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THE FIGHT AGAINST THE CITIZENSHIP QUESTION:

ENSURING EVERYONE COUNTS IN THE 2020 CENSUS



This case is an in-depth look at the multipronged legal and advocacy efforts against the inclusion of a citizenship question in the 2020 Census. The case is one of two such products; the other explores advocacy for federal appropriations to support a fair and accurate 2020 Census. While these cases stand alone, they can also be understood within results from the evaluation of the multiyear national initiative of the Census Subgroup, a part of the Democracy Funders Collaborative: [Together We Count](#).

Barsoum Policy Consulting developed these case studies under a subcontract with ORS Impact; graphic design was done by ORS Impact. The photographs used in this report represent real 2020 Census efforts and were generously shared with us by Karen Narasaki.

Overview

"This is a recipe for sabotaging the census."¹ —Arturo Vargas, NALEO Educational Fund

THE QUESTION

"Is this person a citizen of the United States?" This is the question the Trump administration sought to add to the 2020 Census as a last-minute attempt to politicize the census and use it for partisan gains.

The decennial census form filled out by all households hasn't included any version of a question about citizenship since 1950. The Census Bureau collects these data through the annual American Community Survey (ACS), a more comprehensive survey of a sample of households in the United States, which asks about citizenship, along with many other questions.²

Attempts to include a citizenship question in the decennial census, often with the goal of excluding noncitizens from the numbers used to draw political districts, have been a long-standing goal of right-wing activists but were never actualized until the Trump administration.

With less than two years from the start of the enumeration, the U.S. Department of Commerce announced it would include the untested citizenship question on the census form to potentially devastating effect—the suppression of the count among primarily Latinx and immigrant communities—reducing political power and federal resources to these communities and the states they reside in for a decade.

CREATING THE PRETEXT

The election of Trump shifted political dynamics and created a window of opportunity for right-wing activists to advance their long-standing goals of counting only citizens for apportionment purposes.

Reporting from ProPublica revealed that on December 12, 2017, the U.S. Department of Justice (DOJ) sent a letter to the Census Bureau asking for a citizenship question to be included in the 2020 Census.³ In the letter, DOJ argued that data on citizenship were needed to have a better understanding of how many Americans are eligible to vote and to enforce section 2 of the Voting Rights Act (VRA) which "[protects]

¹ Justin Elliott, "Trump Justice Department pushes for citizenship questions on census, alarming experts," ProPublica, December 29, 2017. <https://www.propublica.org/article/trump-justice-department-pushes-for-citizenship-question-on-census-alarming-experts>.

² The ACS asks about (1) citizenship status, (2) place of birth, and (3) for those not born in the United States, year of immigration of the United States.

³ This letter was later uncovered in 2019 through investigative journalists at ProPublica; see Elliot, "Trump Justice Department." <https://www.propublica.org/article/trump-justice-department-pushes-for-citizenship-question-on-census-alarming-experts>.

against racial discrimination in voting.”⁴ Legal and voting rights experts denounced this explanation and described the letter as misleading. Since the enactment of the VRA, the census has never posed a citizenship question to all households, and the ACS has historically been used in section 2 cases.

Later, in testimony before Congress on March 20, 2018, Commerce Secretary Wilbur Ross said that DOJ had initiated the request and he ordered the citizenship question in response without any coordination with the White House. “We are responding solely to the Department of Justice’s request,” he testified.⁵ A few days later on March 26th, Ross issued a memorandum adding the citizenship question to the 2020 Census.⁶

As required by law, the Census Bureau had already submitted the topics to be covered in the census and ACS to Congress in March 2017. Census officials estimated it was likely 6.5 million households would not respond to the questionnaire, leading to lower response rates, reduced accuracy, and increased costs associated with non-response follow-up operations. In a survey conducted by the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, 78 percent of Latinos reported that the inclusion of a citizenship question would make people afraid to participate in Census 2020.

NAVIGATING THIS CASE

The decision to include the citizenship question triggered a wave of litigation and sustained advocacy. This case describes the successful nationwide mobilization by census stakeholders against the Trump administration’s attempt to include a citizenship question in the 2020 Census.

The campaign against the question was comprehensive and multipronged, operating on multiple fronts: the courts, Congress and the Census Bureau, and in the public square. These strategies and tactics were deployed simultaneously to synergistic effect. This case describes those various strategies and is organized into the following sections.

- 3 Building the Campaign:** The emerging infrastructure and stakeholders
- 6 The Litigation against the Citizenship Question:** The multiple lawsuits leading to the Supreme Court
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⁴ Section 2 of the Voting Rights Act bars the dilution of voting power of a minority group through redistricting.

⁵ Hearing before the House Appropriations Committee, "FY19 Budget – Department of Commerce," YouTube video, March 20, 2018. <https://www.youtube.com/watch?v=NDWiAiSWgNU&t=2185s>.

⁶ Secretary Wilbur Ross, Memo regarding Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire, March 26, 2018. <https://www.documentcloud.org/documents/4426785-commerce2018-03-26-2>.



Building the Campaign

EMERGENCE OF A 2020 CENSUS INFRASTRUCTURE

Advocates, litigators, census stakeholders, and philanthropic partners mounted an immediate response against the addition of the citizenship question to the 2020 Census questionnaire. With the start of the 2020 Census enumeration looming and the census questionnaire printing deadlines on the horizon, there was a narrow window of opportunity to prevent the addition of the question.

The immediacy of their response and the readiness of organizations to act was facilitated by early funding provided by the Democracy Funders Census Subgroup. The philanthropic community was mobilized in support of the 2020 Census and recognized the threat posed by the citizenship question to a fair and accurate count. Funders collaborated with census stakeholders and grantees to use their bully pulpit and lend their voice against the question. The Democracy Funders Census Subgroup and the Funders Census Initiative worked to educate, engage, and coordinate funders' activities against the question.

As a result of early foundation support, national organizations had already begun collaborating and building an infrastructure that extended into states and localities in preparation for the enumeration or Get Out the Count (GOTC) campaigns. This emerging nationwide GOTC infrastructure was used to support advocacy efforts against the addition of the citizenship question. Simultaneously, it was also a means to continue to build out the infrastructure and engage new state and local organizations in the census outreach and education efforts.

A core group of longtime national census advocates led the advocacy against the citizenship question and ensured it was coordinated with the legal challenges that ensued: The Leadership Conference on Civil and Human Rights, the National Association for Latino Elected and Appointed Officials (NALEO) Educational Fund, and Asian Americans Advancing Justice | AAJC (which was also involved in the Maryland lawsuits). They were joined by Fair Immigration Reform Movement (FIRM) and other immigrant rights organizations.

ENGAGING THE IMMIGRANT RIGHTS MOVEMENT

Until the citizenship question, most national grassroots immigrant rights organizations had not engaged in the 2020 Census and were not yet national census hubs funded to engage their members in GOTC. Immigrant rights groups were spread thin, fighting a daily battle against the Trump administration's anti-immigrant policies, "Their house was on fire and we could not engage them on the census until the citizenship question came up," explained a foundation advisor. NALEO served as the national census hub for the Latinx population, but the administration's decisions to add the citizenship question necessitated the participation of grassroots immigrant rights organizations. "It would have been game over," said a

census stakeholder, if immigrant rights organizations had decided not to engage in the census as an honest and trusted voice to immigrant households.

Immigrant rights activists understood the threat posed by the question to immigrant communities. The citizenship question was also very personal and seen as a direct attack on their very humanity, as one activist explained. “There was a real indignation; this was about counting as a human being and the court was making a decision about whether we count. It was a big deal and I think it energized the whole fight and the whole census process. The tipping point for us getting engaged in the census as an immigrant rights movement would not have happened if it had not been for the citizenship question. It energized and set up the fight for us.”

FIRM was funded to serve as the national census hub for immigrants and mixed status families, along with a cohort of immigrant rights organizations. FIRM, a member of Community Change and a national network of over 45 immigrant rights organizations, provided a central table to coordinate efforts against the question. Many of these grassroots organizations had prior census experience, including the Coalition for Human Rights Los Angeles, the Illinois Coalition for Immigrant and Refugee Rights, and the New York Immigration Coalition, a plaintiff in the New York lawsuit. FIRM was joined by United We Dream, a network of DREAMERS with strong digital and social media skills, and the Center for Popular Democracy, a national network of organizing groups that included strong immigrant rights local chapters, such as Make the Road New York and CASA de Maryland, who were also plaintiffs in the New York litigation. The Black Alliance for Just Immigration (BAJI) was also funded to focus on Black immigrant communities and was a plaintiff in the California lawsuits.

