

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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MEMORANDUM

July 20, 2022

To: Members of the Committee on Oversight and Reform

Fr: Chairwoman Carolyn B. Maloney

Re: Investigation of Census Citizenship Question

When the Supreme Court struck down the Trump Administration’s illegal attempt to add a citizenship question to the 2020 Census, Chief Justice John Roberts observed that the Trump Administration’s stated rationale for including the citizenship question—to help enforce the Voting Rights Act (VRA)—“seems to have been contrived.” Today, the Committee is releasing documents showing Chief Justice Roberts was right. These documents also reveal that even as the Trump Administration was developing this contrived rationale, top Administration officials were secretly exploring what appears to have been their true reason for adding the citizenship question: to exclude non-citizens from congressional apportionment counts, contrary to the clear language of the Constitution.

This memorandum provides Committee Members with new information and findings from the Committee’s investigation into the Trump Administration’s effort to add a citizenship question to the 2020 Census. This information was obtained in response to bipartisan subpoenas issued by the Oversight Committee.

Over the course of this investigation, the Committee faced unprecedented obstruction from the Trump Administration, including Secretary of Commerce Wilbur Ross and Attorney General Bill Barr, both of whom were held in contempt of Congress after they refused to produce documents responsive to the Committee’s subpoenas. President Trump personally directed this obstruction with an overbroad assertion of executive privilege intended to block the Committee’s inquiry.

After more than two years of litigation, and the arrival of a new administration, the Committee entered into an agreement with the Department of Commerce (Commerce) and Department of Justice (DOJ) to obtain previously withheld key documents. The new documents—over which President Trump had previously asserted executive privilege—contain internal communications and analyses by Trump Administration officials regarding the legality and constitutionality of the citizenship question. These documents include multiple drafts of an August 2017 memorandum about the citizenship question prepared by a senior political

appointee and lawyer at Commerce, James Uthmeier (the Uthmeier Memorandum), as well as communications among senior political appointees. The Trump Administration had refused to produce these documents to the Committee based on claims of attorney-client privilege and deliberative process privilege.

These documents shed light on the real reasons that the Trump Administration tried to add a citizenship question to the 2020 Census, and the steps Commerce officials took to justify Secretary Ross's efforts to add the question. They also make clear that President Trump used executive privilege to withhold materials that confirm that VRA enforcement was a mere pretext for including a citizenship question on the 2020 Census.

The documents obtained by the Committee show:

- **Contrary to Secretary Ross's Testimony to Congress, Congressional Apportionment Was Central to His Efforts to Add a Citizenship Question.**

When Secretary Ross testified before the Oversight Committee in 2019, he denied that his interest in adding a citizenship question to the census had anything to do with counting undocumented immigrants for apportionment purposes. However, documents obtained by the Committee show that he requested and received a detailed memorandum exploring the legality of adding a citizenship question to the census for the purpose of apportionment, along with other potential rationales.

- **The Initial Draft of the Legal Memo Warned that Using a Citizenship Question for Apportionment Would Likely Violate the Constitution.**

The Committee obtained an early draft of the Uthmeier Memorandum that expressed skepticism about the legality of including a citizenship question, stating: "Over two hundred years of precedent, along with substantially convincing historical and textual arguments suggest that citizenship data likely cannot be used for purposes of apportioning representatives."

This draft memo also expressed skepticism about whether the Commerce Secretary could add a citizenship question based on a determination that collecting citizenship data through sampling was not feasible. The draft stated: "Of course, so determining would contradict decades of precedent where the Secretary has found sampling for numerous questions—including citizenship—feasible, and where the resulting [American Community Survey] citizenship estimates provided by the Department of Commerce were used by other government agencies in litigation."

- **Commerce Officials Downplayed Legal Concerns and Altered the Memo to Suggest the Citizenship Question Could be Used for Apportionment.**

In later drafts of the memo, Mr. Uthmeier and another political appointee, Earl Comstock, altered or removed language indicating that adding a citizenship question was likely illegal and unconstitutional—including both of the warnings described above.

They also added language that emphasized the Secretary’s discretion when considering adding a citizenship question. The memo ultimately sent to Secretary Ross and DOJ reached essentially the opposite conclusion as the initial draft, asserting, “there is nothing illegal or unconstitutional about adding a citizenship question” and claiming, “there are bases for legal arguments that the Founding Fathers intended for the apportionment count to be based on legal inhabitants.”

In an email to another colleague, Mr. Uthmeier raised the possibility that the memo he drafted was “sugar coating the analysis.”

- **Even As They Developed a Pretext, Trump Administration Officials Privately Admitted Their “Hook” Was That the President or Congress Could Decide to Use Citizenship Data for Apportionment.**

Aides to Secretary Ross discussed apportionment in an email on August 11, 2017, one day after Secretary Ross requested a call with Attorney General Sessions to discuss the citizenship question. Mr. Uthmeier sent a draft of his memo to Mr. Comstock and wrote: “Ultimately, we do not make decisions on how the data should be used for apportionment, that is for Congress (or possibly the President) to decide. I think that’s our hook here.”

- **Secretary Ross Secretly Steered DOJ Towards the Pretextual Rationale.**

The Committee obtained a handwritten cover note that Mr. Uthmeier delivered to DOJ along with the Uthmeier Memorandum. This note shows that Commerce secretly steered DOJ toward using VRA enforcement as a rationale for requesting the addition of the citizenship question. The note states that Secretary Ross “thinks DOJ would have a legitimate use of data for VRA purposes” and urges DOJ to “definitely review” a case cited in the Uthmeier Memorandum that “may stand for proposition that sampling insufficient” for collecting citizenship data.

In December 2017, DOJ sent a letter to Commerce requesting the addition of a citizenship question to the Census in order to enforce the VRA, and citing the case mentioned in Mr. Uthmeier’s cover note.

The successful resolution of the Committee’s lawsuit against Secretary Ross and Attorney General Barr vindicates the authority of the Committee to conduct robust oversight of the Executive Branch and to obtain Executive Branch documents, including with respect to potentially illegal conduct, despite inappropriate and overbroad assertions of attorney-client privilege and deliberative process privilege.

A fair and accurate census is critical to American democracy and required by the Constitution. The factual findings of this investigation underscore the need for legislative reforms to protect the integrity of the census and prevent political interference at the Census

Bureau. Legislation the Committee is taking up will help accomplish these goals and safeguard one of our nation's most important and enduring institutions.

