

Committee on Oversight and Reform
116th Congress

Amendment in the Nature of a Substitute
Offered by Chairman Elijah E. Cummings

Beginning on page 1, strike ‘The Committee on Oversight and Reform, having considered’ and all that follows through the end of the report, and insert the following:

“The Committee on Oversight and Reform, having considered this Report, reports favorably thereon and recommends that the Report be approved.

The form of Resolution that the Committee on Oversight and Reform would recommend to the House of Representatives for citing William P. Barr, Attorney General of the United States, and Wilbur L. Ross, Jr., Secretary of Commerce, for contempt of Congress pursuant to this Report is as follows:

Resolved, That William P. Barr, Attorney General of the United States, and Wilbur L. Ross, Jr., Secretary of Commerce, shall be found to be in contempt of Congress for failing to comply with subpoenas authorized by the Committee on Oversight and Reform and duly issued by Chairman Elijah E. Cummings relating to the 2020 Census.

Resolved, That the Attorney General (i) failed to comply with a Committee subpoena issued on April 2, 2019, to produce documents, and (ii) ordered a Department of Justice employee, John Gore, not to comply with a Committee subpoena requiring him to appear for deposition testimony before the Committee on April 11, 2019.

Resolved, That the Secretary of Commerce failed to comply with a Committee subpoena issued on April 2, 2019, to produce documents.

Resolved, That the Report of the Committee on Oversight and Reform details the refusal of the Attorney General to produce documents to the Committee as required by subpoena, the order from the Attorney General directing John Gore to defy a duly authorized Committee subpoena for deposition testimony, and the refusal of the Secretary of Commerce to produce documents to the Committee as required by subpoena.

Resolved, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of Representatives shall certify the Report of the Committee on Oversight and Reform, detailing the refusal of William P. Barr, Attorney General of the United States, to produce documents to the Committee on Oversight and Reform as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Barr be proceeded against in the manner and form provided by law.

Resolved, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of

Representatives shall certify the Report of the Committee on Oversight and Reform, detailing the refusal of Wilbur L. Ross, Jr., Secretary of Commerce, to produce documents to the Committee as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Ross be proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoenas.

Resolved, That the Chairman of the Committee on Oversight and Reform shall take all necessary steps to enforce the above-referenced subpoenas, including, but not limited to, seeking authorization from the House of Representatives through a vote of the Bipartisan Legal Advisory Group pursuant to clause 8(b) of rule II, and H. Res. 430, to initiate or to intervene in proceedings in any federal court of competent jurisdiction, to seek judgements affirming the duty of the subpoena recipients to comply with the above-referenced subpoenas, and to seek any appropriate ancillary relief, including injunctive relief.

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I. EXECUTIVE SUMMARY

The Committee on Oversight and Reform is investigating the Trump Administration’s decision to add a question to the 2020 Decennial Census asking whether each member of a household is a U.S. citizen. Attorney General William P. Barr and Secretary of Commerce Wilbur L. Ross, Jr. have obstructed and delayed the Committee’s investigation by defying lawful subpoenas for documents issued by Chairman Elijah E. Cummings and authorized by the Committee in a bipartisan vote. Attorney General Barr also ordered a subordinate Department of Justice (DOJ) official, John Gore, to defy a bipartisan deposition subpoena. As a result, the Committee has been left with no choice but to move to contempt proceedings and to seek enforcement of its subpoenas to enable the Committee to fulfill its duties under the Constitution.

The Decennial Census is a cornerstone of our democracy. Article I of the Constitution requires the federal government to conduct a Census every ten years and to count every person in the United States.¹ The Census provides the basis for apportioning seats in Congress and for distributing more than \$675 billion in federal funds. These funds support vital healthcare, nutrition, education, infrastructure, housing, and other programs on which many Americans rely.² The accuracy of the Census is important to every American.

On March 26, 2019, Secretary Ross announced that, for the first time in seventy years, the upcoming 2020 Census would ask every person in America whether he or she is a U.S. citizen.³ Experts—including the Census Bureau’s Chief Scientist, former Census Bureau Directors who served under Republican and Democratic administrations, and many others—raised concerns that this question had not been adequately tested and was likely to discourage participation by non-citizens and immigrants, degrading the quality of the 2020 Census and negatively affecting funds appropriated for certain districts.

Secretary Ross asserted in testimony before Congress that he added the citizenship question solely in response to a December 12, 2017, request from DOJ in order to gather data needed to enforce the Voting Rights Act.

Over the last year, however, evidence has emerged that Secretary Ross’ rationale was merely a pretext. In truth, members of the Trump Administration were seeking to add a citizenship question long before DOJ sent its December 2017 request. Members of President

¹ U.S. Const., Art. 1, sec. 2.

² *Uses of Census Bureau Data in Federal Funds Distribution*, U.S. Census Bureau (Sept. 2017) (online at www2.census.gov/programs-surveys/decennial/2020/program-management/working-papers/Uses-of-Census-Bureau-Data-in-Federal-Funds-Distribution.pdf).

³ The Census Bureau has not included a citizenship question on the Decennial Census since 1950. In 1970, the Census Bureau began sending two different Census surveys to Americans. The short-form Census asked the basic information of every household and did not include a citizenship question. The long-form Census, which went to about one in six households, asked about citizenship. In 2005, the Bureau converted the long-form Census into the American Community Survey, which includes a citizenship question, but is sent to only a small fraction of households. See *FACT CHECK: Has Citizenship Been A Standard Census Question?*, National Public Radio (Mar. 27, 2018) (online at www.npr.org/2018/03/27/597436512/fact-check-has-citizenship-been-a-standard-census-question).

Trump's campaign and transition team discussed the issue before President Trump took office. After his inauguration, the President and his top advisors, including Chief Strategist and Senior Counselor Steve Bannon and Chief of Staff Reince Priebus, met in the White House to discuss the citizenship question. Secretary Ross directed Commerce Department staff to get the citizenship question added to the Census questionnaire long before any request from DOJ. In September 2017, Secretary Ross personally called Attorney General Jeff Sessions to seek DOJ's assistance. DOJ then drafted its request letter while receiving input from Secretary Ross' staff and a member of the Trump Transition Team.

The Trump Administration has claimed that the Committee's investigation is intended to interfere with separate ongoing litigation that is now before the Supreme Court. However, Committee Democrats launched an investigation into the citizenship question just days after Secretary Ross announced his decision in March 2018. Since they were in the minority at the time, their efforts were blocked. In 2019, after Rep. Cummings became Chairman, he renewed these requests and made this investigation a priority for the Committee, well before the Supreme Court took up this case.

The Trump Administration, however, still has failed to cooperate. On April 2, 2019, after the Department of Commerce and DOJ refused to produce key documents voluntarily despite numerous accommodations from the Committee, Chairman Cummings issued document subpoenas to Secretary Ross and Attorney General William Barr. He also issued a deposition subpoena to John Gore, a DOJ official who had refused to answer more than 150 questions during a voluntary interview with Committee staff. The subpoenas were authorized by a bipartisan vote of the Committee.

The Trump Administration defied all three subpoenas. The Department of Commerce and DOJ produced thousands of pages of documents that were largely heavily redacted or already public—but withheld the key unredacted documents identified in the subpoenas. Rather than allow Mr. Gore to testify, the Attorney General instructed him not to appear based on a complaint about a Committee rule that has been in place for over a decade.

The Administration has also tried to stymie the Committee's investigation in other ways. The Department of Commerce refused for more than two months to make three current and former Department officials available for voluntary transcribed interviews. The Department relented only after the Committee scheduled a business meeting to consider issuing subpoenas for these individuals' testimony.

The White House has also aggressively interfered with the Committee's work by instructing Kris Kobach, a private citizen, not to answer questions about his meetings with the President and his senior White House advisors about the citizenship question. The White House claimed that such meetings "fall squarely within the scope of executive privilege," even though it had previously said the decision to add the citizenship question was "made at the department level" rather than at the White House.

II. AUTHORITY AND PURPOSE

Congress has a constitutional responsibility to conduct oversight of the Executive Branch, and the Supreme Court has repeatedly affirmed that duty. The Court held in *McGrain v. Daugherty* that “the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.”⁴ In *Watkins v. United States*, the Court held that Congress’ oversight jurisdiction is far-reaching, stating: “The power of Congress to conduct investigations is inherent in the legislative process. That power is broad.”⁵

Legislation has codified the oversight powers of House and Senate Committees. For example, the Legislative Reorganization Act of 1946 directed committees to “exercise continuous watchfulness” over the Executive Branch’s implementation of programs within their jurisdictions, and the Legislative Reorganization Act of 1970 authorized committees to “review and study, on a continuing basis, the application, administration, and execution” of laws.⁶

The rules of the House of Representatives—adopted pursuant to the Rulemaking Clause of the Constitution—establish the Committee on Oversight and Reform as a standing committee of the House of Representatives. Under House Rule X, the Committee has legislative jurisdiction over issues including “population and demography generally, including the Census,” and the “overall economy, efficiency, and management of government operations and activities.”⁷ As the principal oversight committee of the House of Representatives, the Committee also “may at any time conduct investigations of any matter.”⁸

Pursuant to House Rule XI, the Committee is authorized “to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of books, records, correspondence, memoranda, papers, and documents as it considers necessary.”⁹ The Committee may delegate the “power to authorize and issue subpoenas” to its chair within the Committee rules.¹⁰ The Committee is further authorized to “adopt a rule authorizing and regulating the taking of depositions by a member or counsel of the committee, including pursuant to subpoena.”¹¹

Rules unanimously adopted by the Committee state that the Committee’s Chairman shall “Authorize and issue subpoenas as provided in House Rule XI, clause 2(m), in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the

⁴ 273 U.S. 135 (1927).

⁵ 354 U.S. 178 (1957).

⁶ Pub. L. No. 79-601; Pub. L. No. 91-510.

⁷ House Rule X, clause 1(n).

⁸ House Rule X, clause 4(c)(2).

⁹ House Rule XI, clause 2(m)(1)(B).

¹⁰ House Rule XI, clause 2(m)(3)(A)(i).

¹¹ House Rule X, clause 4(c)(3)(A).

Committee.”¹² The Committee Rules further state that the Chairman, “upon consultation with the Ranking Member, may order the taking of depositions, under oath and pursuant to notice or subpoena.”¹³

The Committee’s investigation into the Trump Administration’s addition of a citizenship question to the 2020 Decennial Census is being undertaken pursuant to the authorities delegated to the Committee under the House Rules.

As a part of this investigation, the Committee is seeking information on the Administration’s actual reasons for adding the citizenship question and the process it followed to do so; how the citizenship question could impact census response rates, accuracy, and cost; the potential negative impacts on certain congressional districts caused by inaccuracies resulting from undercounts; the accuracy of the Administration’s past statements to Congress and the public regarding these issues; and related issues.

