

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CITY OF SAN JOSE, a municipal corporation; and BLACK ALLIANCE FOR JUST IMMIGRATION, a California nonprofit corporation,

Plaintiffs,

vs.

WILBUR L. ROSS, JR., in his official capacity as Secretary of the U.S. Department of Commerce; U.S. DEPARTMENT OF COMMERCE; RON JARMIN, in his official capacity as Acting Director of the U.S. Census Bureau; U.S. CENSUS BUREAU,

Defendants.

Case No. 3:18-cv-2279-RS

**RULE 26(A)(2)(B) EXPERT
REPORT AND DECLARATION
OF MARGO ANDERSON, PH.D.**

I. Qualifications and Professional Experience

My name is Margo Anderson. My background, experience, and list of publications from the last 10 years are summarized in my curriculum vitae, which is attached as **Exhibit A** to this report.

In brief, I am a Distinguished Professor Emerita in History and Urban Studies at the University of Wisconsin, Milwaukee. I received a Ph.D. in History from Rutgers University in 1978. I have written numerous articles and books on the demographic history of the United States and on the Census. Relevant book publications include the second edition of *The American Census: A Social History* (Yale University Press, 2015); *Encyclopedia of the U.S. Census: From the Constitution to the American Community Survey (ACS)*, 2d ed. (Washington, D.C.: CQ Press, 2011), coedited with Constance F. Citro and Joseph J. Salvo; and Margo Anderson and Stephen E. Fienberg, *Who Counts? The Politics of Census-Taking in Contemporary America* (New York: Russell Sage Foundation, 2001). I have received research fellowships from the National Endowment for the Humanities, the American Council of Learned Societies, and the Woodrow Wilson International Center for Scholars. In 2012-2013, I was an ASA-NSF-Census Bureau Fellow in Residence at the Census Bureau. I served as the President of the Social Science History Association (2006).

In the past four years, I have not testified as an expert at trial or by deposition. For my work on this matter, I am being compensated at a rate of \$100 per hour, plus reimbursement for expenses. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

II. Summary of Findings

I was retained by plaintiffs in *City of San Jose, et al. v. Ross, et al.* to evaluate the nature of the Department of Commerce's decision to add a question on citizenship to the 2020 decennial census in the context of the history of the United States Census.

In forming my conclusions, I considered the Administrative Record and other materials produced by the Commerce Department and Census Bureau in this lawsuit;¹ the authorities cited in this report; and the technical and administrative literature on taking the census available in the scholarly canon, Congressional documents, and census publications, both print and digital. Materials that I consulted not footnoted in this report are listed in **Exhibit B** attached hereto. I have discussed the historical record of census procedures with Dr. Joseph Salvo, Director of the Population Division, New York City Department of City Planning (with whom I also co-edited the 2d edition of the *Encyclopedia of the U.S. Census*). I have also relied on my years of experience as an historian of the U.S. federal statistical system generally and the census in particular, as set out in my curriculum vitae.

Based on my analysis, I have formed the following opinions:

1. The language, mode of administration, and possible answers to questions regarding citizenship status posed on the census (a "citizenship question" or a "question on citizenship") have changed repeatedly over the course of American history.
2. Driven by innovations in survey methodology – primarily, sampling – the 1950 census was the last time a citizenship or naturalization question appeared on the complete count census.
3. Unlike many other questions appearing on complete count censuses, citizenship questions have been the subject of limited technical and cognitive research to reconcile known problems and ambiguities in the data, and thus improve data quality. Indeed, the only scientific evaluation of the quality of complete count data for a question on citizenship dates to the 1950 census.
4. Posing a question on citizenship to respondents of the 2020 Decennial Census, as Secretary Ross directed in his March 26, 2018 memorandum, (AR1313) would break from historical census practice.

¹ I have focused particular attention to the historical justifications for including the question set forth in Secretary Ross's March 26, 2018 memorandum (AR1313) and the Census Bureau's statement that "[b]ecause no new questions have been added to the Decennial Census (for nearly 20 years), the Census Bureau did not feel bound by past precedent when considering the Department of Justices' request," (AR1296).

III. Citizenship Questions on the American Census

A. Overview

The proposal by Secretary Ross to include a question on citizenship on the 2020 decennial census questionnaire has prompted much discussion on the historical experience of collecting information on the citizenship of American residents. This review traces that history to shed light on the applicability of historical analogies from past practice on the current proposal.

The U.S. government has included questions on citizenship in some form for several different reasons, with different wording, and using different statistical methodologies in 14 of the 23 decennial censuses since 1790.

The question first appeared in 1820, was repeated in 1830, and next appeared in 1870. Thereafter, it was asked continuously from 1890 to 1950 and again from 1970 to 2000 on the census long form sample survey. This “on again, off again” experience is not unusual for census questions, as the salience of social, political, and economic issues changes over time.

The U.S. government has also changed the method of taking the census over time. From 1790 to 1960, enumerators collected census information directly from households. From 1970 onward, the primary mode of data collection changed. The Census Bureau began mailing questionnaires to households. If the Bureau did not receive a response to the mailed form, an enumerator was dispatched to the address to collect the data or to find out if the housing unit was vacant.

The administrative structures for the census have also changed over time. Until 1902, the “Census Office” was a temporary agency in the State Department (1790-1840) or the Interior Department (1850-1900), established and mothballed each decade. Congress wrote and rewrote the census statute, including the actual questionnaire, every ten years. Congress established a permanent agency in 1902, and relocated it in the Department of Commerce and Labor in 1903. Between 1910 and 1930 the Census Office took on more of the burden of questionnaire design. The 1929 Census Act acknowledged the shift, authorizing the Census Director to manage technical issues of administration. Congress shifted that authority to the Secretary of Commerce in 1954.

