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SARAH BALDWIN: From the Watson Institute at Brown University, this is *Trending Globally*. I'm Sarah Baldwin. Cristian Farias is a journalist who writes about law in the Supreme Court. For much of the last two years, he's followed the Trump administration's efforts to put a citizenship question on the 2020 Census. One morning last May, he saw on his phone that new documents had surfaced in a lawsuit challenging that move.

CRISTIAN Basically when this filing got posted, I almost didn't make it to work. I was like, freaking out.

FARIAS:

SARAH BALDWIN: Turns out his boss at *The New York Times* was too.

CRISTIAN I got an email from my editor. And she goes, Cristian, it's OK if you don't make it to the

FARIAS: meeting. There's this huge A1 story. We need you to write an editorial about this tomorrow. I'm like, [LAUGHS] I'm already on it. I'm all about this. You'll have it this afternoon.

SARAH BALDWIN: He's one of the most important explainers of the drama surrounding the US's 2020 Census and of the importance, in general, of getting the census right. We talked about what the census is, and how its integrity is at risk today. I started, though, by asking him why it matters so much in the first place. Here's Cristian.

CRISTIAN It is important because it is a constitutional imperative. It is an Article I of the Constitution. And

FARIAS: it mandates that every year for there to be an actual enumeration. Those words, actual enumeration of every person in the country. And what comes out of that has huge consequences for everyone, not just citizens. Not just non-citizens, but really everyone. And we should all care about that.

SARAH BALDWIN: So break it down for us. What is the census?

CRISTIAN The census is basically a survey, a questionnaire-- gets sent out every decade, every 10 years

FARIAS: to every household in the country. Now, in this census, there will be experimented with online survey. And for the first time, which I think is going to be exciting. And it's going to help response rates that what the census cares about is to get a full and accurate count of everyone in the country.

Everyone counts. Everyone needs to be counted. And everyone needs to be accounted for, because we need to know how many people are in the United States. And depending on that number that gets produced after this Herculean task, which involves politicians, involves bureaucrats. It involves surveyors on the ground, enumerators, as they're named, canvassers. And just, it's a huge human and technical operation.

After that product is received, it is sent to the president. And then from there, the process begins of reapportionment of congressional seats and also the distribution of hundreds of billions in federal funds every year. So this is not something that you do once every 10 years just because we need a number, and we need to know how many there are. Yes, we need that.

But also, many communities stand to win or lose if they're not accounted for, because federal funding for medical services, for Medicaid, for children with disabilities, there are many things that are riding on this count. And if certain population or a certain community doesn't have its proper amount of funding, then the people who live there suffer at the end.

SARAH BALDWIN: And the whole point of a representative democracy is that people are represented fairly.

CRISTIAN FARIAS: Absolutely. And that's one thing that also matters a great deal. The census and the Constitution doesn't say only citizens get represented. In Congress, only certain people of certain countries get represented. Every person needs to be accounted for. And because that mandate involves everyone, there is no room for gaming the system.

SARAH BALDWIN: Let's talk about the recent drama around the 2020 Census and the attempted introduction of a question about citizenship. Just briefly walk us through what happened and what we now know what was the motivation behind including that question.

CRISTIAN FARIAS: Sure. So March 2018, the Commerce Secretary Wilbur Ross, the Commerce Department, happens to be the one cabinet position in the federal government structure with direct supervision over the census. Wilbur Ross as the overseer in a way of the 2020 Census, he basically said that there has been a need for the inclusion of a citizenship question on the 2020 Census, a question that his own experts at the Census Bureau discouraged against because it hadn't been properly tested.

A lot of these questions when just the fact of including one new simple question, even something as simple as, are you a US citizen, it sounds very simple on paper-- very

innocuous. It doesn't sound nefarious. What's wrong with asking about citizenship? We want to know who's a citizen-- who isn't, right? It seems simple.

But it needs to be tested for the reason that every question-- if you ask someone, how much do you make as a salary or in wages, even a question as simple as that can cause a depression of how many people respond to it because people are very skittish about sharing personal information with the government.

Every question no matter how simple or how complex it may be will lead to people not responding. So it needs to go through a rigorous testing process to make sure that it won't affect the main goal of the census, which is a full and accurate count of everyone in the United States. Any question that undermines that goal, it has to go through an even more complex process.

So the citizen question hadn't been put through such a rigorous process. And, yet, because of political influence, Wilbur Ross was determined to get this question on the census. He said that the Department of Justice in Washington needed this question, because it would help the administration better enforce the Voting Rights Act.

The Voting Rights Act is a historic law passed in the 1960s that basically allows the federal government to protect citizens from voter disenfranchisement, from voter suppression. For many who saw that announcement, including myself, is that if you look at the record of the Trump administration, they don't really care about voting rights. There is not a record of them being protective of voter rights. So for all of a sudden for them say, we want to protect voting rights--

SARAH BALDWIN: It was disingenuous.