I. THE COMMITTEE'S INVESTIGATION

A. Secretary Ross's Campaign to Add the Citizenship Question

As detailed in the Committee's bipartisan June 2019 contempt report and my November 12, 2019, memorandum for Members,¹ the Committee found that as early as 2016, members of Donald Trump's presidential campaign and transition team began discussing adding a citizenship question to the 2020 Census form.² Within days of President Trump's inauguration in 2017, the President and his top advisors, including Steven Bannon and Reince Priebus, met to discuss the issue.³

The Committee found that, throughout 2017, Secretary Ross pressed his staff to find a way to add a citizenship question to the 2020 Census. Commerce officials concluded that a formal request from another agency was necessary to provide a basis for the inclusion of the question.⁴ However, initial attempts to persuade the Department of Homeland Security and DOJ to make this request stalled. In August 2017, Secretary Ross grew impatient and pressed Earl Comstock, Director of the Office of Policy and Strategic Planning at Commerce, to arrange a call with Attorney General Jeff Sessions to discuss the issue. Mr. Comstock responded that "we are preparing a memo and full briefing for you on the citizenship question."⁵

Mr. Comstock told Secretary Ross that he "asked James Uthmeier, who had 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."⁶ Mr. Uthmeier prepared a memorandum,

¹ Committee on Oversight and Reform, *Resolution Recommending that the House of Representatives Find William P. Barr, Attorney General of the United States, and Wilbur L. Ross, Jr., Secretary of Commerce, in Contempt of Congress for Refusal to Comply with Subpoenas Duly Issued by the Committee on Oversight and Reform*, 116th Cong. (2019) (H. Res. 497), Memorandum from Acting Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Members of the Committee on Oversight and Reform, *Update on Investigation of Census Citizenship Question Since House Held Attorney General Barr and Commerce Secretary Ross in Contempt of Congress* (Nov. 12, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-11-12.Memo%20to%20COR%20Members%20re.%20Census.pdf>).

² Committee on Oversight and Reform, Transcribed Interview of Kris Kobach (June 3, 2019).

³ *Id.*

⁴ Email from Earl Comstock, Director, Office of Policy and Strategic Planning, to Secretary Wilbur L. Ross, Jr., Department of Commerce, and Ellen Herbst, Department of Commerce (May 2, 2017).

⁵ Email from Earl Comstock, Department of Commerce, to Secretary Wilbur L. Ross, Department of Commerce (Aug. 10, 2017) (COM_IC_PR00000022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/08.10.17%20Email%20Ross%20to%20Comstock.pdf>).

⁶ Memorandum from Earl Comstock; Director, Office of Policy and Strategic Planning; Department of Commerce, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Sept. 8, 2017) (online at

which he shared with Mr. Comstock for comments and subsequently provided to Secretary Ross and other officials at Commerce.

Officials at Commerce and DOJ arranged a call in September 2017 between Secretary Ross and Attorney General Sessions to discuss the inclusion of the citizenship question on the 2020 Census. Following this conversation, officials at DOJ conveyed to Commerce: “The AG is eager to assist.”⁷ John Gore, a senior official at DOJ, began drafting a letter from DOJ to Commerce requesting the inclusion of a citizenship question. At some point after Mr. Gore began working on the request letter, Mr. Uthmeier hand-delivered his memorandum along with a handwritten note to Mr. Gore.⁸

An outside advisor working with Secretary Ross also pushed DOJ to request a citizenship question using the pretext of VRA enforcement.⁹ In October 2017, Mark Neumann, a member of President Trump’s transition team who advised Secretary Ross on the census, sent Mr. Gore a draft letter addressed from DOJ to the Census Director, which claimed that data from a citizenship question was needed to ensure “compliance with requirements of the Voting Rights Act and its application in legislative redistricting.”¹⁰ Mr. Neuman shared part of that draft letter with Thomas Hofeller, a Republican gerrymandering expert who had written a secret study in 2015 concluding that adding a citizenship question would be “advantageous to Republicans and Non-Hispanic Whites” and was necessary to exclude immigrants from legislative redistricting.¹¹

On December 12, 2017, DOJ sent a formal request letter to Commerce to add a citizenship question to the 2020 Census. The letter stated that data from a citizenship question was “critical to the Department’s enforcement efforts under Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting.” The letter argued that the sampling data already provided by the American Community Survey (ACS)—a demographics

<https://apps.npr.org/documents/document.html?id=4896064-Administrative-Record-For-Census-Citizenship#document/p2/a454666>).

⁷ Email from Danielle Cutrona, Senior Counsel, Department of Justice, to Wendy Teramoto, Chief of Staff, Department of Commerce (Sept. 17, 2017) (emphasis added) (online at <https://apps.npr.org/documents/document.html?id=5027607-Page-2637-Of-Administrative-Record-For-Census#document/p1/a464469>); *see also* Committee on Oversight and Reform, Interview of Gene Hamilton, at Page 29 (May 30, 2019) (explaining that the Attorney General had spoken to Secretary Ross about whether the Department could use citizenship information from the Census).

⁸ Committee on Oversight and Reform, Transcribed Interview of John Gore (Mar. 7, 2019).

⁹ *See* Memorandum from Acting Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Members of the Committee on Oversight and Reform (Nov. 12, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-11-12.Memo%20to%20COR%20Members%20re.%20Census.pdf>).

¹⁰ Draft Letter from Department of Justice to John H. Thompson, Director, Census Bureau (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/HOGR-Census-02122019-001371.pdf>).

¹¹ Thomas Hofeller, *The Use of Citizen Voting Age Population in Redistricting* (2015) (online at <https://assets.documentcloud.org/documents/6111284/May-31-2019-Unredacted-Exhibits.pdf>).

survey program that gathers information, including citizenship data, from a sample of 3.5 million households per year—was not accurate enough.¹²

On March 26, 2018, Secretary Ross formally announced that the citizenship question would be added to the 2020 Census.¹³

B. The Committee’s Investigation into the Origins of the Citizenship Question

On March 27, 2018—one day after Secretary Ross announced his decision to add a citizenship question—then-Ranking Member Elijah E. Cummings called on the Committee to investigate the Administration’s decision and the impact the citizenship question’s addition could have on the accuracy of the enumeration.¹⁴ Once in the majority in 2019, Chairman Cummings and the Committee sought documents from Commerce and DOJ and testimony from officials concerning the origins of the citizenship question.

On March 14, 2019, Secretary Ross testified before the Committee. He maintained that his interest in adding a citizenship question was unrelated to apportionment, and that the decision to consider and add the question was made only because Commerce had received the December 12, 2017, letter from DOJ specifically requesting it.¹⁵

After DOJ and Commerce failed to comply voluntarily with the Committee’s requests for documents and testimony, Chairman Cummings issued subpoenas to Secretary Ross and Attorney General Barr on April 2, 2019. All Committee Democrats and one Republican voted in favor of issuing the subpoenas.¹⁶

In June 2019, the Supreme Court issued a ruling in a separate lawsuit brought by states and cities that prohibited the Trump Administration from adding the citizenship question to the census. The Court concluded that the Administration’s justification for the question—enforcement of the VRA—was “pretextual,” and found that “the Secretary had made up his mind

¹² Letter from Arthur E. Gary; General Counsel, Justice Management Division; Department of Justice, to Ron Jarmin, Director, Census Bureau (Dec. 12, 2017) (online at www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html).