The Census Bureau has been a pioneer in the development of both the science of statistics and survey methodology. Machine tabulation of survey data (1890), the introduction of probability sampling methods for population measurement (1940), computerization of census administration (1950), digital mapping of the addresses of the nation (1980s) – to name just a few innovations – were arguably invented or elaborated on by the Census Bureau.

To understand the relevance of the history of past queries on citizenship, one must place those queries in the context of the technical, demographic, political, and statistical worlds of the past. The most relevant experiences are 1) the long “run” starting in 1890 and ending

in 1950, and 2) the changing practices to propose, test, and finalize census questions before each enumeration.

Secretary Ross' memorandum asserts that "several stakeholders who opposed reinstatement of the citizenship question did not appreciate that the question had been asked in some form or another for nearly 200 years." While this statement suggests substantial historical continuity regarding the citizenship question, in fact the question language, the mode of administration, and the requested answers changed over time.

B. Citizenship-Related Questions Appeared Sporadically from 1790 to 1890

1. *Early Nineteenth Century Censuses*

The U.S. Constitution mandated that a census be conducted every ten years, counting free persons and "other persons" (*i.e.*, slaves) and charged Congress with implementing it. It provided no other guidance on how to conduct the count. Early census procedures were hashed out on the floor of the House and Senate, and stuck quite closely to the constitutional mandate for the first 30 years. There were some small additions or interpretations of the constitutional mandate (*e.g.*, asking for crude breakdowns of the age and sex of the white population), but by and large, Congress was reluctant to risk further efforts for fear of jeopardizing the apportionment functions, which were the original justification of the count. Since there was no federal government bureaucracy to speak of at the time, Congress authorized U.S. marshals to appoint assistants to act temporarily as census enumerators.

By 1820, a more adventurous Congress added more questions. Congress had requested 13 pieces of information of a household in 1810 but asked for 32 in 1820. Sixteen of the new inquiries were for age and sex breakdowns of the "free colored" and slave population. All told, 27 of the inquiries defined the age and sex cohorts of Americans. The other five questions called for the "names of heads of families," three questions for the "number of persons engaged in" "Agriculture," "Commerce," and/or "Manufactures," in a household, and for "Foreigners not naturalized." The form did not ask for the name of any member of a household beyond the "head," so "Foreigners not naturalized" were not identified by name.

In 1830, for the first time, the federal government printed forms to be used for the census and sent them to the marshals and their assistants. A protean census office of a clerk or two made modifications to the 1820 questions, clarifying that the question for "ALIENS – foreigners not naturalized" applied to "White Persons" only.²

Inquiries related to citizenship, alien status, or naturalization then disappeared from the censuses of 1840, 1850 and 1860.

² <https://www.census.gov/history/pdf/1830-2-042018.pdf>

2. *Citizenship Questions on the 1870 Census*

When a citizenship question did reappear on the 1870 census, the country was in the throes of Reconstruction. Congress grappled with issues that ranged from how to reintegrate the rebel states into the Union to how to protect the civil, economic, and political rights of the newly emancipated “freedmen.”

The end of slavery also meant the end of the Three-Fifths Compromise, which ironically would have increased congressional representation for former slave states without Congressional intervention. Former slaves would be fully counted for apportionment, giving southern states increased political power even as they denied freedmen a mechanism for participating in politics. Section 2 of the Fourteenth Amendment attempted to address that problem by providing a new apportionment standard:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. ***But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.***

In summary, southern states could continue to bar freedmen from the franchise, but if they did, they would lose seats in the House. Congress determined the mechanism to collect the information to enforce this new constitutional provision was to be the 1870 census.

The 1870 census forms as printed thus asked the enumerator to check a box under the heading “Constitutional Relations” if the person was a “male citizen of the United States of 21 years or upwards.” A second box asked if the person was a “male citizen of the United States of 21 years or upwards whose right to vote is denied or abridged on other grounds than rebellion or other crime.”

In February 1870, the Fifteenth Amendment provided that the “right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” Census officials interpreted the new provision to mean that any state law denying the right to vote to freedmen was legally

void and thus did not “come within the view of marshals and their assistants in respect to the census.”³ Accordingly, questions about voting were not repeated in later censuses.

C. Citizenship Questions Appeared from 1890 through 1950 to Investigate the Assimilation of Immigrants

The modern form of the citizenship question dates back to the 1890 census, when Congress added a set of questions about American migration patterns to address how well the foreign-born were assimilating. The census had asked household heads about the place of birth (state or foreign country) of household members since 1850. During a substantial wave of European immigration to the U.S. in the late-19th and early-20th century, officials added questions for the foreign-born population on language spoken, year of immigration, citizenship, and mother tongue. During this time period, the U.S. had relatively few restrictions on immigration and few mechanisms to track immigrants once they arrived.

During this period, the census asked all respondents where they were born and where their parents were born. It asked whether respondents could speak English, and which languages were spoken by everyone aged 10 or older. But from 1890 to 1910 only foreign-born males aged 21 or above were asked about “naturalization” because only adult men had political rights.

During this period the census was conducted solely by traveling enumerators who had been provided written instructions explaining what questions to ask and how to mark the forms. The 1890 instructions, for example, simply told the enumerator to mark “yes” or “no” in a box to indicate if the adult foreign-born male was “naturalized.” The word “citizenship” did not appear on the form or in the instructions. In other words, the question was designed to measure a foreign-born adult male’s effort to become a naturalized citizen.

In 1920, the census expanded the question to all foreign-born residents, not just adult men. By 1930, adult women had political rights. The expanded universe of respondents complicated the enumerator’s task.⁴ Minor foreign-born children gained citizenship if a

³ See the 1870 enumerator instructions, available at U.S. Bureau of the Census, *Twenty Censuses, Population and Housing Questions, 1790-1980* (Washington, D.C.: GP, 1979), 19. For Congressional debate on the implications of emancipation for census taking, See Margo Anderson, *The American Census: A Social History*, 2d ed. (New Haven: Yale University Press, 2015).

