



November 9, 2021

VIA E-MAIL

Laura Iheanachor
CREW
1331 F Street NW
Suite 900
Washington, DC 20004
liheanachor@citizensforethics.org

RE: FOIA Appeal No. DOC-OIG-2022-000073 of FOIA Request No. DOC-OIG-2021-001869

Dear Ms. Iheanachor:

This letter responds to your Freedom of Information Act (FOIA) appeal filed with the Department of Commerce, Office of Inspector General (OIG) on October 12, 2021. In that appeal, you challenge the partial denial of your FOIA request number DOC-OIG-2021-001869.

For the reasons explained below, I am granting your appeal in part and denying your appeal in part. Specifically, I am upholding the withholdings in the relevant record for privileged material, as well as certain withholdings related to personal privacy. However, I have identified passages where the initial withholdings for personal privacy were overbroad and am releasing that additional information to you.

Initial Request and Determination

In your FOIA request, you sought “the complete, unredacted version” of the report of investigation for OIG case no. 19-0728 (ROI 19-0728). The OIG responded to your FOIA request on July 26, 2021. After reviewing that record under the terms of FOIA, including consultation with the Department of Commerce Office of General Counsel, the OIG produced that record with partial withholdings under FOIA Exemptions 5, 6, and 7(C).

FOIA Exemption 5 protects inter-agency and intra-agency records that would not be available by law to a party other than an agency in litigation with the agency. 5 U.S.C. § 552(b)(5). FOIA Exemption 6 protects information in personnel, medical, or similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. *Id.* § 552(b)(6). Finally, FOIA Exemption 7(C) protects law enforcement information, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. *Id.* § 552(b)(7)(C).

Your Appeal

Your appeal challenges all of the withholding of information from ROI 19-0728 pursuant to those three FOIA exemptions. With regard to the information withheld under Exemption 5, you state that this information “appears to be neither predecisional nor deliberative, but rather

reflects final agency decisions and conclusions to be used in support of former Secretary Ross' decision to include a citizenship question on the 2020 Census." As an example, you point to the redaction of passages relaying the substance of an internal agency memorandum "contain[ing] a historical and legal analysis of the Secretary's legal and constitutional authority to add a citizenship question to the 2020 Census." Department attorneys prepared this memorandum for then Secretary Ross in August 2017 as he considered inclusion of a citizenship question. While your exact argument is not clear, you seem to assert that this "finalized" memorandum communicated an official agency decision, rather than merely providing advice that the agency could use in making a decision.

You also challenge the withholdings in the ROI under Exemption 6 and 7(C). Your appeal does not identify any specific withholdings to which you object. Rather, you seem to broadly assert that there is not an articulable personal privacy interest in any of the information withheld under these exemptions. Further, you state that even if such a privacy interest existed, it would be outweighed by overwhelming public interest in disclosure of the information given that "[t]he census is a crucial component of our democracy."

Appeal Decision

After reviewing the copy of ROI 19-0728 provided to you and considering your appeal, I uphold all of the withholdings under Exemption 5. However, I determined that several of the Exemption 6 and 7(C) withholdings were overbroad and am releasing that additional information to you.

A. Exemption 5 Withholding

Information was withheld from ROI 19-0728 under Exemption 5 based on attorney-client privilege and deliberative process privilege. Exemption 5's language has been interpreted to exempt documents that are protected by statutory privileges and civil discovery rules, including both of those common law privileges. *Burka v. U.S. Dept. of Health and Human Services*, 87 F.3d 508, 514-516 (D.C. Cir. 1996). The deliberative process privilege protects the "decision making processes of government agencies." *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 150-51 (1975). To qualify, material must be both predecisional and deliberative. *Brennan Ctr. For Justice at New York Univ. Sch. Of Law. v. DOJ*, 697 F.3d 184, 194 (2d Cir. 2012). Protected materials are those that reflect advisory opinions, recommendations, and deliberations offered in the course of decision making. *Loving v. Dept. of Defense*, 550 F.3d 32, 38 (D.C. Cir. 2008). The attorney-client privilege concerns "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." *Mead Data Cent. Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977).

Your appeal fails to demonstrate that any of the Exemption 5 withholdings here were improper. The withheld passages reflect advice and opinions provided by Department officials in the course of a decision process on the content of the 2020 Decennial Census questionnaire. Further, in certain cases those communications involved confidential legal advice being provided by Department attorneys to senior Department decision-makers. The withheld material does not reflect, as you suggest, final agency decisions. For example, the August 2017 memorandum prepared for Secretary Ross by Department attorneys does not lose its deliberative character merely because it may have offered "finalized" advice on the Secretary's legal authority to include a citizenship question in the Decennial questionnaire. A final recommendation from agency advisors on the legality of an action under consideration is not the same thing as a final decision by the agency head on whether to actually take that action. Indeed, the Department's claims of privilege

over information related to the content of the memorandum, as well as the other withholdings in the ROI, have been upheld in civil litigation in federal court. *See New York v. U.S. Dep't of Commerce*, 351 F.Supp.3d 502, 548 n. 19, 553, *rev'd in part on other grounds by U.S. Dep't of Commerce v. New York*, 139 S.Ct. 2551 (2019).

B. Exemption 6 and 7(C) Withholding

FOIA Exemption 6 protects information in personnel, medical, or similar files, where disclosure would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6). The Supreme Court has interpreted “similar files” broadly, applying Exemption 6 when the requested information “applies to a particular individual.” *U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982). In so doing, the Court expressly rejected limiting the exemption to “a narrow class of files containing only a discrete kind of personal information.”¹ *Id.* FOIA Exemption 7(C) protects from disclosure records or information compiled for law enforcement purposes to the extent that such disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).

It is well-established that an individual generally has a strong privacy interest in whether he is mentioned in an investigative file. *See, e.g., Fitzgibbon v. CIA*, 911 F.2d 755, 767 (D.C. Cir. 1990); *Cotton v. Adams*, 798 F. Supp. 22, 26 (D.D.C. 1992). However, even when law enforcement records are at issue, any privacy interests at play must be balanced against the magnitude of the public interest in learning that information, with a focus on “the extent to which disclosure . . . would shed light on an agency’s performance of its statutory duties or otherwise let citizens know what their government is up to.” *U.S. Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 497 (1994).

Considering all of the relevant factors here, I conclude that the majority of the Exemption 6 and 7(C) redactions in ROI 19-0728 were overbroad. For example, most of the redacted information involves identifying information of very senior government officials in relation to the performance of their official duties, and further where their connection to the events discussed in the ROI has already been extensively circulated in the public domain. Moreover, and importantly, I find the degree of public interest in this matter to be exceptionally high. The Census is a critical component of our democracy and the public has great concern in knowing the actions of its most senior officials in connection with it. That compelling interest is evidenced here by the intense level of media and congressional interest, as well as litigation, surrounding the matters discussed in ROI 19-0728.

The OIG is re-releasing this ROI after removing portions of redactions that were overbroad. I am upholding a few of the initial redactions under Exemptions 6 and 7(C) where I have determined that personal privacy interests sufficiently outweigh the public interest in disclosure. For example, I have upheld redaction of certain personal information that is not directly relevant to the citizenship question or Secretary Ross’s testimony, as well identifying information of less senior officials who had only minor involvement in the events at issue. Accordingly, ROI 19-0728 will remain partially redacted under Exemptions 6 and 7(C), as well as under Exemption 5.

