

**COUNTING EVERY PERSON:
SAFEGUARDING THE 2020 CENSUS
AGAINST THE TRUMP ADMINISTRATION'S
UNCONSTITUTIONAL ATTACKS**

HEARING
BEFORE THE
COMMITTEE ON
OVERSIGHT AND REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

—————
JULY 29, 2020
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Serial No. 116–108

Printed for the use of the Committee on Oversight and Reform



Available on: *govinfo.gov*,
oversight.house.gov or
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U.S. GOVERNMENT PUBLISHING OFFICE

41–984 PDF

WASHINGTON : 2020

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Wednesday, July 29, 2020

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND REFORM,
Washington, D.C.

The committee met, pursuant to notice, at 9:46 a.m., in room 2154, Rayburn House Office Building, Hon. Carolyn Maloney [chairwoman of the committee] presiding.

Present: Representatives Maloney, Norton, Lynch, Cooper, Connolly, Krishnamoorthi, Raskin, Rouda, Khanna, Mfume, Wasserman Schultz, Sarbanes, Welch, Kelly, DeSaulnier, Lawrence, Gomez, Pressley, Tlaib, Porter, Comer, Jordan, Gosar, Foxx, Hice, Grothman, Palmer, Higgins, Norman, Roy, Miller, Green, Steube, and Keller.

Chairwoman MALONEY. The committee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time.

I now recognize myself for an opening statement.

Thank you all for being here today. Our Constitution requires that every 10 years we count every person living in the United States of America.

We use this count to allocate more than a trillion dollars in Federal resources, to draw legislative maps, and to assign Electoral College votes to states.

It is no exaggeration to say that the census is a cornerstone of our democracy. Last week, the president issued a memorandum directing the Secretary of Commerce to provide him with all the information necessary to exclude undocumented immigrants from the census count for apportionment purposes.

Let me be clear. The president's direction is unconstitutional, it is illegal, and it disregards the precedent set by every other president, beginning with President George Washington.

The Constitution requires the census to count, quote, "the whole number of persons in each state," end quote. Federal law requires the Secretary of Commerce to report, quote, "the total population," end quote, of each state to the president and it requires the president to transmit this information to Congress.

In the 230-year history of the census, no president has ever tried to manipulate the census count in this way. In fact, just two years ago, the Census Bureau reaffirmed its commitment to do the exact opposite of what the president is now trying to do.

The Bureau committed to counting every person, regardless of citizenship or legal status under the rules of Congress set in the Census Act of 1790.

The president's decision to release this illegal memo now appears designed to inflict maximum damage to the accuracy of the ongoing 2020 census.

In just two weeks, the Census Bureau will start visiting the homes of millions of people who have not yet responded to the census.

The president's latest attack on immigrants could sow fear and confusion in communities across the country and could lead many people to decide not to participate. This will hurt communities that are already undercounted, underrepresented, and underfunded.

Addressing the chaos caused by the president's memo will drain valuable resources from the Census Bureau, which is already struggling to administer the 2020 census in the middle of an unprecedented pandemic and it will further divide our country at a time when we need unity.

Of course, this is not the first time that President Trump has attempted to politicize the census. For more than two years he tried to add a citizenship question, even though the Census Bureau's own studies showed it would depress response rates in many communities.

When this committee investigated, Secretary Ross and other administration officials denied they were trying to exclude immigrants from congressional apportionment and, instead, claimed falsely that the Department of Justice needed citizenship data to enforce the Voting Rights Act.

The Supreme Court saw through their explanation, calling it, quote, "contrived," end quote, and blocking the addition of the citizenship question. And when Secretary Ross and Attorney General Barr refused to turn over documents about the real reason for the citizenship question, the House held them both in contempt.

Now the president is trying again to weaponize the census to hurt immigrants and help Republicans. As a Nation, we depend on the census to be nonpartisan, fair, and accurate.

As I told Director Dillingham the last time he appeared before us, our Constitution requires it, our communities rely on it, and our democracy depends on it.

We are here today at this emergency hearing because the Trump administration is threatening this cornerstone of our democracy.

We will hear from four former Census Bureau directors who oversaw the census during both Republican and Democratic administrations.

They will share their views on the president's unprecedented attempts to manipulate the census count and why it is important to count every person in the United States.

Then we will hear directly from the current Census Bureau director, Dr. Dillingham. I expect Dr. Dillingham to give us an honest assessment of how the president's memo could impact the accuracy of the census and what the Bureau is doing to address this risk.

I thank all of our witnesses for participating today and I look forward to your testimony. I now recognize the distinguished ranking member, Mr. Comer, for an opening statement.

Mr. COMER. Chairman MALONEY. I appreciate you calling this hearing today on the 2020 census.

Let me begin by saying unequivocally the 2020 census is counting every resident in the United States, regardless of citizenship status. Any assertions to the contrary are scare tactics, which have the consequence of reducing participation in the census.

The census is underway now. I want to encourage every American to complete their census form. Starting in August, census enumerators will be fanning out across the country to count non-responding households.

I encourage everyone to engage with an enumerator if they come to your door. But if you are concerned about an enumerator coming to your door, you can complete your 2020 census online now at *mycensus2020* or *my2020census.gov*.

I truly wish the hearing today were an oversight hearing of the 2020 census because COVID-19 has created a lot of operational challenges for the census.

Unfortunately, this committee has conducted no oversight of these impacts. Once again, Democrats are focusing their efforts on political issues, not the basic good government oversight this committee is charged with conducting.

Last week, President Trump took a very important step to ensuring the sanctity of our Nation's elections and equal representation under the Constitution.

The president directed the Secretary of Commerce to report an apportionment count for the House of Representatives, which includes nonlegal residents in the United States including illegal immigrants.

All Americans should care about who is being included in the apportionment count. Including illegal immigrants in the count for representation in Congress only dilutes the representation of all Americans who vote in elections and makes a mockery of our basic principle of one person one vote.

The president's action restores the concept of representational government envisioned by the Constitution. In a country so closely divided as the United States, illegal immigrants and noncitizens have a material effect on representation.

Representation should matter to everyone. It is a simple question of fairness. Predictably, the Democrats' liberal interest groups have already filed lawsuits against the president. Like the sound and fury surrounding the citizenship question, the legal questions about the president's action are likely to wind up at the Supreme Court.

This hearing today is the Democrats' first shot across the bow of Chief Justice Roberts and the other Supreme Court justices. The intimidation of the Supreme Court begins today.

I urge us all to focus on the task at hand, the completion of the 2020 census count now underway.

With that, I yield back.

Chairwoman MALONEY. Thank you.

Now I would like to introduce our witnesses. Our first panel is composed for former Census directors. We are grateful to have their expertise.

Our first witness today is Mr. Vincent Barabba, who served as Census director from 1973 to 1976 and again from 1979 to 1981.

Then we will hear from Kenneth Prewitt, who served as the Census director from 1998 to 2001.

Next, we will hear and go to Robert M. Groves, who served as the Census director from 2009 to 2012.

Finally, we will go to John H. Thompson, who served as the Census director from 2013 to 2017.

The witnesses will be muted so we can swear them in. Unmuted so that we can swear them in.

Witnesses, please raise your right hand. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

[Witnesses are sworn.]

Chairwoman MALONEY. Let the record show that the witnesses answered in the affirmative. Thank you.

Without objection, your written statements will be made part of the record, and with that, Mr. Barabba, you are now recognized for your testimony.

**STATEMENT OF VINCENT BARABBA, FORMER DIRECTOR,
CENSUS BUREAU (1973-1976 AND 1979-1981)**

Mr. BARABBA. Thank you.

The Thomas Theorem, formulated in 1928, stated that if men define situations as real, they are real in their consequences. In essence, the Thomas Theorem surfaces the potential that when incorrect situations are perceived by people as real, they are real in their consequences.

The real problem with the president's current action is that by reintroducing his illegal desire of only counting citizens using the many approaches he has taken is to ensure that he achieves his real objective.

That is to make sure less people will be counted in states with large minority populations which did not support President Trump or the positions he has taken.

If this occurs, those areas will have their representation in Congress and other legislative districts reduced as well and they will receive fewer government-approved allocations based on the census count.

However, the incorrect perception of possible direct harm by filling out the form by noncitizens is not correct because it is against the law for any Census Bureau employee to disclose or publish any census or survey information that identifies an individual or business.

This is true even for inter-agency communications. The FBI and other government entities do not have the legal right to access this information.

Violating the confidentiality of a respondent is a Federal crime with serious penalties, including a Federal prison sentence of up to five years, a fine of up to \$250,000, or both.

In fact, when these protections have been challenged, Title 13's confidentiality guarantee has been upheld in the courts.

I will now provide an example of how the Census Bureau and other agencies work together to follow Title 13.

On August 13, 1980, late that afternoon, four FBI agents arrived at the district office in Colorado Springs armed with a search warrant authorizing them to seize the census documents including completed questionnaires in the course of their investigation of a case involving alleged questionnaire falsification and payroll fraud.

I was immediately informed of the situation and contacted the director of the FBI. After a brief flurry of telephone calls to employees in Colorado, we agreed to a mutually satisfactory conclusion that could be reached while the disputed questionnaire remained in the custody of the Census Bureau.

Ultimately, the documents were placed in a secure room protected by two locks with one key held by the FBI and the other by a local census official.

Under this arrangement only sworn census employees were allowed to enter the room. But an FBI agent had to be present when the door was open.

While the door was unlocked, an agent was stationed outside the room to monitor the activities of the census personnel.

The Census Bureau brought in experienced Census Bureau enumerators from outside the Denver area to reinterview the respondents in the area where the alleged fraud had taken place and compared the original questionnaires with those from the recanvass.

Census Bureau officials prepared a report that described all significant discrepancies uncovered but did not reveal any confidential information.

As the chairwoman mentioned, I served as Census Bureau director through the appointment by presidents of both political parties. In 1980, I had the honor of providing the Secretary of Commerce with the Census Bureau statement showing the population of the states and the number of representatives to which each state is entitled, which he then forwarded to the president.

I was also proud of the fact that our outreach program to low-income and minority population led to an estimated count of nearly 97 percent of our population.

The 1980 census was also a clear demonstration of the non-partisan manner in which the census should be conducted. The 1980 census was designed and planned during a Republican presidency and successfully implemented as designed and planned during a Democratic presidency.

It will be up to Congress and the press to make sure that disinformation being created by the president be addressed forcefully and that his true motivation be made clear.

The census belongs to the people, not the president. The entire population of persons in the United States should participate willingly in the 2020 census and use the moment to reaffirm our Founders' intent that everyone be counted.

Thank you.

Chairwoman MALONEY. Thank you so much for your testimony and your service.

We will now here from Dr. John Eastman, professor, Henry Salvatori Professor of Law, and community service director, Center for Constitutional Jurisprudence Dale E. Fowler School of Law and Senior Fellow, Claremont Institute.

Dr. Eastman?

[Inaudible.]

Chairwoman MALONEY. We seem to have some technical problems. We are going to go to the next speaker after Dr. Eastman and come back to him because there seems to be a problem with connecting with him.

Thank you.

We will now turn to Dr. Prewitt.

Mr. Prewitt, you are now recognized.

**STATEMENT OF KENNETH PREWITT, FORMER DIRECTOR,
CENSUS BUREAU (1998-2001)**

Mr. PREWITT. Thank you very much, Madam Chairwoman.

We know that this discussion will include concern about the—in putting the noncitizens and/or the illegals into the apportionment count. I just have to say three things about that.

First, we have never done it. The census has never done it.

Second, they can't do it by asking questions. You are not going to knock on the door and say, are you or are you not.

And third, the administrative records are inadequate to do it. So, even if it was a good idea, we don't know—we don't yet know that we can do it—that the Census Bureau can do it.

With that as my starting point, I want to go on and say some things about the larger census, as the ranking member invited us to do.

We all know that we are about 62 percent with respect to non-response with respect to self-reporting. But that leaves, you know, more than a third of the population uncouneted.

I have to really stress this point. Nonresponse followup, hard to count, very difficult census territory, as we all know, and we are not in control. We as the Census Bureau, the we as the Congress, the we as the White House.

COVID is in control of whether we will be able to—that is, the Census Bureau will be able to do this count successfully before the end of the year, which they are now on that—on that schedule.

We know about 15 percent of the American population has already told us in polls that they do not intend to cooperate with the census.

So, I would like to make two, three quick points.

How do I define a successful census? The Bureau will know, as no other unit of government can, if the numbers will accurately re-apportion and fairly distribute Federal funds for a decade.

It knows that the census count is the denominator of every vital statistics we rely on, whether the number—whether it is the number of consumer products, whether it is a differential rate of infection across the population subgroups on the pandemic, and so forth. Every number that we use for 10 years is anchored to the quality of the census.

Second, the Bureau knows that these statistical facts can easily damage the flawed numbers that will be produced will—that we

will inflict on society will create serious damage to this society, and it is not pretty.

Ten years of homeless veterans because we mis locate their—mislocate their—sorry, mislocate their hospitals. Ten years of tropical storm disaster relief that is too little and too late because traffic congestion is underestimated.

Ten years of foreplanning by local school districts because they have flawed estimates of how many first graders are going to show up. Ten years of missed Chamber of Commerce—misled Chamber of Commerce because predictions of population growth and characteristics are off base.

We know that will be the consequences of a census that does not count as best it can, quite separate from who is in the apportionment count. We have to start with a good census.

The third thing I would say about this is the Bureau will not want to inflict the damage that flawed numbers will produce. The Census Bureau is too honorable, too scientific, too proud of its professional standards, too faithful to its constitutional duties. The Bureau will struggle with the enormous burden of whether to release substandard results.

I urge the Congress to share the burden. I would ask the Congress to please appoint, using the National Academy of Sciences or some other apolitical trusted institution of its choosing, to produce pre-determined quality metrics that can assess if the final 2020 numbers reasonably match what the Bureau knows that they should be, and the Bureau has very good estimates from ACS, from the demographic analysis. Very good estimates of how many people across the states, all the way down to census track levels.

So, if we can have this special group of experts to sort of create the metrics by which we will judge if we have an adequate census to do what it is supposed to do, and if not, what steps should the country take.

Chairwoman MALONEY. Thank you.

We are going to return to Dr. Eastman, if we have solved the difficulties of reaching him.

Dr. Eastman?

Mr. EASTMAN. Let us try—let us try this again.

Can you hear me now?

Chairwoman MALONEY. Yes, we can.

Mr. EASTMAN. Very good. Thank you.

STATEMENT OF JOHN EASTMAN, HENRY SALVATORI PROFESSOR OF LAW AND COMUNITY SERVICE DIRECTOR, CENTER FOR CONSTITUTINAL JURISPRUDENCE, DALE E. FOWLER SCHOOL OF LAW, CHAPMAN UNIVERSITY; AND SENIOR FELLOW, CLAREMONT INSTITUTE

Mr. EASTMAN. Chairman Maloney, Ranking Member Comer, and other members of the committee, thank you for inviting me to participate in this important hearing.

I actually think President Trump's directive is not only good policy but perfectly constitutional, and I want to address, real quickly, something Mr. Prewitt said.

I think there is a confusion here between the two purposes that we use the census for. One is for apportionment, set out by Article 1 Section 2 of the Constitution.

The other, exercising Congress's spending power or its commerce power, is to do a whole myriad of other things like allocate Federal resources, determine where we are going to need schools and VA hospitals, and what have you.

President Trump's order addresses the apportionment part of that. It doesn't have anything to do with the broader purposes of a total count on the census.

I think the political theory underlying the reason we have the apportionment clause is extremely important, and so let me begin with that.

We get our political theory from the Declaration of Independence. It sets out universal principles. All men are created equal, that we are endowed by our Creator with certain inalienable rights. But we apply those universal principles in a particular context. The Declaration starts off by talking about one people separating themselves from another.

The theory of representative government is that it is based on the consent of the people to be governed. Not on the consent of people elsewhere, but on the consent of the particular people that are setting up a government.

Now, those principles—the consent of the government, the representative government theory—find their selves into the text of the Constitution.

Right from the very beginning it says, "We, the people of the United States." It doesn't say, "We, the people of the world" or "We, the people of any foreign nationals who happen to be present when we take a census."

It is "We, the people of the United States." That language is mimicked then in the apportionment clause. Article 1 Section 2 Clause 1 says representatives are chosen by the people, that same people referring back to the people of the United States, now the people in their several states.

Then in Clause 3, it says that the people, again, and they choose their representatives based on the total number of persons. That refers back to their representatives. That refers back to the people in the several states.

Proof of this is the clause excluding Indians not taxed. That was a clause that was designed to recognize and to exempt from the census count those people who were in the states but not part of our body politic who were not citizens. As the Supreme Court held in *Elk v. Wilkins*, Indians not taxed are excluded from the census for the reason that they are not citizens.

In other words, the whole political theory of the Declaration codified into the Constitution is that we are counting people for purposes of apportionment in order to reflect accurately representative strength and divide equally and fairly the representation among the several States based on their numbers of people who are citizens, who are part of the body politic.

I will give you an example. If the 1984 Olympics was held in 1980 and it happened to coincide with Census Day, we wouldn't have added two or three congressional seats to California

because there were a couple million people visiting Los Angeles for the Olympics.

This has always been our history. Diplomats, visitors have never been counted because they are not part of the body politic. They don't adhere to the necessity of the theory of representative government.

The Supreme Court has upheld this as well. It is recognized in *Reynolds v. Sims*, for example, which was the equal protection one person/one vote case, that it is the equal number of citizens. They refer repeatedly to the language of citizens rather than total population.

Now, for most of our history, there wasn't much difference. The disparity between citizens and noncitizens was, roughly, similar one district to another. So, we didn't have to get into this question.

But we now live in a circumstance where there are vast differences state by state between the number of citizens compared to the total population, and to continue to count total population for apportionment purposes is to give an undue weight that people—to states that have large numbers of noncitizens living within their borders.

That is not consistent with the principles of representative government. It is unfair to those states that continue to have only citizens. It is particularly unfair when the number of noncitizens includes large numbers of people who are not here legally at all.

It creates a perverse incentive to encourage illegal immigration, to undermine the weight of the votes of citizens elsewhere in the country.

Thank you, Madam Chairman. I look forward to your questions.
Chairwoman MALONEY. Thank you.

I now—next, is Mr. Groves, and I understand that you have a hard stop at 11. You will be excused with our thanks, and you may have questions for the record.

Mr. Groves, you are now recognized.

**STATEMENT OF ROBERT M. GROVES, FORMER DIRECTOR,
CENSUS BUREAU (2009-2012)**

Mr. GROVES. Thank you, Chairwoman Maloney and Ranking Member Comer.

Since 1790, each U.S. decennial census has sought to enumerate all residents in the country. Some of the first words in the U.S. Constitution seem to illuminate the intent of the Founding Fathers on this score.

Before the decennial mandate as laid out in Article 1 Section 2, the prior section, Section 1, notes the qualifications of membership in the House of Representatives.

I quote, "No person shall be a representative who shall not have attained to the age of 25 years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen."

So, I note the explicit designation of the word "citizenship" for qualifications of members of the House, and the very next section, Section 2, outlining the decennial census, the word "citizen" is not used, either in referring to the census or to the apportionment of the House of Representatives.

Instead, the phrase “whole persons” is used. This goal, a complete enumeration of all persons, residents, in the country has been the basis of all censuses since that conducted by Thomas Jefferson in 1790. It has been the basis of reapportionment decade after decade. Indeed, the decennial census is the only event we have in this country in which all persons participate.

I am not a lawyer and, thus, will not comment on the legal basis of the recent memorandum. I will, instead, comment on the critical needs of the Census Bureau, going forward, with an eye toward quality assurance and transparency.

I have four points.

One, the Census Bureau technical staff must be free to complete the 2020 census at the maximum level of quality possible within the unprecedented constraints of the pandemic.

As you know, the technical staff of the Census Bureau has requested the delay in the delivery of various products. This request flows from the delay in the conduct of various stages of data collection.

This delay, no doubt, has saved lives of enumerators whose public service will make these efforts successful. I applaud the technical staff of the Census Bureau making this decision.

The decision, however, forces a delay of delivery of 2020 products. I support this delay and urge Congress to authorize it.

No. 2, all of us need to convey the message again very clearly that the 2020 census must enumerate all persons resident in the U.S.

Regardless of the outcome in the administration’s memorandum, the decennial census has the goal of enumerating all persons in the United States. We must double down on this message in the coming days.

No. 3, the Census Bureau should release all quality indicators of the measurement of citizens required under the July 11, 2019, executive order.

Rarely in the conduct of censuses throughout the world is the responsible agency asked to produce official estimates critical to the society without prior testing.

The attempt to assemble from administrator record systems and other sources counts of citizens at small geographical areas is unprecedented in the history of the Bureau.

With unprecedented efforts comes the obligation to inform the country of the strengths and weaknesses of a product. I urge Congress to assure that evaluations of the accuracy of such statistics be presented along with the estimates themselves.

No. 4, the credibility of the 2020 census can be achieved only by wide dissemination of quality indicators of the data.

I urge the Census Bureau, given the unique nature of this data collection, to publish intermediate indicators of quality of the 2020 census.

These would include process indicators, comparisons with population estimates from demographic analysis in comparable tabular form, and initial field data from the post-enumeration survey, for example, match rates of households.

Credibility requires transparency. The sooner the country can see multiple indicators of the 2020 census quality, the sooner the use case for the census can be made.

In conclusion, I am pleased to submit this written testimony. I look forward to testifying before the committee.

Chairwoman MALONEY. Thank you.

We will now conclude this panel with Mr. Thompson.

Mr. Thompson, you are now recognized.

**STATEMENT OF JOHN H. THOMPSON, FORMER DIRECTOR,
CENSUS BUREAU (2013-2017)**

Mr. THOMPSON. Good morning, Chairwoman Maloney, Ranking Member Comer, and members of the committee. Thank you for this opportunity to testify before your committee regarding the July 21, 2020 memorandum for the Secretary of Commerce on excluding illegal aliens from the apportionment base following the 2020 census.

I am extremely concerned that this action will adversely affect the quality and accuracy of the 2020 census. The remainder of my testimony will focus on five areas that I believe are critical for your committee and the leadership at the Department of Commerce and the Census Bureau to consider.

First, effects of the directive on the 2020 census response for the hard-to-count populations. I believe that the memorandum has a high potential to reduce the likelihood of census participation for the hard-to-count populations including noncitizens and immigrants.

A significant component of the Census Bureau plan to get a complete count of these populations is getting out a message that the 2020 census is important to local communities and that respondent information is kept completely private and not shared with any outside entity, including law and immigration enforcement.

I am very concerned that the release of this memorandum will increase the fears of many in the hard-to-count community that their data will not be safe. The end result will most likely be increased nonparticipation and increased undercounts of these populations.

Two, effects of not accepting the Census Bureau recommendation to extend the 2020 census deadlines. The Census Bureau, through the Department of Commerce, has requested that Congress extend the deadlines for providing apportionment counts on redistricting data by four months. It is critical that these deadlines be extended.

The effective conduct of the operation to enumerate those households that do not self-respond, nonresponse followup, or NRFU, is necessary to achieve a fair and accurate enumeration for all populations.

I am concerned that not extending the deadlines will force the Census Bureau to make adjustments to the NRFU. These adjustments will most likely include reducing the number of NRFU visits and increasing the use of statistical methods to impute responses into a much greater percentage of housing units than in previous censuses.

The consequence of actions such as this would tend to underrepresent the hard-to-count populations and over represent other populations.

Three, the risk of introducing serious errors into the 2020 census apportionment counts before the quality and accuracy of the 2020 census is understood.

For the 2020 census, little is known at this point regarding quality, accuracy, and most importantly, the number of undocumented persons that will actually be enumerated.

I am very concerned that a much lower number of undocumented persons will be counted in the 2020 census relative to previous censuses due to increased fear that their information will not be secure.

At the same time, a significant portion of legal residents could be over counted. It will take very careful analysis to understand the properties of the 2020 census and to determine how many, if any, undocumented persons are included in the enumeration.

This analysis will not be available when the apportionment count is released. Therefore, using the existing estimates of the undocumented population to reduce the 2020 census numbers would have unknown and possibly serious adverse effects on the accuracy of the resulting apportionment.

