



# The Phyllis Schlafly Report

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## High Noon for Citizenship at High Court

It was high drama on April 23 at the Supreme Court as the Justices heard what many consider to be the most important case of the Term. At issue is whether the upcoming 2020 census will be allowed to include the following question: “Is this person a citizen of the United States?”

The census includes questions about race, sex, and age; whether a resident is a U.S. citizen is just as important as other demographic details. As Justice Brett Kavanaugh pointed out during oral argument on April 23, other countries routinely ask their residents about citizenship in a census.

Fellow Trump nominee Neil Gorsuch indicated his support for allowing the question about citizenship. Justice Alito seemed on board too, and Justice Thomas is expected to join this conservative bloc.

But liberals have created an uproar over this issue, and questioning from the Left side of the Court was hostile and intense. Obama-appointed Justices Kagan and Sotomayor complained that the record compiled by the lower court did not support asking about citizenship.

At trial, an Obama-appointed judge named Jesse Furman impugned Commerce Secretary Wilbur Ross for authorizing the citizenship question. The district judge declared that Ross had somehow “violated the public trust” by including this question, even though similar questions have been asked many times in the past.

That smear of Trump Cabinet member Ross was unfair, but the litigation machine on the Left has obtained additional federal court rulings to block President Trump’s citizenship question. No one can be deported for truthfully answering the question about citizenship on the census, but we would learn how many illegal residents there really are and where.

In the case simply captioned *Department of Commerce v. New York*, the Supreme Court showed signs of a 5-4 majority to overturn the trial verdict

in New York against Secretary Ross and the Trump Administration. This could deliver by the end of June Trump’s biggest court victory of his presidency to date.

“Can you believe that the Radical Left Democrats want to do our new and very important Census Report without the all important Citizenship Question,” Trump tweeted earlier this month. “Report would be meaningless and a waste of the \$Billions (ridiculous) that it costs to put together!”

Meaningless indeed, and potentially even worse than that, as a census which fails to ask about citizenship inflates the bona fide populations of California and New York, to the detriment of many other states. Illegal aliens are counted in those states as though they were citizens, and New York and California soak up tax dollars this way.

Democrats brag that they won the popular vote in the last election, but they actually lost that vote in the 49 states outside of California. It is no coincidence that some of the most outspoken opponents of having a count that distinguishes between citizens and aliens include the attorney general of that vast sanctuary state.

Fewer lawful residents means less funding, and if illegals duck the census to avoid the question then this could reduce the numbers of Electoral College votes and congressmen for California and New York. Their influence would then shrink, and they would take fewer federal dollars in entitlements if the citizenship question is asked in the census.

Beneficiaries of including a citizenship question in the census would be all American citizens who are entitled to full representation without dilution of their vote or their tax dollars. That includes middle America, also known as Trump Country.

The Department of Justice pointed out that an accurate count of citizens would even be helpful to enforcing the Voting Rights Act, to the benefit of minorities who are American citizens. But the Democrat leadership cares

more about preserving their own political power, which counting citizens threatens.

Despite being a magnet for immigration, Democrat-controlled New York has driven away many citizens over the past decade. Between July 2017 and July 2018, New York State actually lost population, and population growth in California is below the national average.

Democrats fear that conservative states will use the census question to redraw their state legislative districts in proportion to who is a citizen, thereby reducing representation for urban areas boosted by the presence of illegal aliens. Justice Gorsuch alluded to this, which the Supreme Court allowed in *Evenwel v. Abbott* (2016).

Cities currently have an incentive, both financially and politically, to harbor illegal aliens. Better data on who is a citizen and who is not would help end that racket.

## Opportunity at the Border

Reports that Stephen Miller is back in charge on border security are welcome, and even overdue. The departure of Kirstjen Nielsen as Secretary of Homeland Security creates a golden opportunity for President Trump and the American people to take control of our southern border, just in time for Trump's reelection campaign.

President Andrew Jackson had to fire two of his Treasury Secretaries before he finally found one who would implement his policy against a national bank, which was Jackson's core issue. President Trump, the modern president most like Jackson in style, can pick a Homeland Security Secretary who will implement Trump's policies on border security.

Kris Kobach has been the leader on this issue for decades. Phyllis Schlafly had Kris speak at her events long before he became the Secretary of State of Kansas, and after that the Trump-endorsed Republican nominee for governor.

Trump's first two Homeland Security Secretaries were fine folks, but neither had sufficient litigation experience in how to navigate the hostility of liberal courts to real border security. Everything President Trump tries to do to protect our country at our southern border is blocked by lawsuits filed in activist courts.

Kobach has been litigating on the right side of this issue for years, winning some while being harshly treated by liberal judges in others. He's the man the Leftists most want to prevent from becoming Secretary of Homeland Security, which simply reinforces how important it is for Trump to nominate him for this job or appoint him as immigration czar.