CENTRALIZED COORDINATION

The Census Counts Campaign was formed by The Leadership Conference and other groups, including NALEO Educational Fund and AAJC, to focus on the 2020 Census to increase participation among historically undercounted populations. It coordinated across the more than 25 national census hub organizations and became the central coordinating table for the advocacy efforts against the citizenship question.

The Census Counts Campaign played four important roles that enabled census stakeholders to stay informed on the numerous strategies and actions and take action on the federal and local levels.

- **Census capacity building for organizations new to the census.** The Census Counts Campaign helped build the knowledge and understanding of new partners and helped them navigate the increasingly expanding and complex national census infrastructure, which was particularly important for onboarding the national immigrant rights organizations.
- **A centralized resource on the census, the citizenship question, and campaign materials (research, messaging points, toolkits, social media resources, and videos).** These easily accessible and usable resources enabled organizations to quickly get up to speed, easily engage, and speak with a unified voice.

- An information sharing and dissemination role. This kept all stakeholders apprised of the litigation, federal advocacy efforts, and implications for the 2020 Census.
- A structure and table. This was used to facilitate collaboration and coordination across the nationwide network of organizations and strategies.





The Litigation against the Citizenship Question

“Commerce Secretary Wilbur Ross used his authority over the census and approved plans to add the question, ‘Is this person a citizen of the United States?’ That decision triggered what could become one of the most influential legal battles over the next decade. More than two dozen states and cities, along with other groups, have filed six lawsuits around the country against the Trump administration to get the question removed.”⁷

—Hansi Lo Wang, National Correspondent, National Public Radio

Trump’s election introduced uncertainty and instability to the census. Stakeholders were on guard in anticipation of an attempt to add a citizenship question and other potential efforts to undermine and politicize the census. The Leadership Conference was convening legal groups to consider the various possibilities and was in communication with state attorneys general in states that would be opposed to the question. These planning conversations helped litigators rapidly respond and file lawsuits.

California, the state with the country’s largest immigrant population, filed suit within hours of Ross issuing his memorandum, followed by New York, and then other states, cities, and civil rights organizations. By June 2018, six lawsuits were filed in three different federal district courts—in New York, California, and Maryland—with slightly different claims (see Appendix A for descriptions of the six lawsuits). Ultimately, the two cases in each of the three district courts were heard together—consolidated by the courts—resulting in three rulings. (See Figure X for a chronology of events.)

Hanging over all the litigation was the July 1, 2019, printing deadline for the census forms and related materials.

NEW YORK V. U. S. DEPARTMENT OF COMMERCE

In early July, Judge Jesse Furman of the U.S. District Court for the Southern District of New York ruled that the New York case, the largest of the six lawsuits against the citizenship question, could move forward. It was the first of the lawsuits to go to trial and became the case that went to the U.S. Supreme Court.

Judge Furman played an important role in expediting the case, moving quickly to set a trial date for November 5, 2018, and consolidating the New York state and New York Immigration Coalition cases. The legal team, led by the American Civil Liberties Union Foundation (ACLU) and the New York State attorney general, argued that the addition of the question violated both the U.S. Constitution and the

⁷ Hansi Lo Wang, “How the 2020 Census Citizenship Question Ended Up in Court,” NPR.org, Morning Edition, November 4, 2018. <https://www.npr.org/2018/11/04/661932989/how-the-2020-census-citizenship-question-ended-up-in-court>.

Administrative Procedure Act (APA)—a federal law that governs how agencies exercise their powers—and that the Commerce Department acted with discriminatory intent against immigrant and communities of color in adding the citizenship question.

Judge Furman ordered the Commerce and Justice departments to release internal documents related to the citizenship question and allowed lawyers to depose up to 10 officials from the two departments.⁸ He also coordinated with the California and Maryland district court judges to set parameters around shared depositions and discovery across the numerous legal teams. “Most of these government officials were only going to be made available for one deposition even though we had three different cases,” explained one of the attorneys. “So all of the discovery had to be done together with all three counsel groups.” It was a significant amount of work over a short period of time but the collaboration across legal teams helped spread the workload.

The Trump administration attempted to halt the trial by directly appealing to the Supreme Court. They requested the trial be placed on hold until the Supreme Court resolve disputes over whether Commerce Secretary Wilbur Ross would be deposed. The request to halt the trial was rejected, but Ross’ deposition was temporarily blocked.

The Supreme Court also allowed the plaintiffs to obtain additional documents related to the decision to add the question, which revealed that it was Secretary of Commerce Wilbur Ross who had initiated the addition of the question soon after his February 2017 confirmation. In fact, it was Ross himself who asked DOJ to submit a formal request for the question, contradicting his congressional testimony that his decision was “solely” in response to the DOJ request. Documents later released also revealed discussions between Ross, White House chief strategist Steve Bannon, Kris Kobach (the former vice chair of Trump’s election integrity commission), and Attorney General Jeff Sessions on the citizenship question, again contradicting his congressional testimony that he was not aware of any discussion about the issue between him or his staff and the White House.⁹

In a July 3rd hearing, Judge Furman said, “It now appears that the idea of adding the citizenship question originated with Secretary Ross, not the Department of Justice, and that its origins long predated the December 2017 letter from the Justice Department.”¹⁰

⁸ Hansi Lo Wang, “Multi-state lawsuit against census citizenship question to move ahead,” NPR.org, July 26, 2018. <https://www.npr.org/2018/07/26/629773825/multi-state-lawsuit-against-census-citizenship-question-to-move-ahead>.

⁹ Hansi Lo Wang, “Commerce secretary now recalls discussing citizenship question with Steve Bannon,” NPR.org, October 11, 2018. <https://www.npr.org/2018/10/11/656570447/commerce-secretary-now-recalls-discussing-citizenship-question-with-steve-bannon>.

¹⁰ Hansi Lo Wang, “Commerce secretary grew impatient over census citizenship question, emails reveal,” NPR.org, July 24, 2018. <https://www.npr.org/2018/07/24/631537992/commerce-secretary-grew-impatient-over-census-citizenship-question-emails-reveal>; A Commerce Department Inspector General Report released in 2021 revealed that Wilbur Ross “misrepresented the full rationale” for adding the citizenship question when he testified in Congress. The Biden Department of Justice declined to prosecute the former Commerce secretary; see Tierney Sneed, “Justice Department won’t prosecute Wilbur Ross for misleading Congress about attempted 2020 census change,” CNN, Politics, July 19, 2021. <https://www.cnn.com/2021/07/19/politics/census-wilbur-ross-congress-inspector-general-justice-department/index.html>.

Furman scheduled the trial to start on November 5, 2018. What emerged through the trial was that Ross and the Department of Commerce had also not been truthful with their own Census Bureau about the origin and motive for the addition of the question. In a memo to Ross, John Abowd, the Census Bureau's chief scientist, warned that adding a citizenship question to the 2020 Census "is very costly, harms the quality of the census count," and they had a better alternative using existing government records.¹¹ At trial, Abowd became visibly emotional when asked if he had been informed that the Commerce Department had initiated the request. "No one told me that," he responded.¹²

"That was part of the evidence in our case that came out in our trial, that the Census Bureau staff didn't recommend adding a citizenship question," explained one of the plaintiffs' attorneys. "They had come up with an alternative to get better citizenship data if the Trump administration wanted it, and they did not understand until some of the documents came out through our discovery that the Commerce Department never cared and was always going to add a question because the goals for adding a question were more nefarious. That was quite compelling."

On January 15, 2019, the federal district court ruled for the plaintiffs and ordered the Commerce Department to remove the citizenship question from the 2020 Census. Judge Furman ruled that in deciding to add a citizenship question to the 2020 Census, Secretary Ross violated the APA. He held that Ross's decision was arbitrary and made in spite of overwhelming evidence that the question would depress census response rates. He concluded that Ross's purported reason for adding the question—to assist the Justice Department in enforcing the Voting Rights Act—was "pretextual," or a made-up excuse. However, Judge Furman rejected plaintiffs' claims that addition of the question was intended to discriminate against minority communities because the evidence presented by plaintiffs was not enough to prove "that it was a pretext for discrimination."¹³

In response to the decision, Steven Choi, executive director of the New York Immigration Coalition, a plaintiff in the case, issued the following statement:

¹¹ Hansi Lo Wang, "How the 2020 Census Citizenship Question Ended Up in Court," NPR.org, Morning Edition, November 4, 2018. <https://www.npr.org/2018/11/04/661932989/how-the-2020-census-citizenship-question-ended-up-in-court>.