Four, there must be transparency in how the estimates of the undocumented population are constructed. The 2020 census is the foundation of our democracy and there must be assurances that any actions that would affect the census are based on objective methodologies. A long-held principle of the Census Bureau is openness and transparency.

Five, the importance of not even giving the appearance of political interference with the conduct and tabulation of the 2020 census.

Perceptions that the results of the 2020 census have been manipulated for political purposes will greatly erode public and stakeholder confidence not only in the 2020 census but in our democracy.

When I was directing the 2000 census as a career executive under the leadership of Census Bureau Director Dr. Kenneth Prewitt, we went to great lengths to assure all stakeholders that data-driven decisions were being made and that there was no consideration of politics in the conduct of the census.

I would strongly urge the current Census Bureau and Department of Commerce senior officials to follow these principles for the 2020 census.

In conclusion, thank you for this opportunity and I look forward to answering any questions that you may have.

Chairwoman MALONEY. Thank you. The chair now recognizes herself for five minutes for questions. I would like, first, to thank all of you for joining us today.

It is powerful to hear from four former Census directors who have been appointed by presidents of both parties. Collectively, you have served Richard Nixon, Gerald Ford, Jimmy Carter, Bill Clinton, George W. Bush, Barack Obama, and Donald Trump.

On July 21, the president issued a memo directing the Secretary of Commerce to provide him with the information necessary to ex-

clude undocumented immigrants from the census count for apportionment purposes.

Many people have opined already that the president's memorandum is unlawful and unconstitutional. I have studied it closely and believe it violates the clear language of the Constitution and existing Federal laws.

But I want to ask each of you the same question for a yes or no answer.

In your opinion and based on your knowledge and experience, does the president's July 21 memo seeking to exclude undocumented immigrants from the apportionment base appear to violate existing Federal law and historically enduring views of the Constitution, yes or no.

Mr. BARABBA?

Mr. BARABBA. Yes.

Chairwoman MALONEY. Dr. Eastman?

Mr. EASTMAN. No.

Chairwoman MALONEY. Mr. Prewitt?

Mr. PREWITT. Yes.

Chairwoman MALONEY. Mr. Groves?

Mr. GROVES. Yes.

Chairwoman MALONEY. Mr. Thompson?

Mr. THOMPSON. Yes.

Chairwoman MALONEY. Second question. Based on your knowledge and experience, does the Constitution require the census to count every person living in the United States at the time of the census, including undocumented immigrants?

Mr. Barabba, yes or no?

Mr. BARABBA. Yes.

Chairwoman MALONEY. Dr. Eastman?

Mr. EASTMAN. No.

Chairwoman MALONEY. Mr. Prewitt?

Mr. PREWITT. Yes.

Chairwoman MALONEY. Mr. Groves?

Mr. GROVES. Yes.

Chairwoman MALONEY. Mr. Thompson?

Mr. THOMPSON. Yes.

Chairwoman MALONEY. A third question. Based on your knowledge and experience, do you agree that the Federal law requires the president to send Congress an apportionment count based on the census count of the total population of the U.S., including undocumented immigrants?

Mr. Barabba, yes or no?

Mr. BARABBA. Yes. Yes.

Chairwoman MALONEY. Dr. Eastman? Dr. Eastman?

Mr. EASTMAN. No. No.

Chairwoman MALONEY. Mr. Prewitt?

Mr. PREWITT. Yes.

Chairwoman MALONEY. Mr. Groves?

Mr. GROVES. Yes.

Chairwoman MALONEY. Mr. Thompson?

Mr. THOMPSON. Yes.

Chairwoman MALONEY. And, last, and is it correct that all previous censuses and apportionment counts in the history of the

United States have included both citizens and noncitizens, including undocumented immigrants?

Mr. BARABBA, yes or no?

Mr. BARABBA. Yes.

Chairwoman MALONEY. Dr. Eastman, yes or no?

Mr. EASTMAN. No.

Chairwoman MALONEY. Mr. Prewitt?

Mr. PREWITT. Yes.

Chairwoman MALONEY. Mr. Groves?

Mr. GROVES. Yes.

Chairwoman MALONEY. Mr. Thompson?

Mr. THOMPSON. Yes.

Chairwoman MALONEY. Thank you. I think that all of these answers speak for themselves. The president may not pick and choose who is included in the census count or the apportionment base.

The Constitution, Federal law, and the historic practice of the Census Bureau dating back more than two centuries all require the census count and the apportionment base to include every person in the United States, regardless of their immigration status.

I now yield to the distinguished ranking member for five minutes for questions.

Mr. COMER. Dr. Eastman, thank you for testifying today, and let me be crystal clear. I strongly support the president's order. I want to start with a few basic questions.

What is the constitutional and legal justification for the president's apportionment decision, briefly?

Mr. EASTMAN. Well, the Constitution says count all persons in the several states. That refers to the people of the several states. That refers to the people of the United States.

As the Indians in the tax exclusion clause makes clear, it was designed to cover citizens. Those are the people that we are choosing representatives to represent. It doesn't include people who are here visiting and, certainly, not people who are here visiting unlawfully.

Mr. COMER. Right. So, why is using total population not a good metric for an apportionment count?

Mr. EASTMAN. Well, for many of our nation's—much of our Nation's history, total population was, roughly, approximate in district by district to citizen population.

That is no longer the case, and the political theory and the text and the reference to the people that is contained in the Constitution suggests that we now take account of the fact that we have great disparities, district to district, for apportionment purposes on the number of citizens versus the total population.

Mr. COMER. Will you briefly explain the principle of one person one vote?

Mr. EASTMAN. Well, the idea of one person one vote, set out by the Supreme Court in *Reynolds v. Sims* is tied to the idea of representative government, that we should each have an equal vote in who our—we are going to choose as our representative.

We are not talking about other people in the world having a say in who we choose as our representatives. It is one person, and that means one citizen one vote because those are the people that are choosing who is going to represent them in this particular place in this particular government.

It is not a world government. It is a government of the people of the United States.

Mr. COMER. So, for the issue at hand, can you explain how counting illegal immigrants for purposes of apportionment dilutes the political power of citizens and legal immigrants in states with fewer illegal immigrants?

Mr. EASTMAN. Take two states, like California, 2.5 million estimate illegal immigrants. That is, roughly, three or four additional congressional seats beyond what the citizen population would allow, and you are diluting the votes of citizens in other places that have not encouraged such illegal immigration into their states.

If our representative government is going to be based on citizens, then diluting the vote of citizens to overweight the apportionment in the number of seats, and it is not just seats in Congress.

It is seats—it is votes in the Electoral College for president as well. And this is not partisan. California and Florida and Texas would all lose seats if the president's order is upheld. That is, you know, some on the Democrat side, some on the Republican side.

This goes more to the basic notion of representative government, and who it is our elected representatives are supposed to be representing, and it is citizens here. It is not people from elsewhere in the world.

Mr. COMER. So, doesn't counting illegal immigrants for purposes of the apportionment base distort the principle of one person one vote?

Mr. EASTMAN. It most certainly does and it dilutes the votes of legitimate citizen voters in states that have low numbers of illegal immigrants or other foreign nationals present within their borders.

Mr. COMER. My last question. How does the president's memorandum on apportionment restore equal representation in apportionment in the House of Representatives?

Mr. EASTMAN. Well, it gets back to the apportionment base that I think our Constitution envisioned, certainly, the theory of our Declaration of Independence envisioned, and that is the one people that are choosing our representatives we are going to apportion that people according to state and allot the number of congressional seats based on that, not however many people we can cram into the state leading into the census to bolster up our numbers.

It is citizens who are choosing representatives. It is citizens those representatives are representing and, therefore, the apportionment ought to be tied to citizenship.

Mr. COMER. Well, Dr. Eastman, you have done an excellent job explaining this issue that I think an overwhelming majority of Americans support. I appreciate your testimony and look forward to further questions.

Madam Chair, I yield the balance of my time.

Chairwoman MALONEY. Thank you.

The chair now recognizes Representative Norton.

Ms. NORTON. Thank you, Madam Chair, and this is an important hearing and I appreciate this hearing.

I would like to approach this—my question from a constitutional basis, as I practiced constitutional law before I was elected to Congress.

The Trump administration's attempt to exclude undocumented immigrants from the citizen count appears to me to be plainly unconstitutional.

The language of the Constitution is pretty clear. Article 1 Section 2 says that the apportionment of representatives shall be based on, quote, "the actual enumeration of," and here are the words, "the whole number of persons." Persons. I am underlining that.

The Fourteenth Amendment says, "Representatives shall be apportioned"—again, I am quoting—"among the several states according to their respective numbers, counting the whole number"—here again is that word—"of persons in each state."

Persons. I don't see citizens and I don't see any other word, such as voters. So, I really don't need to have taught Constitutional law the way I did.

You don't need a law degree of any kind or a dictionary to go through the exercise I have just gone through. Whole number of persons in each state, every single person. Since most of you have been directors of the Census Bureau, for the record, I would like your answers to the following.

Does—in your understanding, does the term "whole number of persons" in each state include undocumented immigrants living in the United States?

Mr. Barabba?

Mr. BARABBA. Yes.

Ms. NORTON. Mr. Prewitt?

Mr. PREWITT. Yes.

Ms. NORTON. Mr. Groves?

Mr. GROVES. Yes.

Ms. NORTON. Mr. Thompson?

Mr. THOMPSON. Yes.

Ms. NORTON. I would like to ask each of you, based on your experience—your actual experience—a related question. During your tenure as director of the Census Bureau did you have any doubt that the Constitution requires the census count to include undocumented immigrants living in the United States?

Mr. Barabba?

Mr. BARABBA. No, I did not have any doubts.

Ms. NORTON. Mr. Prewitt?

Mr. PREWITT. No.

Ms. NORTON. Mr. Groves?

Mr. GROVES. No doubts.

Ms. NORTON. Mr. Thompson?

Mr. THOMPSON. No doubts.

Ms. NORTON. Let me direct you—if the Trump administration had any doubts they might go to the Census's own website. Here is a question from that website—Bureau's website—entitled, Fighting 2020 Census Rumors. Setting the Record Straight.

Question: Are noncitizens counted in the census? Answer: Yes, everyone counts. The 2020 census counts everyone living in the country including noncitizens. I put this on the record because anything this hearing—conclusions we come to should be based on just such documented evidence.

The administration might also have looked at a letter sent to Congress from the Justice Department in 1989 when George H. W.

Bush was president and Attorney General Bill Barr was the head of the department's Office of Legal Counsel.

That letter affirms the department's—the Justice Department's conclusion that both the enumeration clause and the Fourteenth Amendment, quote, “require”—and here I am quoting them—“the inhabitants of states who are illegal aliens to be included in the census.”

Mr. Thompson, as the most recent Census director on this panel, could you briefly explain why you believe it is important that the census include everyone, every living person, in the United States, not just citizens or voters?

Mr. THOMPSON. Certainly. So, the Census Bureau is charged with a very difficult task and that is counting everyone in the United States.

The Census Bureau has no enforcement powers whatsoever. They are a statistical agency. So, they wouldn't even have the ability to try to ascertain someone's legal status or not legal status.

Now, I might add, that if they tried to do that then they would produce counts that were seriously flawed.

Ms. NORTON. Thank you very much. Thank you, Madam Chair. I yield back.

Chairwoman MALONEY. The chair now recognizes Representative Gosar.

Mr. GOSAR. Thank you very much, Madam Chairman.

Dr. Eastman, in your testimony and opinion piece you wrote in June of last year, you connected the citizenship question to the fundamental notion engrained in our system of government, the consent of the governed.

Representation is based on such consent and this notion was confirmed in the Fourteenth Amendment, which excluded Indians not taxed because they were not part of the political body. You conclude then that citizenship is at the core of representation.

However, in today's discussion, we are again addressing the question of whether we can allocate representation based on the known presence of millions of individuals who are not citizens.

Question to you, do you feel that President Trump's memorandum calling for an apportionment count that tallies only the number of citizens and legal residents in a state is in line with the core founding tradition of the Fourteenth Amendment?

Mr. EASTMAN. I do. Not only is it in line with it, I think it is compelled by it. The notion of consent of the governed requires that we apportion our representatives based on who is going to be governed, not on people who are here illegally or people who are temporarily visiting, or Indians not taxed. I think the Supreme Court's decision in *Elk v. Wilkins* is very clear.

The reason that clause is there, Indians are not taxed or excluded from the count, is because they are not citizens. Well, the Indians not taxed right now are illegal immigrants or foreign nationals who are visiting this country that are not part of our body politic. The same principle applies.

Mr. GOSAR. That has a lot to do with application of our laws to the governed as well as trying to make sure that we are beholden to the country, would it not?

Mr. EASTMAN. It does. Look, the very notion of consent of the governed is that a particular people decide on the kind of government they are going to have and who the representatives in that government are going to be to govern them in order to best secure the inalienable rights that they have from nature and nature's guide.

It is not designed to give other people a voice. I mean, why have we spent the last three years concerned about Russia interference in our election if we think anybody from the world over ought to have a say in the choosing and the allotment of our representatives?

The fact of the matter is it is the body politic, the particular people that choose our representatives to govern ourselves and to apply laws to other people while they are visiting here, but they are not the governing body. They are not the political regime.

Mr. GOSAR. Dr. Eastman, you actually heard the discussion from the gentlewoman from the District of Columbia. You know, she says that the—specifically that citizens are not enumerated. Can you address that?

Mr. EASTMAN. Sure. So, it says counting the number of—whole number of persons, but it says their representatives, and the “their” refers back to the people in the states, in the several states.

“The people” refers back to the very opening language of the Constitution, “We, the people of the United States,” allotted according to the people in the states and it is those persons that we are going to count.

We have never in our history counted every single individual who happens to be within the state at the time of the census. We have not counted visitors. We have not counted Indians not taxed. We have not counted diplomats.

The principle of reason why we don't count such folks is they are not part of the people. They are not persons that form part of the people in the states that are the people of the United States.

You can't read that one word in isolation, as she did. It is part of the larger language of Article 1 Section 2 as well as the Preamble and it is part of the principles that are set out in the Declaration of Independence tied back to the very notion of consent of the governed.

Mr. GOSAR. Thank you.

Finally, Madam Chairwoman, I would like to express my concern with the actions of this body over the past several years. Partisan leadership has forced this committee to consider this simple question of having a person identify themselves as citizen on numerous times.

However, we have only had a few hearings on the topic of issues like hard-to-count populations, an issue for my district and I am sure districts of several other members of this committee.

This misdirection has forced this committee to deal with how we ask one question to non-Americans more so than how we ensure Americans in these hard-to-count populations so it can participate in the entire census, even though the majority constantly states its intentions to count every person.

American voters and American tax dollars send us all to Washington, DC, to provide for and oversee the census. Yet, partisan

leadership has neglected its true intention, which concerns members like myself who are focused on ensuring their constituents get their proper representation and protection from their Federal Government.

Maybe we ought to entertain that if we are going to give another stimulus what we ought to do is ask that they fulfill filling out their census if you wanted to get everybody's vote. Maybe that is an incentive that we could go by.

I yield back.

Chairwoman MALONEY. The chair now recognizes Representative Lynch.

[No response.]

Chairwoman MALONEY. We now recognize Representative Cooper.

Mr. COOPER. Thank you so much, Chairwoman Maloney, and also I would like to honor Delegate Norton. Your line of questioning has exposed the fact that for those not keeping score back home that virtually every living director of the census supports your view that the president has taken a unilateral and outrageous version of the Fourteenth Amendment, which is probably unconstitutional.

You would think that a country as old and as distinguished as America would be able to reputably count its own citizens and follow the precedent established by every living Census director to count not only citizens but others such as undocumented people in each district.

There are countless questions surrounding the census and an issue we are facing in my congressional district is this. I am told that outreach specialists, partnership specialists, will have their contracts terminated September 30 and that the census will continue until October 31.

So, I would like to find out from the previous Census directors what effect this could have on the accuracy of the count when partnership specialists are terminated a month early, a month before the census has ended.

I do not know the impact of this decision on enumerators themselves, but it would seem that partnership specialists would not have been hired unless they added some value to the process.

So, I would like to hear from Mr. Prewitt, Mr. Groves, Mr. Barabba, and Mr. Thompson about the effect of this premature and early termination of census specialists on the accuracy of the count.

Mr. BARABBA. This is Mr. Barabba. Let me speak first.

In fact, yesterday I talked to the individual who is responsible for the area in which I live and she was very concerned that we would be—her contract would be eliminated one month before the activity is completed.

She had reached out to many, many organizations throughout the area and keeping in contact with them is important to the absolute completion of the census, particular in areas that we have in our district in our area like Salinas and other areas which have significant minority populations.

Mr. GROVES. Let me—this is Bob Groves. Let me just comment.

If there is one piece of evidence that we have with great assurance it is that local community leaders that have the trust of di-

verse communities in their areas are key to the original response, the self-response, as well as the nonresponse followup stage.

We know this from several decades of work. Any interference in their performance will affect the quality of the census and we should avoid it whenever possible.

Mr. COOPER. Is it going too far to say that the—

Mr. PREWITT. This is—

Mr. COOPER. Go ahead.

Mr. PREWITT. Sorry. Just one more

[Inaudible] of this. We have a vast pro bono labor force out there trying to help us do the census. This was launched in the 2000 census.

It had never existed before, and it is responsible for the fact that we have a self-response and a nonresponse of the people who don't respond. It is attributable to that crowd of people, and they are in the thousands, in the thousands.

They are school teachers, they are union leaders, they are Chambers of Commerce leaders, in the thousands to help us do this census and they think their job is to count everyone.

Mr. COOPER. What can communities do to prevent the termination of these partnership specialists or to, if need be, supplement or substitute the work of these specialists in that crucial month of October?

Mr. Thompson?

Mr. BARABBA. I am not sure what communities could do but the Congress can certainly do something, and that is to make sure that the period is extended.

Mr. THOMPSON. So, as my former colleagues have all said, a really important component of getting a complete count is getting—is getting the message out on the local level that the census is very important to your community and, very importantly, that the census is completely confidential, which is not a message that can go out from Washington.

We started these programs in the 2000 census and we saw some dramatic decreases in the undercounts of various hard-to-count populations.

So, for the month of October, it is critical that local communities, local leaders keep getting those messages out about why the census is important to their community and that it is completely confidential. The census doesn't share information with anyone.

Mr. COOPER. I thank the chair. I see that my time has expired.

Chairwoman MALONEY. The gentleman yields back.

The chair now recognizes Congressman Jordan.

[No response.]

Chairwoman MALONEY. Congresswoman Foxx?

Ms. FOXX. Thank you, Madam Chair.

Dr. Eastman, the president's memorandum notes the interpretation of the Fourteenth Amendment term, quote, "persons in each state," end quote, is subject to judgment. Leading up to each decennial census, the Census Bureau releases a detailed rule on determining residency for each decennial census count. Do you agree that the standard for residency is subject to judgment?

Mr. EASTMAN. I do, and we have routinely altered that. We have included people who are long-term residents in the state but not short-term residents.

We have included people who are no longer residents in a state but are abroad because of work or military service or what have you, and every census those parameters.

Ms. FOXX. So, do you believe it is appropriate for residency criteria to change to exclude illegal aliens?

Mr. EASTMAN. I do.

Ms. FOXX. Mr. Thompson, when you were director you drafted the current residency rules for the 2020 census. Is that correct?

Mr. THOMPSON. Yes, it is, Congresswoman.

Ms. FOXX. So, it is fair to say that you support counting every person residing in the United States, legal or illegal. Is that correct?

Mr. THOMPSON. That is correct.

Ms. FOXX. OK. When you were director, did you support changing the rules for military residency?

Mr. THOMPSON. I did.

Ms. FOXX. So, let me understand this. There are many Americans who reside overseas including military personnel, yet they are enumerated as if they were residing in the United States.

But they aren't residents because they are not present on April 1, 2020. So, using your logic, military personnel deployed abroad should be excluded. Is that correct?

Mr. THOMPSON. No, ma'am. We did a lot of review of the previous census residence rules. We put them out in the Federal Register for comment, and based on a lot of input, we made the decision that we should count the overseas military in the United States.

Ms. FOXX. OK. Well, that is absolutely the way it should be, in my opinion. But because we recognize these individuals are normally U.S. residents but were asked to serve abroad and will return when their short service is over.

They are serving the country and deserve to be counted and represented. But their representation is diluted by illegal aliens being counted, even though they have broken our laws to come here.

Mr. Thompson, another question for you. The 2020 census residency criteria changed how prison inmates are counted. For the 2020 census, prison inmates are enumerated at their prison, which is technically their residence on Census Day. Is this correct?

Mr. THOMPSON. That is correct, and that is where they have been counted in most censuses.

Ms. FOXX. OK. Well, it is very controversial because some people believe that they should be counted at their residence pre-incarceration because that is their normal residence, not the prison.

Some people argue you are diluting the representation of inmates by counting them at their prisonsites. So, you believe, though, the prison inmates' representation is diluted—do you believe that it is diluted because of how the census enumerates their location?

Mr. THOMPSON. So, the final decisions on where to count the prisoners were made after I actually left government service. But I support the Census Bureau's decision to count the prisoners where they are incarcerated.

Ms. FOXX. So, you believe the fair representation of prison inmates. Why do you support the dilution of prison inmates and other citizens' constitutional representation by supporting the counting of illegal aliens?

Mr. THOMPSON. Throughout my experience at the Census Bureau, which included 27 years as a career employee and then four years as a political appointee as director, I operate under the guidance that the census was the count everyone in the United States, regardless of status.

Ms. FOXX. Thank you, Madam Chair. I yield back.

Chairwoman MALONEY. Thank you.

We now recognize Congressman Lynch.

Mr. LYNCH. Can you hear me?

Chairwoman MALONEY. We can hear you.

Mr. LYNCH. Great. Well, thank you, Madam Chair, for holding this very important and very timely hearing, and I want to thank all of our witnesses as well.

I would like to ask a question of Mr. Barabba, Mr. Groves, Mr. Thompson, and Mr. Prewitt. I notice that back in April you each signed a public letter supporting the Bureau's request to delay this process, and I think, Mr. Prewitt, you were quoted in one of the articles that I read.

You said that, "The truth is that the only thing in charge of this census right now is the virus, not the Bureau, not the president, and the virus will be in charge until it isn't."

Mr. Prewitt, would it be correct to say that the coronavirus presents an enormous challenge to the Census Bureau to conduct an accurate and timely count of the American people under these conditions?

Mr. PREWITT. A huge, huge challenge, unprecedented.

Mr. LYNCH. Yes. Now, the reason that—I am assuming that the reason that you requested the delay was to give the Bureau more time. I mean, this is—this is the largest and most complex census ever conducted in this country.

Then you add—and that is in normal times. Then you add in the pandemic and the limitation on the enumerators and people being hunkered down.

I guess I am assuming that you all wrote that letter based on it being in the best interest of the country. Is that correct?

Mr. PREWITT. Yes, sir.

Mr. BARABBA. Yes, sir.

Mr. GROVES. Yes, sir.

Mr. THOMPSON. Yes, sir.

Mr. LYNCH. Now, this most recent memorandum that the president submitted last week directing the Census Bureau to take a whole different approach to this census, in the middle of the census, it seems to me that this new memorandum of questionable legality, really, will require the Bureau to dedicate considerable resources and a huge work around in light of the new memorandum. Would that be a correct assumption here?

Mr. PREWITT. Yes.

Mr. BARABBA. It would.

Mr. GROVES. Yes.

Mr. THOMPSON. Yes.

Mr. LYNCH. So, you have got this whole shift in resources, this redeployment, and a whole different program that has been put in as of last week directing the Census Bureau to change their plans, and yet—and yet on Monday the Census Bureau also posted on its website that despite this huge demand on resources that arose last week with the president’s memorandum, the Census Bureau says that it is working toward this plan to complete the field data collection by October 31, 2020.

Do you think it is feasible to dedicate all those resources to the object of the new memorandum and, yet, not have the accuracy of the census impacted?

Mr. PREWITT. Right now, the Census, I believe, sir, is at risk of being inadequate to do the task it is charged to do, a serious risk. And I would like to take as much of the burden off of them as we can. That is operational burden, timing burden, and so forth.

I was extremely disappointed when it turned out that they were not going to get the four-month extension going on into 2021, which we were counting on and they were planning around that, and then suddenly there is a reversal on that decision.

