



**Democrat Fear-Mongering on the Citizenship Question:
Gathering Census Information about Citizenship is Not New
and Should Not be Controversial**

**Minority Staff Report
Committee on Oversight and Reform
U.S. House of Representatives**



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Executive Summary

Democrats do not want to know how many citizens there are in the United States. Although the Census Bureau solicits citizenship information from a portion of the population every year, Democrats now fear that a full survey of U.S. citizens will hurt their political fortunes for years to come.

To prevent this outcome, Democrats in Congress—including Chairman Elijah E. Cummings—have initiated an aggressive investigation of the Commerce Department’s reinstatement of a citizenship question on the 2020 decennial census. As the Committee Republicans have documented, Chairman Cummings’s investigation is designed to influence pending Supreme Court litigation by seeking documents from the Commerce Department that go directly to heart of the issue before the Supreme Court.¹

The Democrat fear-mongering about the citizenship question on the 2020 Census is disingenuous and wrong. Soliciting citizenship information from the people present in the United States is not new and should not be controversial.

Every decennial census from 1820 to 1950 inquired about citizenship. From 1970 to 2000, the long-form census—sent to a segment of the population—inquired about citizenship. Since 2005, the Census Bureau has asked 3.5 million Americans about their citizenship every year.

State and local governments regularly ask residents for their citizenship status—for a driver’s license or a firearm permit. The federal government asks every potential employee in the country whether they are a citizen. Other countries ask a citizenship question on their censuses, which the United Nations recommends as a best practice.

As Democrats stoke fear about the citizenship question, the facts say otherwise. The Census Bureau’s chief scientist says there is no evidence the question will depress response rates. Federal law protects all information submitted via the Census, making it illegal to misuse citizenship information for a law-enforcement purpose. Aggregated and anonymized citizenship data is useful to policymakers in a number of different areas, including housing, education, and public health.

Chairman Cummings’s partisan investigation of the Commerce Department’s reinstatement of the citizenship question ignores these key points. His investigation, sadly, wastes Committee resources that could be dedicated to bipartisan oversight of the real challenges facing the 2020 Census. The Oversight Committee should not be mired in this wasteful, partisan investigation.

¹ STAFF OF H. COMM. ON OVERSIGHT & GOV’T REFORM, 116TH CONG., DEMOCRATS’ INVESTIGATION OF THE CITIZENSHIP QUESTION: A TRANSPARENT ATTEMPT TO IMPROPERLY INFLUENCE THE SUPREME COURT OF THE UNITED STATES (2019).

Collecting Citizenship Information Is Not a New Practice

On March 26, 2018, Commerce Secretary Wilbur Ross announced his intention to reinstate a question regarding citizenship on the 2020 Census.² On March 29, 2018, the Census Bureau presented the 2020 Census questions to Congress, including the question regarding citizenship.³ Democrats in Congress protested immediately, with then-Ranking Member Cummings calling it a “a new, untested question.”⁴ In reality, however, the Census Bureau solicited citizenship information on the long-form decennial census questionnaire until 2000 and has done it annually since 2005 on the American Community Survey.

The Census Bureau Already Routinely Collects Citizenship Information

A question about citizenship on the census is not new. Every decennial census from 1820 to 1950 asked about citizenship. From 1970 to 2000, the Census Bureau mailed a “long-form census” with the decennial census to five percent of American households.⁵ In addition to asking the 10 basic census questions on the short form, the long-form census asked more expansive questions about a person’s dwelling and the composition of the household. From 1970 to 2000, each long-form census asked a citizenship question.

Table 1: 1940 Census Citizenship Question⁶

What is the person’s place of birth?
If foreign born, is the person a citizen?

Table 2: 1950 Census Citizenship Question⁷

1. What State or country was the person born in?
2. If foreign born, is the person naturalized?

² Letter from Hon. Wilbur Ross, Sec’y, Dep’t of Commerce, to Karen Dunn Kelley, Undersecretary for Econ. Affairs, Dep’t of Commerce (Mar. 26, 2018).

³ Questions Planned for the 2020 Census and American Community Survey: Federal Legislative Programs and Uses, U.S. Census Bureau (March 2018).

