

From: [Gary, Arthur \(JMD\)](#)
To: [Allen, Michael \(JMD DAAG\)](#); [Lofthus, Lee J \(JMD\)](#)
Subject: FW: Supplemental Letter to John H. Thompson US Dept. of Commerce/US Census Bureau - Re: Legal Authority for American Community Survey Questions
Date: Wednesday, February 22, 2017 2:48:00 PM
Attachments: [Letter to Mr. J Thompson US Dept of Commerce Census Bureau.pdf](#)

Mike & Lee – Census bureau called to ask if DOJ still wants to request inclusion of new questions relating to the LGBT populations as part of the 2020 Census. This was an initiative of CRT, the Associate’s Office and ODAG over the last couple of years, culminating in the letter I sent on November 4. I’d like to consult with you about how to raise this question to the new leadership. Of those I worked with before, only John Elias is still among us.

Census needs to finalize the questions by the end of March, but will be going to print early in March. They are currently preparing one version with the questions and one without, in order to bide time till the final cutoff.

Art

Arthur E. Gary

General Counsel

Justice Management Division

U.S. Department of Justice

Two Constitution Square, Suite 8E.500

145 N. Street, NE

Washington, DC 20530

202-514-3452 (OGC main line)

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From: Gary, Arthur (JMD)
Sent: Friday, November 04, 2016 5:29 PM
To: Guzman, Javier M. (OAAG) <jmguzman@jmd.usdoj.gov>; Levitt, Justin (CRT) <Justin.Levitt@crt.usdoj.gov>; Elias, John (OAAG) <jelias@jmd.usdoj.gov>

JMD0001

Subject: FW: Supplemental Letter to John H. Thompson US Dept. of Commerce/US Census Bureau - Re: Legal Authority for American Community Survey Questions

Gentlemen – the letter to Census is going out in the mail this evening.

Have a good weekend.

Art

Arthur E. Gary

General Counsel

Justice Management Division

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From: Allen, Michelle M (JMD)

Sent: Friday, November 04, 2016 5:27 PM

To: Gary, Arthur (JMD)

Subject: Supplemental Letter to John H. Thompson US Dept. of Commerce/US Census Bureau - Re: Legal Authority for American Community Survey Questions

As Requested.

Michelle

JMD0002

From: Gary, Arthur (JMD)
To: "(b) (6)"@doc.gov"
Subject: ACS Questions: DOJ
Date: Tuesday, March 07, 2017 6:07:00 PM
Attachments: Census Letter.Use of ACS data DOJ response Mar 7 2017.pdf

Mr. Robinson – the attached letter is on its way to you by regular mail.

Arthur E. Gary
General Counsel
Justice Management Division
U.S. Department of Justice
Two Constitution Square, Suite 8E.500
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Washington, DC 20530
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JMD0003



U.S. Department of Justice

Justice Management Division

Office of General Counsel

Washington, D.C. 20530

March 7, 2017

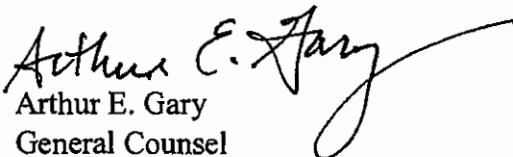
Barry K. Robinson
Chief Counsel of Economic Affairs
U.S. Department of Commerce
Office of the General Counsel
Washington, DC 20230

RE: Legal Authority for American Community Survey Questions

Dear Mr. Robinson:

This letter is in response to your letter of March 1, 2017, concerning proposed new content on the American Community Survey (ACS) for the 2020 Census. The Department of Justice (Department) officially advised you on July 1, 2016, that, consistent with recent practice, it had no need to amend the current content or to request new content in the ACS. A subsequent Department letter of November 4, 2016, suggested new topics for the ACS. Your March 1, 2017, letter asks if the Department still wishes to maintain that request, and you have further indicated that a response is needed immediately. Because such a request requires thorough analysis and careful consideration, the Department is unable to reaffirm its request of November 4, 2016. Accordingly, the Department stands by its earlier position articulated in the July 1, 2016 letter.

Sincerely,


Arthur E. Gary
General Counsel

JMD0004

From: [Gary, Arthur \(JMD\)](#)
To: [Lothus, Lee J \(JMD\)](#); [Allen, Michael \(JMD DAAG\)](#)
Subject: FW: ACS Questions: DOJ
Date: Wednesday, March 08, 2017 4:17:00 PM
Attachments: [Census Letter.Use of ACS data DOJ response Mar 7 2017.pdf](#)

FYI – closed this out last night on request from James McHenry. Today I got a call from Commerce OGC thanking us for the letter and appreciative of the “adroit” language, given the sensitivity of the issues. It wasn’t my language, but I accepted the appreciation!

From: Gary, Arthur (JMD)
Sent: Tuesday, March 07, 2017 6:11 PM
To: (b) (6) @doc.gov' <(b) (6) @doc.gov>
Subject: ACS Questions: DOJ

Mr. Robinson – the attached letter is on its way to you by regular mail.

Arthur E. Gary
General Counsel
Justice Management Division
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From: [Gary, Arthur \(JMD\)](#)
To: [Lofthus, Lee J \(JMD\)](#); [Munro, Shannon L. \(JMD\)](#)
Subject: attaching my last letter to Census about the POSSIBLE new questions - November 2016
Date: Wednesday, March 29, 2017 2:44:00 PM
Attachments: [Census Letter.Use of ACS data SUPPLEMENTAL REQUEST PDF.Nov42016.docx.pdf](#)

As far as it got was asking Census to consider new information uses (no mention of 'questions' explicitly)

Art

Arthur E. Gary
General Counsel
Justice Management Division
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JMD0007

From: [Posner, Morton J \(JMD\)](#)
To: [Lofthus, Lee J \(JMD\)](#); [Allen, Michael \(JMD DAAG\)](#)
Cc: [Gary, Arthur \(JMD\)](#); [Tang, Evelyn \(JMD\)](#)
Subject: RE: Census
Date: Friday, September 08, 2017 3:22:58 PM

Page 53-54 of this draft American Community Survey has citizenship questions. CRT is identified as a component next to selected statutory uses of the data.

<https://apps.npr.org/documents/document.html?id=3986426-Census-2020-Subjects-Planned-Draft#document/p75/a373524>

From: Posner, Morton J (JMD)
Sent: Friday, September 08, 2017 3:17 PM
To: Lofthus, Lee J (JMD) <llofthus@jmd.usdoj.gov>; Allen, Michael (JMD DAAG) <mallen@jmd.usdoj.gov>
Cc: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>; Tang, Evelyn (JMD) <etang@jmd.usdoj.gov>
Subject: Census

From Census' request to DOJ to consult on a FOIA to it, Evelyn is aware of this correspondence from Art regarding LGBT census questions, that was later reported. John Thompson is the name of the census person, not in JMD. Art then responded to Census in March that the Department would not pursue the LGBT questions. You'll notice Art copied CRT on the letter, but no one in particular. I'm unable to discover anything about citizenship questions.

Let me know if you want me to follow up further.

Morty

<http://www.npr.org/2017/07/18/536484467/census-bureau-found-no-need-for-lgbt-data-despite-4-agencies-requesting-it>

<https://apps.npr.org/documents/document.html?id=3892167-DOJ-to-Census-Bureau-2016-11-04-Edit>

From: [Lofthus, Lee J \(JMD\)](#)
To: [Tang, Evelyn \(JMD\)](#); [Posner, Morton J \(JMD\)](#); [Allen, Michael \(JMD DAAG\)](#)
Cc: [Gary, Arthur \(JMD\)](#)
Subject: RE: Census
Date: Friday, September 08, 2017 3:24:35 PM

Any knowledge of anyone at CRT or elsewhere working on citizenship questions?