In my sense, the chances of having a census accurate enough to use is unclear. Very, very much unclear whether we will even have a census.

That is why the debate about the illegals or undocumented is beside the point if we are not even going to have a census that we can take to the American people, and that is what I am worried about.

Mr. LYNCH. Thank you very much, Mr. Prewitt.

Madam Chair, my time has expired and I yield back. Thank you. Chairwoman MALONEY. Thank you.

I now recognize Representative Palmer.

Mr. PALMER. Thank you, Madam Chair.

I have a couple of reports, one of which is from the Pew Research Center, about the transient nature of people who are here and are here unauthorized, here illegally.

About 40 percent of the people who are here illegally are here—won’t even be here for the next census. Given that, the transient status of millions of foreign residents in the U.S., doesn’t it make it even more problematic to include unauthorized noncitizens, people who are here illegally and who are here temporarily, to be counted for apportionment, Dr. Eastman?

Mr. EASTMAN. Yes, I agree, and I think it applies to legal temporary immigrants as well, people on temporary work visas or student visas.

Mr. PALMER. Well, the point being—

Mr. EASTMAN. It is a very transient population, yes.

Mr. PALMER. Yes, sir. The point being is that these are not people who will be here to participate in our government in any form or fashion.

I would like to also point out that 60 percent of the unauthorized immigrants, the people who are residing here illegally, reside in just 20 metro areas that are self-declared sanctuary cities, counties, or states.

By violating Federal law by establishing themselves as sanctuaries for people here illegally, including some who have com-

mitted felonies, by the way, have these states created an advantage for themselves that could cause harm to states that aren't declared as sanctuaries?

Dr. Eastman?

Mr. EASTMAN. Yes. Yes, they do. Depending on the distribution of the illegal immigrant population, states that are encouraging illegal immigration stand to gain a large number of seats in the House of Representatives as well as votes in the Electoral College president—

Mr. PALMER. Well, could that—

Mr. EASTMAN [continuing]. To the detriment of other states.

Mr. PALMER. Doesn't that create an incentive for certain states and certain places to declare themselves sanctuaries to give benefits, to give protection from prosecution for whatever crimes they might commit to increase the number of people in those areas to give them this advantage? I mean, isn't that a rational thing to do if you are already acting in contradiction to Federal law?

Mr. EASTMAN. Well, it is rational in the short term, Representative Palmer, and not so much in the long term. But, you know, Alabama is likely to lose a seat in Congress and an electoral vote for president as a result of this kind of encouragement for illegal immigration to reside in certain states like California.

Mr. PALMER. Well, speaking of rational, and I try to be rational. I try to be linear in my thinking so I start and follow evidence to where it might lead.

Your points early on about the right to self-government resides with the citizens, not with noncitizens, whether they are here legally or illegally, and to make this point, we don't allow foreign citizens residing in the United States, whether they are here legally or illegally, to run for office, do we?

Mr. EASTMAN. No, we don't.

Mr. PALMER. OK. We don't allow people who are here from foreign countries, whether they are here legally or illegally, to make campaign contributions to U.S. candidates, do we?

Mr. EASTMAN. No, we do not.

Mr. PALMER. Presumably, we don't allow people who are here from foreign countries, whether they are here legally or illegally, to vote in our elections, do we?

Mr. EASTMAN. It is illegal for them to vote, although we have got evidence that large numbers have voted.

Mr. PALMER. That is why I say presumably.

So, let me ask each of the other panelists. Are those laws fair?

Mr. Prewitt—Dr. Prewitt, are those laws fair? Should we allow foreign citizens to run for office, to make financial contributions to candidates, or to vote in our elections? It is a yes or no.

Mr. PREWITT. Let me just—I am sorry. You are asking me a question?

Mr. PALMER. No. No. It is a yes or no. Do we—should we allow foreign citizens to run for office, should we allow foreign citizens to make campaign contributions, should we allow them to vote in our elections whether they here legally or illegally? It is a yes or no. Your silence is—

Mr. PREWITT. That is what the law is now and I agree with the law.

Mr. PALMER. OK. That is a great legal answer.

Mr. Thompson, yes or no?

Mr. THOMPSON. I agree with the laws in the United States.

Mr. PALMER. That is a—you agree that we shouldn't allow that.

Dr. Eastman, I think I know your answer but give me a quick answer, yes or no.

Mr. EASTMAN. Yes, absolutely.

Mr. PALMER. All right. If that is the case, why in the world would we think it should be legal to allow people who are here illegally or legally to be counted for apportionment to influence our government when close to 40 percent of them won't even be here for the next census? Can you answer that? It doesn't make sense, does it?

Mr. EASTMAN. Yes, I don't—it doesn't make sense and I don't think it is consistent with the theory and the text of the Constitution either.

Mr. PALMER. I thank the gentlemen. I yield back.

Madam Chairman, I would like to enter these documents into the official record.

Chairwoman MALONEY. May I see what the documents are?

Mr. PALMER. Yes, ma'am. They are documents from the Pew Research Center and one of them is from the Migration Population Institute located here in Washington, DC.

Chairwoman MALONEY. OK. Without objection.

Mr. PALMER. I thank the chairwoman and I yield back.

Chairwoman MALONEY. I now recognize Representative Connolly.

Mr. CONNOLLY. Thank you, Madam Chairman, and thank you for your long leadership on trying to preserve an accurate census and a fair and transparent process associated with it. Your leadership has meant a great deal and has served our country well. Thank you.

I must say, listening to this discussion, Dr. Eastman would be apparently very happy with the decision of Roger Taney and the Supreme Court that ruled on Dred Scott because in that decision they decided that no African American, free or slave, was a citizen of the United States deserving of any of the privileges of white people.

But that is actually the language of the ruling and, therefore, no blacks would have been counted in the census and we would have had millions of Americans declared noncitizens, under Dr. Eastman's logic, not counted in a census and we would have had no picture of America, especially south—at the southern part of America in terms of the actual demographics just how tolerable the numbers were of African Americans per the Constitution were singled out to be counted as three-fifths of a person for the purpose of census which, by the way, inflated the numbers of southern representation to the Congress at the time.

You know, immigrants throughout American history have been subject to this kind of smear and innuendo we have been listening to. You know, they are all criminals. They are all trying to cheat. States are using them to inflate their numbers.

You know, there were movements in the 19th century, the Know Nothing Party, to ban them, to deny them the vote. Irish immigrants—there was a big movement in New York in the mid-19th century to deny Irish immigrants the right to vote because they

were illiterate, they were ignorant, they worshipped a foreign religion.

They weren't really Americans. This kind of nativism, this kind of bigotry, frankly, has no place in the carrying out of the census.

The language of the Constitution—and for a crowd that talks about originalism, well, the language is clear. It says persons. It doesn't say citizens. It says persons.

It wants to get a feel how many people are here at a given time. How many people are residing in the United States of America. Not what their future intentions are, not what their status is.

Are they residing here, for the purpose of understanding the population of the United States at any given time, and that is how the census has been carried out.

Let me ask Mr. Prewitt, and all of the former directors could answer this as well. Have we ever adopted, to your knowledge, in the carrying out of the census in modern times a selective process of not enumerating certain individuals because of their status?

Mr. PREWITT. No, sir.

Mr. BARABBA. Not to my knowledge.

Mr. CONNOLLY. Mr. Groves?

Mr. Groves?

[No response.]

Mr. CONNOLLY. Mr. Thompson?

Mr. THOMPSON. None.

Mr. CONNOLLY. And why do you think we need to have account of the people, the persons, residing in the United States? Why is that important? Why isn't Dr. Eastman right—let us only count citizens—full-blooded American citizens and nobody else?

Mr. PREWITT. My quick answer on that is they—they are paying taxes if they put gasoline in their car. They are paying property taxes if they live someplace. That is, they are functioning as people living in a country and, more than that, that you have a really difficult, difficult situation to uncount from.

I don't think the under members of the committee have paid enough attention to my first point. We do not know—the Census Bureau does not know how to do what the president is asking them to do and it is going to hurt the census and, therefore, we are at risk of not having the census in 2020.

Mr. CONNOLLY. Mr. Thompson, is it—is it the case that, for example, throughout American history this is what we have done?

We counted immigrants whether they were citizens or not in the 19th century at the turn of the 20th century as well as currently. Isn't that the case?

Mr. THOMPSON. That is the case.

Mr. CONNOLLY. Yes. So, this—what Dr. Eastman is propounding sounds reasonable except it would fly in the face of over 200 years of practice and American history and, in my view, would flaunt the actual words of the Constitution of the United States.

Thank you. I yield back.

Chairwoman MALONEY. Thank you.

The chair now recognizes Representative Roy.

Mr. ROY. Madam Chairman, before I start, may I ask which of the experts remain available for response?

Chairwoman MALONEY. I believe—I believe Mr. Groves had an appointment at 11 and had to leave but the rest are there.

Mr. ROY. So, Mr. Barabba, Prewitt, and Thompson are all available?

Chairwoman MALONEY. Yes. Yes.

Mr. ROY. OK. Thank you. Sorry.

Mr. Eastman, let me ask you just a quick question about the law. If I recall correctly, there was a case in which Justice Thomas in 2001 in dissent clarified that there was a split in the circuits and a split in the law, Ninth Circuit versus the Fourth and the Fifth, as to what the court's position would be on the question at hand, on apportionment and what we are talking about.

Is that true and would you expound on that? Very briefly, because I need to move on.

Mr. EASTMAN. Yes. So, it was a case out of Hawaii that was dealt with. They wanted to apportion locally based on citizen population rather than total population. The court upheld that and there was language in it that strongly suggested such was compelled by the notion of representative government.

Judge Kozinski on the Ninth Circuit specifically said that even though the decision doesn't absolutely require that technically, the logic of it compels it and I think that is right.

If I could go back. Representative Connolly, I know you are protected by the speech and debate clause, but that doesn't mean I should not respond to the slanderous statement you made.

I do not defend Judge Taney's decision in Dred Scott. In fact, I am a vigorous defender of the dissenting opinions in that. It was an absolutely wrong decision. African Americans were treated as citizens in this country and Taney was wrong.

I will not let you get away with the slander just because you are protected by the speech and debate clause.

Mr. ROY. Well, Professor, I was going to give you an opportunity to respond. I am glad you did. I was going to ask you that question. I thought it was irresponsible of my colleague to ask a question along those lines and I am glad that you responded.

It was not appropriate to direct that toward you on a very debatable question, a very real question, and at a bare minimum we can all agree that there is a split in the jurisprudence or a difference of opinion in the jurisprudence on whether or not apportionment should be accounted for in the way we are discussing, and that this is a live question and that citizenship, in fact, matters.

The citizenship must matter. If we are to be a nation of laws and if we are going to have citizens vote, citizens running for office, that we should have a robust debate and discussion and that, frankly, this body, this Congress, ought to act.

My colleagues on the other side of the aisle spent last year fighting every ounce of effort on the part of this administration or this body and Republicans in this body to try to ask a question, a simple question, on the census as to whether or not you are a citizen or not.

The vast majority of Americans recognize that that is an important question to ask. But I would just say again to the professor we agree. At a bare minimum, there is a split in the jurisprudence on this question. Is that correct?

Mr. EASTMAN. That is correct.

Mr. ROY. Thank you.

A question here for Mr. Barabba, Prewitt, or Thompson, and I am going to go through a few things because I have a limited time here, and then I just want to get your yes or no on whether I am characterizing this appropriately.

My understanding of the way the census counts is that we have something called count imputation and that we have something called characteristic imputation, and that in count imputation we have status count imputation, we have occupancy count imputation, and we have household size count imputation.

What does this mean for the average listener? It means that we make stuff up. It means that we have situations where we literally have an address, we can't find the house, and we impute to that address the—or I would say the count of a house nearby.

It means that we go through an occupancy and say, well, we find the house and there is somebody there but we can't find them. So, we just say well, you know what, the next-door neighbor there is five white people in that house so we are just going to put five white people in this house. Or that we have household size imputation that says well, we don't know how many numbers in it.

Well, we don't know if it is one or two or three but we are just going to guess that it is five or ten based on who is next door. And that, in fact, we have characteristic imputation where we go into race and characteristics, and that this is a reality of what our Census Bureau does in order to achieve numbers.

Now, that is what is actually going on. Now, there is a whole another thing where we have the community survey, the ACS, and I would ask Mr. Eastman, if you would jump in here real quick, is it not correct that the ACS is used and that the court acknowledges that it is appropriate for it to use those estimates and sampling for purposes of the application of the Voting Rights Act?

Mr. EASTMAN. Yes, that is correct.

Mr. ROY. So, my question here would be would it not, therefore, of course, be appropriate to use, if you are a state, for redistricting purposes, not apportionment?

Let me just ask this question—for redistricting purposes the same data if you are going to use it for the Voting Rights Act?

Mr. EASTMAN. Yes, absolutely, and it is more current because it is taken every year instead of just the decennial census.

Mr. ROY. You should use the ACS in this case. If we are going to be doing apportionment you can use the ACS for apportionment?

Mr. EASTMAN. I believe we could, certainly, to coincide with the census.

Mr. ROY. So, my question to the former directors of the Census Bureau, am I incorrect that the Census Bureau does in fact have to fill holes and make assumptions on data when they go house to house when they get into this and that imputation is a way that the Census Bureau does that? Just a yes or no, and then I will finish my questions, Madam Chair.

Mr. Thompson?

Mr. THOMPSON. Thank you for unmuting me. The Census Bureau has used a technique called count imputation because if they don't

do anything that means they are assuming everything is vacant or nonexistent, which isn't the case either.

Mr. ROY. Mr. Prewitt?

Mr. PREWITT. Yes, it is a longstanding practice. It is used as rare as possible. You would much rather get a direct response. But we don't always get direct responses and we don't do—just say, oh well, that is too bad, we will just have to go. These are well established technical statistical processes that have given us a more complete census than we would otherwise have.

Mr. ROY. Thank you, sir. Then Mr. Barabba and then I am done, Madam Chairwoman.

Mr. BARABBA. I concur with my colleagues' comments.

Mr. ROY. Thank you all.

Chairwoman MALONEY. Thank you.

We now recognize Congressman Raskin.

Mr. RASKIN. Madam Chair, thank you very much. Thanks for calling this super important hearing, and it is really wonderful to hear all of the prior Census directors who converge around a very simple conclusion, which is that the president's proposal is a radical break from history and a radical break from the text of the Constitution, a radical break from the structure and the spirit and the meaning of the Constitution.

So, basically, every methodology we have for interpreting what the Constitution means supports the proposition that we have been doing it right for more than two centuries. That is, we have been counting everybody. That is the way we have done it.

There is no reason to overthrow that right now and what we are getting, really, from the administration is a whole series of attacks on the election, attack on mail-in balloting, the president threatening not to observe the final results of the election if he doesn't like it, and so on. This is all part of kind of a anticipatory temper tantrum by the president.

I wanted to correct a couple of things that were floating out there, specifically about voting and citizenship, and there seemed to be this false equation between voting and citizenship.

The Supreme Court has been very clear that they don't imply one another. There are, obviously, large categories of people who are citizens who can't vote, starting with children, and historically the vast majority of citizens couldn't vote because women couldn't vote as well as children, as well as people who weren't land owners or property owners.

Conversely, there were lots of people who could vote who were not citizens for the vast majority of American history, and even today there are lots of municipalities and localities which allow people to vote without regard to citizenship in local elections.

But the way that it—the way that it existed through the 18th and 19th and, really, up to the early 20th century was that what mattered was race qualifications, gender qualifications, property and wealth qualifications for voting, and if you were a Christian white male property owners, it didn't make any difference what your, quote, "citizenship" was, and that was a confusing concept anyway for more than a century whether that was determined at the state level or the Federal level. We didn't have these kind of rigid ideas about citizenship that are being propounded right now.

So, that was a conservative position having to do with land ownership and property ownership and race and gender for a very long time. It wasn't until we started getting immigrants coming in from southern Europe and other places that that turned around.

But you should go back and check out the history leading up to the Civil War and the admission of Kansas and Nebraska and a number of the other states there because it was the Republican Party which was the great champion of alien suffrage in America, and the advocate of the idea that if you would be willing to move out to the Midwestern and the Western states you should be allowed to vote before you became a citizen.

That was Lincoln's position. That was the position of the Republican Party. It was the South's position that there were all these radical immigrants coming over from Europe bringing anti-slavery ideas that they should—it was their position that they shouldn't be included for that reason.

In fact, if you look at Article 1 of the Confederate Constitution of the United States it says that you must be a citizen of the Confederacy in order to vote, something that we don't have in the U.S. Constitution, which is why noncitizens could vote for most of our history and in lots of cities and, indeed, in corporations.

I wonder if the position on the other side is that you need to be a citizen of the United States in order to be a member of a corporate board of directors and to vote in a corporation in America or to own stock in America. I mean, that would be a really startling position. But it seems to flow from what they are saying.

Let me just ask, I got curious about this whole question of the Indians not taxed that was repeated so joyfully by one of the witnesses, and I wonder, Mr. Prewitt, if I could come to you.

What is the situation today of Indians not taxed? Certainly, there are children who are Native Americans who are not taxed but also adults who are not paying taxes. Are they counted today as part of the census despite the constitutional tax?

Mr. PREWITT. Yes, they are.

Mr. RASKIN. Huh. OK. That is interesting.

Let me ask another question of you, Mr. Prewitt. If we were actually to go ahead and adopt the president's proposal and now we see why, of course, they were pushing for their citizenship question, which was struck down by the Supreme Court as lawless and a violation of the whole Administrative Procedures Act. But now we know why they were doing it.

But if we were to go ahead with this, how would they actually—since we don't know who is a citizen and who is not a citizen, how would they go ahead and try to make that work?

Mr. PREWITT. In my judgment, there is no way. This is what worries me about this initiative. The expert on administrative records at the Census Bureau for many, many years and I will now quote her—she is now at Georgetown University. “To produce a good number, that is, a good number separating out the documented from the undocumented, you need to be able to draw a clear line between the two categories. But that sharp definition doesn't exist in the administrative records available to the Census Bureau.”

This is an article in Science Magazine just published yesterday. So, we are all anxious about this initiative, not because of the argu-

ments that are being made about so forth and so on. It is what it is going to do to the census itself in 2020. And, look, if we don't come up closer to 100 percent than we are now coming—

Mr. RASKIN. Yes.

Mr. PREWITT [continuing]. Then we are in trouble.

Mr. RASKIN. So, Madam Chair, just to conclude, it is not only unrooted in the text of the Constitution an impractical but it is a danger to having the real census counted and completed.

Thank you very much for your indulgence, Madam Chair. I yield back to you.

Chairwoman MALONEY. Congressman Hice?

Congressman Hice? He is online.

You need to unmute yourself, Congressman Hice.

Mr. HICE. OK. All right.

Chairwoman MALONEY. OK. Great.

Mr. HICE. Thank you, Madam Chair.

I want to thank all our witnesses for being here today. Unfortunately, I think it is, largely, a waste of your time as yet again it is for ours. I mean, we continue not doing our job of oversight and in this case specifically as it relates to the census.

We have—here we are four months into the census and this is the first time we have had a hearing about it. We have only—so 120 days into this we are just now getting around to it, and as Mr. Prewitt shared a little earlier, we may not even have a census this go around because of the pandemic and other issues.

Yet, the irresponsibility of this committee to do proper oversight, this is the only third committee hearing—full committee hearing—of the year for my count, and it is just unacceptable that my colleagues have been willing to show up for work as we have done in the Republican Party.

Perhaps we would be able to continue our oversight, and to somehow think now that we are engaged in an emergency over this and even in this emergency hearing we are still not providing oversight as to what is happening with the census is unthinkable to me and highly irresponsible.

I would ask the chair if we could get back to the order of what this committee is supposed to be involved with. But as it relates to right now, to, again, somehow think that it is unreasonable or unconstitutional for us as a nation to have the number of citizens who are in the country as well as the total number of people in this country is just unthinkable to me.

That this is somehow a radical break for us to know the number of citizens as well as noncitizens is, in itself, an absurd way of thinking about all of this, to me. But here, nonetheless, we are.

Dr. Eastman, I appreciate the testimony that you have given and the answers you have given. I know this has already been covered but I think it is worth reiterating again. Is the president within his authority to direct a memorandum to the Census Bureau?

Mr. EASTMAN. I believe he is, and I think the Supreme Court's decision in the *Franklin v. Massachusetts* supports that.

Mr. HICE. Likewise, he is within his authority to ask the Bureau to send him an apportionment count that includes citizens and legal residents. Is that correct?

Mr. EASTMAN. That is correct.

Mr. HICE. OK. And just reiterate, again, why this is so important that we have a count of citizens, not just—illegals as well? I mean, we need to know. I am fine if we want to know the total number here. But the critical aspect is knowing the citizens. Again, emphasize why that is the case.

Mr. EASTMAN. The importance of knowing the citizens and apportioning according to the citizen distribution is because it is the citizens that control that government. It is not foreigners that control our government. That is one of the most basic premises of the consent of the governed principles set out in the Declaration of Independence.

Mr. HICE. Absolutely. I mean, I don't see what is so complicated about this. It is illegal for a noncitizen to vote. It is illegal for them to be involved in our political process.

Yet, now, for all practical purposes, we have a political class, a political party, that is determined to give citizens of foreign countries the right to vote in our Federal elections, to be involved in impacting our Federal elections.

This whole thing, to me, ought to be deeply troubling and, at worst, it should be seen as election interference. For us to enable or fight on behalf of individuals who are illegally in this country to impact the voting power of the citizens in this country is

[Inaudible]

Quite frankly, if you look back—I don't know, Dr. Eastman, if you caught any of the D.C. Statehood debate that we had around here. But it is the same thing then as it is now. It is all about gaining and strengthening political power for the Democratic Party.

It shrugs off all norms. It shrugs off common sense. It shrugs off the law in itself, and I would just thank you again, for your testimony here today and I would implore my colleagues on the other side to end these showboat hearings and let us get back to the work of good census oversight.

With that, Madam Chair, I yield back.

Chairwoman MALONEY. Well, I thank the gentleman for his testimony, and I would just like to respond to his attack.

I read the president's census memo carefully and I believe that it is blatantly unconstitutional and that complying with his memo would violate Federal law. That is why we called this important hearing, and I would like to say you don't have to take—

Mr. HICE. Madam Chairwoman is certainly entitled to her opinion.

Chairwoman MALONEY. Sir, may—I did not interrupt you. May I complete?

You do not have to take my word for it. All four of—four former Census directors that served both Republican and Democratic presidents said that they also believe that the president's memo appears to violate the Constitution and existing law.

So, this is serious, and I now recognize Congressman Rouda.

Mr. ROUDA. Thank you, Madam Chair.

It must be exhausting for Republicans when the president tweets out lies and you are forced to defend it. It must be exhausting to be a Republican when the president of the United States holds a press conference and sells snake oil salesmen cures for the coronavirus.

It must be extremely exhausting to come in here and defend the president of the United States when he takes unconstitutional actions such as he has done here.

Candidly, I feel sorry for you. I feel sorry that members of the House of Representatives of the United States of America are afraid to speak their mind, to speak the opinions that they hold, to speak the truth that they know in their hearts and their mind and defend this president at all costs. Defending the indefensible.

It seems that the primary argument that has been stated, as Representative Raskin pointed out, at least a half dozen times in this hearing is that Indians not taxed were not counted.

The utter stupidity in that statement lies in the fact that undocumented immigrants last year, according to the Internal Revenue Service, paid \$9 billion in payroll taxes. According to the Internal Revenue Service, undocumented immigrants paid \$12 billion in Social Security benefits more than they received.

And according to the Institute of Taxation and Economic Policy, undocumented immigrants paid \$12 billion in state and local coffers.

Yet, here we are. Here we sit today because of this memorandum by this president telling us clearly what is most important to this president. Yet, we sit here today, 140,000 of our fellow Americans are dead.

Tens of thousands more Americans will die in the coming months because of the utter lack of leadership by this president. The economic collapse of our country is unfolding before our eyes because a president is unwilling to do what is necessary as the leader of the United States to ensure that we take the actions we need to take to protect Americans, and tens of millions Americans are out of work, struggling to figure out how to pay rent, pay the mortgage, pay medical bills, and put food on the table for their families.