¹ Accordingly, I reject the argument in your appeal that ROI 19-0728 does not qualify as part of “similar files” for purposes of Exemption 6.

Conclusion

Your appeal is denied in part and granted in part. As noted above, I have reviewed ROI 19-0728 and am re-releasing that record to you with additional information responsive to your FOIA request. Please see the enclosure to this letter. These pages remain partially redacted under FOIA Exemptions 5, 6, and 7(C). Moreover, the OIG will be re-posting ROI 19-0728 to our FOIA Electronic Reading Room (<https://www.oig.doc.gov/Pages/FOIA-Electronic-Reading-Room.aspx>) to include the additional information that has been released on this appeal.

This is the final decision of the OIG. You have the right to seek judicial review of this partial denial, as provided in 5 U.S.C. § 552(a)(4)(B). Further, the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

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Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

However, OGIS indicates that it has currently adjusted its normal operations due to the COVID-19 pandemic to balance the need of completing its work while also adhering to the recommended social distancing for the safety of its staff. As a result, you may experience a delay in receiving a response to your request. To ensure a more timely response to your inquiry, NARA recommends that you contact OGIS via email at ogis@nara.gov. For the most up to date information, see <https://www.archives.gov/ogis>.

Sincerely,

**Wade
Green**

Wade Green
Counsel to the Inspector General

Digitally signed by
Wade Green
Date: 2021.11.09
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Enclosure

Investigation into Misrepresentations of the Origins of the Proposed Citizenship Question on the 2020 Decennial Census

INVESTIGATIVE REPORT NO. 19-0728

JULY 6, 2021

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U.S. Department of Commerce
Office of Inspector General
Office of Audit and Evaluation

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Cover: Herbert C. Hoover Building main entrance at 14th Street Northwest in Washington, DC. Completed in 1932, the building is named after the former Secretary of Commerce and 31st President of the United States

Introduction

On May 31, 2019, the Office of Inspector General (OIG) received a joint letter from 13 U.S. Senators alleging that the Department of Commerce (the Department) and the U.S. Department of Justice (DOJ) concealed the contribution of a political redistricting strategist—Dr. Thomas Hofeller—in the rationale for the addition of a citizenship question to the 2020 Decennial Census (2020 Census). The letter made the following specific allegations:

- (a) “In depositions and congressional interviews, Justice and Commerce Department officials failed to disclose the substantive public policy role of political operative, Dr. Thomas Hofeller, in adding the question to the 2020 Census; and
- (b) In concealing the contribution of Dr. Hofeller, Justice and Commerce Department officials purposely obscured the impermissible racial and partisan motivations for adding a citizenship question—to be ‘advantageous to Republicans and Non-Hispanic Whites’ and to ‘clearly be a disadvantage to the Democrats’—in both the Justice Department’s December 2017 letter requesting the citizenship question and the Commerce Department’s March 2018 memorandum adding the question.”

The allegations, if substantiated, would contradict then-Department Secretary Wilbur Ross’s assertion that the addition of the citizenship question was based solely on a DOJ request to assist in the enforcement of the Voting Rights Act of 1965 (VRA).¹ Further, the allegations, if substantiated, would implicate DOJ and Department officials in an effort to conceal from Congress and the public the true rationale for the addition of the citizenship question to the 2020 Census.

On June 27, 2019, our office initiated this investigation based on the allegations listed above and possible violations of 18 U.S. Code § 1001: Statements or entries generally. This report documents our investigation and findings.

Executive Summary

Our investigation was unable to establish that Dr. Thomas Hofeller had a substantive public policy role in the addition of the citizenship question to the 2020 Census. Our investigation did substantiate that correspondence from the Department to the DOJ contained verbiage similar to that used in portions of Dr. Hofeller’s unpublished 2015 study focusing on the use of Citizenship Voting Age Population (CVAP)² for the purposes of redistricting; however, those similar portions related to historical and factual references to the Census and did not include Dr. Hofeller’s opinions.

Our investigation established Secretary Ross misrepresented the full rationale for the reinstatement of the citizenship question during his March 20, 2018, testimony before the House Committee on Appropriations and again in his March 22, 2018, testimony before the

¹ 52 U.S.C. § 10301 et seq.

² *Exhibit I: Chart Comparing Hofeller 2015 Study with DOJ December 2017 Letter*, 125–126. Available at <https://assets.documentcloud.org/documents/6111284/May-31-2019-Unredacted-Exhibits.pdf> (accessed March 8, 2021).

House Committee on Ways and Means. During Congressional testimony, Secretary Ross stated his decision to reinstate the citizenship question was based solely on a DOJ request. That request memorandum was signed by the DOJ on December 12, 2017. However, evidence shows there were significant communications related to the citizenship question among the Secretary, his staff, and other government officials between March 2017 and September 2017, which was well before the DOJ request memorandum. Evidence also suggests the Department requested and played a part in drafting the DOJ memorandum. Further, Secretary Ross sent a memorandum to the Department on June 21, 2018, clarifying his deliberations regarding adding a citizenship question to the Decennial Census. In this memorandum, the Secretary stated he began considering the content of the 2020 Census, to include reinstating the citizenship question, soon after his appointment to Secretary.

Background

On December 12, 2017, Arthur Gary, the General Counsel for DOJ's Justice Management Division (JMD), sent a letter to Dr. Ron Jarmin, then-performing the non-exclusive functions as Director of the U.S. Census Bureau (Census Bureau), requesting that the Bureau add a citizenship question to the 2020 Census.³

On March 26, 2018, Secretary Ross sent a memorandum⁴ to Karen Dunn Kelley, then-Deputy Secretary of Commerce, notifying her of his decision to add the citizenship question to the 2020 Census based on DOJ's request for data to enforce Section 2 of the VRA. The Secretary's March 26, 2018, memorandum maintained that adding a citizenship question would provide DOJ with the most complete and accurate count of CVAP.⁵

Between March 2018 and May 2018, Secretary Ross testified before the U.S. House of Representatives and the U.S. Senate and affirmed that the Department responded solely to DOJ's request to add the citizenship question.⁶

In June 2018, Secretary Ross issued a supplemental memorandum wherein he stated he began considering various fundamental issues with the 2020 Census, which included the addition of a

³ Arthur E. Gary to then-performing the non-exclusive functions as Director of U.S. Census Bureau, December 12, 2017. *Request to Reinstate Citizenship Question on 2020 Census Questionnaire*. Available at <http://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html> (accessed March 8, 2021).

⁴ Wilbur L. Ross, Jr., to Undersecretary for Economic Affairs, March 26, 2018. *Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire*. Available at <http://www.documentcloud.org/documents/4426785-commerce2018-03-26-2.html> (accessed March 8, 2021).

⁵ *Id.* at p. 5.