¹³ Letter from Secretary Wilbur L. Ross, Jr., Department of Commerce, to Karen Dunn Kelley, Under Secretary for Economic, Department of Commerce (Mar. 26, 2018) (online at www.commerce.gov/sites/default/files/2018-03-26_2.pdf).

¹⁴ Committee on Oversight and Government Reform, *Press Release: Cummings Issues Statement Calling for Hearings on Trump Administration Plan to Add Citizenship Question to Census* (Mar. 27, 2018) (online at <https://oversight.house.gov/news/press-releases/cummings-issues-statement-calling-for-hearings-on-trump-administration-plan-to>).

¹⁵ Committee on Oversight and Reform, *Hearing with Commerce Secretary Wilbur L. Ross, Jr.* (Mar. 14, 2019) (online at <https://oversight.house.gov/legislation/hearings/commerce-secretary-wilbur-l-ross-jr>).

¹⁶ Committee on Oversight and Government Reform, *Press Release: Committee Approves Subpoenas in Security Clearance and Census Investigations* (Apr. 2, 2019) (online at <https://oversight.house.gov/news/press-releases/committee-approves-subpoenas-in-security-clearance-and-census-investigations>).

to reinstate a citizenship question well before receiving DOJ's request and did so for reasons unknown but unrelated to the VRA."¹⁷

Nonetheless, Secretary Ross and Attorney General Barr refused to fully comply with the Committee's subpoenas. On June 12, 2019, President Trump asserted executive privilege over 11 specific documents subpoenaed by the Committee, asserting they were protected by the deliberative process privilege, attorney-client privilege, and attorney work product privilege, and made a protective assertion of executive privilege over all other documents subpoenaed by the Committee.¹⁸ On July 19, 2019, the House of Representatives voted to hold Attorney General Barr and Secretary Ross in contempt for failure to comply with the Committee's subpoenas.¹⁹ On November 26, 2019, the Committee filed a lawsuit against Secretary Ross, Attorney General Barr, and their respective agencies in order to obtain the documents withheld by Commerce and DOJ.

At the center of the litigation was the memorandum written by Mr. Uthmeier. As the Committee stated in its complaint, "Mr. Uthmeier had drafted a secret memorandum ('Uthmeier Memorandum'), which had been shared with Secretary Ross, analyzing legal issues surrounding the citizenship question."²⁰ The complaint noted:

[T]he Uthmeier Memorandum ... goes to the heart of the interactions between the two agencies in creating the VRA pretext. The Memorandum's delivery method—by hand and accompanied by a handwritten note, with the goal of avoiding any digital fingerprints—suggests a contemporaneous effort to conceal the Uthmeier Memorandum's contents.²¹

The Committee asked the court to enforce the subpoenas and order Commerce and DOJ to produce the Uthmeier Memorandum and other documents. The Committee noted that the withheld documents "reflect the reasons and process for developing the citizenship question, the coordination between the Commerce Department and DOJ to create the pretextual rationale, and the involvement of internal and outside parties." The Committee highlighted that this information was needed to further the Committee's "constitutional duties to oversee DOJ and the

¹⁷ *U.S. Department of Commerce v. New York*, 139 S. Ct. 2551, 2574 (2019).

¹⁸ Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (June 12, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-06-12%20Census%20Documents%20Notification%20of%20Assertion%20-%20Cummings_AS%20DISTRIBUTED_1.pdf).

¹⁹ H. Res. 497, Recommending that the House of Representatives find William P. Barr, Attorney General of the United States, and Wilbur L. Ross, Jr., Secretary of Commerce, in contempt of Congress for refusal to comply with subpoenas duly issued by the Committee on Oversight and Reform (116th Cong.).

²⁰ Committee on Oversight and Reform, *Complaint, Committee on Oversight and Reform v. Barr*, 1:19-cv-03557 (D.D.C.) (Filed Nov. 26, 2019).

²¹ *Id.*

Commerce Department and to remedy through legislation any defects in the administration of the Census.”²²

The Committee argued that the Trump Administration’s assertions of deliberative process privilege, attorney-client privilege, and attorney work product doctrine were not valid bases to withhold documents in response to the Committee’s subpoenas, and that even if these privileges were valid, they were clearly outweighed by the Committee’s need to obtain these documents in order to conduct effective oversight and pursue a legislative response.

The Committee also emphasized that the Administration’s privilege assertions appeared to be part of a continued effort to conceal the truth about the citizenship question from Congress.

After nearly two years of litigation, in September 2021, the Committee reached an agreement with Commerce and DOJ whereby the Departments agreed to provide nearly 500 previously withheld or redacted documents, including draft and final versions of the Uthmeier Memorandum, for an initial *in camera* review by the Committee. Following the review, the Committee identified a subset of key documents for production.

In early 2022, Commerce and DOJ produced the requested key documents.

In a letter to the Committee, Commerce stated:

The Department wishes to emphasize again that its agreement to provide these documents both for review and for production has been informed by the exceptional circumstances presented here, including the Supreme Court’s finding that the then-Secretary decided to include the citizenship question on the 2020 Census questionnaire based upon a “contrived” rationale.²³

The parties subsequently agreed to dismissal of the lawsuit.

II. THE UTHMEIER MEMORANDUM

A. Development of the Uthmeier Memorandum

1. Early Draft of the Memorandum

In mid-2017, at Secretary Ross’s request, Mr. Comstock asked Mr. Uthmeier to prepare a memorandum analyzing how Commerce might add a citizenship question to the census.²⁴

²² *Id.*

²³ *Letter to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, from J.D. Grom, Senior Advisor for Legislative and Intergovernmental Affairs, Performing the Duties of the Assistant Secretary of Commerce for Legislative and Intergovernmental Affairs, Department of Commerce (Jan. 6, 2022) (online at [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/01.06.22 Letter Commerce to COR.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/01.06.22%20Letter%20Commerce%20to%20COR.pdf)).*

²⁴ Memorandum from Earl Comstock; Director, Office of Policy and Strategic Planning; Department of Commerce; to Secretary Wilbur L. Ross, Jr., Department of Commerce (Sept. 8, 2017) (online at

During a transcribed interview, Mr. Uthmeier confirmed that he conducted research and wrote a legal memorandum on this subject, with assistance from others inside and outside the Department.²⁵ The Committee obtained an initial, undated draft memorandum addressing the issue (Draft I).²⁶

The initial draft memorandum considers “two potential legal avenues” for including a citizenship question: (1) apportionment purpose and (2) non-apportionment, data collection purposes.

