



# Administration Abandons Plans to Add Citizenship Question to Census 2020, Following U.S. Supreme Court Decision

## Where Things Currently Stand

- As a result of the June 27 U.S. Supreme Court ruling, the Administration has abandoned its plans to add a question on U.S. citizenship to Census 2020.
- The federal district court judges in New York and Maryland litigation have issued orders which permanently block:
  - the addition of the citizenship question to Census 2020 or any effort to ask about citizenship as part of the decennial enumeration; and
  - any delay in the printing of Census questionnaires after June 30 for the foregoing purpose.
- The Administration issued an Executive Order instructing all federal executive departments and agencies to assist the Department of Commerce with determining the number of citizens and non-citizens in the country, which includes providing the Department access to relevant administrative records.
- Policymakers, advocates and litigators are carefully reviewing the Executive Order and the Administration's statements when issuing it, including assessing whether the President's directive deviates from existing practices in a way that would negatively impact the Latino community.
- We are also developing strategies to combat any potential threats to the U.S. Constitution's standard for apportionment, Latino voting rights, and fair redistricting, which might arise as the Administration moves forward with the Executive Order.

## How did we get here?

- On March 26, 2018, Secretary of Commerce Wilbur Ross announced the addition of the citizenship question to the 2020 Census questionnaire, claiming his decision resulted from a request by the Department of Justice (DOJ) to obtain improved data for voting rights enforcement.
- The announcement came just a few days before the deadline for the submission of the questionnaire to Congress for approval as mandated by federal law, after years of planning and preparations by the Census Bureau for a decennial Census that did not include a citizenship question.

## Facts and Myths about the Citizenship Question and the Decennial Census

- **MYTH:** The citizenship question is needed for “improved voting rights enforcement.” ([Read more here](#))
- **FACT:** Data from the American Community Survey, and the census “long” form before that, are sufficiently robust for voting rights enforcement purposes.
- **MYTH:** The Census has a long history of asking our nation’s residents about their citizenship status.
- **FACT:** The Census has never asked about the citizenship of the entire U.S. population. The last time the Census Bureau did anything similar was in 1950, prior to the enactment of the Voting Rights Act of 1965. In the form sent to every household in the nation, the Bureau asked for the citizenship status of foreign-born residents, a small subset of the population.

## What Happened in the Courts?

### Supreme Court

- **On June 27, 2019**, in a 5-4 decision, the U.S. Supreme Court temporarily halted the addition of a question on citizenship to the Census 2020 questionnaire.
- In its opinion, the Court found that the addition of question failed to satisfy the Administrative Procedure Act (APA) requirements because **Secretary Ross did not articulate a satisfactory explanation for the decision to add the question.** The Court noted that the Administration’s supposed VRA enforcement rationale was “more of a distraction,” and seemed “contrived.”
- **The Court sent the case back to the Commerce Department for it to provide a better explanation for the decision to add the question.** However, the Court also rejected the claim that the addition of the question violated the Constitution.

### Lower Courts, prior to Supreme Court decision

- Since January 2019, three federal district courts have ruled against the citizenship question. All three found that the **Department of Commerce violated the APA** which is intended to prevent federal agencies from unsound decisions and abuses of their discretion.
- All three courts also found that the Commerce Secretary’s voting rights enforcement **justification for adding the question was a pretext for some other unspecified rationale.** The California and Maryland courts also found that the addition of the question violated the Enumeration Clause of the U.S. Constitution, but this finding was reversed by the Supreme Court.

### Uncovered Evidence

- Litigation helped uncover **evidence that Secretary Ross wanted the citizenship question included in Census 2020 long before the DOJ requested it.**
- In addition, in May 2019, **evidence emerged suggesting that the citizenship question was added to discriminate against Latinos and other non-Whites.** The appellate court in the Maryland litigation asked the district court to review that evidence a few days before the Supreme Court issued its decision.

