPERATION IS LIKELY TO DRAW SIGNIFICANT PUBLIC ATTENTION) OR WHEN
THE INTERIOR ENFORCEMENT

PPDC
Attachment 1

TELEGRAPHIC MESSAGE

NAME OF AGENCY USDOJ, USINS, HQINS, COENF	PRECEDENCE ACTION NO. PRIORITY	SECURITY CLASSIFICATION UNCLASSIFIED
ACCOUNTING CLASSIFICATION 1230.000	DATE RECEIVED 02-08-90	FILE CO 287-P / CO 702-P CO 689-P
FOR INFORMATION CALL		
NAME SSA M. D. CALVERT	FROM NUMBER FTB 689-2990	TYPE OF MESSAGE ☒ TELETYPE ☐ WIRE ☐ MULTIPLE
THIS SPACE FOR USE OF COMMUNICATION UNIT		

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

ALL REGIONAL COMMISSIONERS (ROCON)(ROOPS)
ALL DISTRICT DIRECTORS (DIDIR)(DIDIV)
ALL SECTOR HEADQUARTERS CHIEF PATROL AGENTS
ALL OFFICERS IN CHARGE

ALL ROCON
ALL DIDIR
ALL SHCPA
ALL OIC

FROM: COMMISSIONER, HQINS, WASHINGTON, D.C. (COENF)

FILE: CO 287-P, CO-807-P, CO-689-P

SUBJECT: COMMISSIONER'S GUIDELINES FOR THE CONTINUATION OF ENFORCEMENT OPERATIONS DURING THE 1990 CENSUS

1. PURSUANT TO THE PROVISIONS OF THE U.S. CONSTITUTION, ALL PERSONS WHO NORMALLY RESIDE IN THE UNITED STATES, INCLUDING ILLEGAL ALIENS, WILL BE ACCOUNTED FOR IN THE NATIONAL CENSUS. THE WILLINGNESS OF ALL PERSONS TO PARTICIPATE IN THE CENSUS WILL HELP ENSURE THAT THE DATA COLLECTED BY THE CENSUS BUREAU WILL BE THE MOST ACCURATE AND RELIABLE. ACCORDINGLY, IN KEEPING WITH THE ESTABLISHED STANDARDS OF CONDUCT OF SERVICE EMPLOYEES, NO OFFICER OR OTHER EMPLOYEE OF THE SERVICE SHALL DELIBERATELY OR INTENTIONALLY ENGAGE IN ANY CONDUCT THAT IS INTENDED TO INHIBIT OR DETER ANY PERSON OR GROUP OF PERSONS FROM THE FULLEST POSSIBLE PARTICIPATION IN THE UPCOMING 1990 CENSUS.
2. IN KEEPING WITH THE SERVICE MISSION OF THE ENFORCEMENT OF THE IMMIGRATION AND NATIONALITY ACT AND THE RELATED CIVIL AND CRIMINAL PROVISIONS, INCLUDING SERVICE EFFORTS TO COUNTER ALIEN INVOLVEMENT IN ORGANIZED CRIME AND DRUG TRAFFICKING ACTIVITIES, IT IS THE OFFICIAL POLICY OF THE SERVICE THAT STANDARD ENFORCEMENT OPERATIONS WILL CONTINUE THROUGHOUT THE PERIOD OF THE CENSUS.
3. POLICY GUIDELINES FOR STANDARD FIELD ENFORCEMENT OPERATIONS ARE AS FOLLOWS:

MORE FOLLOWS

SECURITY CLASSIFICATION

PAGE NO.

1

NO. OF PGS.

4

UNCLASSIFIED

UNCLASSIFIED

PAGE TWO - COMMISSIONER'S GUIDELINES FOR THE CONTINUATION OF ENFORCEMENT OPERATIONS DURING THE 1990 CENSUS

- 29A. CONSISTENT WITH THE PREVIOUS POLICY STATEMENTS ISSUED BY THE OFFICE OF THE COMMISSIONER, ALL OFFICES OF THE SERVICE SHALL EXERCISE PRUDENT JUDGEMENT TO PREVENT THE PUBLIC PERCEPTION THAT THE SERVICE IS CONDUCTING "NEIGHBORHOOD SWEEPS". THESE ACTIVITIES WERE DISCONTINUED PRIOR TO THE 1990 CENSUS AND HAVE NOT BEEN REINSTITUTED AS AN ENFORCEMENT PRACTICE. IN ADDITION, SURVEYS OF PLACES OF EMPLOYMENT, COMMONLY REFERRED TO AS "FACTORY RAIDS," WILL CONTINUE TO BE BASED ON AN INVESTIGATIVE PROCESS THAT HAS PROVIDED EVIDENCE OF THE PRESENCE OF ALIENS WHO ARE NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES. AS OUTLINED IN PARAGRAPH 30. OF THESE GUIDELINES, SURVEYS WILL CONTINUE TO BE CONDUCTED WITH THE VOLUNTARY CONSENT OF THE EMPLOYER WHENEVER POSSIBLE.
30. CONTACTS WITH EMPLOYERS AS A PART OF EMPLOYER SANCTIONS ACTIVITIES, INCLUDING GENERAL ADMINISTRATIVE PLAN (GAP) INSPECTIONS, AND LEAD-DRIVEN INVESTIGATIONS CONDUCTED PURSUANT TO THE COMMISSIONER'S EMPLOYER SANCTIONS POLICY MEMORANDUM DATED JANUARY 9, 1990, WILL CONTINUE. ROUTINE INSPECTIONS OF EMPLOYER FILES OF EMPLOYMENT ELIGIBILITY VERIFICATION FORMS (FORM I-9) WILL CONTINUE TO FOLLOW THE PROCESS BASED UPON AN ADVANCED NOTICE OF SEVENTY-TWO HOURS. SEARCHES OF PLACES OF EMPLOYMENT OR OTHER NON-RESIDENTIAL PLACES SHALL BE BASED UPON CONSENT OR AUTHORIZED BY WARRANT OR COURT ORDER.
30. CONTACTS WITH EMPLOYERS AS A PART OF THE SERVICE'S EMPLOYER AND LABOR RELATIONS PROGRAM WILL CONTINUE WITHOUT INTERRUPTION.
30. CONTACTS AND ACTIVITIES WITH OTHER LAW ENFORCEMENT AGENCIES TO IDENTIFY, LOCATE, AND APPREHEND ALIENS, AND OR U.S. CITIZENS CONSPIRING WITH ALIENS, WHO ARE INVOLVED IN, OR CONVICTED OF, CRIMINAL VIOLATIONS, WHETHER THE ALIENS ARE IN CUSTODY OR AT LARGE, INCLUDING, BUT NOT LIMITED TO, PERSONS INVOLVED IN ORGANIZED CRIME, NARCOTICS TRAFFICKING, ALIEN SNUFFLING, PRODUCTION AND OR SALE OF COUNTERFEIT OR FRAUDULENT DOCUMENTS, AND OR THE PROVISION OF SERVICES, GUIDANCE OR COUNSELING IN FURTHERANCE OF ANY VIOLATION OF IMMIGRATION LAWS, SHALL CONTINUE WITHOUT CHANGE.
30. CONTACTS WITH PERSONS, WHETHER ALIENS OR U.S. CITIZENS, IN PLACES OF RESIDENCE SHALL CONTINUE AS PART OF ANY NORMAL ENFORCEMENT ACTIVITY, AND ANY ENTRY INTO OR SUBSEQUENT SEARCH OF A PLACE OF RESIDENCE SHALL BE BASED UPON CONSENT OR AUTHORIZED BY WARRANT OR COURT ORDER.

UNCLASSIFIED

PAGE THREE- COMMISSIONER'S GUIDELINES FOR THE CONTINUATION OF ENFORCEMENT OPERATIONS DURING THE 1990 CENSUS

- 3F. CONTACTS WITH PERSONS, WHETHER ALIENS OR U.S. CITIZENS, IN PLACES THAT SERVE AS PUBLIC TRANSPORTATION TERMINALS, INCLUDING AIRPORTS, SEAPORTS, TRAIN AND BUS DEPOTS OR STATIONS, SHALL CONTINUE TO BE CONDUCTED AS PART OF THE SERVICE MISSION OF INTERDICTING TRAVEL AND TRANSPORTATION OF ALIENS UNLAWFULLY PRESENT IN THE U.S. DETENTION OF PERSONS IN THESE PLACES SHALL CONTINUE TO BE BASED UPON REASONABLE SUSPICION AND ARTICULABLE FACTS THAT LEAD A SERVICE OFFICER TO BELIEVE THAT AN OBSERVED PERSON IS AN ALIEN LIKELY TO BE UNLAWFULLY PRESENT IN THE U.S.
- 3G. CONTACTS WITH PERSONS, WHETHER ALIENS OR U.S. CITIZENS, IN PUBLIC PLACES, WHERE A GROUP OF PERSONS IS KNOWN TO GATHER, AND THE PURPOSE OF GATHERING IS THE SEEKING OR CONTINUATION OF DAY LABOR OR OTHER EMPLOYMENT, SHALL CONTINUE AS PART OF THE SERVICE MISSION TO PREVENT THE EMPLOYMENT OF ALIENS UNAUTHORIZED TO BE EMPLOYED IN THE UNITED STATES. DETENTION OF PERSONS IN THESE PLACES SHALL CONTINUE TO BE BASED UPON REASONABLE SUSPICION AND ARTICULABLE FACTS THAT LEAD A SERVICE OFFICER TO BELIEVE THAT AN OBSERVED PERSON IS AN ALIEN LIKELY TO BE UNLAWFULLY PRESENT IN THE UNITED STATES.
- 3H. CONTACTS WITH PERSONS, WHETHER ALIENS OR U.S. CITIZENS, IN THE PLACES CONTIGUOUS TO THE U.S. INTERNATIONAL BORDER, OR THE PLACES ESTABLISHED AS BEING THE FUNCTIONAL EQUIVALENT OF THE U.S. INTERNATIONAL BORDER, AND WITHIN A ZONE EXTENDING 25 MILES FROM THE BORDER INTO THE INTERIOR OF THE U.S., INCLUDING FIXED AND MOBILE VEHICLE TRAFFIC CHECK POINTS AND DESIGNATED AIR, LAND, AND SEA PORTS OF ENTRY LOCATED AT THE BORDER OR WITHIN THE INTERIOR OF THE U.S., SHALL CONTINUE AS PART OF THE SERVICE MISSION TO PATROL THE BORDER AND THE FUNCTIONAL EQUIVALENT THEREOF TO PREVENT THE UNLAWFUL ENTRY OF PERSONS. SUCH ACTIVITIES INCLUDE THE INSPECTION OF ALIENS AND THE EXAMINATION OF U.S. CITIZENS SEEKING TO ENTER THE U.S. THROUGH ANY PORT OF ENTRY AND THE INTERDICTION AND INVESTIGATION OF ANY PERSON ATTEMPTING TO ENTER THE U.S. AT ANY PLACE OTHER THAN A PORT OF ENTRY.
4. IN KEEPING WITH AN AGREEMENT BETWEEN THE SERVICE AND THE BUREAU OF THE CENSUS, NEWS RELEASES OR PUBLIC ANNOUNCEMENTS MADE BY THE SERVICE WITH REGARD TO SERVICE ENFORCEMENT ACTIVITIES WILL BE TEMPORARILY DISCONTINUED DURING THE PERIOD STARTING FEBRUARY 11, 1990, AND ENDING JULY 31, 1990. OFFICERS ENGAGED IN EXTRAORDINARY ENFORCEMENT ACTIONS MAY REQUEST AUTHORIZATION FROM THIS OFFICE (COENF) FOR A NEWS RELEASE IF DEEMED APPROPRIATE BY
- Dates?
p5to7

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UNCLASSIFIED

PAGE FOUR: COMMISSIONER'S GUIDELINES FOR THE CONTINUATION OF ENFORCEMENT OPERATIONS DURING THE 1990 CENSUS

THE CHIEF PATROL AGENT OR DISTRICT DIRECTOR. REQUESTS SHALL BE WRITTEN AND SUBMITTED VIA FACSIMILE TRANSMISSION TO REGIONAL COMMISSIONERS FOR THEIR CONCURRENCE AND FORWARDING TO THIS OFFICE (COENP).

5. THESE GUIDELINES ARE INTENDED TO ENSURE THAT THE SERVICE CONTINUES TO PERFORM ALL ENFORCEMENT ACTIVITIES THAT ARE CONSISTENT WITH THE STATUTORY PROVISIONS OF FEDERAL LAW THAT ARE INTENDED TO CONTROL ILLEGAL ACTIVITIES RELATED TO ALIENS.
6. OFFICERS OR OTHER EMPLOYEES WHO HAVE QUESTIONS REGARDING THESE GUIDELINES ARE DIRECTED TO SEEK CLARIFICATION THROUGH THE NORMAL SUPERVISORY CHAIN. SUPERVISORS SHOULD BE ALERT TO THEIR RESPONSIBILITY TO PROVIDE AN ADEQUATE RESPONSE TO ANY QUESTION DIRECTED TO THEM. SUPERVISORY AND MANAGEMENT PERSONNEL SHOULD SEEK ANSWERS TO ANY QUESTIONS REGARDING THESE GUIDELINES THROUGH THE APPROPRIATE DISTRICT, SECTOR, REGIONAL OR CENTRAL OFFICE PROGRAM CHAIN OF COMMAND. MEDIA AND GENERAL PUBLIC INQUIRIES REGARDING THESE GUIDELINES SHOULD BE REFERRED TO THE APPROPRIATE LEVEL OF MANAGEMENT CONSISTENT WITH THE EXISTING SERVICE POLICY ON CONTACTS WITH THE MEDIA AND DISSEMINATION OF OFFICIAL POLICY.
7. THESE GUIDELINES SHALL REMAIN IN EFFECT UNTIL SUPERCEDED IN WRITING BY THIS OFFICE.

GENE McNARY
COMMISSIONER

HEADQUARTERS, U. S. IMMIGRATION AND NATURALIZATION SERVICE, WASHINGTON, D. C.
FEBRUARY 28, 1990

END OF MESSAGE

PAGE 4 OF 4

UNCLASSIFIED

SECTION: NEWS; Pg. A27

LENGTH: 424 words

HEADLINE: INS will back off during census;

IMMIGRATION: Meissner tells Congress the agency will avoid areas where workers are counting.