The draft memorandum explores whether citizenship or legal status “are constitutionally relevant for apportionment purposes,” and highlights serious weaknesses in that position, stating in the opening paragraph:

The government appears to never have adopted such an interpretation of the Apportionment Clauses, and the Census Bureau has taken a litigation position against exclusion for apportionment purposes based on legal status.²⁷

The draft memorandum then summarizes the history of the Apportionment Clause and the Census Bureau’s collection of citizenship data, noting that “in 1980, the Bureau of the Census took a litigation position against increasing efforts to determine citizenship.” The memorandum explains that the Bureau “argued that illegal aliens must be included in the apportionment count, and that increased efforts to determine citizenship status would undermine accuracy.”²⁸

Reviewing the text and legislative history of the Apportionment Clause and the Fourteenth Amendment, historical practice in early censuses, and Supreme Court jurisprudence, the draft memorandum concludes that people cannot be excluded from apportionment counts on

<https://apps.npr.org/documents/document.html?id=4896064-Administrative-Record-For-Census-Citizenship#document/p2/a454666>).

²⁵ Committee on Oversight and Reform, Transcribed Interview of James Uthmeier (June 11, 2019) (“I put together a legal memo on the topic. ... Census career officials would have provided me documents. Counsel working in the Office of General Counsel would have provided me documents ... Occasionally, I asked a law clerk that worked there over the summer to provide some documentation. ... And then I also consulted Mark Neuman, who was someone that was referred to me as an expert on all things Census. He had been involved in the transition team briefings and also provided documents to me.”) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-06-11%20Interview%20of%20James%20Uthmeier%20-%20Final%20%28with%20errata%29.pdf>).

²⁶ Census Memorandum Draft I, James Uthmeier, Department of Commerce (COM_IC_NPR00004338-COM_IC_NPR00004351) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20I.pdf>). Although the document does not contain a date or author, Commerce staff confirmed that this draft of the memorandum was authored by Mr. Uthmeier and predates the other drafts obtained by the Committee.

²⁷ Census Memorandum Draft I, James Uthmeier, Department of Commerce, at Page 4 (COM_IC_NPR00004338-COM_IC_NPR00004351) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20I.pdf>). (citation omitted).

²⁸ *Id.*

the basis of citizenship, explaining, “The history strongly suggests a constitutional requirement to include non-citizens in the apportionment calculations.”²⁹

The draft memorandum concludes:

Over two hundred years of precedent, along with substantially convincing historical and textual arguments suggest that citizenship data likely cannot be used for purposes of apportioning representatives.³⁰

This initial draft memorandum also considers adding a citizenship question for non-apportionment purposes. Noting that “Apportionment is not the only purpose for the information collected through the census,” the memorandum enumerates a variety of other uses for data collected in the census, including “distributing federal program funds to states,” “drawing political districts,” and “determining eligibility for federal programs or amounts of benefits.”³¹

In a section titled “*Citizenship Question is Relevant for Federal Programs and for State Redistricting*,” the draft memorandum asserts: “An accurate count of citizens is also important for determining potential Voting Rights Act violations in state-drawn legislative districts.” The memorandum cites to *League of United Latin American Citizens (LULAC) v. Perry* to detail the Supreme Court’s history of delineating “between the voting age population and the *citizen* voting age population when considering potential violations of section 2 of the Voting Rights Act.”³² In that case, the memorandum states, “Race was used to create a ‘facade of a Latino district’ because even though Latinos were a majority of the voting age population, they did not have a citizen voting age population that could meaningfully elect candidates.” The draft memorandum asserts that “an accurate count of citizens is also important for determining potential Voting Rights Act violations.”³³

The draft memorandum states that federal law authorizing the Secretary of Commerce to use sampling to collect citizenship information gives the Secretary “broad discretion” to determine whether sampling is “feasible.”³⁴ However, the memorandum cautions that “the Census Bureau already provides citizenship estimates based on data it currently collects from the ACS, and courts consider the ACS reliable for enforcement of the Voting Rights Act.”³⁵ The draft memorandum concludes that any finding that sampling is infeasible would fly in the face of longstanding agency practice, explaining:

²⁹ *Id.*

³⁰ *Id.* at Page 13.

³¹ *Id.* at Page 8-9 (citations omitted).

³² 548 U.S. 399 (2006).

³³ Census Memorandum Draft I, James Uthmeier, Department of Commerce, at Page 9 (COM_IC_NPR00004338-COM_IC_NPR00004351) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20I.pdf>).

³⁴ *Id.* at Page 1.

³⁵ *Id.* at Page 9 (citation omitted).

In short, and without opining on the wisdom of such an action, a citizenship status question may legally be included on the decennial census **so long as the collected information is not used for apportionment** or in any individualized proceeding against a respondent, and the Secretary determines sampling is not feasible. **Of course, so determining would contradict decades of precedent where the Secretary has found sampling for numerous questions—including citizenship—feasible, and where the resulting ACS citizenship estimates provided by the Department of Commerce were used by other government agencies in litigation.**³⁶

2. *August 11 Drafts Sent to Earl Comstock*

A draft dated August 11, 2017 (Draft II), authored by Mr. Uthmeier, retained much of the language and structure of Draft I but contained numerous substantive edits, removing language questioning the legality of adding a citizenship question and adding language that emphasized the Secretary’s discretion. Draft II reached essentially the opposite conclusion as Draft I, stating, “there is nothing illegal or unconstitutional about adding a citizenship question.”³⁷

Draft II included a series of key changes from Draft I:

- **Draft I** notes on the first page:

[I]f citizenship or legal status are constitutionally relevant for apportionment purposes—as this memorandum explores—such question must be included on the 2020 Census. **The government appears to never have adopted such an interpretation of the Apportionment Clause, and the Census Bureau has taken a litigation position against exclusion for apportionment purposes based on legal status.**

This language was removed from Draft II. Instead, **Draft II** states:

[T]he government has apparently not yet taken the position that citizenship should be an inquiry relevant to apportionment. However, the language of the Constitution is not entirely clear on this.

- In a section that discusses the Apportionment Clause, **Draft I** states:

Over two hundred years of precedent, along with substantially convincing historical and textual arguments suggest that citizenship data likely cannot be used for purposes of apportioning representatives.

³⁶ *Id.* at Page 14.

³⁷ Census Memorandum Draft II, James Uthmeier, Department of Commerce (Aug. 11, 2017) (COM_IC_NPR00003973-COM_IC_NPR00003986) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20II.pdf>).

Draft I also suggests that there is no case law or legal precedent that supports the use of citizenship data for apportionment purposes, and that the majority of legal scholarship does not support the idea.³⁸

In **Draft II**, this paragraph was removed.

- In the “Conclusion” section, **Draft I** acknowledges that a citizenship question may be legally included on the census only if “the Secretary determines sampling is not feasible.” this draft warns, however:

[S]o determining would contradict decades of precedent where the Secretary has found sampling for numerous occasions—including citizenship—feasible, and where the resulting ACS citizenship estimates provided by the Department of Commerce were used by other government agencies in litigation.

