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# POLICY BRIEF

## Indian Country Opposes Shortened Census Timeline

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Controversial changes to the U.S. Census Bureau’s operational plans mean hard-to-reach populations face an increased threat of being undercounted in the 2020 Census and therefore a greater potential of being underrepresented and underfunded in the next decade.

In April, the Census Bureau asserted that it needed to extend<sup>1</sup> the end of the Census data collection period by three months, from July 31 to October 31, due to delays caused by the COVID-19 pandemic. The Census Bureau asked Congress to extend its statutory reporting deadlines for apportionment and redistricting into 2021. Thus far, no such legislation has been signed into law—although the Heroes Act<sup>2</sup> passed by the House of Representatives in May did include relevant provisions.<sup>3</sup> In order for the Census Bureau to have sufficient time to conduct data collection, analysis and reporting, the Congress must act to extend its statutory deadlines.

On August 3, the Census Bureau released a surprise statement,<sup>4</sup> announcing that it intends to end the data collection period, including self-response options, on September 30. This move curtails the Census Bureau’s data gathering operations by a whole month and gives families less time to participate in the U.S. Census.

The Census Bureau says it is confident that it will “meet a similar level of household responses as collected in prior censuses, including outreach to hard-to-count communities.”<sup>5</sup> Outside observers, however, are doubtful the bureau will be able to fulfill its mandate and Constitutional obligation to count “the whole number of persons in each state”<sup>6</sup> while restricting operations. For example, the Government Accountability Office issued a report,<sup>7</sup> declaring that the “recent decision to compress Census timeframes poses additional risks to an accurate count.” Additionally, four former U.S. Census Bureau Directors issued a strongly worded statement opposing the bureau’s decision, stating, in part, “we strongly urge the Congress to extend the legal deadlines for the 2020 Census and to require that the Census

<sup>1</sup> U.S. Census Bureau. Press Release. April 13, 2020. <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html>

<sup>2</sup> Congress. H.R.6800 - The Heroes Act. <https://www.congress.gov/bill/116th-congress/house-bill/6800/text>

<sup>3</sup> Wang, H. May 12, 2020. In COVID-19 Relief Bill, House Democrats Propose Pushing Census Deadlines. NPR. <https://www.npr.org/sections/coronavirus-live-updates/2020/05/12/854909600/in-covid-19-relief-bill-house-democrats-propose-pushing-census-deadlines>

<sup>4</sup> U.S. Census Bureau. Press Release. August 3, 2020. <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>

<sup>5</sup> Ibid.

<sup>6</sup> Cornell Law School. 14<sup>th</sup> Amendment. <https://www.law.cornell.edu/constitution/amendmentxiv>

<sup>7</sup> U.S. Government Accountability Office. August 27, 2020. 2020 Census: Recent Decision to Compress Census Timeframes Poses Additional Risks to an Accurate Count. <https://www.gao.gov/assets/710/709050.pdf>

Bureau to continue all data collection operations through October 30, 2020.”<sup>8</sup>

A number of cities, counties, and civil rights organizations have filed a lawsuit<sup>9</sup> in an attempt to ensure the Census Bureau would maintain its stated data collection end date of October 31. The Navajo Nation, the Gila River Indian Community, and the Phoenix Indian Center joined the lawsuit, which alleges that the Census Bureau decision places already disadvantaged communities at greater risk of underrepresentation and underfunding, as well as risking an incomplete and inaccurate enumeration. Tribal interests note that Indian Country previously suffered an undercount of about 4.9 percent<sup>10</sup> in the 2010 Census, which cost tribes valuable resources over the past decade.

On September 5, a federal judge issued a temporary restraining order,<sup>11</sup> preventing the Census Bureau from acting on its plan to end the Census count early. The order is good until the court’s hearing on the lawsuit, September 17.