⁴ “Column 23. Naturalization.-This question applies to all foreign-born persons, male and female, or whatever age. Prior to September 22, 1922, a foreign-born woman became a citizen when her husband was naturalized. Since that date, she must take out papers in her own name, and if she does not do this she remains an alien even though her husband becomes naturalized. The question should be answered, therefore, for every person whose birthplace was in a foreign country, as follows:

180. For a foreign-born male 21 years of age and over write “Na” (for “naturalized”) if he has either (1) taken out second or final naturalization papers, or (2) become naturalized while under the age of 21 by the naturalization of either parent.

181. For a foreign-born female 21 years of age and over write “Na” if she has either (1) taken out final papers, or (2) become naturalized through the naturalization of either parent while she was under the age of 21, or (3) if she became naturalized prior to 1922 by the naturalization of her husband. (See par. 179.)

parent naturalized. Before 1922, a married woman was naturalized if her husband naturalized or she married an American citizen. After 1922, she had to file on her own. There were other wrinkles, too, since a minor alien could not file for naturalization until the age of 18. The question was titled "naturalization" and included under a subheading titled "CITIZENSHIP, ETC." which also included questions on when the person immigrated to the U.S. and whether he or she could speak English. The Bureau instructed the enumerator to write in the box "Na" for naturalized; "Pa" for someone who had taken out first papers – that is, had started to apply for naturalization; and "Al" for alien, for anyone else. For residents born in the U.S., the question was left blank.

In 1940 for foreign-born residents, the Bureau instructed the enumerators to enter "Na" "(for naturalized) if the persons has become an American citizen, either by taking out second or final naturalization papers or through the naturalization of either parent;" "Pa" "(for first papers) if the person has declared intention to become an American citizen and has taken out 'first papers;'" "Al" "(for alien) if the person has neither become naturalized nor taken out first papers;" or "Am Cit" "(for American citizen born abroad) if the foreign-born person or person born at sea was an American citizen at birth." For native-born residents, the column was left blank.⁵

The 1950 instructions told the enumerator to write "Yes" in the box for the question "Is he naturalized?" "if the person has become an American citizen, either by taking out final naturalization papers or through the naturalization of either parent;" or "No" "if the person has neither become naturalized through naturalization of a parent nor taken out final papers. Enter 'No' if the person has taken out first papers only." A new category, "AP," was implemented for those persons "born of American parents abroad or at sea."⁶

The 1950 census was the last time a citizenship or naturalization question appeared on the complete count census.

182. For a foreign-born person under 21 years of age write "Na" if either parent has been naturalized. This applies to infants and young children as well as to older persons under 21.

183. For all foreign-born persons who have not been naturalized but have taken out first papers write "Pa" (for "papers"). Note that a person must be at least 18 years of age in order to take out first papers. Minor children should not be returned "Pa" merely because their parents have taken out first papers.

184. For all foreign-born persons neither naturalized nor having first papers, write "Al" (for "alien");" Minnesota Population Center, IPUMS USA, U.S. Census Data For Social, Economic, And Health Research, <https://usa.ipums.org/usa/voliii/inst1930.shtml>. The instructions for other years are available at: <https://usa.ipums.org/usa/voliii/tEnumForm.shtml>.

⁵ IPUMS USA, <https://usa.ipums.org/usa/voliii/inst1940.shtml>

⁶ IPUMS USA, <https://usa.ipums.org/usa/voliii/inst1950.shtml>

D. Changes in Immigration Law and Migration Patterns from 1924-1965 Led to Removal of the Question from the 1960 Census

The U.S. dramatically restricted foreign immigration via the national Origins Act of 1924. Discriminatory quotas based on the “national origin” of the potential immigrant, enforced with new visa requirements, signaled the end to America’s historically open immigration policy. Depression and war further dampened international migration. By mid-century, America’s foreign-born population had declined from about 14 million people in 1920-1930 to about 10 million from 1950-1970, even as the total population grew from 106 million in 1920 to 203 million in 1970. As noted above, census questions for the foreign-born population monitored immigrant assimilation. The Bureau reported that about half of foreign-born immigrants were naturalized in 1920. By 1950, that proportion rose to 80 percent.⁷

By the 1950s, it looked as if waves of immigrants coming to the U.S. were truly a thing of the past. A panel of population experts acknowledged as much in the mid-1950s while considering calls for new census questions for the 1960 census. “The Committee is aware of pressures to reduce the amount of information on ethnic status, on the assumption that the proportion of foreign stock in the population will continue to decrease.” But the panel cautioned against hasty removal of all the questions on this population, and added that:

[I]t is almost as important to measure the decline in the extent of ethnic differentiation – if, indeed, it is declining – as to have a historical record of the period of heavy immigration. The experience of the United States in the assimilation of a diversity of ethnic groups is virtually without parallel in the modern world, and the record of that experience should not be truncated by a failure to describe the terminal, as well as the early and middle, phases of the cycle of immigration and assimilation.

It thus recommended the retention of the place of birth of parents question, and the reinstatement of the question on mother tongue. The question on mother tongue, the panel noted, “will enable the identification of certain important groups – *e.g.*, Spanish-Americans that have retained a degree of ethnic distinctiveness despite residence of several generations in the United States.”⁸

In a related article, Census Bureau official Paul Glick reported that the citizenship/naturalization question would not be included on the 1960 census “because of the lack of evidence of extensive use of the item from the 1950 Census for research purposes.”⁹ For example, E.P. Hutchinson’s study, *Immigrants and Their Children, 1850-*

⁷ Figures from Campbell Gibson, “Chapter 12 – Foreign-Born Population, American Demographic History Chartbook: 1790 to 2010,” www.demographicchartbook.com, accessed August 17, 2018.