⁴ Press Release, H. Comm. on Oversight & Reform, Cummings Issues Statement Calling for Hearings on Trump Administration Plan to Add Citizenship Question to Census (Mar. 27, 2018), <https://oversight.house.gov/news/press-releases/cummings-issues-statement-calling-for-hearings-on-trump-administration-plan-to>.

⁵ U.S. Census Bureau, History of Questionnaires available at https://www.census.gov/history/www/through_the_decades/questionnaires/.

⁶ 1940 Census questions available at https://www.census.gov/history/www/through_the_decades/index_of_questions/1940_population.html.

⁷ 1950 Census questions available at https://www.census.gov/history/www/through_the_decades/index_of_questions/1950_population.html.

Table 3: Citizenship Question – 1980 Long Form Population Survey⁸

In what state or foreign country was the person born?
If this person was born in a foreign country...
<ul style="list-style-type: none">• Is this person a naturalized citizen of the United States?
<ul style="list-style-type: none">• When did this person come the United States to stay?

After the 2000 Census, the Census Bureau replaced the long-form census with the American Community Survey (ACS).⁹ Unlike the long-form census, the Census Bureau conducts the ACS on a continuing, annual basis, sending the survey to about 3.5 million households each year.¹⁰ The ACS includes expanded questions on demographics, dwelling unit, and household composition, as well as a series of detailed citizenship questions.¹¹ The proposed question about citizenship on the 2020 Census is similar to the question posed on the annual ACS survey.

Table 4: 2019 ACS Questionnaire - Citizenship¹²

Where was this person born?
<ul style="list-style-type: none">• In the United States• Outside the United States
Is this person a citizen of the United States?
<ul style="list-style-type: none">• Yes, born in the United States• Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas• Yes, born abroad of U.S. citizen parent or parents• Yes, U.S. citizen by naturalization• No, not a U.S. citizen
When did this person come to live in the United States?

⁸ 1980 Census questions available at

https://www.census.gov/history/www/through_the_decades/index_of_questions/1980_population.html.

⁹ U.S. Census Bureau, History: American Community Survey, available at

https://www.census.gov/history/www/programs/demographic/american_community_survey.html.

¹⁰ *Id.*

¹¹ U.S. Census Bureau, American Community Survey: Questions on the Form and Why We Ask, available at

<https://www.census.gov/acs/www/about/why-we-ask-each-question/>.

¹² Citizenship questions on the 2019 ACS questionnaire are found on page 8, questions 7-9 available at

<https://www2.census.gov/programs-surveys/acs/methodology/questionnaires/2019/quest19.pdf?#>.

Figure 1: 2020 Census Question on Citizenship

The image shows a screenshot of a digital form titled "Is this person a citizen of the United States?". It contains five radio button options: "Yes, born in the United States", "Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas", "Yes, born abroad of U.S. citizen parent or parents", "Yes, U.S. citizen by naturalization – Print year of naturalization" (with a four-digit input field and a mouse cursor), and "No, not a U.S. citizen".

Until Secretary Ross’s decision to reinstate a citizenship question on the 2020 Census, there had been no constitutional challenge to the inclusion of a citizenship question on the census or the ACS. During the Committee’s March 14 hearing with Secretary Ross, Rep. Michael Cloud (R-TX) asked him about this issue. Secretary Ross testified:

Mr. Cloud: There’s been an argument that this question is unconstitutional, yet we’ve used it several times over the last 100 years and it’s not been brought into question before. Is that correct?

Sec. Ross: Oh, it’s been used multiple times over the last 120 years, and the exact wording of this is what’s been used each year on the ACS. That’s one of the many reasons why in my March 26, 2018, memo I cited the fact that the Census Bureau professionals regarded this question as adequately tested because it had already been exposed with exactly those same words to more than 30 million Americans over a long period of years.¹³

Ranking Member Jim Jordan (R-OH) made the same point during the Committee’s hearing with Secretary Ross, reminding the Committee that the citizenship question is not new and has been thoroughly tested. He explained:

I would like to remind my colleagues the citizenship question is not new. It has appeared on previous decennial census questionnaires and is asked on the American Community Survey every single year. The majority apparently does not object to the American Community Survey asking a citizenship question, so I don’t understand the majority’s objection to the question now. It is the exact same question on both forms.