“Because the decennial census is at issue here, an inaccurate count would not be remedied for another decade, which would affect the distribution of federal and state funding, the deployment of services, and the allocation of local resources for a decade,” wrote U.S. District Court Judge Lucy Koh.<sup>12</sup>

“I hope that this TRO causes the Census Bureau to rethink its rush plan and go back to its original Covid-19 plan and avoid the need for further litigation,” Gila River Indian Community Governor Stephen Roe Lewis said in the Tucson Sentinel.<sup>13</sup>

The compressed timeframe for data collection is extremely worrisome to Indian Country, where response rates are still severely low, according to the Census Bureau’s own reported data.<sup>14</sup>

The National Congress of American Indians (NCAI), the Native American Rights Fund (NARF), and the National Urban Indian Family Coalition (NUIFC) issued a joint statement, calling the action<sup>15</sup> an “unwarranted and irresponsible decision.” NCAI published a policy brief<sup>16</sup> requesting an extension of the Census statutory deadlines. A group of 42 Native American organizations co-signed a letter<sup>17</sup> urging Congress to honor the October 31, 2020 deadline. In a House Committee on Oversight and Reform hearing September 10,<sup>18</sup> Governor Lewis called a complete and accurate count “a matter of life and death” for Indian Country.

<sup>8</sup> Barabba, V., Prewitt, K., Groves, R., and Thompson, J. August 4, 2020. On the Importance of Extending the 2020 Census Statutory Deadlines to Achieve a Fair and Accurate Enumeration of the United States. <https://www.documentcloud.org/documents/7013550-Aug-4-2020-Statement-By-Former-U-S-Census-Bureau.html>

<sup>9</sup> Case No. 20-cv-5799-LHK First Amended Complaint for Declaratory and Injunctive Relief. <https://turtletalk.files.wordpress.com/2020/09/2020-09-01-61-amended-complaint.pdf>

<sup>10</sup> U.S. Census Bureau. May 22, 2012. [https://www.census.gov/newsroom/releases/archives/2010\\_census/cb12-95.html](https://www.census.gov/newsroom/releases/archives/2010_census/cb12-95.html)

<sup>11</sup> Koh, L. Order Granting Motion for Temporary Restraining Order. <https://lawyerscommittee.org/wp-content/uploads/2020/09/2020-09-05-84-Order.pdf>

<sup>12</sup> Ibid.

<sup>13</sup> Belley, M. September 7, 2020. Judge halts plan to end Census early, as Arizona, tribal responses lag. Tucson Sentinel.

[http://www.tucsonsentinel.com/local/report/090720\\_census\\_stay/judge-halts-plan-end-census-early-as-arizona-tribal-responses-lag/](http://www.tucsonsentinel.com/local/report/090720_census_stay/judge-halts-plan-end-census-early-as-arizona-tribal-responses-lag/)

<sup>14</sup> U.S. Census Bureau. Self-Response Rates Map. <https://2020census.gov/en/response-rates/self-response.html>

<sup>15</sup> National Congress of American Indians. August 5, 2020. National Native Organizations Issue Joint Statement on U.S. Census Bureau Change to 2020 Census Operations. <http://www.ncai.org/news/articles/2020/08/05/national-native-organizations-issue-joint-statement-on-u-s-census-bureau-change-to-2020-census-operations>

<sup>16</sup> National Congress of American Indians. Ensuring Indian Country is Counted: Congressional Extension of Statutory Deadlines. [http://www.ncai.org/policy-issues/tribal-governance/census/NCAI\\_Census\\_Deadline\\_Extension\\_One\\_Pager\\_.pdf](http://www.ncai.org/policy-issues/tribal-governance/census/NCAI_Census_Deadline_Extension_One_Pager_.pdf)

<sup>17</sup> National Congress of American Indians. August 5, 2020. Native American Groups Urge Congress to Honor the October 31, 2020 Census Date to Count Native Americans Ravaged by COVID-19 and to Provide Contingency Funding. <http://indiancountrycounts.org/wp-content/uploads/2020/08/AIAN-Census-Deadlines-Sign-on-FINAL-08.05.2020.pdf>