From: Tang, Evelyn (JMD)
Sent: Friday, September 08, 2017 3:23 PM
To: Posner, Morton J (JMD) <mposner@jmd.usdoj.gov>; Lofthus, Lee J (JMD) <llofthus@jmd.usdoj.gov>; Allen, Michael (JMD DAAG) <mallen@jmd.usdoj.gov>
Cc: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
Subject: RE: Census

For what it's worth, based on email traffic, Josh Levitt, then Deputy Assistant Attorney General in the Civil Rights Division, had apparently been the one working with the Census Bureau on the LGBT issue.

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<https://apps.npr.org/documents/document.html?id=3892167-DOJ-to-Census-Bureau-2016-11-04-Edit>

From: [Tang, Evelyn \(JMD\)](#)
To: [Posner, Morton J \(JMD\)](#); [Lofthus, Lee J \(JMD\)](#); [Allen, Michael \(JMD DAAG\)](#)
Cc: [Gary, Arthur \(JMD\)](#)
Subject: RE: Census
Date: Friday, September 08, 2017 3:28:20 PM

Sorry, I got the name wrong –it was Justin Levitt – Voting Rights Section.

From: Tang, Evelyn (JMD)
Sent: Friday, September 08, 2017 3:23 PM
To: Posner, Morton J (JMD) <mposner@jmd.usdoj.gov>; Lofthus, Lee J (JMD) <llofthus@jmd.usdoj.gov>; Allen, Michael (JMD DAAG) <mallen@jmd.usdoj.gov>
Cc: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
Subject: RE: Census

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Sent: Friday, September 08, 2017 3:17 PM
To: Lofthus, Lee J (JMD) <llofthus@jmd.usdoj.gov>; Allen, Michael (JMD DAAG) <mallen@jmd.usdoj.gov>
Cc: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>; Tang, Evelyn (JMD) <etang@jmd.usdoj.gov>
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<https://apps.npr.org/documents/document.html?id=3892167-DOJ-to-Census-Bureau-2016-11-04-Edit>

JMD0010

From: [Tang, Evelyn \(JMD\)](#)
To: [Lofthus, Lee J \(JMD\)](#); [Posner, Morton J \(JMD\)](#); [Allen, Michael \(JMD DAAG\)](#)
Cc: [Gary, Arthur \(JMD\)](#)
Subject: RE: Census
Date: Friday, September 08, 2017 3:31:58 PM

In what context? I have heard of only minor issues relating to SEPS or OARM (revising forms) but nothing reflecting any major changes or new policies.

From: Lofthus, Lee J (JMD)
Sent: Friday, September 08, 2017 3:25 PM
To: Tang, Evelyn (JMD) <etang@jmd.usdoj.gov>; Posner, Morton J (JMD) <mposner@jmd.usdoj.gov>; Allen, Michael (JMD DAAG) <mallen@jmd.usdoj.gov>
Cc: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
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JMD0011

Morty

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<https://apps.npr.org/documents/document.html?id=3892167-DOJ-to-Census-Bureau-2016-11-04-Edit>

From: [Lofthus, Lee J \(JMD\)](#)
To: [Tang, Evelyn \(JMD\)](#); [Posner, Morton J \(JMD\)](#); [Allen, Michael \(JMD DAAG\)](#)
Cc: [Gary, Arthur \(JMD\)](#)
Subject: RE: Census
Date: Friday, September 08, 2017 3:33:42 PM

Something about removing a question or questions about a person's citizenship...

From: Tang, Evelyn (JMD)
Sent: Friday, September 08, 2017 3:32 PM
To: Lofthus, Lee J (JMD) <llofthus@jmd.usdoj.gov>; Posner, Morton J (JMD) <mposner@jmd.usdoj.gov>; Allen, Michael (JMD DAAG) <mallen@jmd.usdoj.gov>
Cc: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
Subject: RE: Census

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<https://apps.npr.org/documents/document.html?id=3892167-DOJ-to-Census-Bureau-2016-11-04-Edit>

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To: [Lofthus, Lee J \(JMD\)](#); [Posner, Morton J \(JMD\)](#); [Allen, Michael \(JMD DAAG\)](#)
Cc: [Gary, Arthur \(JMD\)](#)
Subject: RE: Census
Date: Friday, September 08, 2017 3:48:07 PM

Probably not what you are looking for but earlier this summer OARM changed their website to allow Honor's Program applicants to apply even if they are non citizens. This was previously not permitted by the online application system. There have always been exceptions to the prohibition on hiring noncitizens so this wasn't really a policy change.

I haven't heard of anything specifically about removing questions about citizenship.

From: Lofthus, Lee J (JMD)
Sent: Friday, September 08, 2017 3:34 PM
To: Tang, Evelyn (JMD) <etang@jmd.usdoj.gov>; Posner, Morton J (JMD) <mposner@jmd.usdoj.gov>; Allen, Michael (JMD DAAG) <mallen@jmd.usdoj.gov>
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<https://apps.npr.org/documents/document.html?id=3892167-DOJ-to-Census-Bureau-2016-11-04-Edit>

From: Allen, Michael (JMD DAAG)
To: Gary, Arthur (JMD)
Subject: Can you call me or Lee if you get this before COB Friday?
Date: Friday, September 08, 2017 3:56:42 PM

Thanks. Sorry to interrupt but have an unexpected question from OAG about the Census ACS questions.

Mike

From: Gary, Arthur (JMD)
To: Posner, Morton J. (JMD)
Subject: FW: please proof read & print the attached for my signature BUT BEFORE YOU DO...
Date: Monday, November 06, 2017 4:54:00 PM
Attachments: Commerce OGC Letter.Use of ACS data CRT & OJP-BJS.June 24 2104.docx

(b) (5)

From: Gary, Arthur (JMD)
Sent: Tuesday, June 24, 2014 6:35 PM
To: Allen, Michelle M (JMD) <mmallen@jmd.usdoj.gov>
Subject: please proof read & print the attached for my signature BUT BEFORE YOU DO...

Before you finalize & print, let's talk about the best way to handle the CC's as well as the attachment.

<<Commerce OGC Letter.Use of ACS data CRT & OJP-BJS.June 24 2104.docx>>

Thanks,

Art

Arthur E. Gary

General Counsel

Justice Management Division

U.S. Department of Justice

Two Constitution Square, Suite 8E.500

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JMD0018

From: [Gary, Arthur \(JMD\)](#)
To: [Allen, Michelle M \(JMD\)](#)
Subject: Please set up for my signature
Date: Wednesday, November 29, 2017 10:21:00 AM
Attachments: [Request for Citizenship Information.Nov29 FINAL.docx](#)

Hi Michelle- - I will need to send this out via mail on Friday. I know you won't be here, so can you set this up today with Friday's date? It can probably wait till Monday to mail, but still if you can do up an envelope to the Office of the Director I'd appreciate it. How does postage work?

Thanks,

Art

Arthur E. Gary
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JMD0019

From: [Gary, Arthur \(JMD\)](#)
To: ["Michelle.M.Allen@usdoj.gov"](mailto:Michelle.M.Allen@usdoj.gov)
Cc: [Thompson, John E. \(JMD\)](#)
Subject: revised letter
Date: Wednesday, November 29, 2017 2:29:00 PM
Attachments: [Request for Citizenship Information.Nov29.FINAL.docx](#)

The only change is in Dr. Jarmin's title. It's awkward, but I called the director's office & it's what they want. On the envelope too!