¹³ *Commerce Secretary Wilbur L. Ross, Jr.: Hearing Before the H. Comm on Oversight and Reform*, 116th Cong. (2019).

My colleagues complain the question hasn't been tested because it was added at the last minute. This argument is simply false. The question has already gone through rigorous testing, over more than a dozen years, as it has appeared on the American Community Survey. In fact, the American Community Survey required more rigorous testing for this question than the question would have received in 2018 Census test.¹⁴

State and Federal Entities Regularly Solicit Citizenship Information for a Variety of Reasons

In addition to the Census Bureau, other state and federal entities solicit and collect citizenship data for a variety of reasons, including employment and licensure. For example:

- The U.S. Citizenship and Immigration Services requires each prospective employee in the United States to submit an Employment Eligibility Verification Form (I-9 form), which asks about the employee's citizenship status;¹⁵
- The District of Columbia solicits citizenship status for individuals applying for a driver's license;¹⁶
- The state of Wisconsin similarly requests citizenship status for individuals applying for a driver's license;¹⁷
- The state of California asks about an individual's citizenship when applying to obtain a firearm;¹⁸ and
- The state of Ohio requires an applicant for a concealed-carry license to state his or her citizenship.¹⁹

Other Countries Solicit Citizenship Information as Part of Their Censuses

The collection of citizenship information during a population census is actually a common practice among countries. In fact, as part of its principles and recommendations for

¹⁴ *Id.*

¹⁵ Dep't of Homeland Security, U.S. Citizenship & Immigration Servs., Employment Eligibility Verification, https://www.uscis.gov/system/files_force/files/form/i-9-paper-version.pdf.

¹⁶ D.C. Dep't of Motor Vehicles, DC Driver License or Identification Card Application, https://dmv.dc.gov/sites/default/files/dc/sites/dmv/publication/attachments/DMV%20BOE%20Application_2-25-19.pdf.

¹⁷ Wisc. Dep't of Transportation, Wisconsin Driver License (DL) Application, <https://wisconsin.gov/Documents/formdocs/mv3001.pdf>.

¹⁸ CA Dep't of Justice, Bureau of Firearms, Personal Firearms Eligibility Check Application, <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/pfecapp.pdf>.

¹⁹ State of Ohio, Application for a License to Carry a Concealed Handgun, <https://www.ohioattorneygeneral.gov/Files/Forms/Forms-for-Law-Enforcement/Concealed-Carry-License-and-Renewal-Application.aspx>.

population censuses, the United Nations recommends that countries gather citizenship information about its population.²⁰ As Secretary Ross testified during the Committee’s hearing:

The United Nations has recommended that countries ask the citizenship question or some form of it, and many countries do. I believe I mentioned a few. Australia, Canada, France, Germany, Ireland, Mexico, and the United Kingdom are a few that occurred to me offhand.²¹

Democrats Are Fear-Mongering about the Citizenship Question

Democrats are loudly protesting the reinstatement of the citizenship question on the 2020 Census, knowing that the question is not new, and that similar information is solicited regularly at all levels of government. Democrats are playing to fear, alleging that immigrant households will not respond to the census if it includes a question on their citizenship.²² They make these arguments in spite of testimony from John Abowd, the Census Bureau’s chief scientist, that “there is no credible quantitative evidence that the addition of the citizenship question will affect the accuracy of the count.”²³ Stripping away this Democrat rhetoric, however, shows that citizenship information obtained through the Census is a proper use of the Commerce Secretary’s authority, protected by federal law, and beneficial to policymakers.

Commerce Secretary Ross Is Authorized to Add a Citizenship Question to the Census

Federal law allows the Commerce Secretary to select the questions to be asked on the decennial census, so long as the Secretary meets certain statutory deadlines.²⁴ First, the Secretary must submit the proposed subjects for the decennial census to Congress three years before the appropriate census date.²⁵ Second, the Secretary must submit the final questions for a decennial census two years before the appropriate census date.²⁶ For the 2020 Census, the appropriate census date is April 1, 2020.