⁶ Then-Ranking Minority Member Elijah E. Cummings, et al., to Chairmen Trey Gowdy and Mark Meadows, August 2, 2018. *Letter from the Committee on Oversight and Government Reform to the Committee on Oversight and Government Reform and the Subcommittee on Government Operations*. Available at https://connolly.house.gov/uploadedfiles/ogr_dems_request_ross_hearing_8.2.18.pdf (accessed March 8, 2021). This letter was signed by Congressmen Elijah Cummings, Eleanor Norton, Peter Welch, Robin Kelly, Mark DeSaulnier, Gerald Connolly, Carolyn Maloney, Jim Cooper, Brenda Lawrence, Jamie Raskin, Bonnie Watson Coleman, William Lacy Clay, Stacey Plaskett, John Sarbanes, Jimmy Gomez, Stephen Lynch, Raja Krishnamoorthi, and Matthew Cartwright.

citizenship question, soon after being appointed Secretary, despite previously testifying at least three times that his decision was based on DOJ's request.⁷

After Secretary Ross's decision to reinstate the citizenship question on the 2020 Census, multiple civil lawsuits were filed against the Department, DOJ, Secretary Ross, Dr. Jarmin, and other Department and DOJ officials. The lawsuits were referred to the U.S. Supreme Court in February 2019 and argued before the Court in April 2019. On June 27, 2019, Chief Justice Roberts published the Court's opinion, which stated Secretary Ross did not violate the Enumeration Clause, U.S. Const. art. I, § 2, cl. 3; Amdt. 14, § 2; or the Census Act, Title 13 of the U.S. Code, by reinstating the citizenship question.⁸ However, the Court affirmed, in part, a lower court's decision that Secretary Ross's "contrived" rationale for reinstating the citizenship question was an executive branch overreach under the Administrative Procedure Act, 5 U.S.C. § 551 et seq.

Details of Investigation

A. Timeline of Events

Below is a chronological summary of relevant documents, including testimonies, emails, and other correspondence, collected and reviewed during this investigation.

2017 Correspondence and Testimony

March 10 [Email]: Earl Comstock, then-Department of Commerce Director of Policy, emailed Secretary Ross and courtesy copied Eric Branstad, then-Department of Commerce Senior White House Advisor, with the subject line "Your Question on the Census." Comstock forwarded a link to a 2010 Wall Street Journal article written by Carl Bialik titled, "The Pitfalls of Counting Illegal Immigrants."⁹ Comstock further highlighted a sentence in the article: "No major government survey, including the [D]ecennial [C]ensus now under way, asks Americans about their citizenship status."

April 5 [Email]: Brooke Alexander, Executive Assistant to Secretary Ross, emailed Hilary Geary, Secretary Ross's spouse, stating that Steve Bannon, then-White House Chief Strategist, wanted to speak with Secretary Ross about the Census.¹⁰

April 20 [Email]: Alexander sent an email to Comstock and courtesy copied Wendy Teramoto, then-Department of Commerce Chief of Staff. In the email, Alexander stated the Census Director had an "April 29 meeting of the National Advisory Committee on Racial, Ethnic and Other Populations. We must get our issue resolved before this!"

⁷ Wilbur L. Ross, Jr., Supplemental Memorandum. *Supplemental Memorandum by Secretary of Commerce Wilbur Ross Regarding the Administrative Record in Census Litigation*, June 21, 2018. Available at <https://assets.documentcloud.org/documents/4550951/Supplemental-Memo-by-Wilbur-Ross.pdf> (accessed March 8, 2021).

⁸ *Dep't of Commerce, v. New York*, No. 18-966, 588 U.S. ___, 139 S. Ct. 2551, 204 L. Ed. 2d 978 (2019).

⁹ Cummings, August 2, 2018, *Letter to Chairmen*.

¹⁰ *Ibid.*

Alexander also indicated she had trouble sending the email from “SWLR’s Account” so she was sending the message from her account, but “the message was from him” (referencing Secretary Ross).¹¹

May 2 [Email]: Secretary Ross emailed Comstock and Ellen Herbst, former Commerce Chief Financial Officer and Assistant Secretary of Administration, and stated, “I am mystified why nothing [has] been done in response to my months['] old request that we include the citizenship question. Why not?” Comstock replied, “I agree Mr. Secretary. On the citizenship question we will get that in place. The broad topics were what were sent to Congress earlier this year as required. It is next March—in 2018—when the final 2020 [D]ecennial Census questions are submitted to Congress. We need to work with [DOJ] to get them to request that citizenship be added back as a [C]ensus question, and we have the court cases to illustrate that D[OJ] has a legitimate need for the question to be included. I will arrange a meeting with D[OJ] staff this week to discuss.”¹² This email was then forwarded to include Teramoto on the email chain.

Later the same day, Teramoto replied to Secretary Ross, “I continue to talk frequently with Mar[k] [Neuman] and we often have dinner together. He...talks about [the Census] nonstop. I know he would help you as much as he can. Do you want me to set up another meeting? I think you could task him with putting together an immediate action plan. Also[,] [h]e may be in [REDACTED] this weekend. I think you are to[o]. Let me know if you want to have a drink or get together with him over the weekend.”¹³ (Note: Mark Neuman was further identified as A. Mark Neuman, then-Senate appointee to the Census Monitoring Board and unpaid advisor to Secretary Ross on 2020 Census matters.)

May 3 [Email]: Comstock emailed Branstad “Thanks” in response to Branstad’s forwarding of an email conversation that identified Mary Blanche Hankey, DOJ White House Liaison, as a “counterpart to reach out to at DOJ –Regarding Census and Legislative issue?”¹⁴

July 14 [Email]: Kris Kobach, then-Kansas Secretary of State, emailed Secretary Ross, stating he was following up on a telephone discussion he and Secretary Ross had referencing how the Census does not ask respondents about their citizenship. Kobach also provided an example of a citizenship question that could be added to the 2020 Census.¹⁵

¹¹ *Ibid* and Internal Department document.

¹² Wilbur L. Ross, Jr., to Director of Office of Policy and Strategic Planning and Chief Financial Officer of the Department, May 2, 2017. *E-mail from Secretary Ross to Director of Office of Policy and Strategic Planning and Chief Financial Officer of the Department*. Available at <https://www.documentcloud.org/documents/4616784-May-2-2017-Email-From-Wilbur-Ross.html> (accessed March 8, 2021).

¹³ *Ibid*.

¹⁴ Internal Department document.

¹⁵ Internal Department document.

July 21 [Email]: Kobach forwarded Teramoto the email he sent Secretary Ross the week prior and further stated, “He and I had spoken briefly on the phone about this issue, at the direction of Steve Bannon, a few months earlier.”¹⁶

July 25 [Calendar Entry]: Secretary Ross’s calendar entry reflected a telephone call with Kris Kobach from 11:00 a.m. to 11:30 a.m.¹⁷

August 8–10 [Email]: Secretary Ross and Comstock had email conversations pertaining to the DOJ and its analysis of the citizenship question. On August 8, 2017, Secretary Ross emailed Comstock and stated, “(b) (5)

Were you on the call this morning about Census? They seem [dug] in about not [using] the citizenship question and that raises the question of where is the DOJ in their analysis? If they still have not come to a conclusion[,] please let me know your contact person and I will call the [Attorney General].”¹⁸

On August 9, 2017, Comstock replied, “Mr. Secretary—we are preparing a memo and full briefing for you on the citizenship question. The memo will be ready by Friday, and we can do the briefing whenever you are back in the office. Since this issue will go to the Supreme Court we need to be diligent in preparing the administrative record.”¹⁹

On August 10, 2017, Secretary Ross replied, “I would like to be briefed on Friday by phone. I probably will need an hour or so to study the memo first. We should be very careful, about everything, whether or not it is likely to end up in the [Supreme Court].”²⁰

August 11 [Email]: James Uthmeier, then-Senior Advisor to the Department’s General Counsel and Secretary Ross, and [REDACTED] Department’s Office of the Chief Counsel for Economic Affairs, finalized a memorandum covering the “historical use of citizenship on [C]ensus inquiries.” Uthmeier forwarded the memorandum to Comstock, who then forwarded the memorandum to Secretary Ross and courtesy copied Teramoto.²¹ A review of Uthmeier’s August 11, 2017, memorandum disclosed it was addressed to Secretary Ross, Teramoto, and Comstock and was titled “Citizenship Inquiries on the Decennial Census.” The memorandum contained a historical and legal analysis of the Secretary’s legal and constitutional authority to add a citizenship question to the 2020 Census. Uthmeier concluded that (b) (5)

¹⁶ Cummings, August 2, 2018, *Letter to Chairmen*. p. 4 and Internal Department document.