Yet, here we are today because of this president showing us and the minions that follow him what is important to them. Not as a Democrat, not as a former Republican, but as an American. We are better than this.

I yield back.

Chairwoman MALONEY. Thank you.

I now recognize Representative Green.

Mr. GREEN. Thank you, Chairwoman and Ranking Member, and thanks to our witnesses.

The right to vote is sacred. As Americans, we are blessed to live in a country that respects the time-honored tradition of one person one vote. Wars have been fought, marches have been led, blood, sweat and tears have been shed defending and advancing this fundamental right.

Unfortunately, Democrats are attacking this very right and are trying to disenfranchise American citizens in order to gain more power. Some states, such as California, have already flirted with openly allowing illegal immigrants to vote in state and local elections.

Currently, in California you can register to vote online. All they require is you check a box certifying that you are a U.S. citizen and you either provide a Social Security number or a California driver's

license. But remember, driver's license, which they also grant to illegal immigrants.

Disturbingly, the L.A. Times reported that over 1 million illegal immigrants had driver's license in California and that was 2018. The fact is today's Democrat Party leadership, they don't care about one person one vote.

They care about obtaining power at any cost, even if they have to attack the very foundation of our republic, American citizenship, and the right to vote. Now Democrats are continuing their offensive on the Constitution by attacking the 2020 census.

They have managed to politicize every step in the census process, even criticizing President Trump for trying to include a citizenship question. Moreover, Democrats are ignoring history and the rule of law. The citizenship question has been included on most censuses from 1820 to 1950 and as recently as 2000.

Additionally, the Supreme Court ruled in 2019 the questions inclusive is—inclusion is perfectly legal. Despite this, the Democrat shenanigans managed to get the question removed by default since it was too late to add the question before the surveys were printed.

The citizenship question, when used to determine apportionment, is a simple manner of fairness and common sense. American citizens have certain rights that noncitizens do not have, the most fundamental of which is the right to choose our leaders.

Democrats are eager to cry foreign interference when it comes to the Russian hoax. But if we count illegal immigrants in apportionment, particularly those new to our country, how is that not foreign interference?

I guess all Russia has to do is send a few thousand people across our porous southern border into California and they get an extra vote in Congress.

How is continuing illegal immigrants—counting illegal immigrants in the census or in the apportionment process not an assault on the fundamental rights of every American citizen?

I would like to ask my Democrat colleagues if an illegal immigrant can vote, then what is the point in citizenship? Why not have France just vote in our elections? What is the point of our legal immigration system?

There is no escaping the fact that including illegal immigrants in the apportionment process dilutes the vote of every single American citizen.

Not only is it unfair, it creates an incentive for states to accept more illegal immigrations. Authors Hans von Spakovsky and Mike Gonzalez have written including illegal immigrants in the apportionment process, quote, “perversely incentivizes states to encourage more illegal immigration in violation of U.S. laws and the well being of American citizens, all in order to gain more congressional representation. Simply put, those here illegally should have no say in electing America's leaders,” end quote.

Make no mistake. The Democrats are simply grabbing power at the expense of the American people again. The Democrats have actually made the point of the unfairness of counting illegal immigrants for apportionment in this committee today.

Many of the Democrat members have asked in survey fashion a series of questions of each of our witnesses. The answer: yes, no, yes, yes, each time. The problem is this. It is a biased sample.

They allowed us one witness and they provided three witnesses who share their opinion. It is unfair. It is biased and it is exactly what we will get if we count illegal immigrants in apportionment.

It will misrepresent the votes of Americans in states that abide by our laws. The assertion that the opinion of the Census directors is somehow reflective of the people of America is absurd. They are three voices out of 330 million people. Their opinion counts three out of 330 million.

Rather than helping to get the Census Bureau an accurate count during a very difficult time with the pandemic, Democrats are further throwing a wrench in the process by coupling statutory relief with the census poison pill provisions.

It is shameful. But it all goes to show you the truth. Democrats are more about power than they are about the integrity of our elections or the fundamental right of every American citizen.

Thank you, Chairman, and I yield.

Chairwoman MALONEY. I thank the gentleman for his testimony, and I do want to point out that the Census Bureau is not asking people about the citizenship status on the 2020 census, which the Trump administration wanted it to do.

They tried to do that. But this was struck down by the Supreme Court of the United States of America. So, the citizenship question was removed.

I now recognize Debbie Wasserman Schultz, Representative Schultz, from the great state of Florida.

Ms. WASSERMAN SCHULTZ. Thank you, Madam Chair.

I am going to present some inconvenient facts that really fly in the fact of the ridiculous argument that was just made by the gentleman who previously spoke, and that is that in the section from census.gov labeled the importance of apportionment, it reads, "Article 1 Section 2 of the U.S. Constitution mandates that an apportionment of representatives among the states must be carried out every 10 years."

Therefore, apportionment is the original legal purpose of the decennial census, as intended by our Nation's Founders. Apportionment is the process of dividing the 435 membership seats in the U.S. House of Representatives among the 50 states based on the state population counts that result from each decennial census.

The apportionment results will be the first data published from the 2020 census and those results will determine the amount of political representation each state will have in Congress for the next 10 years.

Not only does the Constitution not qualify what type of person or category of individual will be counted for apportionment, the Trump administration's own Census Bureau specifically leaves out any reference to categorizing the type of individual that we are counting and whether or not they will count toward apportionment.

The Founding Fathers intended that everyone living in the United States other than originally counting slaves, tragically, as three-fifths of a person should be counted for the decennial census specifically for apportionment. That is in the Constitution, too.

So, what is going on here is that the U.S. Supreme Court scuttled the administration's bigoted plans to try to intimidate people who are not citizens from answering the census and, thus, being able to be counted and counted for apportionment purposes and instead are trying to back door the citizenship question by using an executive order to not count those who are not citizens in apportionment.

It is not constitutional, it is not legal, and it is transparent in its, really, venomous political intent.

My question is that we have a number of—a number of experts here and I want to just go through a couple of key facts. This committee's investigation showed that the likely reason for the citizenship question was electoral politics.

I would like to ask Mr. Barabba do you agree that the policies proposed by President Trump's memo last week to exclude undocumented immigrants from the apportionment count are consistent with the real objective for the proposed citizenship question?

That was for Mr. Barabba. Did you hear the question?

Mr. BARABBA. I did not hear my name. I am sorry.

Ms. WASSERMAN SCHULTZ. That is OK.

Mr. BARABBA. Would you repeat the question, please?

Ms. WASSERMAN SCHULTZ. So, Madam Chair, if I can have a few additional seconds to make sure I don't lose my time.

Do you agree that the policies proposed by President Trump's memo last week to exclude undocumented immigrants from the apportionment count are consistent with what their real objective was in originally proposing the citizenship question?

Mr. BARABBA. I believe what he is trying to do is to have an effect on the outcome of the apportionment process to his favor.

Ms. WASSERMAN SCHULTZ. Could you be a little more specific?

Mr. BARABBA. Well, if you count fewer people

[Inaudible] as I pointed out in my testimony, who are low income, they are more likely to be people who do not vote for the president because of his positions.

Ms. WASSERMAN SCHULTZ. Mr. Prewitt, can you explain why fears in the immigrant community about the census would depress response rates and, ultimately, lead to a less accurate census count?

Mr. PREWITT. Yes, because they are afraid that the answers will be used against them as the—it was, unfortunately, produced in the 1941 period with the Japanese American 60 years ago.

We are still talking about that. It cast a very long shadow over the census, and what we are going through now will cast another very long shadow. If they are afraid that it will be used against them, as a group, then they have a reason to sort of dodge it and not respond to it and hide out.

Ms. WASSERMAN SCHULTZ. Thank you.

Mr. Thompson, after the issuance of this recent memorandum, it really is even harder to escape the conclusion that the Trump administration is attempting to manipulate the census count for political purposes. If this behavior is normalized, what impact do you think this will have for the future of our democracy and ensuring an accurate count in the decennial census?

Mr. THOMPSON. So, that is an excellent question, Congresswoman. It is incredibly important that the census be viewed as a nonpolitical objective enterprise because it is the foundation, one of the cornerstones, of our democracy and perceptions that it is being politicized, as Dr. Prewitt said, will have a long, long lifespan and it will make it very difficult to take not only this census but censuses in the future.

Ms. WASSERMAN SCHULTZ. Thank you, Madam Chair.

I yield back the balance of my time.

Chairwoman MALONEY. Thank you.

We now recognize Representative Higgins by remote. He is online.

Representative Higgins?

Mr. HIGGINS. Madam Chair—

Chairwoman MALONEY. Thank you.

Mr. HIGGINS. Thank you, Madam Chair.

This type of anti-American rhetoric that I am hearing from my colleagues across the aisle today is exactly why regular American patriots don't like politicians and don't trust the government. What are the Democrats trying to hide right now? This is the number-one thing. This is the major point that is incredibly clear.

Across America, from sea to shining sea, by hard-working American citizens, voting rights in America and congressional representation in America belong to American citizens, period.

Our nation's fabric has changed through the generation. The census is conducted primarily for apportionment every 10 years. This is a—this is a challenge that has evolved and changed over the course of time, and what we now face is the very clear fact that illegal residents of our country or illegal occupiers of our country have significantly affected representation.

What are the Democrats hiding? Illegals interfere with our republic when it comes to congressional apportionment and voting.

President Trump's new policy would restore congressional representation to its rightful owners, the citizens of America. What are the Democrats hiding? Why would we not want to know how many citizens versus noncitizens are in our country?

I will tell you why. America, I hope you are paying attention. Estimates range from 12 million to 25 million illegal aliens in this country. That is 700,000 constituents per congressional district. That is 17 to 35 congressional districts that can be swayed by illegal aliens within our country.

The 115th Congress majority

[Inaudible] Republican majority was 47. The 116th Congress the Democrats hold a 34-vote majority. The reality is that illegal aliens present in our country, if counted for apportionment, actually do shift the balance of one man one vote away from densities of population of American citizens toward densities of population of illegal immigrants.

My colleagues across the aisle don't want America to know that, but I do, because we prefer to speak the truth, and I—and I take offense to some of the language that has been used toward myself and my colleagues by the gentleman prior.

You don't know our heart, sir—good sir. You calling us minions and other things. You are wrong for that and you know it. America is watching and they know it.

Mr. Eastman, you are a constitutional scholar, are you not, good sir?

Mr. Eastman, please unmute yourself.

Mr. EASTMAN.

[Inaudible] unmute.

Mr. HIGGINS. My question was are you a constitutional scholar, sir?

Madame Chair, I would like this time observed.

Mr. EASTMAN. Let us try again. Can you hear me now?

Mr. HIGGINS. Yes, sir. Mr. Eastman, my question was are you a constitutional scholar, sir?

Mr. EASTMAN.

[Inaudible]

Mr. HIGGINS. Please unmute yourself, sir.

Mr. EASTMAN. Yes, I am.

Mr. HIGGINS. All right. We are back on track here. Welcome to 21st technology that doesn't work for remote committee hearings. I urge my colleagues to return to regular order.

Mr. Eastman, are you familiar with the—with the president's new policy that we are discussing today? Can it not be challenged in court as constitutional or unconstitutional?

Mr. EASTMAN. According to

[Inaudible]

Mr. HIGGINS. Your audio is not functioning, sir.

Mr. EASTMAN.

[Inaudible] Let us try this. Is that better?

Mr. HIGGINS. Yes, sir. That is better.

Madam Chair, I would like this time observed—the delay.

Mr. EASTMAN. Yes.

Mr. HIGGINS. Mr. Eastman, my question to you is very simple. You are familiar with President Trump's policy regarding the census that we are discussing today. Can this policy be challenged constitutionally in court or can it not? Is that not our process?

Mr. EASTMAN. Well, it has already been challenged in four different cases in court. I believe when it gets to the Supreme Court, based on the Franklin v. Massachusetts case, the Trump policy will be upheld. But it will

[Inaudible]

Mr. HIGGINS. And if—in the interest of time, if the President Trump policy is overturned by the Supreme Court, which is our judicial procedure, I would encourage my colleagues to wrap their passion up in a judicial challenge properly. If the president's policy is overturned by the Supreme Court, then that is it, isn't it?

Mr. EASTMAN. Well, that is—yes, that is it and Congress would certainly have a say with a constitutional clarifying amendment. But I believe the Constitution allows for the policy already.

Mr. HIGGINS. Very well. So, prior Supreme Court rulings that have established by majority rule in the Supreme Court that an agency's action is final when an agency completes its decision-making process, specifically as it regards to the census, that the president is not required to transmit the secretary's report directly

to Congress; rather, that he uses the data from the census in making his statement. Are you familiar with that rule as written by Justice O'Connor?

Mr. EASTMAN. Yes, I am. That is the Franklin v. Massachusetts case to which I have been referring.

Mr. HIGGINS. Yes, sir. It certainly is.

So, Madam Chair, I thank you for your indulgence. We had some technical difficulties from the gentleman.

I just want to clarify that what is before us today is the balance of power of the representative republic if American citizens that we are supposed to serve, and if any of my colleagues or fellow Americans across the country have a problem with the president's decision, then by all means, follow the constitutional process by which you would challenge that as to Article 3 and the judicial process.

Madam Chair, I yield.

Chairwoman MALONEY. Thank you.

I now recognize Congressman Sarbanes from Maryland.
Congressman Sarbanes?

Mr. SARBANES. Thanks very much, Madam Chair. Can you hear me?

Chairwoman MALONEY. Yes, we can.

Mr. SARBANES. OK. Well, I appreciate the hearing.

You know, fundamentally, you can't run a country if you don't know how many people are in your country, and that is the purpose of the census, plain and simple.

It is not a Democratic power grab. This is a patriotic exercise that we engage in every 10 years to know who is in our country, how many people, so we know how to provide services and resources and function as a country.

That is what this is about. This is about being able to function properly and efficiently as a country so we know where to build the roads and the hospitals and the schools. I want to know how many people live in my district.

Whatever district I am representing as a Member of Congress I need to know how many people there are living in that district so I know what the schools should be, how many resources should come behind community health clinics, what is the capacity of the hospitals that we need and our other health care providers.

That is the purpose of this, and if we don't take the census seriously we are not going to be able to function as a country in an effective way. So, that is what this is about. This isn't about political power grabs. This is about doing what makes common sense and what our Constitution calls upon us to do every 10 years.

Now, I don't want to belabor what the president has done because it is very clear, based on the testimony, and I think an easy reading of the Constitution that what the president has proposed most recently is not only unconstitutional, it is completely unworkable.

I would like the former directors, if they would, to give me your perspective on this very delicate line that we are walking right now.

On the one hand, we know that the census needs to be completed within a certain period of time so that the data all works, and the

further we get away from April 1 the more potentially compromised that can be.

On the other hand, we don't want to rush the census in a way that would undermine its accuracy and I fear that the president is seeking to do that now, from what I understand. He is trying to sort of telescope the process here.

So, could you speak, and any of you are invited to weigh in of the former directors—tell me what your greatest concerns are right now about our ability to conduct the census in an efficient way to gather up the data, to be confident in it, and how do we navigate this window that we have to pull that off?

I will turn it back to the directors.

Mr. THOMPSON. I can start. The career people who are experts at making the census requested a four-month extension of the deadlines that is in their title.

They know what they are doing. They know what it is going to take to get the census done. Not extending those deadlines is going to put tremendous pressure on the Census Bureau. It is not clear what kind of quality counts they can produce if they don't get the extension. So, it could be a really big problem.

Mr. SARBANES. Mr. Prewitt?

Mr. PREWITT. Yes, I would just add to that, as I tried to say in my opening testimony, I really do think right now we ought to be appointing an independent apolitical groups of statisticians and otherwise informed people—National Academy of Science can certainly do this—and look at metrics, what will be telling us that we have a census that is inadequate for the purposes of reapportionment.

It is inadequate for the purpose of trending over a trillion dollars and it is inadequate as a base number for all of our other surveys for 10 years.

I think we are at risk of giving to the country a set of numbers which will make what previous—what you said at the very beginning. You want to know how many coming to school, how many in the hospitals, what is the traffic load, what about emergency preparation.

All of those depend upon numbers, and I am very worried that we may not have those numbers at a level at which we are able to give them to the president at the end of this calendar year.

So, the extra four months is really important.

Mr. SARBANES. Thanks very much, Madam Chair. I appreciate the opportunity and I think what we are hearing is the politics need to be kept away from this space.

The president is trying to politicize it. We need to keep it in a safe zone and get this right and do it properly for the benefit of the country.

I yield back.

Mr. BARABBA. Chairwoman, can I make a comment, please?

Chairwoman MALONEY. Thank you. Who is wanting to make a comment?

Mr. BARABBA. Yes. I would just add to what my colleagues have said that the manner in which the president is positioning his question on citizenship would me more—it is designed to be alarming to noncitizens to be counted, and its approach is going to make

it difficult for the census to do its job, which is to count everyone, every person in this country.

Chairwoman MALONEY. Thank you.

I now recognize Representative Robin Kelly from remote. Kelly.

Ms. KELLY. Thank you, Madam Chair.

Chairwoman MALONEY. Thank you.

Ms. KELLY. A couple of points I wanted to make, first, that I have been on Oversight for over seven years and most of that time I was in the minority, and I never remember the minority having more than one witness. I just wanted to make that—make that point.

Then I thought I heard one of my colleagues say that we want to have the undocumented count because that will help us with our sanctuary cities. Well, Chicago is a sanctuary city and New York is a sanctuary city, and we already know that Illinois will lose one congressional seat.

So, counting the undocumented is not helping us over another state that you may represent that doesn't want to count the undocumented.

But I wanted to ask Mr. Groves if undocumented immigrants do not respond to the census either because they are afraid of being identified or are motivated because of this memo, what effect do you predict this will have on the distribution of Federal funds and would it affect some communities more than others?

Mr. PREWITT. If I am unmuted I will—Dr. Groves has left.

Ms. KELLY. Oh, I am sorry. That is right.

Mr. PREWITT. Yes, that is right. Yes.

Ms. KELLY. I have been waiting so long.

Mr. PREWITT. I am sorry. I will give you a very quick response.

Look, right now with respect to the 62 percent of the public that has sent in a form, that is a highly variable number state by state that goes up as high as 72 percent and it goes down as low as 52 percent. That is a 20 percent difference between those two states.

If that carries forward for the rest of the census, that means you are going to have states that are counted close to a 100 percent and states that are counted at 80 percent, and that is not a functional census.

Ms. KELLY. Is that by

[Inaudible]

Mr. PREWITT. Hugely disproportionate the way the Federal funds get spent because the Federal funds is a fixed number and it is proportionate to size. So, if somebody is a 100 and somebody is 80, the one that is 100 is actually going to get 20 more because it is going to be spent somewhere. So, it is a very serious issue.

Ms. KELLY. Also the other thing is, when I think about one of the counties I represent is Cook County and even if someone is undocumented if they need help or care the county or the city, you know, they still will help.

They just don't, you know, leave people to die or to be homeless and that kind of thing. They still feel that responsibility and none of that is free. You know, it costs money.

Mr. PREWITT. Yes.

Ms. KELLY. So, that is why it is so important.

Madam Chair, I yield back early.

Chairwoman MALONEY. Thank you. The gentlelady yields back, and I now—Representative Grothman is now recognized.

Mr. GROTHMAN. OK. Thank you very much and thank you for having this hearing. Always enjoyable.

I think there is some confusion, so the first question I have is for Dr. Eastman. The president's memo, as I understand it, doesn't include distribution of Federal funds. It is only for the purposes of apportionment. Am I wrong on that?

Mr. EASTMAN. No, you are absolutely correct on that. The two are distinct and actually the constitutional authority is different for each of the two.

Mr. GROTHMAN. OK. So, this idea that if we don't count people who are here illegally is going to result in, say, less Federal aid to the city of Chicago, that is not accurate, right?

Mr. EASTMAN. That is not accurate. The count will be there. The question is what are the numbers we use for apportionment purposes, not for all the other myriad uses for the census.

Mr. GROTHMAN. OK. Good.

Now, I want to ask you about other people who are—you know, I happen to live in Wisconsin. There are people who could be in Wisconsin for a variety of reasons. There could be people who were born there and will die there and live there their whole life.

There can be people there who are diplomats from a consulate in Chicago who are driving around, seeing what is going on up there. You could have tourists who plan on leaving.

You could have people who spend seven months of the year in Florida and five months of the year in Wisconsin. You could have somebody coming over from Iowa who is taking care of an aging relative and expects to return home.

Could you comment on these different situations? Are all of these people supposed to be counted for apportionment purposes? None of these counted for apportionment purposes? If we go through them, a diplomat, they are not counted, are they, even though they are in Wisconsin?

Mr. EASTMAN. No diplomats are counted even though they are persons in the state, if you want to take the technical reading that has been offered. Visitors are not counted. Temporary people passing through are not counted, and I think that is—Indians not taxed are not counted, we haven't had that category since citizenship was offered in the 1920's, broadly, to Native Americans.

But for the first century and a quarter of our Nation's history they weren't counted. It is because what the—as the Supreme Court said, what we are aiming for here is who is being represented, who is in charge, who are the sovereign people that are choosing the representatives and allocating the distribution of seats in Congress and electoral votes based on that.

Mr. GROTHMAN. OK, and I will give you a specific example. Let us say I am in Wisconsin. Let us say a woman moves into Wisconsin to take care of her aging mother and expects to return home from Iowa, has no intention of staying in Wisconsin. Maybe her mother is even in home hospice. Should she be counted as a Wisconsin resident?

Mr. EASTMAN. I don't believe she should be and I don't think the Census Bureau does. They ask where her normal place of abode is.

Mr. GROTHMAN. OK. If I am in this country illegally, how under any circumstances—what contortions would you reach to say that a person who is here illegally intends to stay permanently.

I would think if I was caught in a country illegally for whatever reason, I would expect to return home. Isn't it kind of insulting to somebody to say if they are here illegally we are going to make the assumption they are there permanently?

Mr. EASTMAN. Well, I think so and, you know, you can read this into the phrase "in the state." The other argument has been, well, anybody that is residing in the state. Well, they have added the word "residing" to there.

So, why don't we also add the word, more consistent with the theory, "lawfully residing there?" That gets more at the question of who is being represented—those who are here lawfully.

Mr. GROTHMAN. Well, right. I am going to go back to the two situations. If you have someone in Wisconsin taking care of an aging relative until they pass away, you know, we consider they are a permanent resident another place, right?

I think, normally, if you have a college student who is in Wisconsin for nine months and then returns to Iowa that Iowa is considered their place. They don't intend to stay in Wisconsin full time.

By what logic could you say if someone, say, is overstaying a visa and, you know, but plans on returning home—you assume returning home—how in—what type of legal logic could you have to say that we expect that person to stay in Wisconsin permanently?

I don't understand that. Can you imagine a legal theory that we are going to assume somebody who comes here illegally is going to be considered a permanent resident?

Mr. EASTMAN. Well, there is one theory that has been floated called virtual representation. Even though they are not part of the citizenry of that state or that community they are, nevertheless, there and so, therefore, the people would treat them as if they are being represented even though they have no say in the government. I think that is fundamentally incompatible—

Mr. GROTHMAN. Well, why don't we assume they are going to leave, though? That is what I don't understand.

Mr. EASTMAN. Yes, I don't—I don't—Congressman, I agree with you. I don't understand it either. But I am trying to tease out the theory on the other side to try and make some sense of it and I can't.

It is so fundamentally incompatible with the notion of consent of the governed that is the cornerstone of our system of representative government.

Mr. GROTHMAN. Well, I just will say on behalf of the illegal citizens in my state I think it is insulting to imply that in the future they are never going to obey the law.

Thank you.

Chairwoman MALONEY. Congresswoman Lawrence is recognized.

Ms. LAWRENCE. Thank you, Madam Chair. I would like to bring the focus back to what the census is established, and that is to count every person. I was a mayor and I know that the amount of people who are driving over my roads go into the population, goes

into the formula of how much I come to the Federal Government, say I need X amount of bill dollars or any X amount of dollars.

I need to know how many children are going to our schools so that we can anticipate the amount of brick and mortar, the amount of taxation for educating the children in our community.

It is so sad that this current administration uses every single angle to politicize it and have it to be a Democrat or a Republican issue.