In **Draft II**, this admonishment was removed. Instead, **Draft II** states:

To inquire about citizenship on the short form decennial for non-apportionment reasons, the Department must show that sampling is not feasible for the needed data analysis. **That appears to be a low bar.**

- **Draft II** repeatedly emphasizes the discretion of the Secretary. In the very first paragraph, it adds the sentence: “**To be clear, the secretary has broad discretion to add questions to the decennial census.**” In the next paragraph, the memorandum repeats this point:

However, where census questions are asked for purposes not related to apportionment, the Secretary must believe that such information could not be feasibly collected through sampling. **Again, the Secretary enjoys broad discretion in making such determinations.**

- At the end of the section that discusses adding a citizenship question for non-apportionment purposes, **Draft II** adds an entire paragraph that emphasizes the Secretary’s discretion.³⁹

³⁸ Census Memorandum Draft I, James Uthmeier, Department of Commerce, at Page 13 (COM_IC_NPR00004338-COM_IC_NPR00004351) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20I.pdf>). (“Should the Bureau of Census decide to make a distinction that would exclude noncitizens or illegal aliens from apportionment, there is at least a policy argument and a minority-view in scholarship that can be employed in legal challenge.”).

³⁹ Census Memorandum Draft II, James Uthmeier, Department of Commerce, at Page 10 (Aug. 11, 2017) (COM_IC_NPR00003973-COM_IC_NPR00003986) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20II.pdf>). (“In summary, the Secretary has very broad discretion to include questions on the decennial census for purpose other

On August 11, 2017, Mr. Uthmeier emailed Draft II to Mr. Comstock.⁴⁰ His cover email notes: “I know [Secretary Ross] likes short briefing materials, but I wanted to be more thorough given the issue and our uncertainty regarding the exact question(s) being presented.”⁴¹ Mr. Uthmeier also wrote:

I have some new ideas/recommendations that I look forward to discussing.
Ultimately, we do not make decisions on how the data should be used for apportionment, that is for Congress (or possibly the President) to decide. I think that’s our hook here.⁴²

Later that day, Mr. Uthmeier sent another email to Mr. Comstock, attaching a slightly revised draft (Draft III), and noting that he “Made a couple of small edits for clarity.”⁴³ Draft III is largely identical to the previous draft, but Mr. Uthmeier added a paragraph that states:

No federal court has held that the census population count used for apportionment should not include citizens. **However, there are bases for legal arguments that the Founding Fathers intended for the apportionment count to be based on legal inhabitants.**⁴⁴

Draft III does not include any citation for this assertion, which is at odds with legal analysis in Draft I.

Shortly after he sent Draft III to Mr. Comstock, Mr. Uthmeier shared the same draft with Leonard Shambon, another political appointee and Special Legal Advisor in Commerce’s Office of the Chief Counsel for Economic Affairs, stating, “**Feel free to let me know if this is sugar**

than apportionment. ... To inquire about citizenship on the short form decennial for non-apportionment reasons, the Department must show that sampling is not feasible for the needed data analysis. That appears to be a low bar.”)

⁴⁰ Email from James Uthmeier, Senior Advisor and Counsel, Department of Commerce, to Earl Comstock; Director, Office of Policy and Strategic Planning; Department of Commerce (Aug. 11, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/08.11.17%20Email%20Uthmeier%20to%20Comstock.pdf>).

⁴¹ *Id.* (emphasis added).

⁴² *Id.* (emphasis added).

⁴³ *Id.*

⁴⁴ Census Memorandum Draft III, James Uthmeier, Department of Commerce (Aug. 11, 2017) (COM_IC_NPR00003957-COM_IC_NPR00003970) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20III.pdf>) (emphasis added).

coating the analysis too much.⁴⁵ Mr. Shambon responded to Mr. Uthmeier by attaching a chronology of the census and a list of key dates where citizenship was measured.⁴⁶

3. *Mr. Comstock Edited the Memo, and Mr. Uthmeier Shared It with Secretary Ross*

After he received the Uthmeier Memorandum, Mr. Comstock made numerous substantive edits (Draft IV) to further downplay the constitutional prohibition on using citizenship information for apportionment purposes and emphasize the Secretary's discretion. The previous draft, Draft III, had stated that "a citizenship status question may legally be included on the decennial census, as it has been in the past, **so long as the collected information is not used for apportionment** or in any individualized proceeding against a respondent, and the Secretary determines that sampling is not feasible."⁴⁷ Mr. Comstock deleted "for apportionment," leaving the impression that citizenship information collected on the census *could* be used for apportionment purposes.⁴⁸

In short, a citizenship status question may legally be included on the decennial census, as it has been in the past, so long as the collected information is not used ~~for apportionment or in~~ any individualized proceeding against a respondent, and the Secretary determines that sampling is not feasible.

Draft III had also stated, "To inquire about citizenship on the short form decennial for non-apportionment reasons, **the Department must show** that sampling is not feasible for the needed data analysis."⁴⁹ Mr. Comstock changed that sentence to read, "To inquire about

⁴⁵ Email from James Uthmeier, Senior Advisor and Counsel, Department of Commerce, to Leonard Shambon, Special Legal Advisor, Department of Commerce (Aug. 11, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/08.11.17%20Email%20Uthmeier%20to%20Shambon.pdf>).

⁴⁶ Email from Leonard Shambon, Special Legal Advisor, Department of Commerce, to James Uthmeier, Senior Advisor and Counsel, Department of Commerce (Aug. 11, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Shambon%20Census%20Chronology.pdf>).

⁴⁷ Census Memorandum Draft III, James Uthmeier, Department of Commerce (Aug. 11, 2017) (COM_IC_NPR00003957-COM_IC_NPR00003970) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20III.pdf>) (emphasis added).

⁴⁸ Edited Memorandum from Earl Comstock to James Uthmeier, Department of Commerce (Aug. 11, 2017) (COM_IC_NPR00003606) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20IV.pdf>) (emphasis added).