⁸ Otis Dudley Duncan, “Report of the Committee on the 1960 Census, Population Association of America,” *Population Index*, Vol. 23, No. 4 (Oct., 1957), 293-305, at 300-01, Stable URL: <http://www.jstor.org/stable/2731681>, accessed March 9, 2018 17:30.

⁹ Paul Glick, “Plans for the 1960 Census of Population,” *Population Index*, Vol. 25, No. 4 (Oct., 1959), 289-301, at 295. Stable URL: <https://www.jstor.org/stable/2731190>, accessed: 17-08-2018.

1950 focused on the geographic and occupational patterns and the countries of origin of America's immigrants. There was no analysis of citizenship patterns.¹⁰ In other words, leading up to the 1960 census, a question on immigrant citizenship was not one that drew the interest of researchers, politicians, or the public.

Things stood in the early 1960s, but the political landscape soon changed. In 1965, Congress repealed the National Origins Act and overhauled American immigration policy. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 signaled the end of legal discrimination on the basis of race, ethnicity, religion, national origin, and sex in public accommodations, employment, and political participation. The Supreme Court, in a series of landmark rulings, voided apportionment systems in violation of the new principle of "one man, one vote." Census data would be crucial to the implementation of these new policies.

E. The Sampling Revolution Addressed New Data Needs in 1960 and Beyond

Census officials approached these new data demands through their experience with statistical and administrative innovations – notably sampling, computerization, and the mail census – already underway. Indeed, officials felt they were well-situated to respond to calls for new data collections and tabulations and pointed to the innovations they had developed to meet the challenges of the Great Depression and world wars. Those events had prompted major technical innovations in the census to measure living standards, track mass unemployment, and provide economic information for the new system of national accounts. In 1939, Congress added a census of housing to the decennial count, for example, roughly doubling the number of questions asked in 1940 compared to 1930, thus putting additional burdens on both the public, and the processing capacities of the Census Bureau.

Probability sampling proved its power in measuring unemployment. Unemployment is a rapidly changing phenomenon ill-suited to full count census methods designed to measure slower, long-term trends. Frequent repeated probability samples of the working age population became the solution. The small samples could be collected, tabulated, and reported frequently to monitor changing phenomena. After using experimental surveys in the late 1930s, the Bureau instituted a "Monthly Report on the Labor Force" in the early 1940s and renamed it the Current Population Survey after World War II.

Federal Statistical experience with probability sampling for unemployment measurement then opened up a whole new world of possibilities for population measurement, as officials recognized that samples could be added to the complete count enumeration to measure data quality and accuracy, enumerator bias, and data processing issues such as coding efficiency. The period from the 1940s through the 1960s saw the flowering of this new field. Officials began experimenting with sampling in the decennial census in 1940, putting some "supplemental questions" to only 5 percent of the population to reduce the burden on respondents and save tabulation time. In 1950 a "post-enumeration survey" for a small sample of households was designed to assess the accuracy and completeness of the count.

¹⁰ New York: John Wiley & Sons, Inc, 1956.

By 1960, with 20 years of sampling experience, census officials shifted all but the most basic questions to a 25 percent sample form. Never again would the Census Bureau ask every American household in the country to respond to dozens of questions. The “long form,” as it came to be called in 1970 – with its several dozen questions on social and economic characteristics – would burden only a quarter or fewer American households. Officials assured the public that the new probability sampling methods would produce data that was just as accurate, more cheaply and efficiently.

Thus, as census officials approached the data needs stemming from the legislative and court decisions of the 1960s, they assured Congress and the public that they were ready for the new challenges. In mid-1967, for example, Census Director A. Ross Eckler testified before the Subcommittee on Census and Statistics of the House Committee on Post Office and Civil Service on plans for the 1970 population questions. He reported that the only questions planned to be asked of everyone would be name, address, sex, age, race, relationship to household head, and marital status. Questions on the situation of the foreign-born would be asked of a 25 percent sample, and would include queries on birthplace, parental birthplace, and mother tongue.

Eckler acknowledged that the Bureau was still consulting with its advisory committees and collecting public input, and noted that the Bureau was discussing a 5 percent sample with additional questions. “The leading candidates for use in a subsample,” he noted, were “additional detail to identify ‘other income;’ a question on the presence of disability which limits the amount or kind of work a person can do; citizenship; year of immigration; and ethnic origin.”¹¹ A 5 percent sample would produce data for states and large metropolitan areas only.

F. Census Added the Question to a 5 Percent Sample in 1970 to Obtain Accurate Data

Census official Ed Goldfield, writing in the summer of 1969 in the American Political Science Association publication, *PS*, reported that the 1970 census would reinstate the citizenship question on a 5 percent sample, as hinted by Eckler’s 1967 testimony.¹² Goldfield explained that “[o]ver 5 million immigrants have come to the United States since 1950 so there is need for basic data on citizenship and the characteristics of aliens. Information on citizens is useful in the measurement of the extent to which people entitled to vote actually do so and of the assimilation of various categories of the foreign born by naturalization.” He continued by discussing how the changes in immigration patterns were prompting new approaches to such questions on the census:

¹¹ Hearing, “1970 Census Plans,” May 23, Jun. 20-22, 1967, before the Subcommittee on Census and Statistics; Committee on Post Office and Civil Service. House, Committee Serial Number: Committee on Post Office and Civil Service Serial No. 90-16, Y4.P84/10:90-16, pp. 50-52.

¹² Edwin D. Goldfield, “Relevant Data for Political Science in the 1970 Census,” *PS*, Vol. 2, No. 3 (Summer, 1969), 308-314, Stable URL: <https://www.jstor.org/stable/418367>, accessed August 17, 2018. Quotes from 309.