The census has nothing to do with your political affiliation. It has everything to do with the enumeration of the people who live in this country so that we can appropriately allocate the funds to run our country.

I know in my district there is a very rich and, thank God, amazing diversity of people. Strong representation from the Middle East and Bangladesh, other countries. We have Jewish. We have African. We have India.

So, when you knock on the door of a home and you say, are you legal or not legal, the trust, because of this administration's just absolute aggressive immigration demoralizing the value of people in our country, it creates fear, whether you want to admit it or not.

Mr. Thompson, are you still here?

Is Mr. Thompson still here?

Mr. THOMPSON. Yes, I am here.

Ms. LAWRENCE. OK. Is it true that the immigrant communities have historically been undercounted in the census and can you explain why this is pragmatic?

Mr. THOMPSON. That is an excellent question, Congresswoman.

So, the Census Bureau has always been measuring a differential undercount and that is for the white non-Hispanic population they have been measuring slight overcounts and for other populations, the African Americans, Hispanics, they have been measuring undercounts. American Indians, they have been measuring undercounts, and they call it the differential undercount.

So, the implications of that are—filter through all the important uses of the census including apportionment, including redistricting, and including the allocation of \$1.5 trillion in Federal funds every year.

If there is an undercount in a community, then that community doesn't get its fair share of any of those resources.

Ms. LAWRENCE. So, when a community does not get the proper allocation of funds. When we start talking about poverty, when we start talking about generational misrepresentation, it is all tied to the census and how we count the citizens and the people of this—of this country. Is that correct?

Mr. THOMPSON. Yes, ma'am.

Ms. LAWRENCE. Do you agree that President Trump's executive order is likely to make the problem worse by discouraging legal immigrants from completing the census?

Mr. THOMPSON. Yes. I included in my testimony my concerns that the memorandum was going to increase fears among the hard-to-count populations, which would include immigrants, noncitizens, that their data would not be safe, and therefore, their nonparticipation.

Ms. LAWRENCE. Madam Chair, I just want to be clear on the record. The census is not a Democrat or Republican issue. It is an issue about how we will fund our country.

I sit on Appropriations and I say often if you want to know where a person's heart is, if you want to know what your values are, follow the money. If we systematically eliminate and discourage participation, then our values will be very clear that if you are a minority, if you are immigrant, you have no value.

Thank you so much. I yield back.

Chairwoman MALONEY. Thank you. Thank you to the gentle lady for her powerful statement.

Congresswoman Miller is now recognized.

Mrs. MILLER. Thank you, Chairman Maloney and Ranking Member Comer, and to all of you witnesses who are here today.

As we will discuss further in the next panel with Dr.—Director Dillingham, apportionment is drastically different than taking the census.

It is essential that the census count every person living in the United States as this data is used to appropriate Federal resources to the communities in need. Another use for this data is to fulfill the constitutional duty of apportionment.

Apportionment is the essential process that Congress takes to make sure that the Members of Congress are distributed fairly and proportionally across the United States.

Allowing some states with a high number of undocumented immigrants to subvert the will of American citizens by denying other states their fair representation cannot be allowed.

While many across the aisle actively champion illegal immigration and deny the government's duty to protect our sovereign border, to turn around and try to distort the president's actions to protect American democracy into a constitutional crisis is an absolute farce.

This hearing is just a continuation of the lack of leadership that America is so tired of seeing out of Washington.

I support President Trump's memorandum of apportionment and reiterate the importance of making sure Americans' voices are heard here in Congress and at the ballot box.

Dr. Eastman, how would counting residents living in the United States illegally undermine the representation of legal American citizens?

Mr. EASTMAN. Well, it would create an apportionment that shifts numbers of representatives in the House of Representatives and also the electoral votes for president from places where there are not large numbers of illegal immigrants to places where there are, therefore, diluting the vote and political power and sovereignty of the people in the states that do not have large numbers of illegal immigrants and benefiting those that have violated our law.

Mrs. MILLER. So, how are smaller rural states, which already have very few Members of Congress negatively impacted by the larger states who are bolstering their census counts with undocumented immigrants?

Mr. EASTMAN. Well, we have got a number of states that will lose or not gain a seat in Congress as a result of counting the large number of illegal immigrants that have consolidated in particular

states—in three or four states, for example. It would shift away from the rural states and it would debase the votes of American citizens in large portions of the country.

Mrs. MILLER. So, basically, in a congressional district where half the population is comprised of undocumented immigrants, is that fair representation to a district that is comprised entirely of American citizens? Doesn't that dilute the representation that citizens have in Congress?

Mr. EASTMAN. It does so in two ways. It gives that state with the illegal immigrants an additional seat in Congress. That creates—that enhances their political power, and it also takes each voter in that district and essentially makes their vote worth twice as much as the votes in a district where there are no illegal immigrants.

Mrs. MILLER. So, historically, why has it been the standard to use total population for apportionment instead of the number of citizens, and does this actually subvert the democratic will of American voters?

Mr. EASTMAN. Well, historically, we have used total population because there was not a differential between total population and citizen population, and so total population was a very good proxy for the political representation.

But we now have a vast disparity between citizen and noncitizen areas of the country and that is skewing the political authority of the people that are supposed to be choosing the representatives to govern.

Mrs. MILLER. Thank you. I yield back my time.

Chairwoman MALONEY. Thank you. I now recognize the vice chair of the committee, Congressman Gomez, for five minutes. Thank you for coming.

Mr. GOMEZ. Thank you, Madam Chair.

I just want to remind people, I am actually very happy that President Trump and the administration revealed its true colors.

For the long time, if we remember back when they were trying to add the citizenship question to the census it was always about enforcing the Voting Rights Act and they repeated it and repeated it and repeated it.

But even your Republican chair, Trey Gowdy, didn't even believe that was the case, right. He even made the argument that their logic didn't make sense because they have been enforcing the Voting Rights Act—the Justice Department—since its existence without having that information on the—of citizenship on the census.

So, we always knew what this was about. It was about Kris Kobach. It was about the apportionment expert trying to create a scenario that they can make an argument why undocumented immigrants and not all people should be counted in apportionment. That was what it was always about.

So, it just revealed their true colors that they put forward this executive order and this memo of understanding, and the reason why it was always about that because this administration and Trump have always attempted to use the census as a political weapon to marginalize communities throughout the country.

I believe that this is only the next step because I believe the true direction that this administration wants to go and some individuals on the right of the political spectrum is to undermine the Four-

teenth Amendment itself, the idea that any person or persons born or naturalized in the United States are subject to the jurisdiction of the United States and are citizens of the United States.

That is where, ultimately, they want to go. They, as I am talking about the Trump administration, I am talking about the people who are on the right who don't see people who are born here as valid citizens of this country.

So, this is just the next step, you know, what President Trump has done in these memos. But I believe that it will be found unconstitutional.

I believe that some of the recent rulings by the Supreme Court indicate that this court is not a Republican court or a Democratic court. It is the Supreme Court of the United States of America and I look forward for this case to go forward.

But the present memo does, I believe, violate the Constitution. It also violates Federal statutes as enacted by Congress.

Title 13 states that after the census is complete the Secretary of Commerce shall send the president, and I quote, "the tabulation of total population by states, which then the president must transmit to the Congress a statement showing the whole number of persons." It doesn't say anything else. It says of persons in each state.

I would like to go down the line and ask each of you a question. In your experience as director of the Census Bureau, do you ever—did you ever understand Federal law to allow the Secretary of Commerce to exclude undocumented immigrants from the census count he or she is required to send to the president?

Mr. Barabba?

Mr. BARABBA. No. The answer is no.

Mr. GOMEZ. Mr. Prewitt?

Mr. PREWITT. No.

Mr. GOMEZ. Mr. Thompson?

Mr. THOMPSON. No.

Mr. GOMEZ. Those are some simple questions when it comes to this issue, that it has never been allowed and no one has ever requested it. But this administration is trying to once again use the census for political ends and to marginalize the undocumented community and undermine our democracy.

We have a choice to make. The country is getting more diverse. No matter if we throw up roadblocks, no matter what we do, the country is changing. But it is not about how—we shouldn't allow those changes to determine our character. It is how we handle those changes that will determine the character and the values of this country.

I am proud to be an American and a lot of the people who are here, undocumented or otherwise, are also proud to be in this country and we will fight for our place in this country every step of the way until the day that we are no longer on this Earth.

With that, I yield back.

Chairwoman MALONEY. Thank you, Mr. Gomez.

The chair now recognizes Congressman Keller.

Mr. KELLER. Thank you, Madam Chair. Thank you, Ranking Member Comer.

Last week, the president issued a memorandum directing the Department of Commerce to provide him with an apportionment count which only includes those in this country legally.

Since we all know that an apportionment count, a census count, and a redistricting are different things, I am concerned that the title of this hearing conflates all of these into one group.

Creating the assumption that these terms are all the same thing makes the accusation that the president's actions are unconstitutional, which they are not.

Dr. Eastman, can you explain how an apportionment count is different from a census count and redistricting?

Mr. EASTMAN. Sure. The census count total count that is addressed to things like Federal spending and how many schools we need and how much space we need on the highway, those are exercised pursuant to Congress's power under the commerce clause and under the spending clause, and we get a total count. It doesn't matter on what basis you are here.

But apportionment is supposed to be tied to people who are choosing representatives, and we can have an apportionment count of the persons in the state for that purpose that is different from the total population count that would include visitors, it would include people on temporary visas, and would include all of those other things. We can have two different counts.

The president's memo is directed to the apportionment count, what numbers of persons are we going to use for distributing our political power in this country based on the population of citizens, of we the people.

Mr. KELLER. Thank you.

This committee has spent endless hours holding hearings, conducting investigations, issuing subpoenas, and holding administration officials in contempt of Congress all due to an issue with the citizenship question on the census.

While this effort eventually—was eventually abandoned, a citizenship question should not be controversial and neither should using an apportionment count of only those who reside in our country legally. If someone is here illegally they should not be represented in the U.S. Congress.

Dr. Eastman, why did the Supreme Court rule that a citizenship question being asked on the census questionnaire is in fact constitutional?

Mr. EASTMAN. Well, because, first of all, history. We have asked that question on almost every census in our entire history.

The only reason it blocked it from the current census is because the Supreme Court found that the department had not properly gone through the requirements of the Administrative Procedures Act. But it went out of its way to say asking about citizenship is perfectly constitutional.

Mr. KELLER. OK. Just one thing. I know there has been a lot of discussion on why we need to make sure that the representation is correct. But I know the—some of the people on the left want to do away with the Electoral College.

By counting people who are not U.S. citizens here legally, is that a way to make the Electoral College less relevant or, over time, irrelevant by shifting representation away from American citizens?

Mr. EASTMAN. It does. It has the same effect of diluting the votes of citizens that the apportionment of the House of Representatives has because the Electoral College votes are based on the total number of seats one has in the House of Representatives plus the two senators.

Mr. KELLER. So, if I couldn't get an amendment through or I couldn't get a national popular vote and I wanted to do away with Electoral College, I would—I would want to count people for representation purposes who are in our country illegally?

Mr. EASTMAN. You certainly would alter the impact of—that citizens have on the outcome of elections and that undermines the very notion of the consent of the governed.

Mr. KELLER. And the point, I guess, I want to make, by the way the Trump administration wants to make sure that we know the difference between when we are talking apportionment and census and redistricting, we want to take care of everybody that is here in our country but we also want to make sure that the government is selected by American citizens and not people who are not citizens of this country. Is that correct?

Mr. EASTMAN. That is correct, and I don't think it is partisan. Look, I mean, if you look at the numbers, Texas is going to lose seats as a result of this as well as California. It is hard to say that that is a partisan outcome. It is a good governance outcome.

Mr. KELLER. It is an outcome that means we are exceptional because we are Americans and we should have government that is decided by American citizens and not people that are foreign nationals in our country illegally.

Thank you, Madam Chair, and I yield back.

Chairwoman MALONEY. I thank the gentleman, and I thank all of the panelists for their testimony and remind them that they—there will be additional questions that may come to them and I would be grateful for their swift response.

We will now go to the second panel, but first I would like to respond to Mr. Hice's request that we have a—he mentioned we needed a hearing on the hard-to-count communities and stated that we had only had not enough hearings on the census.

I would like to place in the record that since I have been chair there have been five hearings on the census, including one on the "Hard-to-Count Communities in the 2020 Census," which was January 9, 2020.

We were also privileged to have Director Steven Dillingham here on February 12, and appreciate him coming back very much, and we also had one on "Beyond the Citizenship Question: Repairing the Damage and Preparing for We, the People" in 2020, and we also had one on "Getting the Count: The Importance of the census for Both States and Local Communities," and on March 14 we had Commerce Secretary Wilbur Ross.

So, I would like to place in the record these hearings that we had, five, and mention to Ranking Member if you would like to have another hearing on hard-to-count communities, as Mr. Hice mentioned, we would be glad to accommodate having another.

I would also like to place in the record the listing of 12 full committee hearings that we have had on different subjects. But, obvi-

ously, five with both the full committee and subcommittees has been a priority, as it should be, for this country.

I would like to place this in the record. Thank you.

Chairwoman MALONEY. So, the first panel is dismissed with our great thanks. Thank you for your time. Thank you for your service. Thank you for coming back to testify with us from across the country. We are very, very grateful. Thank you.

We are also grateful that we are joined by Mr. Steven Dillingham, the current director of the Census Bureau. We thank you very much for your time, for your service, and for agreeing to be here. We are very appreciative.

If the witnesses would please rise and raise your right hand. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

[Witness is sworn.]

Chairwoman MALONEY. Thank you.

Let the record show that the witness answered in the affirmative. We thank you. Without objection, your written statement will be made part of the record.

With that, Mr. Dillingham, you are recognized for your testimony. Again, thank you for your service.

And I just want to add, the coronavirus has changed everything and it has really changed how we have been able to conduct the census, and I appreciate your service during this very, very difficult time.

Thank you for being here.

STATEMENT OF STEVEN DILLINGHAM, DIRECTOR, CENSUS BUREAU

Mr. DILLINGHAM. Chairwoman and Ranking Member, I don't know if you noticed but I had my own specially designed mask, and I provided one to you and the ranking member. So, I hope you will find it useful, at least for getting the message out. Thank you so much.

Chairwoman Maloney, Ranking Member Comer, and members of the committee, I am honored to be with you today. I would like to congratulate Ranking Member Comer on his recent appointment.

I appreciate the support of Congress and this committee's commitment to a successful 2020 census. The nonpartisan U.S. Census Bureau is the Nation's leading Federal statistical agency.

Its career and noncareer staff work together to advance its mission, always in accordance with governing laws and court rulings. The Census Bureau does not set policy nor does it control the use of its data products.

The Census Bureau adheres to the highest standards of scientific integrity and transparency, and the principles and practices of Federal statistical agencies.

Meeting challenges posed by the unprecedented brutal pandemic remains a top priority. The Census Bureau's dedicated work force has worked hard and professionally to keep the 2020 census on track.

This morning I am pleased to highlight some recent developments. On July 21, the president issued a Presidential memorandum that has been the topic, certainly, of the first panel.

In response to the memorandum, Secretary Ross called upon the Census Bureau to examine the directive and commence efforts to develop methodologies for producing a special tabulation for apportionment.

A group of expert career staff will examine possible methodologies. Operations are not affected by the memorandum. We remain committed to counting every person in the right place and only once.

To help the Census Bureau meet challenges posed by the pandemic, the White House Office of Management and Budget submitted a request to supplement our hiring pay incentives, outreach, and replenish our contingency funding to provide the necessary flexibility.

Despite the pandemic, the 2020 census self-response has been a tremendous success. We are now at almost 63 percent with more than 92 million households counted. About 80 percent have chosen to respond using the internet. Our response system has not had a single minute of down time since we first invited people to respond online, beginning in March. We successfully set up—we sent up—we say up to five mailings because if you do answer in self-response you are not receiving, hopefully—after a period of time, not receiving additional mailings.

But we successfully sent up to five mailings and an additional mailing to areas with post office boxes. Our sixth mailing has begun and should reach 34 million nonresponding households.

In September, we will be sending a seventh mailing, including questionnaires, to the lowest responding tracts in hard-to-count areas.

Our update leave, which is our operation to hand deliver packets to housing units, well, it is generally complete. Certainly, 99.—the last I looked was—I think it was about 99.9 percent. It is basically complete except for some very small communities.

Our counting college students continues to progress. We have a special operation to ensure a complete and accurate count of college students. College students must be counted where they live or stay most of the time as of April 1. Congress is considering legislation which was passed by the House to alleviate confusion among college administrators.

The largest component of our field operation nonresponse followup is underway and expanding rapidly. We have begun a soft launch in selected areas where we could do so safely and effectively. The first six area Census offices began work on July 16. Six more began on July 23. Tomorrow, 35 others will begin work and 40 more will start on August the 6. They will be announced today. The remainder will begin this work on August the 11th and will be covering the entire nation.

Today, we are announcing that as part of our nonresponse followup operation we will contact some households by phone.

Health and safety of Census Bureau staff and the public remains our priority. The provision of personal protective equipment, trainings, and adherence to social distancing reflect our commitment to health and safety of the public and our employees.

We require all census employees interacting with the public to wear a face mask, regardless of location. We daily monitor health

conditions nationally and at the state and local levels. Our hiring of census takers and staff continues.

We now have 3 million applicants available as temporary census workers. We continue receiving about 1,500 new applicants each day.

Our 248 area census offices are completing the hiring process for about a half million temporary census workers. More than 900,000 job offers have been accepted.

Our partnerships are unprecedented, exceeding our most ambitious goals. With almost 400,000 partners, we are expanding our outreach to hard-to-count populations.

Despite having to delay the mobile questionnaire assistance efforts due to the pandemic, partnership staff have identified assistant sites where people go when they leave home, such as grocery stores, such as pharmacies and other places, in compliance with local, state, and Federal safety guidelines.

We have seen great examples in New York City, and I know that you have participated, Madam Chairwoman, in Kentucky as well and probably in all member districts. The 2020 census communications campaign continues to expand its reach.

We increased the communications contract budget from \$500 million to \$700 million and increased our media buys, which are in progress now.

We will run many types of advertising in low response rate areas, including those with hard-to-count audiences.

As voices in your communities, thank you for sharing our message that participating in the 2020 census is easy, safe, and important. We appreciate your strong support for 2020 census and our operations.

Our committed employees and volunteers remain on mission and are accomplishing tremendous results. Our offices have led other Federal agencies in reopening in a rapid, phased, and safe manner.

I could not be prouder of our talented and dedicated career and temporary work force soon to become the Nation's largest. We are grateful that almost every House and Senate office is active as a 2020 census congressional partner.

We look forward to our continued work together and thank each of you for your support. Together, we are reminding everyone that the 2020 census belongs to our Nation at large and will help shape a better future for all who live here.

Thank you so much. I look forward to your questions.

Chairwoman MALONEY. Thank you, and the chair now recognizes herself for questions, and I appreciate your testimony that the census belongs to the people and it is part of our future.

I do want to report that in New York the census has been non-partisan, professional. They have responded to every request from the mayor to attend various meetings from the community. They have been at the community boards, the block associations.

They work weekends, handing out information in the parks and have responded to every request my office has made for them to join us in getting the word out to the public in a nonpartisan professional way, and I want to thank you for that.

Mr. DILLINGHAM. Madam Chairwoman, I want to thank you that I had some particulars with regard to your efforts in the food dis-

tribution areas of New York City and appreciate you as well as your colleagues all across the country.

Chairwoman MALONEY. It is very, very important.

But I must tell you, Director Dillingham, I am very, very concerned about the president's memo, and I have read the president's memo very carefully and I believe that it is blatantly unconstitutional and that complying with this memo would violate Federal law, and I strongly urge you not to violate Federal law.

But you don't have to take my word for it. We had quite a lengthy hearing today and all four of your professional nonpartisan predecessors testified on the previous panel that they believe the president's memo appears to violate the Constitution and existing law.

So, I would like to ask you, do you agree with your predecessors that the memo appears to violate the Constitution and existing Federal law?

Mr. DILLINGHAM. Madam Chairwoman, I was able to catch parts of that hearing. I know just, perhaps, the latter parts, and I was amazed at what a healthy discussion and debate and a very vivid one at times with regard to policy and history as well as law.

They are in a different position than I am in. I respect them greatly and we have many things in common, certainly, the completeness and accuracy of the 2020 census.

We have other things in common and that is the respect for the Bureau, the Census Bureau, as well as the principles that govern it, the relevance, the credibility, the integrity, the independence, et cetera. So, we have much in common.

But I am not in a position where I can express my opinions with regard to the policy, with regard—and it wouldn't be even wise with the history and, certainly, not with the legal analysis, which is now a subject of litigation.

So, as I did last year, I have to beg off. I cannot answer or even give my personal views because my job as the Census Bureau director will be to execute the 2020 census and we do abide by court decisions and controlling law.

So, we will have to wait and see how that legal debate comes out and we will do our job. But that is our focus. Our mission right now is a complete and accurate count that will include everyone living in this country.

Chairwoman MALONEY. OK. Well, in your job executing the 2020 census did you or anyone else, in your knowledge, from the Census Bureau contribute to the president's July 21 memo or provide input on it before it was released?

Mr. DILLINGHAM. Madam Chairwoman, I certainly did not and I am not aware of others in the Census Bureau that did.

Chairwoman MALONEY. I understand there are, roughly, five political appointees. Did any of them participate in this memo?

Mr. DILLINGHAM. Madam Chairwoman, I think, including myself, we have six now and that is out of more than 6,000 employees.

Chairwoman MALONEY. OK.

Mr. DILLINGHAM. But to my knowledge, they did not and I would not have reason to think so. We do have—I am sure, as you have pointed out, we have two new ones. So, I can't speak for actions that occurred prior to them joining the Census Bureau.

Chairwoman MALONEY. Well, let us move on to the nuts and bolts of the memo. It appears that the president is asking the Commerce Department for information that would allow him to exclude undocumented immigrants from the apportionment base.

As we all know, the Census Bureau will not be asking people about the citizenship status on the 2020 census. The Trump administration tried that. The Supreme Court struck it down.

So, my question is, Director Dillingham, how will the Census Bureau and Department of Commerce be determining the number of undocumented immigrants in each state?

Mr. DILLINGHAM. Madam Chairman, I can tell you that, as you refer, the Presidential memorandum has some specifics in it, and prior to that we did have an executive order last year that also directed us to look at our administrative data.

The Census Bureau has a long history of collecting administrative data that is very valuable in very many different ways.

So, this particular Presidential memorandum, and it resulted in the Secretary of Commerce giving us the directive and guidance to proceed with the requirements of the Presidential memorandum and it calls upon us to look at our administrative data and any data that we have in trying to determine the number, which is a statistic, on undocumented persons in the country and for the use of applying it to the apportionment count.

So, what we are doing we have experts at the Census Bureau that are now beginning the process of looking at methodologies and we have collected data from many agencies, Federal agencies—many of the memoranda were already in existence by some additional Federal agencies—to see what we can gain from that administrative data and what the methodology might be in developing a count of undocumented persons, and that process is just beginning. The Presidential memorandum just came out last week.

Chairwoman MALONEY. Dr. Dillingham, your testimony says the Bureau, and I quote, “has begun to examine and report on methodologies,” end quote, to let the president exclude undocumented immigrants.

So, my question is, what steps has the Bureau taken and will you share any reports with this Oversight Committee that has jurisdiction for the census and its operations?

Mr. DILLINGHAM. Madam Chairwoman, as you are aware, we are a very transparent organization, and maybe the precision of that statement was—may be a little bit misleading at this time.

We have convened a group. The group was selected by a career deputy at the Census Bureau, and they have been tasked with this. There have been no reports. There are no draft reports.

But they have previous experience in this area. So, they are generally aware of methodologies that have been considered to be applied to administrative data and so, for them, this is a new tasking to look at. But we—they are just beginning their work.

Chairwoman MALONEY. OK. Thank you. I think it is obvious that the president is going to try to use some external information that does not come from the census count to exclude undocumented immigrants.

So, my question, Director Dillingham, is isn't it true that the Bureau cannot provide the president with actual responses from every person in the U.S. confirming their immigration status?

Mr. DILLINGHAM. Well, we are to look at the administrative data that we have, which we have been collecting, and to determine to what extent it might identify and how it would identify and how the data could be matched, et cetera.