The Constitution gives Congress sweeping power to carry out the census “in such manner as they shall by law direct,” and the Committee’s investigation may lead Congress to pursue legislation.¹⁴ To give just a few illustrative examples, such legislation could reform the process used to add questions to the census, change the requirements for congressional notifications or testing of topics and questions, require the disclosure of census questions proposed by third parties, add further protections regarding the use of census data by federal agencies or others, mandate additional non-response follow-up procedures to prevent undercounts, alter funding levels for the upcoming census, or prohibit the inclusion of a citizenship question altogether.

III. BACKGROUND ON THE COMMITTEE’S INVESTIGATION

On March 26, 2018, Secretary of Commerce Wilbur Ross announced that he had decided to add a citizenship question to the 2020 Decennial Census.¹⁵ Secretary Ross and other Commerce Department officials repeatedly testified that this decision was based solely on a December 12, 2017, letter from DOJ requesting that a citizenship question be added to the 2020 Census to “best enable the Department to protect all American citizens’ voting rights under Section 2” of the Voting Rights Act.¹⁶

Testifying before the House Committee on Appropriations on March 20, 2018, Secretary Ross stated: “We have had a request, as everyone is aware, from the Department of Justice, to

¹² Rule 12(g) of the Committee on Oversight and Reform, 116th Cong.

¹³ Rule 15(a) of the Committee on Oversight and Reform, 116th Cong.

¹⁴ U.S. Const., Art. 1, sec. 2. Statutes governing the census are codified in Title 13 of the U.S. Code.

¹⁵ Letter from Secretary Wilbur Ross, Jr., Department of Commerce, to Karen Dunn Kelley, Under Secretary for Economic, Department of Commerce (Mar. 26, 2018) (online at www.documentcloud.org/documents/4426785-commerce2018-03-26-2.html).

¹⁶ 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).

add a citizenship question to the 2020 census.” He continued: “We are responding **solely** to the Department of Justice’s request.”¹⁷

Two days later, on March 22, 2018, Secretary Ross testified before the Committee on Ways and Means. He stated: “The Department of Justice, as you know, initiated the request for inclusion of the citizenship question.”¹⁸

On May 8, 2018, at a hearing before the Committee on Oversight and Government Reform, Earl Comstock, Director of the Office of Policy and Strategic Planning at the Department of Commerce, testified: “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.”¹⁹

Two days later, before the Senate Committee on Appropriations, Secretary Ross again testified that the DOJ request letter was the basis of his decision to add the citizenship question, stating: “Well, the Justice Department is the one who made the request of us.”²⁰

Information gathered by the Committee demonstrates that these statements were, at best, misleading. In fact, the December 2017 request from DOJ appears to have been no more than a pretext.

The Trump Administration actually began a campaign to add the citizenship question immediately after the President’s inauguration in January 2017. That campaign followed efforts to promote a citizenship question by Thomas Hofeller, a now-deceased Republican gerrymandering expert. In 2015, Mr. Hofeller wrote a secret study concluding that counting voting-age citizens, rather than total population, in legislative districts “would be advantageous to Republicans and Non-Hispanic Whites.” He also concluded: “Without a question on citizenship being included on the 2020 Decennial Census questionnaire, the use of citizen voting age population is functionally unworkable.”²¹

A. The Trump Campaign and Trump Transition Team Discussed Adding a Citizenship Question

Members of Donald Trump’s presidential campaign and transition team began discussing the potential addition of a citizenship question well before the President took office in January

¹⁷ House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *FY19 Budget Hearing: Department of Commerce*, 115th Cong. (Mar. 20, 2018) (emphasis added).

¹⁸ House Committee on Ways and Means, *Hearing with Commerce Secretary Ross*, 115th Cong. (Mar. 22, 2018).

¹⁹ Committee on Oversight and Government Reform, *Hearing on Progress Report on the 2020 Census*, 115th Cong. (May 8, 2018).

²⁰ Senate Committee on Appropriations, Subcommittee on Commerce, Justice, and Science and Related Agencies, *Hearing on FY 2019 Funding Request for the Commerce Department*, 115th Cong. (May 10, 2018).

²¹ 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>).

2017. Former Kansas Secretary of State Kris Kobach, who served as an “informal adviser to the President throughout the campaign,” told Committee staff during a transcribed interview that he had discussions about adding a citizenship question during the 2016 campaign. He explained, “I certainly discussed the issue with people during the campaign.”²²

These discussions continued on President Trump’s Transition Team after the 2016 election. In a transcribed interview with Committee staff, a former member of the Transition Team, Gene Hamilton, testified that Mr. Kobach, who also served on the transition, contacted him in “early November of 2016” to discuss legislative proposals regarding the citizenship question.²³

During the transition, gerrymandering expert Thomas Hofeller reportedly had direct communications with the Transition Team official responsible for the census. That official, Mark Neuman, recalled that he spoke to Mr. Hofeller about the subject multiple times.²⁴

B. The President and His Top Advisors Discussed Adding a Citizenship Question Within Days of the Inauguration

Within days of President Trump’s inauguration, the President, the President’s Chief Strategist and Senior Counselor Steve Bannon, and the President’s Chief of Staff Reince Priebus held meetings with Mr. Kobach to discuss the addition of the citizenship question. Mr. Kobach told Committee staff during his interview that the meetings occurred in “late January-early February of 2017.” He recalled two meetings, one with Mr. Bannon, and a second with President Trump, who may have been accompanied by Mr. Bannon and Mr. Priebus.²⁵

Although the White House instructed Mr. Kobach not to divulge to the Committee the content of those meetings—or whether he had other meetings with the White House on the citizenship question—Mr. Kobach has stated publicly that he raised the issue with the President because he “wanted to make sure the president was well aware” and that the President “absolutely was interested in this.”²⁶

Secretary Ross was sworn in on February 28, 2017. Just ten days later, Secretary Ross received an email from Earl Comstock regarding “Your Question on the Census.” The email included a Q&A from the Census Bureau website explaining that “undocumented residents (aliens),” along with all other “citizens and noncitizens” residing in the United States, “are to be included in the census and thus in the apportionment counts.” The email also included a *Wall*

²² Committee on Oversight and Reform, Transcribed Interview of Kris Kobach (June 3, 2019).

²³ Committee on Oversight and Reform, Transcribed Interview of Gene Hamilton (May 30, 2019).

²⁴ Deposition of A. Mark Neuman, Civ. No. 8:18-cv-01041-GJH (D. Md. Oct. 28, 2018).

²⁵ Committee on Oversight and Reform, Transcribed Interview of Kris Kobach (June 3, 2019).

²⁶ *That Citizenship Question on the 2020 Census? Kobach Says He Pitched It to Trump*, Kansas City Star (Mar. 27, 2018) (online at www.kansascity.com/news/politics-government/article207007581.html).

Street Journal article entitled, “The Pitfalls of Counting Illegal Immigrants,” and noted that “neither the 2000 nor the 2010 Census asked about citizenship.”²⁷

In April 2017—eight months before DOJ sent its request letter— Secretary Ross’ assistant wrote in an email that “Steve Bannon asked that the Secretary talk to someone about the Census.”²⁸ In testimony before the Committee on March 14, 2019, Secretary Ross stated that Mr. Bannon had “requested that I consider taking a phone call from an individual called Kris Kobach.” He recalled that Mr. Bannon “said that Kobach had a question that he thought should be asked on the census.” Secretary Ross testified that, “shortly thereafter, possibly the next day, I did have a conversation with Kris Kobach.”²⁹ In a subsequent email, Mr. Kobach recalled that his conversation with Secretary Ross had been “at the direction of Steve Bannon.”³⁰

A week after Mr. Bannon contacted Secretary Ross to connect him with Mr. Kobach, on April 13, 2017, Mr. Comstock emailed Mr. Neuman—the former Transition Team member who was informally advising Secretary Ross—to ask when the Department needed to notify Congress about the questions that would be on the American Community Survey and the Decennial Census.³¹ Mr. Neuman replied, “there will be another opportunity next year.”³²

C. Commerce Secretary Ross Began a Campaign to Add the Citizenship Question Months Before the Department of Justice Sent a Request

During spring 2017, Secretary Ross pressed his staff to move more aggressively to add a citizenship question to the 2020 Census. In an email to Mr. Comstock and the Department’s Chief Financial Officer Ellen Herbst on May 2, 2017, Secretary Ross wrote: “I am mystified why nothing have [sic] been done in response to my months old request that we include the citizenship question.”³³ Mr. Comstock responded:

²⁷ Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Mar. 10, 2017) (online at <https://apps.npr.org/documents/document.html?id=4619371-Page-2521-Of-Administrative-Record-For-Census#document/p1/a443003>).

²⁸ Email from Brooke Alexander, Executive Assistant to the Secretary, Department of Commerce, to Hilary Gearsy Ross (Apr. 5, 2017) (online at <https://apps.npr.org/documents/document.html?id=4616790-April-5-2017-Email-From-Brooke-Alexander#document/p1/a441453>).

²⁹ Committee Oversight and Reform, *Hearing with Commerce Secretary Wilbur L. Ross, Jr.*, 116th Cong. (Mar. 14, 2019) (online at <https://oversight.house.gov/legislation/hearings/commerce-secretary-wilbur-l-ross-jr>).

³⁰ Email from Kris Kobach, to Wendy Teramoto, Chief of Staff, Department of Commerce (July 21, 2017) (online at <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p775/a428456>).

³¹ Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Mark Neuman (Apr. 13, 2017).

³² Email from Mark Neuman, to Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce (Apr. 14, 2017).

³³ Email from Secretary Wilbur L. Ross, Jr., Department of Commerce, to Earl Comstock, Director, Office of Policy and Strategic Planning, and Ellen Herbst, Chief Financial Officer, Department of Commerce (May 2, 2017).

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 decennial Census questions are submitted to Congress. **We need to work with Justice to get them to request that citizenship be added back as a census question**, and we have the court cases to illustrate that DoJ has a legitimate need for the question to be included. I will arrange a meeting with DoJ staff this week to discuss.³⁴

In a subsequent memo to Secretary Ross, Mr. Comstock detailed his efforts to get another agency, the Department of Homeland Security, to request the citizenship question and noted that he was initially rebuffed by both DOJ and the Department of Homeland Security, leading him to consider whether the Department of Commerce could add the question even without a request from another agency. He wrote:

In early May, Eric Branstad put me in touch with Mary Blanche Hankey as the White House liaison at 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.³⁵

On May 30, 2019, Committee staff conducted a voluntary transcribed interview with Mr. Hamilton. He informed Committee staff that he received a call from a White House official, John Zadrozny on the Domestic Policy Council, informing him that he “would be receiving a phone call from someone from the Department of Commerce related to the Census.”³⁶

Mr. Comstock then contacted Mr. Hamilton. Mr. Hamilton told the Committee that Mr. Comstock called him to ask “if the Department of Homeland Security could use or had a need for the information for citizenship information of the Census that would facilitate a departmental mission.” Mr. Hamilton told the Committee that he checked with experts within the Department, but that nobody identified a need for this information. He then reported back to Mr. Comstock that the Department “didn’t really have a use for” the information.³⁷

³⁴ 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) (emphasis added).

