



U.S. Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue NW  
Washington, DC 20530

September 11, 2018

**By ECF**

The Honorable Jesse M. Furman  
United States District Judge  
Southern District of New York  
Thurgood Marshall Courthouse  
40 Centre Street  
New York, New York 10007

Re: *State of New York, et al., v. U.S. Dep't of Commerce, et al.*, 18-cv-2921  
*New York Immigration Coalition, et al., v. U.S. Dep't of Commerce, et al.*, 18-cv-5025

Dear Judge Furman:

Defendants write to address Plaintiffs' sixth letter motion to compel, seeking release of material in 32 documents over which Defendants have claimed deliberative process. No. 18-cv-2921, ECF No. 299; No. 18-cv-5025, ECF No. 123.

**1. Defendants Are Exercising Their Discretion to Release Certain Deliberative Material.**

Plaintiffs did not contact Defendants in advance of filing their motion, to confer regarding the specific documents as to which they planned to contest Defendants' assertion of deliberative process. Accordingly, Defendants do not believe Plaintiffs' letter motion properly complies with Paragraph 2.C of this Court's Individual Rules of Practice. Nonetheless, once Defendants received the motion and list of contested documents, Defendants reviewed the documents as they would have done during a meet-and-confer process to determine whether they would consider waiving deliberative process privilege in any instance. Pursuant to this review, Defendants have exercised their discretion to release additional material. Specifically, as indicated in the table filed herewith as Exhibit 1, Defendants are releasing Bates Nos. 1403, 3687, 3690, 3702, 3888, 3907, 2474, 2517, 10342, and 10352 in full (aside from the redaction of certain personal information) and are also releasing certain previously redacted parts of Bates Nos. 2160, 2199, 3695, 3698, 3984, 10273, and 10356.

In addition, in conducting its review, Defendants discovered that other copies of redacted documents (Bates Nos. 3990-4001, 11047, and 11048) had already been released in unredacted form and, in one case (Bates No. 2461), that the deliberative process privilege had been erroneously listed on the privilege log for that document, although no such redactions had been made to that document. This additional information is also included in the attached table. In summary, the table thus identifies 17 documents as to which Defendants believe that a dispute legitimately remains; these documents are listed in the attachment to the Declaration of Earl W. Comstock, submitted herewith as Exhibit 2. The released versions of those documents released in part are submitted herewith as Exhibit 3.

**2. Defendants Have Properly Redacted Deliberative Process Material from the Remaining 17 Documents at Issue and the Privilege Should Not Be Overcome.**

In light of Defendants' release of complete and/or re-redacted versions of many of the documents at issue, many of Plaintiffs' claims (specifically, with regard to the documents now being released in full, or with all responsive portions released) are now moot. Defendants continue to assert, however, that the remaining withheld material in the documents at issue is protected by the deliberative process privilege<sup>1</sup> and that Plaintiffs have not shown that their need for the documents outweighs the harm to the deliberative process from release of the documents.

The deliberative process privilege is a subset of executive privilege and protects from disclosure documents "reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975). This privilege arises out of a recognition "that it would be impossible to have any frank discussion legal or policy matters in writing if all such writings were to be subjected to public scrutiny." *EPA v. Mink*, 410 U.S. 73, 87 (1973). For a document to be protected by the deliberative process privilege, it must be: "(1) an inter-agency or intra-agency document; (2) 'predecisional'; and (3) deliberative." *Tigue v. U.S. Dep't of Justice*, 312 F.3d 70, 76 (2d Cir. 2002). The 17 documents at issue clearly meet that standard, as Plaintiffs concede.