BYLINE: DENA BUNIS , The Orange County Register

DATELINE: WASHINGTON, DC

BODY:

Immigration agents will lay low in immigrant communities while U.S. Census workers are in the field, Commissioner Doris Meissner assured a Hispanic congressman Wednesday.

Rep. Jose Serrano, D-N.Y., said there is a widespread fear in the Hispanic community among legal immigrants, undocumented immigrants and even new citizens that participating in the census could somehow get them in trouble with the Immigration and Naturalization Service.

At a hearing on her budget for next year, Meissner told Serrano during the period when census takers are in the community finding people who did not fill out the forms about two weeks, she said the INS will basically stay out of the community.

That comment raised concerns for Rep. Harold Rogers, R-Ky., who asked if that meant people would not be deported during that time or other efforts to remove illegal immigrants would cease.

Meissner assured him it did not.

"It is a fine line," Meissner said in an interview after the hearing. "We need to do everything we can to assure people that their participation in the census is not going to lead to an immigration enforcement action," she said.

Meissner said she has talked with census officials about how the INS can reassure people. She said the agency might even participate in public service announcements, making the separation between the INS and the census clear.

As far as Amin David is concerned, the best way for the INS to help the census is to stay away.

"We have worked very hard to make sure the community really believes there is a great separation, an ocean of separation between INS and any other effort by the government," said David, head of Los Amigos, a community activist organization in Orange County.

MEISSNER: That's correct.

KOLBE: OK, I might want to see if there's anything we can do to accelerate it. It's really been an intolerable situation for a couple of years and I don't know how much longer they can -- they can go with this. because if that's the last unplugged area, we have to get some temporary facilities or something because they're just -- you can put more people in there.

MEISSNER: Right.

KOLBE: Literally...

MEISSNER: Well, we have moved in modular facilities. That continues to be an option...

KOLBE: I know. I've seen those.

MEISSNER: Sometimes that's the best you can do but it's obviously better than nothing.

KOLBE: Thank you very Mr. Chairman. I have some other questions. I may either submit them for the record or if I can I will -- you're ready -- ask them.

ROGERS: Ready. Mr. Serrano.

SERRANO: Thank you Mr. Chairman.

This morning we had our hearing with the Census Bureau and among the other things discussed, we discussed methods of reducing the under count. And as you know the constitutional mandate for the census is to count everyone in the country on census day regardless of citizenship status. But one group that tends to be more under counted than others is immigrants, both documented and undocumented.

Some come from countries where government is feared. Some live in households where landlords or local authorities may try to break up. Some are undocumented and fear any contact with government that might bring them to the attention of the INS.

Census Director Pruitt (ph) said this morning that he has requested a moratorium on INS raids for the period of the 2000 census, to make it absolutely clear that filing out a census questionnaire or answering an enumerator's knock at the door will not threaten any resident.

Can you tell me what the INS plans are for encouraging all U.S. residents who participate in this 2000 census, and can you also assure me if you can, that INS does not and will not get information of any kind about individuals from the Census Bureau?

And let me just, before I let you answer, say that this is not just an issue for undocumented folks which is obviously something that concerns you. It should not constitutionally concern the census count.

Census
3/24/97

But it's also about people who just became citizens who are still very much not fully understanding that in this country we don't have to fear the government, you know, to that extent or at all.

And they may just think that any kind of action in this way affects them also, even though they're here legally or are here as citizens already.

What can you tell me about this issue?

MEISSNER: Well participation in the sense that it's an accurate census count is of overriding national importance. That is an issue the INS and the Census Bureau have always agreed on. The -- we have had discussions, I have had discussions with the prior director of the census about INS during the census period. Traditionally INS has been very -- agreeable is even too weak of a word -- I mean has strongly supported the notion that we should make known during the period of the census that people need not have a fear of immigration enforcement in the process of the census being taken.

And I would envision our doing the same thing for the 2000 census.

I would also say that the issue of the way in which the immigration service enforces the law in communities and in the interior of the country is one that is changing. I made reference to that in my opening remarks. We are pursuing a strategy of enforcement in the interior of the country now which is more targeted, which seeks to achieve high impact out of activities that are abusive, criminal in nature, fraudulent and we are organizing our resources to focus them in those ways so that we would increasingly see ourselves dealing with enforcement at the community level through removing criminals, through packing anti-smuggling, though focusing on benefit and document fraud.

And I think that is the best way for us to enforce the immigration law. It also is a way that should create more confidence in communities about the nature of the immigration activity in their communities.

SERRANO: Now is this going to be -- could you categorize this as something that would be passively done by the INS or this something where you might go somewhat out of your way to make sure this happens.

You know, I remember the 1980s...

MEISSNER: In the past right. We've gone out of our way in the past to...

SERRANO: Well, but if you recall in the 1980 census, one of the things that really broke our hearts in our communities was the fact that the Catholic Church came out and said we can't guarantee that people who come forth and say that they're in this country, will be protected in terms of the INS. Now, perhaps at that time the church just spoke a little too quickly or whatever, but it created I remember an incredible feeling in my neighborhood from people who were legally here, waiting to apply or applying. Which brings me to the whole issue of the backlog.

The backlog in the census count presents another problem. That is if you're

here legally, you're waiting to be processed. You're in the system if you will. You're still with a lot of these fears about how you deal with government and

with the INS, especially the INS. And we've just got to make sure and I don't know commissioner that it would be enough. And I'm not saying that this is your shortcoming. It's us in general. That it would be enough to put out the word that it's OK. I mean is it possible as the census is going out there, the Census Bureau in a very forceful way, to say be counted, for the INS to say and therefore, duo know, we're not -- this is not an issue for us.

I mean I know that's a touchy thing for you because you're not supposed to advertise your OK. The person is not OK but we do want to count people.

MEISSNER: Right. Well, let me say that I will do everything that I can and on behalf of the immigration service, we will do everything that we can institutionally to work with the Census Bureau so that a successful census -- so that there is nothing in the immigration context that undercuts the ability of the Census Bureau to do it's job.

Now we always will have the issue of criminal aliens and of criminal activity on the part of aliens. So we would not stand down where that work is concerned. But apart from criminal activity, we have I think been very aggressive in doing things that are appropriate to communicate, that above all people should feel safe in participating in the census and in cooperating with the census.

And I will be very eager...

SERRANO: I can understand that...

MEISSNER: ... to do that again.,

SERRANO: ... yes, let me just say that for the record, I don't want you to stand down or back off from any of your duties. I just want us to all find a way that perhaps the message could come out from your agency that your work is not directly related to being counted in the census.

I mean that doesn't mean people who are in fear of the INS are going to start loving you overnight. That's what we're looking for, but certainly that they're -- that people feel there's relationship between one and the other because...

MEISSNER: We have talked about that with the Census Bureau. That is a continuous conversation with the census approaching and we will do everything we can to assure that.

SERRANO: My colleague Robert Underwood, the delegate from Guam, asked me to raise this issue with you today. "During the past year more than 500 Chinese undocumented immigrants, and smugglers, mostly men, have been apprehended on Guam. Since January of this year, a total of 235 have been apprehended. Just this past Sunday the largest group so far -- 97 -- undocumented immigrants including women and children, ran aground on Guam. Each of them is expected to apply for asylum. I understand that the INS does not have sufficient funds to process immigrants on Guam. Now does INS propose to address the situation and

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The San Diego Union-Tribune

April 11, 1999, Sunday

SECTION: NEWS Pg. A-18

LENGTH: 628 words

HEADLINE: Census 2000; Census officials stress privacy guarantee; Agency urges minorities to be counted without fear of deportation

SOURCE: STAFF WRITER

BYLINE: Samuel Autman

DATELINE: LOS ANGELES

BODY:

LOS ANGELES -- If the Immigration and Naturalization Service wants access to Census Bureau data collected in the 2000 count, it will have to wait until 2072.

Under federal law, neither the INS nor the Internal Revenue Service -- or the FBI, the White House, or any agency -- can pry that information from the Census Bureau until 72 years after it is collected. That is more than two generations. Personal information from the 1930 count will be released in 2002.

The law guarantees the privacy of everyone from movie star Sylvester Stallone, to television talk show host Oprah Winfrey to the average citizen who fills out a form.

Census Bureau Director Kenneth Prewitt met recently with community leaders here to discuss why minorities were undercounted in 1990 at a higher rate than whites. Overwhelmingly, confidentiality and immigration issues were believed to be the factors keeping people from returning the forms.

"If I violate this law I go to jail, so I take this law very seriously," Prewitt said. "We really can't get to those communities without the help of the trusted community leaders."

Prewitt said the bureau has a 200-year history to point to if anyone questions its integrity. The Census Bureau considers itself the pre-eminent collector and disseminator of timely, relevant and quality data about the people and the economy of the United States.

And it will fight to protect that information.

In 1950, for example, President Harry Truman and his family had to relocate from the White House to Blair House. The Secret Service asked the Census Bureau for personal data of all the residents who lived nearby. Census coordinator Ed Goldfield denied the request.

And in 1980, four FBI agents armed with a search warrant showed up at the census office in Colorado Springs, Colo., demanding access to records. An office worker fended off the agents while the national directors of both organizations discussed the warrant in Washington. The agents did not get the desired information.

The U.S. Supreme Court handed down a decision in the 1980s, keeping such records private.

David Hoffman, one of many spokesmen for the bureau, said all census employees -- be they telephone receptionists, numerators, field overseers or office managers -- must submit to a police, FBI and security check before being employed.

Hoffman said there is no court record of anyone having been prosecuted for leaking information or doing something egregious. But there is a long trail of workers -- thousands, he said -- who have been fired for carelessly leaving confidential information unprotected.

"Those are grounds for dismissal," Hoffman said. "That does not mean an individual would necessarily be prosecuted. Prosecution is always a matter of discretion. Anyone who would knowingly leak information would feel the force of an 800-pound gorilla landing on them. They would be fired and prosecuted unequivocally."

Recently the Mexican American Legal Defense and Education Fund launched a national campaign called "Make Yourself Count," consisting of posters and television commercials targeting minorities.

"What you and I know is that in some single-family apartments there might be two families living there and another family living in the garage," said Antonia Hernandez, the defense fund's director.

Prewitt, Hernandez and Rep. Lucille Roybal-Allard, a Los Angeles Democrat who chairs the Congressional Hispanic Caucus, plan to contact the INS so that immigration sweeps do not interfere with the count.

"Given our large immigrant population, the challenge is to make sure that the Hispanics and other immigrant populations know they cannot be deported for filling out a census form," Roybal-Allard said.

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THE ORANGE COUNTY REGISTER

March 25, 1999 Thursday MORNING EDITION

Irene Bueno

06/02/99 07:37:07 PM

Record Type: Record

To: Robin J. Bachman/WHO/EOP
cc:
bcc:
Subject: Re: Census/Confidentiality Recap

Thanks for the update. I will follow up on the confidentiality issue with Dan Marcus for starters b/c this is another complicated legal issue.

Robin J. Bachman

Robin J. Bachman 06/02/99 04:00:16 PM

Record Type: Record

To: Irene Bueno/OPD/EOP, Karen Tramontano/WHO/EOP
cc:
Subject: Census/Confidentiality Recap

This was a follow-up meeting to the Friday call. I got called at 1:45 pm about the 2 pm call, talk about no respect... Anyway...

The idea was to address any new questions -- now that the groups had the OLC opinion. No big questions arose.

Glenn with the Asian Pacific Legal Defense Fund raised the question of what happens in 2002 if the next Administration chooses to ignore the OLC opinion. Dan Marcus and Andy Pincus said that OLC opinions are binding on the current Admin, and are general followed in later Admins. They said that the real attack would come if the new White House chose to change the existing statute.

Glenn and Marisa Demeo had a brief exchange about their "ethical obligations to advise immigrants to participate." Glenn, although agreeing that this was a first step, felt more internal dialogue between the groups was needed before he felt he could tell immigrants to participate in the census. Marisa stated that although the dialogue would be helpful, it must be internal and that the immigrant advocacy groups had a responsibility not to scare their constituents by expressing doubts in public. Glenn concurred.

Again, the larger question of privacy/confidentiality for other services came up. Andy again stated that this Administration was working on it. Tina Hone also committed to being helpful. These statements kinda went over like a lead balloon. I believe Cecelia said something like, "yeah, and

you were around when these laws were being enacted..."

The MOU question also was raised by Glen. Marcus stated that he thought they would weakened the OLC Opinion. Eileen Jacobs concurred, saying they would be "self-defeating."

Marisa wrapped up. No additional calls were mentioned. Andy did ask for the groups help in continuing to calm any fears towards census in the communities. He mentioned op-ed, etc. that Census and Commerce were willing to do.

Robin
x66237

Robin J. Bachman

06/08/99 09:55:44
AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: census clips

The Houston Chronicle

June 07, 1999, Monday 3 STAR EDITION

SECTION: A; Pg. 18

LENGTH: 678 words

HEADLINE: Data in upcoming census confidential, official tells group

SOURCE: Staff

BYLINE: RAD SALLEE

BODY:

The word was "confidential." Alfonso E. Mirabal repeated it over and over - with emphasis, in English and in Spanish - to an East End audience here.

"The census is con-fi-den-ti-al," he stressed. "If I give the information on your census form to anyone else, I can go to jail."

Mirabal, the Census Bureau's Dallas regional director, and U.S. Rep. Gene Green, D-Houston, addressed about 50 citizens Thursday at the Magnolia Multi-Service Center.

Their visit was aimed at mustering citizen participation in the upcoming census. Green also called for Congress to fund a follow-up survey, based on a statistical sample of the population, that would adjust the totals to include people overlooked in the April 1 count.

The meeting at 7037 Capitol was held in a largely Hispanic neighborhood. Surveys after several censuses indicated that Hispanics were largely undercounted.

The bureau estimated that the 1990 Census in Texas undercounted Hispanics by 5.4 percent, compared with 3.9 percent for blacks and 2.6 percent for non-Hispanic whites and Asians.