³⁵ Memorandum from Earl Comstock, Director, Office of Policy and Strategic Planning, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Sept. 8, 2017) (online at <https://apps.npr.org/documents/document.html?id=4896064-Administrative-Record-For-Census-Citizenship#document/p2/a454666>).

³⁶ Committee on Oversight and Reform, Transcribed Interview of Gene Hamilton (May 30, 2019).

³⁷ *Id.*

In his memo to Secretary Ross, Mr. Comstock explained:

Gene and I had several phone calls to discuss the matter, and then Gene relayed that after discussion DHS 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.³⁸

On July 14, 2017, Mr. Kobach emailed Secretary Ross to “follow up on our telephone discussion from a few months ago.” He wrote that adding a citizenship question to the census was “essential” and would address “the problem that aliens who do not actually ‘reside’ in the United States are still counted for congressional apportionment purposes.”³⁹ He also included a sample citizenship question.⁴⁰

Secretary Ross’ Chief of Staff, Wendy Teramoto, then arranged a call between Mr. Kobach and the Secretary on July 25, 2017.⁴¹ Mr. Kobach told the Committee that he did not recall whether he had a second call with the Secretary, but the call is reflected on Secretary Ross’ calendar.⁴²

On August 8, 2017, Secretary Ross emailed Mr. Comstock to follow up on his outreach to DOJ. He wrote: “where is 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 AG.”⁴³ Mr. 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

³⁸ 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 <https://apps.npr.org/documents/document.html?id=4896064-Administrative-Record-For-Census-Citizenship#document/p2/a454666>).

³⁹ *Id.*

⁴⁰ Email from Kris Kobach, Kansas Secretary of State, to Secretary Wilbur L. Ross, Jr., Department of Commerce (July 14, 2017) (online at <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p776/a428457>).

⁴¹ Email from Wendy Teramoto, Chief of Staff, Department of Commerce, to Kris Kobach, Kansas Secretary of State (July 24, 2017) (online at <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p776/a428457>).

⁴² Committee on Oversight and Reform, Transcribed Interview of Kris Kobach (June 3, 2019); Commerce Secretary Wilbur Ross’s Calendar for July 25, 2017 (“11:00 AM - 11:30 AM Call w/ Kris Kobach”) (online at www.documentcloud.org/documents/5001734-COMM-17-0501-Ross-Cal.html#document/p1651/a461389).

⁴³ Email from Secretary Wilbur L. Ross, Jr., Department of Commerce, to Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce (Aug. 8, 2017) (online at <https://apps.npr.org/documents/document.html?id=4872562-2018-09-11-Letter-Response#document/p40/a453277>).

are back in the office. Since this issue will go to the Supreme Court we need to be diligent in preparing the administrative record.⁴⁴

Secretary Ross responded:

I would like to be briefed Friday by phone. I will probably need an hour to study the memo first. [W]e should be very careful, about everything, whether or not it is likely to end up in the SC.⁴⁵

On August 11, 2017, Mr. Comstock sent Secretary Ross a memorandum analyzing the citizenship question drafted by James Uthmeier, Senior Counsel to the General Counsel at the Department of Commerce.⁴⁶

D. The Department of Justice Sought to “Assist” Secretary Ross by Requesting a Citizenship Question

In September 2017, officials at the Department of Commerce and DOJ arranged a call on the citizenship question between Secretary Ross and Attorney General Jeff Sessions. On September 17, 2017, Danielle Cutrona at DOJ wrote to Ms. Teramoto at the Department of Commerce: “From what John [Gore, Acting Assistant Attorney General] told me, it sounds like **we can do whatever you all need us to do** and the delay was due to a miscommunication. **The AG is eager to assist.**”⁴⁷

Mr. Gore was the principal drafter of DOJ’s letter requesting a citizenship question. During the period when he was preparing that letter, Mr. Gore had multiple conversations with the Department of Commerce’s General Counsel, Peter Davidson, and Mr. Uthmeier about the citizenship question.⁴⁸

Mr. Uthmeier had a memorandum on the citizenship question, along with a personal note, hand-delivered to Mr. Gore. In his interview with Committee staff, Mr. Gore refused to say why Mr. Uthmeier told him he wanted to deliver the memo by hand. DOJ attorneys directed Mr.

⁴⁴ Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Aug. 9, 2017) (online at <https://apps.npr.org/documents/document.html?id=4872562-2018-09-11-Letter-Response#document/p40/a453277>).

⁴⁵ *Id.*

⁴⁶ Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Aug. 11, 2017).

⁴⁷ 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, 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,).

⁴⁸ Committee on Oversight and Reform, Transcribed Interview of John Gore, 105-109 (Mar. 7, 2019).

Gore not to tell the Committee the substance of any of his conversations about the citizenship question with the Attorney General, Ms. Cutrona, Mr. Davidson, or Mr. Uthmeier.⁴⁹

Mr. Gore also told the Committee that Mr. Davidson at the Department of Commerce contacted him and informed him that former Trump Transition Team member Mark Neuman would contact him about the citizenship question. Mr. Gore then spoke to Mr. Neuman and subsequently “reviewed some documents and information regarding the census” that Mr. Neuman provided to him. Among other documents, Mr. Neuman provided “a draft letter that would request reinstatement of the citizenship question on the census questionnaire.”⁵⁰

The draft letter that Mr. Neuman provided to Mr. Gore contained language that matched, word-for-word, a document found on the hard drive of Mr. Hofeller that had been created in August 2017.⁵¹ While this language did not appear in DOJ’s final letter to the Department of Commerce, it demonstrates a connection between Mr. Hofeller, Mr. Neuman, and Mr. Gore. DOJ has refused to provide the Committee with drafts of DOJ’s letter to the Department of Commerce.

In October 2017, Mr. Gore, along with another individual in DOJ’s Civil Rights Division, participated in a conference call about the citizenship question with White House Domestic Policy Council official John Zadrozny.⁵² At the direction of DOJ attorneys, Mr. Gore refused to tell the Committee what was discussed on that conference call.

On November 27, 2017, Secretary Ross wrote to Mr. Davidson: “We are out of time. Please set up a call for me tomorrow with whoever is the responsible person at Justice. We must have this resolved.”⁵³

Two weeks later, on December 12, 2017, DOJ sent its request letter. The letter contended that data from a citizenship question on the 2020 Decennial Census 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 data already provided through the American Community Survey was not accurate enough.⁵⁴

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question*, New York Times (May 30, 2019) (online at www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html).

⁵² Committee on Oversight and Reform, Transcribed Interview of John Gore (Mar. 7, 2019).

⁵³ Email from Secretary Wilbur L. Ross, Jr., Department of Commerce, to Peter Davidson, General Counsel, Department of Commerce (Nov. 27, 2017) (online at <https://apps.npr.org/documents/document.html?id=4620785-Page-11193-Of-Administrative-Record-For-Census#document/p1/a443377>).

⁵⁴ 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).

Ten days after the letter was sent, on December 22, 2017, Acting Census Bureau Director Ron Jarmin emailed Arthur Gary, who signed DOJ’s request letter, to request a meeting. Mr. Jarmin noted that the Census Bureau believed it could provide DOJ with the data it requested without adding a citizenship question to the Census, and that adding the citizenship question “would result in higher quality data produced at a lower cost.”⁵⁵

DOJ officials, acting at the direction of Attorney General Sessions, refused to meet with the Census Bureau despite multiple requests.⁵⁶

Documents produced to the Committee suggest that the White House was engaged on the citizenship question during this period. In February 2018, Mr. Zadrozny at the White House sought to arrange a meeting with Mr. Uthmeier from the Department of Commerce, Mr. Hamilton from DOJ, and others. He wrote that “I am trying to avoid phones on this one.”⁵⁷ He also noted, “We need to do this as a meeting because of the sensitivity of the content.”⁵⁸ Mr. Hamilton told the Committee that he did not recall the subject of this meeting or whether it occurred.⁵⁹

On March 26, 2018, Secretary Ross officially announced he had made his decision: the citizenship question would be added to the 2020 Census.⁶⁰

E. Adding the Citizenship Question Will Harm the Accuracy of the Census

Census experts have strongly and unanimously opposed adding a citizenship question.

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.”⁶¹

⁵⁵ Email from Ron Jarmin, Acting Director, Census Bureau, to Arthur Gary, General Counsel, Justice Management Division, Department of Justice (Dec. 22, 2018).

⁵⁶ Committee on Oversight and Reform, Transcribed Interview of John Gore (Mar. 7, 2019).

⁵⁷ Email from John Zadrozny, Special Assistant to the President, The White House, to Gene Hamilton, Counselor to the Attorney General, Department of Justice (Feb. 26, 2018).

⁵⁸ Email from John Zadrozny, Special Assistant to the President, The White House, to Gene Hamilton, Counselor to the Attorney General, Department of Justice (Feb. 21, 2018).

⁵⁹ Committee on Oversight and Reform, Transcribed Interview of Gene Hamilton (May 30, 2019).

⁶⁰ 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 <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p1329/a464493>).

⁶¹ Memorandum from John Abowd, Chief Scientist, Census Bureau, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Jan. 19, 2018) (online at <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p1289/a428453>).

On March 1, 2018, Dr. Abowd sent a second memorandum to Secretary Ross. This memo concluded that adding a citizenship question while also using administrative data on citizenship “would result in poorer quality citizenship data” than using administrative data alone and would “still have all the negative cost and quality implications” of adding the citizenship question.⁶²

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. They wrote:

We strongly believe that adding an untested question on citizenship status at this late point in the decennial planning process would put the accuracy of the enumeration and success of the census in all communities at grave risk.⁶³

This concern is not new. Indeed, as early as 1980, the Census Bureau argued that adding a citizenship question would “inevitably jeopardize the overall accuracy of the population count.”⁶⁴

In the memo outlining his decision, Secretary Ross conceded that the “Census Bureau and many stakeholders expressed concern” that adding a citizenship question “would negatively impact the response rate for non-citizens” and that a “significantly lower response rate by non-citizens could reduce the accuracy of the decennial census and increase costs for non-response follow up (NRFU) operations.”⁶⁵ However, he claimed that there was a lack of “empirical data” to quantify the likely impact.