As this Court has previously recognized, the deliberative process privilege may be overcome in certain circumstances where "the litigation 'involves a question concerning the intent of the governmental decisionmakers or the decisionmaking process itself.'" *In re Delphi Corp.*, 276 F.R.D. 81, 85 (S.D.N.Y. 2011); *see* No. 18-cv-2921, ECF No. 241, at 2. Whether this exception applies is assessed under a five-factor balancing test that weighs "(1) the relevance of the evidence the agency seeks to protect; (2) the availability of other evidence; (3) the seriousness of the litigation; (4) the role of the agency in the litigation; and (5) the possibility that disclosure will inhibit future candid debate among agency decision-makers." Plaintiffs do not contest that the information at issue is covered by the deliberative-process privilege, *i.e.*, that it is both predecisional and deliberative. They argue only that the five-factor balancing test "weighs in favor of disclosure" of this material, notwithstanding its privileged nature. Plaintiffs are wrong. There is no evidence that the withheld material is of relevance to the litigation or that the information contained therein is unavailable from other sources, and the possibility that disclosure will inhibit future candid debate among agency decision-makers weighs against disclosure.

Plaintiffs' assertions are mistaken that the remaining documents or portions of documents for which Defendants continue to assert privilege will reveal "whether Defendants acted with discriminatory intent toward immigrant communities, whether Defendants acted under political pressure, and whether they created a pretext to justify their decision." The material withheld that appears in these documents may generally be characterized into three broad categories – drafts, handwritten notes, and predecisional deliberative discussion among DOC personnel. Plaintiffs do not explain how draft responses to reporters and proposed revisions to such responses, draft responses to Congress, or draft congressional testimony could reveal anything about the reasons for the decisionmaker's underlying decision. Likewise, the early draft legal memorandum, the draft alternatives analysis, the individual employee's handwritten notes, and employees' comments on conversations with others in the early stages of the decisionmaking process represent predecisional

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<sup>1</sup> One document, the attachment referenced in Bates No. 2461, is also being withheld pursuant to the attorney-client privilege. Plaintiffs' letter does not make it clear whether they are actually seeking release of that document and, in any event, they do not challenge the assertion of attorney-client privilege as to this document.

thinking by individual subordinates. Plaintiffs do not explain how they believe any such information from subordinates in the early stages of the decisionmaking process could be relevant to their claims that the ultimate decisionmaker's decision was based on pretext.

Moreover, Plaintiffs do not establish that any information that would be released if the privilege were overridden is essential to their case. *Ford Motor Co. v. United States*, 94 Fed. Cl. 211, 220 (2010) (finding the need for the documents was “‘greatly minimized by an available alternative,’ which gives [plaintiff] ‘the evidence to make out [its] case without forcing a showdown on the claim of privilege.’” (quoting *United States v. Reynolds*, 345 U.S. 1, 11 (1953)); see also *Lemanik, S.A. v. McKinley Allsopp, Inc.*, 125 F.R.D. 602, 608 (S.D.N.Y. 1989) (“[I]t has long been the rule in this Circuit that ‘the parties should not be permitted to roam in shadow zones of relevancy and to explore matter which does not presently appear germane on the theory that it might conceivably become so.’”) (quoting *In re Surety Ass’n of Am.*, 388 F.2d 412, 414 (2d Cir. 1967)). In numerous filings with the Court to date, most recently in their letter motion to compel the deposition of Secretary Ross (No. 18-cv-2921, ECF No. 314; No. 18-cv-5025, ECF No. 139), Plaintiffs cite to numerous documents that they believe provide evidence of pretext. But any such evidence arises from Plaintiffs’ entirely unsupported characterizations of those documents – not the documents themselves. Moreover, there is no evidence that stray bits of withheld, privileged material in the documents at issue will provide Plaintiffs with any more definitive evidence.