¹² Fred Barbash, "How Wilbur Ross 'aggressively' tried to alter the 2020 Census and 'conceal' why, according to a federal judge," *The Washington Post*, January 15, 2019. <https://www.washingtonpost.com/politics/2019/01/16/how-wilbur-ross-aggressively-tried-alter-census-conceal-why-according-federal-judge/>.

¹³ Brianna Cea and Kelly Percival, "Court strikes down controversial census citizenship question," The Brennan Center for Justice, January 15, 2019. <https://www.brennancenter.org/our-work/analysis-opinion/court-strikes-down-controversial-census-citizenship-question>.

*"Today's decision is a victory for all New Yorkers and immigrants across the country, as Judge Furman rebuked the Trump administration's naked attempt to circumvent the law for its own gain. The Administrative [Procedure] Act cannot be used to rig the Census as part of a white supremacist agenda led by Kris Kobach and Steve Bannon. We expect the administration will appeal, but we're ready to fight this battle all the way up to the Supreme Court and win. Immigrants are what truly make America great and we're not going to lose a dime, or our voices to Washington D.C."*¹⁴

The Trump administration did appeal the decision to the U. S. Court of Appeals for the Second Circuit and petitioned the Supreme Court to bypass the lower court, citing the census questionnaire printing deadline as the need for an expedited decision. On February 15, the Supreme Court announced it would take up the citizenship question dispute and scheduled oral arguments for April 23, 2019—less than three months out from the July 1 questionnaire printing deadline.

CALIFORNIA V. ROSS AND KRAVITZ V. U.S. DEPARTMENT OF COMMERCE

The two other lawsuits were still pending in federal district courts in California and Maryland. The New York District Court ruling provided a potential path for the judges in those cases to follow.¹⁵

The California trial took place in January 7, 2019, with the Lawyers' Committee for Civil Rights Under Law and California attorney general Xavier Becerra leading the way for plaintiffs. Documentation acquired through the trial revealed that Trump administration officials suggested the possibility of lifting protections that keep census responses confidential and sharing those responses with law enforcement and national security agencies.¹⁶

On March 6, U.S. district judge Richard Seeborg in San Francisco blocked the Trump administration from adding a citizenship question to the 2020 Census, ruling that it was in violation of the APA and also in violation of the Constitution's enumeration clause, which requires "actual enumeration" of all people in each state every 10 years. The court ruled that the administration's addition of the citizenship question was not just unlawful (as in the New York case) but also unconstitutional. This marked the second federal judge to rule against the administration on the issue.¹⁷

¹⁴ New York Immigration Coalition, "Breaking: Immigrant Plaintiffs Claim Victory in Census Question," January 15, 2019. <https://www.nyic.org/2019/01/breaking-immigrant-plaintiffs-claim-victory-census-question/>.

¹⁵ New York Immigration Coalition, "Breaking: Immigrant Plaintiffs."

¹⁶ Tara Bahrampour, "Trump administration officials suggested sharing census responses with law enforcement, court documents show," *The Washington Post*, November 19, 2018. https://www.washingtonpost.com/local/social-issues/trump-administration-officials-suggested-sharing-census-responses-with-law-enforcement-court-documents-show/2018/11/19/41679018-ec46-11e8-8679-934a2b33be52_story.html.

¹⁷ Jeff Daniels, "Federal judge in California bars Trump administration from adding citizenship question to 2020 census," CNBC, March 6, 2019. <https://www.cnbc.com/2019/03/06/federal-judge-bars-trump-from-adding-citizenship-question-to-census.html>.

The Maryland case, led by the Mexican American Legal Defense and Education Fund (MALDEF) and Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC), alleged discrimination against Latino and Asian American communities and challenged the constitutionality of the addition of a citizenship question to the 2020 Census.

On April 5, 2019, U.S. district judge George J. Hazel joined the two other federal judges in ruling the addition of the question unlawful because it violated both the enumeration clause and the APA, and he blocked the federal government from including a citizenship question on the 2020 Census.

However, Judge Hazel did not find enough evidence to support plaintiff's claims that the administration's intention in adding the question to the census was to discriminate against noncitizens, immigrants, Latinos, and Asian Americans in violation of the equal protection clause of the Fifth Amendment and that members of the administration conspired to deprive racial minorities of their constitutional right to equal representation.

In a strange twist of events, files discovered on hard drives belonging to a recently deceased Republican redistricting strategist Thomas Hofeller revealed a 2015 unpublished study in which he concluded that adding a citizenship question to the 2020 Census would be "advantageous to Republicans and non-Hispanic Whites" and "a disadvantage to the Democrats" in the next redistricting cycle.¹⁸ Before his death, Hofeller had been in communication with the Trump transition team on the addition of the citizenship question. His files revealed that he wrote a portion of a draft Justice Department letter arguing that adding the question was critical to enforcing voting rights.¹⁹

The discovery came just weeks before the Supreme Court was to issue its ruling and was the most explicit evidence to date that the Trump administration added the question to use citizenship data to reduce immigrants' political influence by drawing legislative maps based on the number of citizens in a district rather than the total population²⁰ and, thereby, disenfranchising immigrants and people of color.

In May, attorneys from MALDEF and Advancing Justice | AAJC presented this new evidence in support of their intentional discrimination claim. Judge Hazel ruled that the new evidence merited more consideration, opening the possibility that the question could come before the Supreme Court again on an issue not currently before the court. "This is a significant move by the district court that gives credence to what we all know, that the government conspired to discriminate against Latinos and immigrants of color when it added a citizenship question to the 2020 census," said Andrea Senteno, MALDEF's regional counsel.²¹

¹⁸ Kelly Percival, "What the blockbuster documents uncovered this week mean for the census citizenship case at the Supreme Court," Brennan Center, May 31, 2019. <https://www.brennancenter.org/our-work/analysis-opinion/what-blockbuster-documents-uncovered-week-mean-census-citizenship-case>.

¹⁹ Michael Wines, "Deceased G.O.P. strategist's hard drives reveal new details on the census citizenship question," *New York Times*, May 30, 2019. <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html>.

²⁰ Ari Berman, "Hidden figures: How Donald Trump is rigging the census," *The Nation*, May/June 2018.

²¹ Tara Bahrampour, "Federal judge says census citizenship question merits more consideration in light of new evidence," *The Washington Post*, June 20, 2019. <https://www.washingtonpost.com/dc-md-va/2019/06/19/maryland-judge-rules-new-evidence-census-citizenship-question-lawsuit/>.

THE U.S. SUPREME COURT DECISION

The Supreme Court heard oral arguments on April 23. The justices seemed divided, leading court watchers and legal pundits to conclude the court would narrowly uphold the citizenship question.

On June 27, 2019, in what the Associated Press described as a “surprising move,” the U.S. Supreme Court, in a 5-4 ruling, blocked the Commerce Department from adding a citizenship question to the 2020 Census.²² In the majority opinion, Chief Justice Roberts declared that Secretary Ross provided a pretextual reason for wanting the citizenship question that was merely “a distraction,” in violation of the legal requirement that agencies disclose the true reasons behind their decisions.²³ The court found that adding such a question would not violate the Constitution but that the administration’s justification for doing so—enforcing the Voting Rights Act—may have been “contrived”—a sham offered after the fact to justify adding the question. “The chief justice simply couldn’t swallow that claim,” reported NPR. “And Roberts said accepting the explanation would require the court to have “a naivete from which ordinary citizens are free.”²⁴

The decision, however, gave the administration the opportunity to try again by offering more genuine reasons for wanting to add a citizenship question.²⁵

Initially, the administration announced that it would look for a different “path forward” to include the question. Two issues made further attempts challenging. First, the Trump administration had been arguing for the expedition of the case because of the census questionnaire printing deadline, telling the court a decision was needed by July 1. Continued legal efforts beyond July 1 would have put government lawyers in jeopardy of being accused of misrepresentation to the court. Second, it seems likely that government lawyers were concerned that further efforts to include a citizenship question might create an opportunity for Judge Hazel in the Maryland case to rule for the plaintiffs on intentional discrimination, sending a new case on civil rights violations to the Supreme Court.

Ultimately, the administration abandoned the effort and on July 11, 2019, announced it was not going to include a citizenship question on the 2020 Census. However, attempts to prevent undocumented immigrants from being counted for purposes of congressional apportionment and possibly redistricting, at least in some states, persisted even beyond the conclusion of the enumeration.

²² Mark Sherman and Jessica Gresko, "High Court keeps citizenship question of census for now," Associate Press, June 27, 2019. <https://apnews.com/article/courts-donald-trump-us-supreme-court-politics-supreme-courts-ade8a97cb1944da2983a3c89cb5dcda8>.

