



The Supreme Court blocked a citizenship question from the census. Now what?

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The Supreme Court's 5-4 decision Thursday to block the Commerce Department from adding a citizenship question to the U.S. census sparked confusion in Washington, leaving both sides in the case scrambling to interpret the court's nuanced ruling ahead of a deadline to finalize the census questionnaire.

As attorneys, legal experts and others parsed the opinion, disagreements quickly emerged on whether the question — “Is this person a citizen of the United States?” — was off the 2020 survey for good, or whether the Trump administration could still offer a justification that would change the justices' minds.

The case now returns to a lower court but could eventually come back before the Supreme Court. Census forms were scheduled to be printed by next month in order for the once-every-decade survey of the country's population to stay on track.

But hours after the high court's decision, President Donald Trump tweeted that he is appealing for a delay of the census in order to ensure the question is included.

What the court decided

In the opinion, which was written by Chief Justice John Roberts, the court ruled that the Commerce Department does have the authority to add a question to the census asking respondents if they are citizens of the U.S. The conservative members of the court agreed with Roberts on that point.

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But Roberts took issue with Commerce Secretary Wilbur Ross' explanation that adding the question would help enforce the Voting Rights Act. “The evidence tells a story that does not match the explanation the Secretary gave,” Roberts wrote.

This claim is ultimately what the Supreme Court took issue with, describing the reasons behind the administration's reasoning as "contrived." The final opinion of the court also suggested that Ross, who runs the department charged with administering the census, had plans to include the citizenship question long before that explanation. "The record shows that the Secretary began taking steps to reinstate a citizenship question about a week into his tenure," Chief Justice John Roberts wrote.

The government relies on census data to inform health care decisions, transportation, infrastructure, social programs, and to reallocate seats in the U.S. House of Representatives. Roberts' opinion, which was joined by the court's four liberal members, appeared to align with critics who have long argued the citizenship question — an addition pursued by Ross for close to a year — was politically motivated. Legal scholars and court watchers Thursday agreed that the Trump administration got in its own way by offering a justification for the citizenship question that would not pass legal muster.

"If they could simply come up with a plausible reason, I think even if it was political, it might have been able to go there," said Ilya Shapiro, director of constitutional studies at the Cato Institute, a libertarian think tank. "In a sense, a bad reason might have been better than a fake reason, if you will," he added.

Has anything like this happened before?

If the citizenship question were to make its way onto the 2020 census, it would be the first time since 1950. The question was moved off the short form to the longer form of the census in 1960 for cost efficiency reasons. The long form of the census stopped being used in 2000.

How could the Trump administration get the question back to court?

Though the court has stopped the citizenship question from being added to the 2020 Census, it does not mean definitively that the question cannot appear on the forms. However, the administration would have to overcome a series of challenges to ensure its inclusion.

The ruling sent the case back to the judge in the Southern District of New York who had presided over it before the Supreme Court took it up. That judge, an appointee of former Democratic President Barack Obama, previously ruled that adding the citizenship question was an "arbitrary and capricious" move by the Trump administration.

But Robert's decision Thursday opened the door for the lower court to weigh new evidence discovered in the digital files of a deceased Republican political operative, Thomas Hofeller, who acknowledged that the citizenship question would help the GOP.

In order to get the citizenship question back in front of the Supreme Court, the Commerce Department would have to provide new arguments for why the question needs to be included, with the hope that the justices would accept their new rationale.

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But there's no guarantee that new arguments would automatically return the case to the Supreme Court, said Thomas Dupree, who served as a deputy assistant attorney general under President George W. Bush.

Even if the commerce secretary provides a new explanation for the citizenship question, "it's not as if it automatically goes back to the Supreme Court," Dupree said.

The high court's schedule is another factor that makes it unlikely that the Trump administration could see a speedy reversal in its favor. The court's summer recess is scheduled to start this week, and it would be "highly unusual" for the court to reconvene over the recess to reconsider the case, Dupree said.

The Commerce Department has said that the census questionnaire has to be printed by July 1, though there are arguments, including from a government witness during a lower court hearing, that it could wait until late October. Trump's tweet certainly calls into question whether that July date is firm, potentially lifting a de-facto deadline for the administration to argue their point for the inclusion of the question.

What critics of the question are saying about the decision

The American Civil Liberties Union and other advocates for populations who could be affected by a citizenship question on the 2020 census are declaring the Supreme Court's decision a win.

"For all intents and purposes, this is over," said Dale Ho, director of the ACLU's Voting Rights Project. "It is very difficult for me to see [the government's case] succeeding" and the citizenship question being added to the 2020 Census, Ho added, citing what he says is the administration's previous inability to clearly prove why the question must be added.

"You cannot come up with another reason, when you've said for months that you have no other reason," Ho said.

While critics are hopeful that the question will not appear on the census next year, they are still concerned that the fear attached to the questionnaire could be enough to drive immigrant and minority populations away from participating.

"Today is an unequivocal win for democracy, but the fight is not over," said Vanita Gupta, president and CEO of the Leadership Conference Education Fund. She pointed out that the public fight over the citizenship question comes against the backdrop of the Trump administration's hardline policies aiming to drastically reduce migration into the U.S. According to Gupta, that sort of climate makes people's fear that census information could be used against them "very real."

Research from experts, including those at the Census Bureau, backs concerns that the question could deter people from participating in the census. A study published by the bureau this month estimates the question could cause more than 8 million people to not respond. A separate study from Harvard's Shorenstein Center says the question could lead to an undercount among Hispanics in particular, to the tune of about 6 million, or 12 percent of the Hispanic population recorded in the 2010 census. It also could drive up the cost of executing the census as well; the

Census Bureau study said following up with families who have not participated is “the most expensive census operation.”