That same year, Houston's estimated undercount of 3.9 percent was the highest of any major city, while Texas' 2.8 percent was second to New Mexico.

A University of Houston study found that some Hispanics here were afraid of

being reported to authorities if they answered the census questionnaire. Some also said they feared eviction if landlords learned how many people shared an apartment. Officials say the fears are unfounded because census data are confidential.

Instead, Green and Mirabal emphasized, an accurate census is essential if a city or state wants its rightful share of tax dollars or legislative representation.

"The census is about power and money," Mirabal said.

While the totals involved are large, their impact can be exaggerated. Texas' 1990 undercount cost the state an estimated \$ 1 billion in federal funding over the decade, about 1 percent of what it received.

Green noted that a struggle is brewing in Congress over funding for the follow-up survey, which the bureau calls the Accuracy and Coverage Evaluation. Similar to the "post-enumeration surveys" of 1990 and 1980, the ACE would use statistical sampling to estimate how many people in each state and major ethnic group were not counted.

Republicans generally oppose sampling if the resulting estimates are to be used for political redistricting or the allocation of federal funds. The issue is partisan because minorities and the poor, who are more severely undercounted than affluent whites, are more likely to vote for Democrats.

Critics of sampling also contend that it is unreliable and can be manipulated for political reasons. However, a number of professional groups and scholars, including three National Research Council panels, have endorsed the method.

The U.S. Supreme Court has ruled that the Census Act bars sample-based estimates for apportioning the 435 U.S. representatives among the 50 states. But the court said nothing about their use for redistricting or funding, and its ruling did not address constitutional objections.

The undercounts in 1980 and 1990 prompted bitter fights in Congress and federal court. Democrats wanted to adjust the totals to reflect sample survey findings. Republicans did not, and they won.

Green and other Democrats emphasize that the 1990 Census missed more people than any previous one. But on a percentage basis, the estimated 1990 undercount of 1.6 percent was the second-lowest ever, bested only by 1.2 percent in 1980.

Census officials fear that the uncounted share, which had fallen steadily for decades until 1990, will continue to creep upward in Census 2000 while census costs skyrocket.

The 1990 Census cost \$ 2.6 billion, and "Census 2000" was projected to cost \$ 4 billion if some statistical shortcuts were used - but the Supreme Court has barred these.

Without these, the Census Bureau has put a tentative price tag of \$ 7.2 billion on Census 2000. Green and Mirabal said they do not know what the census and the follow-up survey will cost.

Los Angeles Times

June 4, 1999, Friday

SECTION: Metro; Part B; Page 6; Zones Desk
LENGTH: 686 words

HEADLINE: LATINO CENSUS WORKERS CITE TRUST AS KEY TO EFFORT; SURVEY:
INFORMATION CAMPAIGN IS SEEN AS BEST WAY TO RAISE RESPONSE RATES OF
THOSE FEARFUL OF GOVERNMENT.

BYLINE: ANNETTE KONDO, TIMES STAFF WRITER

BODY:

When the Census Bureau worker knocked at the door of their Pico-Union apartment, Louisa Ollague remembered the reaction she and her grandmother had.

They hid in the closet.

Over in Pacoima, Isai Perez recalled how his parents decided not to fill out the forms. They were citizens, but were still fearful of the government's purpose and documents.

From that 1990 census, Ollague and Perez have since traveled to the other side of the doorway in the Latino community: They're now officials knocking on doors, working to dispel fears and misconceptions, and encouraging residents to be counted in next year's census.

To improve census counts of Latinos, particularly in sections of the city with consistent undercounts, Perez and Ollague said residents need to talk to faces they can trust. That can mean leaders from schools and churches or local nonprofit officials. Even residents who hold sway within neighborhoods.

"I call it my comadre network," explained Perez, a community partnership specialist with the U.S. Census Bureau office in Van Nuys.

Perez and Ollague addressed a task force Thursday that is examining ways to increase census participation in Rep. Howard Berman's 26th Congressional District, which includes portions of the northeast Valley.

Officials said census forms that are filled out at home and mailed back contain better data than forms requested by a visiting census worker.

Census officials are especially concerned about some tracts with less than 50% mail response rates. For example, one tract in Pacoima, part of Berman's district, had a 49.6% rate and is targeted by community leaders for better census results.

A Pacoima native and resident, Perez said he often goes to parent centers at schools, ferreting out the mothers who are most likely to go home to the neighborhood and "spread the gospel" about the census.

If there's trepidation about the government, Perez said he reminds the comadres of their overcrowded schools and how a better count of children in the census can result in greater funding.

Many Latinos do not include their children on the census forms, and community education in that area is critical, he said.

From the 1990 census, half the people missed in the Los Angeles County count were children age 17 and younger, Perez said.

*

As regional census director for the Mexican American Legal Defense and Educational Fund, Ollague said anti-immigrant fears fueled by Proposition 187 and welfare reform have scared off many Latinos, even legal residents, from anything connected with the government.

MALDEF is expanding its outreach for the 2000 Census, but the biggest need is for local, grass-roots efforts, she said.

At a recent soccer match at Los Angeles City College, Ollague said her information booth about the census was flooded with inquiries. Many people had never heard of the decennial count and how it affects federal funding for critical services such as health care and schools.

"One third-grader asked me if I needed help, and he distributed leaflets," she said. "That's what we need. We need an army of people to help with the census."

MALDEF is working closely with the Los Angeles Unified School District to help educate children, who it is hoped, will ultimately pass the pro-census message on to their parents.

Schools and teachers are trusted community fixtures in Latino communities, Ollague said, and MALDEF is working with the school district's census count committee. Ten-minute information videos prepared by MALDEF will be available for schools, and information pamphlets will be distributed through students.

John Reeder, regional director for the Census Bureau, reminded local officials who attended Thursday's meeting that census undercounts are not a racial issue, but primarily one of socioeconomics. Renters, younger families that are busy, and less-educated residents are more likely to be missed.

"The census isn't on people's radar screen," he said, encouraging community groups to contact the bureau, which is eager to hold community



*United States Department of Justice
Immigration & Naturalization Service
Office of the Executive Associate Commissioner
Policy and Planning*

*425 I Street, NW
Washington, D.C. 20536
Phone: 202-514-3242 / Fax: 202-305-0134*

Fax Cover Sheet

To: Lrene Bueno From: Barbara Stack
Fax: _____ Pages: 2
Phone: _____ Date: _____
Re: _____
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

Sample Census response.



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

Glenn D. Magpantay, Esq.
Director, Asian American Democracy Project
Asian American Legal Defense
and Education Fund
99 Hudson Street, 12th Floor
New York, New York 10013

Dear Mr. Magpantay:

The Attorney General has asked me to respond to your recent letter concerning enforcement activities by the Immigration and Naturalization Service (INS) during the 2000 census.

First, I can assure you that the INS recognizes the overarching national importance of an accurate census, and we will take all appropriate steps to avoid interfering with that goal, consistent with our obligations under law. In order to achieve this result, the INS and the Census Bureau are working cooperatively together, building on the successful relationship between the two agencies during the 1990 census. The INS will take steps to minimize the potential chilling effect of its operations on census participation. While the INS will continue to enforce the immigration laws during the census period, we will do so in a manner consistent with the importance of an accurate count.

Sincerely,

[AAG?]



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

99 HUDSON STREET, 12th FL, NEW YORK, NY 10013-2815 212 966-5932 FAX 212 966-4303

August 13, 1999

Irene Bueno
Special Assistant to the President
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Ms. Bueno: *Creve -*

I thought you would be interested in our letter to The President and INS Commissioner asking for a moratorium of INS raids during the census.

As you know, one of the main reasons for the differential undercount in the 1990 census was a mistrust of federal governmental employees, particularly amongst immigrant communities. Events of the 1990s have only exacerbated this fear. Many in our community, particularly immigrants and new citizens, will not differentiate between INS agents and census enumerators. To address this concern, we have asked for a national moratorium on workplace and neighborhood raids by the INS while census enumerators are canvassing neighborhoods.

I mentioned this issue to Commissioner Meissner while in Seattle last month. She understood the concern and maintained that she had already agreed to a moratorium *for only a two week period*. Such a brief time is too short to have any real affect. We urge for a duration for at least three months, covering the *entire* enumeration period.

I hope you will take our views into your consideration. If you have any questions, please feel free to contact me at AALDEF at 212-966-5932.

Sincerely,

Glenn D. Magpantay, Esq.
Director

Asian American Democracy Project

Enclosure.



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

99 HUDSON STREET, 12th FL, NEW YORK, NY 10013-2815 212 966-5932 FAX 212 966-4303

July 1, 1999

The Honorable William J. Clinton
President of the United States
The White House
Washington, DC 20500

Ms. Doris Meissner
Commissioner of the Immigration and Naturalization Service
U. S Department of Justice
Washington, DC 20536

Dr. Kenneth Prewitt
Director of the U.S. Census Bureau
U.S. Department of Commerce
Suitland, MD 20233

Dear Mr. President, Commissioner Meissner, and Director Prewitt:

We, the undersigned members of the Asian American Task Force on the Census, are writing to encourage you to consider and coordinate a moratorium of neighborhood and workplace raids conducted by the Immigration and Naturalization Service during the block canvassing enumeration period of the decennial census.

Asian Pacific Americans suffered a net 2.3% national undercount rate in the 1990 census. We have embarked on a community education campaign to ensure every Asian American fully participates in Census 2000. As was reported to Congress, one of the main reasons for the undercount in the 1990 census was a mistrust of federal governmental employees, particularly among immigrant communities.

Recent events have only exacerbated the fear of governmental employees. The concert of recent federal legislation like the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the cut off of benefits for immigrants under the Welfare Reform Act, California's Proposition 187, proposals to forbid legal immigrants from making political contributions, the unwarranted harassment of Asian Americans and Americans with ethnic surnames in the campaign finance controversy, and recent incidents of police brutality in New York City have left immigrants and new citizens feeling that this nation, though built and made great by immigrants, is now intolerant and unwelcoming of new immigrants.

Immigrants and new citizens do not differentiate between INS agents and Census enumerators. The privacy of census information, oath that census employees must take to protect respondents' information, and heavy fines imposed on census employees who divulge census information are inconsequential. Immigrants and new citizens would

become immediately suspect of any governmental official asking questions around the neighborhood or apartment building. Regardless of whichever federal agency employs the individual, non participation, hiding, and partial responses would ensue.

To address this fear, we urge you to consider a national moratorium on raids by the INS while census enumerators are canvassing neighborhoods, and making such a moratorium known to the community.

A moratorium would not render the INS in abdicating its legal responsibility. It would merely convey a sensitivity to the experiences of immigrant populations, including the fear of governmental employees. It would also encourage all people, particularly immigrants and new citizens, to fully participate in the census.

Such a moratorium must last for the entire period during the census enumeration, as well as include a few weeks prior to the mailing of census forms and a few weeks after the enumeration period, reaching the accuracy and coverage evaluation (ACE) period. At the very least, this period should last five months from the beginning of March 2000 through the end of July.

This longer period of time is necessary because it allows immigrants to feel safer about the moratorium. The reasons for the period of time during the enumeration should be clear. The time before the census enumeration is important because it shows the government's sincerity in the moratorium. The period after the enumeration is equally important because it sends a message of "no broken promises." Specifically, it should include the time during ACE in which the fullest cooperation is essential.

This moratorium must be documented in writing. It is unlikely the community will believe there is a moratorium if there is no documentation. While an oral agreement for a moratorium is a good first step, recording a moratorium in writing will effectively address immigrants' fear of governmental employees, thereby encouraging participation in Census 2000.

Finally, this moratorium must be national in scope. Many Asian Americans on the East Coast have friends and relatives in other parts of the country. Raids on the West Coast are well known on the East Coast and vice-versa. Thus, a national moratorium is needed.

We are, and will continue, to work very hard to make sure our communities fully participate in Census 2000. Though we are also concerned about the strength of the confidentiality of census information, we hope and believe this will be resolved soon. But even if the integrity of the confidentiality of census information is restored, we cannot deny that community fears about governmental employees still abound. Thus we hope you will consider our views and agree to, in writing, a national moratorium on INS raids during the census enumeration.

Request for a moratorium on INS raids during Census 2000
Letter to Messiner and Prewitt

Doris Pak
Executive Director
Korean American Family
Service Center

Glenn D. Magpantay

Asian American Legal Defense and
Education Fund

Edward Fang
Edward Fang

Indochina Sino-American Community Center

Chung Wha Hong

Chung -Wha Hong

Young Korean American Service &
Education Center, Inc.

Sue Lee

Sue Lee

Chinatown Manpower Project

Betty Lee Sung

Betty Lee Sung

Organization of Chinese Americans

Jeanie Tung

Jeanie Tung

Tubina De O'Connor

Tubina De O'Connor

New York Asian Women's Center

Sam Chen

SAM CHEN

United Overseas Chinese of New York

Request for a moratorium on INS raids during Census 2000
Letter to Messiner and Prewitt

Mathew Koshi
MATHIEW KOSHI
National Indo-American
Association for Senior Citizens

Josefina S. Atienza
JOSEFINA S. ATIENZA
FILIPINO AMERICAN HUMAN SERVICES, INC.

Mari Sakaji
MARI SAKAJI
Japanese American
Social Services, Inc.

Su Ming Yeh
Su Ming Yeh
Asian Professional Extension, Inc.

Juy Tse
Juy Tse
Chinatown Health Clinic

Elisa Chow, C.S.W.
Elisa Chow, C.S.W.
Chinatown YMCA

Teresita R. Rodriguez
Teresita R. Rodriguez
Asian Pacific Islander Coalition on HIV/AIDS

Lotus Chan
Sing Tao Newspaper
Lotus Chan

Jessica Lee
Jessica Lee
Coalition for Asian American
Children and Families

Mae Lee
MAE LEE
CHINESE PROGRESSIVE ASSN.