CRISTIAN FARIAS: Yeah, people smelled something funny was going on from the very beginning. And they said, mm, something must be going on here, because that doesn't sound like something that this administration would come up with on its own. And that's when the lawsuits begin.

SARAH BALDWIN: Mm-hmm. There was six right away, right?

CRISTIAN FARIAS: Well, the three main ones that I've covered and that are the ones that got the farthest are one in New York, one in Maryland, and one in California. Three different federal judges, ultimately, all three of them struck down the question. But what's interesting is that these were lawsuits that ultimately aim to uncover the truth of why this question was added.

And that was the big question mark when these lawsuits were filed. The plaintiffs in these cases, which kind of represented many civil rights and immigrant rights organizations, community groups-- even cities and localities, you'll find places, like El Paso, Texas, which has been in the news lately. They were really mindful of their own populations, very protective of their own interests, because, as I said earlier, they stand to lose a lot if their own are uncounted properly.

And some of these communities already have a reluctance because of the anti-immigrant environment that we're in to have even more dealings with the government. So they had an interest in not seeing this question on the census, because they didn't want their own constituents to lose out on funding or to lose out on representation.

And for that reason is that they sued, one, to stop the question, but, two, to also see what was the motivation behind it. And what's interesting that, as these lawsuits made their way through the courts, a lot of documents turn up. And the government is forced to turn over emails and research and correspondence between different folks within the government.

And as lawyers, we're going through all these documents. They couldn't find V smoking them. But one thing they did find-- and it was that this rationale of voting rights enforcement was a sham that it was totally cooked up. They could see evidence of Wilbur Ross desperately trying to get buy-in for this question.

First, he goes to the Department of Justice. And Department of Justice tells them, nope, we don't need decision. We don't need it. We're fine. We're good. And then he goes to the Department of Homeland Security. Hey, can you help me just give me some reasons for why we need this question? Department of Home Security-- nope, you can't. You have to go to DOJ.

So you see him kind of going back and forth with this ping-pong among the agencies until finally they kind of came up with the voting rights enforcement reason. And the court said, you know what. That's a sham. That's unlawful. The government was not truthful in the way it went about this process. And, therefore, the question should be struck down on administrative law grounds, very technical grounds.

And the plaintiffs, however, in their initial lawsuits had claimed something else. They suspected that Wilbur Ross acted out of discriminatory intent that he had animus-- him or his

administration or someone in the chain of command had an ill-motive against immigrants, against people of color for the inclusion of this question. And the litigation process was supposed to help them suss that out, help them come up with this evidence, the smoking gun to find it.

SARAH BALDWIN: So what happened in May 20 of this year?

CRISTIAN FARIAS: May 30 is a day that I will never forget personally. One, because I had to write about this case once it dropped. Do you mind if I share the story of how I'm personally involved in this?

SARAH BALDWIN: Please.

CRISTIAN FARIAS: Not personally. So I'm going to work on Thursdays. I have a board meeting at *The New York Times* because at the time, I was a member of the editorial board. And Thursday morning is the day when I go for work. And I'm just getting ready to get on the train. And I get an alert on my phone.

I follow this Twitter bot, a robot, that basically scours court decisions and court opinions as they get posted on the internet. And this bot happens to follow the New York census case. And so on the morning of May 30, 2019, I get an alert at 8:45 in the morning from this bot. Oh, and the filing in the census case in New York.

Why? This is at the Supreme Court. The Supreme Court is hearing this case. They already going to issue a decision soon. Why is this activity happening in the lower court? This is already at the Supreme Court. So I open that. I don't always open those things because I got a ton of them. But this one I opened it. And I read the filing.

And the New York lawyers in the case challenging the citizenship question basically accused the Trump administration of lying to the court for not disclosing the full extent of the real reasons for the citizenship question. And it so happened that they had come across a huge trove of documents from the C's Republican operative. His name is Thomas Hofeller. He's a mastermind of gerrymandering.

The way they came across the documents is a bit of a yarn. But long story short, these documents were relevant to the census litigation. And those documents essentially showed how this person Thomas Hofeller was a person who was constantly lobbying the administration from the very beginning, early 2017 and even before the election on the

inclusion of a citizenship question.

And he even helped write word for word parts of a DOJ document explaining this voting rights rationale/pretext explaining how to dress up, basically, the question in a way that would be justifiable in the courts. And one of these lines that this operative uses in these highly secretive but now published documents is that the real purpose of the citizenship question was to create an electoral advantages for Republicans and non-Hispanic whites.

SARAH BALDWIN: He said those words.