Dr. Abowd, however, estimated that adding the citizenship question would result in a decrease in self-response rates of more than 5% among households with at least one noncitizen.⁶⁶ A subsequent randomized controlled trial found the impact could be even more severe:

⁶² Memorandum from John Abowd, Chief Scientist, Census Bureau, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Mar. 1, 2018) (online at <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p1321/a451503>).

⁶³ Letter from Former Census Bureau Directors, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Jan. 26, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/DOJ%20census%20ques%20request-Former%20Directors%20ltr%20to%20Ross.pdf>).

⁶⁴ *Fed’n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (D.D.C. 1980) (noting the Bureau’s concern that “Obtaining the cooperation of a suspicious and fearful population would be impossible if the group being counted perceived any possibility of the information being used against them. Questions as to citizenship are particularly sensitive in minority communities and would inevitably trigger hostility, resentment and refusal to cooperate.”).

⁶⁵ Memorandum from Secretary Wilbur L. Ross, Jr., Department of Commerce, to Karen Dunn Kelley, Under Secretary for Economic Affairs, Department of Commerce, *Reinstatement of a Citizenship Question to the 2020 Decennial Census Questionnaire* (Mar. 26, 2018) (online at www.documentcloud.org/documents/4426785-commerce2018-03-26-2.html).

⁶⁶ Memorandum from John Abowd, Chief Scientist, Census Bureau, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Jan. 19, 2018) (online at <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p1289/a428453>) (warning that, conservatively, a citizenship

When extrapolated to the general population, our results imply that asking about citizenship will reduce the number of Hispanics reported in the 2010 Census by approximately 6.07 million, or around 12.03 percent of the 2010 Hispanic population.⁶⁷

F. Citizenship Data from the Decennial Census is Not Necessary to Enforce the Voting Rights Act

DOJ’s request letter contended that “block-level” citizenship data was critical to its enforcement efforts under Section 2 of the Voting Rights Act and that the data already provided through the American Community Survey was not accurate enough.⁶⁸ Secretary Ross agreed, writing in his decision memo: “The citizenship data provided to DOJ will be more accurate with the question than without it.”⁶⁹

These assertions are incorrect. On March 22, 2018, a coalition of the nation’s preeminent voting rights groups sent a letter to Secretary Ross explaining that the Department has not required this data since the passage of the Voting Rights Act in 1965 and does not require it today. The groups wrote:

[T]he DOJ maintains that a new citizenship question will ensure better enforcement of the Voting Rights Act. This is false. Since the passage of the Voting Rights Act in 1965, the Census has never asked all persons to report their citizenship. In other words, a mandatory question on citizenship has never been necessary to ensure robust protection of the right to vote. That is just as true now as it was in 1965 when the Voting Rights Act was passed.⁷⁰

Similarly, the former head of DOJ’s Civil Rights Division—which is charged with enforcing the Voting Rights Act—stated:

I know firsthand that data from the ongoing American Community Survey was sufficient for us to do our work. Rigorous enforcement of the Voting Rights Act has never required the addition of a citizenship question on the census form sent to all households.⁷¹

question would reduce response rates for households with at least one noncitizen by 5.1% and increase the costs of non-response follow up by \$27.5 million not including increases in other costs).

⁶⁷ *Estimating the Effect of Asking About Citizenship on the U.S. Census*, Harvard Shorenstein Center (April 2019) (online at <https://shorensteincenter.org/estimating-effect-asking-citizenship-u-s-census/>).

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 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 <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p1329/a464493>).

⁷⁰ Letter from Constitutional Accountability Center et al., to Secretary Wilbur L. Ross, Jr., Department of Commerce (Mar. 22, 2018) (online at www.theusconstitution.org/wp-content/uploads/2018/03/CAC-Census-Letter-Groups.pdf).

⁷¹ *The Bitter Lie Behind the Census’s Citizenship Question*, Washington Post (Mar. 29, 2018) (online at

IV. THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF JUSTICE HAVE OBSTRUCTED THE COMMITTEE'S INVESTIGATION

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.⁷² Since becoming Chairman, he has made this investigation a priority for the Committee.

On April 2, 2019, after DOJ and Department of Commerce failed to comply voluntarily with the Committee's requests for documents and testimony, the Committee voted on a bipartisan basis to authorize document subpoenas to Attorney General Barr and Secretary Ross and a deposition subpoena to John Gore.⁷³ However, the Attorney General and Secretary Ross have defied those subpoenas by refusing to produce key documents and, in the case of the Attorney General, by instructing Mr. Gore not to appear for his deposition.

A. The Department of Commerce Has Refused to Produce Key Documents Required by the Committee's Subpoena

Committee Democrats first requested documents from the Department of Commerce on April 4, 2018, in advance of an April 11, 2018, briefing from Census Bureau and Commerce Department officials.⁷⁴ The Department produced no documents and instead told Members during the briefing that documents were being collected in response to separate, ongoing litigation requests and that the Committee could expect to receive them at the same time they were made public and provided to the parties in the lawsuits.⁷⁵

On June 28, 2018, Rep. Cummings and Rep. Carolyn Maloney led more than 50 House Democrats in writing to Secretary Ross and requesting that he answer questions about the

www.washingtonpost.com/opinions/the-bitter-lie-behind-the-census-citizenship-question/2018/03/29/f2991020-32cc-11e8-8bdd-cdb33a5eef83_story.html?utm_term=.1a02760cf3eb.

⁷² Committee on Oversight and Government Reform Democrats, *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>).

⁷³ *Committee Approves Subpoenas in Security Clearance and Census Investigations*, Committee on Oversight and Reform (Apr. 2, 2019) (online at <https://oversight.house.gov/news/press-releases/committee-approves-subpoenas-in-security-clearance-and-census-investigations>).

⁷⁴ Letter from Ranking Member Elijah E. Cummings et. al, Committee on Oversight and Government Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce, and Dr. Ron Jarmin, Ph.D., Acting Director, Census Bureau (Apr. 4, 2018) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-04-04.%20EEC%20Maloney%20Norton%20Clay%20Connolly%20&%20Gomez%20to%20Commerce%20re.Cens_...pdf).

⁷⁵ Briefing from Acting Director Ron Jarmin, Census Bureau, Michael Walsh, Jr., Deputy General Counsel, Department of Commerce, and Jennifer Ortman, Assistant Division Chief, American Community Survey Office, Census Bureau, to Committee on Oversight and Government Reform (Apr. 11, 2018).

contradictory and misleading testimony he provided to Congress.⁷⁶ Secretary Ross did not reply. On August 3, 2018, Reps. Cummings and Maloney, along with 43 Democrats, wrote again to request answers about the Secretary's misleading testimony.⁷⁷ Yet again, Secretary Ross declined to respond.

On December 21, 2018, Secretary Ross sent a brief letter to Rep. Cummings, which he characterized as a response to the Ranking Member's earlier questions. Rather than answer the questions, however, the Secretary's response largely repeated information in public court filings. The response contained no documents.⁷⁸

On January 8, 2019, the Committee renewed Rep. Cummings' requests from the prior Congress, including for the documents initially requested in April 2018. In his letter to Secretary Ross, Chairman Cummings also asked him to testify before the Committee.⁷⁹ The Department of Commerce responded by producing thousands of pages of documents, most of which were already publicly available, heavily redacted, or non-responsive. The Department did not provide complete responses to the Committee's written questions.

On March 5, 2019, the Department of Commerce sent a letter seeking to postpone the Secretary's previously agreed upon testimony before the Committee. The letter requested that the Committee postpone the hearing until the end of April—more than six weeks—so Secretary Ross could have additional time to prepare his testimony and to produce documents.⁸⁰ Chairman Cummings responded on March 6, stating that the Secretary had already had nine weeks since the initial invitation, so the hearing would remain on March 14. In an effort to accommodate the Department's concerns, Chairman Cummings agreed to the Secretary's requests that the scope of the hearing be limited, and the Committee prioritized certain documents to be produced prior to

⁷⁶ Letter from Ranking Member Elijah E. Cummings et al., Committee on Oversight and Government Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (June 28, 2018) (online at <https://maloney.house.gov/sites/maloney.house.gov/files/618%20Sec%20Ross%20Supplemental%20Memo%20Letter.pdf>).

⁷⁷ Letter from Rep. Carolyn Maloney et al., to Secretary Wilbur L. Ross, Jr., Department of Commerce (Aug. 3, 2018) (online at <https://maloney.house.gov/sites/maloney.house.gov/files/2018%200803%20Letter%20to%20Secretary%20Ross.pdf>).

⁷⁸ Letter from Secretary Wilbur L. Ross, Jr., Department of Commerce, to Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform (Dec. 21, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DOC.122118.%20Response%20to%20EEC%20re%20Citizenship%20Questions.pdf>).

⁷⁹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Jan. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-01-08.EEC%20to%20Ross-DOC%20re%20Citizenship%20Question.pdf>).

⁸⁰ Letter from Michael Platt Jr., Assistant Secretary for Legislative and Intergovernmental Affairs, Department of Commerce, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 5, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.03.05%20Letter%20to%20Chairman%20Cummings_0.pdf).

the hearing. However, Chairman Cummings warned the Secretary that “the existence of separate civil litigation is not a valid basis to withhold these documents from the Committee.”⁸¹

On March 7, Secretary Ross confirmed he would appear to testify on March 14 “to answer the Committee on Oversight and Reform’s (Committee) questions on the preparations for the 2020 Census and the addition of the citizenship question.”⁸² He did not indicate that any documents or information would be withheld.

At the March 14 hearing, despite having agreed in advance to the Committee’s questions, Secretary Ross refused to provide key information or documents requested by the Committee, stating: “I will certainly address the question to my staff and to my counsel. To the degree that this is involved in pending litigation, there may be problems.” Chairman Cummings expressed frustration with Secretary Ross’ reversal, stating, “when I heard your testimony, I felt like you were trying to pull a fast one on me.” He asked Secretary Ross to “consult with your lawyers” and “produce all of the priority documents this committee has requested” by March 19, 2019. He explained that if Secretary Ross did not comply, the Committee would have no choice but to consider issuing a subpoena for documents and conducting transcribed interviews with staff from the Department of Commerce and DOJ who were involved in adding the citizenship question.⁸³

The next day, Committee staff followed up with the Department of Commerce to offer additional accommodations. In an email to Department staff, Committee staff provided the Department with a subset of 11 key documents within the Committee’s set of priority documents and asked for their production, without redactions, by March 19, 2019.⁸⁴

On March 19, 2019, the Department of Commerce failed to produce any of the 11 key documents without redactions. The Department asserted that Secretary Ross “stands by the answers and responses provided in the hearing.”⁸⁵

On March 20, 2019, the Committee requested transcribed interviews with three Commerce Department officials who played critical roles in the addition of the citizenship

⁸¹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Mar. 6, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-06.EEC%20to%20Ross-DOC%20re%20Documents%20and%20Testimony.pdf>).