Request for a moratorium on INS raids during Census 2000
Letter to Clinton, Meissner, and Prewitt

Sincerely,

Members of the Asian American Task Force on the Census

James Lap
JAMES LAP
NYC TECHNICAL COLLEGE

Woo-Khil Choi
Woo-Khil Choi
Korean Youth Center of NY

Lorinda Chen
LORINDA CHEN
Chinese American
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Sayu Bhojwani
Sayu Bhojwani
South Asian Youth Action

Giho Kim
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Grace Lynn Volckhausen

Laura Lopez
LAURA LOPEZ
BOARD CHAIR, FAHSI
FILIPINO AMERICAN HUMAN SERVICES, I

July 1, 1999

cc: U.S. Attorney General Janet Reno
U.S. Commerce Secretary William Daley

Senate Committee on Governmental Affairs Chairman Fred Thompson
Senate Committee on Governmental Affairs Ranking Member Joseph Lieberman

Senate Subcommittee on Immigration Chairman Spencer Abraham
Senate Subcommittee on Immigration Ranking Member Edward Kennedy

House Committee on Government Reform Chairman Dan Burton
House Committee on Government Reform Ranking Member Henry Waxman

House Subcommittee on the Census Chairman Dan Miller
House Subcommittee on the Census Ranking Member Carolyn Maloney

House Subcommittee on Immigration and Claims Chairman Lamar Smith
House Subcommittee on Immigration Ranking Member Sheila Jackson Lee

Congressmembers José Serrano and Nydia Velázquez

Members, Census Monitoring Board
Members, Census Bureau Race and Ethnic Advisory Committees



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

May 21, 1999

The Honorable Doris Meissner
Commissioner
Immigration and Naturalization Service
U.S. Department of Justice
Washington, DC 20530

Dear Commissioner Meissner:

As you know, the United States has an extraordinarily longstanding tradition of protecting the confidentiality of information provided to the Census Bureau. The Supreme Court observed in Baldrige v. Shapiro, 455 U.S. 345 (1982), that "[a]lthough Congress has broad power to require individuals to submit responses, an accurate census depends in large part on public cooperation. To stimulate that cooperation, Congress has provided assurances that information furnished to the Secretary [of Commerce in connection with the census] by individuals is to be treated as confidential" (455 U.S. at 354). The Court's opinion in that case recounts in detail Congress's consistent efforts to protect the confidentiality of census information (*id.* at 356-358).

The current confidentiality provisions are contained in Sections 9 and 214 of the Census Act, 13 U.S.C. 9 & 14.

In the upcoming decennial census – Census 2000 – the Census Bureau will ask a variety of questions including, on the long form, questions regarding respondents' country of birth and United States citizenship. (The long form is delivered to 17% of households; most households are asked to fill out the "short form," which asks only for the names, ages, sex, relationship, and race or ethnicity of the persons living at that address.) Responses to these questions are, of course, covered by the confidentiality obligation.

Recently, questions have been raised about the effect on the confidentiality requirement of 8 U.S.C. 1373, a provision of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). We believe strongly that the confidentiality requirement was not affected and asked the Office of Legal Counsel for its view of the effect of that statute. OLC concluded that the IIRIRA provision "does not repeal" the census confidentiality provision, and that the confidentiality requirement therefore remains in full force and effect. (I have enclosed a copy of the opinion for your information.)

The Honorable Doris Meissner
May 21, 1999
Page Two

In view of the fact that the INS is responsible for administering the Nation's immigration laws, including IIRIRA, I would be interested in your reaction to the OLC opinion - in particular, whether you believe it to be the proper interpretation of IIRIRA. I look forward to hearing from you on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Daley", written over a vertical line.

William M. Daley

Enclosure

ate and the House of Representatives a report on the operations of the program and the feasibility of expanding the program to cover the nationals of all countries.

(g) **WORLDWIDE APPLICABILITY OF THE PROGRAM.**—

(1) **EXPANSION OF PROGRAM.**—

(A) **IN GENERAL.**—Not later than 6 months after the submission of the report required by subsection (f), the Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

(B) **DEADLINE.**—Such expansion shall be completed not later than 1 year after the date of the submission of the report referred to in subsection (f).

(2) **REVISION OF FEE.**—After the program has been expanded, as provided in paragraph (1), the Attorney General may, on a periodic basis, revise the amount of the fee imposed and collected under subsection (e) in order to take into account changes in the cost of carrying out the program.

(h) **DEFINITIONS.**—As used in this section:

(1) **APPROVED INSTITUTION OF HIGHER EDUCATION.**—The term "approved institution of higher education" means a college or university approved by the Attorney General, in consultation with the Secretary of Education, under subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act.

(2) **DESIGNATED EXCHANGE VISITOR PROGRAM.**—The term "designated exchange visitor program" means a program that has been—

(A) designated by the Director of the United States Information Agency for purposes of section 101(a)(15)(J) of the Immigration and Nationality Act; and

(B) selected by the Attorney General for purposes of the program under this section.

SEC. 642. COMMUNICATION BETWEEN GOVERNMENT AGENCIES AND THE IMMIGRATION AND NATURALIZATION SERVICE.

(a) **IN GENERAL.**—Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) **ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES.**—Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) **OBLIGATION TO RESPOND TO INQUIRIES.**—The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

SEC. 643. REGULATIONS REGARDING HABITUAL RESIDENCE.

Not later than 6 months after the date of the enactment of this Act, the Commissioner of Immigration and Naturalization shall issue regulations governing rights of "habitual residence" in the United States under the terms of the following:

(1) The Compact of Free Association between the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia (48 U.S.C. 1901 note).

(2) The Compact of Free Association between the Government of the United States and the Government of Palau (48 U.S.C. 1931 note).

SEC. 644. INFORMATION REGARDING FEMALE GENITAL MUTILATION.

(a) **PROVISION OF INFORMATION REGARDING FEMALE GENITAL MUTILATION.**—The Immigration and Naturalization Service (in cooperation with the Department of State) shall make available for all aliens who are issued immigrant or nonimmigrant visas, prior to or at the time of entry into the United States, the following information:

(1) Information on the severe harm to physical and psychological health caused by female genital mutilation which is compiled and presented in a manner which is limited to the practice itself and respectful to the cultural values of the societies in which such practice takes place.

(2) Information concerning potential legal consequences in the United States for (A) performing female genital mutilation, or (B) allowing a child under his or her care to be subjected to female genital mutilation, under criminal or child protection statutes or as a form of child abuse.

(b) **LIMITATION.**—In consultation with the Secretary of State, the Commissioner of Immigration and Naturalization shall identify those countries in which female genital mutilation is commonly practiced and, to the extent practicable, limit the provision of information under subsection (a) to aliens from such countries.

(c) **DEFINITION.**—For purposes of this section, the term "female genital mutilation" means the removal or infibulation (or both) of the whole or part of the clitoris, the labia minora, or labia majora.

SEC. 645. CRIMINALIZATION OF FEMALE GENITAL MUTILATION.

(a) **FINDINGS.**—The Congress finds that—

(1) the practice of female genital mutilation is carried out by members of certain cultural and religious groups within the United States;

(2) the practice of female genital mutilation often results in the occurrence of physical and psychological health effects that harm the women involved;

Policy specialist questions count of illegal aliens

Urges reform before 2000 census

By August Gribbin
THE WASHINGTON TIMES

Congress must help U.S. citizens regain control of their nation's future — now — before the 2000 census further erodes the people's power to govern.

That's the warning lawyer Charles Wood, a former Justice Department policy specialist, gives in the most recent issue of Harvard's *Journal of Law and Public Policy*.

This country's policy of counting and including illegal aliens among the nation's residents unfairly gives certain states greater representation in the House of Representatives, he argues. He also challenges the policy of automatically granting citizenship to the U.S.-born children of illegal aliens.

Including illegals in the national population count is based on the Third Amendment to the Constitution. Automatically granting citizenship to the children of illegals rests on the 14th Amendment. Thus, some scholars and the U.S. Attorney General's Office have argued the census and birthright policies cannot be changed without amending the Constitution.

Not so, says Mr. Wood.

Both amendments are vague, he says, and government policies are based on incorrect interpretations. He notes that the 14th Amendment was passed in 1866 before laws creating "illegal aliens" even existed.

At any rate, he and many in Congress contend that, since the policies are interpretation-based, an act of Congress can alter them.

Using the Third Amendment as

an example, Mr. Wood explains what he says is a new and persuasive notion — that the Constitution is silent about the policies.

"My view," he says, "is that the Constitution would authorize either position: that illegals must be counted or that they must not. The Constitution doesn't require either position."

In any event, "the damage being done to the national interest by current interpretations [of those amendments] is so serious and fundamental that change is imperative."

He insists that one way or another, the policies must be modified quickly before next year's national head count, which will guarantee the political damage continues for another 10 years.

Mr. Wood is well known to Washington policy analysts specializing in immigration and population matters, and he is not alone in his urgent concern about the practices he says are fundamentally unfair.

John Fonte, director of the Hudson Institute's Center for American Common Culture, says Mr. Wood's argument is "right on track." He adds, "This is a major issue, a haunting question of major importance for Americans in the 21st century. It won't go away, and Mr. Wood has provided a definitive argument."

In a separate interview, Michael Warder, vice president of another policy research organization, California-based Claremont Institute, agrees. Echoing Mr. Fonte, he says Mr. Wood "has put his finger on a serious problem — one of the most important issues facing the United States in the 21st century."

What's more, Rep. Brian P. Bilbray has taken action. The California Republican has attracted 30 co-signers of his "Citizenship Reform Act of 1999," which would eliminate the automatic citizenship policy.

The bill would grant citizenship to children born in the United States only if at least one of the parents was a U.S. citizen or "an alien who is lawfully admitted for permanent residence and maintains his or her residence in the United States."

Mr. Bilbray has introduced the proposal twice before, but Congress has had little inclination to deal with it. As Anthony C. Beilenson, a former Democratic representative from California, stated in a House hearing, the matter is "one of the most difficult and emotional issues."

Typically, altering the "birth-right policy" is seen as an attempt to halt the dramatic influx of illegal aliens into the United States. But Mr. Wood relates it and the need for changing the census practice to "political self-determination."

"It is hard to imagine current policies that are more likely to undermine the democratic nature of our political system and erode the ability of the American people to control their own future," he writes.

He reasons that each of the policies threatens the "rightful share of power" of "legitimate citizen majorities." Each practice jeopardizes U.S. citizens' ability to guarantee that they, their descendants, and the naturalized citizens they permit to "join the American political community" will maintain political control.

The threat to the control becomes reality in places like California, Texas, New York and many

other communities where illegals increasingly gravitate. When the illegals are included as part of the resident population, they boost the communities' total population count.

Because the number of seats — and representatives — each state is allotted in the U.S. House of Representatives is based on the state's total population, states with great numbers of illegals can gain added seats in the House. States with comparatively few illegals get fewer representatives and less say in national and even state affairs.

"As a secondary concern, take the situation where state A has 400,000 residents," he says. "Half are citizens; half illegals. And consider state B, which has 400,000 residents — all citizens. The 200,000 citizens of state A have twice the political clout of the citizens in state B."

In effect, the policies allow persons who sneak into the nation to siphon political power from the citizens whose laws they have broken. Mr. Wood calls this a "distortion of democratic principles."

Automatically granting American citizenship to the U.S.-born infants of illegals is seen as encouraging aliens to enter illegally and rewarding them for breaking U.S. law. It also is seen as unfair to legal immigrants who often must wait years to obtain citizenship.

Then, too, the infant citizens become eligible for federal and state aid and make it likely that their

parents will escape deportation. In fact, having a U.S.-born child enhances the parents' chances of becoming permanent U.S. residents.

Thus Mr. Wood says that over time it's possible for "what would otherwise be citizen majorities in particular areas to be outvoted by new majorities consisting in significant part of persons whose membership in the political community... is not based on the consent of the American people."

Put differently, aliens who should not be in the United States and have broken the law could come to dominate politically the legitimate, law-abiding citizen population.

There is considerable public concern about the estimated 21,000 illegals who infiltrate the United States each month, and government officials concede the increasing incursions add significance to the issues Mr. Wood raises.

Yet he notes that "despite the stakes involved, Congress has devoted little recent attention to these census and birthright citizenship issues. This neglect is extremely troubling."

Ultimately, he says, the issue is whether American citizens will "control the nation's future," or the future will "continue to be influenced to a significant degree by individuals whose very presence in this country is in violation of its laws."

The Washington Times

THURSDAY, JULY 22, 1999



*United States Department of Justice
Immigration & Naturalization Service
Office of the Executive Associate Commissioner
Policy and Planning*

*425 I Street, NW
Washington, D.C. 20536
Phone: 202-514-3242 / Fax: 202-305-0134*

Fax Cover Sheet

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For Immediate Release
March 13, 2000

Contact: Albert Chung
(202) 296-2300



**INS RELEASES GUIDANCE LIMITING ENFORCEMENT ACTIVITY
DURING CENSUS 2000
NAPALC Welcomes Effort by INS to Avoid Hampering with
Census 2000 Participation**

Washington, D.C. – The Immigration and Naturalization Service (INS) today issued instructions to INS regional district offices across the country, emphasizing that the INS will not conduct activities that could inadvertently discourage full participation by legal and undocumented immigrants in Census 2000.

The guidance requires that enforcement operations be planned carefully during peak Census 2000 activity, which extends from March through August 2000. This is the time period during which census forms are returned, census enumerators visit those households who do not respond, and other census activities take place.

The INS will seek to minimize its visibility during this time period, especially in residential areas (including migrant workers camps and shelters), but will continue to conduct ongoing investigations of a criminal nature, such as immigrant smuggling. Moreover, INS Regional Directors must first review and pre-authorize any high visibility operation that might draw public attention, and Deputy District Directors must review and pre-authorize all other enforcement activity that might hamper census participation.

“The INS guidance addresses many of the concerns we have raised,” stated Karen K. Narasaki, Executive Director of the Legal Consortium. “While community advocates had hoped for a moratorium on all INS activities, we are pleased that the guidance significantly and clearly limits enforcement activities during this critical period to minimize even the appearance that census activities may somehow be linked with the INS.”

“It is helpful that the INS is limiting enforcement activity for the full census period and that it has put into place supervisory reviews before an operation may be conducted,” noted Deepa Iyer, Staff Attorney at the Consortium.

The guidance explicitly states that INS agents are to avoid activities that would suggest even the appearance of a connection between the census and INS enforcement activity, and are not to interfere with census workers and community-based census outreach sites. Further, the directive stated that census-related activities may not be used as a source of leads or information to conduct INS enforcement activity in any way.