CRISTIAN FARIAS: He read that we need a citizen question-- is needed. This information is needed. The census data is needed so that we can create an electoral advantage for Republicans and non-Hispanic whites. Now, that is the smoking gun that the plaintiffs can never get because they couldn't depose Wilbur Ross. They couldn't ask him questions directly.

And because litigation is difficult, sometimes it's really hard to get information like that. And basically when this filing got posted, and I read it, I almost didn't make it to work. I was, like, freaking out because I read it on my phone. And I composed the tweet really fast trying to explain what the filing meant.

I retweeted that filing. And then it went viral on my feed. It got, like, 3,000 re-tweets. I created a short Twitter thread explaining the significance of this filing. I said, hey, this is a major break in the sense of litigation. As the Supreme Court is considering a ruling in this case, new evidence has surfaced that basically nails the reason for the question-- something that's been deemed a mystery.

Those are the words that a judge used. The census question is a mystery. And it is that they need it, because the data will be helpful to create a major electoral advantage for Republicans and for white people. Now, a lot of these lawsuits when they were first filed, they alleged, but they couldn't prove that racial discrimination was a reason for the census question, the citizenship question.

But because you couldn't prove it, judges said, sorry, we don't have this evidence. We have to dismiss these claims. But now with this new evidence, these claims gained a lot of relevance. And what's funny is that I get an email from my editor. And she goes, Cristian, it's OK if you don't make it to the meeting.

There's this huge A1 story on *The New York Times* about these new documents that got

discovered in the census case. And we need you to write an editorial about this tomorrow. I'm like, I'm on it. [LAUGHS] I'm already on it. Actually before your email, I'm all about this. I just went viral. And, yeah, it's OK. I can write it.

SARAH BALDWIN: Amazing.

CRISTIAN FARIAS: You'll have it this afternoon. And so, yeah. And so in the next morning's paper Friday, because *The Times* still does paper, you have that A1 story about the C's operative and his explosive documents. And in the back of a paper, you had an editorial by me explaining the significance of that and how for once, the public gets a chance to learn the reason behind this question. But, yeah, but still, the Supreme Court hasn't ruled. And they have the last word. And that's the next chapter of this whole saga.

SARAH BALDWIN: It's such a crazy collision of racism and demography and history and constitutional law and civil rights. It's very dramatic. And I just shudder to think where we'd be now without Thomas Hofeller's daughter thinking to hand over the hard drives from his computer.

CRISTIAN FARIAS: Absolutely. And if government should stand for anything, at the very least, it should stand for good government and for things following a process and for officials to be truthful with the reasons for why they're doing things. Obviously here, they couldn't be truthful, because the truth may have been too much to bear for the public. So they had to dress it up. They had to hide it.

And in history, we've seen a lot of that in order to justify terrible policies that have a horrible effect on real people. They have to dress up the reason so that they can pass muster in the courts. And we saw that in this case. But when I went to that hearing at the Supreme Court, I was really demoralized when I was hearing the arguments and when I was hearing just the skepticism from the more conservative justices were they were simply buying every single line from the administration.

And we all thought the court was going to just rule for the administration. And as you know, at the end of June and the last day of the Supreme Court's term, we found out that the Chief Justice Roberts joined the more liberal members of the court. And they disallowed the question from moving forward.

So that was very heartening to see. I mean, and obviously that the ruling on its phase doesn't tell you what deliberations happened behind the scenes and what may have cost a

conservative member of a court-- Chief Justice Roberts is conservative-- to agree with his more liberal colleagues that this question should not be allowed to proceed.

But as you probably are aware a few weeks ago, there was no reporting that Chief Justice Roberts changed his vote in the census. He was going to rule for the administration. And he had a change of heart between the release of these documents and the Supreme Court ruling.

So maybe these documents did play a role. And even though he doesn't say it in the ruling, and there's no way to know until their private papers get released, who knows when-- 50 years from now, 100 years from now.

But the fact that cooler heads prevailed and that this information came to light, it shows that there is value in digging and searching for the truth and to bring it to the court's attention, to use it in litigation, and to exhaust every avenue to try to make the government work for the people, rather for very discrete parties in interest.

SARAH BALDWIN: Cristian, you got a degree in journalism and then not long after, went out and got a degree in law. Did you always know that you wanted to combine those two? What made you go for the law degree?

CRISTIAN FARIAS: I always thought I was just going to be a journalist. Before being a legal journalist or someone who wrote about justice issues, I was an entertainment journalist. It was a little different. It's just covering musicians and singers and that kind of thing. But along with my journalism degree, I went to Rutgers University.

I double majored in Spanish-English interpreting and translation. And as a subset of that, I decided to focus on court interpreting and translation, because you have medical translation. You have business. And I decided to do court interpreting, one, because I heard that it pays well. And two, because it's very technical. And it involves courtroom activities.