<sup>18</sup> House Committee on Oversight and Reform. September 10, 2020. Providing the Census Bureau with the Time to Produce a Complete and Accurate Census. <https://oversight.house.gov/legislation/hearings/providing-the-census-bureau-with-the-time-to-produce-a-complete-and-accurate>

Some tribes have been planning outreach efforts through the end of October; now those plans have been derailed. Navajo Nation President Jonathan Nez said, “Unfortunately, the federal government has undermined the time, planning, and resources that the Navajo Nation had dedicated to the Census count by shortening the time period by an entire month and now we are seeking a resolution through the courts,” according to Indian Country Today.<sup>19</sup>

One of the greatest challenges tribal citizens face in responding to the Census is access to mail, phone, or internet. As our own report<sup>20</sup> from last year showed, more than half of reservation residents have no internet at home or must depend on unreliable cell phone service for home internet. “Shortening the Census time frame only adds to the challenges ... especially for our elder population and those who live in remote areas,” said Navajo Nation President Myron Lizer, according to the Albuquerque Journal.<sup>21</sup>

Because many living on tribal reservation lands do not have traditional addresses, in-person enumeration is necessary for achieving as close to a complete count as possible. The Census Bureau conducts Update/Leave operations to reach households with non-traditional addresses and Non-Response Follow-Up operations to reach households who have not yet responded to the Census. Ending these operations early means many will go uncounted.

In addition to requests that the data collection period be extended, Congress must pass legislation that would allow the Census Bureau more time to conduct its data analysis and compile its reports. Specifically, the Census Bureau is required to report on state population counts for congressional district reapportionment by December 31, but if that deadline were extended, which requires an act of Congress, the Census Bureau could have more time to conduct operations and analysis. A recently introduced<sup>22</sup> Senate Bill grants those extensions in a timeline that mirrors the Census Bureau’s original request, but it is unclear whether the bill will gain traction.

The COVID-19 pandemic is not over, especially not in Indian Country. For this reason, Census data collection efforts must continue so that tribal citizens have a full chance to participate in the Census.

## **Recommendations**

AIPI recommends the following policy changes, similar to those set forth by NCAI:<sup>23</sup>

1. The U.S. Congress should pass—and President Donald Trump must sign—legislation to extend the statutory reporting deadlines for apportionment and redistricting such that the Census Bureau has enough time to conduct a complete count.
2. The U.S. Census Bureau should return to the widely publicized data collection termination date of October 31. This will allow Indigenous people and all Americans time to respond and ensure that the country has as close to a full count as possible.

<sup>19</sup> Bennett-Begaye, J. September 4, 2020. Early Census deadline ‘feels like an attack’. Indian Country Today. <https://indiancountrytoday.com/news/early-census-deadline-feels-like-an-attack-gYjHNTGRa02Pq2q1COB6Rw>

<sup>20</sup> American Indian Policy Institute. Tribal Technology Assessment: The State of Internet Service on Tribal Lands. <https://aiipi.asu.edu/research>

<sup>21</sup> Davis, T. September 4, 2020. Navajo Nation Joins Lawsuit Over U.S. Census Deadline. Albuquerque Journal. <https://www.abqjournal.com/1493207/navajo-nation-joins-lawsuit-over-us-census-deadline.html>

<sup>22</sup> Wang, H. September 15, 2020. Bipartisan Senate Push to Extend Census Begins Weeks Before Count Is Set to End. NPR. <https://www.npr.org/2020/09/15/913163016/bipartisan-senate-push-to-extend-census-begins-weeks-before-count-is-set-to-end>

<sup>23</sup> National Congress of American Indians. Ensuring Indian Country is Counted: Congressional Extension of Statutory Deadlines. [http://www.ncai.org/policy-issues/tribal-governance/census/NCAI\\_Census\\_Deadline\\_Extension\\_One\\_Pager\\_.pdf](http://www.ncai.org/policy-issues/tribal-governance/census/NCAI_Census_Deadline_Extension_One_Pager_.pdf)

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