AFFILIATES
Los Angeles
Asian Pacific American
Legal Center

New York
Asian American Legal
Defense & Education Fund

San Francisco
Asian Law Caucus

census workers and community based outreach sites such as Census Questionnaire Centers or "Be Counted Sites;" that the INS will avoid any appearance that their activities are linked to census operations; that the notion of "residential areas" has been expanded to cover migrant worker camps and shelters for runaways, battered spouses, and the homeless; and that approval for any enforcement activity has to be approved by high-ranking INS officials.

MALDEF, joined by other immigrants-rights groups, will remain vigilant during this census period. We want to ensure that the INS and its field officers fully implement this guidance. In no way should enumerators be mistaken for INS officials. The fear and concerns of many, legal residents and non-documented persons alike, should not keep them from providing vital census information -- information that can help them, their children, and the entire community in which they live by determining government funding vital for schools, road maintenance and city services, among other benefits.

The other groups involved in this effort were the National Asian Pacific American Legal Consortium (NAPALC), the National Association of Latino Elected and Appointed Officials Education Fund (NALEO), the National Council of La Raza (NCLR), and the National Network for Immigrant and Refugee Rights (NNIRR).

MALDEF is a national civil rights organization which protects and promotes the civil rights of Latinos through advocacy, community education and outreach, leadership development, higher education scholarships and, when necessary, through the legal system.

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MALDEF

Press Statement

Mexican American Legal Defense and Educational Fund

1717 K Street N.W., Suite 311 • Washington, DC 20036 • 202-293-2828 • Fax 202-293-2849

For Immediate Release
March 13, 2000

Contact: Christina Chavez Cook - D.C.
Triana R. D'Orazio - D.C.
202/293-2828
Annette Garcia - L.A.
213/629-2512

INS GUIDELINES ON CENSUS RESPONSIVE TO MALDEF PROPOSALS

(Washington, D.C.) The Mexican American Legal Defense and Educational Fund (MALDEF) commends the U.S. Department of Justice's (DOJ) Immigration and Naturalization Service (INS) on their release today of adjusted guidelines for INS operations during the census period.

MALDEF, joined by the National Asian Pacific American Legal Consortium (NAPALC) and the National Association of Latino Elected and Appointed Officials Education Fund (NALEO), met with and presented to INS officials a short but precise list of suggested guidelines.

In the newly released guidance, INS makes a commitment to support the Census Bureau's effort to have all persons participate in the census, as is Constitutionally mandated, regardless of immigration status.

"We are pleased to read that today's guidance issued to INS field offices by the DOJ includes many of the suggestions we requested they consider," said Christina Chavez Cook, Legislative Staff Attorney for the MALDEF Washington, DC office. "While MALDEF knew that the confidentiality of census information was protected under law, we were primarily concerned about INS activities that would mistakenly be connected to census operations. We believe the guidelines address this issue," she elaborated.

The INS' guidance regarding operations during the census period between March and August is extremely important to the immigrant and undocumented community. Of particular noteworthiness is the INS' assurances that in no way will INS officials jeopardize the confidentiality of the census, nor make any attempt at gathering information collected via the census; that enforcement will not interfere with

- MORE -

MALDEF APPROVES OF NEW INS GUIDANCE

Page 2



U.S. Department of Justice
Immigration and Naturalization Service

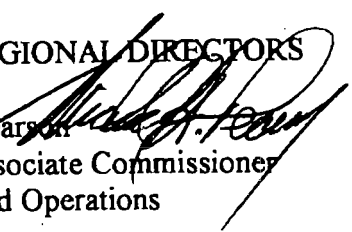
HQINV 50/18

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

MAR 13 2000

MEMORANDUM FOR REGIONAL DIRECTORS

FROM: Michael A. Pearson 
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Guidelines for INS Operations During Census 2000

During the year 2000, the Census Bureau will conduct the decennial census of all persons residing in the United States. The Immigration and Naturalization Service (INS) supports the Census Bureau's efforts to have full participation by all persons regardless of immigration status. While the Service will continue to enforce the immigration laws during the census period, steps will be taken to avoid adverse effects on census participation. Attached are detailed guidelines for INS field operations during Census 2000. Please review these guidelines carefully.

It is the longstanding view of the Department of Justice that the Constitution requires that all inhabitants of the United States, including illegal aliens, be enumerated in the census. It is generally believed that census counts taken in recent decades have undercounted the illegal alien population. The willingness of illegal aliens to participate in Census 2000 depends much on their confidence that INS will not be able to access the information collected. It is crucial that undocumented as well as documented aliens understand that they are expected to respond to census takers and questionnaires, and that there is no nexus between the census and INS enforcement activities.

Under law, census data for individuals and establishments receive confidential treatment. As required by the confidentiality provisions of Title 13, United States Code (U.S.C.), the Census Bureau may not give the INS access to any individually identifiable census data or information. See 13 U.S.C. §§ 8 & 9. The Department of Justice has determined that Section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which limits federal, state, and local authorities from restricting the exchange of immigration and citizenship information with the Service, does not abridge the protection given to census records.

Memorandum for: Regional Directors
Subject: Guidelines for INS Operations During Census 2000

Page 2

Service officers shall under no circumstances seek, accept or use any census information in violation of 13 U.S.C. §§ 8 & 9.

During Census 2000, INS shall conduct its activities to support and encourage full participation in the census by all persons residing, legally or illegally, in all areas of the United States. INS managers will consider census activities when proposing and planning all operational activity. Interior enforcement activity must be planned and executed in a manner designed to minimize possible negative impact on the census. This includes avoiding actual interference with census workers and community-based census outreach sites, as well as avoiding any appearance that INS activities are linked to census operations. For example, conducting an enforcement operation shortly before or after census workers are active in a particular location could create the appearance that there is a connection between the two agencies. That perception may chill the willingness of some aliens to participate in the census. Census-related activities may not be used as a source of leads or intelligence-gathering for INS operations in any way.

Regional Directors must maintain close oversight of all enforcement activities throughout the national census period, with special consideration required during peak census activity periods. Further, Regional Directors must approve in advance any high visibility interior operations that might have an impact on census participation (see "Guidelines" 3 and 4). All other interior enforcement activity that might impact census participation must be approved at a level no lower than the Deputy District Director or Deputy Chief Patrol Agent.

"Peak Census 2000 activity period" is defined as the period during which census takers will visit the homes of those who did not respond by mail. Length of peak periods will vary based on the number of homes that must be visited in a given jurisdiction and cannot be determined until after the mailed responses have been received. Peak periods are expected to fall in May and June 2000, but in some areas they may begin as early as March or end as late as August 2000. Census Bureau regional representatives will establish contacts with their INS counterparts at the district level so that they can advise INS officials as soon as the dates of the peak period in each jurisdiction are decided. Census Bureau regional offices will contact INS district offices in the first quarter of calendar year 2000 to discuss timelines and census operations. Regional Directors should designate a point of contact at the regional level. The Deputy District Directors, Officers in Charge, and Deputy Chief Patrol Agents will serve as the points of contact for the districts, suboffices, and sectors.

All INS employees should be reminded that they are not to intentionally engage in conduct that would inhibit or deter persons from full participation in the census count. Field offices should share the INS position and guidelines for Census 2000 with local organizations

Memorandum for: Regional Directors

Page 3

Subject: Guidelines for INS Operations During Census 2000

and other Government agencies, placing special emphasis on the confidentiality of census data and the fact that there is no connection between census operations and INS enforcement activities.

Attachment

**Guidelines for Immigration and Naturalization Service Enforcement Operations
During Census 2000**

1. In keeping with established standards of conduct of INS employees, no officer or other employee of the INS shall deliberately or intentionally engage in any conduct that is intended to inhibit or deter any person or group of persons from the fullest possible participation in the upcoming Census 2000.
2. While the INS must continue to fulfill its mission to enforce the Immigration and Nationality Act and related civil and criminal provisions, enforcement operations during the period of the census should be planned and conducted to avoid adverse effects on census participation. These guidelines apply throughout the national census period, March through August, 2000.
3. Accordingly, the INS will minimize its visibility during peak Census 2000 activity periods, exercising particular consideration in primarily residential areas. "Residential areas" include all locations where individuals may reside and be counted, including migrant workers camps and shelters for people without housing, such as the homeless, runaways, or abused women and children. INS enforcement operations that may result in large numbers of arrests, other than standard patrols of the border and public transportation facilities, should not be planned in residential areas during Census 2000 enumeration. This does not preclude INS officers from entering residential areas in order to conduct ongoing investigations. Examples include following a load of smuggled aliens to a drop house, executing a warrant of arrest on a criminal alien in a residential area, or other activity related to organized crime, alien smuggling, or production or sale of fraudulent documents.
4. INS Regional Directors must concur in advance with any high visibility interior operations that might have an impact on census participation (e.g., where the size, scope or nature of the operation is likely to draw significant public attention). All other interior enforcement activity that might impact census participation must be approved at a level no lower than the Deputy District Director or Deputy Chief Patrol Agent. It is a longstanding policy that INS does not conduct neighborhood sweeps and care should be taken to avoid creating a public perception that such enforcement operations occur.
5. Press and public informational material shall be sensitive to the impression and impact such information may have on responses to the census. Press materials and statements referring to activities described in paragraph 4 of these guidelines must be coordinated with Yvette La Gonterie, INS Headquarters' Office of Field Operations, and Nancy Cohen, Office of Public Affairs, prior to release to the media.
6. Relationships shall be established and maintained at the headquarters, regional and district levels with Census Bureau counterparts so that procedures will be developed to resolve complaints, concerns, and rumors relating to INS operations during Census 2000.
7. Census enumeration records receive confidential treatment pursuant to Title 13 United States Code (U.S.C.) §§ 8 and 9. As required by these confidentiality provisions, the Census

Bureau may not give the Immigration and Naturalization Service access to any individually identifiable census data or information. INS officers shall under no circumstances seek, accept or use any census information in violation of 13 U.S.C. §§ 8 and 9. Further, census-related activity may not be used as a source of leads or intelligence-gathering for INS operations in any way.

8. Upon request, efforts should be made to communicate to the public that the INS will have no access whatsoever to information collected by the Census Bureau and that there is no connection between census participation and INS enforcement activities.

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

RESPONSE TO QUERY

03/13/00

INS Statement on Census 2000

The Immigration and Naturalization Service (INS) fully supports the Census Bureau's effort to have all persons participate in Census 2000, regardless of immigration status. It is the longstanding view of the Department of Justice that the Constitution requires all inhabitants of the United States, including illegal aliens, be counted in the census.

Census data receive confidential treatment under the law. Individual responses collected and maintained by the Census Bureau cannot be obtained or reviewed by the INS. INS employees will under no circumstances seek, accept, or use any census information in violation of the law.

There is no connection at all between census participation and INS enforcement activities. INS employees will avoid contact or interference with census workers and community-based census outreach sites. Census-related activities may not be used as a source of leads or intelligence-gathering for INS operations in any way, and INS will strive to avoid any appearance that they could be connected.

While INS will continue to enforce the Immigration and Nationality Act during the census, INS will take special care in residential neighborhoods and defer some routine and discretionary enforcement operations during peak census activity periods. Special consideration and supervisory review of enforcement actions will occur during the census. National security and public safety operations, however, will go forward.

The INS issued guidance to its field offices emphasizing the special steps to be taken in regard to enforcement operations during Census 2000.

3/13/00

**Questions and Answers for Internal Use Only
Census 2000**

Q1: Is the INS declaring a moratorium on enforcement actions during Census 2000? If not, why?

A1: The INS is responsible for enforcing our nation's immigration laws and will continue to do so during the census. Therefore, the INS is not declaring a moratorium or suspending enforcement actions during the census. However, in our effort to support and encourage full participation in Census 2000, special steps are being taken to avoid adverse impact of INS activity on census data collection. To ensure that INS employees avoid contact or interference with census workers and community-based census outreach sites, each INS region and district office will be told of peak census activity times in their areas. In addition, special consideration and supervisory review of enforcement actions will occur during the census and some routine or discretionary enforcement operations will be deferred during peak census activity periods.

Q2: You have said that "special consideration" and "additional supervisory review" of enforcement actions will occur during the census. What does this mean? Please provide examples.

A2: INS will minimize its enforcement activity in primarily residential areas and any high visibility operations during peak census activity periods. Enforcement operations that could result in large numbers of arrests, other than standard patrols of the border and public transportation facilities, will generally not be planned in residential areas during peak census activities.

This does not, however, prevent INS officers from conducting ongoing criminal and time sensitive investigations, even in residential neighborhoods. Examples of ongoing investigations include following a load of smuggled aliens to a drop house, executing warrants of arrest on criminal aliens, and activities related to organized crime, alien smuggling and the production or sale of fraudulent documents.

INS regional Directors must approve any high visibility interior enforcement operations that may have a significant impact on census participation, such as where the size, scope or nature of the operation is likely to draw significant public attention during peak census activity periods.

Q3: Critics say that illegal aliens will not participate in the census without an INS moratorium on enforcement operations. How do you respond to that criticism?

A3: The law requires that census data be treated confidentially. (13 U.S.C. Sections 8 & 9.) The INS does not have access to any individual response to the census. The INS

will not use census operations or participation as a basis for enforcement in any way. All inhabitants of the United States, regardless of immigration status, should participate in the census without fear that INS will use it, i.e., information or fact of participation, against them. It just will not happen.

Q4: Community-based sites, known as Questionnaire Assistance Centers and Be Counted Sites, will be helping with the census. Are people who seek assistance at these sites safe from INS enforcement?

A4: Yes, INS will not target these census-related sites for immigration enforcement. There is absolutely no connection between census activities and INS operations.

Q5: What about worksite enforcement activities during the census?

A5: As with other enforcement operations during the census, with high visibility operations that may have a significant impact on census participation, such as where the size, scope or nature of the operation is likely to draw public attention during peak census activity, INS regional Directors must approve the operation.

Q6: Why are illegal aliens counted in the census? This means that congressional districts are based on where illegal aliens live.