We are just—we have just recently—there is still some data that hasn't been finalized, but we have received most of the data from the other Federal agencies and we are receiving data as well, pursuant to the executive order last year, from some state agencies.

So, that process is—again, it is underway. There have been no reports. There have been no analysis that I have seen and it is—they are moving rapidly as possible to look at the data, look at the methodologies, and to—really, to find options to see if that is—how that would be done.

Chairwoman MALONEY. Thank you.

Dr. Dillingham, if the Census Bureau and the Commerce Department are going to be relying on external data that they have cobbled together to estimate the number of undocumented immigrants, then I believe that they, clearly, will be violating the Constitution which requires, and I quote, "actual enumeration," end quote.

So, I am concerned about that. You testified in February before this committee, and I quote, "We must work together to foster public trust," and I agree. It seems to me that following the words of the Constitution—

Mr. COMER. Madam Chair?

Chairwoman MALONEY. Federal law and 230 years of precedent are essential parts of that public trust, and we owe it to our children and to future generations to pass an objective, nonpartisan, and fair census, and I hope we can work together to reassure the public that the government will follow the Constitution.

And I yield to you for your comments and then to my distinguished ranking member for his questions.

Mr. DILLINGHAM. Madam Chairwoman, you are exactly right that everyone, regardless of how they feel about the development of a new option with the apportionment data, everyone is committed and the Presidential memorandum provides that we will count everyone.

So, we will develop the number, the total count, and we want it as accurate and complete as possible. The issue, as you have described, is one, is there going to be a new tabulation for purposes of apportionment.

Chairwoman MALONEY. OK. I yield to my distinguished colleague.

Mr. COMER. Thank you. Director Dillingham, thank you for being here today. Let me begin by thanking you for being here. I think you arrived probably three hours ago. I apologize that you weren't on the first panel.

It is unprecedented and somewhat disrespectful that the head of such an important government agency would be put on the second panel. But, nevertheless, you have had a great attitude and I appreciate you being here and I look forward to some good questions.

Let me begin by saying the online response this year has been remarkable. Your enumerators are now in the field practicing social distancing and utilizing PPE.

I think it is important to note that you are putting the care of your workers and the public at the forefront, and I am told the census is well positioned to deliver a timely and accurate count.

Turning to the president's memorandum on apportionment, from a fundamental fairness perspective, it is the right thing to do.

We cannot allow individuals unlawfully present in the United States to dilute the votes of citizens and lawful immigrants who waited their turn to come to this country to engage in our democracy, and I am confident a majority of Americans share that opinion.

With respect to the census, it is more complex than a simple head count. Let us touch on tourist visas, for example. If a tourist overstays their visa and they just don't leave, are they considered a resident?

Mr. DILLINGHAM. Well, we have a historically developed set of criteria for residency that we apply, and, as you described, if it is a simple tourist who is not usually residing where they are found in this country, no, we would not—we would not want to count any response from those individuals. They should—it should be explained on the form their usual residence is the key wording.

Mr. COMER. So, for purposes of apportionment, if a person who stayed longer than 60 days over, which I am under the impression that is the legal definition of a United States resident by the way the census rules are, this person who overstayed their visa they are not lawfully present and, therefore, it is fair say that they wouldn't deserve to have representation in Congress. Is that correct?

Mr. DILLINGHAM. Well, again, we apply the criteria of usual residency and it will differ by times and circumstances. But that is the criteria we use for delivering a complete and accurate count.

Mr. COMER. So, what—back to the earlier question that the—Chairwoman Maloney asked, what data bases does the president's memorandum propose we use to determine who will be included in the apportionment part and who should not?

Mr. DILLINGHAM. The Presidential memorandum does not really specify. But in the executive order of last year it specified a number of agencies. I had the listing here but we have some—I think it is 16 or 17 agreements in place.

Some were already in place before that happened. But it is a wide variety of Federal agencies, and in addition to that, the executive order asked us to begin collecting state data where possible.

There are many uses of the data generally but some of the data uses include matching to make sure you have the right individual so you are not double counting, duplicating, et cetera.

So, we have some 16 or 17 agreements in place where the data has come to the Census Bureau or is in the process for a couple of them still coming, and then we have some state data that we have available.

So, we will be looking at that data very carefully, and the Census Bureau—administrative data is not new and some nations actually do their census based on administrative data, and one of the things

as well under the executive order is for us to be thinking about the next census.

So, there are a lot of people that actually disagree on this question that are very interested in the utility, and as the chairwoman pointed out, the accuracy of administrative data because it could have many benefits in the future as it does now.

Mr. COMER. So, you are confident that we can get an accurate count of legal citizens for the purpose of congressional apportionment?

Mr. DILLINGHAM. I am confident that we are going to analyze the data we have and look at the methodologies that might be employed for that purpose.

Mr. COMER. Mm-hmm. Well, I am confident that you can get the accurate count and I know the—a majority of Americans expect that because what America is seeing now, especially from my colleagues on the other side of the aisle, is a Congress that continues to spend at an unprecedented rate deficit spending.

They are seeing mayors in certain cities in the United States turn a blind eye to vandalism and violence, and they expect to be represented fairly and accurately in the U.S. House of Representatives, and this is very important.

I don't think anyone here questions the importance of the census. One thing that many of my colleagues on the other side of the aisle have tried to imply and imply falsely is that citizens would not be counted. The census is going to count everyone, correct, and not leaving anyone out?

Mr. DILLINGHAM. That is correct. That is correct.

Mr. COMER. But what the president—

Mr. DILLINGHAM. What the—

Mr. COMER. Exactly.

Mr. DILLINGHAM. Those few that you mentioned, perhaps.

Mr. COMER. Exactly. What the president's memorandum states and what the Census Bureau is going to implement is the fact that law-abiding citizens, legal citizens of the United States, should not be at a disadvantage with respect to congressional apportionment.

I think that the memorandum is constitutional. I think it is the right thing to do. If anyone out here questions how this is going to impact funding, it is not going to impact funding because we are counting everyone.

The memorandum is solely clearly focused on congressional apportionment, and we are talking about as many as 24 seats in the U.S. House of Representatives. It is a significant number of representatives in the U.S. House of Representatives.

So, I appreciate what you are doing. We feel, at least in my district, that this is the right thing to do. I think the majority of Americans feel it is the right thing to do, and we look forward to hearing further reports on the implementation.

You are doing a great job getting people counted and we look forward to the data that will be used to determine the correct apportionment as we move forward.

Madam Chair, I yield back.

Mr. DILLINGHAM. Ranking Member, could I offer one point?

The terminologies here vary but, again, the Presidential memorandum, in case I misspoke, is focused on the undocumented who lack legal status, differentiating on citizenship.

Chairwoman MALONEY. Thank you very much. The gentleman yields back.

I recognize my colleague, who is a chair of one of the subcommittees, Jamie Raskin, and I want to thank him for his leadership on the census.

He has had several hearings in his subcommittee and field hearings on the importance of counting the hard to count and the importance of the census on local and state delivery of services. So, I want to thank you for your leadership on the census. Thank you for joining us today.

Mr. RASKIN. I mean, I would just return the compliment, Madam Chair. You have really been an outspoken and just unabashed champion of the census at every turn in this Congress, and so thank you for your leadership.

I remember we have had several hearings on this and one of them was in New York City before the nightmare of the COVID-19 crisis took over.

So, Mr. Dillingham—Dr. Dillingham—welcome. A few simple questions. Is the word “person” synonymous with the word citizen in the Constitution, according to your—

Mr. DILLINGHAM. Congressman, I want to thank you and all you are doing for the 2020 census and I understand you also wear a hat as a constitutional scholar.

So, as I explained to the chairwoman earlier that it was a very dynamic display of democracy here today with differing opinions, both as to history and policy and legal analysis, and I understand that several lawsuits have been filed that would be looking at these definitions.

So, I have to beg off from offering any legal analysis or opinion myself because my job is to administer the 2020 census.

Mr. RASKIN. OK. Just my own little insight on it is that when the Founders of the Constitution wanted to use the word citizen they used the word citizen, like in Article 3 Section 2 establishing diversity jurisdiction in Federal courts where a citizen from one state could sue a citizen from another state.

But here, in Article 1 Section 2, the Founders said that the apportionment of representatives must be based on, quote, “the actual enumeration of the whole number of free persons.” Of free persons.

So, I mean, can we agree that if the president’s new interpretation is pasted onto the census, this will be a radical departure from everything that we have done for more than two centuries?

Mr. DILLINGHAM. This Presidential memorandum has nothing to do with our operation right now with the census. We are counting everyone. It has to do with a tabulation that has been requested on apportionment.

Mr. RASKIN. Right, and but for more than two centuries the census has counted all persons, right, and the administration’s attempt to try to impose a citizenship question even was invalidated by a Supreme Court that Donald Trump helped to construct himself. But that Supreme Court said that this was a lawless effort by the administration, right.

So—OK, so you—in other words, you are just going to remain agnostic on the constitutional question here?

Mr. DILLINGHAM. I think I have a—

Mr. RASKIN. Yes.

Mr. DILLINGHAM [continuing]. Professional obligation is the prudent thing to do.

Mr. RASKIN. OK. Would you pronounce, at least on this one? Has the text of the Constitution changed in the last two years?

Mr. DILLINGHAM. Not that I am aware of.

Mr. RASKIN. OK. And how long have you been with the census?

Mr. DILLINGHAM. Just over a year and a half at this point.

Mr. RASKIN. OK. But it is your understanding that noncitizens have always been counted in the census, according to the constitutional text?

Mr. DILLINGHAM. It is my understanding that the Presidential memorandum is requesting for a change in the tabulation and calculation of—for apportionment purposes.

Mr. RASKIN. OK. Let me switch over to talk about COVID-19. Are we taking care of our people sufficiently? Are we—are you training your census count takers in all of the proper COVID-19 precautions?

Mr. DILLINGHAM. We are certainly trying to. I think we are. But we are very vigilant on that. We are continuing to do assessments each and every day, seven days a week, certainly, with the data from the CDC, from Health and Human Services, the state data, the local government data.

We actually have a fusion center that is monitoring developments seven days a week. We have purchased the personal protective equipment. We have plans for obtaining more. We have a process by which everyone wears their mask.

So, yes, we are doing everything. We are very diligent and we want to make sure that those practices are not only in the training but we want to monitor. So, yes, I think we are doing an excellent job.

Mr. RASKIN. OK. The reason I ask is that I have heard from a field enumerator in training who has quit or is planning to quit because of COVID-19, and this person told my staff that despite, you know, your formal expressed commitment to taking care of everybody they are not getting any real training on how to minimize COVID exposure in their work. So, they are given the Purell and the cloth mask but no real instructions on how to conduct themselves to limit exposure. So, it would be great if you could get back to us.

Mr. DILLINGHAM. Yes. Sure.

Mr. RASKIN. Please do get back to us, if you would, with really what your plan is to fully educate the whole staff and to make sure that this is something we are on top of because enumerators can, obviously, become super spreaders if they are not following the right precautions.

Mr. DILLINGHAM. Congressman, we certainly will, and I will say that we do have challenges because a lot of our training is virtual training. But we are also improving that training and I will say when we are hiring, you know, 500,000—a half a million employ-

ees, I can't say there is never slippage. But we are doing what we can and we will continue to enhance if we identify any needs.

Mr. RASKIN. Do you have a publication like COVID-19 rules for the road or specific instructions?

Mr. DILLINGHAM. I don't have the training curriculum with me, but we can get you that.

Mr. RASKIN. OK. If you would share it with us—

Mr. DILLINGHAM. Certainly.

Mr. RASKIN [continuing]. Just so we get that out there. We want to make sure, one, that all of our enumerators are properly taken care of, and two, the public knows that so that no one is afraid to interact with them.

Mr. DILLINGHAM. Absolutely. And I might point out also, as I mentioned in the opening statement that, you know, we are in the early stages of launching the enumeration now. So, we are learning at this stage, and on August the 11 we will be, basically, enumerating nationally.

So, we have phased this in so that we can learn and it is a very dynamic environment with the virus and so we are learning as we go and doing what we can to make sure everyone is protected.

Mr. RASKIN. Well, I appreciate that, and you can become a model to the rest—

Mr. DILLINGHAM. Thank you.

Mr. RASKIN [continuing]. Of the government and the rest of the country. I appreciate it.

I yield back, Madam Chair.

Chairwoman MALONEY. Thank you. The gentleman's time has expired.

I now represent by video Congressman Gosar. Can you hear us? Congressman Gosar, you are now recognized.

Mr. GOSAR. I can hear you. Can you hear me?

Chairwoman MALONEY. Yes, we can. Thank you. You are now recognized.

Mr. GOSAR. Thanks, Madam Chairwoman.

Director Dillingham, we have heard the fear mongering for months from my friends on the left and the liberal media accomplices of the allegations that the responses to the 2020 decennial will fall behind previous decennials.

Could you elaborate, despite the fear being spread by those on the left, why the current self-response rate is in fact on par or slightly ahead of previous decennials at the same period of time?

Mr. DILLINGHAM. Let me say that, as we pointed out, the internet option that we have implemented this year, there was a lot of concerns of last year in ensuring that all the protections were in place, the technologies were in place, and we are very—to some extent, a little bit surprised how people prefer the internet option and in this environment it is by far the safest option and the most efficient option.

So, 80 percent of our self-responses are coming in via the internet. We still have the telephone option and in different times and right now, for various reasons, that is picking up a little.

But frequently people will use the telephone option to just ask questions about how they can do the internet option. So, we have that, and, of course, they can do the traditional paper option.

So, having those three options for self-response as well as expanding our mailings, our extensive outreach activities, are making a difference. So, we are very pleased to be where we are.

Mr. GOSAR. Can you hear me?

Mr. RASKIN. Yes.

Mr. GOSAR. Can you hear me?

Mr. RASKIN. Yes, we got you.

Yes, you can proceed.

Mr. GOSAR. Can you hear me?

Mr. RASKIN. Yes. Yes, you can proceed.

Mr. GOSAR. Oh, OK. I am sorry.

Now, we have heard for months from my liberal friends on the left that the integrity of the Bureau's network and backup system are inadequate to handle the online response. Did they—they

[Inaudible] with this fear before the census started, kind of like what we have been seeing today. Has the Bureau's system ever crashed as predicted by our liberal friends?

Mr. DILLINGHAM. No, it has not. It has been tremendously successful and, as I said, we have not had a—

Mr. RASKIN. Mr. Gosar, I think you need to mute one of your devices. I think you are getting feedback. I think you might have us on two different devices. There we go.

Mr. DILLINGHAM. We have had tremendous success with the three options and the favorite option for self-response is the internet.

[Pause.]

Mr. GOSAR. Director Dillingham, the majority likes to say that this administration does not want to count everyone. It does not want to reach hard-to-count communities.

Has anyone in the Trump administration, including Secretary Ross, ever suggested you do less than your highest level of effort to count everyone, including the—reaching the hard-to-count communities?

Mr. DILLINGHAM. Well, the latter part of that question is absolutely accurate. We are devoting tremendous effort all throughout the Census Bureau with seasoned professionals to make sure that we reach everyone and, particularly, the hard-to-count areas.

[Pause.]

Mr. RASKIN. Mr. Gosar, have we lost you?

[No response.]

Mr. RASKIN. Mr. Gosar? OK.

Why don't we proceed at this point then with Ms. Tlaib and we will come back to Mr. Gosar when we get him back up.

Ms. Tlaib, you are recognized now for five minutes.

Ms. TLAIB. Thank you, Chairman.

Dr. Dillingham, during our oversight hearing when you last testified on February 12 I asked you about the administration's failure to include a racial or ethnic category for individuals who identify under MENA, which is the Middle Eastern or North African category.

Following that meeting, I sent you a letter along with our Oversight Chairwoman Maloney inquiring why this decision was made, and I have to say I was pretty, you know, underwhelmed with the explanation.

Since then, I worked with Committee on Appropriations to ensure that this issue is a priority in the 2030 census and, currently, the Subcommittee on Commerce, Justice, and Science report does say, I quote, “The committee directs the Census Bureau to conduct a feasibility study on including a race category for individuals identified as MENA, which was not ultimately included in the 2020 census questionnaire.”

So, Dr. Dillingham, will you commit on record to do as the committee directs and conduct the study to include a race category for individuals who identify as MENA?

Mr. DILLINGHAM. Congresswoman, I do remember your request. My understanding was we did at least partially reply, and there may have been some other information that it may be in process.

Ms. TLAIB. No, I am asking you, we put this in the committee—

Mr. DILLINGHAM. Yes, with regard—with regard to Congress, I think you had indicated it was appropriators asking us. We are, certainly, very interested in looking at that topic and we are very beginning the process of looking at the 2030.

Ms. TLAIB. Yes. Yes. OK. Yes.

So, I just want you to know—

Mr. DILLINGHAM. Yes.

Ms. TLAIB [continuing]. Dr.—no, I hear you, because the 20—so the previous administration already decided to do it. You all just ignored it. So, are we—so just to be clear, like, right now we are saying the committee also expects the questions—the MENA category to be on the 2030. Will you support—

Mr. DILLINGHAM. I will support the research as to—

Ms. TLAIB. Will you support anything
[Inaudible]

Mr. DILLINGHAM. Yes, I will support the research into your issue and I do think that one of the improvements that was done is, in fact, the write-in. But I understand that you wanted more than that and we will look into it. Yes, ma’am.

Ms. TLAIB. So, also will you commit on record to do as the committee directs and conduct this study to include—I am sorry. The committee report also put in there that the committee also expects that the questions on sexual orientation and gender identity will also be examined for possible inclusion in the 2030 census.

Will you commit on record to do as the committee directs and examine for the possible inclusion question on sexual orientation and gender identity?

Mr. DILLINGHAM. Madam Congresswoman, we will look at that. That has been a topic that has, you know, been examined, continues to be examined, and we do have questions in some of our surveys that, in fact, get to the heart of those questions.

I think that there is a need to make sure that questions of that type would work with the census. But we will, certainly, study that.

Ms. TLAIB. I appreciate that.

Mr. DILLINGHAM. Thank you.

Ms. TLAIB. Thank you, and I kind of want to switch subjects now.

On April 13, 2020, Secretary Ross personally called leaders in Congress to tell them the administration needed additional time to

deliver redistricting data because of delays due to the coronavirus pandemic.

In order to honor that request

[Inaudible] 2020 members of the Oversight Committee introduced the fair

[Inaudible] census that

[Inaudible] 2020 the delivery deadline

[Inaudible] the administration had requested well into 2021.

Also, the census official leading field operations said in May, quote, “We have passed the point where we could even meet the current legislative requirement of December 31. We can’t do that anymore.”

Dr. Dillingham, briefly, do you agree with the assessments by—that has been put forth by your colleague, Mr. Olson? Why or why not?

Mr. DILLINGHAM. Congresswoman, if you could repeat the latter part of your question. But—

Ms. TLAIB. So, it is—yes, Tim Olson said, “We have passed the point where we could even meet the current legislative requirement of December 31. We can’t do that anymore.”

Do you agree with Mr. Olson?

Mr. DILLINGHAM. Congresswoman, I can assure you that we do—are doing continuous assessments and there had been—

Ms. TLAIB. So, you don’t agree with him?

Mr. DILLINGHAM. I can’t—I can’t agree with—we got many more assessments ahead of us here and we are proceeding with—

Ms. TLAIB. OK. Well—

Mr. DILLINGHAM [continuing]. As soon as possible—

Ms. TLAIB. Yes.

Mr. DILLINGHAM [continuing]. To conduct the census.

Ms. TLAIB. You know, he runs the field operations, Mr. Dillingham.

Mr. DILLINGHAM. He does.

Ms. TLAIB. Yes. And he is telling you this is bad—like, we are not going to be able to meet the deadlines. This is—I don’t know, it is common knowledge. I mean, if they are the ones on the ground with the direct contact with the people and the residents, I think you should listen to them.

Mr. DILLINGHAM. Congresswoman, I also—I always listen to him and he is a very important and knowledgeable member of the team.

Ms. TLAIB. But you are just—OK. Yes. Well, despite the operational delays, the White House is now stating that corona relief funds will allow the Trump administration to rush apportionment count by December before President Trump could leave the White House. So, it now appears that the administration is trying to finish before December 31.

You know what this is really about and I got to tell you, I just need you to choose your country first and making sure that—because, for me, it is not about reapportionment.

It is also about class sizes, health care, services for our residents, and I don’t—you know, the constant politicizing of our census has been disgusting and, really, undeserving. Our residents don’t deserve this kind of count.

Mr. COMER. Madam Chair?

Ms. TLAIB. They want to be counted. They want to be able to——

Mr. COMER. Madam Chair?

Ms. TLAIB [continuing]. Move forward and you have people out in the field telling you——

Mr. COMER. She is over time. Madam Chair——

Ms. TLAIB. Yes. I—well, I yield. I thank you very much.

Mr. COMER. Madam Chairman?

Mr. DILLINGHAM. Thank you. Thank you.

Mr. COMER. Madam Chairman?

Mr. SARBANES.

[Presiding.] This is—this is Congressman Sarbanes. I think I have taken over the chairing of the committee——

Mr. COMER. Who?

Mr. SARBANES [continuing]. If I am not mistaken, and would yield to Mr. Palmer next for his questions.

Mr. COMER. OK. Thank you. Just wanted to make sure. She was over time. Thank you.

Mr. SARBANES. Mr. Palmer, you are recognized.

Mr. PALMER. I thank the chairman.

Director Dillingham, for the record, and you can speak slowly so that all my colleagues understand it, but does the census intend to count everyone?

Mr. DILLINGHAM. Congressman, it certainly does.

Mr. PALMER. OK. So, for the record, we are counting everyone?

Mr. DILLINGHAM. We are counting everyone who lives in this country and it is their usual residence. That is correct.

Mr. PALMER. I thank the gentleman, and I think that is the proper approach for the Census Bureau, and I don't think we should make it about anything else but counting people who are in the country.

Now, let me ask you this. We have got the issue of undocumented people living here and, as I raised this point earlier in the first panel, a substantial number of those are transitory individuals who—about 18 to 20 percent of whom will not be here for the next census.

So, one of the issues that I wanted to ask you about is how does the Census Bureau count undocumented immigrants or people who live in that transitory situation where they are only here for a few years and then they are gone? Do you—do you deal with that at all?

Mr. DILLINGHAM. Well, Congressman, we—if someone is living here for a few years, in all likelihood they are going to be counted if they are usually residing here.

Now, that doesn't mean they have legal status. So, one of the reasons the president, I assume, who directed us to look at the administrative data or for issues similar to that, what is the status of some of the people that are usually residing in the country and is it an undocumented status or is it in the illegal status.

Mr. PALMER. So——

Mr. DILLINGHAM. And that is one of the things for the Presidential Memorandum.

Mr. PALMER. So, let me be clear. So, when there is someone here who is only going to be here, say, another year or two, they will

be counted in the census, even though—because you don't know when they are leaving, that they will be counted.

Mr. DILLINGHAM. That is correct.

Mr. PALMER. Now, this—I want to ask another question, then I will come back to that. But do you include short-term visitors? I mean, people here who are on student visas who might be here for a year getting a Master's or two years getting a Ph.D. or maybe even four years for an undergraduate degree. Do those—are those people counted?

Mr. DILLINGHAM. Congressman, usually a year makes a big difference. So, it—if they are usually residing here and April 1 they are residing here and it is their usual residence, we do count them.

Mr. PALMER. OK. Well, that raises and, I think, reinforces the point that I tried to make earlier about we should count everybody.

But we shouldn't count everybody for apportionment, because you just testified that you count people who are here on student visas for the census.

But I don't think—well, I won't say that I don't think anybody would reasonably argue that those people should be counted for apportionment because I think there are a number of people that are here now would say they should be.

But I think that raises this—a very serious issue for counting people who won't even be here maybe for the next election but they would be counted for apportionment and it would have a profound impact on representation in Congress for a number of states that—and I raised this point as well in the previous panel about states that are—declared themselves sanctuaries.

There are 20 metro areas, 60 percent of the unauthorized immigrants live in 60 cities—I mean, in 20 metro areas that have declared themselves sanctuaries, which creates this, I think, an incredible incentive for people to come there because they are going to be protected from Federal law enforcement, even those who have committed felonies. I mean, this doesn't make any sense to me.