And oh, that sounds exciting, to just be in a room translating documents. That's boring. But if there's a courtroom, that's cool. And so as part of doing that, that's what kind of got my foot in the world of the law and just being in the courtroom. It so happened that I did an internship in that.

And one day I was sitting working on my music articles-- I forget. I was newly married. I got a call out of the blue from the state of New Jersey saying that they were about to impose a hiring

freeze. Governor Christie was about to impose a hiring freeze. I don't know for what reason that they had three openings for bilingual probation officers for the New Jersey Court system.

I had no idea what a probation officer was or what it did or the job description. But I said all right. It sounds like it's court-related. It's a civil service job. And I've been a freelance journalist for a long time. I'll give it a shot. And I had a 180 career change. And I decided to become a probation officer for the New Jersey Court system-- took the civil service test, did really well.

I almost did it for three years. And doing that work working with people convicted of crimes, supervising them in the community, writing a lot of court documents, and even appear in court a few times, I said, maybe I should go to law school, learn this thing really well. And maybe I can be a public defender or a civil rights lawyer and help some of these people.

Before they even get to court and get involved with the criminal justice system maybe as a lawyer, I can help them not get involved and maybe prevent their conviction. So that's why I thought I wanted to be when I went to law school. And in law school, as I learned a little of those things that I aspired to be one day, as I work towards my goal of being a lawyer for the needy and the downtrodden, my third year of law school, journalism, kind of called me back.

And I started writing op-eds in columns for a number of publications. I didn't think I had a future in it, because it's a very difficult field to break into, especially for someone who has no connections in the business of politics or public policy. I didn't know Nina Totenberg or Adam Liptak or all the big names that you read in the news covering the Supreme Court.

But somehow, people noticed that I could string sentence together that my prose was good enough to be printed and published. First I started freelancing. And then the Huffington Post called me to become a staff reporter with them and covering the Supreme Court.

And then *New York Mag* called me again to be a columnist with them on a more steady basis. And eventually, *The New York Times* called me to join their editorial board. And I'm really grateful for these opportunities. And I hope to continue doing it for as long as I can.

SARAH BALDWIN: You also made me think-- you're here at Brown University. And I know you've been meeting with students and student groups throughout the day. And you're going to give a lecture soon about the census and the importance of counting everyone. What's your message to students to the young people, the 21-year-olds today?

CRISTIAN Well, my message to them is that there is value in civic society pushing against attempts to

FARIAS: distort and rig our democracy. There are forces. And I'm not pointing fingers to any particular party, because everyone is trying in a way to protect themselves and to entrench themselves in power. But what I'm saying is that there are very strong forces at work, try to define or redefine what the United States is and what it stands for and what it's supposed to mean.

President Trump gave an address before the UN a few days ago or yesterday, probably, basically saying that there is a national renewal happening in this country and using a lot of coded words that just basically didn't sit right with me as to you need to preserve your origins. And you need to preserve your heritage-- a lot of words that--

SARAH BALDWIN: And I think he said the future is not for globalists. It's for patriots.

CRISTIAN It's something like that. And there is a lot of messaging and a lot of administrative actions
FARIAS: being taken to define who is or who shouldn't be a part of us. And the beauty of the census is that the census, even though, originally-- and that's where we get the very terrible 3/5 clause where the original census was the one that started measuring slaves as 3/5 of a person.

But even then, the original census counted everyone. People had different weight. Some people were half property, half people. Others were full people-- free people. But it still counted everyone. And that is one fundamental aspect that through the amendments to the Constitution the census has retained, everyone still counts today.

And if there's one message that I want to leave a community is that that no matter what signs you see from politicians, from elected leaders, from those in power as to who should or shouldn't belong, the census and the constitutional mandate to count everyone tells us a different story that in this country, everyone counts. And you may not have the right to vote. You may not have the right to certain social services.

You may still have to fight tooth and nail to be treated a little equally with respect to certain areas where some people still get more benefits than others. But when it comes to the simple basic fabric of the nation as to who our representative democracy ought to stand for, the answer to that is everyone. And that's what I hope that the message that I hope to leave everyone here.

SARAH BALDWIN: Thank you so much, Cristian, for coming in today.

CRISTIAN Thank you for having me. It was a great chat.

FARIAS:

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SARAH BALDWIN: This episode of *Trending Globally* was produced by Dan Richards and Babette Thomas. Our theme music is by Henry Bloomfield. I'm Sarah Baldwin. You can subscribe to us on iTunes, Stitcher, Spotify, or your favorite podcast app. If you like what you hear, leave us a rating and review on iTunes. It really helps others find the show.

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