A6: The basis for counting all persons residing in the United States, regardless of immigration status, is the U.S. Constitution. Census information has various important purposes. For example, census information is used to distribute government funds to communities and states for highways, schools, and health facilities. Communities may not receive their fair share of this valuable funding without a complete, accurate census.

Q7: What timeframe will the INS guidelines regarding the census be in effect?

A7: The INS guidelines regarding census participation sensitivity apply throughout the national census period, March through August 2000.

Q8: Does the field guidance apply to the new Quick Response Teams (QRTs)?

A8: Yes, QRTs operate under the supervision of the district offices and are subject to the guidance.

Robin J. Bachman 05/28/99 08:48:20 PM

Record Type: Record

To: Karen Tramontano/WHO/EOP, Irene Bueno/OPD/EOP

cc: Christopher.Morton @ mail.doc.gov, EBloom1 @ doc.gov @ inet, rshapiro @ mail.doc.gov @ inet

Subject: VP Materials

In addition to our standard paper, here's what I gave to the VP's office. They also have the OLC opinion and the Daley, Meissner letters. I'm sure they'll tweak these for his briefing book which goes into him Monday around noon. If you see problems, Dan Taylor in VP policy and Jano Cabrera in VP press are good contacts.

Robin



Confidentiality.d Confidentiality Guidance



052899.do General Guidance



vp0528.do This was their press release draft, Rob and I edited it. I suspect they might do some slight touch-ups.



TP0125b.do They wanted Supreme Court info.

Census Confidentiality Issue

BACKGROUND:

Title 13 of the Census Act ensures that, by law, the Census Bureau cannot share a respondent's answers with any other government agency. Recently, questions have been raised about the effect of the 1996 Immigration Act on this longstanding privacy protection. On June 2, 1999, the Commerce Department will make available a recent Department of Justice Office of Legal Counsel (OLC) opinion on this issue.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) contains provisions that seem to weaken the Census Act by allowing government agencies to seek or report information about the identity and whereabouts of undocumented immigrants.

The OLC opinion states that the confidentiality requirement was not affected by IIRIRA. OLC concluded that the IIRIRA provision "does not repeal" the census confidentiality provision, and that the confidentiality requirement remains in full force and effect.

Question: Why Is Confidentiality so Important to Conducting a Successful Census?

Answer: We want to make sure everyone participates in Census 2000.

The census is a vital, statistical snapshot that tells us who we are and where we are going as a nation. And though it is taken only once a decade, it is important to our everyday lives. The census helps communities determine where to build everything from schools to supermarkets, and from homes to hospitals. And it helps the government decide how to distribute funding to states and localities.

We know that in 1990, the census missed more than 8 million people, and double-counted more than 4 million. Low-income people living in cities and rural communities, minorities and children were disproportionately undercounted. Clearly, in 1990 we didn't have the most accurate data.

We must do all we can to ensure everyone participates in Census 2000. With the confidentiality provisions, undocumented immigrants can fill out the Census form without the fear that any information they provide will later be transmitted, or obtained by the INS, IRS or local police departments. And respondents can also be assured that the Census Bureau will not sell or give away their addresses.

As the Census Director has noted, the confidentiality protection is essential

to the success and integrity of the census process.

Everyone counts so everyone should be counted.

Question: **Has The INS Commented On This Opinion?**

Answer: Yes. In a letter to Commerce Secretary Daley, INS Commissioner Meissner says: "The INS agrees with the OLC's opinion in this matter. I can assure you that INS officials as in the past, will not seek or accept any census information provided in violation of 13 U.S.C. Sec. 9(a). We at the INS understand that the assurance of the confidentiality of census information has stood as a bedrock guarantee upon which all U.S. citizens and residents can rely. Further, the INS agrees that this guarantee is essential to the success and integrity of the census proce

Census Guidance

OPERATIONAL PLAN

On February 22, 1999, Census Director Prewitt outlined the Census Bureau's revised Census 2000 plan.

Question: What Did Director Prewitt Announce?

Answer: Dr. Prewitt released a detailed summary of the operational plan for Census 2000.

The professionals at the Census Bureau refined their plan based on the experiences of the Dress Rehearsals -- which again showed that the conventional head count produces a significant undercount -- and to be responsive to the January Supreme Court decision.

The Administration's goal remains the same. Census 2000 must be the most accurate census possible completed using the most up-to-date scientific methods as recommended by the National Academy of Sciences and the vast majority of the professional scientific community.

Question: Why Is The Administration Conducting A Two-Number Census?

Answer: The Census Bureau will produce a complete and accurate census that will result in an official number. To do this the Census Bureau will:

Mail census forms to every household and do door-to-door follow-up to the homes that did not respond to the mailing;

for the first time in history, the Bureau will put on a national advertising campaign urging everyone to participate;

use special outreach to contact and encourage everyone to return their census forms, including people who do not have a fixed address;

carry out the Accuracy & Coverage Evaluation (ACE), a quality check which completes the census by evaluating accuracy and correcting any undercount.

The Supreme Court ruling said that the Bureau must produce an unadjusted number for purposes of apportionment. The Court also affirmed that the law **requires** the use of scientific methods for all other purposes.

SUPREME COURT RULING

Question: Does the Supreme Court's Decision Mean That the Census Bureau Cannot Use "Sampling" in Conducting the 2000 Census?

Answer: The Supreme Court's ruling was a narrow one focused on the use of sampling techniques for purposes of apportionment under the current statute. The Court went on to affirm that the law **requires** the use of scientific methods for all other purposes, if "feasible."*

The Census Bureau reviewed and revised its Census 2000 plan to be responsive to the January Supreme Court decision. To eliminate the undercount for all other purposes beyond apportionment of congressional seats among the states, Census 2000 will be completed using modern scientific methods. The Census Bureau has determined that it is feasible to use these methods and will use these methods to produce the most accurate census permitted under the law.

[*Writing for the majority, Justice O'Connor stated that the 1976 amendments to Title 13 U.S.C. (The Census Act) changed the provision in law from one that "*permitted* the use of sampling for purposes other than apportionment into one that *required* that sampling be used for such purposes if 'feasible.'" (p. 23) Justices Renquist, Scalia, Kennedy, and Thomas joined Justice O'Connor.]

Follow-up: And Will the Administration Use "Sampling" to Allocate Federal Funds and to Provide Data to States for Redistricting?

A: We believe that the Court affirmed that the law **requires** the use of scientific methods for all other purposes, if feasible, (which would include allocating Federal funds and providing data to the states for redistricting). The Census Bureau will complete the 2000 Census, as it has for decades, using modern scientific methods.

3/2/99 GAO REPORT

On March 2, 1999, Rep. Henry Waxman (D-CA), ranking member of the House Government Reform and Oversight Committee, released a U.S. Government Accounting Office (GAO) report titled: Formula Grants: Effects of Adjusted Population Counts on Federal Funding to States.

Question: Doesn't This GAO Report Show That There Are Winners And Losers When You Use Adjusted Data?

Answer: We know that in 1990, the census missed more than 8 million people, and double-counted more than 4 million. Low-income people living in cities and rural communities, minorities and children were disproportionately undercounted. Clearly, in 1990 we didn't have the most accurate data.

The census has real impact on the lives of real people, as the GAO report shows. Information gathered in the decennial census is used by states and local governments to plan schools and highways, by the federal government to distribute funds for health care and other programs, and by businesses in making their economic plans.

That is why we must do everything we can to ensure that everyone is included in the count. **Our goal is the most fair and accurate census possible, completed using the most up-to-date methods** as recommended by the National Academy of Sciences and the vast majority of the professional scientific community.

[If pushed: Funding should flow to where people live.]

VETO THREAT

Question: Will the President Veto Any Bill That Bars Scientific Methods for Non-apportionment Purposes?

Answer: As you know, the Supreme Court's ruling made it clear that the Census Bureau is required, if feasible, to use scientific methods for all other purposes. The President will fight any effort that prohibits the Administration from using lawful scientific methods to produce an accurate count. Yes, he will veto such a bill.

EMERGENCY SUPPLEMENTAL

Question: Were there Any Census Provisions in the Recent Supplemental?

Answer: Yes. The 1999 Emergency Supplemental Appropriations Act (H.R. 1141) allocated an additional \$44.9 million for Census 2000 activities in the fiscal year ending September 30, 1999. This amount is over and above the \$1.027 billion already appropriated for Census 2000 for the current fiscal year. Because of the Supreme Court ruling, the Bureau must expand its operational capacity to support follow-up visits to all households that don't return a census form by mail.

The President said in his signing statement: "I am pleased that the bill repeals a provision of law that had threatened to interrupt funding for the Departments of Commerce, Justice, State, and other agencies. In addition to removing this funding restriction, the bill provides the added resources needed to continue preparations for a decennial census. My Administration will work with the Congress to ensure that next year the Census Bureau has the funding needed to conduct the most accurate census possible." (5/21/99)

[The White House and the Hill are currently negotiating over fiscal year 2000. OMB is expected to send a 2000 figure to the Hill on 6/2/99.]

STATEMENT BY VICE PRESIDENT GORE

Next year, our nation will commence work on one of our country's most important Constitutionally mandated responsibilities -- ensuring a full and accurate Census count. I feel it is vitally important that we count every American for one simple reason: every single American counts.

The success of this great national enterprise depends on the participation of every person and the guarantee of the confidentiality of their answers.

And that is why I was pleased that the Department of Justice recently reaffirmed the right of the every person to have their census questionnaire answers and information protected -- without exception. Put simply, this decision will mean that everyone will be able to participate in the Census without fear of having their answers forwarded to the IRS, FBI, INS -- or any other government agency.

This decision will help ensure that on April 1st of 2000, everyone will be able to stand up and be counted.

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U.S. Department of Justice

Office of Legal Counsel

VIA FAX

Office of the Assistant Attorney General

Washington, D.C. 20530

May 18, 1999

**MEMORANDUM FOR ANDREW J. PINCUS
GENERAL COUNSEL
DEPARTMENT OF COMMERCE**

From: Randolph D. Moss *RDM*
Acting Assistant Attorney General

Re: The Effect of 8 U.S.C.A. § 1373(a) on the Requirement Set Forth in 13 U.S.C. § 9(a)
That Census Officials Keep Covered Census Information Confidential

You have inquired about the relationship between two federal statutes. The first provision is 13 U.S.C. § 9(a) (West 1994 & Supp. 1999), which sets forth the longstanding requirement that census officials must, with certain express exceptions, keep covered census information confidential. The second provision is section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-707, which now appears as 8 U.S.C.A. § 1373(a) (West 1999), and which concerns the authority of federal, state, and local government officials and entities to disclose to the Immigration and Naturalization Service ("INS") information regarding an individual's citizenship or immigration status. You have asked whether 13 U.S.C. § 9(a) has been partially repealed by 8 U.S.C.A. § 1373(a).¹ We conclude that it has not.

I.

It is useful at the outset to describe the two federal statutes that are at issue. We begin by describing the longstanding confidentiality provision that has been codified as 13 U.S.C. § 9(a). We then describe the recently enacted provision that addresses the disclosure of certain information to the INS that now appears as 8 U.S.C.A. § 1373(a).

Section 9(a) of title 13 represents the most recent codification of a statutory confidentiality requirement that dates back more than a century and that bars the disclosure of covered census information by census officials. See Baldrige v. Shapiro, 455 U.S. 345,

¹ See Letter from Andrew J. Pincus, General Counsel, United States Department of Commerce, to Randolph D. Moss, Acting Assistant Attorney General, Office of Legal Counsel, United States Department of Justice, Re: Effect of the Illegal Immigration Reform and Immigrant Responsibility Act on the Confidentiality of Census Information (May 14, 1999) ("Pincus Letter").

356-59 (1982) (reviewing the history of the requirement); Census Data Unavailable to Women's Bureau of Department of Labor and Individuals, 36 Op. Att'y Gen. 362, 363-66 (1930) (same). The core of this requirement has remained essentially unchanged since its initial enactment and generally prohibits census officials from disclosing covered information. The provision has been understood, in the absence of clear exceptions, to impose a broad requirement of confidentiality. See Baldrige, 455 U.S. at 359 (holding that lists of addresses collected and utilized by the Bureau of the Census are exempt from disclosure by civil discovery or under the Freedom of Information Act); United States v. Bethlehem Steel Corp., 21 F.R.D. 568, 572 (S.D.N.Y. 1958) (barring disclosure to the Department of Justice); Confidential Treatment of Census Records, 40 Op. Att'y. Gen. 326 (1944) (subjecting Archivist to statutory confidentiality requirement); Census Data Unavailable to Women's Bureau of Department of Labor and Individuals, *supra* (barring disclosure of census information to the Women's Bureau of the Department of Labor and Individuals).

At present, the provision enumerates certain express exceptions to the confidentiality requirement, the most recent of which were added by two amendments that Congress enacted in 1997. One of these amendments added a cross-reference to a contemporaneously enacted provision that permits certain otherwise prohibited disclosures to be made to the Census Monitoring Board. See Department of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-119, § 210(k), 111 Stat. 2471, 2487 (1997) (amending the face of 13 U.S.C. § 9(a)); *id.*, § 210(e)(3), 111 Stat. at 2485 (permitting disclosure to Census Monitoring Board). The other added a cross-reference to a contemporaneously enacted provision that permits certain otherwise prohibited disclosures to be made to the Department of Agriculture for the purpose of facilitating the agriculture census. See Census Agriculture Act of 1997, Pub. L. No. 105-113, § 4(a)(1), 111 Stat. 2274, 2276 (amending the face of 13 U.S.C. § 9(a)); *id.*, § 2(f), 111 Stat. at 2275 (permitting disclosure to the Agriculture Department).²

The statutory prohibition against the disclosure of census information now codified as 13 U.S.C. § 9(a) not only protects the personal privacy of persons who respond to the census, but also, in doing so, facilitates the administration of the census, which the Constitution commands the federal government to perform every ten years. See U.S. Const. art. I, § 2, cl. 3. As the Supreme Court observed in Baldrige v. Shapiro, "[a]lthough Congress has broad power to require individuals to submit responses, an accurate census depends in large part on public cooperation. To stimulate that cooperation Congress has provided assurances that information furnished to the Secretary [of Commerce] by individuals is to be treated as confidential." 455 U.S. at 354. Not surprisingly, therefore, federal law provides that census officials who violate the terms of the statutory confidentiality requirement may be subject to criminal prosecution for the commission of a felony, and, upon conviction, may face a

² Congress did not reenact the substantive confidentiality requirement itself, however, in amending the provision to include these express exceptions.

maximum prison term of five years. See 13 U.S.C. § 214 (1994).