Thanks,

Art

Arthur E. Gary
General Counsel
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JMD0020

From: [Allen, Michelle M \(JMD\)](#)
To: [Gary, Arthur \(JMD\)](#)
Subject: Census Bureau Request for 2020 Questionnaire - Dr. Ron Jarmin
Date: Wednesday, November 29, 2017 5:24:33 PM
Attachments: [Dr.Jarmin Census Bureau Letter.pdf](#)

Art,

As requested attached is your copy. I will leave envelope on my desk for mailing. If things go well tomorrow, I may come in for a few hours on Friday. Of course I will let you know.

Thanks,

Michelle

From: [Gary, Arthur \(JMD\)](#)
To: [Allen, Michelle M \(JMD\)](#)
Subject: Request for Citizenship Information.Dec 11 FINAL
Date: Monday, December 11, 2017 7:01:00 PM
Attachments: [Request for Citizenship Information.Dec 11 FINAL.docx](#)

Michelle—here's the final (hoping!) version of this letter. Please proofread & set up for signature.

Thanks!

Art

From: [Allen, Michelle M \(JMD\)](#)
To: [Gary, Arthur \(JMD\)](#)
Subject: U. S. Census Bureau Dr. Jarmin (Revised Dec. 12th).pdf
Date: Tuesday, December 12, 2017 1:37:51 PM
Attachments: [U. S. Census Bureau Dr. Jarmin \(Revised Dec. 12th\).pdf](#)

Art,

As Requested.

Michelle



U.S. Department of Justice
Justice Management Division
Office of General Counsel

Washington, D.C. 20530

DEC 12 2017

VIA CERTIFIED RETURN RECEIPT

7014 2120 0000 8064 4964

Dr. Ron Jarmin
Performing the Non-Exclusive Functions and Duties of the Director
U.S. Census Bureau
United States Department of Commerce
Washington, D.C. 20233-0001

Re: Request To Reinstate Citizenship Question On 2020 Census Questionnaire

Dear Dr. Jarmin:

The Department of Justice is committed to robust and evenhanded enforcement of the Nation's civil rights laws and to free and fair elections for all Americans. In furtherance of that commitment, I write on behalf of the Department to formally request that the Census Bureau reinstate on the 2020 Census questionnaire a question regarding citizenship, formerly included in the so-called "long form" census. This data is critical to the Department's enforcement of Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting. To fully enforce those requirements, the Department needs a reliable calculation of the citizen voting-age population in localities where voting rights violations are alleged or suspected. As demonstrated below, the decennial census questionnaire is the most appropriate vehicle for collecting that data, and reinstating a question on citizenship will best enable the Department to protect all American citizens' voting rights under Section 2.

The Supreme Court has held that Section 2 of the Voting Rights Act prohibits "vote dilution" by state and local jurisdictions engaged in redistricting, which can occur when a racial group is improperly deprived of a single-member district in which it could form a majority. See *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). Multiple federal courts of appeals have held that, where citizenship rates are at issue in a vote-dilution case, citizen voting-age population is the proper metric for determining whether a racial group could constitute a majority in a single-member district. See, e.g., *Reyes v. City of Farmers Branch*, 586 F.3d 1019, 1023-24 (5th Cir. 2009); *Barnett v. City of Chicago*, 141 F.3d 699, 704 (7th Cir. 1998); *Negrn v. City of Miami Beach*, 113 F.3d 1563, 1567-69 (11th Cir. 1997); *Romero v. City of Pomona*, 883 F.2d 1418, 1426 (9th Cir. 1989), *overruled in part on other grounds by Townsend v. Holman Consulting Corp.*, 914 F.2d 1136, 1141 (9th Cir. 1990); see also *LULAC v. Perry*, 548 U.S. 399, 423-442 (2006) (analyzing vote-dilution claim by reference to citizen voting-age population).

JMD0024

The purpose of Section 2’s vote-dilution prohibition “is to facilitate participation ... in our political process” by preventing unlawful dilution of the vote on the basis of race. *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997). Importantly, “[t]he plain language of section 2 of the Voting Rights Act makes clear that its protections apply to United States citizens.” *Id.* Indeed, courts have reasoned that “[t]he right to vote is one of the badges of citizenship” and that “[t]he dignity and very concept of citizenship are diluted if noncitizens are allowed to vote.” *Barnett*, 141 F.3d at 704. Thus, it would be the wrong result for a legislature or a court to draw a single-member district in which a numerical racial minority group in a jurisdiction was a majority of the total voting-age population in that district but “continued to be defeated at the polls” because it was not a majority of the citizen voting-age population. *Campos*, 113 F.3d at 548.

These cases make clear that, in order to assess and enforce compliance with Section 2’s protection against discrimination in voting, the Department needs to be able to obtain citizen voting-age population data for census blocks, block groups, counties, towns, and other locations where potential Section 2 violations are alleged or suspected. From 1970 to 2000, the Census Bureau included a citizenship question on the so-called “long form” questionnaire that it sent to approximately one in every six households during each decennial census. See, e.g., U.S. Census Bureau, *Summary File 3: 2000 Census of Population & Housing—Appendix B at B-7* (July 2007), available at <https://www.census.gov/prod/cen2000/doc/sf3.pdf> (last visited Nov. 22, 2017); U.S. Census Bureau, *Index of Questions*, available at https://www.census.gov/history/www/through_the_decades/index_of_questions/ (last visited Nov. 22, 2017). For years, the Department used the data collected in response to that question in assessing compliance with Section 2 and in litigation to enforce Section 2’s protections against racial discrimination in voting.

In the 2010 Census, however, no census questionnaire included a question regarding citizenship. Rather, following the 2000 Census, the Census Bureau discontinued the “long form” questionnaire and replaced it with the American Community Survey (ACS). The ACS is a sampling survey that is sent to only around one in every thirty-eight households each year and asks a variety of questions regarding demographic information, including citizenship. See U.S. Census Bureau, *American Community Survey Information Guide at 6*, available at [https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS Information Guide.pdf](https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS%20Information%20Guide.pdf) (last visited Nov. 22, 2017). The ACS is currently the Census Bureau’s only survey that collects information regarding citizenship and estimates citizen voting-age population.

The 2010 redistricting cycle was the first cycle in which the ACS estimates provided the Census Bureau’s only citizen voting-age population data. The Department and state and local jurisdictions therefore have used those ACS estimates for this redistricting cycle. The ACS, however, does not yield the ideal data for such purposes for several reasons:

- Jurisdictions conducting redistricting, and the Department in enforcing Section 2, already use the total population data from the census to determine compliance with the Constitution’s one-person, one-vote requirement, see *Evenwel v. Abbott*, 136 S. Ct. 1120 (Apr. 4, 2016). As a result, using the ACS citizenship estimates means relying on two different data sets, the scope and level of detail of which vary quite significantly.

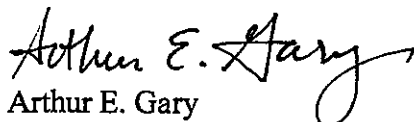
- Because the ACS estimates are rolling and aggregated into one-year, three-year, and five-year estimates, they do not align in time with the decennial census data. Citizenship data from the decennial census, by contrast, would align in time with the total and voting-age population data from the census that jurisdictions already use in redistricting.
- The ACS estimates are reported at a ninety percent confidence level, and the margin of error increases as the sample size—and, thus, the geographic area—decreases. See U.S. Census Bureau, *Glossary: Confidence interval (American Community Survey)*, available at https://www.census.gov/glossary/#term_ConfidenceintervalAmericanCommunitySurvey (last visited November 22, 2017). By contrast, decennial census data is a full count of the population.
- Census data is reported to the census block level, while the smallest unit reported in the ACS estimates is the census block group. See *American Community Survey Data* 3, 5, 10. Accordingly, redistricting jurisdictions and the Department are required to perform further estimates and to interject further uncertainty in order to approximate citizen voting-age population at the level of a census block, which is the fundamental building block of a redistricting plan. Having all of the relevant population and citizenship data available in one data set at the census block level would greatly assist the redistricting process.