¹⁷ Internal Department document.

¹⁸ Internal Department document.

¹⁹ Internal Department document.

²⁰ Internal Department document.

²¹ Internal Department document.

(b) (5) ²² (b) (5)

²³

August 14 [Email]: Uthmeier forwarded the August 11, 2017, memorandum to Peter Davidson, then-Department General Counsel, asking for a review. During the email exchange, Uthmeier stated, (b) (5)

²⁴

September 8 [Memorandum]: Comstock drafted a memorandum to Secretary Ross titled “Census Discussions with DoJ” wherein Comstock stated:

“In early May Eric Branstad put me in touch with Mary Blanche Hankey as the White House liaison in the Department of Justice. Mary Blanche worked for AG Sessions in his Senate office, and came with him to the Department of Justice. We met in person to discuss the citizenship question. She said she would locate someone at the Department who could address the issue. A few days later she directed me to James McHenry in the Department of Justice.

I spoke several times with James McHenry by phone, and after considering the matter further James said that Justice staff did not want to raise the question given the difficulties Justice was encountering in the press at the time (the whole Comey matter). James directed me to Gene Hamilton at the Department of Homeland Security.

Gene and I had several phone calls to discuss the matter, and then Gene relayed that after discussion DHS [Department of Homeland Security] really felt that it was best handled by the Department of Justice.

At that point the conversation ceased and I asked James Uthmeier, who had by then joined the Department of Commerce Office of General Counsel, to look into the legal issues and how Commerce could add the question to the Census itself.”²⁵

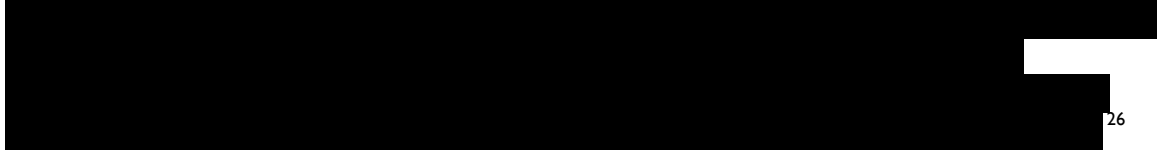
²² Internal Department document.

²³ Internal Department document.

²⁴ Internal Department document.

²⁵ Internal Department document.

September 8 [Email]: Uthmeier sent an email to Comstock and Teramoto to update Comstock on Uthmeier's and Davidson's efforts in researching the citizenship question. Uthmeier stated that they (b) (5), (b) (6), (b) (7)(C)



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September 13 [Email]: John Gore, then-DOJ Acting Assistant Attorney General, Civil Rights Division, emailed Teramoto wishing to speak to her regarding a "DOJ-[Department] issue."²⁷

September 16–17 [Email]: Teramoto exchanged emails with Danielle Cutrona, former Senior Counselor to the Attorney General at DOJ in attempts to connect then-Attorney General Jeff Sessions and Secretary Ross. On September 17, 2017, Teramoto stated, "They connected."²⁸

December 12 [Letter]: Arthur Gary sent Dr. Jarmin an official letter requesting the citizenship question be added to the 2020 Census to enforce the VRA.

2018 Correspondence and Testimony

March 20 [Congressional Testimony]: During testimony before the House Committee on Appropriations, Secretary Ross answered Congressman José E. Serrano's question, "Should political parties and campaign politics ever factor in to what is asked of every household in the country on the [C]ensus?" by stating, "No political party has asked us to do anything on the [C]ensus. We have had a request, as everyone is aware, from the Department of Justice to add a citizenship question to the 2020 [C]ensus."

Congressman Serrano further asked, "[h]as the President or anyone else in the White House directed you to add this or a similar question to the 2020 census?" Secretary Ross responded, "[w]e are responding solely to the Department of Justice's request."²⁹

March 22 [Congressional Testimony]: During testimony before the House Committee on Ways and Means, Secretary Ross answered Congresswoman Judy Chu's question, "Can you tell me whether the Department of Commerce plans to include the citizenship question in the 2020 Census?" by stating: "Department of Justice has, as you know, initiated the request for inclusion of the citizenship question." Secretary Ross also stated, "[b]ecause it is from the Department of Justice, we are taking it very

²⁶ Internal Department document.

²⁷ Internal Department document.

²⁸ Internal Department document.

²⁹ House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *FY19 Budget Hearing: Department of Commerce* (Mar. 20, 2018).

seriously and we will issue a fulsome documentation of whatever conclusion we finally come to.”³⁰

March 26 [Memorandum]: Secretary Ross signed a memorandum titled “Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire” addressed to then-Department Deputy Secretary Karen Dunn Kelley. In the memorandum, the Secretary stated: “Following receipt of the DOJ request, I set out to take a hard look at the request and ensure that I considered all facts and data relevant to the question so that I could make an informed decision on how to respond. To that end, the Department of Commerce (“Department”) immediately initiated a comprehensive review process led by the Census Bureau...At my direction, the Census Bureau and the Department's Office of the Secretary began a thorough assessment that included legal, program, and policy considerations.”³¹

May 8 [Congressional Testimony]: During testimony before the House Oversight and Government Reform Committee, Comstock answered Congresswoman Eleanor Holmes Norton’s question, “Why did this question, which was dropped for seventy years, suddenly appear on the Decennial Census? What was the point?” by stating: “We received a request from the Justice Department for this and their rationale was that the level of information that they needed to enforce the Voting Rights Act was not available...This was requested by the Department of Justice for their statutory duty to enforce the Voting Rights Act...The reason for this question was the Justice Department asked this to get more accurate information at the Census block level.”³²

May 10 [Congressional Testimony]: During testimony before the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, Secretary Ross answered Senator Brian Schatz’s question, “And so, this request for a question to be added to the census comes from DOJ, comes from a political appointee. It seems to be out of left field, and then is not included in the field test because of, I guess, the logistics of printing it in time. I guess I would like to hear how you respond to, if we were just sitting down having a cup of coffee, what I would say is, ‘Come on. This is what it looks like.’ And so, I understand you are doing everything to mitigate the impact of this, but I think the provenance of this is not on the level that DOJ is trying to enforce the Voting Rights Act and on the level through the normal regular order interacted in an interagency professional way, but rather this is a political matter. And so, how can you reassure me that that is not what happened or at least reassure me that you are not going to allow it to be implemented in that way?” by stating: “We spent a lot of time talking with [DOJ] about the request. We truly believe they think they need it and they are a qualified party to make that request under the procedures.” During the same hearing, Secretary Ross answered Senator Patrick Leahy’s question, “And why this sudden interest in that when the [Justice] Department is supposed to

³⁰ U.S. Congress, House of Representatives, Committee on Ways and Means. *Hearing with Commerce Secretary Ross*, 115th Cong, 2nd sess. (Mar. 20, 2018), p. 36.