Secretary Ross adhered to this statutory timeline. On March 28, 2017—three years before the appropriate census date—Secretary Ross submitted the proposed subjects for the 2020 Census to Congress.²⁷ On March 29, 2018—two years before the appropriate census date—Secretary Ross submitted the final questions to Congress.²⁸

²⁰ United Nations, Principles and Recommendations for Population and Housing Censuses (2017), https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Principles_and_Recommendations/Population-and-Housing-Censuses/Series_M67rev3-E.pdf.

²¹ *Supra* note 13.

²² *Supra* note 13, at 103.

²³ *Supra* note 13.

²⁴ 13 U.S. Code § 141 (1976).

²⁵ 13 U.S. Code § 141(f)(1) (1976).

²⁶ *Id.* at § 141(f)(2).

²⁷ U.S. Dep’t of Commerce, Subjects Planned for the 2020 Census and American Community Survey (Issued March 2017), <https://www2.census.gov/library/publications/decennial/2020/operations/planned-subjects-2020-acr.pdf>.

²⁸ Questions Planned for the 2020 Census and American Community Survey: Federal Legislative Programs and Uses, U.S. Census Bureau (March 2018).

On December 12, 2017, the Department of Justice (DOJ) formally asked the Census Bureau to add a citizenship question to the 2020 Census.²⁹ DOJ explained that it needed more specific census-block data to enforce provision of the Voting Rights Act.³⁰ Following the DOJ letter, using his authority under federal law, Secretary Ross decided to add a citizenship question.

Secretary Ross explained his reasoning in a March 26, 2018 memorandum, writing:

To conclude, after a thorough review of the legal, program, and policy considerations, as well as numerous discussions with the Census Bureau leadership and interested stakeholders, I have determined that reinstatement of a citizenship question on the 2020 decennial census is necessary to provide complete and accurate data in response to the DOJ request. To minimize any impact on decennial census response rates, I am directing the Census Bureau to place the citizenship question last on the decennial census form.³¹

Census-Solicited Citizenship Information Cannot Be Used for Immigration Enforcement

Some have alleged that the responses to the citizenship question could be used for law enforcement or immigration proceedings.³² However, federal law strictly protects all data provided to the Census Bureau. Disclosure of census data is punishable by five years in prison and a \$250,000 fine.³³ All officers, employees (permanent and temporary), contractors, volunteers, or anyone else handling census data must sign a lifetime oath to keep the data confidential.³⁴

In addition, the Census Bureau goes to great lengths to ensure that any statistical data it obtains is anonymized and cannot be traced back to an individual person or household. The Census Bureau does not share individual responses with other agencies. Aggregated data sets generated from respondent information may be shared with other agencies, but only for statistical uses and only if the agency has requested the data from the Commerce Secretary.

Citizenship information obtained by the Census Bureau cannot be used for immigration enforcement or any other law enforcement purpose. Although census data was used to locate

²⁹ Letter from Hon. Arthur E. Gary, General Counsel, Justice Management Division, U.S. Dep't of Justice to Hon. Ron Jarmin, Acting Dir., Census Bureau (Dec. 12, 2017) (on file with the Committee).

³⁰ *Id.* at 2.

³¹ *Supra* note 2.

³² Letter from the Leadership Conference on Civil and Human Rights, et. al., to Hon. Wilbur Ross, Sec'y, U.S. Dep't of Commerce (January 8, 2018) available at <https://censusproject.files.wordpress.com/2018/01/doj-citizenship-q-proposal-final.pdf>.

³³ Press Release, The U.S. Census Bureau's Commitment to Confidentiality (May 7, 2018), https://www.census.gov/newsroom/blogs/director/2018/05/the_u_s_census_bure.html.

³⁴ In 2018, Committee staff traveled to Rhode Island to conduct oversight of the 2018 Census Test. Committee staff was required to sign documents swearing not to disclose any private information, in perpetuity, with which the staff may encounter over the course of the time conducting oversight.