The text of § 9(a) provides:

(a) Neither the Secretary, nor any other officer or employee of the Department of Commerce or bureau or agency thereof, or local government census liaison, may, except as provided in section 8 or 16 or chapter 10 of this title or section 2(f) of the Census of Agriculture Act of 1997 or section 210 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 -

(1) use the information furnished under the provisions of this title for any purpose other than the statistical purposes for which it is supplied; or

(2) make any publication whereby the data furnished by any particular establishment or individual under this title can be identified; or

(3) permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports.

No department, bureau, agency, officer, or employee of the Government, except the Secretary in carrying out the purposes of this title, shall require, for any reason, copies of census reports which have been retained by any such establishment or individual. Copies of census reports which have been so retained shall be immune from legal process, and shall not, without the consent of the individual or establishment concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding.³

In contrast to 13 U.S.C. § 9(a), section 1373(a) of title 8, entitled "Communication between Government agencies and the Immigration and Naturalization Service," is a recent enactment, and there is little in the way of legislative history that illuminates its scope.

³ Subsection (b) sets forth an additional, express exception to the limited ones that are contained in the body of subsection (a). This provision is not at issue in this matter. The subsection provides:

(b) The provisions of subsection (a) of this section relating to the confidential treatment of data for particular individuals and establishments, shall not apply to the censuses of governments provided for by subchapter III of chapter 5 of this title, nor to interim current data provided for by subchapter IV of chapter 5 of this title as to the subjects covered by censuses of governments, with respect to any information obtained therefor that is compiled from, or customarily provided in, public records.

Congress adopted the provision in the course of passing IRIRA in 1996, well after 13 U.S.C. § 9(a) had been enacted but just prior to the enactment of the recent amendments to 13 U.S.C. § 9(a) described above. The limitation was originally set forth as section 642(a) of IRIRA and is codified as section 1373(a) of title 8.

The text of § 1373(a) provides:

(a) In general

Notwithstanding any other provisions of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

Subsection (b) places an additional limitation on attempts to restrict a federal, state, or local government "entity" from making certain uses of information regarding the immigration status, lawful or unlawful, of any individual. Subsection (b) provides:

(b) Additional authority of Government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.⁴

⁴ Subsection (c) of section 1373 imposes a duty upon the INS to respond to certain requests for information about the citizenship or immigration status of individuals that it receives from governmental agencies. That portion of the provision is not at issue here. It provides:

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

II.

The question that we must resolve concerns the relationship between these two federal statutes, one of which sets forth a longstanding bar to the disclosure of sensitive information by census officials that may be enforced with criminal penalties, and the other of which sets forth a limitation intended to facilitate the disclosure of certain information to the INS.

We begin with the text of the statute that might be construed to have effected a repeal of prior law. We are mindful in doing so that "repeals by implication are not favored," United States v. United Continental Tuna Corp., 425 U.S. 164, 168 (1976); Morton v. Mancari, 417 U.S. 535, 551 (1974) ("When two statutes are capable of co-existence, it is the duty of the courts . . . to regard each as effective"), and that it is "[a] long-standing maxim of statutory construction that statutes are enacted in accord with the legislative policy embodied in prior statutes, and that therefore statutes dealing with the same subject should be construed together." Memorandum for Glen E. Pommerening, Assistant Attorney General for Administration, from Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, Re: Establishing a Maximum Entry Age Limit for Law Enforcement Officer Positions in the Department of Justice at 3 (Apr. 3, 1975).

Here, by virtue of its more recent enactment, and notwithstanding the 1997 amendments to 13 U.S.C. § 9(a), the potential repealer is 8 U.S.C.A. § 1373(a), the text of which provides that federal, state, or local governmental "entit[ies]" or "official[s]" may not "prohibit, or in any way restrict," certain types of disclosures to federal, state, or local government entities or officials. In our view, the text of § 1373(a) does not manifest the kind of clear congressional intention that is ordinarily required to effect the repeal of a federal statute such as 13 U.S.C. § 9(a). Indeed, if anything, the statutory text suggests that Congress did not intend to repeal existing, federal statutory prohibitions or restrictions on disclosure.

There would be nothing impermissible about a federal statute that took the form of a repeal of prior federal statutory disclosure prohibitions or restrictions. The question, here, however, is whether 8 U.S.C.A. § 1373(a) is such a federal statute, and textual evidence suggests that it is not. There is a straightforward way in which 8 U.S.C.A. § 1373(a) might have been drafted to repeal federal statutes prohibiting or restricting disclosure and to establish an interpretive background for future federal statutes that would favor disclosure: "Notwithstanding any provision of law, a federal, state, or local official or entity may provide information, without restriction" In contrast, the terms of § 1373(a) do not clearly invest governmental officials or entities with the affirmative authority to disclose information in circumstances where they otherwise would be prohibited from doing so by a federal statute. Rather, the provision is phrased as a limitation on the authority of government entities or officials to impose prohibitions or restrictions on disclosures by government entities or officials. The phrasing therefore requires that we determine, in order to discern the scope of the provision, the government "entities" to which Congress has directed this bar. A consideration of that question, in turn, reveals the problem with construing § 1373(a) to

supersede federal statutory prohibitions or restrictions on the disclosure of information.

One could read the text of § 1373(a) to supersede federal statutory prohibitions or restrictions on disclosure by concluding that the phrase a "federal, state, or local government entity or official may not prohibit, or in any way restrict" includes within its terms the United States Congress acting pursuant to its lawmaking authority in the same way that it would include within its terms states or local governments acting pursuant to their lawmaking authority. Such a construction would be at odds, however, with the fact that Congress may not, by statute, direct the Congress not to enact certain laws in the future. See, e.g., Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 135 (1810) (Marshall, C.J.) ("The principle asserted is that one legislature . . . cannot abridge the powers of a succeeding legislature. The correctness of this principle, so far as respects general legislation, can never be controverted."). That is not to say, of course, that Congress may not enact a statutory prohibition that Congress could lift only by subsequently repealing it. It is rather to say that Congress has no power to command itself by statute not to enact a law in the future, and thus that it would be odd to construe the command contained in § 1373(a) to have been intended to apply to Congress's own power to enact prohibitions or restrictions on disclosure. It would appear from the text, therefore, that the provision is intended to constrain the lawmaking discretion of other government officials and entities but not of the very governmental entity that is constitutionally vested with the lawmaking power of the federal government.

It is not possible, moreover, to construe § 1373(a) as if it were intended to apply only to federal statutory disclosure prohibitions or restrictions that had been enacted prior to the passage of § 1373(a). Such a construction would avoid the problem that we have just mentioned, but only by giving rise to a new one. It would be quite strange to conclude that Congress intended for § 1373(a) to apply only retroactively as a general matter, and the statutory text simply does not permit the provision to be construed to apply both prospectively and retroactively to state and local laws, but only retroactively to federal statutes.

We also do not believe that it would make sense to construe § 1373(a) as if it were intended to preclude federal officials or entities from implementing, through, for example, criminal prosecutions or disciplinary actions, federal statutory prohibitions or restrictions against disclosure. Such an interpretation would require one to make the dubious assumption that Congress intended to preclude federal officials from implementing statutory prohibitions or restrictions against disclosure that it had not seen fit to repeal.

These interpretive oddities do not arise if the text is construed to apply only to disclosure prohibitions or restrictions other than those imposed by federal statute. For example, § 1373(a) may be comfortably construed to displace conflicting state or local non-disclosure laws, even if they have been enacted by statute or ordinance;⁵ state and local

⁵ See infra, note 7.

governments must legislate in this area in accord with federal law, City of New York v. United States, 971 F. Supp. 789 (S.D.N.Y. 1997) (rejecting a Tenth Amendment challenge to the application of § 1373(a) to preempt a city executive order prohibiting city officials from disclosing certain information to the INS), and the rule that Congress may not bind its future lawmaking power is obviously not implicated by a federal statute that has such preemptive effect. Section 1373(a) also may be comfortably construed to limit the discretionary authority of federal officers or employees, or federal entities like administrative agencies, to adopt disclosure prohibitions or restrictions; federal officials or entities generally may exercise discretionary authority of this sort only to the extent that Congress allows by statute. The ease with which the provision may be read to cover these applications stands in marked contrast to the struggle that would be required to read the provision to cover federal statutory prohibitions or restrictions on disclosure.

To be sure, the presence of the prefatory phrase "notwithstanding any other provisions of Federal, State, or local law" does reflect a congressional intention to displace inconsistent law. It does not, however, support a broad construction of the substantive provision that would give rise to such inconsistencies. See Moyle v. Director, Office of Worker's Compensation Programs, 147 F.3d 1116, 1119 (9th Cir. 1998) ("The fact that [a statute] provides that it is effective '[no]rwithstanding any other provision of law' also does not evidence an express repeal of [the other] statute."), cert. denied, 67 U.S.L.W. 3641 (U.S. Apr. 19, 1999) (No. 98-927); Kee Leasing Co. v. McGahan, 944 F.2d 577, 582 (9th Cir. 1991) ('norwithstanding' phrase by itself did not in and of itself indicate a congressional intent to repeal other statute). The "notwithstanding" phrase merely prefaces the substantive limitation that § 1373(a) sets forth, and, as we have explained, the text of § 1373(a) suggests that this substantive limitation does not apply if Congress is the source of the prohibition or restriction in question. The limitation appears instead to be intended to apply only when the source of the prohibition or restriction on disclosure is an entity or official other than Congress. The "notwithstanding" phrase is thus best read to mean only that, notwithstanding a federal statute that would authorize federal officials or entities to exercise their general administrative discretion in a manner that would prohibit or restrict disclosures of the type identified in § 1373(a), such federal officials or entities may not exercise such discretion. The phrase should not be understood to refer, therefore, to federal statutes that themselves prohibit or restrict such disclosures.⁶

Nor do the terms of the title of subsection (b) of section 1373 of title 8, which employs similar language to subsection (a), reflect a congressional intention to cover federal statutory prohibitions or restrictions on disclosure. The subsection is entitled, "Additional Authority of

⁶ Questions may arise in some circumstances as to whether a federal statute constitutes a prohibition or restriction on disclosure or merely confers general administrative authority upon subordinate officials or entities that would enable them to determine in their discretion whether to adopt such prohibitions or restrictions. We have no need to address such questions here, however, because there is no question that 13 U.S.C. § 9(a) constitutes a federal statutory bar against disclosure.

Governmental entities." This language should not be read to suggest that Congress intended for the text of both subsections to authorize governmental entities or officials to make disclosures in contravention of otherwise applicable federal statutes. Section 1373 confers "additional authority" on state and local governmental entities to the extent that it preempts state or local disclosure prohibitions that would otherwise apply to them. Thus, even if the title to subsection (b) should be given interpretive weight, its terms are consistent with the construction of the text of § 1373(a) that we have set forth above.⁷

III.

The remaining evidence of congressional intent supports the inference that the text invites: that 8 U.S.C.A. § 1373(a) does not repeal federal statutory prohibitions or restrictions on disclosure to the INS of information concerning an individual's citizenship or immigration status.

As an initial matter, Congress amended the version of 13 U.S.C. § 9(a) that pre-dated the enactment of § 1373(a) after § 1373(a) had been enacted. The amendments, as we have already explained, added two express exceptions to the confidentiality requirement for census information that 13 U.S.C. § 9(a) had previously set forth. This recent history of express amendment is consistent with Congress's past practice of expressly identifying the relationship between the confidentiality requirement that 13 U.S.C. § 9(a) sets forth and other federal statutes. See, e.g., 42 U.S.C. § 11608 (1994) (setting forth the manner in which otherwise confidential covered census information may be disclosed to implement a certain treaty); 42 U.S.C. § 6274 (1994) (specifically abrogating protections conferred by section 9 of title 13 to implement a different statutory policy); 50 App. U.S.C. § 2411 (1994) (providing express exemption for covered census information from general disclosure requirement); see Pincus Letter, at 1 (noting that "the few statutory exceptions to this requirement are explicit and limited"). Because "this particular problem of statutory construction arises in a context in which Congress has historically legislated with care and specificity," Exchange Authority for Kaloko Honokohau National Historical Park, 6 Op. O.L.C. 251, 255 (1982), the absence of a

⁷ In concluding that the text of § 1373(a) should not be understood to repeal federal statutory prohibitions or restrictions on disclosure, we express no view as to whether other limitations on the scope of the provision may also be warranted by either its text or its purposes. We note, however, that, although, as we explain below, the legislative history comports with our conclusion that Congress did not intend § 1373(a) to supersede legislatively enacted federal prohibitions or restrictions on disclosure, see infra 11-12, the legislative history also suggests that Congress intended to supersede state and local prohibitions or restrictions on disclosure without regard to whether such prohibitions or restrictions had been enacted legislatively or adopted pursuant to the exercise of administrative discretion. See H.R. Rep. No. 104-469, pt. 1, at 277 (1996) (explaining that the House version of the measure "is designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS"). Thus, the legislative history casts doubt upon a construction of § 1373(a) that would leave in place all legislatively enacted prohibitions or restrictions on disclosure, including state and local ones.

reference in either statute to the other suggests that the text of 13 U.S.C. § 9(a) should be construed to mean just what it says, and that 8 U.S.C. § 1373(a) should be understood to have left in place the confidentiality requirement that 13 U.S.C. § 9(a) establishes.⁸

The fact that neither statutory provision refers to the other is also significant because it has long been assumed that, if Congress were to cut back on the confidentiality provision set forth in 13 U.S.C. § 9(a), it would do so clearly. In rejecting a request by the United States Department of Justice that census officials be ordered to disclose census information relevant to an investigation, Judge Weinfeld explained that "the purpose to protect the privacy of the information furnished to the Government is so clear and the public policy underlying the purpose so compelling that, absent a clear Congressional grant, there is no basis upon which to direct the Department of Commerce to make available to the Department of Justice or to any person the reports here sought." See Bethlehem Steel Corp., 21 F.R.D. at 572. The Attorney General employed a similar requirement of clarity in determining that a statute that granted custody of federal records to the Archivist did not displace the confidentiality requirement set forth in a predecessor to 13 U.S.C. § 9(a). "The policy of insuring by legislative and executive action that no unauthorized use is made of information obtained in the census, and the compelling reasons therefor, are set forth in the Attorney General's opinion of September 29, 1930, to the Secretary of Commerce. It would require very clear language in a general statute relating to the custody of records to justify attributing to the Congress an intention to depart from its policy, and there is no such clear indication in the Archives Act." 40 Op. Att'y Gen. at 327-28.⁹

The presumption employed in these cases arises from the important governmental interests that first prompted the enactment of a statutory requirement of confidentiality. Indeed, the Supreme Court emphasized the long history of this statutory requirement, and the

⁸ Shortly after § 642(a) of IIRIRA had been enacted, the Department of Justice submitted a legislative proposal to Congress that contained various technical amendments to IIRIRA and that would have expressly provided that § 642(a) did not repeal 13 U.S.C. § 9(a). See Letter to the Honorable Newt Gingrich, Speaker of the United States House of Representatives, from Andrew Foiss, Assistant Attorney General, Office of Legislative Affairs, (July 3, 1997), with attached legislative proposal entitled, "Technical Immigration and Naturalization Amendments of 1997." The fact that Congress did not enact this legislative proposal into law does not, of course, suffice to indicate that Congress intended for § 642(a) to repeal a portion of the confidentiality requirement set forth in 13 U.S.C. § 9(a). See Helvering v. Hallock, 309 U.S. 106, 121 (1940) (Frankfurter, J.) ("[W]e walk on quicksand when we try to find in the absence of corrective legislation a controlling legal principle").