³¹ Ross to Undersecretary for Economic Affairs, March 26, 2018. *Memorandum*.

³² U.S. Congress, House of Representatives, Committee on Oversight and Government Reform. *Progress Report on the 2020 Census*, 115th Cong., 2nd sess., (May 8, 2018).

enforce violations and does not see any problems?” by stating: “Well the Justice Department is the one who made the request of us.”³³

June 21 [Memorandum]: Secretary Ross signed a “Supplemental Memorandum” to his March 26, 2018, memorandum regarding his decision to add the citizenship question to the 2020 Census. In the memorandum, Secretary Ross stated: “Soon after my appointment as Secretary of Commerce, I began considering various fundamental issues regarding the upcoming 2020 Census, including funding and content. Part of these considerations included whether to reinstate a citizenship question, which other senior Administration officials had previously raised. My staff and I thought reinstating a citizenship question could be warranted, and we had various discussions with other governmental officials about reinstating a citizenship question to the Census. As part of that deliberative process, my staff and I consulted with Federal governmental components and inquired whether the Department of Justice (DOJ) would support, and if so would request, inclusion of a citizenship question as consistent with and useful for enforcement of the Voting Rights Act.”³⁴

August 26 [The Hofeller Files]: Dr. Thomas Hofeller, the aforementioned redistricting expert and political strategist, died. In October 2018, his daughter, Stephanie Hofeller (S. Hofeller), discovered numerous USB drives, flash drives, and other media storage devices in Dr. Hofeller’s home office. Dr. Hofeller’s widow also told S. Hofeller that Dalton Lamar Oldham, also known as “Dale,” Dr. Hofeller’s business partner and fellow Geographical Strategist, took Dr. Hofeller’s laptop and desktop computer. S. Hofeller reached out to Common Cause, a nonprofit political watchdog group based out of Washington, DC, to help Dr. Hofeller’s widow obtain an attorney. Through Common Cause, S. Hofeller learned that the data on Dr. Hofeller’s storage media might prove valuable in a lawsuit relating to redistricting in North Carolina. In February 2019, in response to a subpoena, S. Hofeller sent the storage media to the law firm of Arnold & Porter, which was representing the plaintiffs in the North Carolina General Court of Justice, Superior Court Division (18 CVS 014001).³⁵ Arnold & Porter forwarded the storage media to Stroz Friedberg, a digital forensic and technical investigations firm in Washington, DC. During the examination of Dr. Hofeller’s storage media, [REDACTED], Digital Forensic Analyst, discovered 21 documents relating to redistricting and the 2020 Census. Included in these documents was a 2015 study Dr. Hofeller conducted for *The Washington Free Beacon* and several emails among Census Bureau Chief of Staff Christa Jones, Neuman, and Dr. Hofeller between 2010 and 2015.³⁶

³³ U.S. Congress, Senate, Committee on Appropriations, Subcommittee on Commerce, Justice, and Science and Related Agencies. *Review of the FY 2019 Budget Request for the U.S. Department of Commerce*, 115th Cong., 2nd sess., (May 10, 2018).

³⁴ Ross, *Supplemental Memorandum*, June 21, 2018.

³⁵ See *Common Cause v. Lewis*, 18 CVS 014001, N.C. Sup. Ct. Div. (2019).

³⁶ NPR. *Emails Show Trump Officials Consulted With GOP Strategist On Citizenship Question* [online]. <https://www.npr.org/2019/11/12/778496494/emails-connect-trump-officials-and-gop-redistricting-expert-on-citizenship-quest> (accessed March 10, 2021).

October 8 [Deposition]: Neuman was deposed in the United States District Court for the District of Maryland (*Civil Action No. 8:18-cv-01041-GJH*), stating that he has known Dr. Hofeller for “25 years” and that Neuman had spoken to Dr. Hofeller several times during the transition of administrations in 2016-2017. Neuman further answered questions from attorneys of Covington & Burling LLP, including “Did the issue of how states might use citizenship data from the [D]ecennial [C]ensus in deciding how to draw legislative districts come up in your conversations with Mr. [Hofeller]?” by stating: “I don't believe so. Again, you know, when you—these are conversations long ago, but it—it—I don't think so. Because it—again, it's not the kind of thing that he would talk about.” Neuman also testified that he was “familiar” with the draft DOJ letter (discussed in the following congressional testimony); however, he did not author it.³⁷

2019 Correspondence and Testimony

March 7 [Congressional Testimony]: Gore gave testimony to the House of Representatives Committee on Oversight and Reform (the Committee). When asked if he had any conversations with anyone about the addition of a citizenship question, Gore stated that he spoke to three individuals at the Department: Peter Davidson, James Uthmeier, and Wendy Teramoto. Gore further testified that around October of 2017, he had a conversation with Neuman, who provided Gore with documents and information regarding the 2020 Census, including “a draft letter that would request reinstatement of the citizenship question on the [C]ensus questionnaire.” Gore also stated he received a “hand delivered” memorandum about the citizenship question from Uthmeier.³⁸

March 14 [Congressional Testimony]: During testimony before the Committee, Congressman and Committee Chair Elijah Cummings's stated, “Secretary Ross, you have claimed repeatedly that you added the citizenship question only because the Justice Department asked you to. You testified under oath on three occasions. Each time, you said you were responding solely to the Department of Justice's request. But now we have obtained documents showing that you were working to add the citizenship question from your very first days at the Commerce Department.” Secretary Ross responded by stating, “My reasons for adding the citizenship question are described in detail in the March 26, 2018, decision memo. After we received the Department of Justice letter on December 12, 2017, we, namely Commerce Department, myself, and the Census Bureau, initiated a very detailed, very thorough process to consider that request. That's what we were responding to.” When asked by Congressman Cummings whether Secretary Ross wished to withdraw his prior testimony after the new documents had come to light, Ross responded, “I testified truthfully to the best of my ability in response to what my understanding of the questions were.”

³⁷ *New York v. U.S. Dep't of Commerce*, No. 18-CV-2921, Docket Entry 595, Att. 1 (S.D.N.Y. May 31, 2019).

³⁸ Majority Staff to Committee Members, March 14, 2019. *Supplemental Memo on Transcribed Interview with John Gore Regarding Addition of Citizenship Question to Census*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-14.%20Supplemental%20Memo%20on%20Gore%20TI.pdf> (accessed March 10, 2021).