²³ Brennan Center for Justice, "Four Takeaways from the Supreme Court census citizenship questions ruling," July 1, 2019. <https://www.brennancenter.org/our-work/analysis-opinion/four-takeaways-supreme-courts-census-citizenship-question-ruling>.

²⁴ Nina Totenberg and Hansi Lo Wang, "Trump threatens Census delay after Supreme Court leaves citizenship question blocked," NPR.org, All Things Considered, June 27, 2019. <https://www.npr.org/2019/06/27/717635291/supreme-court-leaves-citizenship-question-blocked-from-2020-census>.

²⁵ Dara Lind, "The Supreme Court Census Ruling, explained," Vox Media, June 27, 2019. <https://www.vox.com/2019/6/27/18761016/supreme-court-census-citizenship-opinion-decision>.

Judges in all three lower court cases (New York, Maryland, California) issued orders to permanently block the addition of the citizenship question or any effort to ask about citizenship on the 2020 Census.



THE RESPONSE TO THE U.S. SUPREME COURT DECISION

"In a voting rights victory, the Supreme Court today denied the Trump administration's effort to include a citizenship question on the 2020 Census. The Supreme Court agreed that the administration's stated reason for adding the question was "contrived."²⁶ —ACLU

"The people have spoken, the courts have spoken, and finally, the Trump administration has conceded—there will be no 2020 Census citizenship question. This is a victory for all those who fought so hard against this partisan ploy to weaponize the census and rig our democracy. Now we double down on the work to ensure a fair and accurate count." —Vanita Gupta, **The Leadership Conference on Civil and Human Rights**

"Today is a good day for the American people. We fought in the court of law and we won. The citizenship question will not be on the 2020 Census! This is a clear win for all of us who fought for a fair and accurate census that is free from politically-motivated questions." —John Yang, **Asian Americans Advancing Justice | AAJC**²⁷

"Today's decision from the U.S. Supreme Court has for the moment walked our nation back from the brink of a catastrophic disaster that would have inflicted a wound on our constitution and democracy that may never have healed. While we are happy with this decision, we know that this effort to undermine the progress of the Latino community and suppress the count of Latinos has still left its mark on Census 2020. —Arturo Vargas, **NALEO Educational Fund**²⁸

"Today's Supreme Court decision to block the citizenship question and send the case back to the lower courts is a victory for immigrants, communities of color, and our democracy. We have always known that the Trump administration's inclusion of the question was designed to deny immigrant rich states access to our fair share of federal funding and political power. But the fight is not over, which is why we'll continue to fight this administration's attacks on our immigrant communities in the courts, in the legislature, and in the streets." —Steve Choi, **New York Immigration Coalition** and plaintiff in *Department of Commerce v. New York State*²⁹

²⁶ "ACLU comment on Supreme Court census citizenship case victory," ACLU, June 27, 2019. <https://www.aclu.org/press-releases/aclu-comment-supreme-court-census-citizenship-case-victory>.

²⁷ John Yang, "Advancing Justice | AAJC Declares Victory on Citizenship Question," press release, Asian Americans Advancing Justice | AAJC, July 11, 2019.

<https://www.advancingjustice-aajc.org/press-release/advancing-justice-aajc-declares-victory-citizenship-question>.

²⁸ Amanda Bosquez and Daniel Ramirez, "U.S. Supreme Court Decision to Temporarily Halt Citizenship Question from Moving Forward Marks Victory for Census 2020, Latin Community and Democracy, news release, NALEO, June 27, 2019. https://naleo.org/wp-content/uploads/2019/10/6_27_19_-_NEF_Statement_on_SCOTUS_Decision_-_CQ_Halted_Final.pdf.

²⁹ New York Immigration Coalition, "Breaking: Immigrant Advocates & Plaintiff Respond to SCOTUS Decision on Census Citizenship Question Case, NYIC, June 27, 2019. <https://www.nyic.org/2019/06/breaking-immigrant-advocates-plaintiff-respond-to-scotus-decision-on-census-citizenship-question-case/>.



The Arc of Advocacy Escalation

“We must double down on our efforts—to urge the court to do the right thing, and to urge Congress to remove the citizenship question. We won’t give up; there’s too much at stake.”

—Census Counts Campaign

The census was occurring in an already challenging and hostile climate for immigrants and communities of color. From its earliest days, the administration had demonstrated its stance on immigrants with the Muslim ban, the border wall, and the on-going raids and deportations. There was no reason for immigrants to trust the census. The Census Bureau’s own research had already identified major barriers to participation in the 2020 Census, including concerns about confidentiality, fear of repercussions, and distrust of government.

The citizenship question controversy came at a critical juncture in the planning for the 2020 Census. Stakeholders were already involved in multiyear advocacy to ensure the census was sufficiently funded and were in the midst of preparations for the enumeration. The citizenship question had the potential of further suppressing the count, particularly among Latinx and immigrant communities. At a February 2019 meeting, advocates raised this question for discussion: “The damage is done, what are we doing now?”

Advocacy against the citizenship question had been on-going even before the litigation was filed. Census advocates had already fended off legislative attempts by Rep. Steve King (R-IA) to collect information on the number of immigrants and their legal status and Rep. Clay Higgins (R-LA) to block census funding unless a question on immigration status was included in the decennial census. Advocates were accustomed to the long-standing efforts of conservative members of Congress to include some type of citizenship question in the census, but this new administration gave them greater cause for concern.

In response to the DOJ letter, stakeholders immediately mobilized, hoping to squelch the notion early and influence Secretary of Commerce Wilbur Ross. The Leadership Conference organized a letter with 170 civil and human rights groups to Ross, urging him to reject DOJ’s request to add a new citizenship question on the 2020 Census. They wrote the following:

*"A fair and accurate census, and the collection of useful, objective data about our nation's people, housing, economy, and communities generally, are among the most significant civil rights issues facing the country today. Every census since the first enumeration in 1790 has included citizens and non-citizens alike. Adding a new question on citizenship to the 2020 Census undoubtedly would affect response rates, outreach, and advertising strategies, and other important elements of the nation's largest, most complex peacetime activity, calling into question the results of many years of costly, painstaking research and testing."*³⁰

This was followed by a slew of letters in opposition to the question from 61 members of Congress, six former Census Bureau directors, 160 mayors, the National League of Cities, 19 attorneys general, and more.

Despite the outcry, Ross formally announced his decision to add the question in March 2018. Stakeholders were prepared, and the response was immediate. Advocates advanced strategies on parallel tracks targeting Congress and the courts. The window of opportunity for definitive action to prohibit the citizenship question was brief and would close by summer of 2019. Census advocates and stakeholders used all available opportunities and tactics to prevent the addition of the question, as described following.

OVERSIGHT HEARINGS

Census advocates and stakeholders immediately called for oversight hearings in the House and the Senate to question Commerce Secretary Ross and his motives for adding an untested citizenship question this late in the decennial planning process despite the advice of career census bureau officials and six Census Bureau directors from Republican and Democratic administrations.³¹

Oversight hearings were a means to hold the Department of Commerce accountable and served as a key part of the factual record and discovery for the legal cases. A prime example is the March 22, 2018, sworn testimony Ross provided before the House Ways and Means Committee that DOJ "initiated the request for inclusion of the citizenship question." But documents and emails later released through the litigation contradicted Ross' testimony about the origins of the question, revealing he had been actively working to add the question months before the DOJ letter.

Rep. Elijah E. Cummings (D-MD), the top Democrat on the House Oversight and Government Reform Committee, said, "Lying to Congress is a serious criminal offense, and Secretary Ross must be held

³⁰ Leadership Conference on Civil and Human Rights, "Protect the Census: Oppose DOJ Request to Add a Citizenship Question to 2020 Census," Letter to Secretary of Commerce Wilbur Ross, Civilrights.org, January 10, 2018. <https://civilrights.org/resource/protect-census-oppose-doj-request-add-citizenship-question-2020-census/>.

³¹Leadership Conference on Civil and Human Rights, Letter to House Committee on Oversight and Government Reform, Civilrights.org, April 12, 2018. <http://civilrightsdocs.info/pdf/policy/letters/2018/4-12-18-OGR-Coalition-Letter-Concerning-Citizenship-Question.pdf>.

accountable.”³² The ACLU along with their legal partners also asked New York district judge Jesse Furman to impose penalties on the Trump administration for providing allegedly false or misleading statements during the lawsuits.