For many users of the statistics, this kind of information on ethnic origin has become inadequate, because, as the era of mass immigration moves further into history, the questions touch smaller proportions of the population. In the 1960 census, only 5 percent of the population was reported as foreign-born and only 14 percent as native of foreign or mixed parentage. Some additional ethnic information was provided by identifying persons with Spanish surnames in the Southwestern States. Puerto Ricans were identified by their birthplace and the birthplace of their parents. In 1970, a new item on Mexican or Spanish origin or descent will help further to delineate the characteristics of Mexican, Puerto Rican, Cuban, and other groups of Spanish descent

Also in 1970, the question on year of immigration, which was last included foreign born as long-term residents or recent arrivals. There is now particular interest in the effect of the labor force provision in the Immigration Act of 1965, and those concerned may use the data to evaluate the effect of previous legislation by comparing the characteristics of immigration before and after the law became effective.

The Bureau also reported on the federal agencies that had requested new or revised questions for the 1970 census. They reported that the Department of Labor and the Immigration and Naturalization Service had requested the citizenship and year of immigration questions.¹³

Thus the citizenship question once again became a standard question on the "long-form" census, as a sample question in 1970 through 2000. In the early 21st century, when the Bureau replaced the decennial "long form" census with the continuous measurement American Community Survey, the citizenship question shifted to that instrument.

Goldfield expected that the 1970 census information on citizenship and what he called "ethnic origin" would provide guidance on the impact of the 1965 changes in immigration law, patterns of voter participation, and the "'assimilation' of various categories of the foreign born by naturalization." What officials did not anticipate was how the changes in the 1965 law, particularly for immigrants from the Western Hemisphere, as well as the technical change to the mail census and self response, would complicate their capability to measure the number and characteristics of immigrants in the U.S.

G. Since the Introduction of the "Long Form" Census in 1970, the Citizenship Question Has Appeared Only There

The 1970 and later censuses confirmed the use of sampling for all but the most basic census questions. The Bureau marked the change by coining the terms "short form" and "long form" to describe the different questionnaires. The Bureau also introduced the mail

¹³ House Committee On Post Office and Civil Service, 91st Cong., 1st Sess., April 1, 24, May 8, June 16, 17, 1969, "1970 Census And Legislation Related Thereto, Part 1," Hearings before the Subcommittee on Census And Statistics of the Committee on Post Office and Civil Service, Serial 91-8 (Washington, D.C.: GPO, 1969), 25.

census in 1970 for about 60 percent of households, making “self-response” the most common response mode to either the “short” or “long form” from then on. The restored citizenship question was placed on the “long form” 5 percent sample in 1970. Only the foreign-born were to answer the question. The form provided check boxes to indicate “Is this person naturalized?” The possible answers were “Yes, naturalized;” “No, alien;” or “Born abroad of American parents.”

The simplified response options in the mail census, compared to the more complex listings and instructions of the complete count enumerator era noted above, eliminated the information that had been provided to the enumerators on how to handle complicated cases, and put the burden on the respondent to puzzle out how to respond to the question.

From the 1950s on, the Bureau also routinely conducted evaluation studies to measure bias, coding, or other errors for particular questions. They reported, for example, that of the 10.3 million foreign-born residents in 1950, about 7 percent (slightly more than 730,000 people), had “unknown” citizenship status.¹⁴ Additionally, the technical supporting materials from the 1950 census evaluation reported that about 8 percent of the reported citizenship responses of the foreign-born were likely in error.¹⁵

The Content Reinterview Study of the 1970 census selected a sample of cases for an intensive in-person reinterview to see if the answers would be the same. For the citizenship question, the Bureau reported that the “naturalized” foreign-born was “overestimated” by about 2.6 percent and that the “alien” foreign-born was “understated” by about 2.2 percent. These findings, however, did not draw much concern from the officials. As they commented, “[i]n general, the direction of the bias in the ‘naturalized’ and ‘alien’ categories is what one would expect recognizing that persons undergoing the naturalization process but not having completed it might tend to report themselves as naturalized and that unregistered aliens might also tend to report themselves as naturalized.”¹⁶

The citizenship question on the 1980 “long form” census was similar to the 1970 version. Only foreign-born residents were to answer, indicating whether the individual was “Yes, a naturalized citizen;” “No, not a citizen;” or “Born abroad of American parents.” The instructions continued: “Fill the ‘Yes, a naturalized citizen’ circle only if the person has completed the naturalization process and is now a citizen.”¹⁷ But even subtle changes in language and instructions confused respondents.¹⁸ The Bureau reported that:

¹⁴ U.S. Bureau of the Census *Historical Statistics of the United States, Colonial Times to 1970, Bicentennial Edition*, Part 1 (Washington, D.C.: GPO, 1975), 116. The table indicated similar “unknown citizenship” in censuses from 1920-1940.

¹⁵ U.S. Bureau of the Census, 1950 Census of Population, Volume IV, *Special Reports, No. 3A, Nativity and Parentage*, 3A-6, available at https://www2.census.gov/prod2/decennial/documents/41601756v4p3_TOC.pdf

¹⁶ U.S. Bureau of the Census, *1970 Census of Population And Housing: Evaluation And Research Program: Accuracy of Data For Selected Population Characteristics As Measures By Reinterviews* (Washington, D.C.: GPO, 1974), 26.

¹⁷ a. Is this person a naturalized citizen of the United States?

22 percent of people who entered a U.S. State in the birthplace question (11) [that is, were birth citizens] reported themselves as ‘Naturalized citizens’ in the citizenship question (12). The erroneous entries required a substantial amount of editing These examples of misreporting suggested that many respondents apparently did not follow the instructions that only persons born in foreign countries should answer the question.