Kobach has explained that the Homeland Security Department has been the "biggest impediment" to Trump accomplishing at the border what he was elected to do. Career workers there have slow-walked or outright rejected the sensible changes that Trump and his top aide on this issue, Stephen Miller, have sought.

For now, the U.S. Customs and Border Protection Commissioner Kevin McAleenan will temporarily replace Nielsen as acting secretary. McAleenan is hard-working and widely respected, but nothing in his background suggests a willingness to anticipate and overcome the judicial activism which thwarts President Trump's attempts to secure the border.

Instead, McAleenan looks for ways to accomplish more within the framework imposed by the courts and prior administrations. That approach will not get the job done, as nearly everyone on both sides of the issue recognizes.

What is needed is a decisive leader on this fundamental issue, as Trump himself has been. Kobach explained on Monday three big improvements Trump could do immediately for the border.

First, the Trump Administration should issue a regulation that replaces the court-ordered "Flores" settlement which generally requires releasing teenage and younger illegal aliens from custody. That Flores settlement, named after a 15-year-old girl who came here illegally from El Salvador, was a pro-illegal immigration deal cut by the Clinton Administration and used by the ACLU to interfere with Trump's border control.

Second, Trump could require that asylum applications be processed near the border, including housing the illegal aliens in thousands of trailers available to FEMA, the Federal Emergency Management Agency. Judges should be sent to the border to review and adjudicate the asylum applications there, rather than allowing the illegal aliens to disperse throughout our country before their applications are rejected.

Judges would rule more quickly on the asylum applications under Kobach's proposal, and word would get back to the countries south of the border that no one will be allowed into the United States pending a frivolous application for asylum. The game of claiming asylum and then evading deportation by exploiting the delay in the processing of the application would be over.

Unlike Canada, Mexico has refused to sign a "safe third country agreement" which requires migrants to apply for asylum in the first safe country they arrive in. Mexico allows hundreds of thousands of migrants to travel through their country in order to seek asylum in the United States, rather than in Mexico.

Kobach has been litigating against the ACLU and other enemies of Trump for decades, and his wealth of experience in dealing with activist pro-immigration courts is essential to making any real progress. Kobach has unmatched experience on election fraud by illegal aliens, housing and job problems caused by illegal aliens, and the unfair in-state tuition granted by some public universities to illegals.

“We’re bucking a court system that never rules for us,” Trump observed about judicial activism. Trump should “lawyer up” by picking Kobach to implement real border security.

## **ISIS Bride Is Not an American Citizen**

The case of the ISIS bride, Hoda Muthana, could result in a landmark ruling on what it means to be an American citizen and who has rights to that precious status. After spending five years in Syria with ISIS, the terrorist group also known as the Islamic State, Ms. Muthana wants to come back to the United States.

She was born in New Jersey to parents who had come here from Yemen under diplomatic immunity. Her father had worked for Yemen’s mission to the United States.

Children born in the United States to diplomats from foreign countries are not American citizens, under a longstanding rule of law. Not even advocates of open borders dispute that.

Yet many people mistakenly assume that being born on U.S. soil is enough to become a citizen, which is simply not true. The case of the ISIS bride, who moved to Alabama and from there joined ISIS, confronts this legal issue in a high-profile case.

Raised in the United States, Hoda was 19 when she told her parents she was going on a field trip as part of a college course she was taking. Instead she withdrew from college and used her tuition refund to buy a one-way ticket to Turkey, and then somehow made her way to ISIS-held territory in Syria.

While in war-torn Syria she apparently met and married an ISIS fighter, and after he was killed, she married another ISIS fighter. During this period she posted a series of blood-curdling tweets, which have since been deleted by Twitter.

“Americans wake up!” Muthana tweeted in 2015 from ISIS-held territory in Syria. “Go on drive-bys and spill all of their blood, or rent a big truck and drive all over them. Kill them.”

She witnessed dead bodies lying about in Syrian streets where ISIS had murdered them. She observed heads severed by ISIS and planted on poles in order to terrify opponents of ISIS.

When her second husband was killed, leaving her pregnant, Hoda married yet a third ISIS fighter. She left that husband and was captured by Kurdish forces, who placed her and her 18-month-old son in a massive refugee camp in northeast Syria with thousands of other widows and children.

Life is hard in the refugee camp, where women are punished if they step outside their tent without wearing a hijab or burqa. Not long after calling for death to Americans, Hoda has since decided that “I prefer America to anywhere else.”

To President Trump, Hoda’s recent remorse seems a little too convenient. “I have instructed Secretary of State Mike Pompeo, and he fully agrees, not to allow Hoda Muthana back into the Country!” Trump tweeted in February.

The same day Secretary Pompeo declared that “Ms. Hoda Muthana is not a U.S. citizen and will not be admitted into the United States. She does not have any legal basis, no valid U.S. passport, no right to a passport, nor any visa to travel to the United States.”