Japanese-Americans for relocation to internment camps in the early 1940s,³⁵ such disclosures would be unlawful today. At a Committee hearing in 2018, the Justice Department and the Commerce Department confirmed that citizenship data would not be used for law enforcement purposes.³⁶

In fact, citizenship information obtained by the Census Bureau would not be useful for immigration enforcement because the census question does not ask about legal status. As Secretary Ross explained in his testimony:

The census question will not ask about legal status of the respondent. It simply asks about the factual status, citizen or not, and some questions about where they came from. There is nothing in the census data that can be used by enforcement authorities for immigration or for any other purpose.

Under Title 13 [of the U.S. Code], everyone at the census who has access to the data has taken a lifetime oath not to reveal that information to anyone outside, the detailed private information. Consequently—and anyone who violates that is subject to years in prison and large fines.

So it is a very serious, very important factor of the census that no one's individual data will be used for any other purpose other than the aggregations that we provide externally.

So this is not a tool as such for immigration. Our job is simply to count the people, whether citizen or not. And it is not our job to become involved with any other function of government.³⁷

Citizenship Information Is Useful to Policymakers for a Variety of Reasons

Despite Democrat hysteria about the citizenship question, policymakers at all levels of government use anonymized and aggregated citizenship data for legitimate reasons. In fact, one of the cornerstones of the Census Bureau is providing free, unencumbered, public access to statistical data. Currently, without a citizenship question on the decennial census, the Census Bureau relies on citizenship data collected through ACS sampling.

Citizenship information is a component of the Justice Department's enforcement of the Voting Rights Act (VRA). In its letter to the Census Bureau, the Justice Department noted, "[f]or years, the Department used the data collected in response to that [citizenship] question in

³⁵ Lori Aratani, *Secret use of census info helped send Japanese Americans to internment camps in WWII*, WASH POST (Apr. 6, 2018), https://www.washingtonpost.com/news/retropolis/wp/2018/04/03/secret-use-of-census-info-helped-send-japanese-americans-to-internment-camps-in-wwii/?utm_term=.57bae905a26f.

³⁶ *Progress Report on the 2020 Census: Hearing Before the H. Comm. on Oversight and Gov't Reform*, 115th Cong. 57-58 and 80-81 (May 8, 2018) (statement of Earl Comstock, Dept. of Commerce).

³⁷ *Supra* note 13.

assessing compliance with Section 2 [of the VRA] and in litigation to enforce Section 2’s protections against racial discrimination in voting.”³⁸ The letter further stated, “the ACS is currently the only survey that collects information regarding citizenship and estimates citizen voting-age population.”³⁹

According to the Census Bureau, state and local governments currently use citizenship data obtained from the ACS for many purposes, including to:

- determine how many citizen and non-citizens are receiving public benefits, like Medicaid and Supplemental Nutrition Assistance Program;
- better target local resources to address local problems like drug use in immigrant communities;
- align educational resources in a community, like determining scholarship assistance;
- determine homeownership rates for citizens and non-citizens in their communities; and
- help local businesses understand the changing demographics of the community to better inform business decisions.⁴⁰

Conclusion

The Census Bureau has solicited citizenship information in a variety of formats almost continuously from 1850 to the present. It is only now, when the Trump Administration decides to reinstate the citizenship question on the decennial census, that Democrats and liberal special interests object to collecting citizenship data.

Chairman Cummings has initiated a partisan investigation designed to solicit the same information from the Commerce Department that is currently at issue before the Supreme Court. His investigation is a key part of the Democrat effort to sow apprehension and illegitimacy around the reinstatement of the citizenship question on the 2020 Census.

Chairman Cummings’s investigation is also, unfortunately, a missed opportunity. By dedicating the Committee’s limited resources toward a partisan investigation, the Chairman is sacrificing bipartisan oversight of the real challenges facing the census—such as information technology, hiring and recruiting, communications and partnership programs, opening area census offices, and the census print contract. If Chairman Cummings focused on these issues rather than pursuing a partisan investigation of the citizenship question, the Committee could have a real chance to help mitigate potential waste, fraud, and abuse in the 2020 Census.

³⁸ *Supra* note 29 at 2.

³⁹ *Id.*

⁴⁰ U.S. Census Bureau, American Community Survey, “Why We Ask Questions About...Place of Birth, Citizenship, Year of Entry,” available at <https://www.census.gov/acs/www/about/why-we-ask-each-question/citizenship/>.