

Trump's threat to override Supreme Court on census: The march toward rule by decree

Eric London
10 July 2019

The Trump administration's assertion of the power to add a question regarding citizenship to the 2020 census via a presidential order, overriding Congress and the Supreme Court, marks a new stage in the concentration of political authority by the executive branch.

Trump is adopting the theory of the "unitary executive," overriding the constitutional separation of powers to assert rule by decree.

The Supreme Court has prohibited Trump from printing census questionnaires that include the citizenship question. On June 27, just three days before the printing deadline, the court ordered the government to remove the question on the grounds that the Trump administration's rationale—that it was asking about citizenship status to protect "voting rights"—was a mere pretext.

Congress has also expressed opposition to the citizenship question. Last month, the House Oversight and Reform Committee subpoenaed Attorney General William Barr and Commerce Secretary Ross for documents relating to the administration's decision to add the citizenship question to the census form. Both have refused to respond, and the full House may vote soon to hold the two officials in criminal contempt.

Disregarding the Supreme Court and the House of Representatives, Trump announced plans to add the question to the census via presidential fiat. On July 5, he told reporters on the White House lawn, "We're working on a lot of things including an executive order." On Monday, Attorney General Barr publicly backed Trump's proposal, declaring, "The president is right on the legal grounds."

Yesterday, Trump took to Twitter and openly denounced the Supreme Court, writing: "Recent 'strained' decisions by the United States Supreme Court, some so simple as allowing the question, 'Are you a citizen of the United States' on our very expensive Census Report."

As a legal matter, Article 1, Section 2 of the US Constitution mandates that representation be apportioned by a decennial national census and that Congress—not the president—is responsible for conducting the census in "such manner as they shall by Law direct." The Constitution bars the president from making his own laws, and no court has given the president the power to enforce laws in contradiction to congressional intent or judicial interpretation.

If Trump issues the order, it will likely provoke a dramatic confrontation between the executive and judiciary branches. As University of Baltimore Law Professor Garrett Epps wrote in the *Atlantic* on July 8, the courts will almost certainly reject the legality of Trump's order. "And here's where Trump's truculent tone becomes most chilling," he wrote. "Because the next step would, logically, be a claim that the executive can ignore the Court."

Throughout his presidency, Trump and his fascist advisors have operated according to a calculated political strategy. As his administration whiplashes from crisis to crisis, Trump responds by pushing the boundaries of basic democratic legal forms, testing his own strength and appealing to a relatively small far-right base.

Lacking popular support, his greatest asset is the fecklessness of the Democratic Party, whose record is one of permanent acquiescence to Trump's escalating attack on basic democratic principles.

When Trump declared a travel ban on immigrants and visitors from Muslim countries, the Democrats shut down nationwide protests and channeled opposition into the 2018 midterm elections. When he declared a national emergency and deployed thousands of troops to the border, the Democrats accepted the measure without a fight. When he usurped Congress's powers by appropriating Pentagon money to fund the deployment and build his border wall, the Democrats accepted the

move and later voted to backfill the military funds diverted to the border.

When Trump proclaims the power to nullify election results or cancel elections altogether, the Democrats downplay such statements as “jokes.” When border guards systematically abuse detained immigrant children at Trump’s suggestion, the Democrats respond by giving the American immigration Gestapo \$4.9 billion more to expand the crackdown.

After Trump placed tanks on the streets of Washington, DC, and transformed the July Fourth holiday into an authoritarian tribute to the military, the Democratic Party press praised Trump’s speech as a stately appeal to “national unity.”

Trump’s provocative maneuvers have engendered widespread opposition in a country founded in a revolution against the rule of a king. Spontaneous protests broke out in dozens of locations across the country last week as photos of dead immigrants and children in cages engendered a mood of national shame.

Yet even as popular revulsion over his right-wing policies grows, Trump is able to violate basic constitutional norms with less and less resistance from within the political establishment. The president who lost the popular vote by the widest margin of any elected president in US history is able to arrogate to himself powers far greater than even his most popular predecessors. He does so without opposition from the Democratic Party, even though the latter controls the House of Representatives and leads all 2020 presidential polls.

What accounts for this apparent contradiction?

Both Trump’s drive to dictatorship and the Democrats’ acquiescence are objectively determined outcomes of the protracted crisis of American capitalism, rooted in US imperialism’s weakening economic and geopolitical position and the immense growth of social inequality.

Three billionaires own as much wealth as the poorest 160 million people in the US. Worldwide, a couple dozen tycoons are worth as much as half of the world’s population—3.7 billion people. Democratic forms of rule are incompatible with such levels of inequality.

In a Dec. 3, 2000, lecture on the eve of the Supreme Court’s ruling in *Bush v. Gore*, then Socialist Equality Party (US) National Secretary and current SEP National Chairman David North explained that the court’s decision would reveal “how far the American ruling class is prepared to go in breaking with traditional bourgeois-democratic and constitutional norms.” The court’s

majority took the most extreme course of action in rubber-stamping Bush’s electoral fraud. It declared that the American people did not even have the right to vote for president.

The SEP explained that the court-sanctioned theft of the election, and the failure of the Democratic Party or any faction of the political and media establishment to oppose it, demonstrated that there was no significant constituency within the ruling class for the defense of democratic rights.

The actions of the Trump administration vindicate this perspective and show that this process is far more advanced today. Bourgeois newspapers the world over are warning of “pitchforks” and “guillotines”—their frightful catchwords for social revolution. In France, emergency rule has been used to criminalize “yellow vest” protesters. In Germany, the intelligence agencies are conspiring with neo-Nazis to terrorize the population and facilitate the revival of German militarism.

In the US, the Democrats made extensive use of executive power under President Obama, including by taking the ultimate step—assassinating US citizen Anwar al-Awlaki and his 16-year-old son without a warrant or trial. All factions of the ruling elite demand that Julian Assange be locked up for exposing US war crimes.

The Democrats are petrified at the prospect of growing social opposition and increasing interest in socialism. They accept Trump’s dictatorial measures as preferable to taking any action that risks mobilizing popular anger. They base their attack on Trump not on opposition to his fascistic policies and attacks on immigrants and workers, but on appeals to the military and intelligence agencies and war-mongering against Russia and China. They are also preparing the state apparatus for the violent suppression of the class struggle.

The working class, against whom these measures are directed, is the only social force that can lead the struggle against dictatorship, war and the capitalist system.



To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact