**Written Testimony of Kelly Percival**

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**Before the New York City Council Committee on Governmental Operations, Committee on Immigration, and Committee on State and Federal Legislation**

**RE: Oversight – Preparations For a Complete Count in the 2020 Census**

**October 29, 2019**

Good afternoon members of the Joint Committee. My name is Kelly Percival, and I am Counsel to the Democracy Program at the Brennan Center for Justice at NYU School of Law. I am pleased to be testifying today about how the Council and your respective Committees can help ensure that every resident of New York City is counted in the 2020 Census.

The Brennan Center is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. Our Democracy Program focuses on ensuring that all Americans are equally represented in our government and have an equal voice in our elections. Our work promoting voting rights, campaign finance reform, and redistricting integrity seeks to ensure that American democracy is responsive to the needs and desires of all people.

As part of this work, the Center seeks to promote a fair and accurate decennial census. The census is the cornerstone of American democracy. Census population numbers are used for apportioning Congress, drawing district boundaries for everything from congressional seats to local city council districts, as well as allocating billions of dollars annually in public funding for basic services like schools, roads, and hospitals. Counting everyone here in New York City will be essential for the City to get the financial support it needs to support these services over the next decade.

The 2020 Census faces a variety of threats, ranging from cybersecurity issues to lack of funding. I would like to focus my remarks today on one threat in particular: widespread fears that the federal government intends to use census data to harm census respondents. More importantly, I will suggest what the City can do to limit that threat and best position your residents to be fully counted in 2020.

First, the threat. Concerns about the confidentiality of data submitted to the Census Bureau and fears of repercussions for participating in the census are discouraging people from standing up to be counted in 2020. A Census Bureau survey conducted earlier this year found that almost one-third of respondents were “extremely concerned” or “very concerned” that the Census Bureau would not keep their answers confidential. And nearly one-quarter were “extremely” or “very” concerned that the Census Bureau would share their answers with other government agencies or use their answers against them in some way.[[1]](#footnote-1)

These concerns are not shared equally. Communities of color—populations that the Census Bureau has long struggled to count fully—are most likely to fear that participating in the 2020 Census may result in harm to them. A recent study by the Pew Research Center, for example, found that Black and Hispanic residents are significantly less likely to respond to the 2020 Census than non-Hispanic whites.[[2]](#footnote-2) The Census Bureau has likewise found that Black, Hispanic, and Asian residents are much more concerned about the confidentiality of their census data than white residents.[[3]](#footnote-3)

Many of these fears stem from the Trump administration’s efforts to include a historically unprecedented citizenship question on the 2020 Census. When the Supreme Court held in June 2019 that the administration had acted illegally in attempting to add the question, the President issued an Executive Order calling on the Census Bureau to collect citizenship data from other administrative agencies that it cannot collect through the 2020 Census itself. [[4]](#footnote-4) That order has caused further confusion and exacerbated fears that census data will be used for harmful purposes.

In a city as racially and ethnically diverse as New York, allaying these fears will be essential to ensuring that everyone is equally counted.

The City can play a central role in counteracting this climate of fear by building public confidence in the security of census data.

The City should undertake advertising and public education campaigns to assure affected populations that no citizenship question will appear on the 2020 Census and that the information they provide on the census cannot be used against them. The City’s public messaging should include information about the laws that protect the confidentiality of census data. Those laws are ironclad. The federal Census Act—Title 13 of the U.S. Code— prohibits the Census Bureau from disclosing any personally identifiable information that it receives.[[5]](#footnote-5) Title 13 also makes it illegal for census data to be used for any nonstatistical purpose. [[6]](#footnote-6) That means that the government cannot use census data for things like immigration enforcement or criminal prosecution. It is also illegal for the Census Bureau to give census responses to other government agencies. In other words, agencies like Immigration and Customs Enforcement have no legal way to access census responses.