For all of these reasons, the Department believes that decennial census questionnaire data regarding citizenship, if available, would be more appropriate for use in redistricting and in Section 2 litigation than the ACS citizenship estimates.

Accordingly, the Department formally requests that the Census Bureau reinstate into the 2020 Census a question regarding citizenship. We also request that the Census Bureau release this new data regarding citizenship at the same time as it releases the other redistricting data, by April 1 following the 2020 Census. At the same time, the Department requests that the Bureau also maintain the citizenship question on the ACS, since such question is necessary, *inter alia*, to yield information for the periodic determinations made by the Bureau under Section 203 of the Voting Rights Act, 52 U.S.C. § 10503.

Please let me know if you have any questions about this letter or wish to discuss this request. I can be reached at (202) 514-3452, or at Arthur.Gary@usdoj.gov.

Sincerely yours,



Arthur E. Gary
General Counsel
Justice Management Division

From: [Gary, Arthur \(JMD\)](#)
To: [Gore, John \(CRT\)](#)
Subject: FW: U. S. Census Bureau Dr. Jarmin (Revised Dec. 12th).pdf
Date: Tuesday, December 12, 2017 1:44:00 PM
Attachments: [U. S. Census Bureau Dr. Jarmin \(Revised Dec. 12th\).pdf](#)

John – this is going out in the mail this afternoon.

Art

From: Allen, Michelle M (JMD)
Sent: Tuesday, December 12, 2017 1:38 PM
To: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
Subject: U. S. Census Bureau Dr. Jarmin (Revised Dec. 12th).pdf

Art,

As Requested.

Michelle



U.S. Department of Justice
Justice Management Division
Office of General Counsel

Washington, D.C. 20530

DEC 12 2017

VIA CERTIFIED RETURN RECEIPT

7014 2120 0000 8064 4964

Dr. Ron Jarmin
Performing the Non-Exclusive Functions and Duties of the Director
U.S. Census Bureau
United States Department of Commerce
Washington, D.C. 20233-0001

Re: Request To Reinstate Citizenship Question On 2020 Census Questionnaire

Dear Dr. Jarmin:

The Department of Justice is committed to robust and evenhanded enforcement of the Nation's civil rights laws and to free and fair elections for all Americans. In furtherance of that commitment, I write on behalf of the Department to formally request that the Census Bureau reinstate on the 2020 Census questionnaire a question regarding citizenship, formerly included in the so-called "long form" census. This data is critical to the Department's enforcement of Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting. To fully enforce those requirements, the Department needs a reliable calculation of the citizen voting-age population in localities where voting rights violations are alleged or suspected. As demonstrated below, the decennial census questionnaire is the most appropriate vehicle for collecting that data, and reinstating a question on citizenship will best enable the Department to protect all American citizens' voting rights under Section 2.

The Supreme Court has held that Section 2 of the Voting Rights Act prohibits "vote dilution" by state and local jurisdictions engaged in redistricting, which can occur when a racial group is improperly deprived of a single-member district in which it could form a majority. See *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). Multiple federal courts of appeals have held that, where citizenship rates are at issue in a vote-dilution case, citizen voting-age population is the proper metric for determining whether a racial group could constitute a majority in a single-member district. See, e.g., *Reyes v. City of Farmers Branch*, 586 F.3d 1019, 1023–24 (5th Cir. 2009); *Barnett v. City of Chicago*, 141 F.3d 699, 704 (7th Cir. 1998); *Negrn v. City of Miami Beach*, 113 F.3d 1563, 1567-69 (11th Cir. 1997); *Romero v. City of Pomona*, 883 F.2d 1418, 1426 (9th Cir. 1989), *overruled in part on other grounds by Townsend v. Holman Consulting Corp.*, 914 F.2d 1136, 1141 (9th Cir. 1990); see also *LULAC v. Perry*, 548 U.S. 399, 423–442 (2006) (analyzing vote-dilution claim by reference to citizen voting-age population).

JMD0028

The purpose of Section 2's vote-dilution prohibition "is to facilitate participation ... in our political process" by preventing unlawful dilution of the vote on the basis of race. *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997). Importantly, "[t]he plain language of section 2 of the Voting Rights Act makes clear that its protections apply to United States citizens." *Id.* Indeed, courts have reasoned that "[t]he right to vote is one of the badges of citizenship" and that "[t]he dignity and very concept of citizenship are diluted if noncitizens are allowed to vote." *Barnett*, 141 F.3d at 704. Thus, it would be the wrong result for a legislature or a court to draw a single-member district in which a numerical racial minority group in a jurisdiction was a majority of the total voting-age population in that district but "continued to be defeated at the polls" because it was not a majority of the citizen voting-age population. *Campos*, 113 F.3d at 548.

These cases make clear that, in order to assess and enforce compliance with Section 2's protection against discrimination in voting, the Department needs to be able to obtain citizen voting-age population data for census blocks, block groups, counties, towns, and other locations where potential Section 2 violations are alleged or suspected. From 1970 to 2000, the Census Bureau included a citizenship question on the so-called "long form" questionnaire that it sent to approximately one in every six households during each decennial census. See, e.g., U.S. Census Bureau, *Summary File 3: 2000 Census of Population & Housing—Appendix B at B-7* (July 2007), available at <https://www.census.gov/prod/cen2000/doc/sf3.pdf> (last visited Nov. 22, 2017); U.S. Census Bureau, *Index of Questions*, available at https://www.census.gov/history/www/through_the_decades/index_of_questions/ (last visited Nov. 22, 2017). For years, the Department used the data collected in response to that question in assessing compliance with Section 2 and in litigation to enforce Section 2's protections against racial discrimination in voting.

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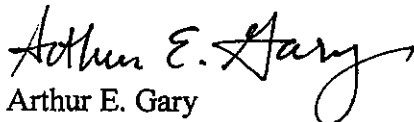
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Please let me know if you have any questions about this letter or wish to discuss this request. I can be reached at (202) 514-3452, or at Arthur.Gary@usdoj.gov.

Sincerely yours,



Arthur E. Gary
General Counsel
Justice Management Division

From: Allen, Michelle M (JMD)
To: Garv, Arthur (JMD)
Subject: Letter to Dr. Jarmin - US Census Bureau
Date: Monday, December 18, 2017 3:12:00 PM

Art,

Mr. Davidson(Dept. of Commerce) called to say that Dr. Ron Jarmin hasn't received the letter via "Certified Return Receipt" yet. He wanted to know if I would fax a copy over to Dr. Jarmin. Any objections?

Thanks,

Michelle

JMD0031

From: [Allen, Michelle M \(JMD\)](#)
To: [Gary, Arthur \(JMD\)](#)
Subject: FW: Letter to Dr. Jarmin - US Census Bureau
Date: Monday, December 18, 2017 3:22:35 PM

Ok...so now OLA wants a PDF of the letter as well. Anela Mangum (OLA) wants me to PDF her a copy.