⁸² Letter from Secretary Wilbur L. Ross, Jr., Department of Commerce, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 7, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-07%20Letter%20to%20Chairman%20Cummings.pdf>).

⁸³ Committee Oversight and Reform, *Hearing with Commerce Secretary Wilbur L. Ross, Jr.* (Mar. 14, 2019).

⁸⁴ Email from Staff, Committee on Oversight and Reform, to Staff, Department of Commerce (Mar. 15, 2019).

⁸⁵ Letter from Ross Branson, Deputy Assistant Secretary for Legislative and Intergovernmental Affairs, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 19, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DOC.031919.Response%20to%20EEC%20re%20Citizenship%20Question.pdf>).

question: Earl Comstock, Peter Davidson, and James Uthmeier.⁸⁶ The Department did not make them available for interviews.

Further, the Department of Commerce did not produce the requested documents, despite receiving repeated follow-up by Committee staff. Instead, the Department demanded that the Committee identify “specific, particularized information needs” for each of the requested documents and transcribed interviews.⁸⁷

On March 29, 2019, Chairman Cummings wrote to Secretary Ross:

Our need for these documents and interviews is clear. The Committee is seeking to understand the real reason that you added a citizenship question to the 2020 Census. ... The requested documents and interviews may provide contemporaneous evidence of the real reason that you added the citizenship question and the process you followed.⁸⁸

Chairman Cummings listed six issues on which the requested documents and interviews could shed light, including the Secretary’s “apparent interest in adding a citizenship question beginning in early 2017,” “The role of the White House in coordinating the addition of a citizenship question,” and the Secretary’s “deliberations leading to the issuance of the pretextual decision memorandum in March 2018.”⁸⁹ Despite these explanations, the Department continued to withhold the documents and interviews.

On April 2, 2019, the Committee voted on a bipartisan basis to authorize a subpoena to Secretary Ross to compel production of key documents, including the 11 previously identified key documents and one category of documents from the Committee’s previous requests.⁹⁰ The documents required to be produced by this subpoena are shown in Appendix A. Following the issuance of the subpoena, the Department produced additional documents. However, many of those documents were heavily redacted, did not include attachments, or were not responsive to the subpoena. The Department failed to produce an unredacted copy of any of the 11 key documents required by the subpoena.

⁸⁶ Email from Staff, Committee on Oversight and Reform, to Staff, Department of Commerce (Mar. 20, 2019).

⁸⁷ Letter from Ross Branson, Deputy Assistant Secretary for Legislative and Intergovernmental Affairs, Department of Commerce, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 26, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DOC.032619.%20Response%20to.pdf>).

⁸⁸ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Mar. 29, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-29.EEC%20to%20Ross-DOC.pdf>).

⁸⁹ *Id.*

⁹⁰ *Committee Approves Subpoenas in Security Clearance and Census Investigations*, Committee on Oversight and Reform (Apr. 2, 2019) (online at <https://oversight.house.gov/news/press-releases/committee-approves-subpoenas-in-security-clearance-and-census-investigations>).

On May 7, 2019, Chairman Cummings and Rep. Jamie Raskin, the Chairman of the Subcommittee on Civil Rights and Civil Liberties, sent invitations directly to Mr. Comstock, Mr. Davidson, and Mr. Uthmeier for transcribed interviews.⁹¹

On May 8, 2019, Chairman Cummings again wrote to Secretary Ross, this time requesting a personal meeting to discuss the Department’s refusal to produce documents. Chairman Cummings wrote:

I am writing to request a meeting to discuss the Department’s refusal to produce documents pursuant to a subpoena authorized by the Committee on a bipartisan basis regarding your decision to add a citizenship question to the 2020 Census. I would like to meet with you in person, preferably in the next two weeks, to ensure that you are fully apprised of the actions of your staff and to determine whether there is any way to resolve this impasse before initiating potential enforcement action.⁹²

The Secretary responded on May 20, 2019, declining to meet with Chairman Cummings. Instead, he reiterated the Department’s already-fulfilled demands for the “particularized legislative need” for each of the documents and reasserted vague claims of Executive Branch confidentiality interests.⁹³ In a separate letter on May 21, 2019, the Department of Commerce refused to make the three witnesses available for transcribed interviews, again demanding a “demonstration of the Committee’s particularized need” and “legislative purpose.”⁹⁴

⁹¹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Earl Comstock, Deputy Chief of Staff and Director of Policy, Department of Commerce (May 7, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-07.EEC%20JR%20to%20Comstock-DOC%20re%20TI.pdf>); Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Peter Davidson, General Counsel, Department of Commerce (May 7, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-07.EEC%20JR%20to%20Davidson-DOC%20re%20TI.pdf>); Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to James Uthmeier (May 7, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-07.EEC%20JR%20to%20Uthmeier%20re%20TI.pdf>).

⁹² Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (May 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-08.EEC%20to%20Ross-DOC%20re%20Meeting.pdf>).

⁹³ While the Committee has described its particularized need for these documents in detail, courts have never found a requirement that Congress justify its requests for information line-by-line. As District Court Judge Amit Mehta recently described: “Once a court finds that an investigation is one upon which legislation could be had, it must not entangle itself in judgments about the investigation’s scope or the evidence sought . . . [I]t is not the judicial officer’s job to conduct a ‘line-by-line review of the Committee’s requests.’ *Bean LLC v. John Doe Bank*, 291 F. Supp. 3d. 34, 44 (D.D.C. 2018). ‘There is no requirement that every piece of information gathered in such an investigation be justified before the judiciary.’ *McSurely*, 521 F. 2d at 1041.” *Donald J. Trump, et al. v. Committee on Oversight and Reform of the U.S. House of Representatives*, et. al, 19-cv-01136 (May 20, 2019).

⁹⁴ Letter from Charles Kolo Rathburn, Performing the Duties of the Assistant Secretary for Legislative and Intergovernmental Affairs, Department of Commerce, to Chairman Elijah E. Cummings, Committee on Oversight

Committee staff spoke to Department staff on May 31, 2019, to seek a resolution of these issues, again explaining the need for the documents. Department staff did not commit to providing any of the key unredacted documents identified by the Committee and did not commit to make any of the three witnesses available for transcribed interviews. Committee staff warned that if the Committee could not obtain compliance, the Committee would consider taking further action, including an enforcement action with respect to documents and the issuance of subpoenas for public testimony from the three witnesses being withheld.

On June 3, 2019, the Committee notified Secretary Ross that it was scheduling a vote to hold him in contempt of Congress for failing to comply with the Committee’s document subpoena. The Committee offered to postpone the vote if the 11 priority documents identified in Item 1 of the April 2 subpoena were produced without redactions by June 6, 2019.⁹⁵

Also, on June 3, 2019, the Committee notified Members of a business meeting scheduled for 9:00 a.m. on June 5, 2019, to vote to authorize subpoenas for testimony from Mr. Comstock, Mr. Davidson, and Mr. Uthmeier, the three Department of Commerce witnesses who had not agreed to be interviewed voluntarily. Late in the evening on June 4, the Department of Commerce agreed to make all three witnesses available for transcribed interviews—as the Committee had requested more than two months earlier. The Committee then cancelled the subpoena vote.

However, the Department of Commerce produced no additional documents by the Committee’s June 6 deadline. In a letter to the Committee that evening, the Department claimed that holding Secretary Ross in contempt was “premature,” but refused to provide unredacted copies of any the key documents required by the Committee’s subpoena and offered no accommodation with respect to those documents.⁹⁶

B. The Department of Justice Has Refused to Produce Key Documents Required by the Committee’s Subpoena

On May 1, 2018, the Democratic Members of the Oversight Committee requested documents from DOJ.⁹⁷ The Department did not respond.

and Reform (May 21, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-21%20CKR%20to%20EEC.pdf>).

⁹⁵ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (June 3, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-06-03.EEC%20to%20Ross-DOC%20re%20Transcribed%20Interviews_0.pdf).

⁹⁶ Letter from Charles Kolo Rathburn, Performing the Duties of the Assistant Secretary for Legislative and Intergovernmental Affairs, Department of Commerce, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (June 6, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Letter%20from%20DOC%20to%20Chairman%20Cummings%20%5B6-6-2019%5D.pdf>).

⁹⁷ Letter from Ranking Member Elijah E. Cummings et al., Committee on Oversight and Government Reform, to John Gore, Acting Assistant Attorney General, Department of Justice (May 1, 2018) (online at <https://maloney.house.gov/sites/maloney.house.gov/files/2018-05-01.%20Dem.Members%20to%20DOJ->

As Chairman, Rep. Cummings renewed his request for these documents on February 12, 2019.⁹⁸ In the weeks that followed, the Committee worked to provide accommodations to the Department to facilitate its production. The Committee identified a subset of key documents to be produced first, including the memorandum and note described above from then-Senior Counsel to the General Counsel James Uthmeier that were hand-delivered to Principal Deputy Assistant Attorney General John Gore in the fall of 2017. DOJ did not provide the priority documents, instead producing only documents that were heavily redacted and already largely publicly available.

On March 20, 2019, Committee staff contacted Department staff and again requested the production of the priority documents. Committee staff noted that if the Department could not commit to producing them, “the Committee will have no choice but to consider taking additional steps to ensure compliance.”⁹⁹ The Department responded on March 22, 2019, declining to produce the documents and citing “litigation and confidentiality concerns.”¹⁰⁰

On April 2, 2019, Chairman Cummings sent a letter to the Department explaining that the Supreme Court has made clear that ongoing litigation does not preclude Congress from investigating an issue.¹⁰¹ Later that day, the Committee took a bipartisan vote in support of the Chairman compelling the production of these documents, and the Chairman issued a document subpoena to Attorney General Barr.¹⁰² The documents required to be produced by that subpoena are listed in Appendix B.

Since that time, the Department has produced some documents, but many are heavily redacted, do not include attachments, and are not responsive to the subpoena. The Department has declined to produce unredacted copies of the priority documents required by the subpoena.

On June 3, 2019, the Committee notified Attorney General Barr that it was scheduling a vote to hold him in contempt of Congress for failing to comply with the Committee’s subpoena. The Committee offered to postpone the vote if a narrow subset of priority documents were produced by June 6, 2019.¹⁰³

Gore%20re.Citizenship%20Question-2020%20Decennial%20Census.pdf).