⁴⁹ Draft Memorandum from James Uthmeier, Department of Commerce, at Page 14 (2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20III.pdf>) (emphasis added).

citizenship on the short form decennial for non-apportionment reasons, **the Secretary must determine** that sampling is not feasible for the needed data analysis.”⁵⁰

Mr. Comstock’s edits gave the impression that Secretary Ross had the unfettered discretion to make this determination.⁵¹ Mr. Comstock emailed Draft IV to Mr. Uthmeier on August 11, and Mr. Uthmeier accepted Mr. Comstock’s edits.⁵² Later that same day, Mr. Uthmeier sent Draft IV to Secretary Ross.⁵³ Three days later, on August 14, 2017, Mr. Uthmeier also emailed the same version of the memorandum to Peter Davidson, then-General Counsel at Commerce.⁵⁴

4. *Commerce Officials Secretly Researched Pretextual VRA Rationale*

Documents indicate that on September 6, 2017, Secretary Ross apparently discussed the citizenship question with his staff, including the possibility of using VRA enforcement as a rationale for adding a citizenship question. Mr. Ross also appears to have discussed with staff reaching out to Kansas Secretary of State Kris Kobach, who had previously suggested to Secretary Ross that he add a citizenship question to address the “problem” that “aliens” are “still counted for congressional apportionment purposes.”⁵⁵ Following this meeting, Mr. Uthmeier conducted research on the use of citizenship data for VRA enforcement, more than three months before DOJ provided its request letter in December 2017.⁵⁶ Mr. Uthmeier and the other Commerce aides also took steps to keep their efforts a secret.

⁵⁰ Edited Memorandum from Earl Comstock to James Uthmeier, Department of Commerce (Aug. 11, 2017) (COM_IC_NPR00003606) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20IV.pdf>) (emphasis added).

⁵¹ Edited Memorandum from Earl Comstock to James Uthmeier, Department of Commerce (Aug. 11, 2017) (COM_IC_NPR00003606) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20IV.pdf>).

⁵² Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to James Uthmeier, Senior Advisor and Counsel, Department of Commerce (Aug. 11, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/08.11.17%20Email%20Uthmeier%20to%20Comstock.pdf>).

⁵³ Email from James Uthmeier, Senior Advisor and Counsel, Department of Commerce, to Secretary Wilbur L. Ross, Department of Commerce (Aug. 11, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20V%20w.%2008.16%20Email%20to%20Ross.pdf>).

⁵⁴ Email from James Uthmeier, Senior Advisor and Counsel, Department of Commerce, to Peter Davidson, General Counsel, Department of Commerce (Aug. 14, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/08.14.17%20Email%20Uthmeier%20to%20Davidson.pdf>).

⁵⁵ Email from Kris Kobach to Secretary Wilbur L. Ross, Jr., Department of Commerce (July 14, 2017) (online at www.documentcloud.org/documents/4500011-1-18-Cv-02921-Administrative-Record#document/p776/a428457).

⁵⁶ Email from James Uthmeier, Senior Advisor and Counsel, Department of Commerce, to Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce (Sept. 7, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/09.07.17%20Email%20Uthmeier%20to%20Comstock.pdf>).

On September 7, 2017, Mr. Comstock emailed Mr. Uthmeier and Mr. Davidson stating, “As I discussed with James a little while ago, the Secretary would like an update on progress since the discussion yesterday regarding the citizenship question.” In response, Mr. Uthmeier wrote that he was seeking to schedule a call “as soon as possible” with the “Kansas AGs office”—apparently a reference to Mr. Kobach. Mr. Uthmeier also explained, “I’m looking into states that evidently used citizenship data for redistricting/VRA enforcement and can provide that information today.”⁵⁷

Mr. Davidson then advised against contacting Mr. Kobach, suggesting they instead reach out to “trusted outside advisors to bring some more perspective to this decision, before we do anything externally.” He continued, “So let’s just call a timeout on any external contacts on this topic until we are ready for word to get out publicly that we are looking into this.”

The next day, Mr. Uthmeier replied again, noting the efforts they were taking to keep their work a secret. He stated that he and Mr. Davidson had reached out to Ted Kassinger and Mark Neuman “to discuss the issues that we reviewed with the Secretary,” and explained:

Ultimately, everyone is in agreement with our approach to move slowly, carefully, and deliberately so as to not expose us to litigation risk. We can discuss further in person. At this point, Peter and I want to make sure that we are not yet discussing our analysis with outside parties that may take our discussions public.⁵⁸

Mr. Uthmeier also provided a further update on his research into the VRA rationale, stating:

Following up on the Secretary’s request from Wednesday, there are several states that have been involved in litigation for using citizenship data for redistricting: Texas, California, Florida, Illinois, and North Carolina have all used CVAP data (citizen voting age population) analyses for redistricting.⁵⁹

⁵⁷ Email from James Uthmeier, Senior Advisor and Counsel, Department of Commerce, to Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce (Sept. 7, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/09.08.17%20Email%20Uthmeier%20to%20Comstock.pdf>).

⁵⁸ Email from James Uthmeier, Senior Advisor and Counsel, Department of Commerce, to Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce (Sept. 8, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/09.08.17%20Email%20Uthmeier%20to%20Comstock.pdf>).

⁵⁹ Email from James Uthmeier, Senior Advisor and Counsel, Department of Commerce, to Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce (Sept. 8, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/09.08.17%20Email%20Uthmeier%20to%20Comstock.pdf>) (emphasis added).

The final Uthmeier memorandum asserted that there were multiple potential uses for citizenship information, including VRA enforcement.⁶⁰

5. *Commerce Secretly Steered DOJ Toward VRA Enforcement in Hand-Written Note*

Mr. Uthmeier hand-delivered the Uthmeier Memorandum to DOJ, along with a hand-written note from Mr. Uthmeier to John Gore that steered DOJ toward one particular use for citizenship data—enforcement of the Voting Rights Act:

GENERAL COUNSEL

John,
Sec Ross has reviewed concerns and thinks DOJ would have a legitimate use of data for VRA purposes. Please let me know if you'd like to discuss

- James

ps - definitely review ^{Luisev.} proposition that sampling insufficient for CVAP data needs.

As shown above, the cover note states:

Sec Ross has reviewed concerns and thinks DOJ would have a legitimate use of data for VRA purposes. Please let me know you would like to discuss. – James

⁶⁰ Census Memorandum Draft VI (COM_IC_PR00000002-COM_IC_PR00000017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20VI%20w.%20Cover%20Note.pdf>).

PS – definitely review *Lulac v. Perry*, may stand for proposition that sampling insufficient for CVAP data needs.⁶¹

The memorandum that Mr. Gore received appears to be yet another slightly edited version of the memorandum shared with Secretary Ross and Mr. Davidson (Draft V). Draft V is similar to previous versions, but contains additional language in the section discussing the potential use of census data in enforcing the VRA. The added language asserts that the Supreme Court indicated that a state “must use” citizen voting age population data if the state is expected to have “a number of minority persons covered by Section 2 of the Voting Rights Act sufficient to form a district.”⁶²

6. *DOJ’s Letter to Commerce Requesting a Citizenship Question be Added*

On December 12, 2017, DOJ sent its letter to Commerce requesting the inclusion of a citizenship question on the 2020 Census questionnaire.⁶³ Although Arthur Gary, General Counsel of DOJ’s Justice Management Division, signed the letter, the letter was drafted by John Gore.⁶⁴

Echoing Mr. Uthmeier’s analysis, the request letter argues that data from a citizenship question on the decennial census is “critical to the Department’s enforcement of Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting.”⁶⁵ Specifically, DOJ asserts that “the Department needs a reliable calculation of the citizen voting-age population in localities where voting rights violations are alleged or suspected.”