Congressman Cummings went on to ask, “in early April 2017, you got a call from Steve Bannon about the citizenship question. That was also a month before the Department of Justice sent its letter. Is that correct?” Secretary Ross answered by stating, “Yes, sir.” Congressman Cummings continued by asking, “Is it your testimony that your call with Mr. Bannon had nothing to do with efforts to pursue the citizenship question?” Secretary Ross answered, “Steve Bannon called with a simple request, namely asking if I would take a call from Kris Kobach, and I agreed to that request as a courtesy since he was a White House staffer. And shortly thereafter, possibly the next day, I did have a conversation with Kris Kobach.”³⁹

May 30 [Congressional Interview]: Gene Hamilton, then-Senior Counselor to the Secretary of DHS, gave testimony to the Committee, wherein he testified that Kobach contacted him in “early November of 2016” to discuss legislative proposals regarding the citizenship question. Hamilton stated he received a call from John Zadrozny, White House Domestic Policy Counsel, who told him that he “would be receiving a phone call from someone from the Department of Commerce related to the Census.” Comstock called and asked “if [DHS] could use or had a need for the information for citizenship information of the Census that would facilitate a departmental mission.” Hamilton testified that he checked with experts within the DHS, but that nobody identified a need for this information. He reported to Comstock that DHS “didn’t really have a use for” the information.⁴⁰

June 3 [Congressional Interview]: Kobach participated in an interview with staffers of the House of Representatives Committee on Oversight and Reform and stated he met with President Donald Trump, Bannon, and Reince Priebus, President Trump’s then-Chief of Staff, to discuss the addition of a citizenship question to the 2020 Census. Kobach recalled two meetings in late January or early February of 2017—one with Bannon and the second with the President, who may have been accompanied by Bannon and Priebus. Kobach also recalled a telephone conversation with Secretary Ross in the first half of 2017 in which he requested that Secretary Ross consider reinstating the citizenship question to the 2020 Census. Kobach could not recall whether Secretary Ross was supportive of the idea at that time. Later, in July 2017, Kobach emailed Secretary Ross to provide proposed verbiage for the citizenship question and mentioned that the lack of a citizenship question leads to the problem that aliens who do not reside in the U.S. could still be counted for congressional apportionment. Kobach again could not recall if Secretary Ross responded to his request. Later, in February 2018, Kobach was provided an opportunity to make an official notice and comment for additions to the 2020 Census. Kobach used that opportunity to send Secretary Ross an official comment requesting the reinstatement of the citizenship question and offering his support for the DOJ’s request. During the interview, Kobach

³⁹ U.S. Congress, House of Representatives, Committee on Oversight and Reform. *Hearing with Secretary of Commerce Wilbur L. Ross, Jr.*, 116th Cong., 1st sess., March 14, 2019.

⁴⁰ U.S. Congress, House of Representatives, Committee on Oversight and Reform. *Interview of Gene Patrick Hamilton*, 116th Cong., 1st sess., May 30, 2019.

denied ever speaking to Comstock or Uthmeier about the citizenship question and denied ever reading Hofeller's 2015 Redistricting Study.⁴¹

June 27 [Supreme Court Decision]: The U.S. Supreme Court ruled that Secretary Ross could not add the citizenship question to the 2020 Census based on his "contrived" rationale. The Court found "the decision to reinstate a citizenship question cannot be adequately explained in terms of DOJ's request for improved citizenship data to better enforce the VRA." The Court further found "the evidence tells a story that does not match the explanation the Secretary gave for his decision" and that "the VRA enforcement rationale—the sole stated reason—seems to have been contrived."⁴²

November 12 [Congressional Memorandum]: Congresswoman Carolyn B. Maloney, in her position as Acting Chairwoman of the House of Representatives Committee on Oversight and Reform, sent a memorandum titled "Update on Investigation of Census Citizenship Question Since House Held Attorney General Barr and Commerce Secretary Ross in Contempt of Congress" to members of the Committee on Oversight and Reform. The memorandum outlined the following four documents since received from Neuman:⁴³

- (a) **August 30, 2017** [Email]: Neuman emailed Dr. Hofeller asking if the language in the following excerpt was correct:

"We understand that the Bureau personnel may believe that ACS [American Community Survey] data on citizenship was sufficient for redistricting purposes. We wanted the Bureau to be aware that two recent Court cases have underscored that ACS data is not viable and/or sufficient for purposes of redistricting. Two important citations from these cases are as follows:

___Bartlet v Simpson; lullac v perry 'Relevant numbers must account for citizenship in order to determine the group's opportunity to elect candidates in order to determine the groups opportunity to elect candidates...pg 4 lulac v [sic].'"⁴⁴

Note: The same legal citations sent to the DOJ from the Department were also in the final letter requesting the reinstatement of the citizenship question to the Census from the DOJ to the Department.⁴⁵

⁴¹ U.S. Congress, House of Representatives, Committee on Oversight and Reform. *Interview of Kris Kobach*, 116th Cong., 1st sess., June 3, 2019.

⁴² *Commerce v. New York*, 139 S. Ct. 2551 (2019).

⁴³ Carolyn B. Maloney to Members of the Committee on Oversight and Reform, November 12, 2019. Memorandum from Acting Chairwoman Carolyn B. Maloney to Members of the Committee on Oversight and Reform. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-11-12.Memo%20to%20COR%20Members%20re.%20Census.pdf> (accessed March 10, 2021).

⁴⁴ A. Mark Neuman to Tom Hofeller, August 30, 2017. *Email Census*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017.08.30%20Email%20from%20Mark%20Neuman%20to%20Thomas%20Hofeller%20%281%29.pdf> (accessed May 26, 2021).

⁴⁵ Gary to Census Director, December 12, 2017. *Letter*.

Later that same day, Dr. Hofeller responded to Neuman by saying, “Mark: Dale Just [sic] read it, and says it is fine as written. Tom.”⁴⁶

- (b) **October 6, 2017** [Text Message]: Neuman sent Gore a text message with Neuman’s draft language that contained content approved by Dr. Hofeller and Oldham on August 30, 2017.⁴⁷
- (c) **October 8, 2017** [Email]: Secretary Ross and Davidson exchanged emails with the subject line: “Re: Letter from DOJ,” wherein Secretary Ross requested a “status.” Davidson replied that he was speaking with Neuman, who was relaying notes from a meeting the previous week.⁴⁸
- (d) **October 8, 2017** [Text Message]: Davidson texted Neuman, stating “[Thanks]...He appreciated the update and your help.”⁴⁹

B. Relevant Interviews

Mark Neuman—Neuman stated he assumed the role of an unpaid advisor to Secretary Ross and the Census Bureau after then-Census Bureau Director John Thompson’s retirement in June 2017 to bridge the gap between Thompson and the Senate confirmation of the next director. Neuman had years of experience working on the Census Monitoring Board and agreed to advise Secretary Ross on policy and procedure issues dealing with the 2020 Census. Neuman denied any involvement in drafting the language sent from the Department to DOJ, but he admitted that he emailed Dr. Hofeller the verbiage in the letter to “confirm the language” used in the letter was accurate. Additionally, Neuman stated he reached out to Dr. Hofeller throughout the transition of administrations because Dr. Hofeller was an expert in block counting for apportionment. Also, Dr. Hofeller was considered a “stakeholder” and it was very common for members of the Department to reach out to stakeholders during a transition. When Neuman asked Dr. Hofeller his opinion on issues that may arise during the 2020 Census, Neuman recalled Dr. Hofeller believed that counting based on citizenship would become an issue, among others. Neuman described Dr. Hofeller as a redistricting specialist, but did not believe he had any influence over the decision to add the citizenship question to the 2020 Census. Instead, Neuman believed Kobach was the

⁴⁶ Tom Hofeller to A Mark Neuman, August 30, 2017. *Email RE: Census*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017.08.30%20Email%20from%20Thomas%20Hofeller%20to%20Mark%20Neuman.pdf> (accessed May 26, 2021).

