

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074

<https://oversight.house.gov>

July 22, 2020

The Honorable Wilbur L. Ross, Jr.
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Ross:

Yesterday, President Trump issued a memorandum directing you to exclude undocumented immigrants from the 2020 Census apportionment calculations for the House of Representatives.¹ This action directly violates the Constitution and the laws passed by Congress, and it appears to be a blatant attempt to politicize the 2020 Census, depress participation, and undermine its accuracy. Because the Administration is taking this step in the middle of the ongoing Census, the Committee on Oversight and Reform requests that you appear for an emergency hearing on Wednesday, July 29, 2020.

Background

The President's unconstitutional memorandum comes after the Trump Administration failed in its last attempt to politicize the Census. Beginning in 2017, the Administration attempted to add an unlawful citizenship question to the 2020 Census—a decision that was struck down by the Supreme Court last year. The Administration argued repeatedly—including before this Committee—that the attempt to add the citizenship question was not for the purposes of excluding undocumented immigrants from the 2020 Census apportionment calculations.

Despite these assertions, a study written by a Republican gerrymandering expert who provided input on the Administration's effort to add the citizenship question stated that excluding undocumented immigrants from the redistricting counts "would be advantageous to Republicans and Non-Hispanic Whites."² After this document was made public, the Supreme Court ruled that the Administration's rationale for adding the question was "contrived" and that

¹ The White House, *Memorandum on Excluding Illegal Aliens from the Apportionment Based Following the 2020 Census* (July 21, 2020) (online at www.documentcloud.org/documents/6999106-July-21-2020-Memorandum-On-Excluding-Illegal.html).

² Thomas Hofeller, *The Use of Citizen Voting Age Population in Redistricting* (2015) (online at <https://assets.documentcloud.org/documents/6111284/May-31-2019-Unredacted-Exhibits.pdf>).

the effort to add it was illegal.³ Now, the Administration has dropped all pretense of upholding the Constitution and ensuring a fair, full, nonpartisan, and accurate census and ordered you to exclude undocumented immigrants from the 2020 Census apportionment calculations.

Even prior to the coronavirus pandemic, experts testified to the Committee that the Census Bureau was at risk of failing in critical aspects of Census preparations, which could impact the ability to conduct a complete and accurate count.⁴ Since the outbreak of the pandemic, the Census Bureau has faced serious new challenges. For example, the pandemic has led to repeated delays in Census operations, leading the Bureau to push back its timeline from August 1, 2020, to October 31, 2020.⁵

Request for Hearing Testimony

The decennial census is a cornerstone of our democracy. Article I of the Constitution requires the federal government to conduct a Census every ten years and to count every person in the United States. Article I, Section 2 of the Constitution specifically assigns Congress the authority to direct the census in “in such manner as they shall by law direct.”⁶ Our nation’s laws require that “the President shall transmit to the Congress a statement showing the whole number of persons.”⁷ The Supreme Court has reaffirmed the principle of counting every person.⁸

The President’s memorandum violates these constitutional and statutory mandates and appears to be an attempt to sow confusion, reduce participation, and distort the count in the ongoing 2020 Census. For all these reasons, the Committee on Oversight and Reform requests your testimony at a hearing on July 29, 2020, at 10:00 a.m., in room 2154 of the Rayburn House Office Building.

The enclosed Witness Instruction Sheet provides information for witnesses appearing before the Committee. Please note the procedures for submitting written testimony at least two business days prior to the hearing. Please contact the Committee by July 24, 2020, to confirm your attendance. If you have any questions, please contact Committee staff at (202) 225-5051.

³ *Dept. of Commerce, v. New York*, 139 S. Ct. 2551 (2019).

⁴ Committee on Oversight and Reform, *Hearing on Reaching Hard-to-Count Communities in the 2020 Census* (Jan. 9, 2020) (online at <https://oversight.house.gov/legislation/hearings/reaching-hard-to-count-communities-in-the-2020-census>).

⁵ Census Bureau, *2020 Census Operational Adjustments Due to COVID-19* (last viewed July 21, 2020) (online at <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html>).

⁶ U.S. Const., Art. 1, sec. 2.

⁷ 2 U.S.C. 2(a).

⁸ *Knox v. Lee*, 79 U.S. 457 (1871); *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016).

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Sincerely,

A handwritten signature in blue ink that reads "Carolyn B. Maloney". The signature is written in a cursive style and is positioned above a horizontal line.

Carolyn B. Maloney
Carolyn B. Maloney
Chairwoman

Enclosure

cc: The Honorable James R. Comer, Ranking Member

Committee on Oversight & Reform
Witness Instruction Sheet

1. Witnesses should provide their testimony, biography, and "Truth in Testimony" disclosure and certification form via email to Oversight_Clerks@mail.house.gov no later than 10:00 a.m. two business days prior to the hearing.
2. Witnesses should also provide a short biographical summary and include it with the electronic copy of testimony provided to the Clerk.
3. At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions. Written testimony will be entered into the hearing record and may extend to any reasonable length.
4. Written testimony will be made publicly available and will be posted on the Committee's website and the U.S. House of Representatives Document Repository. It is therefore recommended that personally identifiable information, such as addresses and phone numbers, not be included in the biographical information.
5. The Committee does not provide financial reimbursement for witness travel or accommodations. Witnesses with extenuating circumstances, however, may submit a written request for such reimbursements to Robin Butler, Financial Administrator, 2157 Rayburn House Office Building, at least one week prior to the hearing. Reimbursements will not be made without prior approval.
6. Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.
7. Please note that Committee Rule 16(b) requires counsel representing an individual or entity before the Committee or any of its subcommittees, whether in connection with a request, subpoena, or testimony, promptly submit a notice of appearance to the Committee. If this applies to you, please email the address above to acquire this form.

For inquiries regarding these rules and procedures, please contact the Committee on Oversight and Reform at (202) 225-5051.

Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)*, of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

Committee: _____

Subcommittee: _____

Hearing Date: _____

Hearing :

Witness Name: _____

Position/Title: _____

Witness Type: Governmental Non-governmental

Are you representing yourself or an organization? Self Organization

If you are representing an organization, please list what entity or entities you are representing:

If you are a **non-governmental witness**, please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that you or the organization(s) you represent at this hearing received in the current calendar year and previous two calendar years. Include the source and amount of each grant or contract. *If necessary, attach additional sheet(s) to provide more information.*

If you are a **non-governmental witness**, please list any contracts or payments originating with a foreign government and related to the hearing's subject matter that you or the organization(s) you represent at this hearing received in the current year and previous two calendar years. Include the amount and country of origin of each contract or payment. *If necessary, attach additional sheet(s) to provide more information.*

False Statements Certification

Knowingly providing material false information to this committee/subcommittee, or knowingly concealing material information from this committee/subcommittee, is a crime (18 U.S.C. § 1001). This form will be made part of the hearing record.

Witness signature

Date

If you are a non-governmental witness, please ensure that you attach the following documents to this disclosure. Check both boxes to acknowledge that you have done so.

- Written statement of proposed testimony
- Curriculum vitae

*Rule XI, clause 2(g)(5), of the U.S. House of Representatives provides:

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

(B) In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of any Federal grants or contracts, or contracts or payments originating with a foreign government, received during the current calendar year or either of the two previous calendar years by the witness or by an entity represented by the witness and related to the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B) shall include—

(i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and

(ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.