Accordingly, the Bureau once again reworded the citizenship question on the “long form.” In 1990, 2000, and the ACS, the question was asked of everyone in the sample, not just the foreign-born. Moreover, it was rewritten to read “Is this person a CITIZEN [*sic*] of the United States?” rather than inquire about the naturalization behavior of the foreign-born. Answer options included citizen by birth in the U.S.; citizen by birth in a U.S. territory; citizen by birth to American parents or parent abroad; citizen by naturalization. A residual fifth answer option was simply, “No, not a citizen of the United States” with no further detail about whether a foreign-born individual was pursuing naturalization.¹⁹

Therefore, while censuses has asked respondents about their citizenship status, the form and context of the question have varied considerably over time. Moreover, since the introduction of the “short form” census in 1970, the citizenship question has never appeared on the “short form” instrument.

IV. Adding the Citizenship Question to the 2020 “Short Form” Census Without Additional Testing Would Depart from Historical Census Practice and Would Not Correct Known Data Issues

A. The Counterintuitive Finding that Sampling Produced More Accurate Statistical Data than Complete Count Data

As census officials and the larger social science research community continued to refine the theory and practice of probability sampling, they confronted questions from the lay public and even some skeptical survey researchers about why they were sure that sample data produced better statistical results than complete count data. It was fairly easy to see that a sample data collection saved money by contacting fewer respondents, and thus reduced response burden. Officials, however, felt they needed to provide more explanation on the claim to accuracy. Thus the social science journal literature is replete with discussions on these matters in the mid-20th century. By the late 1960s, when Bureau officials felt their methods were indeed robust, they published a series of articles directed to an academic audience which recounted their experience with the development of sampling, the

☐ Yes, a naturalized citizen

☐ No, not a citizen

☐ Born abroad of American parents

¹⁸ U.S. Bureau of the Census, 1990 Census of Population and Housing, *History*, Part D (Washington, D.C.: 1996), 14-20.

¹⁹ *Ibid.*

measurement of bias, and accuracy in the census in the context for their plans for 1970.²⁰ Hansen and Waksberg, for example, noted:

Sampling was first introduced to obtain some of the information in the 1940 Census and for some of the detailed tabulations. Its use was considerably expanded in the 1950 Census, which was the first one to rely significantly on sampling for the collection of basic data. However, in that census there still were a number of restrictions that were imposed on the determination of what items should be collected on a sample basis. Information on such items as labor force, occupation and industry, citizenship, and place of birth were retained on a 100 percent basis primarily because it was felt unwise to move too far towards dependence on sampling without additional experience.

The Bureau's experience evaluating the 1950 census, as confirmed by the additional use of sampling in the 1960 census, led to several surprising conclusions. Hansen and Waksberg wrote:

(a) The 1950 evaluation program – in particular the CPS Census Match and the various response variance studies – provided evidence that for most census statistics, the introduction of a moderate sampling error would have only a minor effect on the total mean square error. In other words, the errors resulting from simple response and enumerator variance, and the biases arising from the use of enumerators (with the kind of training and control they could be given in a massive census operation) were already so large that sampling error could be introduced, even in small areas, with very little additional impact on the quality, (b) Substantial savings in cost could be achieved, and (c) The results could be compiled and made available on a more timely basis.

In brief, the sample data were of higher quality than complete count data.

Hansen and Waksberg and Waksberg and Pritzker also reported that their research revealed new technical issues for the decennial census, notably that there were undercount problems in the census (estimated at 3 percent in 1960) and that the undercount was differential – that is, that the overall count missed particular demographic groups, especially minorities and the poor in both urban and rural areas. Innovations planned for 1970 – including the introduction of the mail census and special outreach programs – were designed to get control of those issues and improve the accuracy of the basic enumeration.²¹

²⁰ See for example, Joseph Waksberg and Leon Pritzker, "Changes in Census Methods," *Journal of the American Statistical Association*, Vol. 64, No. 328 (Dec., 1969), pp. 1141-1149, Stable URL: <https://www.jstor.org/stable/2286056>, accessed August 17, 2018; Morris Hansen and Joseph Waksberg, "Research on Non-Sampling Errors in Censuses and Surveys," *Revue de l'Institut International de Statistique / Review of the International Statistical Institute*, Vol. 38, No. 3 (1970), 317-332, Stable URL: <https://www.jstor.org/stable/1402198>, accessed August 17, 2018.

²¹ See also Eckler's testimony on undercount, *ibid.*, pp. 68 ff.

B. Adding the Question Would Depart from Historical Practice

From the 1950s on, new testing systems were extended to all aspects of census processing – from questionnaire design, to coding accuracy, to content reinterview, as well as undercount measurement. As noted above, the evaluation studies of the 1950, 1970, and 1980 censuses documented non-response on the citizenship/naturalization question; positive bias in naturalization reporting; negative bias in alien reporting for the foreign-born; and misreporting of citizenship status by the native-born.

Recent studies of non-response or misreporting associated with the citizenship question indicate that issues of bias remain. This review of the longer history indicates that the question also includes a great deal of technical and wording change over the decades, much of which the Bureau has long been aware of. Unlike many other important census questions, however, citizenship has been subject of much more limited technical and cognitive research. And the Bureau has not produced reliable estimates of non-response, bias, and misreporting in the data over the 120 year period since 1890 akin to the research it has produced on differential undercount measurement.²²

Even the Secretary hinted at the potential problems. The Secretary acknowledged that the question has not been tested in a census context, even noting that it should go last on 2020 decennial census questionnaire to minimize confusion and non-compliance.²³ That proposal has not, however, been tested to date.

C. Congressional and Census Efforts to Address the Data Needs on Citizenship Since 1980

There were several points in the late 1970s and 1980s when Congress and the Bureau debated issues surrounding the measurement of the citizenship status of the immigrant population. This experience revealed both the complex methodological issues surrounding data collection, the political controversies that surrounded the debates, and hints at why neither census officials nor Congress proposed moving the question to the “short form.”