Additional emails later obtained by the House Oversight and Reform Committee in its ongoing investigation into the origins of the citizenship question revealed the administration’s advisor on census issues had been in contact with Hofeller on draft language for the citizenship question request.³³

The hearings also generated media attention. Advocates worked with champions on the Hill to raise awareness of the intent of the Trump administration in seeking to add the citizenship question, as one advocate explained, “Every time it could be in the paper, it’s potentially somebody on the Supreme Court reading the paper.”

LEGISLATION

After Judge Furman’s ruling, census advocates called on Congress to “remove the cloud of uncertainty” hanging over final census preparations and take legislative action to prohibit the citizenship question.³⁴

Two bills were introduced in Congress to remove the citizenship question from the 2020 Census.

- The Census Improving Data and Enhanced Accuracy (IDEA) Act, sponsored by Rep. Carolyn Maloney (D-NY) in the House and Sen. Brian Schatz (D-HI) in the Senate, to bar the Commerce secretary from modifying major census design or operational elements that have not been thoroughly tested at least three years before the census and from adding new topics or questions after the statutory deadlines for submitting proposed topics and questions to Congress.
- The Every Person Counts Act, sponsored by Sen. Menendez (D-NJ) and Sen. Cortez Masto (D-NV), would prohibit questions about citizenship or immigration status in a decennial census, starting in 2020.

There was little chance of the passage of either bill through both houses of Congress and of garnering the support of the president. Advocates hoped to attach legislative language to the Fiscal Year 2019 omnibus appropriations bill, a “must pass” bill. However, when the president refused to continue budget

³² Tara Bahrampour, “Wilbur Ross actively pushed to add citizenship question to 2020 Census, documents show,” *Washington Post*, July 24, 2018. https://www.washingtonpost.com/local/social-issues/wilbur-ross-actively-pushed-to-add-citizenship-question-to-2020-census-documents-show/2018/07/24/5601b3b6-8f65-11e8-bcd5-9d911c784c38_story.html.

³³ Hansi Lo Wang, “Emails showed Trump officials consulted with GOP strategist on citizenship question,” NPR.org, November 12, 2019. <https://www.npr.org/2019/11/12/778496494/emails-connect-trump-officials-and-gop-redistricting-expert-on-citizenship-quest>.

³⁴ Leadership Conference on Civil and Human Rights, Letter to Senate Committee on Homeland Security and Governmental Affairs, April 12, 2018. <http://civilrightsdocs.info/pdf/policy/letters/2018/4-12-18-HSGAC-Coalition-Letter-Concerning-Citizenship-Question.pdf>; Terry Ann Lowenthal, “Census Policy Update: What’s in store for 2019?” Funders’ Committee for Civic Participation, February 7, 2019. <https://funderscommittee.org/resource/census-policy-update-whats-in-store-for-2019-2/>.

negotiations and forced a government shutdown in late December and bipartisan leadership handed negotiations to a group of appropriators, the resolution for the census was off the table.

PUBLIC COMMENT PERIOD

On June 8, 2018, the Commerce Department published in the *Federal Register* a notice setting forth the final operational plan for the 2020 Census, which presented an opportunity for stakeholders to weigh in on the proposed inclusion of a citizenship question (among other issues). The notice provided for a 60-day public comment period, in accordance with the Paperwork Reduction Act.³⁵ The Census Counts Campaign launched a tool (CQ Engage) to facilitate participation and allow stakeholders to directly post comments to the *Federal Register* electronically.

The public comment period created a platform for establishing a strong, clear public record from a range of stakeholders and experts who opposed the addition of a citizenship question to the 2020 Census. The goal of the public comment strategy was twofold: influence the Trump administration to reverse its decision and establish an important record for the public, Congress, and the courts to consider. “It was an opportunity for the public to express outrage against the question. We wanted to create a very strong public record that litigators could point to, and we knew our audiences were these judges, and 99% of the public comments filed opposed the citizenship question,” explained one advocate.

More than 250,000 individuals and organizations provided comments urging the Commerce Department to remove the citizenship question.³⁶ Comments spoke of the threat to census accuracy in all communities that would undermine the fair allocation of political representation, public resources, and private investment for the next decade. The organizations represented millions of people from every state and the District of Columbia, as well as diverse urban and rural communities. The Census Counts Campaign also used this as an opportunity to further engage organizations who provided comments in future advocacy against the citizenship question and in the coming GOTC efforts.

Among the organizations providing comments and calling on the administration to withdraw the citizenship question were more than 300 foundations and 33 philanthropy-serving organizations. In a letter to the Department of Commerce, funders wrote:³⁷

“We have different funding priorities, are ideologically diverse, and do not always agree with each other. But we wholeheartedly agree that the citizenship question should not be part of the 2020 Census.”

³⁵ Department of Commerce, "Census Bureau, Proposed Information Collection; Comment Request; 2020 Census," *Federal Register* 83, no. 111 (2018, June 8). <https://www.govinfo.gov/content/pkg/FR-2018-06-08/pdf/2018-12365.pdf>.

³⁶ The Leadership Conference on Civil and Human Rights, "*Groundswell of opposition tells commerce department to scrap the citizenship question on 2020 Census*," Civilrights.org, August 8, 2018. <https://civilrights.org/2018/08/08/groundswell-of-opposition-tells-commerce-department-to-scrap-the-citizenship-question-on-2020-census/>.

³⁷ Funders Committee for Civic Participation, "Unprecedented: More than 300 U.S. philanthropic leaders call for removal of citizenship question from 2020 Census," press release, August 7, 2018. <https://funderscommittee.org/resource/census-2020-public-comment-on-the-citizenship-question/>.

Stakeholders also worked with the media to highlight the public comment period ending on August 7, 2018. The *San Francisco Examiner* reported:

*"Including the citizenship question in the census questionnaire is mere fear-mongering with the aim of suppressing or inhibiting California's voice in the legislative process. We, the public, have an opportunity to de-politicize the census with our comments. We need an accurate count to continue investing in our people. This is not about being a Democrat or a Republican. It's about being a San Franciscan, a Californian."*³⁸

Overall, the Census Bureau reported receiving 147,8932 documents with comments, and 99 percent of the comments filed opposed the citizenship question.³⁹

ORGANIZING IMMIGRANT COMMUNITIES AND BUILDING POWER

The coalition of organizations opposing the citizenship question expanded beyond the traditional census stakeholders to include immigrant rights organizations. Immigrant communities were a common target of Trump policies, making litigation a frequently used and critical strategy for immigrant right groups. "One of the things we learned early on after the Muslim ban, was the courts became one of our only resources against Trump," explained one activist. The citizenship question once again targeted immigrant communities; they responded by organizing around the litigation and using it to build power. "It's about the power on the other side, them trying to make us invisible and on our side trying to be visible, trying to be in this place with dignity, this place that we call home."

For immigrant rights organizers, the litigation was also a mobilization tool, as one organizer explained. "We don't file cases in court just for the sake of filing a case or winning it. We file cases so that we can build people power behind it. For us it's connected to our organizing. We use the courts and we use the process of litigation to educate our communities, to agitate our communities, and to engage our communities. Otherwise, it doesn't work for us."

The citizenship question was what one immigrant rights activist described as an "organizing moment" that served to raise awareness of the census as well as the upcoming elections. "The strength that we brought is that we have been working on the ground for years and are trusted in communities. We needed to organize around the census. It's not just counting, it's actually organizing." Immigrant rights groups organized immigrant communities around the citizenship question litigation in several important ways.

³⁸ Jaya Padmanabhan, "Everyone Counts in the US Census," *San Francisco Examiner*, July 26, 2018. <https://www.sfexaminer.com/news/everyone-counts-in-the-u-s-census/>.

³⁹ Bureau of Census, "Analysis of comments received on the 2020 Census 60-day Federal Register Notice," *Regulations.gov*, January 23, 2019. <https://www.regulations.gov/document/USBC-2018-0005-79003>.

- **Serving as plaintiffs in the lawsuits**—Multiple local immigrant rights organizations and coalitions were plaintiffs in all six of the lawsuits. The litigation was used to engage communities in a range of actions. Immigrants rights groups also submitted public comments and amicus briefs in the lawsuits.
- **Leveraging the moment**—The citizenship question created greater awareness and fear of the census. But this heightened awareness opened the door to conversations with immigrant communities about the importance of the census. Participating in the census was framed as an action in resistance to the administration’s attempt to disenfranchise immigrant communities.
- **Building power**—The census was not the end goal but rather a means to an end toward building the power of immigrant communities. It was a continuum of actions that included completing the census and voting, for those who were eligible to vote. The census represented “being seen” and voting “being heard;” messages that were echoed in communications materials.