In addition to those core protections, Title 13 prohibits anyone except for Census Bureau employees to see census responses.[[7]](#footnote-7) Bureau employees are sworn to secrecy under the threat of criminal prosecution, and they can be sent to prison for up to five years and fined up to $250,000 if they break their oath.[[8]](#footnote-8)

Finally, Title 13 prohibits the federal government from using census responses to harm anyone.[[9]](#footnote-9)

All these prohibitions apply equally to any information the Census Bureau gathers using administrative records from other agencies, including any information on citizenship that the Bureau may gather pursuant to the July 11 Executive Order.

In order to ensure maximum participation in the 2020 Census, census respondents should be informed that the Bureau operates as a sort of vacuum: it can take in most any information it wants from other agencies, but it cannot release that information unless it complies with all the applicable confidentiality restrictions. The Census Bureau’s most recent policy on safeguarding and managing census data endorses this view, and specifically notes that Title 13 protects administrative records the Bureau receives from other agencies.[[10]](#footnote-10) John Abowd, the Bureau’s chief scientist, moreover, confirmed this strict confidentiality policy in a recent presentation on collecting administrative records on citizenship.[[11]](#footnote-11)

Title 13 is just one of the many laws that protect the confidentiality of census data. Other federal laws, including the Confidential Information Protection and Statistical Efficiency Act, the Privacy Act, and the tax code, provide additional safeguards. I have included a comprehensive guide to these laws in my written testimony.[[12]](#footnote-12)

Educating the public on the strength of these confidentiality protections can work in tandem with communications about the real-world impacts that the census will have on every family and community in New York City. Such a public message will help ensure that every person feels comfortable getting counted in 2020 and motivated to do so.

Thank you so much for the opportunity to testify today. I am happy to answer any questions.

1. *See* U.S. Census Bureau, 2020 Census Barriers, Attitudes, and Motivators Study Survey Report (Jan. 24, 2019), 39, 43, <https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2020-report-cbams-study-survey.pdf> [↑](#footnote-ref-1)
2. *See* D’Vera Cohn & Anna Brown, *Most U.S. adults intend to participate in 2020 census, but some demographic groups aren’t sure*, Pew Research Ctr., (Oct. 18, 2019), <https://www.pewresearch.org/fact-tank/2019/10/18/most-u-s-adults-intend-to-participate-in-2020-census/> (finding 26% of black adults and 21% of Hispanic adults unlikely to respond to the census, compared to just 12% of white adults). [↑](#footnote-ref-2)
3. *See* CBAMS, *supra*, note 1, at 40. [↑](#footnote-ref-3)
4. Exec. Order No. 13,880, 84 Fed. Reg. 33,821 (July 11, 2019). [↑](#footnote-ref-4)
5. 13 U.S.C. § 9(a)(2). [↑](#footnote-ref-5)
6. 13 U.S.C. § 9(a)(1). [↑](#footnote-ref-6)
7. 13 U.S.C. § 9(a)(3). [↑](#footnote-ref-7)
8. 13 U.S.C. § 214; 18 U.S.C. §§ 3559, 3571. [↑](#footnote-ref-8)
9. 13 U.S.C. § 8(c). [↑](#footnote-ref-9)
10. *See* Census Bureau, DS007: Safeguarding and Managing Information 5 (2017), 5, <https://www2.census.gov/foia/ds_policies/ds007.pdf>?. [↑](#footnote-ref-10)
11. *See* John M. Abowd, Census Bureau Citizenship Data Research and Product Development, (Sept. 6, 2019), 25, <https://assets.documentcloud.org/documents/6386176/Census-Bureau-Citizenship-Data-Research-and.pdf> (“As with all administrative data ingested by the Census Bureau, the citizenship data will be used only for statistical purposes. As with all administrative data ingested by the Census Bureau, the confidentiality of the citizenship data will be fully protected by Title 13, Section 9….”). [↑](#footnote-ref-11)
12. *See* Kelly Percival, *Federal Laws that Protect Census Confidentiality*, The Brennan Center for Justice at NYU School of Law, (Feb. 2019), <https://www.brennancenter.org/sites/default/files/2019-08/Report_Federal_Laws_Census_Confidentiality.pdf>. [↑](#footnote-ref-12)