From: Allen, Michelle M (JMD)
Sent: Monday, December 18, 2017 3:12 PM
To: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
Subject: Letter to Dr. Jarmin - US Census Bureau

Art,

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Michelle



U.S. Department of Justice
Justice Management Division
Office of General Counsel

Washington, D.C. 20530

DEC 12 2017

VIA CERTIFIED RETURN RECEIPT
7014 2120 0000 8064 4964

Dr. Ron Jarmin
Performing the Non-Exclusive Functions and Duties of the Director
U.S. Census Bureau
United States Department of Commerce
Washington, D.C. 20233-0001

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JMD0033

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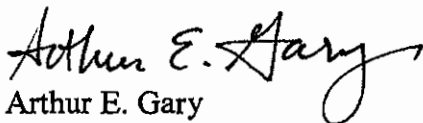
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Sincerely yours,



Arthur E. Gary
General Counsel
Justice Management Division

From: [Lofthus, Lee J \(JMD\)](#)
To: [Gary, Arthur \(JMD\)](#)
Subject: RE: Census letter
Date: Monday, December 18, 2017 5:11:08 PM

You off with John yet or still talking?

From: Gary, Arthur (JMD)
Sent: Monday, December 18, 2017 5:10 PM
To: Lofthus, Lee J (JMD) <llofthus@jmd.usdoj.gov>
Subject: Census letter

Art

Arthur E. Gary
General Counsel
Justice Management Division
U.S. Department of Justice
Two Constitution Square, Suite 8E.500
145 N. Street, NE
Washington, DC 20530
202-514-3452 (OGC main line)

NOTICE: This email (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient (or the recipient's agent), you are hereby notified that any dissemination, distribution, copying, or use of this email or its contents is strictly prohibited. If you received this email in error, please notify the sender immediately and destroy all copies.

JMD0036

From: Justin Elliott
To: [Press](#)
Cc: [Gary, Arthur \(JMD\)](#)
Subject: DOJ / Census story (Deadline 2:45pm)
Date: Friday, December 29, 2017 12:47:53 PM

Hi,

I'm a reporter with ProPublica in New York. I'm working on a story today on Arthur Gary's Dec. 12 letter to Dr. Ron Jarmin of the Census Bureau requesting that the Census add a question about immigration status. I've pasted the full text of the letter below.

My deadline is 2:45 pm EST today (Friday).

My questions:

—How do you respond to criticism that adding an immigration question would, in the words of one observer, “drive the response rate down enormously” by disincentivizing undocumented immigrants from participating in the census?

(Source: https://www.washingtonpost.com/local/social-issues/white-house-proposal-to-ask-immigration-status-in-census-could-have-chilling-effect-experts-say/2017/02/01/1fc51b8e-e8af-11e6-bf6f-301b6b443624_story.html?utm_term=.6c6313123722)

—Are there specific examples of cases in which the DOJ's enforcement of Section 2 of the Voting Rights Act has been hindered by the issue you raise in the letter?

—Has Commerce/Census made a decision about whether an immigration question will be added?

—Is there anything else I should know?

Feel free to give me a call to discuss further. I'm at 774-826-6240.

Best,
Justin

--

Justin Elliott
Reporter
ProPublica
Office: (917) 512-0223
Signal: (774) 826-6240
justin@propublica.org
PGP

JMD0037

Dec. 12 2017

Dr. Ron Jarmin
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U.S. Census Bureau
United States Department of Commerce
Washington, D.C. 20233-0001

Re: Request To Reinstate Citizenship Question On 2020 Census Questionnaire

Dear Dr. Jarmin:

The Department of Justice is committed to robust and evenhanded enforcement of the Nation's civil rights laws and to free and fair elections for all Americans. In furtherance of that commitment, I write on behalf of the Department to formally request that the Census Bureau reinstate on the 2020 Census questionnaire a question regarding citizenship, formerly included in the so-called "long form" census. This data is critical to the Department's enforcement of Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting. To fully enforce those requirements, the Department needs a reliable calculation of the citizen voting-age population in localities where voting rights violations are alleged or suspected. As demonstrated below, the decennial census questionnaire is the most appropriate vehicle for collecting that data, and reinstating a question on citizenship will best enable the Department to protect all American citizens' voting rights under Section 2.

The Supreme Court has held that Section 2 of the Voting Rights Act prohibits "vote dilution" by state and local jurisdictions engaged in redistricting, which can occur when a racial group is improperly deprived of a single-member district in which it could form a majority. See *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). Multiple federal courts of appeals have held that, where citizenship rates are at issue in a vote-dilution case, citizen voting-age population is the proper metric for determining whether a racial group could constitute a majority in a single-member district. See, e.g., *Reyes v. City of Farmers Branch*, 586 F.3d 1019, 1023-24 (5th Cir. 2009); *Barnett v. City of Chicago*, 141 F.3d 699, 704 (7th Cir. 1998); *Negrn v. City of Miami Beach*, 113 F.3d 1563, 1567-69 (11th Cir. 1997); *Romero v. City of Pomona*, 883 P.2d 1418, 1426 (9th Cir. 1989), *overruled in part on other grounds by Townsend v. Holman Consulting Corp.*, 914 F.2d 1136, 1141 (9th Cir. 1990); see also *LULAC v. Perry*, 548 U.S. 399, 423-442 (2006) (analyzing vote-dilution claim by reference to citizen voting-age population).

JMD0038

The propose of Section 2's vote-dilution prohibition "is to facilitate participation ... in our political process" by preventing unlawful dilution of the vote on the basis of race. *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997). Importantly, "[t]he plain language of section 2 of the Voting Rights Act makes clear that its protections apply to United States citizens." *Id.* Indeed, courts have reasoned that "[t]he right to vote is one of the badges of citizenship" and that "[t]he dignity and very concept of citizenship are diluted if noncitizens are allowed to vote." *Barnett*, 141 F.3d at 704. Thus, it would be the wrong result for a legislature or a court to draw a single-member district in which a numerical racial minority group in a jurisdiction was a majority of the total voting-age population in that district but "continued to be defeated at the polls" because it was not a majority of the citizen voting-age population. *Campos*, 113 F.3d at 548.

These cases make clear that, in order to assess and enforce compliance with Section 2's protection against discrimination in voting, the Department needs to be able to obtain citizen voting-age population data for census blocks, block groups, counties, towns, and other locations where potential Section 2 violations are alleged or suspected. From 1970 to 2000, the Census Bureau included a citizenship question on the so-called "long form" questionnaire that it sent to approximately one in every six households during each decennial census. See, e.g., U.S. Census Bureau, *Summary File 3: 2000 Census of Population & Housing—Appendix B at B-7* (July 2007), available at <https://www.census.gov/prod/cen2000/doc/sf3.pdf> (last visited Nov. 22, 2017); U.S. Census Bureau, Index of Questions, available at https://www.census.gov/history/www/through_the_decades/index_of_questions/ (last visited Nov. 22, 2017). For years, the Department used the data collected in response to that question in assessing compliance with Section 2 and in litigation to enforce Section 2's protections against racial discrimination in voting.

In the 2010 Census, however, no census questionnaire included a question regarding citizenship. Rather, following the 2000 Census, the Census Bureau discontinued the "long form" questionnaire and replaced it with the American Community Survey (ACS). The ACS is a sampling survey that is sent to only around one in every thirty-eight households each year and asks a variety of questions regarding demographic information, including citizenship. See U.S. Census Bureau, *American Community Survey Information Guide at 6*, available at [https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS Information Guide.pdf](https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS%20Information%20Guide.pdf) (last-visited Nov. 22, 2017). The ACS is currently the Census Bureau's only survey that collects information regarding citizenship and estimates citizen voting-age population.