Shaping the Narrative

The citizenship question was a high-profile issue that attracted media attention. The litigation further heightened the media spotlight and coverage creating an opportunity to highlight and raise awareness about the census and encourage participation.

A coordinated effort organized by the Census Counts Campaign and its partners NALEO, AAJC, National Urban League, Color of Change, and others leveraged mainstream and ethnic media—through press calls, op-eds,⁴⁰ and a full-page question and answer on the editorial page of *The New York Times* with Vanita Gupta, president and CEO of The Leadership Conference.⁴¹

The communications strategy supported and connected the various tactics through unified messaging directed at multiple audiences:

- **The broader public**, to build public will and demonstrate a show of support against the question
- **Elected officials**, to build the political will to act against the addition of the question
- **Historically undercounted populations**, particularly immigrants, to assuage fears and encourage them to be counted
- **The courts**, to make them aware of the broad opposition to the question.

Messaging against the citizenship question was necessarily nuanced—advocating against the citizenship question while encouraging participation in the census. Stakeholders were cautious not to further depress participation in the census, as one advocate explained. “The key piece was to acknowledge how harmful adding a question like this was, while also keeping in mind that in a few months we would be encouraging communities to fill out their census. We needed to be mindful of making people aware of the harm, and acknowledging their fear, while also not trying to create a state of panic.”

Rumblings of a census boycott emerged as retaliation to the citizenship question. Stakeholders wanted to avert highlighting this potential boycott by directly responding to it. Instead, messages focused on allaying fears, emphasizing data confidentiality protections, educating on what communities stand to lose if they are not counted, and framing participation in the census as the best way to protest the administration.

The citizenship question was viewed as an attempt by the Trump administration to erase immigrant and communities of color; the overarching message in response was “We Count,” “Hagase Contar,” and “Count Me In,” which were used as hashtags for social media posts. Messaging developed in multiple languages focused on the census as a means to build political power and representation and ensure

⁴⁰ NYTimes Editorial Board, "The Trump Administration Sabotages the Census," *New York Times*, March 27, 2018. <https://www.nytimes.com/2018/03/27/opinion/trump-census-2020-citizenship.html?searchResultPosition=6>.

⁴¹ NYTimes Editorial Board, "Why the Government Wants to Know your Citizenship Status," *New York Times*, August 4, 2018. <https://www.nytimes.com/2018/08/04/opinion/sunday/census-immigration-vanita-gupta.html>.

communities receive their fair share of federal resources. Messages also directly addressed the fear communities were feeling by using it as a source of motivation, as reflected in one of the core messages.

“This is about more than one person filling out a form and being counted in the census, it's about entire communities standing up and declaring, amidst awful attacks from this administration, that we matter! That we count! That our voices and our perspectives deserve support, representation, and recognition!”

Messaging also aligned with the litigation to amplify legal rulings. For example, a consistent message focused on urging the Supreme Court to “uphold Judge Furman’s careful, well-reasoned and fact-bound decision.” Another message was that “The consensus is clear, the addition of the citizenship question to the 2020 Census was unlawful and the Supreme Court should uphold the lower court rulings to remove the question.”

National organizations, such as NALEO, developed comprehensive citizenship question toolkits that included information on the census, the origins of the citizenship question, and explanations of the litigation; it also provided ways to take action, messages, and talking points. Digital toolkits were created by FIRM, in partnership with United We Dream and other immigrant rights organizations, as well as Color of Change, which included messaging, talking points, hashtags, and sample tweets and posts along with graphics for dissemination on Twitter, Facebook, and Instagram. TikTok was used as a vehicle for immigrants to provide personal testimonies of why the census mattered to them.

The Census Counts Campaign centralized all the toolkits and resources from partner organizations—including NALEO, FIRM, Faith in Public Life, Count All Kids, and Color of Change—all of whom had also developed targeted messages and resources on the citizenship question in multiple languages for their respective constituencies. This centralization and coordination of messaging helped expand the diversity of voices and base of support against the citizenship question with consistent messages.

The Census Counts Campaign, in partnership with national organizations, developed separate toolkits for the day the Supreme Court heard oral arguments and the day the court issued its decision. The Decision Day Toolkits included four different scenarios with aligned messaging for each scenario: (1) a ruling that allowed the addition of the citizenship question, (2) a ruling that declared the addition of the citizenship question unlawful, (3) a ruling that the administrative decision-making process was flawed and directed the secretary of Commerce to follow the requirements of the law to add the question, and (4) the Supreme Court remanding the case back to the Southern District of New York. The various scenarios reflect the comprehensive planning and level of preparation to control the narrative in response to any judicial outcome.

Disinformation and misinformation about the citizenship question and who should participate in the census were an additional challenge for stakeholders to navigate. The Leadership Conference, Data & Society, and Spitfire Strategies created a Disinformation Lab to develop a centralized shared strategy that focused on monitoring, analyzing, and responding to dis/misinformation. The Census Counts Campaign provided trainings on dis/misinformation and asked organizations to document and report it. Data & Society, a research organization, helped monitor and analyze dis/misinformation, and Spitfire Strategies

provided communications and rapid response support. “Inoculation” messages were created to provide accurate information and facts to thwart disinformation. One of the national census partners described the impact of the strategy this way: “Because of the Disinformation Lab, we were able to have people document misinformation in real time, within a day or less we could have people on video in social media, in the media, in the neighborhoods with a counter message so that the misinformation never gets traction.”

Figure 1 | Examples of Social Media Posts, Census Counts Campaign





Influencing the Court

“We wanted Justice Roberts to understand that this question was completely outside the norm, and if he wanted to make a very narrow ruling, which he ultimately did, we would show him how to do that.”

—Census Advocate

Much of the advocacy efforts outside the courts were focused on demonstrating wide opposition to the question and creating a context that might inform and influence the Supreme Court’s decision. But two tactics—an amicus brief campaign and an op-ed—were directly targeting the court and Chief Justice Roberts, in particular. The fundamental goal, as one advocate described it, was “to build the case to demonstrate to Roberts that he would be going way out on a limb if he were to rule in favor of the administration.”

Part of the arguments before the Supreme Court were the amicus curiae or “friend-of-the-court” briefs. The Brennan Center for Law and Justice and The Leadership Conference developed an amicus brief campaign to ensure a full range of voices were before the Supreme Court. Brennan Center played a critical role in coordinating amicus briefs, described by one attorney as “an art.” And because The Leadership Conference was at the center of the advocacy strategy, it was well positioned to help identify key voices. A total of 25 amicus briefs were filed by an array of civil rights groups, current and former federal officials, state and local governments, scholars, businesses, philanthropy, and others.⁴² The briefs advanced several key themes.⁴³

- Opposition to the citizenship question that transcends partisan divisions and political administrations
- Implications for administrative law and judicial oversight of federal agencies
- The Commerce Department’s inaccurate historical narrative regarding the justification for adding the citizenship question
- Deviation from the accepted norms for creating effective and accurate surveys
- The harm a citizenship question would cause on multiple populations

⁴² Kelly Percival and Brianna Cea, "Annotated Guide to the Amicus Briefs in the Census Exclusion Memorandum Cases," Brennan Center for Justice, April 11, 2019. <https://www.brennancenter.org/our-work/court-cases/annotated-guide-amicus-briefs-supreme-courts-citizenship-question-case>.

⁴³ Kelly Percival, Brennan Center for Justice, "Amicus briefs flag key themes for the Supreme Court's census citizenship case," Truthout, April 22, 2019. <https://truthout.org/articles/amicus-briefs-flag-key-themes-for-the-supreme-courts-census-citizenship-case/>.

Funders once again lent their voices and filed an amicus brief with the Supreme Court. Thirty philanthropic organizations from national, state, regional, and community foundations, as well as philanthropy-serving organizations representing different missions and geographic regions provided a nonpartisan perspective on the importance of accurate census data for priority setting, research, targeting investments, and monitoring emerging needs.⁴⁴

Advocates demonstrated broad and diverse opposition to the citizenship question across a broad swath of stakeholders spanning the ideological spectrum as reflected in amicus briefs, letters to the Department of Commerce, public comments, and op-eds. “We wanted to show that there was overwhelming opposition not just among the general public but among scientific experts, statisticians, demographers, former Census Bureau directors,” explained an advocate.