The following day, a 32-page, 128-paragraph lawsuit against President Trump and Secretary Pompeo was filed by the Constitutional Law Center for Muslims in America. Lawyers then pressed their claim before U.S. District Judge Reggie Walton.

Her lawyers pointed out that Hoda had been issued a U.S. passport in 2014, without which she could not have traveled to Syria. But Judge Walton said that “just because she received a U.S. passport does not mean she is a U.S. citizen,” and he denied her request to expedite her case.

“The government informed Muthana more than three years ago that she is not a citizen and canceled her erroneously issued passport,” Pompeo’s lawyers told the court. “Muthana — who was at the time a member of ISIS — failed to act timely in response to that notification, [and] remained in a war zone through hostilities for a period of years.”

“The Man Without a Country” tells the story of a young American who, after renouncing his citizenship, is ordered to spend the rest of his life aboard ships at sea with no hope of ever setting foot on U.S. soil again. One of the most popular literary works of the nineteenth century, it was later adapted for a number of movies, radio and television dramas, and even an opera.

The ISIS bride is a modern version of the same story, except that she is not doomed to roam the seas with no place to go. Perhaps she could settle in her parents’ country of Yemen or remain in Syria, but she has no rights to citizenship in the United States.

## The Wall Versus Judicial Supremacy

“We have an invasion of drugs, invasion of gangs, invasion of people, and it’s unacceptable,” President Trump said in mid-February. “It’s very simple. We want to stop drugs from coming into our country. We want to stop criminals and gangs from coming into our country.”

It was from the White House Rose Garden that President Trump delivered those remarks, on the eve of the 3-day weekend for Washington’s Birthday. He campaigned for president on securing the southern border of the United States, and he plans to do precisely that for the American people.

Consider just one day’s traffic at a single section of the border that lacks a physical barrier. Among those caught crossing into Texas on February 7 were a Mexican previously convicted in Georgia for child molestation, a Honduran previously convicted in North Carolina for “indecent liberties with child,” and another Honduran who was previously identified in Florida as a member of MS-13.

The federal police agency known as ICE, which stands for “Immigration and Customs Enforcement,” reports that some 266,000 aliens with criminal records were arrested in the past two years. This agency also arrested 1,500 aliens for human trafficking and deported 10,000 known or suspected gang members in the last fiscal year, yet many Democrats want to abolish this protective agency.

At remote sectors of the border in Arizona and New Mexico, large numbers of Central Americans, mostly from Honduras and Guatemala, are being dropped off by the busload and who then cross on foot. The Border Patrol reports that 242 people were arrested on January 24, while 375 people crossed near Yuma and another 306 entered through New Mexico.

Many of the illegal arrivals were very sick with contagious diseases, and their health problems overwhelmed the facilities available in small towns near the border. The Border Patrol reports that 2,224 migrants, mostly from Central America, had to be driven three hours to the nearest hospital for treatment that could not be provided on site.

The ongoing invasion, as Trump correctly described it, is unacceptable and cannot be allowed to continue. The president is right to declare a national emergency on the border, which permits him to reallocate some additional funds from other parts of the federal budget after the \$1.375 billion approved by the Nancy Pelosi Congress runs out.

“Look, I expect to be sued,” Trump said, and within minutes of his speech, ACLU Executive Director Anthony Romero announced he would be filing a lawsuit. The ACLU lawsuit would add to lawsuits already filed by California and something called the Center for Biological Diversity.

“They will sue us in the 9th Circuit, even though it shouldn’t be there,” Trump said prophetically, referring to the California-based court. “And we will possibly get a bad ruling, and then we’ll get another bad ruling. And then we’ll end up in the Supreme Court, and we’ll win.”

The lawsuits ought to be laughed out of court, even in the Ninth Circuit. Presidents have declared 58 national emergencies since 1976, when Congress gave the president that power, and 31 of them are still in effect.

Never before has a judge tried to second-guess a president’s declaration that a national emergency exists, and no court should be allowed to enter those uncharted waters now. Congress gave that power to the president with no limit on the reasons for which an emergency can be declared.

But never before have we had a president willing to stand up to the globalists, the media, and the federal courts. The real showdown between President Trump and the federal judiciary has begun.

In the meantime, Democrats would campaign against Trump by using lower court rulings that predictably take the liberal side. Trump’s legal strategy should anticipate this, and seek an expedited appeal that bypasses the liberal Second, Fourth, Ninth or D.C. Circuits, which are packed with anti-Trump judges.

To no one’s surprise, sixteen liberal states chose San Francisco as the location for their lawsuit to block Trump. Only one out of 14 active judges on that court was appointed by a Republican president, giving Democrats roughly a 93% chance of having a judge picked by Obama or Clinton decide their case.

But all litigants have the right to appeal a preliminary injunction immediately, and the Department of Justice should start preparing those papers now. The appeal should be straight to the Supreme Court to ensure a decision before the 2020 presidential election.

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