⁹⁸ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Matthew Whitaker, Acting Attorney General, Department of Justice (Feb. 12, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-12.EEC%20to%20Whitaker-DOJ%20re%20Census_0.pdf).

⁹⁹ Email from Staff, Committee on Oversight and Reform, to Staff, Department of Justice (Mar. 20, 2019).

¹⁰⁰ Email from Staff, Department of Justice, to Staff, Committee on Oversight and Reform (Mar. 22, 2019).

¹⁰¹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Stephen E. Boyd, Assistant Attorney General, Department of Justice (Apr. 2, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-02.EEC%20to%20Boyd-DOJ%20re%20Census_0.pdf).

¹⁰² *Committee Approves Subpoenas in Security Clearance and Census Investigations*, Committee on Oversight and Reform (Apr. 2, 2019) (online at <https://oversight.house.gov/news/press-releases/committee-approves-subpoenas-in-security-clearance-and-census-investigations>).

¹⁰³ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Attorney General William P. Barr, Department of Justice (June 2, 2019) (online at

On June 6, DOJ sent a letter to the Committee that called a contempt vote “premature,” but refused to produce the documents identified in the subpoena and did not offer any accommodation with respect to those documents.¹⁰⁴

C. The Attorney General Ordered a Subordinate to Defy the Committee’s Deposition Subpoena

On May 18, 2018, then-Acting Assistant Attorney General John Gore testified at a hearing of the Committee on Oversight and Government Reform. Citing “ongoing litigation, the potential effect of public statements on pending court cases, and the Department’s litigation constraints,” Mr. Gore refused to disclose any information beyond what was already included in DOJ’s December 2017 letter requesting the citizenship question “or other publicly available information.”¹⁰⁵

On February 14, 2019, Rep. Cummings, as Chairman, wrote to DOJ to request a transcribed interview of Mr. Gore, currently serving as Principal Deputy Assistant Attorney General.¹⁰⁶ During the interview on March 7, 2019, Mr. Gore was directed by DOJ counsel not to answer any questions about the content of conversations or documents relating to the citizenship question. Department counsel cited “ongoing litigation” and “other executive branch confidentiality interests” as the basis for instructing Mr. Gore not to answer the Committee’s questions. In total, Mr. Gore refused to answer more than 150 questions asked by Committee staff.¹⁰⁷

Later that day, in an effort to accommodate the Department, Committee staff wrote to DOJ staff requesting answers to a subset of 18 priority questions Mr. Gore refused to answer during his interview. In an additional effort to accommodate the Department, Committee staff proposed that Mr. Gore return voluntarily to answer this narrow set of questions.¹⁰⁸

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-06-03.EEC%20to%20Barr-DOJ%20re%20Census.pdf>

¹⁰⁴ Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (June 6, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Letter%20from%20DOJ%20to%20COR%206-06-19.pdf>).

¹⁰⁵ Committee on Oversight and Government Reform, *Hearing on Progress Report on the 2020 Census*, 115th Cong. (May 18, 2018). Mr. Gore further explained: “Pending litigation is a limitation in these circumstances. Other limitations include the need for the Department of Justice to facilitate open and robust discussion before decisions are made. For that reason, the department does not talk about deliberations or privileged conversations that might happen in an attorney-client context.”

¹⁰⁶ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to John Gore, Principal Deputy Assistant Attorney General, Department of Justice (Feb. 14, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-14.EEC%20to%20Gore-DOJ%20re%20Transcribed%20Interview%20Request_1.pdf).

¹⁰⁷ Committee on Oversight and Reform, Transcribed Interview of John Gore (Mar. 7, 2019).

¹⁰⁸ Email from Staff, Committee on Oversight and Reform, to Staff, Department of Justice (Mar. 7, 2019).

The Department responded to the request on March 22, 2019, by declining to make Mr. Gore available due to “litigation and confidentiality concerns.”¹⁰⁹

On April 2, 2019, the Committee voted on a bipartisan basis to authorize a subpoena compelling Mr. Gore to testify. The Chairman issued the subpoena on the same day requiring Mr. Gore to appear at a deposition on April 11, 2019.¹¹⁰

On April 9, 2019, the Department wrote to the Committee that Attorney General Barr had personally directed Mr. Gore not to comply with the subpoena and not to appear for the deposition. The Department challenged the Committee’s longstanding deposition rule prohibiting agency counsel from attending—a rule that was adopted unanimously by the Committee in January 2019 and which has been in place for more than a decade under both Republican and Democratic Chairmen. During that period, no Executive Branch official or private sector individual has ever refused to attend a deposition on these grounds. The Department claimed that the bipartisan rule “unconstitutionally encroaches on fundamental Executive Branch interests.” The Department concluded: “As a result, the Attorney General has determined that Mr. Gore will not appear at the April 11 deposition unless a Department representative may accompany him.”¹¹¹

On April 10, the Committee wrote to Attorney General Barr that he appeared to be “instructing Mr. Gore to defy a duly authorized congressional subpoena approved by the Committee on a bipartisan basis,” as well as the Committee’s rules. The letter warned that the Committee “expects Mr. Gore to testify in accordance with the Committee’s lawful subpoena and the Committee’s rules” and that if he failed to do so, “the Committee will consider him to be in contempt of Congress.” However, the letter also offered to accommodate the Department’s interests in protecting any valid privilege by making a separate room available at the Committee’s offices for Department counsel during the deposition and permitting Mr. Gore or his counsel to request a break to consult with Department counsel.¹¹²

The same day, in response to a request from Mr. Gore’s personal counsel, the Committee agreed to postpone the deposition until April 25, 2019.

¹⁰⁹ Email from Staff, Department of Justice, to Staff, Committee on Oversight and Reform (Mar. 22, 2019).

¹¹⁰ *Committee Approves Subpoenas in Security Clearance and Census Investigations*, Committee on Oversight and Reform (Apr. 2, 2019) (online at <https://oversight.house.gov/news/press-releases/committee-approves-subpoenas-in-security-clearance-and-census-investigations>).

¹¹¹ Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Apr. 11, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-4-9%20HOCR%27s%20subpoena%20to%20John%20Gore%20%28CRT%29%20-%20Cummings%20%234235573.pdf>).

¹¹² Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Attorney General William P. Barr, Department of Justice (Apr. 10, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-04-10.EEC%20to%20Barr-DOJ%20re%20Gore%20Deposition.pdf>).

On April 24, DOJ wrote a letter reiterating the Attorney General’s instruction to Mr. Gore to defy the Committee’s subpoena.¹¹³ On April 25, 2019, Mr. Gore failed to appear for his deposition.¹¹⁴

In its letter to the Committee on June 6, 2019, the Department once again refused to allow Mr. Gore to testify, claiming that the “exclusion of agency counsel” pursuant to the Committee’s rules would “unconstitutionally infringe upon the prerogatives of the Executive Branch.”¹¹⁵

V. THE ADMINISTRATION’S JUSTIFICATIONS FOR DEFYING THE COMMITTEE’S SUBPOENAS ARE INVALID

Both the Department of Commerce and DOJ have claimed that ongoing litigation, deliberative process privilege, and attorney-client privilege protect these documents from production to this Committee. None of these rationales is a valid basis for withholding information from the Committee.

A. The Administration Cannot Withhold Information from Congress Based on Ongoing Litigation

Following the Secretary’s decision to add a citizenship question to the 2020 Census, the State of New York, along with several states, cities, and the U.S. Conference of Mayors, filed suit in the U.S. District Court for the Southern District of New York alleging that the question’s addition violates the “constitutional obligation to conduct an ‘actual Enumeration’” and the Administrative Procedure Act (APA).¹¹⁶ District Judge Jesse Furman ruled that Secretary Ross violated the APA and Section 6(c) and Section 141(f) of the 1976 Census Act and enjoined the Census Bureau from adding the question to the 2020 questionnaire.¹¹⁷ The Commerce Department appealed. The Supreme Court granted certiorari on February 15, 2019, and oral argument was heard on April 25, 2019.

¹¹³ Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Apr. 24, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-4-24%20HOCR%27s%20subpoena%20to%20John%20Gore%20%28CRT%29%20-%20Cummings%20%234235573_0.pdf).

¹¹⁴ See Letter from John D. Adams, McGuireWoods LLP, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Apr. 24, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/April%2024%20ltr%20to%20The%20Hon.%20Elijah%20E.%20Cummings%20from%20John%20Adams_0.pdf).

¹¹⁵ Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (June 6, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Letter%20from%20DOJ%20to%20COR%2006-06-19.pdf>).

¹¹⁶ Plaintiff’s First Amended Complaint for Declaratory and Injunctive Relief, 1-4 (Apr. 30, 2018), *New York et. al. v. U.S. Dept. of Commerce et. al* (No. 1:18-cv-2921).

¹¹⁷ *New York, et al., v. United States Department of Commerce, et al.*, 315 F. Supp. 3d 766 (S.D.N.Y. 2018).

The State of California also challenged the citizenship question in U.S. District Court for the Northern District of California. On March 6, 2019, District Judge Richard Seeborg held that Secretary Ross violated the APA, the Census Act, and the Enumeration Clause of the Constitution because the question would have a negative impact on “the prospect of achieving the central constitutional purpose of an actual enumeration in 2020.”¹¹⁸ The Commerce Department appealed.

Residents of Maryland and Arizona also challenged the citizenship question in the U.S. District Court for the District of Maryland.¹¹⁹ On April 5, 2019, the court held that the addition of the question violated the APA and the Enumeration Clause.¹²⁰ The Commerce Department appealed.

The Constitution provides Congress with its own responsibility to conduct oversight of, and to pass laws relating to, the Census, and the Committee has authority that is separate and independent from any litigation being pursued in civil courts. Chairman Cummings first called for an investigation into the citizenship question’s addition six days before the State of New York filed its lawsuit, and Democratic Members first requested documents from the Department of Commerce on April 4, 2018, and DOJ on May 1, 2018—more than nine months before for the Supreme Court granted certiorari. Chairman Cummings renewed his document requests to the Department of Commerce on January 8, 2019, and to DOJ on February 12, 2019—both before the Supreme Court agreed to hear the case.¹²¹

The Supreme Court has clearly and repeatedly ruled that parallel litigation does not preclude Congress from investigating an issue and is not a valid reason to withhold information from Congress. The Court explained in *Hutcheson v. United States*:

But surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, *Sinclair v. United States*, supra, at 295, or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135, 179-180.¹²²

The Court also held in *Sinclair v. United States*:

¹¹⁸ *California et al., v. Ross, et al.*, C 18-cv-01865-RS (N.D. Cal. Mar. 6, 2019).

¹¹⁹ The court consolidated this case with another case brought by a coalition of Asian-American and Latino groups in California.