The 2010 redistricting cycle was the first cycle in which the ACS estimates provided the Census Bureau's only citizen voting-age population data. The Department and state and local jurisdictions therefore have used those ACS estimates for this redistricting cycle. The ACS, however, does not yield the ideal data for such purposes for several reasons:

- Jurisdictions conducting redistricting, and the Department in enforcing Section 2, already use the total population data from the census to determine compliance with the Constitution's one-person, one-vote requirement, see *Evenwel v. Abbott*, 136 S. Ct. 1120 (Apr. 4, 2016). As a result, using the ACS citizenship estimates means relying on two different data sets, the scope and level of detail of which vary quite significantly.
- Because the ACS estimates are rolling and aggregated into one-year, three-year, and five-year estimates, they do not align in time with the decennial census data. Citizenship data from the decennial census, by contrast, would align in time with the total and voting-age population data from the census that jurisdictions already use in redistricting.
- The ACS estimates are reported at a ninety percent confidence level, and the margin of error increases as the sample size—and, thus, the geographic area—decreases. See U.S. Census Bureau, *Glossary: Confidence interval (American Community Survey)*, available at https://www.census.gov/glossary/#term_ConfidenceintervalAmericanCommunitySurvey (last visited November 22, 2017). By contrast, decennial census data is a full count of the population.
- Census data is reported to the census block level, while the smallest unit reported in the ACS estimates is the census block group. See *American Community Survey Data* 3, 5, 10. Accordingly, redistricting jurisdictions and the Department are required to perform further estimates and to interject further uncertainty in order to approximate citizen voting-age population at the level of a census block, which is the fundamental building block of a redistricting plan. Having all of the relevant population and citizenship data available in one data set at the census block level would greatly assist the redistricting process.

For all of these reasons, the Department believes that decennial census questionnaire data regarding citizenship, if available, would be more appropriate for use in redistricting and in Section 2 litigation than the ACS citizenship estimates.

Accordingly, the Department formally requests that the Census Bureau reinstate into the 2020 Census a question regarding citizenship. We also request that the Census Bureau release this new data regarding citizenship at the same time as it releases the other redistricting data, by April 1 following the 2020 Census. At the same time, the Department requests that the Bureau also maintain the citizenship question on the ACS, since such question is necessary, *inter alia*, to yield information for the periodic determinations made by the Bureau under Section 203 of the Voting Rights Act, 52 U.S.C. § 10503.

Please let me know if you have any questions about this letter or wish to discuss this request I

can be reached at (202) 514-3452, or at Arthur.Gary@usdoj.gov.

Sincerely yours,

Arthur E. Gary
General Counsel
Justice Management Division

From: Stromberg, Stephen
To: [Gary, Arthur \(JMD\)](#)
Subject: From Washington Post Editorial Board
Date: Tuesday, January 02, 2018 2:21:41 PM

Dear Mr. Gary,

I am an editorial writer with the Post. I'm working on a piece about the letter you sent to the Census Bureau last month, as reported by ProPublica. How do you respond to those who take your stated concerns about voting rights as an ominous signal about the administration's intentions in possibly changing Census questions? For purposes of Section 2 cases, how much harder is it to use ACS data? Does the additional hassle really justify changing Census forms in a way that might well drive up costs and deter population counting?

I understand you may not want to comment publicly, but any insight you might be able to provide would be very helpful as we determine our views on this.

Thanks very much in advance.

Best,
Steve

Steve Stromberg
The Washington Post
Office: (202) 334-6370
Cell: (b) (6)

JMD0042

From: [Gary, Arthur \(JMD\)](#)
To: [Lofthus, Lee J \(JMD\)](#)
Subject: Census letter
Date: Monday, December 18, 2017 5:09:00 PM
Attachments: [Dr. Ron Jarmin - US Census Bureau.pdf](#)

Art

Arthur E. Gary
General Counsel
Justice Management Division
U.S. Department of Justice
Two Constitution Square, Suite 8E.500
145 N. Street, NE
Washington, DC 20530
202-514-3452 (OGC main line)

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JMD0043

Gary, Arthur (JMD)

From: Stephen Kruger (b) (6)
Sent: Wednesday, February 14, 2018 9:13 AM
To: Gary, Arthur (JMD)
Cc: (b) (6)
Subject: 2020 census

Dear Mr. Gary:

I refer to your recent letter to Dr. Jarmin.

The entirety of the discussion of which questions should be asked in the 2020 census is based on the false notion that the United States is authorized to conduct a census. Meaning, an inquiry about personal particulars,

It is not. The United States is authorized to conduct an enumeration, meaning, a head count. See my article, "The Decennial Census". It is on the web site of the SSRN, an aggregator of articles about law, economics, and history.

<https://ssrn.com/abstract=1985554>

I don't have Dr. Jarmin's email address, so a copy of this email was not sent to him.

Stephen Kruger
Attorney at Law

Gary, Arthur (JMD)

From: Hansi Wang (b) (6)
Sent: Thursday, March 08, 2018 3:57 PM
To: Gary, Arthur (JMD)
Subject: From NPR reporter (6pm ET deadline)

Hi, Mr. Gary:

NPR reporter Hansi Lo Wang here.

I am working on a story about JMD emails (obtained through ProPublica's FOIA request) about DOJ's request for sexual orientation and gender identity questions on the American Community Survey (ACS):

<https://www.documentcloud.org/documents/4403719-JMD-Response-Documents.html>

Here are my questions:

1. Who provided language for you to use in your letter dated March 7, 2017, to Barry Robinson at the Commerce Department?
2. What were the "issues" referred to in your email dated March 8, 2017, to Lee Lofthus and Michael Allen? (In the email, you wrote: "Today I got a call from Commerce OGC thanking us for the letter and appreciative of the 'adroit' language, given the sensitivity of the issues.")
3. What was the "painful lesson in version control" referred to in your email dated March 29, 2017, to Shannon Munro and Lee Lofthus? (In the email, you wrote: "This will be yet another painful lesson in version control.")
4. What is the current status of DOJ's analysis of its November 4, 2016, request for sexual orientation and gender identity questions to be added to the ACS? Has the DOJ decided to reaffirm this request? If not, why? (In a letter dated March 7, 2017, you wrote to Barry Robinson at the Commerce Department: "Because such a request requires thorough analysis and careful consideration, the Department is unable to reaffirm its request of November 4, 2016.")

My deadline is 6pm Eastern today (Thursday, March 8).

Thank you,

Hansi

Hansi Lo Wang
National Correspondent
NPR

(b) (6)

(b) (6)

twitter: @hansilowang

Gary, Arthur (JMD)

From: Gabriel Arana (b) (6)
Sent: Tuesday, April 03, 2018 12:21 PM
To: Gary, Arthur (JMD)
Subject: media request (on deadline)

Dear Arthur,

I'm a reporter for Them (them.us), a new LGBT publication from Condé Nast. I'm working on a story about the inclusion of sexual orientation and gender identity on the American Communities Survey.

It is my understanding that the DOJ cancelled an earlier request to include the questions on the ACS. In a letter from you dated March 7, 2017, the DOJ writes that "Because such a request requires thorough analysis and careful consideration, the Department is unable to reaffirm its request of November 4, 2016."

A few related questions:

1) Why did the DOJ cancel its earlier request to include this information on the ACS?

The justification for doing so in your letter hints that it is because the DOJ needs more time to conduct "thorough analysis" and to consider the request carefully.

2) Is the DOJ in the process of considering its request? If so, what is the status of those deliberations?