1. *Political Issues*

As evidence of a resurgence in immigration and the impact of the 1965 immigration reform became clearer in the 1970s, some anti-immigrant organizations and members of Congress called on the Census Bureau to produce more data estimating the size and characteristics of foreign-born residents. Legal and legislative challenges focused on estimating the size of

²² The most obvious comparison is the undercount controversies which were very much on the public and technical agenda from 1970 to 2000. They produced legislative and political and technical changes in census methods, court decisions clarifying the relationship between the census functions and the apportionment and redistricting processes, and heightened public awareness of the importance of the census to American life. See for example, Margo Anderson and Stephen E. Fienberg, *Who Counts? The Politics of Census Taking and Contemporary America*, rev. ed. (New York: Russell Sage Foundation, 2001).

²³ AR 1314; 1320

the undocumented population, and stumbled both in federal courts and Congress as census officials explained what a research program to improve immigration data would entail. Indeed, the occasion of these proposals prompted the Bureau to produce a research statement on the “state of the art” at the time in estimating the undocumented population,²⁴ as well as the larger issues involved in measuring the characteristics of the foreign-born population.

Director Vincent Barabba, in particular, provided eloquent Congressional testimony on the issues in the months leading up to the 1980 census, when it was also clear that the overall size of the foreign-born population was growing again. The 1980 census would report over 14 million foreign-born residents, roughly a 40 percent increase compared to the 1950-1970 period, though still a significantly smaller proportion of the total population compared to the early 20th century.

On March 26, 1980, the Senate Subcommittee on Energy, Nuclear Proliferation, and Federal Services, Committee on Governmental Affairs held a hearing addressing the issues raised by S. 2366, a bill sponsored by Walter D. Huddleston (D-KY), to “require adjustments in census population figures for aliens in the United States illegally so as to prevent distortions in the reapportionment of the House of Representatives, the legislative apportionment and districting of the States, and the allocation of funds under Federal assistance programs.”²⁵

Two days later, Census Bureau Director Barabba testified again on these matters at a hearing of the Senate Subcommittee on State, Justice, Commerce, and the Judiciary Appropriations, Committee on Appropriations.²⁶ Responding to a series of questions from

²⁴ A detailed report by Jacob Siegel, Jeffrey Passel, and Greg Robinson, included in the hearing records, see note 25 below, served as a benchmark of technical knowledge going into the 1980 census data collection. Siegel, Passel and Robinson’s “Preliminary Review of Existing Studies of the Number of Illegal Residents to the United States,” concluded that their “review of the existing studies on illegal residents in the United States finds that there are currently no reliable estimates of the number of illegal residents in the country or of the net volume of illegal immigration to the United States in any recent past period.” Recognizing that such a conclusion would receive not receive a welcome response from Congress, they continued:

Although the number of illegal residents in the United States remains uncertain, the authors are willing to make some inferences from the available studies with regard to the possible magnitude of the numbers. They offer the following cautious speculations. The total number of illegal residents in the United States for some recent year, such as 1978, is almost certainly below 6.0 million, and maybe substantially less, possibly only 3.5 to 5.0 million. The existing estimates of illegal residents based on empirical studies simply do not support the claim that there are very many millions (i.e., over 6 million) of unlawful residents in the United States.

²⁵ U.S. Senate, Subcommittee on Energy, Nuclear Proliferation, and Federal Services, Committee on Governmental Affairs, “1980 Census: Counting Illegal Aliens,” March 26, 1980 (Washington, D.C. GPO, 1980). Huddleston was also a plaintiff in *Federation for Am. Imm. Reform v. Klutznick*, 486 F. Supp. 564 (D.D.C. 1980). Census Director Vincent Barabba testified against the bill, and Congress took no action on the measure. Barabba served as Census Bureau Director in the Nixon and Carter administrations.

²⁶ State, Justice, Commerce, the Judiciary, and Related Agencies Appropriations, FY81, Part 3, March 28, 1980 (Washington, D.C., 1980), 256-59.

Senator Dennis DeConcini (D-AZ), Barabba testified to the larger issues involved in Senator Huddleston's bill. Barabba acknowledged that the Census Bureau had the technical expertise to undertake a research program to address the issues of estimating the size and characteristics of the citizen and alien – including illegal alien – population. He emphasized, however, that the Bureau needed time and funding to undertake such a complex project:

One of the points I tried to make . . . relative to the legislation and concerns about the census is part of our authority under title 13 which is delegated to us by the Congress, and it is very explicit. Three years prior to the taking of the census we should come forward and give our general approach to the census program. Two years prior we come with the specific questions and procedures. And we have done that. For somebody to come at the last minute and say find a way of solving the problem is quite wrong. I think Congress was wise in saying you let us know what you are doing.

DeConcini pressed: "Would you agree that with the Census Bureau's vast expertise in statistical methodology that it would seem to be the most logical place for the Federal Government to conduct such a study?" Barabba agreed and added more for Congress to consider: "There is a question in my mind whether it is, from the point of view of the perception that this thing is a law enforcement problem. There is some concern in my mind, whether our reputation of being able to keep information confidential, would in any way be tarnished in this kind of a program." At another point in his testimony, he addressed additional implications of entangling the census in immigration policy and undocumented immigration. "The census is just not designed for this particular problem," he commented. When pressed by DeConcini, he continued:

There would be a tremendous concern on my part that we would have to install a procedure which I am not sure society is ready for, as they do in other countries – registration lists, or even closing society down and holding everybody in place. I am not too sure Congress is ready to resource those bureaus with that authority, nor am I sure too many would agree.