¹²⁰ *Kravitz, et al., v. United States Department of Commerce, et al.*, 336 F. Supp. 3d 545 (D. Md. 2018).

¹²¹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Jan. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-01-08.EEC%20to%20Ross-DOC%20re%20Citizenship%20Question.pdf>); Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Matthew Whitaker, Acting Attorney General, Department of Justice (Feb. 12, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-12.EEC%20to%20Whitaker-DOJ%20re%20Census_0.pdf).

¹²² 369 U.S. 599 (1962).

It may be conceded that Congress is without authority to compel disclosure for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.¹²³

The Committee, under both Republican and Democratic Chairmen, has routinely conducted investigations concurrent with parallel litigation and has received documents and testimony from federal and state agencies and private entities.

For example, in 2015, Chairman Jason Chaffetz conducted an investigation into the decision-making process related to the “Waters of the United States Rule” promulgated by the Environmental Protection Agency and the Army Corps of Engineers.¹²⁴ Despite a suit by 22 states challenging the rule,¹²⁵ the Chairman demanded and obtained documents in compliance with his request.¹²⁶

The same year, Chairman Chaffetz, Rep. Jordan, Rep. Meadows, and Rep. Hurd conducted an extensive investigation into the State of Oregon’s switch from Cover Oregon to the federal healthcare exchange. Despite ongoing civil litigation between the Oracle Corporation and Cover Oregon, the Committee requested and obtained documents from the Governor’s office, the Centers for Medicare and Medicaid Services, Oracle Corporation, and others.¹²⁷ Four subpoenas for depositions were issued, and testimony was obtained from key witnesses.¹²⁸

Also in 2015, the Committee opened an investigation into the State Department’s decision-making process surrounding the environmental impact statement and permitting for the Keystone XL pipeline. While the State Department raised concerns on June 7, 2016, about how

¹²³ 279 U.S. 263 (1929).

¹²⁴ Army Corp of Engineers, Department of the Army, Department of Defense, and Environmental Protection Agency, *Clean Water Rule: Definition of “Waters of the United States*, 80 Fed. Reg. 37053 (June 29, 2019) (online at www.federalregister.gov/documents/2015/06/29/2015-13435/clean-water-rule-definition-of-waters-of-the-united-states).

¹²⁵ *22 States Sue EPA Over Water Rule*, Washington Examiner (June 30, 2015) (online at www.washingtonexaminer.com/22-states-sue-epa-over-water-rule).

¹²⁶ Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works), U.S. Army Corps of Engineers (July 24, 2015); Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works), U.S. Army Corps of Engineers (Oct. 28, 2015).

¹²⁷ *Oregon Settles Bitter Legal Fight with Oracle for \$100 Million*, The Oregonian (Sept. 15, 2016) (online at www.oregonlive.com/politics/2016/09/post_183.html).

¹²⁸ Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to John Kitzhaber, Governor of Oregon (Feb. 13, 2015); Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Andrew M. Slavitt, Acting Administrator, Centers for Medicare and Medicaid Services (June 15, 2015); Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Safra A. Cruz, Chief Executive Officer, Oracle Corporation (Dec. 3, 2015); Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Loretta Lynch, Attorney General, Department of Justice (May 25, 2016).

its production of documents could impact the United States' ability to defend a pending lawsuit brought by TransCanada, it nevertheless produced sensitive documents the following day with the request they not be publicly released without notice and opportunity for the Department to argue against such release. Chairman Chaffetz issued a subpoena to the Department and obtained additional documents responsive to his request. The Committee conducted two transcribed interviews after the subpoena was issued.¹²⁹

In 2016, Chairman Chaffetz and Ranking Member Cummings began a bipartisan investigation into the Flint water crisis.¹³⁰ The Committee sent multiple document requests and held a series of hearings. Although ongoing litigation existed against Michigan Governor Rick Snyder and state and local government officials, and although the Michigan Attorney General appointed a special prosecutor "to look into possible crimes," the Committee requested and obtained a number of documents and transcribed interviews with key individuals at the same time.¹³¹

Similarly, in 2017, Chairman Gowdy and Ranking Member Cummings joined Science Committee Chairman Lamar Smith and Ranking Member Eddie Bernice Johnson in launching a bipartisan investigation into the Equifax data breach. The Committees requested and obtained documents and testimony from key executives despite the ongoing litigation by consumers and financial institutions against Equifax, including a class action lawsuit.¹³²

¹²⁹ Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Secretary John Kerry, Department of State (Feb. 24, 2016) (online at <https://republicans-oversight.house.gov/wp-content/uploads/2016/06/2016-02-24-JEC-to-Kerry-DOS-Keystone-XL-due-3-9.pdf>); Letter from Julia Frifield, Assistant Secretary Legislative Affairs, Department of State, to Chairman Jason Chaffetz, Committee on Oversight and Government Reform (June 7, 2016); Letter from Julia Frifield, Assistant Secretary Legislative Affairs, Department of State, to Chairman Jason Chaffetz, Committee on Oversight and Government Reform (June 8, 2016); Second Subpoena Issued to State Department for Keystone Documents (June 10, 2016) (online at <https://republicans-oversight.house.gov/release/second-subpoena-issued-state-department-keystone-documents/>).

¹³⁰ Letter from Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Michigan Governor Rick Snyder (Feb. 26, 2016) (online at <https://republicans-oversight.house.gov/wp-content/uploads/2016/02/2016-02-26-JC-EEC-to-Snyder-Michigan-Gov.-doc-req.-due-3-11.pdf>); Committee on Oversight and Government Reform, *Cummings Issues Statement on Upcoming Flint Hearings* (Feb. 25, 2016) (online at <https://oversight.house.gov/news/press-releases/cummings-issues-statement-on-upcoming-flint-hearings>).

¹³¹ *Amid Flint Water Crisis, the Lawsuits Are Piling Up*, CBS News (Feb. 8, 2016) (online at www.cbsnews.com/news/flint-water-crisis-lawsuits-piling-up/); *Former Wayne County Prosecutor to Lead Probe of Flint Water Crisis*, Reuters (Jan. 25, 2016) (online at <https://news.yahoo.com/former-wayne-county-prosecutor-lead-probe-flint-water-153706726--business.html>); Letter from Nichole Distefano, Associate Administrator, Environmental Protection Agency, to Chairman Jason Chaffetz, Committee on Oversight and Government Reform (Oct. 20, 2016).

¹³² Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Paulino do Rogo Barros Jr., Interim Chief Executive Officer, Equifax, Inc. (Nov. 20, 2017); Letter from Theodore M. Hester, Partner, King & Spalding LLP, to Chairman Lamar Smith, Committee on Science, Space, and Technology, and Chairman Jason Chaffetz, Committee on Oversight and Government Reform (Dec. 15, 2017); *After the Breach, Equifax Now Faces the Lawsuits*, Washington Post (Sept. 27, 2017) (online at www.washingtonpost.com/news/business/wp/2017/09/22/after-the-breach-equifax-now-faces-the-lawsuits/?utm_term=.20f39dc92b44).

B. Attorney-Client and Deliberative Process Privileges are Not Valid Bases to Withhold the Subpoenaed Information from Congress

The Department of Commerce has claimed that the documents it has withheld are “covered by a variety of privileges, including the deliberative process privilege, the attorney-client privilege, and the attorney work product privilege.”¹³³ DOJ has made an identical argument, pointing out that such privilege claims have previously been used to withhold certain documents from private litigants.¹³⁴ However, the common law privileges cited by the Trump Administration are not valid reasons to withhold documents subject to a valid subpoena from Congress, which derives its investigative authority from the Constitution.

On May 2, 2017, Chairman Jason Chaffetz and Ranking Member Cummings wrote to the Transportation Security Administration (TSA) after TSA cited attorney-client privilege as a reason to withhold documents from the Committee. They wrote:

The House of Representatives derives its authority from the United States Constitution and is bound only by the privileges derived therefrom. As the schedule instructions accompanying the subpoena provided, neither the Committee nor the United States House of Representatives recognizes purported non-disclosure privileges associated with the common law. Further, the mere possibility that a common law privilege may apply in a judicial proceeding is not, in and of itself, a legal justification to withhold documents from this Committee or the Congress.¹³⁵

Similarly, this Committee has never recognized the deliberative process privilege as a valid reason to withhold documents from Congress. The D.C. Circuit has held that the deliberative process privilege is “primarily a common law privilege.” The court distinguished this from the presidential communications privilege, which it held was “rooted in constitutional separation of powers principles and the President’s unique constitutional role.”¹³⁶

Only one District Court Judge has ever held that deliberative process may be invoked in response to a Congressional subpoena, but that case involved facts inapposite to the Committee’s current investigation. In that case, *Committee on Oversight and Government Reform v. Holder*, Congress sought documents “generated in the course of the deliberative process concerning

¹³³ Letter from Charles Kolo Rathburn, Performing the Duties of the Assistant Secretary for Legislative and Intergovernmental Affairs, Department of Commerce, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (June 6, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Letter%20from%20DOC%20to%20Chairman%20Cummings%20%5B6-6-2019%5D.pdf>).

¹³⁴ Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (June 6, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Letter%20from%20DOJ%20to%20COR%206-06-19.pdf>).

¹³⁵ Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Huban Gowadia, Acting Administrator, Transportation Security Administration (May 2, 2017) (online at <https://republicans-oversight.house.gov/wp-content/uploads/2017/05/2017-05-02-JEC-EEC-to-Gowadia-TSA.pdf>).

¹³⁶ *In re Sealed Case*, 121 F.3d 729 (D.C. Cir. 1997).

[DOJ's] response to congressional oversight and related media inquiries."¹³⁷ The documents covered by the Committee's April 2, 2019, subpoenas, however, were all generated prior to the Committee's investigation and do not raise any of the possible separation-of-powers concerns that appeared to animate that decision.

Moreover, even the District Court in *Holder* recognized that the deliberative process privilege is a "qualified privilege, and it can be overcome by a sufficient showing of need." The Court also clarified: "This is a lower threshold to overcome than the privilege that covers Presidential communications."¹³⁸

Such a "lower threshold" would easily be overcome here. The Committee has an urgent need to investigate the addition of a citizenship question to the 2020 Census. The Census is constitutionally mandated to occur in 2020, and questionnaires must be printed months in advance. Congress is responsible for ensuring that the Census counts every person, and the House of Representatives has delegated its responsibility to oversee the Census to this Committee. The documents and information the Committee seeks are critical to its investigation and may shed light on the actual reason the Administration added the citizenship question and many other issues.

Moreover, the D.C. Circuit has held that the deliberative process privilege "disappears altogether when there is any reason to believe government misconduct occurred."¹³⁹ That is certainly the case here, where the Committee's investigation has raised serious questions about whether the Trump Administration had an unconstitutional motive—such as drawing legislative boundaries that were "advantageous" to "Non-Hispanic Whites"—when it added the citizenship question to the Census.