But I do appreciate the fact, for the record, that you are counting everybody. I just think that I feel like, and I think a lot of my colleagues agree, that we shouldn't be counting people who are here temporarily or unlawfully for apportionment purposes.

I thank the gentleman and I yield back.

Mr. DILLINGHAM. Thank you.

Chairwoman MALONEY. [Presiding.] I thank the—the gentleman yields back.

The chair now recognizes Debbie Wasserman Schultz from remote.

Congresswoman Schultz?

Ms. WASSERMAN SCHULTZ. Thank you, Madam Chair.

Chairwoman MALONEY. OK, great.

Ms. WASSERMAN SCHULTZ. Director Dillingham, just a couple of weeks after the Supreme Court struck down the citizenship question, the administration issued an executive order that instructed the Commerce Department to obtain an estimate of the number of citizens and noncitizens by other means.

And Attorney General Barr was very clear about the purpose of doing that. He said, and I quote, "There is a current dispute over whether illegal aliens can be included for apportionment purposes.

Depending on the resolution of that dispute, this data may possibly prove relevant.”

You appeared before an Oversight Subcommittee just a few days later and were asked directly by Representative Pressley if you could confirm the citizenship data collected under the president’s 2019 executive order would not be used in apportionment counts and you responded, quote, “The—we produce, I, and apportionment counts. Let me get back to you on that.”

Mr. DILLINGHAM. Yes.

Ms. WASSERMAN SCHULTZ. Unquote. When you testified on July 24, 2019, were you already aware of the president’s plans to exclude undocumented immigrants from the apportionment counts?

Mr. DILLINGHAM. No, Congresswoman, I was not.

Ms. WASSERMAN SCHULTZ. When did you first become aware that the president, the Commerce secretary, or anyone else in the administration was planning to exclude undocumented immigrants from the apportionment counts?

Mr. DILLINGHAM. Well, I was only formally aware upon issuance of the Presidential memorandum. But there was—I was——

Ms. WASSERMAN SCHULTZ. When did you first become——

Mr. DILLINGHAM. There was a press story a couple of days earlier.

Ms. WASSERMAN SCHULTZ. Reclaiming my time. Reclaiming my time.

When did you first become—not formally, but when did you first become aware that the president, the Commerce secretary, or anyone else in the administration was planning to exclude undocumented immigrants from the apportionment counts?

Mr. DILLINGHAM. I heard—there was a story in the local press here in the D.C. area, perhaps a Capitol Hill newspaper or, as I recall, someone reported a story that such a directive may be coming down. And it was on a—as I recall, it seemed like it was late on a Friday and I was waiting to learn more, and then a few days later the directive was issued.

Ms. WASSERMAN SCHULTZ. You are the director of the census, you learned about the president’s intent to issue an executive order from the—to exclude undocumented immigrants from apportionment counts in a newspaper article?

Mr. DILLINGHAM. Actually, when I saw the formal——

Ms. WASSERMAN SCHULTZ. Is that correct

[Inaudible]

Mr. DILLINGHAM. The formal decision, when it was posted on the Web.

Ms. WASSERMAN SCHULTZ. So, no one gave you a heads up? You had no discussions prior to formal notification or seeing a newspaper article?

You had no discussions with anyone at all prior to either seeing a newspaper story or a formal production of the executive order?

Mr. DILLINGHAM. That is absolutely correct.

Ms. WASSERMAN SCHULTZ. You are under oath. You are under oath. You had no——

Mr. DILLINGHAM. Absolutely. Absolutely, and I will swear to it all day long under oath.

Ms. WASSERMAN SCHULTZ. OK. Just making sure that we are clear. That is unbelievable to me that you are the director of the Census and you didn't hear anything about this before the formal execution of the EO or a newspaper article.

Mr. DILLINGHAM. That is correct.

Ms. WASSERMAN SCHULTZ. And that is because the decision to exclude undocumented immigrants from apportionment counts is, clearly, unconstitutional. As a Federal officer, I am sure you took an oath.

You certainly took one here today, but you took an oath to uphold and defend the Constitution. Do you not have the obligation as the Census director to know how the data your agency collects will be used?

Mr. DILLINGHAM. At no time—

Ms. WASSERMAN SCHULTZ. And how do you reconcile this memorandum—let me finish my question, please. How do you reconcile the recent memorandum with the oath that you swore to uphold?

Mr. DILLINGHAM. Congresswoman, let me explain that the Census Bureau produces statistics and data. We have no control over its uses.

Ms. WASSERMAN SCHULTZ. It certainly is your responsibility to know that the data that you collect is used according to the Constitution, isn't it?

Mr. DILLINGHAM. I am aware of the provision for apportionment in the Constitution, yes. Yes, Congresswoman.

Ms. WASSERMAN SCHULTZ. Your obligation under your oath is to make sure that you are—the data that you are collecting is that you are aware of how it will be used. How do you reconcile the recent memorandum with the oath you swore to uphold? Or are you just a data receptacle?

Mr. DILLINGHAM. Congresswoman, like any Federal statistical agency, we produce the best, most comprehensive, complete, and accurate data possible and we have received this request in a Presidential memorandum to look at our data.

Ms. WASSERMAN SCHULTZ. Right. I understand that. Reclaiming my time.

I understand that you have received that request.

Mr. DILLINGHAM. Yes.

Ms. WASSERMAN SCHULTZ. You are responsible for the decennial census.

Mr. DILLINGHAM. That is correct.

Ms. WASSERMAN SCHULTZ. And the use of the data according to the Constitution. This executive order is not compliant with that, and I think anyone looking at the pattern of the administration's actions can see that this memorandum is an attempt to do an end run around the ruling of the Supreme Court and the requirements of the Constitution.

I only hope that someone leading the Census Bureau, and if not you then someone else, will stand up and follow the law, not follow a lawless president.

Thank you. I yield back the balance of my time.

Mr. DILLINGHAM. Thank you, Congresswoman.

Chairwoman MALONEY. The gentlelady yields back.

Grothman? Mm-hmm.

Mr. GROTHMAN. Thank you. Always enjoyable. I am going to followup on what the—some of the questions the gentleman from Alabama asked.

If I am in the military and I am from Wisconsin, and I am stationed a variety of places over a period of years, never in this country—stationed in Germany, stationed in Korea—but I just decide to keep Wisconsin as my permanent address—I may pay taxes in Wisconsin, I may vote in Wisconsin, even though I am not there—where should they count that person for the purpose of the census? Or since they are never sleeping in the United States should they not count them at all?

Mr. DILLINGHAM. We have special provisions for counting the military, and there is special criteria that, certainly, our leadership has been implementing for a period of years, that how they count people from either place of deployment or their legal residence. We can get back to you with the exact criteria, but we do count the military.

Mr. GROTHMAN. Is that—is that statutory or is that just a rule?

Mr. DILLINGHAM. I will get back to you if there is a statutory basis for it. But it is one of—it is our criteria.

Mr. GROTHMAN. It is kind of relevant as to whether it is statutory or a rule, isn't it?

Mr. DILLINGHAM. It is.

Mr. GROTHMAN. Very, very relevant.

Mr. DILLINGHAM. We have a practice—accepted practice.

Mr. GROTHMAN. Yes. I would like to know that.

Mr. DILLINGHAM. OK.

Mr. GROTHMAN. Second question, as far as students are concerned.

Mr. DILLINGHAM. Yes.

Mr. GROTHMAN. If somebody lives in Wisconsin but goes to school in Ohio, you know, returns over summer break, returns over—you know, probably given how much people go to school nowadays it might be half the time spent at both places, and that person, therefore, I think, probably should file taxes in Wisconsin and vote in Wisconsin. But you are saying that person should be considered a resident of Ohio?

Mr. DILLINGHAM. Well, we—the enumeration criteria does not match the tax requirements, and what we do with college students it is where they usually reside and we look at April 1.

So, basically, to simplify we generally count, particularly full time college students, where they are residing and if they are on a college campus outside of their state that is where we count them.

So, that at University of Wisconsin, you will have a lot of students from Ohio that would be counted there. It is really to capture the count for that locality.

Mr. GROTHMAN. OK. I would say it is about 50/50 and let us say they are on Spring Break on April 1. That doesn't matter, though, if they are home with their parents for a week on April 1?

Mr. DILLINGHAM. The April 1 is, particularly with the pandemic, is not quite as determinative as to where their usual residence is.

Mr. GROTHMAN. OK. So, you are saying—OK. Interesting.

And with regard to diplomats, if somebody is from France, has been living in an apartment in Virginia for six months, you count that person for the census or for six years even, you count that person as a Virginia resident for purposes of the census?

Mr. DILLINGHAM. It is based on their usual residence. I think there are some exceptions for consulates and embassies that people are actually living in an embassy. But we do count, again, people where they usually reside.

Mr. GROTHMAN. OK. So, if a student comes here from France and is here for three months and then leaves for three months and comes here for three months, where are they counted?

Mr. DILLINGHAM. Well, that might be a tough question as to where they usually reside. But I will—

Mr. GROTHMAN. Usually reside means where they physically are?

Mr. DILLINGHAM. Where they usually physically are. Correct.

Mr. GROTHMAN. I talked to people a while ago on the last panel—I think I have this right—and I gave an example in which someone from Iowa, an Iowa resident all the way, car registered in Iowa, votes in Iowa, pays tax in Iowa, they come to Wisconsin because mom is in home hospice and they want to take care of their mom at the end of their life. They intend to return to Iowa. At what point, for the purposes of the census, is that person going to be counted in Wisconsin instead of Iowa?

Mr. DILLINGHAM. Well, it is probably going to be where they claim that they usually reside.

Mr. GROTHMAN. They don't even know yet, right. They are just kind of hanging—they don't know yet. They are hanging you out in Wisconsin with mom.

Two months in? Four months in? When they are there for six months—

Mr. DILLINGHAM. Well, yes. If it is hard for—to determine. Usually—

Mr. GROTHMAN. It is not hard—it is not hard for the Wisconsin Department of Revenue to determine. It is not—it is not difficult for people who vote to determine where they should be.

Just a minute. We will wait here for a second.

[Pause.]

Chairwoman MALONEY. Can someone mute their—there is a disruption. Can someone mute their devices, please? Please mute your devices.

[Pause.]

Chairwoman MALONEY. Please mute your devices, please. OK.

I am sorry. You will get extra time, Mr. Grothman. I am sorry.

Mr. GROTHMAN. You did a good job there. You have a career in law enforcement waiting for you if you ever move on from here.

Yes, in that situation at what point does that person say, I am counted in Iowa instead of Wisconsin, or Wisconsin instead of Iowa?

Mr. DILLINGHAM. It will be an individual factual circumstance. I might add, generally, that might help with this is that when people, particularly students, move, for example, to Madison, Wisconsin—they are from out of—Madison, Wisconsin, and they are from out of state, generally, there are sort of tradeoffs.

So, if they come from another state, that they are not counted where they are perhaps paying taxes or their parents live, they would be—and vice versa, so that is sort of the reasons, I think, behind the criteria.

Mr. GROTHMAN. OK. I will give you a final question because people were asking about this race stuff. Obviously, you know, with intermarriage so many people in this counter are interracial. Who determines what so-called race you are?

Mr. DILLINGHAM. The respondent determines and can write in.

Mr. GROTHMAN. Whether you are one-eighth something? Whether you are—

Mr. DILLINGHAM. The respondent determines.

Mr. GROTHMAN. It has nothing to do—it is entirely subjective, unlike where I live?

Mr. DILLINGHAM. That is correct.

Mr. GROTHMAN. I could be one-sixteenth Mexican, I am Mexican, I am Mexican?

Mr. DILLINGHAM. That is correct.

Mr. GROTHMAN. OK. Thanks.

Chairwoman MALONEY. I want to thank the gentleman for his line of questions. It was interesting. I would like to add to it Americans living abroad that were assigned to—are American citizens but they are working abroad or maybe just vacationing abroad for several years. Where are they counted?

Mr. DILLINGHAM. Actually, they are not counted if they are not—if they are not usually residing in the U.S., and one of the reason, there has been much research and there has been prior case law on that, as I understand it, but at the same time we have people from those countries that may be living here with the same circumstance.

So, we only count those residing in the country, and if they are—if they are abroad for years of study or whatever purpose that we don't count them.

Chairwoman MALONEY. Thank you.

Congressman Sarbanes is recognized.

Mr. SARBANES. Thank you. Thank you, Madam Chair. Thank you, Dr. Dillingham.

I wanted to talk to you about the time lines that you are working under. Could you review for me the—am I understanding it correctly that the field operation that was originally scheduled to finish, I guess, maybe the end of July was pushed to October as a result of these dynamics that you are—you have referred to?

Mr. DILLINGHAM. Congressman, we did have a shift in schedule because of the pandemic. So, in late March, we had to really call a halt to our operations that required human interactions for reasons of safety, just like the rest of the country, the governments and the businesses.

We, basically, had to suspend our operations, and at a point in time we had to start to begin our assessment process, well, when do we think, with the current knowledge, we can restart and complete the process.

And as you are well aware, nationally, and, certainly, with the president's task force they begin to lay out criteria and guidance for what we call reopening and resuming our operations, and we

are really in the forefront of the Federal agencies in getting back to business and opening our 248 offices all across the Nation.

We have to do it safely and we have to do it, and also we will have to enumerate safely.

Mr. SARBANES. Was there also a request by the administration—I think it came to Congress—to push back by two or three months tabulations related to the apportionment and that process from what it would normally be?

Mr. DILLINGHAM. Congressman, those—my understanding is there were discussions but that wasn't at my level, and so that is my understanding that there had been some discussions and consideration of that and has been also reported in the news.

But that is not something I personally participated in.

Mr. SARBANES. Is it also true—and then is it also true that very recently the administration appears to have reversed direction on that and is now suggesting that they want the census to be wrapped up quickly so that that tabulation that I just referred to could actually happen before the end of the year? Are you aware of that?

Mr. DILLINGHAM. I am not aware of all the many reasons except to say that the Census Bureau and others really want us to proceed as rapidly as possible and to get this—get a complete and accurate count as soon as possible.

Mr. SARBANES. Mm-hmm. Do you worry about the census being compromised if there is pressure to finish it too quickly and what would that date be, in your mind?

Mr. DILLINGHAM. I don't have a date in—

Mr. SARBANES. How much time do you need? How much time do you need to give us the assurance that the census can be conducted in a way that yields a robust result?

Mr. DILLINGHAM. Well, Congressman, we certainly want a complete and accurate census. So, that will be, certainly, a consideration as to when we consider the job is done.

Mr. SARBANES. Mm-hmm. Well, I mean, my anxiety here is that the administration originally seemed to be reasonably accommodating the pressure of the pandemic on your efforts by requesting some extension of time with respect to how the results are tabulated for certain purposes.

That was in line with your own judgment that you needed to push the field operations back by two or three months. So, that was consistent.

But now we are hearing that they are looking for money to push the process forward and what I am concerned would be a very premature way and would actually undercut your ability to get this done properly.

So, you are sort of being whipsawed right now between these two different impulses and I am alarmed at that and I think it could undermine the census.

So, we are going to keep a very close eye on this and try to protect the independence of this process from the—this politics that are leaning in on you right now.

With that, I will yield back.

Mr. DILLINGHAM. Thank you.

Chairwoman MALONEY. I want to thank the gentleman for raising that important point. The census professionals have told me that they need at least 10 weeks to do a professional count and they are starting on August 11, and there has been some rumors of trying to complete it by December 31.

The professionals that I have talked to in the Census Bureau say that that is impossible, that they need to have the full 10 weeks to get the—they expect to knock on the doors at least six times to get an accurate count.

We are supporting, really, Secretary Ross's suggestion and request to extend the time for the census. So, there are others that say that for political reasons the president wants it—to have this earlier so that he can make determinations about what information is sent to the states, and I think that is, clearly, unconstitutional and wrong.

I want to thank you, Mr. Sarbanes, for helping me out earlier and becoming the chair. Thank you for your work and for your questions.

I now recognize Congressman Higgins.

Mr. HIGGINS. Thank you, Madam Chairwoman.

Dr. Dillingham, are you present today voluntarily or by subpoena, good sir?

Mr. DILLINGHAM. I am sorry. I am going to have to ask you to repeat that question.

Chairwoman MALONEY. He asked if you were here voluntarily or by subpoena.

Mr. DILLINGHAM. No, I am here voluntarily.

Mr. HIGGINS. I can repeat my questions, Madam Chair. Thank you.

Chairwoman MALONEY. OK.

Mr. HIGGINS. Are you here voluntarily or by subpoena, good sir?

Mr. DILLINGHAM. I am here voluntarily. That is correct.

Mr. HIGGINS. I think it is important that America recognizes that you are voluntarily appearing at a hearing that is titled "Counting Every Person: Safeguarding the 2020 Census Against the Trump Administration's Unconstitutional Attacks."

Are you a gentleman of integrity and good faith, sir?

Mr. DILLINGHAM. Certainly, I strive to be. I think I am. I have had the distinction of being confirmed by the U.S. Senate unanimously on two occasions, the first time in 1990 by the committee that was chaired by then Senator Biden, and then most recently by Senator Ron Johnson.

I have served six administrations so I have considerable experience, and I think they determined that I met the qualifications by statute as well as their criteria for being unbiased, objective, and professional.

Mr. HIGGINS. Thank you for your service and that clarification. You are a gentleman of distinguished accomplishment and we very much appreciate your participation in the effort to secure an accurate and very thorough census.

You are this administration's director for the U.S. Census Bureau, U.S. Department of Commerce. Is that correct?

Mr. DILLINGHAM. That is correct.

Mr. HIGGINS. So, you are—you are the main guy representing the, quote, unquote, “Trump administration” as you sit before this committee today?

Mr. DILLINGHAM. Congressman, I will say that my statute—my selection was to be nonpartisan and the agency is nonpartisan and a pretty independent statistical agency.

Mr. HIGGINS. As it should be. But you represent the administration’s best effort to sure an accurate census. Is that correct?

Mr. DILLINGHAM. For an accurate census, absolutely, Congressman.

Mr. HIGGINS. And you intend to do just that, sir? You stated—you quoted that the president’s directive, which stated, in part, “to provide information permitting the president to the extent practical to exercise the president’s discretion to carry out the policy of the exclusion of illegal aliens from the apportionment base to the extent feasible and to the maximum extent of the president’s discretion under the law.” That is a quote from the president’s directive.

You stated that this does not change the Census Bureau’s plans for field data collection across the Nation. Do you stand by that statement, sir?

Mr. DILLINGHAM. Congressman, I do, that our operations will continue as planned in the context of this Presidential memorandum. It does not impact. It really is a request for a special tabulation for apportionment purposes, which is apart from getting a complete and accurate count of people living in our Nation.

Mr. HIGGINS. Exactly. I very much appreciate you appearing before the committee today in service to our Nation, doing your very best to lead a large team of dedicated Americans to determine a precise count for our census.

Your appearance before the committee today, despite the fact that this was a premeditated effort to identify President Trump’s administration and the census efforts to be unconstitutional, I applaud your courage for appearing today minus a subpoena.

My final question to you, sir, you stated in your written—in your written testimony that the Census Bureau is working to complete data collection as soon as possible and it strives to comply with the law and statutory deadlines. Is that—does that quantify your efforts, sir?

Mr. DILLINGHAM. You are exactly right. That is what we are trying to do, and the final question was we are proceeding in that direction, if that answers your question, sir. I am a little bit—I have a hearing problem. I did volunteer for a year’s service in Iraq and sometimes the—

Mr. HIGGINS. That makes two of us.

Mr. DILLINGHAM [continuing]. Acoustics here are challenging.

Mr. HIGGINS. That makes two of us.

Sir, thank you for appearing before us today.

Madam Chair, I yield.

Chairwoman MALONEY. Thank you.

Mr. DILLINGHAM. Thank you, Congressman.

Chairwoman MALONEY. Thank you, and we now recognize Congressman Welch.

Mr. WELCH. Thank you very much, Madam Chair, for this hearing and, Dr. Dillingham, thank you for appearing voluntarily.

A couple of things. One, just an observation. I know you can't speak about the administration's position on many of these issues. You have got to just do the job as best you can.

But I note the irony that the position of the administration, essentially, is that undocumented immigrants are not, quote, "persons." They are not persons. In that respect, that analysis shares—it shares the finding of the U.S. Supreme Court in *Dred Scott*, which was the most ignominious decision of the Supreme Court in our history, which said that African Americans were not persons.

So, I think that I am just saying that because I think you should understand—all should understand why we are appalled by that administration position.

What I would like to ask you about specifically, Doctor, is the challenge of getting an accurate count in rural areas, and Vermont is quite rural and our response rate is, I think, 47th in person and 40th on the internet, and we have challenges with access to broadband in many parts of our state, and we also have migrant workers who are helping us in our agricultural sector. I understand that your Census Bureau Center for Economic Studies predicted a 2.3 percent drop in self-responses and an eight percent drop in responses in households with noncitizens, including—that includes legal noncitizens.

My question to start is have the census self-response rates lagged in rural areas and what among—that is No. 1, and how are you going to address that?

Mr. DILLINGHAM. Sure. Congressman, we track the areas all across the country and we do it by census tracts, and anyone in the country can go to our website and they can see how their jurisdiction, their tract, their community is doing with self-response rates.

I don't have the figures here before me, but we are well aware that in some rural communities you have special challenges and we have very special procedures that we do.

I discussed earlier, maybe in my prepared statement, about our update leave and we also have various ways that we are—increased mailings that we are doing in the low-response areas and we have a variety of things that we will be enlisting in the weeks ahead.

Beginning August the 11th we should be in all communities, and I hope that we have already made progress in most of the rural communities. But we will do everything we can according to our best abilities and informed by the knowledge of the past and the previous decennial census and current data.

Mr. WELCH. Well, just to interrupt—

Mr. DILLINGHAM. Yes.

Mr. WELCH [continuing]. What are some of the specific things? It is hard. I mean, it is hard to get access to people who are quite skeptical, even suspicious, of government and anyone coming from the Census Bureau is perceived by many to be a government person.

So, what are the specific things you are doing, particularly among the immigrant community to find them and count them?

Mr. DILLINGHAM. Certainly. One of the—the most important thing, well, we have our communications campaign and we have very targeted communications even on local radio and whatever

communications those communities—that will resonate with them and they will get the information.

In addition to that, we, of course, have a partnership specialist, usually selected from those areas, that have knowledge of those areas. We are also, very importantly, using our partners.

With 400,000 organizations, the largest ever, those organizations literally reach into every community in this country. Now, I will say that during the pandemic—

Mr. WELCH. I only have a few minutes. I only have a few—I only have a few seconds. Just—

Mr. DILLINGHAM. I am sorry.

Mr. WELCH. If you are unsuccessful in getting a full count, how does that undercount adversely affect communities or states like Vermont?

Mr. DILLINGHAM. Well, if you have an undercount, you know, the census data is some of the most used data, if not the most used data, at least indirectly, in the country.

So, it is used for, certainly, the allocation of resources—Federal, state, and local. It is used for planning. It is used for research. It is used for decisionmaking.

So, there is a—and it is used in the private sector. So, it is very useful, and our theme that in the message we send is “Help Shape Your Future: Answer the 2020 Census.”

We are trying to communicate that messages and our partnerships are doing a lot in that effort in that we will have, you know, a half million people for where we haven’t received the responses knocking on the doors. But we have more than that in our partnerships.

Mr. WELCH. Thank you, and I yield back.

Thank you, Madam Chair.

Chairwoman MALONEY. We thank you, and we now recognize Congressman Roy I believe by WebEx.

Congressman Roy?

Mr. ROY. Yes, ma’am. Thank you, Chairwoman. Appreciate it.

Dr. Dillingham, thank you for your stamina here. I think this hearing has been going for a little while. I was present for the first panel, dialing in for the second one, but appreciate your presence and your service to our country.

I had just a couple of questions. You know, I asked some questions to some of your predecessors earlier. I just want to make sure I understand this correctly.

Am I right in my understanding, and kind of leaping off of Mr. Welch’s questions, that when you don’t actually come in contact with a person, don’t get a response, go to a house, don’t find it, that there are systems in place in the Census Bureau, for better or worse, right—we could debate the efficacy—where you have imputation?