3) Is there a timeline for when such an analysis will be completed? Or has the matter been dropped entirely?

My deadline is EOD tomorrow, so it would be great if someone could get back to me by then. Feel free to respond by email or ring me at (b) (6). I'm happy to talk off the record as well.

Thanks!
Gabriel

--
Gabriel Arana
<http://www.gabrielarana.com>
Cell: (b) (6)

--
Gabriel Arana
<http://www.gabrielarana.com>
Cell: (b) (6)

Sign up for my newsletter! <http://eepurl.com/dhneG9>

Gary, Arthur (JMD)

From: Gary, Arthur (JMD)
Sent: Tuesday, February 13, 2018 12:41 PM
To: Allen, Michael (JMD DAAG)
Cc: Allen, Michelle M (JMD)
Subject: draft congressional response
Attachments: Draft Response.Census.Honorable Vicente Gonzalez.docx

Mike—I've attached a draft response to Congressman Gonzalez re: census. The control sheet assigns this to me as 'signer' / OGC for action & response. I recall when we discussed this last week you said we'd still send to OLA for signature, so that's how I've drafted it. Let's discuss when we can.

JMD workflow 108582
ES workflow 3965459

Thanks,

Art

Arthur E. Gary
General Counsel
Justice Management Division
U.S. Department of Justice
Two Constitution Square, Suite 8E.500
145 N. Street, NE
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Gary, Arthur (JMD)

From: Gary, Arthur (JMD)
Sent: Tuesday, March 27, 2018 10:25 AM
To: Allen, Michael (JMD DAAG); Lofthus, Lee J (JMD)
Subject: fyi

https://www.washingtonpost.com/news/morning-mix/wp/2018/03/27/california-sues-trump-administration-over-decision-to-add-citizenship-question-to-census/?hpid=hp_rhp-top-table-main_california-census-555am%3Ahomepage%2Fstory

Art

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Gary, Arthur (JMD)

From: Baumgaertner, Emily (b) (6)
Sent: Tuesday, February 13, 2018 1:17 PM
To: Gary, Arthur (JMD)
Subject: NYT reporter // comment on 2020 census citizenship question

Hello, sir:

I hope this message finds you well. Your office informed me that you are in-and-out today, so I wanted to make sure I reached you before our story publishes tonight in order to include your perspective.

I'm writing a story following the state Attorneys General letter sent Monday asking the Dept. of Commerce to exclude a citizenship question from the 2020 census. Instead of including a line from your original letter sent in December making the request, I'd love to include your fresh perspective now. If you have a moment by phone or email, I'd appreciate your comment:

Do you share any of these concerns about a citizenship question leading to an undercount of the population? What is your response to the concerns? Why do benefits in this scenario outweigh any risks?

My sincere thanks,

Emily Baumgaertner

--

Emily Baumgaertner
Washington Bureau
The New York Times
(b) (6)

Gary, Arthur (JMD)

From: Gary, Arthur (JMD)
Sent: Friday, February 09, 2018 10:03 AM
To: 'Pierson, Steve'
Subject: RE: Meeting query from the American Statistical Association

Thank you.

From: Pierson, Steve (b) (6)
Sent: Friday, February 09, 2018 9:59 AM
To: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
Subject: RE: Meeting query from the American Statistical Association

Dear Mr. Gary,

Thank you for the reply. I understand you are not interested in a discussion with us. Would you please refer us to another person at DOJ with whom we could meet about this very important issue? You are not on a mailing list from me but I will be very considerate in considering whether to send any emails to you.
Sincerely,
Steve

From: Gary, Arthur (JMD) [<mailto:Arthur.Gary@usdoj.gov>]
Sent: Friday, February 9, 2018 9:52 AM
To: Pierson, Steve (b) (6)
Subject: RE: Meeting query from the American Statistical Association

I am not interested, and would like to be removed from your mailing list.
Thank you.

From: Pierson, Steve (b) (6)
Sent: Friday, February 09, 2018 9:50 AM
To: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
Subject: RE: Meeting query from the American Statistical Association

Dear Mr. Gary,

I write to follow up the query below about possibly meeting to discuss your December 12 letter. We would appreciate the opportunity to meet with you to hear more of your department's perspective and to share our concerns.
Sincerely,
Steve

From: Pierson, Steve
Sent: Wednesday, January 10, 2018 2:32 PM
To: 'Arthur.Gary@usdoj.gov' <Arthur.Gary@usdoj.gov>
Subject: Meeting query from the American Statistical Association

Dear Mr. Gary,

I write to see if you would be willing to meet with a team from the American Statistical Association regarding your December 12 letter to Dr. Jarmin of the U.S. Census Bureau formally requesting they add a citizenship question to the 2020 questionnaire.

You may have seen a [letter from ASA President Lisa LaVange](#) to Secretary Ross cautioning strongly “against adding this or any other question at this late stage of the process unless there is convincing evidence that its impact will be minimal.”

We would appreciate the opportunity to meet with to hear more of your department’s perspective and to share our concerns.

Thank you for your consideration.

Sincerely,
Steve

Steve Pierson, Ph.D.
Director of Science Policy

American Statistical Association
Promoting the Practice and Profession of Statistics®

(b) (6)

www.amstat.org/policy

For ASA science policy updates, follow us on Twitter: @ASA_SciPol



From: Ron S Jarmin (CENSUS/ADEP FED)
To: [Gary, Arthur \(JMD\)](#)
Cc: [Enrique Lamas \(CENSUS/ADDP FED\)](#)
Subject: Request to Reinstate Citizenship Question On 2020 Census Questionnaire
Date: Friday, December 22, 2017 3:34:07 PM

Arthur,

Thank you for your letter dated 12/12/2017 regarding improving the quality of citizenship information for DOJ enforcement of the Voting Rights Act. Let me start by saying the Bureau is fully supportive of providing DOJ with the highest quality statistical information possible. To that end, I directed staff to review all possible ways to address the needs expressed in the letter. They have now briefed me and their findings suggest that the best way to provide PL94 block-level data with citizen voting population by race and ethnicity would be through (b) (5)

(b) (5) This would result in higher quality data produced at lower cost.

I suggest we schedule a meeting of Census and DOJ technical experts to discuss the details of this proposal. We look forward to working with you on this important statistical matter.

Happy Holidays

Ron Jarmin, PhD.

Associate Director for Economic Programs, and
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census.gov Connect with us on [Social Media](#)

JMD0052

From: [Gary, Arthur \(JMD\)](#)
To: ["Ron S. Jarmin \(CENSUS/ADEP FED\)"](#)
Cc: [Enrique Lamas \(CENSUS/ADDP FED\)](#)
Subject: RE: Request to Reinstate Citizenship Question On 2020 Census Questionnaire
Date: Friday, December 22, 2017 4:16:00 PM

Dr. Jarmin – thank you for your response. We look forward to meeting with you and your team in early January.

Best regards

Arthur E. Gary
General Counsel
Justice Management Division
U.S. Department of Justice
Two Constitution Square, Suite 8E.500
145 N. Street, NE
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202-514-3452 (OGC main line)

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From: Ron S Jarmin (CENSUS/ADEP FED) [mailto:Ron.S.Jarmin@census.gov]
Sent: Friday, December 22, 2017 3:32 PM
To: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
Cc: Enrique Lamas (CENSUS/ADDP FED) <Enrique.Lamas@census.gov>
Subject: Request to Reinstate Citizenship Question On 2020 Census Questionnaire

Arthur,

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I suggest we schedule a meeting of Census and DOJ technical experts to discuss the details of

JMD0053

this proposal. We look forward to working with you on this important statistical matter.