⁴⁷ Neuman to Gore, October 6, 2017. *Text Message*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017.10.08%20Text%20from%20Mark%20Neuman%20to%20John%20Gore.pdf> (accessed May 26, 2021).

⁴⁸ Ross and Davidson, October 8, 2017. *Email Re: Letter from DOJ*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017.10.08%20Email%20from%20Peter%20Davidson%20to%20Wilbur%20Ross%20about%20DOJ%20Letter%20status%20-%20AR%202482%20%281%29.pdf> (accessed June 4, 2021).

⁴⁹ Davidson to Neuman, October 8, 2017. *Text Message*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017.10.08%20Text%20from%20Mark%20Neuman%20to%20Peter%20Davidson.pdf> (accessed June 4, 2021).

“mastermind” behind it. Lastly, Neuman stated he never attended any meetings at the White House to discuss the citizenship question with the administration.

Dr. Ron Jarmin—Dr. Jarmin stated he assumed the role of Acting Director for the Census Bureau after Thompson’s retirement in June 2017, and he performed the nonexclusive functions and duties of the director from July 2017 to January 2019. He previously served as the Associate Director for Economic Programs. Dr. Jarmin assumed his current duties as the Deputy Director and Chief Operating Officer in January 2019. Upon assuming the role of Acting Director of the Census Bureau, Dr. Jarmin had never heard any rumors or conversations about the potential of adding a citizenship question to the 2020 Census. Additionally, Dr. Jarmin was unaware of any other departments or agencies that might have been planning to request the inclusion of the question. In June 2017, during the transition, Thompson informed Dr. Jarmin that the topic of adding the citizenship question may come up, but Thompson never informed Dr. Jarmin why. Dr. Jarmin assumed it was based on meetings Thompson had attended with political appointees in Secretary Ross’s office. After that conversation with Thompson, Dr. Jarmin did not hear anything from the Department about the possibility of adding the citizenship question until approximately November 2017. During that time, Comstock contacted Dr. Jarmin and advised him to “keep an eye out” for a letter that would be making the request. Upon receiving the citizenship question request from the DOJ in December 2017, Dr. Jarmin stated that a team of technical experts from the Census Bureau outlined a way in which the Census Bureau could collect citizenship data in a more cost-effective way without adding the citizenship question to the 2020 Census. Dr. Jarmin contacted the DOJ requesting to meet with its technical experts to discuss their data needs for enforcement of the VRA. After multiple attempts to schedule a meeting, Arthur Gary ultimately informed Dr. Jarmin that no meeting would take place and that the DOJ’s letter adequately described their request. Dr. Jarmin stated this was the only time he recalled a meeting to discuss technicalities being declined. Dr. Jarmin also stated the events in November and December of 2017 puzzled his team at the Census Bureau, and he knew there had to have been other conversations outside of the DOJ prompting these actions and requests. Dr. Jarmin stated that his belief about other conversations outside of the DOJ was confirmed when Secretary Ross sent his March 2018 memorandum to the Census Bureau.

Christa Jones—Jones has been employed with the Census Bureau since 2002 and had previously worked on the Census Monitoring Board, where she became friends with Dr. Hofeller and Neuman. Jones left the Census Bureau in May 2017 to take a policy position working at the DHS. Shortly after deciding to leave the Census Bureau, Jones was contacted by Comstock, who asked her to stay to assist with 2020 Census operations since Thompson was retiring. Ultimately, Jones decided to leave the Census Bureau and spent almost a year working at DHS until Dr. Jarmin offered her the Chief of Staff position at the Census Bureau. Jones accepted the position and returned in February 2018. When asked if her relationships with Dr. Hofeller and Neuman were a contributing factor in the Department’s request for her to return, Jones stated it was possible, but she was unsure. Jones stated she was unaware of any attempts to request the inclusion of a citizenship question until she read about it in the news in December

2017. After her return to the Census Bureau in February 2018, Jones was tasked with evaluating and analyzing options regarding the citizenship question to present to Secretary Ross. After significant research and analysis, Jones's team recommended Secretary Ross use administrative records to provide DOJ the block-level citizenship data they requested. Jones stated she felt it was the most cost-effective method of collecting the data and would create the least harm to the 2020 Census. When the options were briefed to Secretary Ross, he ultimately proposed "Alternative D," which was the use of administrative records as well as including the citizenship question. Jones stated she was disappointed in the Secretary's decision to not use administrative records alone to collect the data because she felt that she and her team put together a very strong argument. Jones also stated that she was disappointed because after she read the Secretary's March 2018 memorandum announcing his decision to include the citizenship question, she realized that the Secretary had already made up his mind to include the question.

When asked about her communication with Dr. Hofeller, Jones characterized her email correspondence as friendly exchanges of news articles of mutual interest. Around January of 2017, Neuman contacted Jones requesting contact information for Dr. Hofeller. Jones presumed Neuman intended to discuss material related to the 2020 Census, as it was a shared interest, but stated she never inquired about the context of Neuman's and Dr. Hofeller's communications.

Enrique Lamas—Lamas was the Acting Deputy Director of the Census Bureau in the 2017-2018 timeframe and worked directly for Dr. Jarmin after Thompson's retirement. Comstock had initially requested Lamas fill the Acting Director position, [REDACTED]

[REDACTED] Prior to December 2017, Lamas was unaware of the Department's or DOJ's efforts to include a citizenship question on the 2020 Census. However, Lamas recalled attending several 2020 Census-related meetings with Secretary Ross, Deputy Secretary Kelley, Comstock, and Israel "Izzy" Hernandez, Senior Advisor to Secretary Ross. The meetings initially were focused on 2020 Census budgetary issues due to cost overruns incurred during Thompson's tenure as Director. At some point, the focus of the meetings changed to 2020 Census content. At first, they looked at the content of the American Community Survey (ACS) and the justifications for its questions. Later, they began to look at all 2020 Census questions, as well as their legislative mandates to include them on the questionnaire. At some point, there was discussion of adding a citizenship question to the 2020 Census, but Lamas could not recall who brought it up or in what timeframe the meetings occurred. The next incident Lamas could recall regarding the citizenship question was when Davidson pulled him into a hallway from a meeting to inquire if Lamas had received the DOJ's written request to add the question. Lamas recalled Davidson relayed it was urgent that they receive the letter. Lamas stated he and Dr. Jarmin received the DOJ letter shortly after this conversation.