The opposition to the citizenship question was also made very directly and personally through a voice familiar to Justice Roberts. Advocates secured an op-ed from John Dunne, a former assistant attorney general for civil rights at the U.S. Department of Justice.⁴⁵ In the op-ed Dunne wrote,

“I had the privilege of serving at the helm of the Civil Rights Division in a Republican administration and personally reviewed numerous proceedings and frequent litigation to enforce the Voting Rights Act. In the 54 years since it was passed, not one of my counterparts—Republican or Democrat—sought a citizenship question on the census since we recognized that it was unnecessary for vigorous enforcement of the act and would likely do more harm than good. . . . Congress requires that agencies give real reasons and rely on real facts. The requirement that agencies not take action that is ‘arbitrary and capricious’ leaves plenty of room for legitimate executive discretion. But it also ensures that agencies stay grounded. Permission to indulge pretext and raw political preference can be too easily manipulated, by liberal administrations no less than conservative ones. In this case, the administration’s reasons are invented, not real, and it is relying on a series of fictions, not facts. This should not be the basis of such a consequential decision.”

Advocates later noted that parts of Justice Roberts’ opinion mirrored some of the argument made in Dunne’s op-ed, which also reflected aspects of the lower court’s ruling.

⁴⁴ *New York v. US Dep’t of Commerce*, 351 F. Supp. 3d 502 (S.D.N.Y. 2019).

https://www.supremecourt.gov/DocketPDF/18/18-966/95035/20190401200604897_18-966bsacFoundationsAndPhilanthropy-ServingOrganizations.pdf.

⁴⁵ John Dunne, “Former assistant attorney general: Trump administration’s case for census citizenship question is bogus,” CNN, June 13, 2019. <https://www.cnn.com/2019/06/13/opinions/supreme-court-census-question-dunne/index.html>.



Leveraging Legal Moments

“This case has never been about a line on a form. It is about whether everyone in America counts. This ruling means they do.”⁴⁶

—Dale Ho, director of the ACLU’s Voting Rights Project, argued the Supreme Court case

While the lawsuits were being argued in the courts, census advocates and organizers amplified legal claims to build public and political will against the citizenship question. Advocates aligned advocacy activities and messaging with key court dates culminating with the Supreme Court ruling. Immigrant rights organizations used the litigation as an organizing tool to rally immigrant communities through an “arc of escalation”—creating a mounting wave of support by educating communities and engaging them in rallies held in cities across the country and outside of the Supreme Court. “By the time of the Supreme Court hearing, we had built enough of a groundswell that people were on the lookout for the decision and all the eyes of media were on it,” explained one organizer.

The Leadership Conference created a task force, co-chaired by the Brennan Center, to provide a space for litigators to share updates and coordinate advocacy activities with the litigation. The Census Counts Campaign then disseminated this information and kept organizations nationwide apprised of the various legal proceedings and provided them with necessary tools and guidance to take action. The goal was to inform and engage. Providing only information on the citizenship question litigation without guidance on taking action and fighting back could have been demoralizing. Organizations were encouraged to elevate legal decisions on social media and in their communications. As previously described, organizations were provided with key messages, talking points, social media guidance and posts, and recent media stories to share.

Rallies and press conferences were organized to highlight the litigation and amplify significant legal arguments and decisions along with census messages. For example, after the July 3 hearing where Judge Furman allowed the New York case to move forward, citing evidence the administration acted in "bad faith" by adding the citizenship question, a rally and press conference were held outside the court with Rep. Grace Meng (D-NY) and members of the New York Immigration Coalition.⁴⁷

Within minutes of the first federal district court’s ruling blocking the citizenship question, the Census Counts Campaign and its national partners distributed talking points to stakeholders urging them to put out statements elevating the harm of the citizenship question to their communities, reiterating

⁴⁶ ACLU, "ACLU comment on Supreme Court census citizenship case victory," June 27, 2019. <https://www.aclu.org/press-releases/aclu-comment-supreme-court-census-citizenship-case-victory>.

⁴⁷ Hansi Lo Wang, "Multi-State Lawsuit Against Citizenship Question to Move Ahead," NPR.org, July 26, 2018. <https://www.npr.org/2018/07/26/629773825/multi-state-lawsuit-against-census-citizenship-question-to-move-ahead>.

opposition to the citizenship question, amplifying Judge Furman's well-reasoned opinion, and calling for Congress to step in.

Once the New York case moved to the Supreme Court, so did the aligned advocacy, and focus shifted to oral arguments and the decision day.

On April 23, 2019, the Supreme Court heard oral arguments. Barbara Underwood, New York's solicitor general, and Dale Ho of the ACLU, argued the legality and constitutionality of the addition of the citizenship question to the 2020 Census. Outside the court, hundreds of activists, including plaintiffs in the original New York case that prompted the Supreme Court review, gathered in support of the decisions of three U.S. district courts to block the inclusion of the question and called on the Supreme Court to do the same. FIRM, The New York Immigration Coalition (NYIC), CASA de Maryland, and Make the Road New York had organized the rally.

Meanwhile, in New York City and other cities across the country, echo rallies were organized with the support of FIRM and the Census Counts Campaign. "A fair and accurate 2020 census is critical for the next generation of Americans to be able to thrive," said Sulma Arias, immigration field director at Community Change and FIRM. "A question about citizenship is dangerous and is intended to intimidate our communities. That is why we are committed to ensuring each and every one of us is counted, and that our voices are heard."

With less than two months before the Supreme Court would issue its decision, advocates continued to build a steady drumbeat against the citizenship question. Immigrant rights groups and census stakeholders continued to hold rallies in front of the Supreme Court. Coordinated online social media actions were held, and op-eds were placed to continue to leverage the media spotlight created by the Supreme Court.

On June 27, 2019, the morning of the Supreme Court decision, census advocates and immigrant rights activists gathered at the steps of the court for a rally and press conference led by FIRM and The Leadership Conference. The voices of the plaintiffs and immigrants were highlighted and centered, humanizing and making real the reason for the litigation.

Social media was also being leveraged by census partners to amplify the moment and buffer against the court potentially upholding the question.

"The Trump administration added the #2020Census citizenship question to erase immigrants and people of color from the count and deprive them of the political representation & resources that we deserve. No matter what the Supreme Court says today, remember that #WeCount" —Color of Change

"Regardless of the decision of the Supreme Court on the dangerous citizenship question, our communities will be counted in the 2020 Census! Participating in the census is an exercise of our collective power!" —The Workers Defense Project

After the decision was issued, the response from stakeholders was immediate. They announced the outcome and victory and sent out action steps for communities on “Top 5 Things To Know For the SCOTUS Census Ruling.” Talking points and messaging highlighted the legal victory and began to pivot toward census GOTC.

“Now we must all work to ensure a fair and accurate count. We must work to ensure hard to count communities, especially those fearful of the government, take part in the census.”



Conclusion and Lessons Learned

It is ultimately unknowable what or if anything influenced the Supreme Court and Justice Roberts. Speculation ranges from Justice Roberts being mindful of his legacy and the reputation of the court, to the efficacy of the legal arguments and advocacy, to the incompetence and outlandishness of the Trump administration, as one attorney speculated. “We stopped the citizenship question because the behavior of the Trump administration was so outrageous it offended even the Supreme Court . . . the fact that they lied so extensively about it at several different points was detrimental to their goals and was the linchpin for us prevailing in the case with the Supreme Court”.

It was likely a combination of these factors. However, litigation alone is limited, even when successful. This was particularly true for the citizenship question because of the fear created by the Trump administration. Census advocates and stakeholders leveraged and amplified the litigation to influence the court but also to quell the fears of immigrant and communities of color and turn their fears into action and acts of resistance directed at participating in the census. The creation of this national coordinated and multipronged advocacy effort against the citizenship question was facilitated by some important elements that also provide lessons learned for future large-scale advocacy.

- The existence of an emerging national infrastructure along with relevant research that was supported by early funding from the Democracy Funders Census Subgroup created readiness among a network of organizations to quickly mount a nationwide campaign against the citizenship question.
- The census expertise of a core group of national organizations—NALEO, The Leadership Conference, AAJC, MALDEF, and the National Urban League—provided litigators and census stakeholders with information and knowledge of the history, operations, and oversight of the Census Bureau and the census, which informed the development of the varying advocacy strategies and tactics.
- The Census Counts Campaign served as a centralized table coordinating across the various strategies and tactics and centralizing and disseminating resources to mobilize organizations nationwide against the addition of a citizenship question.
- The Leadership Conference served as the “connective tissue” linking the litigators to census experts and advocates. Because it was not litigating, it was valued by the attorneys as an outside party that helped coordinate across the litigators and engage them in the broader advocacy strategy.
- The inclusion of immigrant rights organizations helped reach, engage, and center immigrant communities in the advocacy and in census education and outreach. Their organizing approach allowed them to effectively link the census to personal issues directly impacting immigrant communities and engage those communities in the census to build their power at a very disempowering time under the Trump administration.