⁹ The Supreme Court's decision in St. Regis Paper Company v. United States, 368 U.S. 208 (1962), is not to the contrary. In that case, the Court held that the Federal Trade Commission was entitled to order a private corporation to submit certain census-related information that it had maintained, but the Court did so on the basis of a determination that 13 U.S.C. § 9(a) imposes a confidentiality requirement that applies to government officials and not private persons or entities. See St. Regis Paper Company, 368 U.S. at 217-18. The question before us, by contrast, concerns whether the recent enactment of 8 U.S.C.A. § 1373(a) makes permissible the disclosure of census information by government officials who would otherwise be subject to the confidentiality requirement that 13 U.S.C. § 9(a) imposes.

important role that it plays in encouraging the public to cooperate with census officials, in the course of holding that Congress, in enacting the Freedom of Information Act or conferring authority on federal district courts to order the discovery of non-privileged information, could not have intended to override the requirement in a manner that would permit the disclosure of the lists of addresses that had been collected and utilized by the Bureau of the Census. See Baldrige, 455 U.S. at 356-62. The Attorney General also emphasized the important function that the confidentiality requirement performs in describing a nearly identical predecessor to the current, non-disclosure requirement: "There can be no doubt that the Congress intended in the act of June 18, 1929 . . . to give effective assurance to all persons required under penalty of law to furnish information to the Bureau of the Census for statistical purposes, that the identity of the informant and the information furnished would be held in complete confidence by the Bureau." Seventeenth Decennial Census, 41 Op. Att'y Gen. 120, 124 (1953); see also Bethlehem Steel Corp., 21 F.R.D. at 570-71 (explaining that a "purpose [of the requirement] was to encourage citizens to submit freely all data desired in recognition of its importance in the enactment of laws and other purposes in the national interests.").

The confidentiality provision to which the Attorney General referred was itself predated by section 25 of the Act of July 2, 1909, ch. 2, 36 Stat. 1, 9, which set forth the non-disclosure requirement in similar terms to the current requirement. The congressional committee that reported the bill that became the Act of July 2, 1909 explained that the provision was intended to secure "a more effective guaranty than heretofore of the confidential character of the returns as needed in many cases and desirable in all to enlist that public confidence without which census inquiries must fail." H.R. Rep. No. 60-960, at 23 (1908).

In addition, soon after the enactment of the 1929 statute, Act of June 18, 1929, ch. 46, 28 Stat. 21, 25, and consistent with its broad purpose, President Herbert Hoover assured the public by proclamation of November 22, 1929, that the statutory provisions barring the disclosure of census information made clear that:

[t]he sole purpose of the Census is to secure general statistical information regarding the population and resources of the country, and replies are required from individuals only to permit the compilation of such general statistics. No person can be harmed in any way by furnishing the information required. The Census has nothing to do with taxation, with military or jury service, with the compulsion of school attendance, with the regulation of immigration, or with the enforcement of any national, state, or local law or ordinance. There need be no fear that any disclosure will be made regarding any individual person or his affairs. For the due protection of the rights and interests of the persons furnishing information every employee of the Census Bureau is prohibited, under heavy penalty, from disclosing any information which may thus come to his knowledge.

Proclamation No. 1898 (1929).

In light of the federal government's longstanding commitment to confidentiality in this area, there is every reason to expect that Congress would have spoken with particular clarity if it had intended to cut back on the scope of 13 U.S.C. § 9(a) in enacting 8 U.S.C.A. § 1373(a). The plain terms of 13 U.S.C. § 9(a) certainly make clear the nature of this federal governmental commitment to confidentiality, as they render covered census information immune from legal process. A broad construction of 8 U.S.C.A. § 1373(a), however, would permit census officials to disclose to INS employees otherwise protected census information even in the absence of a court order requiring them to do so. It is unlikely that, in light of past practice, Congress would have adopted such a significant limitation on the scope of the census confidentiality requirement without either referring to it expressly in 8 U.S.C.A. § 1373(a) or an amendment to 13 U.S.C. § 9(a), or, at the least, using more direct language than it has employed here.

Finally, the discussion in the legislative reports that directly concerns 8 U.S.C.A. § 1373(a) accords with the conclusion that Congress did not intend to effect the repeal of federal statutory prohibitions or restrictions such as 13 U.S.C. § 9(a). The conference report to HIRIRA, for example, states that section 642(a), which now appears as 8 U.S.C.A. § 1373(a), "provides that notwithstanding any other provision of Federal, State, or local law, no State or local government entity shall prohibit or in any way restrict any government entity or official from sending to or receiving from the INS information regarding the immigration status of any individual in the United States." H.R. Conf. Rep. No. 104-828, at 249 (1996). The report's failure to refer to prohibitions or restrictions by federal government entities may have been the result of an oversight, but the omission nonetheless makes it difficult to discern from the conference report a congressional intention to repeal federal statutory prohibitions or restrictions against disclosure, such as the one contained in 13 U.S.C. § 9(a).

In addition, the Senate Report appears to be focused on state and local disclosure prohibitions and restrictions. Although the report provides that the provision that would later become section 642(a) "[p]rohibits any restriction on the exchange of information between the Immigration and Naturalization Service and any Federal, State, or local agency regarding a person's immigration status," S. Rep. No. 104-249, at 19 (1996), the next two sentences suggest that Congress was concerned with state and local restrictions, not federal statutory ones: "Effective immigration law enforcement requires a cooperative effort between all levels of government. The acquisition, maintenance, and exchange of immigration-related information by State and local agencies is consistent with, and of potentially considerable assistance to, the Federal regulation of immigration and the achieving of the purposes and objectives of the Immigration and Nationality Act." *Id.* at 19-20.

The House Report also fails to provide support for construing 8 U.S.C.A. § 1373(a) to effect the repeal of federal statutory prohibitions or restrictions on disclosure. Indeed, at the time of the report, the bill applied only to state and local prohibitions or restrictions on disclosure, not federal ones. H.R. Rep. No. 104-469, pt. 1, at 104 (1996). To the extent that the report may be understood to shed any light on the kind of prohibitions or restrictions on

disclosure that Congress had in mind in enacting § 642(a), moreover, it suggests that a narrow construction is appropriate. The report states, for example, that "[t]he Committee believes that immigration law enforcement is as high a priority as other aspects of Federal law enforcement, and that illegal aliens do not have the right to remain in the U.S. undetected and unapprehended." H.R. Rep. No. 104-469, pt. 1, at 277 (1996). The report appears to suggest, therefore, that Congress intended to ensure that the INS would not be placed at a comparative disadvantage in performing its law enforcement responsibilities. If § 1373(a) were construed to repeal the applicable portion of 13 U.S.C. § 9(a), however, the INS would be capable of obtaining census information relevant to its law enforcement mission even though other federal agencies would not. The report provides no support for a construction of § 1373(a) that would have the consequence of thus privileging the INS.¹⁰

V.

For the reasons set forth above, we conclude that 8 U.S.C.A. § 1373(a) does not repeal 13 U.S.C. § 9(a).

¹⁰ This evidence from the legislative history may suggest that 8 U.S.C.A. § 1373(a) is not intended to apply to any provision of law, whether federal, state, or local, that imposes a confidentiality requirement that applies to bar disclosures not simply to the INS, but to government agencies generally. We do not address here, however, whether such a distinction between types of confidentiality requirements would be compatible with the text of 8 U.S.C.A. § 1373(a). Cf. Employment Div., Dept. of Human Res. v. Smith, 494 U.S. 872, 878 (1990) (interpreting the word "prohibiting" in the Free Exercise Clause to incorporate an implicit distinction between direct and indirect prohibitions). We do note that while it is clear that Congress intended for 8 U.S.C.A. § 1373(a) to displace state or local provisions that specifically targeted disclosures to the INS for special prohibition, see City of New York v. United States, 971 F. Supp. 789, 792 (S.D.N.Y. 1997), the federal statutory bar to disclosure that is set forth in 13 U.S.C. § 9(a) is not similarly targeted. It applies without regard to whether the information to be protected concerns an individual's citizenship or immigration status or whether the disclosure is to be made to the INS or some other law enforcement agency.



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 I Street NW
Washington, DC 20536

MAY 26 1999

The Honorable William M. Daley
Secretary of Commerce
Washington, DC 20230

Dear Mr. Secretary:

I am writing in response to your letter of May 21, concerning the effect of section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) on the longstanding ban on disclosure by census officials of census information. I am aware that the Office of Legal Counsel of the Department of Justice (OLC), after its thorough review of this issue, has confirmed that the provisions of 13 U.S.C. § 9(a), which prohibit the Census Bureau from disclosing individually identifiable census information to the Immigration and Naturalization Service (INS), are not affected by section 642(a) of IIRIRA, and remain fully in effect. The INS agrees with OLC's opinion in this matter.

I can assure you that INS officials, as in the past, will not seek or accept any census information provided in violation of 13 U.S.C. § 9(a). We at the INS understand that the assurance of the confidentiality of census information has stood as a bedrock guarantee upon which all U.S. citizens and residents can rely. Further, the INS agrees that this guarantee is essential to the success and integrity of the census process. If you have any concerns regarding this or any other matter, please do not hesitate to contact me.

Sincerely,

Doris Meissner
Commissioner



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Immigration and Naturalization Service**

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Sincerely,

A handwritten signature in cursive script, reading "Doris Meissner".

Doris Meissner
Commissioner



*United States Department of Justice
Immigration & Naturalization Service
Office of the Executive Associate Commissioner
Policy and Planning*

*425 I Street, NW
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Fax Cover Sheet

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could be faxed to people. Q+As would
remain internal only.*

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

RESPONSE TO QUERY

00/00/00

DRAFT

2/9/00 8:37 AM

INS Statement on Census 2000

The Immigration and Naturalization Service (INS) supports the Census Bureau's effort to have full participation in Census 2000 by all persons, regardless of immigration status. It is the longstanding view of the Department of Justice that the Constitution requires that all inhabitants of the United States, including illegal aliens, be enumerated in the census.

Census data receive confidential treatment under the law. Individual responses collected and maintained by the Census Bureau cannot be obtained or reviewed by the INS for any purpose.

In keeping with established standards of conduct and the INS' successful experience during the 1990 Census, INS employees will not deliberately inhibit or deter any person or group from full participation in Census 2000. While INS will continue to enforce the Immigration and Nationality Act during the census, steps are being taken to avoid potential adverse effects on census participation. This includes special consideration and additional supervisory review of enforcement operations.

The INS issued guidance to its field offices emphasizing the special steps to be taken in regard to enforcement operations during Census 2000.

DRAFT

Questions and Answers for Internal Use Only Census 2000

Q1: Is the INS declaring a moratorium on enforcement actions during Census 2000? If not, why?

A1: The INS is not declaring a moratorium or suspending enforcement actions during the census. The INS is responsible for enforcing our nations immigration laws and will continue to do so during the census. However, in our effort to support full participation in Census 2000, special steps are being taken to ensure that whenever possible INS does not adversely impact census data collection. Compelling law enforcement issues, like public safety and ongoing criminal investigations, must be given consideration.

Q2: Critics say that illegal aliens will not participate in the census without an INS moratorium on enforcement operations. How do you respond to that criticism?

A2: The law requires that census data be treated confidentially. (See 13 USC, Sections 8 & 9.) The INS will not have access to any individual responses to the census. All inhabitants of the United States, regardless of immigration status, should participate in the census without fear that INS will use the information against them. It just will not happen.

Q3: You have said that "special consideration" and "additional supervisory review" of enforcement actions will occur during the census. What does this mean? Please provide examples.

A3: INS will minimize its visibility in primarily residential areas during peak census activity periods. Enforcement operations that may result in large numbers of arrests, other than standard patrols of the border and public transportation facilities, will not be planned in residential areas during peak census activities.

This does not, however, prevent INS officers from conducting ongoing criminal investigations in residential areas. Examples of ongoing investigations include executing an arrest warrant on a criminal alien and activities related to organized crime – such as alien smuggling and the production or sale of fraudulent documents.

INS regional directors must concur in advance with enforcement operations where the size, scope or nature of the operation is likely to draw public attention during peak census activity.

Q4: What about worksite activities during the census?

A4: As with other enforcement operations during the census, where the size, scope or nature of the operation is likely to draw public attention during peak census activity, INS regional directors must concur in advance. There must be a compelling law enforcement reason for conducting the operation during peak census activity.