Happy Holidays

Ron Jarmin, PhD.

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Office 301.763.1858, Ron.S.Jarmin@census.gov
census.gov Connect with us on [Social Media](#)

From: [Gary, Arthur \(JMD\)](#)
To: ["Ron S Jarmin \(CENSUS/ADEP FED\)"](#)
Cc: [Enrique Lamas \(CENSUS/ADDP FED\)](#)
Subject: RE: Request to Reinstate Citizenship Question On 2020 Census Questionnaire
Date: Tuesday, January 02, 2018 2:21:00 PM

It should work fine- - let me get back to you.

Best wishes to you for 2018 as well.

Thanks,

Art

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From: Ron S Jarmin (CENSUS/ADEP FED) [mailto:Ron.S.Jarmin@census.gov]
Sent: Tuesday, January 02, 2018 1:59 PM
To: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
Cc: Enrique Lamas (CENSUS/ADDP FED) <Enrique.Lamas@census.gov>
Subject: Re: Request to Reinstate Citizenship Question On 2020 Census Questionnaire

Arthur,

Happy New Year! Would the late next week work for a meeting?

Best

Ron Jarmin, PhD.
Associate Director for Economic Programs, and
Performing the Non-Exclusive Functions and Duties of the Director

JMD0055

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Office 301.763.1858, Ron.S.Jarmin@census.gov
census.gov Connect with us on [Social Media](#)

From: Gary, Arthur (JMD) <Arthur.Gary@usdoj.gov>
Sent: Friday, December 22, 2017 4:16:35 PM
To: Ron S Jarmin (CENSUS/ADEP FED)
Cc: Enrique Lamas (CENSUS/ADDP FED)
Subject: RE: Request to Reinstate Citizenship Question On 2020 Census Questionnaire

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JMD0056

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From: Ron S Jarmin (CENSUS/ADEP FED)
To: [Gary, Arthur \(JMD\)](#)
Cc: [Enrique Lamas \(CENSUS/ADDP FED\)](#)
Subject: Re: Request to Reinstate Citizenship Question On 2020 Census Questionnaire
Date: Wednesday, January 03, 2018 1:46:57 PM

Gary,

I'm bringing technical, program and legal folks. It would be good if some technical folks on the DOJ side were there so we can ensure we understand and can meet your requirements. Thursday and Friday are the most open for us, but we're flexible and can shuffle to meet earlier in the week if that's preferable.

Thanks

Ron Jarmin, PhD.

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Sent: Tuesday, January 2, 2018 2:21:05 PM
To: Ron S Jarmin (CENSUS/ADEP FED)
Cc: Enrique Lamas (CENSUS/ADDP FED)
Subject: RE: Request to Reinstate Citizenship Question On 2020 Census Questionnaire

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Art

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JMD0058

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From: Gary, Arthur (JMD) <Arthur.Gary@usdoj.gov>
Sent: Friday, December 22, 2017 4:16:35 PM
To: Ron S Jarmin (CENSUS/ADEP FED)
Cc: Enrique Lamas (CENSUS/ADDP FED)
Subject: RE: Request to Reinstate Citizenship Question On 2020 Census Questionnaire

Dr. Jarmin – thank you for your response. We look forward to meeting with you and your team in early January.

Best regards

Arthur E. Gary
General Counsel
Justice Management Division
U.S. Department of Justice
Two Constitution Square, Suite 8E.500
145 N. Street, NE
Washington, DC 20530
202-514-3452 (OGC main line)

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JMD0059

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Sent: Friday, December 22, 2017 3:32 PM
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Cc: Enrique Lamas (CENSUS/ADDP FED) <Enrique.Lamas@census.gov>
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Happy Holidays

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Associate Director for Economic Programs, and
Performing the Non-Exclusive Functions and Duties of the Director
U.S. Census Bureau
Office 301.763.1858, Ron.S.Jarmin@census.gov
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JMD0060

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Sent: Tuesday, January 02, 2018 1:59 PM
To: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
Cc: Enrique Lamas (CENSUS/ADDP FED) <Enrique.Lamas@census.gov>
Subject: Re: Request to Reinstate Citizenship Question On 2020 Census Questionnaire

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JMD0061

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JMD0062

Best wishes to you for 2018 as well.

Thanks,

Art

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From: Gary, Arthur (JMD) <Arthur.Gary@usdoj.gov>
Sent: Friday, December 22, 2017 4:16:35 PM

JMD0063

To: Ron S Jarmin (CENSUS/ADEP FED)
Cc: Enrique Lamas (CENSUS/ADDP FED)
Subject: RE: Request to Reinstate Citizenship Question On 2020 Census Questionnaire

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Best regards

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JMD0064

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Gary, Arthur (JMD)

From: Gary, Arthur (JMD)
Sent: Wednesday, February 14, 2018 9:51 AM
To: Gore, John (CRT)
Subject: FW: 2020 census

Sharing this.

Art

From: Stephen Kruger (b) (6)
Sent: Wednesday, February 14, 2018 9:13 AM
To: Gary, Arthur (JMD) <agary@jmd.usdoj.gov>
Cc: (b) (6)
Subject: 2020 census

Dear Mr. Gary:

I refer to your recent letter to Dr. Jarmin.

The entirety of the discussion of which questions should be asked in the 2020 census is based on the false notion that the United States is authorized to conduct a census. Meaning, an inquiry about personal particulars,

It is not. The United States is authorized to conduct an enumeration, meaning, a head count. See my article, "The Decennial Census". It is on the web site of the SSRN, an aggregator of articles about law, economics, and history.

<https://ssrn.com/abstract=1985554>

I don't have Dr. Jarmin's email address, so a copy of this email was not sent to him.

Stephen Kruger
Attorney at Law

Gary, Arthur (JMD)

From: Gore, John (CRT)
Sent: Monday, January 29, 2018 2:54 PM
To: Gary, Arthur (JMD)
Subject: RE: following up

I'm free until 3:30 and again after 4 or so. Thanks.

John M. Gore
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
(b) (6)
(b) (6)

From: Gary, Arthur (JMD)
Sent: Monday, January 29, 2018 2:33 PM
To: Gore, John (CRT) (b) (6)
Subject: following up

Hi John – let me know when you have time for a call.

referred to census



On Jan 16, 2018, at 11:53 AM, Gary, Arthur (JMD) <Arthur.Gary@usdoj.gov> wrote:

Good morning Ron --

Due to some scheduling conflicts, we will be unable to meet on Friday, or this week. I'll get back to you with some other dates/times as soon as I'm able.

Art

Arthur E. Gary
General Counsel
Justice Management Division

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referred to census



From: Gary, Arthur (JMD) <Arthur.Gary@usdoj.gov>
Sent: Tuesday, January 9, 2018 7:21:43 PM
To: Ron S Jarmin (CENSUS/ADEP FED)
Subject: RE: Request to Reinstate Citizenship Question On 2020 Census Questionnaire

I'm sorry about the delay in getting back to you. Right now I can propose three options for next week: Thursday morning Jan. 18 (any time); Friday Jan. 19 at 11am or that same afternoon after 2. Please let me know if you prefer to meet at Commerce. Otherwise we can arrange for a conference room at Main Justice.

Thanks,

Arthur E. Gary
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referred to census

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To: Ron S Jarmin (CENSUS/ADEP FED)
Cc: Enrique Lamas (CENSUS/ADDP FED)
Subject: RE: Request to Reinstate Citizenship Question On 2020 Census Questionnaire

It should work fine- - let me get back to you.

Best wishes to you for 2018 as well.

Thanks,

Art

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