Appendix I: Summary of Citizenship Question Litigation⁴⁸

U.S. District Court, S.D. N.Y.

States of New York, et al., v. United States Department of Commerce, et al.

Plaintiffs: The State of New York, sixteen states, seven cities, and the U.S. Conference of Mayors

Attorneys: State attorneys general

Claim: The Commerce Department's addition of a citizenship question to the 2020 Census was unconstitutional and otherwise illegal. The Department's decision was not in accordance with law, contrary to constitutional right, beyond [the Department and the Census Bureau's] statutory authority, and arbitrary and capricious, all in violation of the APA. Additionally, New York and co-plaintiffs alleged that the citizenship question would deter participation in the census and cause an undercount, undermining the accuracy of the 2020 Census and jeopardizing the funding that they receive and undermine the federal government's constitutional obligation to conduct an "actual enumeration" of the nation's population.

New York Immigration Coalition, et al., v. United States Department of Commerce, et al.

Plaintiffs: The New York Immigration Coalition, CASA de Maryland, American-Arab Anti-Discrimination Committee, ADC Research Institute, and Make the Road New York

Attorneys: American Civil Liberties Union Foundation, Arnold & Porter Kaye Scholler LLP, New York Civil Liberties Foundation

Claim: The Commerce Department acted with discriminatory intent toward Asian Americans, Arab Americans, Latinos, and immigrant communities of color in adding a citizenship question to the decennial census form. A citizenship question would drive down participation by members of these communities, thereby reducing their political power and the amount of federal funding they receive, amounting to a violation of the equal protection clause of the Fifth Amendment to the U.S. Constitution. The citizenship question would undermine the federal government's constitutional obligation under the census clause to conduct an "actual enumeration" of the nation's population and violate the APA.

⁴⁸ Information in the table was drawn from the Brennan Center for Justice, "Census Litigation." <https://www.brennancenter.org/issues/gerrymandering-fair-representation/fair-accurate-census/2020-census-litigation>.

U.S. District Court, Northern District of California

State of California, et al. v. Wilbur Ross, Jr., et al.

Plaintiffs: State of California along with several California cities and counties

Litigant: Attorney General Xavier Becerra

Claim: The addition of the question would deter noncitizens and their relatives from responding to the census and produce detrimental effects for states with large immigrant populations—including fewer congressional seats and billions of dollars in lost federal funding. Because a citizenship question would depress census responses, the decision to add it would lead to a violation of the U.S. Constitution’s requirement for an “actual enumeration” of every person residing in the country. The department’s decision also violated the Administrative Procedure Act’s prohibition against “arbitrary and capricious” agency action, because the department failed to adequately account for the undercount threat when formulating its position.

City of San Jose, et al. v. Wilbur L. Ross, Jr., et al.

Plaintiffs: The City of San Jose and the Black Alliance for Just Immigration (BAJI)

Attorneys: Lawyers’ Committee for Civil Rights Under Law, Public Counsel, Manatt, Phelps and Phillips, LLP

Claim: Adding the question would exacerbate historic undercounts in African American, Latino, and other minority communities, leading to losses in congressional representation and federal funding for San Jose and causing BAJI to divert resources to address census issues. Because the addition of the question would depress census responses, the decision to add it violated the U.S. Constitution’s requirement that the government conduct an “actual enumeration” of the nation’s entire population. The plaintiffs also contended that adding the question would inevitably lead to a violation of the government’s federal constitutional duty to apportion congressional seats based on the “whole number of persons” residing in each state. The government violated the Administrative Procedure Act, which bars unlawful and arbitrary agency decision-making by, among other things, inadequately testing the effects of adding the citizenship question on its ability to perform a fair and accurate count.

U.S. District Court, District of Maryland

Robyn Kravitz, et al. v. United States Department of Commerce, et al.

Plaintiffs: A group of individuals from Maryland and Arizona

Attorneys: Covington & Burling LLP, National Redistricting Foundation

Claim: The addition of the question would reduce census response rates and produce a disproportionate undercount in states with high numbers of certain demographic groups, including non-English speakers, people of Hispanic or Latino origin, and immigrants. Therefore, the Commerce Department's decision to add it violated the federal government's constitutional requirement to conduct an "actual enumeration" of every person living in the country. The department added the citizenship question without adequately assessing its likely impact on response rates. For this and other reasons, the Commerce Department's decision also violated the Administrative Procedure Act.

La Union Del Pueblo, et al. v. Wilbur L. Ross, et al.

Plaintiffs: Twenty-five Asian American, African American, Native American, Latino, and immigrant groups

Attorneys: Mexican American Legal Defense and Education Fund and Asian Americans Advancing Justice | AAJC

Claim: The addition of the question would discourage Latinos, Asian Americans, African Americans, Native Americans, and noncitizens from responding to the census form and result in a disproportionate undercount, consequently diluting their political representation and federal funding to their communities. The question was intended to severely undercount Latino, Asian Americans, immigrants, and other populations, a violation of the equal protection clause of the Fifth Amendment. The decision infringed on the federal government's duty to conduct an "actual enumeration" of every person in this county and apportion congressional seats based upon a count of "the whole number of persons," violating the apportionment and enumeration clauses of the U.S. Constitution and the APA. Secretary Ross and the acting director of the Census Bureau conspired with others—including members of the Trump administration—to violate the equal protection rights of Latinos, African Americans, Asian Americans, Native Americans, and foreign-born persons.

Appendix II: Litigation Timeline

	<i>State of California, et al. v. Wilbur Ross, Jr., et al.</i>	<i>States of New York, et al., v. U.S. Department of Commerce, et al.</i>	<i>Robyn Kravitz, et al. v. U.S. Department of Commerce, et al.</i>
2018			
March 26	State of California along with several California cities and counties file suit in the Northern District of California.		
April 3		New York state and more than two dozen states and cities file suit in the Southern District of New York.	
April 11			A group of Maryland and Arizona residents file a lawsuit in the District of Maryland.
April 17	The city of San Jose, California, and Black Alliance for Just Immigration file a lawsuit in the Northern District of California.		
May 25		U.S. Department of Justice files a motion to dismiss the New York lawsuit.	
May 31			La Unión del Pueblo Entero, a Texas-based community group, leads another lawsuit filed in the District of Maryland.
June 6		The New York Immigration Coalition files a lawsuit in the Southern District of New York with four other immigrant rights organizations.	
July 26		U.S. District Judge Jesse Furman rejects the Trump administration's request to dismiss the two New York-based	

	<i>State of California, et al. v. Wilbur Ross, Jr., et al.</i>	<i>States of New York, et al., v. U.S. Department of Commerce, et al.</i>	<i>Robyn Kravitz, et al. v. U.S. Department of Commerce, et al.</i>
Aug 17	U.S. District Judge Richard Seeborg rules the two California-based lawsuits can continue to move forward.	lawsuits over the citizenship question.	
Aug 22			U.S. District Judge George Hazel allows the lawsuits filed by Maryland and Arizona residents to move forward.
Nov 2		The Supreme Court rejects the Trump administration's request to delay the trial for the New York lawsuits.	
Nov 5		New York trial begins.	
2019			
Jan 15		U.S. District Judge Jesse Furman rules that the addition of the question to the census is unlawful. Appeals follow.	
Feb 15		The Justice Department appeals the decision to the U.S. Supreme Court, bypassing the intermediate appellate court. The Supreme Court announces it is taking up the dispute over Secretary Ross's decision to add a citizenship question to the 2020 Census.	
March 6	U.S. District Judge Richard Seeborg rules that adding the question to the census is unlawful and unconstitutional. Appeals follow.		
April 5			U.S. District Judge George Hazel rules the citizenship question

	<i>State of California, et al. v. Wilbur Ross, Jr., et al.</i>	<i>States of New York, et al., v. U.S. Department of Commerce, et al.</i>	<i>Robyn Kravitz, et al. v. U.S. Department of Commerce, et al.</i>
April 23		The U.S. Supreme Court justices hear oral arguments for and against adding the question to the 2020 Census.	unlawful and unconstitutional. Appeals follow.
June 27		In a 5-4 decision led by Chief Justice John Roberts, the U.S. Supreme Court rejects the Commerce Department's attempt to add a citizenship question to the 2020 Census.	
July 11		Trump administration drops plans to add a citizenship question to the 2020 Census.	



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