In addition, the Administration has selectively made public statements regarding the information it is withholding from this Committee. For example, DOJ recently stated that Mr. Hofeller's study "played no role in the Department's December 2017 request to reinstate a citizenship question to the 2020 decennial census"—but it has refused to produce emails and drafts that would allow the Committee to examine whether that claim is true.¹⁴⁰ It would defy logic that the Administration could hide behind "deliberative process privilege" to deny Congress these documents while also making public representations about the same issue.

C. The Department of Justice Must Comply with the Committee's Deposition Subpoena

DOJ has asserted that Attorney General Barr ordered Mr. Gore to defy the Committee's deposition subpoena because DOJ lawyers were prohibited from participating under

¹³⁷ *Comm. on Oversight & Gov't Reform v. Holder*, 979 F. Supp. 2d 1 (D.D.C. 2013).

¹³⁸ *Comm. on Oversight & Gov't Reform v. Holder*, Civ. No. 12-1332 (ABJ), 2014 U.S. Dist. LEXIS 200278 (D.D.C. Aug. 20, 2014).

¹³⁹ *Id.*

¹⁴⁰ *Lawyers: Docs Show Census Changed to Give Republicans Edge*, New York Times (May 30, 2019) (online at www.nytimes.com/aponline/2019/05/30/us/ap-us-census-citizenship-question-lawsuit.html).

longstanding Committee rules. The Department claimed that these rules lack a “legitimate legislative purpose” and “unconstitutionally infringe upon the prerogatives of the Executive Branch.” Both claims are false.

Committee Rule 15, which governs depositions, was adopted unanimously on January 29, 2019. Rule 15(e) states:

Witnesses may be accompanied at a deposition by counsel to advise them of their rights. No one may be present at depositions except members, Committee staff designated by the Chair of the Committee or the Ranking Minority Member of the Committee, an official reporter, the witness, and the witness’s counsel. ***Observers or counsel for other persons, or for agencies under investigation, may not attend.***¹⁴¹

The purpose of this rule is straightforward: it ensures that the Committee is able to depose witnesses in furtherance of its investigations without having in the room representatives of the agency under investigation. There are many circumstances when an agency counsel’s presence at a deposition could hinder the Committee’s investigation, such as situations when the witness may be disclosing misconduct at the agency, the witness is concerned about possible retaliation, or agency counsel may inappropriately interfere with witness testimony. The rule nevertheless protects the rights of witnesses by allowing them to be accompanied by personal counsel. In fact, Mr. Gore is represented by private counsel in this matter.

The constitutional basis for this rule is clear. The Committee’s rules are adopted pursuant to Congress’ constitutional authority to “determine the Rules of its Proceedings.”¹⁴² The rule in question has been in place for more than a decade under multiple Democratic and Republican Chairmen.¹⁴³ During that time, the Committee has conducted multiple depositions with federal officials without agency counsel present, including during the current Administration.

¹⁴¹ Rules of the Committee on Oversight and Reform for the 116th Congress (emphasis added) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/CO_R%20Rules%20-%20passed.pdf).

¹⁴² U.S. Const., Art. I, sec. 5, cl. 2.

¹⁴³ See Committee on Oversight and Government Reform, Rule 15(e), 115th Congress (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/OGR-Cmte-Rules-115-FINAL.pdf>); Committee on Oversight and Government Reform, Rule 15(d), 114th Congress (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/OGR%20Rules%20114th%20.pdf>); Committee on Oversight and Government Reform, Rule 15(d), 113th Congress (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/OGR%20Committee-Rules-113th-Congress.pdf>); Committee on Oversight and Government Reform, Rule 15(d), 112th Congress (online at https://web.archive.org/web/20110604181945/http://oversight.house.gov/images/stories/Other_Documents/ogr%20committee%20rules%20resolution.pdf); Committee on Oversight and Government Reform, Rule 22, 111th Congress (online at <https://web.archive.org/web/20090625011541/http://oversight.house.gov/rules/>); Committee on Oversight and Government Reform, Rule 22 (110th Congress) (online at <https://web.archive.org/web/20071226191125/http://oversight.house.gov/rules/>). The Committee had previously adopted the same rule in 1998, when the Committee was granted deposition authority as part of its investigation into fundraising issues in the Clinton Administration. See Committee on Government Reform Rule 20, 105th Congress (online at www.govinfo.gov/content/pkg/CPRT-105HPRT49381/pdf/CPRT-105HPRT49381.pdf).

For example, in September 2018, under Republican Chairman Trey Gowdy, the Committee conducted a deposition of Principal Deputy General Counsel of the Department of Homeland Security, Joseph Maher. Mr. Maher’s personal counsel attended, but agency counsel did not.¹⁴⁴ Similarly, in 2007, under Chairman Henry Waxman, the Committee conducted depositions of White House employees Sara Taylor, Matt Schlapp, and Mindy McLaughlin. Personal counsel attended each deposition, but the White House Counsel’s Office did not.¹⁴⁵

Moreover, the Department has had ample opportunity to protect its interests in connection with Mr. Gore’s deposition. The Department is well aware of the scope of the deposition based on the issues raised at Mr. Gore’s March 7, 2019, transcribed interview and the list of 18 key questions provided by Committee staff following that interview. To the extent the Department believes that an issue that would be raised at the deposition may implicate a valid privilege, the Department may assert that privilege with the Committee. The Committee also offered to make available a separate room in the Committee’s offices for Department counsel during the deposition. Mr. Gore or his counsel would be permitted to request a break during the deposition to consult with Department counsel. DOJ did not accept this accommodation.

VI. HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the Committee’s March 14, 2019, hearing entitled “Hearing with Commerce Secretary Wilbur L. Ross, Jr.,” was used to develop this Report.¹⁴⁶ That hearing focused on issues related to the 2020 Census, and in particular on the decision by the Trump Administration to add a citizenship question.

The Subcommittee on Civil Rights and Civil Liberties held a related hearing entitled “Getting Counted: The Importance of the Census to State and Local Communities” on May 28, 2019. Witnesses included Dr. Gail Mellow, President, LaGuardia Community College; Julie Menin, Census Director, City of New York; Joseph Salvo, Chief Demographer, Population Division, NYC Department of City Planning; Melva Miller, Executive Vice President, Association for a Better New York; Steven Choi, Executive Director at New York Immigration Coalition, Marc Morial, President and CEO, National Urban League; Greta Byrum, Co-Director, New School Digital Equity Laboratory; Elizabeth OuYang; Jorge Luis Vasquez, Jr., Associate Counsel, LatinoJustice PRLDF; Lurie Daniel Favors, General Counsel, Center for Law & Social Justice; and Kazi Fouzia, Desis Rising Up and Moving.

¹⁴⁴ Committee on Oversight and Government Reform, Deposition of Joseph B. Maher, Principal Deputy General Counsel, Department of Homeland Security (Sept. 25, 2018).

¹⁴⁵ Committee on Oversight and Government Reform, Deposition of Sara Taylor (Apr. 3, 2008); Committee on Oversight and Government Reform, Deposition of Matt Schlapp (Aug. 27, 2007); Committee on Oversight and Government Reform, Deposition of Mindy McLaughlin (Apr. 3, 2008).

¹⁴⁶ Committee on Oversight and Reform, *Hearing with Commerce Secretary Wilbur L. Ross, Jr.*, 116th Cong. (Mar. 14, 2019) (online at <https://oversight.house.gov/legislation/hearings/commerce-secretary-wilbur-l-ross-jr>).

VII. COMMITTEE CONSIDERATION

On [date], the Committee met in open session and ordered the Report favorably reported with [or without] an amendment, by a [specify: voice or rollcall vote of __ to ____], a quorum being present.

VIII. COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of the Report:

IX. COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this Report.

X. NEW BUDGET AUTHORITY AND TAX EXPENDITURES AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this Report from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this Report contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

XI. DUPLICATION OF FEDERAL PROGRAMS

No provision of the Report establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

XII. PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the purpose of the Report is to enforce the Committee's authority to subpoena and obtain documents and testimony related to the Trump Administration's addition of a citizenship question to the 2020 Census.

XIII. ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, the Report does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

APPENDIX A

DOCUMENTS REQUIRED BY APRIL 2, 2019, SUBPOENA TO SECRETARY OF COMMERCE WILBUR L. ROSS, JR.

1. Unredacted copies of the following documents, including all emails in each email chain, and all attachments:
 - a. Memorandum and note from James Uthmeier to John Gore in Fall 2017;
 - b. May 2, 2017, email from Earl Comstock to Wilbur Ross, cc: Ellen Herbst, subject: "Re: Census;"
 - c. May 2, 2017, email from Wilbur Ross to Wendy Teramoto, subject: "Re: Census;"
 - d. August 8, 2017, 7:44:29 p.m., email from Wilbur Ross to Earl Comstock, subject: "Re: [redacted];"
 - e. August 10, 2017, email from Wilbur Ross to Earl Comstock, subject: "Re: Census Matter;"
 - f. August 11, 2017, email from Earl Comstock to Wilbur Ross, cc: Wendy Teramoto, subject: "Memo on Census Question" (with attachment: "Census Memo Draft2 Aug 11 2017.docx");
 - g. September 1, 2017, email from Wilbur Ross to Earl Comstock, cc: Wendy Teramoto, subject: "Re: [redacted];"
 - h. September 1, 2017, email from Earl Comstock to Wilbur Ross, cc: Wendy Teramoto, subject: "Re: ITA Request for [redacted];"
 - i. September 7, 2017, email from James Uthmeier to Earl Comstock, cc: Peter Davidson, subject: "RE: Census Matter Follow-Up;"
 - j. December 20, 2017, email from John Zadrozny to James Uthmeier, subject: "RE: Census Question Request;" and
 - k. February 26, 2018, email from James Uthmeier to Michael Walsh, subject: "Re: Memos."
2. All communications from January 20, 2017, through December 12, 2017, between or among officials from the Department of Commerce, the Census Bureau, and any other office or entity inside or outside of the government regarding the addition of a citizenship question.

APPENDIX B

DOCUMENTS REQUIRED BY APRIL 2, 2019, SUBPOENA TO ATTORNEY GENERAL WILLIAM P. BARR

1. Memorandum and note from James Uthmeier to John Gore in Fall 2017.
2. All documents and communications from January 20, 2017, through December 12, 2017, within the Department of Justice and with outside entities regarding the request to add a citizenship question to the census, including but not limited to the White House, the Commerce Department, the Republican National Committee, the Trump Campaign, or Members of Congress.”