## Developments after the Supreme Court Decision

- While the Commerce Department indicated that the printing of the Census 2020 questionnaires without the citizenship question was proceeding, President Donald Trump made several statements which contradicted the Department, including a Tweet that news reports about the Commerce Department dropping its effort to add the question were incorrect and “FAKE!”
- The Administration then informed the public and the lower courts that it was exploring several options to add the citizenship question. **However, ultimately, in its Executive Order, the Administration indicated that the Court’s ruling had made it impossible to add the citizenship question, because of the logistics and timing for carrying out the Census, combined with anticipated litigation delays.**
- **NEW YORK:** The district court judge in the litigation has issued an order which permanently blocks:
  - the addition of the citizenship question to Census 2020 or any effort to ask about citizenship as part of the decennial enumeration; and
  - any delay in the printing of Census questionnaires after June 30 for the foregoing purpose.

The New York order also permits the district court judge to retain jurisdiction to enforce its order until the Census 2020 results are processed and sent to the President by December 31, 2020.

In addition, the New York plaintiffs have filed a motion for the court to impose sanctions on the Administration for providing false testimony, concealing evidence, and misrepresenting various matters during the litigation.

- **MARYLAND:** In light of the Administration’s initial decision to pursue the citizenship question, Maryland judge permitted the plaintiffs to pursue their discrimination claims through additional discovery. However, the judge has now issued an order similar to the one issued in the New York litigation.

## What was at Stake with Inclusion of the Citizenship Question?

- The Commerce Secretary ignored evidence, including research from the Bureau’s own scientists, that the addition of the citizenship question would lower response rates from immigrants, their families and communities.
- The citizenship question raised concerns in all households – native- and foreign-born– about the confidentiality of information provided to the government and how it will be used.
- **Census officials estimate that 6.5 million residents would not have responded to the questionnaire with a citizenship question,** and lower response rates would have driven up the cost of the Census by increasing expenses for non-response follow up operations.

**Ultimately, adding the question would have sabotaged the Constitutional mandate that the Census obtain a complete count of all of our nation’s residents and would have increased the cost of the Census.**

# What's Next?

## It is critical that the fight for a fair and accurate Census 2020 continues.

***Any further delays will significantly harm Census 2020:*** Time is of the essence to ensure a sound decennial enumeration. The Bureau must simultaneously complete several complex tasks for Census 2020 to stay on track, including making final preparations for self-response (by paper, online or by phone); launching its partnership and communications plan; putting its information technology systems in place; and fully developing its field presence for questionnaire assistance and followup with residents who do not initially respond to the questionnaire. There cannot be any further delays in these activities, and it is particularly critical that Congress ensures that robust FY 2020 funding for Census 2020 be immediately available to the Bureau at the start of that federal fiscal year (October 1, 2019).

***Many challenges remain for a full count of the Latino community:*** The Administration's effort to add the question has significantly eroded public confidence, and the contradictory and confusing actions by the Administration since the Supreme Court decision have deepened this mistrust. Beyond the problems created by the Administration's efforts, there remain several other ongoing challenges facing Census 2020 and the Latino community:

- Lack of full Latino access to the online response option, and lack of information about the full range of options for Census response;
- Cyber-security and misinformation threats;
- Obstacles facing the swift hiring of staff with the linguistic skills and cultural competency for Census outreach, including the Bureau's failure to clarify that work-authorized non-citizens are eligible for these positions; and
- Barriers to obtaining a full count of very young Latino children (ages 0-4), one of the most undercounted groups in the decennial Census.

***The Census Bureau can address many of these challenges by actively engaging community organizations and other "trusted messengers" to rebuild confidence and mobilize residents in hard-to-count communities to participate in Census 2020.***



You can join our efforts to achieve the most accurate Census 2020 count possible of the Latino community by joining our ***Hágase Contar!*** campaign.

To learn more about our efforts call our national bilingual hotline at **877-EL-CENSO** or visit our informational website at **[www.hagasecontar.org](http://www.hagasecontar.org)**