The letter cites to several cases to support the idea that “Section 2 of the Voting Rights Act prohibits ‘vote dilution’ by state and local jurisdictions engaged in redistricting[.]” DOJ explains: “where citizenship rates are at issue in a vote-dilution case, citizen voting-age population is the proper metric for determining whether a racial group could constitute a majority in a single-member district.”⁶⁶ As Mr. Uthmeier suggested in his cover note to Mr. Gore, the

⁶¹ Handwritten Note from James Uthmeier, Department of Commerce, to John Gore, Department of Justice, with Census Memorandum Draft VI (COM_IC_PR00000001-COM_IC_PR00000017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20VI%20w.%20Cover%20Note.pdf>).

⁶² Handwritten Note from James Uthmeier, Department of Commerce, to John Gore, Department of Justice, with Census Memorandum Draft VI (COM_IC_PR00000001-COM_IC_PR00000017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20VI%20w.%20Cover%20Note.pdf>).

⁶³ Letter from Arthur E. Gary, General Counsel, Justice Management Division, Department of Justice, to Ron Jarmin, Director, Census Bureau (Dec. 12, 2017) (online at www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html).

⁶⁴ Committee on Oversight and Reform, Transcribed Interview of John Gore (Mar. 7, 2019).

⁶⁵ Letter from Arthur E. Gary, General Counsel, Justice Management Division, Department of Justice, to Ron Jarmin, Director, Census Bureau (Dec. 12, 2017) (online at www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html).

⁶⁶ *Id.*

request letter cites to *LULAC v. Perry*, explaining that the case “analyz[es] vote-dilution claim by reference to citizen voting-age population.”⁶⁷

Finally, as suggested by the Uthmeier Memorandum, DOJ’s request letter argues that the citizenship data already provided through the American Community Survey is not sufficient to carry out enforcement of the VRA.⁶⁸ The request letter explains that “decennial census questionnaire data regarding citizenship, if available, would be more appropriate for use in redistricting and in Section 2 litigation than the ACS citizenship estimates.”⁶⁹

III. FINDINGS

The new documents obtained by the Committee confirm several key findings in the Committee’s investigation.

A. Apportionment Was Central to Secretary Ross’s Campaign to Add a Citizenship Question

The Uthmeier Memorandum and related communications confirms that Secretary Ross and senior Commerce officials were actively exploring legal justifications and pathways to adding a citizenship question, including the potential use of the citizenship question to alter congressional apportionment. The memorandum includes an entire section entitled “*The Apportionment Clauses Do Not Address the Exclusion of Noncitizens or Illegal Aliens From the Population When Apportioning United States Representatives*,” which explored the constitutional history of the census and whether noncitizens may be excluded from total population counts for apportionment purposes. Both Mr. Uthmeier and Mr. Comstock clearly understood that apportionment was a central concern in undertaking this analysis. The final version of the memorandum states in its concluding paragraph:

[W]hether the courts would uphold use of citizenship information for purposes of Congressional apportionment is questionable. Although there are arguments to support use of citizenship in apportionment, past practice and a Supreme Court case analyzing the definition of “persons” for purposes of the 14th Amendment make clear the issue would

⁶⁷ Handwritten Note from James Uthmeier, Department of Commerce, to John Gore, Department of Justice, with Census Memorandum Draft VI (COM_IC_PR00000001-COM_IC_PR00000017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20VI%20w.%20Cover%20Note.pdf>); Letter from Arthur E. Gary, General Counsel, Justice Management Division, Department of Justice, to Ron Jarmin, Director, Census Bureau (Dec. 12, 2017) (online at www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html).

⁶⁸ Letter from Arthur E. Gary, General Counsel, Justice Management Division, Department of Justice, to Ron Jarmin, Director, Census Bureau (Dec. 12, 2017) (online at www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html).

⁶⁹ *Id.*

be litigated and would remain in doubt until the Federal courts have directly resolved the issue.⁷⁰

B. The Uthmeier Memorandum Was Not an Objective Legal Analysis

Far from an objective legal analysis, the memorandum appears to be an effort to justify Secretary Ross's efforts to add the citizenship question to the 2020 Census. A comparison of the different drafts of the memorandum shows Mr. Uthmeier and Mr. Comstock removed and softened language from the memorandum that raised doubts about the legality and constitutionality of adding a citizenship question, while adding new language to justify such a decision. The initial draft of memorandum strongly suggested there was no viable legal avenue to adding a citizenship question to the census, but later versions of the memorandum somehow come to the opposite conclusion.

C. Commerce Secretly Coordinated with DOJ to Develop a Pretext for the Citizenship Question

The documents obtained by the Committee show that Secretary Ross and his staff secretly researched the pretextual VRA rationale and communicated this rationale via a hand-delivered memorandum and cover note to John Gore. They took these steps months before DOJ sent its request in December 2017. These findings are consistent with the Committee's previous finding that Secretary Ross pressured DOJ to request the citizenship question to construct a basis for including it on the census.

D. Secretary Ross Provided Inaccurate Information to Congress About His Interest in the Citizenship Question and Apportionment

The documents obtained by the Committee confirm that Secretary Ross falsely claimed at a March 20, 2018, hearing that he was adding the citizenship question "solely" at the request of DOJ to help enforce the VRA.⁷¹ These documents also suggest that Secretary Ross was not truthful when he told Congress that his interest in the citizenship question was unrelated to counting undocumented immigrants for apportionment purposes.⁷²

At an Oversight Committee hearing on March 14, 2019, Chairman Cummings questioned Secretary Ross about the discrepancy between Secretary Ross's statement that he had added the citizenship question "solely" at DOJ's request and documents showing that Secretary Ross had been working to add the citizenship question from his very first days at the Department:

⁷⁰ Census Memorandum Draft V, James Uthmeier, Department of Commerce (Aug. 11, 2017) (COM_IC_PR00000024-COM_IC_PR00000039) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Uthmeier%20Memo%20Draft%20V%20w.%2008.16%20Email%20to%20Ross.pdf>).

⁷¹ See, e.g., House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *FY19 Budget Hearing: Department of Commerce*, 115th Cong. (Mar. 20, 2018).

⁷² Committee on Oversight and Reform, *Hearing with Secretary of Commerce Wilbur L. Ross, Jr.* (Mar. 14, 2019) (online at <https://docs.house.gov/meetings/GO/GO00/20190314/109105/HMTG-116-GO00-Transcript-20190314.pdf>).

Chairman: So, Mr. Secretary, let me ask you here today, in light of all of these documents that have come to light, do you wish to withdraw your previous testimony to Congress that your decision to add the citizenship question was based, and I underline, solely, solely on requests from the Department of Justice?