2. *Technical Processes*

Another relevant analogy for the 2020 question is the experience of expanding the citizenship question to all sample respondents on the 1990 census. It is important to note once more that even during the "complete count era" through 1950, the citizenship question was not a universal population query. Between 1890-1910, it was asked of foreign-born adult men. From 1920-1950, it was asked of everyone who was foreign-born. And in 1970 and 1980, only the foreign born were to answer it on the sample.

The 1990 change, however, was not the result of any public, legal, or legislative clamor to get an answer on citizenship from all sample respondents. Rather, the Bureau changed the question because, as noted above, in 1980 the form of the question led to significant misreporting. Specifically, 22 percent of people who reported they were born in a U.S. state,

also reported they were “naturalized citizens.” That is, they misunderstood the instruction that the question was only for the foreign-born. Left uncorrected, these responses would have radically inflated the number of naturalized citizens in the 1980 census. The Bureau “fixed” the problem for the 1980 data with a processing edit to remove someone who was born in a U.S. state from the “naturalized citizen” tally. Even so, the misreporting was a processing headache for the Bureau.

In the content tests for the 1990 census, the Bureau tested five different revisions of the question and found that version that was ultimately used in 1990 an “improvement in accuracy.” As they explained:²⁷

Of persons reporting a U.S. State in the NCT (National Content Test) place of birth question, a higher proportion responded, “Yes, born in the United States” in the new citizenship question than was categorized as such in the modified 1980 version. Also, a lower proportion of persons responded, “Yes, U.S. citizen by naturalization” to the new question than to the modified version. **Although the new question did impose an added response burden and produced a somewhat higher nonresponse rate, it was recommended given the improvement in accuracy. This improvement, in turn, would lead to a substantial reduction in the amount of editing needed to eliminate incorrect responses.**

In other words, there were tradeoffs: the Bureau’s internal processing considerations (“a substantial reduction in the amount of editing”) versus respondent burden and non-response.

The 1990 version of the question is the version that remains on the ACS today.

V. Conclusion

Secretary Ross claimed that “Concerns about decreased response rates generally fell into the following two categories - distrust of government and increased burden.” The 1990 citizenship question revision process documented a third issue of data quality: the editing of incorrect responses generated when the public misunderstands a question. In the 1990 experience, the data processing issues, rather than accuracy and respondent burden, determined the outcome.

Barabba’s warnings, and another failed lawsuit (*Ridge v. Verity*) before the 1990 census, raised the same technical, ethical and political issues that are raised by Secretary Ross’ decision to put a citizenship question on the 2020 decennial census questionnaire. The technical tradeoffs raised by the 1990 census question revision remain. But the silence from Congress, the courts, and the public, since the 1980s on the issue is revealing. The

²⁷ U.S. Bureau of the Census, 1990 Census of Population and Housing, *Content Determination Reports: Birthplace, Citizenship, Year of Entry, and Language*, 1990 CDR-7 (Washington, D.C.: GPO October 1990), 11-12.

issue was not a prominent debate for the 1990, 2000, and 2010 censuses. Recalling Barabba's testimony, and the record of questionnaire design and testing, demonstrate the kind of concrete research and legislative action that would still be necessary to fundamentally modify the current methods to measure the patterns of citizenship in the U.S. population, as well as the propriety of doing so.

Secretary Ross' decision to add a citizenship question to the 2020 census without proper testing and public vetting does not properly take into account the historical complexity of the country's experience with the question. There is little evidence in the Secretary's review of the question to indicate the administration is aware of the varied formats for the question, the technical limitations in the data and their sources, or the complex administrative processes that guide adding, removing, or modifying a census question.

A citizenship question last appeared on a complete count census in 1950 as the proportion of foreign-born residents was declining substantially. The 1950 census was an enumerator based census and the question was asked only foreign-born residents. Detailed instructions for enumerators explained how to report the householder's responses. That year, the Census Bureau reported a 7 percent item non-response rate for the question and that 8 percent of the responses were biased.

On the heels of reform to immigration law in 1965, the Labor Department, the Immigration and Naturalization Service, and the demographic research community asked for the reinstatement of the question for the 1970 census. It was reinstated, but on a sample, where it has remained since. Evaluation studies of the quality of the data continue to report response bias.

Indeed, substantial misreporting of citizenship status in the 1980 census sample prompted the Bureau to research and test different versions of the question and to revise the question for 1990. The revision resulted in great response accuracy, but also increased response burden and item non-response. The format was used for the "long form" 2000 census and continues to appear on the ACS. Its appearance on the ACS does not diminish problems associated with the question's addition to the "short form" in the 2020 decennial.

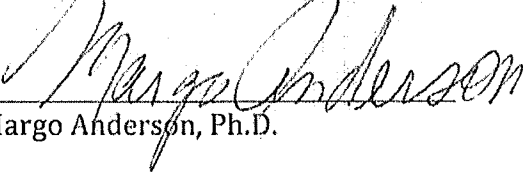
Secretary Ross' rejection of stakeholder concerns was accompanied with the claim that the historical record indicated that "the citizenship question has been well tested." He wrote that "there is no information available to determine the number of people who would in fact not respond due to a citizenship question being added, and no one has identified any mechanism for making such a determination." This report details the substantial yet unacknowledged "information available" both in terms of the varied formats of the questions and the known bias in responses, and a great deal of information about the "mechanisms" the Census Bureau uses to determine whether, how, and why to ask a particular question.

Director Barabba acknowledged in 1980, when pressed on whether the census could provide estimates of the undocumented population, that Congress could mandate that the Bureau estimate the undocumented population. But he also added, "I think somebody

should tell us that right now so we can put all the procedures required in place so we can do it in 1990, because I think it would require major changes in the legislation and how people record themselves in this country." Almost 40 years later, we stand at a comparable moment, and would do well to heed Barabba's call to take the time to open a serious research program and public conversation about the statistical measurement of the characteristics of foreign-born residents in the U.S.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 15th day of November, 2018


Margo Anderson, Ph.D.