[REDACTED] was the Census Bureau's [REDACTED] Redistricting and Voting Rights Section [REDACTED] [REDACTED] stated [REDACTED] never had any conversations or consultations with Department [REDACTED]

officials about adding a citizenship question to the 2020 Census and learned of it after the Bureau received the request from DOJ in December 2017. Additionally, [REDACTED] stated it was [REDACTED] section's responsibility to provide citizenship and CVAP data to the DOJ for their role in enforcing the VRA. According to [REDACTED] the CVAP data [REDACTED] section provided was acquired through ACS responses, and DOJ had previously stated the data was difficult to work with because it was based off of one-year-old geography. However, the DOJ never informed [REDACTED] that their difficulties with the data impaired or impeded their ability to enforce the VRA, and they never proposed a citizenship question be added to the 2020 Census to provide them with better data. In addition to providing DOJ data for enforcing the VRA, [REDACTED] section was also responsible for providing state legislatures with the 2020 Census data they required for redistricting. According to [REDACTED] each state provides a nonpartisan representative to the National Conference of State Legislatures (NCSL), which the Census Bureau considers to be its redistricting stakeholders. [REDACTED] would frequently attend the NCSL meetings and seminars to speak to the states about redistricting. It was at these meetings where [REDACTED] first met Dr. Hofeller and Oldham. [REDACTED] stated Dr. Hofeller was a frequent speaker at the NCSL meetings and always provided valuable briefings related to redistricting. [REDACTED] denied ever seeing Dr. Hofeller's 2015 redistricting study and denied that Dr. Hofeller ever spoke to [REDACTED] about adding a citizenship question to the 2020 Census. [REDACTED] described Oldham as being very "vocal" when the topic of redistricting came up and having strong partisan opinions about redistricting. However, [REDACTED] stated [REDACTED] never heard Oldham bring up the topic of adding a citizenship question to the 2020 Census to aid in Republican redistricting efforts. Lastly, [REDACTED] stated if Secretary Ross wanted to add a citizenship question to the 2020 Census, [REDACTED] thought it would have been prudent to ask the individual state legislatures if there was a need for the information before making a decision.

Arthur Gary—Gary was the General Counsel for DOJ JMD and signed the December 2017 request to add the citizenship question. According to Gary, his staff first heard conversations about the DOJ requesting reinstatement of the citizenship question around September 2017. No one in the JMD section knew where the conversations originated, but Gary believed they came from Gore and personnel in the DOJ's Civil Rights Section. Ultimately, in November 2017, Gore sent Gary a draft of the DOJ letter requesting the reinstatement of the citizenship question. Gary stated he spent time reviewing and editing the letter, but his primary role was to ensure the positions and citations used in the letter were "legally defensible." After coordination with Gore, Gary signed the letter in December 2017 and had his assistant transmit it to Dr. Jarmin. After receiving the letter, Dr. Jarmin contacted Gary and requested a meeting to discuss the technicalities of the DOJ's request. Gary contacted Gore several times to inquire about Gore's and the DOJ's Civil Rights Section meeting with personnel from the Census Bureau to discuss the request, but Gore refused to meet with them. During a conversation with Gore, Gary recalled Gore stating "we don't even care about this." Gore also informed Gary that the DOJ's request to reinstate the citizenship question was not a priority for the DOJ and the request was only sent because Attorney General

Sessions made a commitment to assist Secretary Ross. After those conversations with Gore, Gary contacted Dr. Jarmin and informed him a meeting would not take place.

C. Interview Declinations

This office interviewed agency officials in the key offices involved, including from the Census Bureau and the Department of Justice Office of General Counsel (DOJ OGC).

This office experienced certain challenges obtaining access to witnesses during this review. Most notably, OIG did not obtain testimony from then Deputy Secretary Karen Dunn Kelly nor then Secretary Wilbur Ross. The Department of Commerce, Office of General Counsel (OGC), requested to be present during any interviews of Deputy Secretary Kelly and Secretary Ross. OIG rejected that request as inappropriate and not in accordance with the IG Act. Our office then set a deadline for scheduling interviews of the Secretary and Deputy Secretary through their respective personal attorneys. The Secretary and Deputy Secretary's personal attorneys each reported communicating with OGC and receiving representations that the issue of OGC attendance was still unresolved. Secretary Ross's attorney questioned the OIG's legal authority to investigate this matter. Due to the OIG's position on refusing OGC's presence during the interviews, both the Secretary and Deputy Secretary declined to be interviewed with both attorneys asserting that OGC need to be present to assert confidentiality and Departmental/Executive privilege in the requested OIG interviews.

This office experienced challenges obtaining witness interviews from former Department of Justice officials and political appointees. Most notably, OIG was unable to establish contact with former Department of Justice Attorney General, Jefferson Sessions, despite multiple attempts made by OIG.

OIG requested a witness interview from John Gore, former Department of Justice Assistant Attorney General, Civil Rights Division. This office's request was ultimately denied as the Department of Justice issued a memorandum to the OIG that the information requested from Mr. Gore was subject to privilege and DOJ would be asserting those privileges in reference to Mr. Gore's conversations with Mr. Sessions.

This office encountered challenges when attempting to interview former Department officials and political appointees. Three former additional officials either ignored, declined or initially expressed willingness to participate in an OIG interview but ultimately failed to respond by an established deadline to be interviewed.

Findings

Allegation 1: The Department purposely concealed Dr. Hofeller's substantive public policy role in the motivations to add a citizenship question to the 2020 Census.

Finding: OIG found no evidence Dr. Hofeller played a "substantive public policy" role in the attempt to reinstate the citizenship question on the 2020 Census. OIG identified one exchange between Dr. Hofeller and advisor to Secretary Ross and the Census Bureau, Mark Neuman. Documents provided to Congress by Neuman show that the Department's draft language sent to the DOJ requesting reinstatement of the citizenship question was forwarded to Dr. Hofeller for review by him and his business associate, but nothing was found to show Dr. Hofeller contributed to the drafting of the memorandum or that he provided suggestions for the language to be used in the memorandum. In addition, a comparison of the draft memorandum and Dr. Hofeller's 2015 redistricting study shows similarities in the verbiage used, but those similarities were comprised of historical and factual references to the Census and did not include Dr. Hofeller's opinions. OIG did not identify evidence Secretary Ross had knowledge of Neuman's communication with Dr. Hofeller during his March 20, 2018, testimony before the House Committee on Appropriations and again in his March 22, 2018, testimony before the House Committee on Ways and Means.

Allegation 2: Secretary Ross knowingly misrepresented the rationale for the addition of a citizenship question during his March 20, 2018, testimony before the House Committee on Appropriations and again in his March 22, 2018, testimony before the House Committee on Ways and Means.

Finding: As OIG lacked the benefit of interviewing Secretary Ross, Deputy Secretary Kelley, and several other former key Department and DOJ officials related to this investigation, as detailed above, many questions about the genesis and rationale for the Secretary's decision remain unanswered. However, based on the troves of emails and documents that were reviewed, OIG's investigation concludes there were significant communications related to the citizenship question among the Secretary, his staff, and other government officials between March 2017 and September 2017, which was well before DOJ made the decision to request reinstatement of the citizenship question.

Additionally, during those communications, the Secretary's staff advised him on multiple occasions to be "diligent in preparing the Administrative Record," because they anticipated involvement from the U.S. Supreme Court. This investigation also confirmed the DOJ was not interested in requesting the reinstatement of the citizenship question and only put forth an effort to request the question after Secretary Ross contacted Attorney General Sessions in September 2017, and three members of Secretary Ross's staff coordinated with DOJ's Assistant Attorney General of the Civil Rights Section. Also, Secretary Ross's June 2018 Supplemental Memorandum contradicted his Congressional testimony when he testified that the decision to reinstate the citizenship question was based "solely" on the DOJ's request. In his Supplemental Memorandum, the Secretary admitted he began considering the content of the 2020 Census, to include reinstating the citizenship question, which senior administration officials had previously raised, soon after his appointment. OIG concludes Ross misrepresented the full rationale of the

addition of the citizenship question during his March 20, 2018, testimony before the House Committee on Appropriations and again in his March 22, 2018, testimony before the House Committee on Ways and Means.

Disposition

This investigation was presented to and declined for prosecution by the Public Integrity Section of the DOJ's Criminal Division.