Secretary Ross: May I answer, sir?

Chairman: Yes, of course.

Secretary Ross: 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.⁷³

Contrary to Secretary Ross's assertions, documents show that Commerce—not DOJ—initiated the process for adding the citizenship question. The Uthmeier Memorandum was drafted months before DOJ sent its request, and the VRA enforcement rationale appears to have originated with Commerce—not DOJ.

During the Committee's March 2019 hearing, Secretary Ross also denied any interest in apportionment:

Chairman: And it is your testimony today, sir, that your interest in the citizenship question had nothing to do with counting undocumented immigrants for apportionment purposes?

Secretary Ross: No, sir, it did not.⁷⁴

This testimony is not supported by the new documents obtained by the Committee. The memorandum prepared by Mr. Uthmeier at Secretary Ross's request focuses extensively on the potential use of citizenship data for apportionment purposes, and a contemporaneous email from Mr. Uthmeier to Mr. Comstock regarding the citizenship question asserted that "our hook" was that "[u]ltimately, we do not make decisions on how the data should be used for apportionment, that is for Congress (or possibly the President) to decide."⁷⁵

⁷³ Committee on Oversight and Reform, *Hearing with Secretary of Commerce Wilbur L. Ross, Jr.* (Mar. 14, 2019) (online at <https://docs.house.gov/meetings/GO/GO00/20190314/109105/HMTG-116-GO00-Transcript-20190314.pdf>).

⁷⁴ *Id.*

⁷⁵ Email from James Uthmeier, Senior Advisor and Counsel, Department of Commerce, to Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce (Aug. 11, 2017) (online at

IV. THE NEED FOR REFORM

The Committee’s investigation has exposed how a group of political appointees sought to use the census to advance an ideological agenda and potentially exclude non-citizens from the apportionment count. Despite experts, statisticians, and stakeholders warning of the threats that a citizenship question could pose to the census, Trump Administration officials pressed forward until the Supreme Court ruled their effort was illegal.

Career experts consistently advised Trump Administration officials about the dangers of adding a citizenship question to the census. On January 19, 2018, the Census Bureau’s chief scientist, Dr. John Abowd, wrote to Secretary Ross that “adding a citizenship question to the 2020 Census” is “very costly, harms the quality of the census count, and would use substantially less accurate citizenship status data than are available from administrative sources.”⁷⁶

On January 26, 2018, six former Census Bureau directors—who served in both Democratic and Republican administrations—sent a letter to Secretary Ross opposing the addition of the citizenship question, expressing concerns that it would “put the accuracy of the enumeration and success of the census in all communities at grave risk.”⁷⁷ Despite these warnings, Secretary Ross moved forward with adding the citizenship question to the census.

The documents ultimately obtained by the Committee—including the legal memorandum prepared for Secretary Ross and secret communications between Trump Administration lawyers and political appointees—shed additional light on the depth of partisan manipulation in the 2020 Census, including senior officials’ focus on using a citizenship question to alter apportionment counts and their illegal attempt to develop a pretext. These documents exposed the vulnerability of our national statistical system to partisan manipulation and highlighted the need for Congress to protect the constitutionally mandated census from abuses of power and political interference.⁷⁸

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/08.11.17%20Email%20Uthmeier%20to%20Cormstock.pdf>).

⁷⁶ Memorandum from John Abowd, Chief Scientist, Census Bureau, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Jan. 19, 2018) (online at www.osec.doc.gov/opog/FOIA/Documents/AR%20-%20FINAL%20FILED%20-%20ALL%20DOCS%20%5bcERTIFICATION-INDEX-DOCUMENTS%5d%206.8.18.pdf#page=1289).

⁷⁷ Letter from Former Census Bureau Directors to Secretary Wilbur L. Ross, Jr., Department of Commerce (Jan. 26, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/DOJ%20census%20ques%20request-Former%20Directors%20ltr%20to%20Ross.pdf>).

⁷⁸ The Committee’s November 2019 legal filing explained that the subpoenaed documents could lead the Committee to pursue “a wide range of legislative reforms” including “legislative measures to curb political influence on the census” and “new, judicially enforceable reporting obligations to increase visibility into how the census is being administered.” Committee on Oversight and Reform, Complaint, Committee on Oversight and Reform v. Barr, 1:19-cv-03557 (D.D.C.) (Filed Nov. 26, 2019).

To help prevent a similar crisis from occurring again, the Committee has developed H.R. 8326, *The Ensuring a Fair and Accurate Census Act of 2022*. This bill is designed to protect the Census Bureau and its career employees from political manipulation and pressure similar to that experienced in the run-up to the 2020 Census. Under this bill, the Director of the Census Bureau would be empowered to make key statistical and operational decisions about the decennial census, and could only be removed for cause in the case of inefficiency, neglect of duty, or malfeasance in office. No more than three political appointees, including the Director, would be permitted to serve at the Census Bureau, and the Deputy Director position would be limited to experienced and qualified career staff.

The bill would also prohibit the Secretary of Commerce from adding topics or questions to the decennial census unless he or she followed the existing statutory requirements to notify Congress in advance—requirements that the Trump Administration failed to follow during its illegal attempt to add the citizenship question based on a pretext.⁷⁹ The bill also ensures that no new questions appear on the decennial census questionnaire unless they have been researched, tested, certified by the Secretary, and evaluated by the Government Accountability Office. The bill ensures outside experts advise the Census Director on methodology and statistical analyses through the use of advisory committees.

In addition, the bill improves transparency and accountability within the Census Bureau by requiring the director to submit five year-budget estimates and report annually on any adjustments to the estimates.

* * *

The decennial census determines representation at every level of government, from Congress to school boards. Census data drives over \$1.5 trillion in annual funding for critical services like hospitals, schools, disaster response, and road and bridge repair. Businesses large and small rely on census data to identify new markets and make investment decisions that create jobs and grow the economy. An independent Census Bureau with non-political, career data scientists and statisticians is essential to fulfill the vital mission of the census.

The Committee launched this investigation to protect the independence of the Census Bureau from political interference, and the Committee remains dedicated to preventing abuses or interferences from happening in the future.

⁷⁹ The Secretary of Commerce is required to notify Congress of “subjects” to be included on the decennial census three years in advance. 13 U.S.C. § 141(f)(1). For the 2020 Census, that notification was made in March 2017 and did not include the subject of citizenship. Census Bureau, *Press Release: Census Bureau Submits Subjects for 2020 Census to Congress* (Mar. 28, 2017) (online at www.census.gov/newsroom/press-releases/2017/cb17-47.html). As this memorandum shows, Secretary Ross and his staff purposely kept his efforts to add a citizenship question a secret from Congress and the public for months, until the Secretary finally announced his intent to add this question in 2018 and provided a false rationale for doing so.