Essentially, where you go through count imputation, whether that is status count imputation for, you know, literally you can’t find the address of the house, or occupancy imputation where you find the house but you can’t find a person, or, you know, household size imputation where you don’t know how many people are there, and that it is practice to impute the numbers or, you know, the—

what you find in one house in a neighborhood to the house you don't find or to the individuals you don't find.

And that there is a second category, characteristic imputation, where you are imputing the characteristics of people in the neighborhood, say, there are five white folks in a house over here. We are going to say that there are five white folks in this house by imputation.

Am I, roughly, right? I mean, just a short yes or no and a brief explanation, if you need it. Am I, roughly, right that that is something that you carry out and engage in for a not statistically insignificant number of the people you are, quote, "counting," unquote?

Mr. DILLINGHAM. Congressman, I would have to qualify my answer to that. We do use an imputation process when we have exhausted all efforts at counting the individuals at that residence, as you pointed out.

So, there is a process. The numbers are low and we hope they remain extremely low. But there are times when we have reason to believe, evidence, that someone is living in a household but we are unable to communicate with them. Then, in fact, we do have an imputation accepted method that has been accepted by the courts.

Mr. ROY. Doctor, I am sorry to interrupt because we have limited time. I hate this. I would rather have just a nice long conversation.

Mr. DILLINGHAM. Sure.

Mr. ROY. Do we have a rough estimate of how many that we are talking about here? Are we talking about hundreds of thousands? Are we talking about millions? When we are talking about counting the uncountable, right—that is a phrase I have heard used in the census world community and so forth—what are we talking about here on the rough numbers?

Mr. DILLINGHAM. Well, I can get you more precise numbers. But we are not talking millions. We are talking about those where we have exhausted our efforts and we have reason to believe people are living in that household and then in those instances there is an imputation option.

Mr. ROY. OK. I would appreciate a response to that about how many numbers and broken down to the extent possible we count imputation and characteristic imputation and, you know, the various methods you all use to fill in those holes.

Another question is, Dr. John Abowd, is he—am I correct that that is the individual overseeing the special tabulation for redistricting?

Mr. DILLINGHAM. I am not sure if he has direct management of that. But he is over our research and methodology section that contributes to that process.

Mr. ROY. Did Mr. Abowd testify against the efforts by the administration to count or to ask the question of citizenship on the census last year when it was in litigation?

Mr. DILLINGHAM. I am aware that he was a witness in that case, yes.

Mr. ROY. And he testified against inclusion of that question?

Mr. DILLINGHAM. I have not reviewed his testimony but I think it was considered by many to be—that it raised questions.

Mr. ROY. OK. I just think it merits noting that he has got an intimate involvement in how we are overseeing the tabulation for re-districting and he was testifying against inclusion of the question, which is an administrative decision, and I think bears some questioning as to how this process is being carried out.

I don't know how much time I have left, probably not a lot. I will go ahead and end with that. I would appreciate your response to that question, generally, and I do appreciate your taking time in being here. Thank you.

Mr. DILLINGHAM. Thank you, Congressman.

Chairwoman MALONEY. Thank you.

I now recognize the vice chair of the committee, Congressman Gomez from—by remote.

Mr. GOMEZ. Thank you, Madam Chair.

Mr. Dillingham, thank you for being here with us.

Mr. DILLINGHAM. Thank you.

Mr. GOMEZ. There is a lot of uncertainty, but one thing is definitely clear, that if the Census Bureau is not allowed to continue its count through October and has time to produce the data and they have—as you requested, there is going to be a significant undercount when it comes to the population of the United States.

So, I am going to ask you a series of questions that I need answers to.

Mr.—Dr. Dillingham, it is my understanding that OMB sent language to the appropriators requesting an additional \$448 million in funding but not granting your request to extend the statutory deadline for the data.

Did you see the OMB language before it was sent?

Mr. DILLINGHAM. No. No, I did not. But I am aware we put in a request for a—

Mr. GOMEZ. All right. Thank—

Mr. DILLINGHAM [continuing]. A billion dollars and I got approximately half of that in the Senate bill, I guess.

Mr. GOMEZ. OK. Good to know.

So, you didn't see it. So, therefore, you did not approve it, correct?

Mr. DILLINGHAM. Let me—let me ask you again. Will you describe what it is? I am aware that we were requesting additional funds as part of the appropriations process. I wasn't involved in the discussions, negotiations.

Mr. GOMEZ. Correct. Also in your request—hold on. Your request was also to extend the statutory deadlines for the dating and they sent it without including that language. So, you are saying that you never saw the language before it was sent. So, has the record—

Mr. DILLINGHAM. I will—let me—let me—

Mr. GOMEZ. I have to go on to the next question.

Mr. DILLINGHAM. Sure.

Mr. GOMEZ. Have you discussed with Leader McConnell the need—

Mr. DILLINGHAM. Let me correct. Let me correct.

There have been discussions about the schedule and our ability to continually assess it. So, I am aware of that topic.

Mr. GOMEZ. Yes, but you did not see the language before it was sent, as you stated. Have you discussed with Leader McConnell the need for the extension?

Mr. DILLINGHAM. Have I discussed with who? Excuse me.

Mr. GOMEZ. Leader Mitch McConnell in the Senate. The need for the extension.

Mr. DILLINGHAM. Oh, I have—I have not discussed with House or Senate leadership any specifics about that.

Mr. GOMEZ. OK. In this new plan, is it the idea of career Census officials that are pulling back the enumeration date, like not granting the extension, to do the in-person enumeration through October and to ask for—originally requested for a four-month extension to get the data to Congress by April 21? Is the new deadlines and new plans, is that the idea of career Census officials?

Mr. DILLINGHAM. I can, certainly, say that in discussions we have made assessments along the way and they have discussed with the House and Senate staffs who we have briefed on a weekly basis, and I am sure probably—I am not privy to those discussions but I am sure the topic of extension time and a shift in schedule were discussed.

Mr. GOMEZ. Is the new schedule one prepared by career Census officials?

Mr. DILLINGHAM. I will say that we make assessments and, certainly, our career officials are involved in those recommendations. Absolutely. We listen to our career people as to where we—their assessment as to where we are.

Mr. GOMEZ. So, are you still sticking to the Bureau's request for Congress to—for a four-month extension to April 2021 off of the December 31 statutory deadline for delivering the president the populations total required to reapportion the House of Representatives?

Mr. DILLINGHAM. Congressman, to be clear, someone asked me earlier am I aware that discussions have been held between the administration and Congress.

Mr. GOMEZ. OK. Let me ask you again.

Mr. DILLINGHAM. I am, but I am not party to those.

Mr. GOMEZ. I reclaim my time.

Mr. DILLINGHAM. Yes.

Mr. GOMEZ. You support your original request, the Bureau's, which you are in charge of—

Mr. DILLINGHAM. Yes, correct.

Mr. GOMEZ [continuing]. Request to Congress to extend the delivery of the data to April 2021?

Mr. DILLINGHAM. Congressman, all requests, as my understanding, go through the Office of Management and Budget. We do not directly—

Mr. GOMEZ. I am asking you, do you still stand by your original request? I yield—I reclaim my time. Do you still stand by that extension deadline request that you made—the Bureau made?

Mr. DILLINGHAM. We have, for planning purposes, made assessments and continue to do so.

Mr. GOMEZ. Yes, sir. I am looking for a yes or no. It seems like there is a—there is an obvious pattern that you are not in control

of the Census Bureau and that the political appointees of this administration are.

You know your name will go down in history if this is the worst census ever conducted by the U.S. Government. You are not going to run away and just—and say that this was only because of the Trump administration later on. You will be responsible. Your name will be associated with it.

So, we are going to keep pushing until we have accountability and a complete and accurate count of every person in the United States.

With that, I yield back.

Mr. DILLINGHAM. That is our mission, Congressman, and let me say that I am not involved directly with the Hill negotiations on the—on revising the schedule.

Chairwoman MALONEY. I thank the gentleman for his question and his passion, and now I recognize Congresswoman Miller.

Mrs. MILLER. Thank you, Chairwoman Maloney, and thank you, Ranking Member Comer.

Dr. Dillingham, I want to personally thank you for what you are undertaking to do that is a Herculean effort to complete the census this year in the midst of a pandemic. I wish you all the best of luck and Congress stands ready to support you any way we can in any essential information or mandate once this is completed.

My district is a representation of how difficult the census can be to compete. Four of my 18 counties in my district have 100 percent of their population living in hard-to-count neighborhoods.

I spent last year making sure that I visited each one of these counties and I can tell you from firsthand experience how rural my community in West Virginia is, and this has only been exacerbated by the coronavirus and the pandemic but, actually, in a way, it helped us with this because we were very slow to get the pandemic and we haven't had it to the proportion that has gone on in the country.

It is critical that we count each of our constituents and then once we have that count that we are apportioning congressional seats to each of the states fairly.

As an American citizen, the representation you have in the Federal Government should always be fair and accurate. Counting people living in the United States illegally in apportionment is an attack on our democratic institutions and seeks to take away the vote, the voice, of the American people.

I strongly support President Trump's actions to protect the sanctity of our constitutionally mandated process for apportionment and protecting the voice and the representation of the American people in Congress.

Is the first 2020 census counting of all the people in the United States, regardless of legal residency status? Yes or no.

Mr. DILLINGHAM. Congresswoman, I don't want to get into the details of people that may be not establishing residency, may be temporary. That was another discussion with a Congressman.

But your question, I think, goes to the heart also of the last question and comment. We are absolutely dedicated to a complete and accurate count of the people residing in the United States, and I do think that we are poised—we were poised, I think, not to have

one of the worst but, in fact, to have the very best census ever and that remains our goal.

So, we have not only embraced all sorts of innovations, all sorts of technologies, but our goal is to have the very best count possible, a complete and accurate count of everyone.

Mrs. MILLER. Thank you.

Does the apportionment process play any role in how the census is conducted or is congressional apportionment only tabulated once the census count has been concluded?

Mr. DILLINGHAM. We do the complete census count of everyone and then we are looking, particularly as pointed out, at other data sources to determine whether we can identify a group that the president has recommended to subtract from the apportionment count.

It is a tabulation. So, we will have a complete and accurate count but we are also working to determine the data and methodologies that might supply that additional information.

Again, we are a statistical agency and a data-producing agency, not a policy agency.

Mrs. MILLER. And that is how you will be able to implement the apportionment memorandum, correct?

Mr. DILLINGHAM. That is the way we are proceeding. You are correct, Congresswoman.

Mrs. MILLER. All right. Thank you.

I yield back my time.

Chairwoman MALONEY. Congressman Lynch is recognized via remote. Congressman Lynch?

Mr. LYNCH. Thank you, Madam Chair.

Chairwoman MALONEY. OK.

Mr. LYNCH. Yes. Can you hear me? Can you hear me?

Mr. DILLINGHAM. Yes, I can. Yes, I can.

Chairwoman MALONEY. Yes, we can. Yes, we can.

Mr. LYNCH. OK. All right. Thank you.

Dr. Dillingham, back in June—so I represent, along with Congresswoman Pressley, I represent the Boston area.

Mr. DILLINGHAM. Sure.

Mr. LYNCH. We have got hundreds of thousands of students that normally attend school within my district and Ms. Pressley's district as well.

So, Boston is traditionally one of the more difficult larger cities to count, I think, partly because of the influx of students.

You sent a letter back in June to the college presidents asking them for their cooperation in tendering the rolls—the roll of students, the lists of students that are attending and their addresses as of April 2020.

I just would like to get some update on how that is going. I am a bit concerned because we are experiencing right now an undercount in the process.

I have been working with our fantastic Secretary of State Bill Galvin. This is his third stint. He has been around a while, like me. He does a great job on this.

But we got running behind our historic count levels compared to previous census operations, and I am just wondering how we are making out on the student assessment in terms of tracking them.

You know, a lot of the students are learning remotely so they may not be in their intended location. The schools have closed down. They are not even in the same city. How are we dealing with that?

Mr. DILLINGHAM. Congressman, that is an excellent question. Let me say this. I thought I might have the facts and figures with me. I can't put my hands on them.

But we are making progress. But as I said in my opening statement, we want to do that as accurately, as efficiently, and as soon as possible. So, even though we are making progress, there is still some confusion among the colleges and universities because there are some special provisions for protecting student information.

So, there is a grouping of colleges or some colleges, and I understand I think you have the most colleges per geographical area in the country, and we want—we want to get that information at least in roster form and it will save millions of dollars if we can get it accurately and efficiently, particularly the students that are living off campus.

The House passed a bill with a provision in it and I will bring that to your attention. But that is—we are making progress. I seem to recall that maybe 60 percent of the colleges, but I will check the record on that.

We want all the colleges, and we—and the concern is that perhaps that we wouldn't protect the information. We protect the data better than anyone in the country that I am aware of.

We understand colleges do a lot, but I think we protect it as well if not better, and we have Federal law on our side and we have all the safeguards for that information. We want it and we would like to get it efficiently. We appreciate your interest and other Members of Congress.

Mr. LYNCH. Well, Dr. Dillingham, if I could just ask you. You know, we can't solve everything on this call. But if I could get your commitment that my colleagues from the Boston—for the Massachusetts delegation that are interested in this and we have got a ton of colleges and universities to myself and Ms. Pressley—

Mr. DILLINGHAM. Yes.

Mr. LYNCH [continuing]. And Secretary Bill Galvin, if we could talk with you in your office just to get an assessment on that because time is short, as you know. Is that possible?

Mr. DILLINGHAM. Absolutely. You will get some assessment this week.

Mr. LYNCH. OK.

Mr. DILLINGHAM. Yes, Congressman.

Mr. LYNCH. All right. All right. Thank you so much, and I will yield back the balance of my time.

Thank you, Madam Chair.

Chairwoman MALONEY. Thank you very much. Thank you very much.

And I now recognize Congresswoman Porter.

Ms. PORTER. Thank you very much.

Mr. Dillingham, is the Census Bureau using state administrative records to conduct the 2020 census operations?

Mr. DILLINGHAM. We do use administrative data for some of our purposes of trying to discover whether there is duplication in the management of the census. I can't tell you exactly which data sets.

Ms. PORTER. Super. Is the Census Bureau using these records or are going to be using these records to determine the citizenship status of individuals?

Mr. DILLINGHAM. We do have administrative records that will be used for us to looking at the numbers of citizens and noncitizens. That is correct.

Ms. PORTER. OK. Under the Privacy Act, there should be a system of records notice—it is called an SORN—explaining what these administrative records will be used for. Have you published a SORN, a system of record notice?

Mr. DILLINGHAM. It is my understanding we have complied with all the regulatory needs. But I will double check. We can get back to you on specifics.

Ms. PORTER. OK. So, do you know if that SORN explains what the records will be used for as required by the Office of Management and Budget?

Mr. DILLINGHAM. Are you talking about our administrative records?

Ms. PORTER. Yes.

Mr. DILLINGHAM. Are we—are we sharing that information with the Office of Management and Budget?

Ms. PORTER. Yes.

Mr. DILLINGHAM. We actually have to have their permission to do that.

Ms. PORTER. Great. Does that statement that you gave to the Office of Management and Budget and that system of record notice, does it say anything—does it disclose to the American public that you will be using administrative records to determine if someone is a citizen?

Mr. DILLINGHAM. Well, we—the executive order is quite transparent and points that out and actually the agencies too that will be providing this data. So—

Ms. PORTER. But, respectfully, sir—respectfully, sir, do you have an obligation to comply with the Privacy Act—

Mr. DILLINGHAM. Yes.

Ms. PORTER [continuing]. And to file that system of record notice and to require the statement of purpose with the Office of Management and Budget? So, I am asking you do those statements, which you are responsible for, advise the American public as required in Congress, as required in OMB, as required that the administrative records will be used to determine citizenship status?

Mr. DILLINGHAM. Congresswoman, I will double check on that. But it would certainly be my understanding.

Ms. PORTER. OK. I actually have it in front of me.

Madam Chairwoman, I ask to enter the system of record notice and the OMB purpose statement into the record.

Chairwoman MALONEY. Without objection, yes.

Ms. PORTER. So, the answer, Mr. Dillingham, is no. These disclosures don't make any mention that you will be using administrative records for citizenship, and since you are going to be using these records, both Federal administrative records to help deter-

mine citizenship, you should have submitted a request to the Office of Management and Budget. You should have submitted supported statements explaining exactly how those Federal records would be used.

The notices are very clear. They say indicate how, by whom, and for what purpose the information is to be used. The president's executive order doesn't waive or relieve you of the requirement to be transparent.

Will you commit to filing a new system of record notice that clearly advises that administrative records will be used to determine citizenship status?

Mr. DILLINGHAM. I am not sure I understood the last part of your question. Would I be—would I be assured that I do what?

Ms. PORTER. Will you please commit to following the law—

Mr. DILLINGHAM. We will—

Ms. PORTER [continuing]. With regard to the Privacy Act and filing a new system of record notice and a new statement of purpose to the OMB? If, in fact, I am correct that your existing statement makes no mention of using the administrative records for the purpose of determining citizenship when that in fact is—you have testified is your intent?

Mr. DILLINGHAM. Congresswoman, I will certainly ask our legal counsel to look in the statement of records notice to see if we are in compliance.

Ms. PORTER. Thank you very much.

My last question for you is will you count every person regardless of citizenship because that is what is required by the Constitution?

Mr. DILLINGHAM. As I have said here today, we are going to count everyone living in this Nation.

Ms. PORTER. OK. So, the Constitution says that representatives shall be apportioned among the several states according to their respective numbers, which shall be determined by adding the whole number of free persons.

In the Constitution, what do you think person means in that context?

Mr. DILLINGHAM. Congresswoman, that was a topic of the first panel here and, as I said in my opening remarks, discussing the policies and history and, particularly, the legal analysis isn't one of the—it wouldn't be prudent for me at this time.

As the director of the Census Bureau, we have to get the work done and I am not going to engage, and quite frankly, I am not prepared to engage in the legal analysis or the policy debate.

We are a statistical agency producing statistical products, and if they are legal we will produce them and it will be the best available data that we have.

Ms. PORTER. Mr. Dillingham, I appreciate that. But you can't wax on about your faithful execution of your constitutional duty and then dodge questions about the Constitution in the same hearing.

But I do appreciate your following up on the systems of record notice under the Privacy Act and I will followup with you directly about that.

I yield back.

Mr. DILLINGHAM. Thank you so much.

Chairwoman MALONEY. I thank the gentlelady for her questions, and before I recognize Representative Ranking Member Comer for his closing remarks, I want to seek clarity on one thing, if I could, Mr. Director.

I asked you earlier if you would send this committee the results of the Bureau's analysis under the president's memo, and you responded that the Bureau would be transparent.

Mr. DILLINGHAM. That is correct.

Chairwoman MALONEY. So, can I take that as a yes that you will share the results of the Bureau's analysis?

Mr. DILLINGHAM. It is the policy and practice of the Bureau to share with the world any final decisions we make on that. But in the discussions of it, and I cannot pledge that. I can say that as we—as decisions are made they will be transparent for everyone and particularly the users of the data.

Chairwoman MALONEY. OK. I now recognize Ranking Member Comer for his closing remarks.

Mr. COMER. Thank you, Chairman MALONEY. I appreciate, again, you calling this hearing today on the 2020 census.

I want to reiterate what I said at the beginning of this hearing this morning by saying that everyone should complete their census form and engage with census enumerators if they come to your door. Very important that every single American is counted.

I support the president's action last week to exclude illegal immigrants from the apportionment count, as do a majority of Americans.

Including illegal immigrants in the count for representation in Congress only dilutes the representation of all Americans who vote in elections and makes a mockery of our basic principle of one person one vote.

I just want to make some points to correct the record about some things that we have heard today. Democrats have made some very misleading or incorrect statements that I would like to take this opportunity to correct.

First, we have heard from Democrats that the president's memorandum means that illegal immigrants are not counted for purposes of the 2020 census. This is not correct.

Illegal immigrants are still counted for purposes of the 2020 census. The Presidential memorandum does not direct the Census Bureau not to count illegal immigrants.

It only affects the subsequent use of census data to conduct the apportionment of congressional seats and Electoral College votes among the States.

Illegal immigrants, while counted for the census, will be excluded from the apportionment base.

Second, we have heard from Democrats that the president's memorandum will divert funding or actual Federal funding flowing to states as a result of the 2020 census. This is also incorrect.

The president's memorandum does not direct or divert any Federal funding or exclude illegal immigrants from being considered in future funding decisions. Complete census 2020 data, once tabulated, will be available for Congress, Federal agencies, state legislatures, and municipalities to use when making funding decisions.

We have also heard from Democrats that the Supreme Court ruled that asking whether someone is a citizen is unconstitutional. That is not correct.

In fact, the Supreme Court actually held that asking whether someone is a U.S. citizen on the census is lawful. The justices said that, quote, “In light of the early understanding of and long practice under the enumeration clause, we conclude that it permits Congress and, by extension, the Secretary of Commerce, to inquire about citizenship on the census questionnaire,” unquote.

Although the administration had failed to comply with some procedural requirements in reinstating the question, which had appeared on previous census forms, the question itself was not ruled to be constitutional.

We have also heard that the president’s memorandum is unconstitutional. Not so, says the constitutional law expert, Dr. Eastman, who testified here this morning.

We heard from him that the proper understanding of the Constitution is that we should only apportion seats based on the citizenry and not foreign inhabitants, especially those who are here illegally.

They are here illegally. Counting those unlawfully present creates perverse incentives, dilutes representation of voters in states with fewer illegal immigrants, and undermines the principle of one person one vote.

Representation should matter to everyone. It is a simple question of fairness.

I yield back.

Chairwoman MALONEY. I want to thank the ranking member and all of the participants today, all of our panelists, and especially you, Director. I thank you for your public service and for voluntarily coming here today to be with us.

I want to close by saying that it is an undisputed fact that the coronavirus has changed everything in our country. It has changed everything, the way we do things, and I would say that the coronavirus has changed the census.

Because of the tremendous challenges, the concern for your enumerators’ health, the enumeration was put off. From your testimony today, you say the enumeration for the hard-to-count will begin August 10.

When you put this off, you also—or rather, Secretary Ross asked us to put off the date for collecting the information and also for sending the apportionment to the states from October 2020 to the end of April 2021.

Our Congress, our members of our Democratic Caucus, we passed a bill in the coronavirus and we included the date change that you requested.

So, it is against this backdrop of all these challenges that you are confronted with the hard-to-count, with the coronavirus, and a—I would call it a disruptive and historic disease that has really overburdened the Census Bureau and created more challenges not just with the Census Bureau but to all of government.

And it is against this backdrop that President Trump issued what I consider an illegal memorandum last week and the purpose

that we called this hearing, this emergency hearing, is in response to that memorandum.

This memo would dramatically change the manner in which the census count is reported. I agree with my colleague that you have testified and I applaud you that everyone will be counted. We will all work hard to get undocumented, everyone counted in the census.

But on Monday, I want to point out that the Bureau posted on its website that the Census Bureau is working toward the plan to complete field data collection by October 31, 2020.

Yet, I noticed today that this notice has been removed from your website. Yet, it hasn't been replaced with a new date or with any date on when the field data collection is supposed to happen.

Now, I believe we should do what the census professionals say they need, that they need this postponement to get the field data by October 31 and to report it later in April 2021.

But it has been reported in the press that the administration is trying to rush the apportionment count and trying to push it back to December 31 before President Trump would leave the White House if he, possibly—we don't know what the outcome of the election is—but he would be leaving the house before the election results, if he loses the election.

So, I am concerned that the administration is seeking to rush the process and sacrifice the accuracy of the census for political gain, that the president's intent is to have all of this done before he leaves office so that he can do what I believe is an illegal action.

So, I hope that you will live up to the standards of professionalism, stand by the request of Secretary Ross. I did check with the professionals in New York who are working on the census and they are working with the numbers that Secretary Ross requested, that the data is completed by October 2020 and that it is translated to the states by April 2021.

I also want to say that, without objection, all members will have five legislative days with which to submit additional written questions for the witnesses to the chair, which will be forwarded to the witnesses for their response, and I ask our witnesses to please respond as promptly as they are able.

I now say that this hearing is adjourned.

[Whereupon, at 2:28 p.m., the committee was adjourned.]