On the other hand, as Deputy Chief of Staff and Director of Policy Comstock states, disclosure of the withheld material would discourage open and candid discussion between agency decisionmakers and subordinates. This is especially true where, as here, the notes, opinions and recommendations being withheld have been utilized to make complicated and sensitive decisions related to the decennial census. If agency employees are aware that their opinions, deliberations, and recommendations may be subject to public disclosure, as well as the scrutiny, second guessing, and criticism that would foreseeably follow, the quality and volume of input offered and received with regard to these matters could be adversely affected. Foreseeably, individual employees could be discouraged from sharing a full range of ideas or opinions -- for example, thoughts or opinions that are part of a brainstorming process, that are not necessarily fully formed, or that may later prove erroneous, be unpopular or controversial may no longer be freely offered. In addition, employees could become reluctant to engage in internal debates and disagreements that are critical to healthy decision making, if they believe their drafts could later publicly exposed. Agency officials would thus be hindered in their ability to solicit and receive honest, unfiltered opinions and recommendations -- which, in turn could jeopardize fulsome discussions of the issues, and ultimately, the desired goal of sound decision making. For this reason, the courts routinely sustain the withholding of drafts and documents that reflect the personal opinions or recommendations of individual employees. See *ACLU v. U.S. Dep’t of Justice*, 844 F.3d 126, 133 (2d Cir. 2016) (upholding assertion of privilege as to “informal and preliminary” documents); *Grand Cent. P’ship v. Cuomo*, 166 F.3d 473, 482 (2d Cir. 1999) (“The [deliberative process] privilege protects recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.”); *Citizens Union of City of N.Y. v. Att’y Gen. of N.Y.*, 269 F. Supp. 3d 124, 148 (S.D.N.Y. 2017) (“Absent extrinsic evidence tending to show the relevance of a particular draft, production of these documents is likely to lead only to wasteful fishing expeditions concerning the identification and deciphering of handwriting and the reasons for immaterial revisions.”). Cf. *Allocco Recycling, Ltd. v. Doherty*, 220 F.R.D. 407, 414 (S.D.N.Y. 2004) (stating that notes that are devoted to clarifying the facts and that do not convey personal views, deliberations, or recommendations would not be protected by the privilege).

For these reasons, the Court should affirm Defendants' protection of their privileged materials and deny the Plaintiffs' motion.

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

BRETT A. SHUMATE  
Deputy Assistant Attorney General

JOHN R. GRIFFITHS  
Director, Federal Programs Branch

JOSHUA E. GARDNER  
CARLOTTA P. WELLS  
Assistant Branch Directors, Federal Programs Branch

/s/ Carol Federighi  
KATE BAILEY  
GARRETT COYLE  
STEPHEN EHRLICH  
CAROL FEDERIGHI  
DANIEL HALAINEN  
MARTIN TOMLINSON  
Trial Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave., N.W.  
Washington, DC 20530  
Tel.: (202) 514-1903  
Email: carol.federighi@usdoj.gov

*Counsel for Defendants*

CC: All Counsel of Record (by ECF)

## **EXHIBIT 1**

**Document Dispositions as of 9/11/18**  
**RIF – Release in Full; RIP – Release in Part**  
**WIF – Withhold in Full**

<b>Bates Nos.</b>	<b>Originally WIF or RIP?</b>	<b>New disposition (designation and descriptions of changes do not take into account whether PII is redacted)</b>
1403	WIF	RIF
2160-2162	RIP	Still RIP but fewer redactions
2199-2204	RIP	Still RIP but fewer redactions
2458	RIP	No change
2461 & attachment	RIP	DPP for cover email was error in log; still asserting DPP/AC for attachment
2474-2475	RIP	RIF
2517	WIF	RIF
3687	WIF	Will release with same redactions for DPP as in Bates No. 4005
3690	WIF	RIF as to responsive portions; will continue to redact nonresponsive portions
3695-3697	RIP	Still RIP but fewer redactions
3698	WIF	RIP but still asserting DPP
3702-3704	RIP	RIF
3710	RIP	No changes, but DPP applies only to nonresponsive material
3888	WIF	RIF
3907	WIF	RIF – plus can also RIF other pre-call memos if requested
3984	RIP	Still RIP but fewer redactions
3990-4001	RIP	This email is included unredacted in the chain in Bates No. AR 2446
5428	WIF	No change
5440	WIF	No change
9834	RIP	No change
10273	WIF	RIP; will continue to redact handwritten notes
10291	WIF	No change
10299	WIF	No change
10342-10345	RIP	RIF
10351	WIF	No change
10352	WIF	RIF
10356	WIF	RIP; will continue to redact handwritten notes
11047	WIF	This was released as Bates No. 9111
11048	WIF	This was released as Bates No. 8655
11250-11251	WIF	No change
11252	WIF	No change
11362	RIP	This is the same as Doc. 2461 (in this set)

## **EXHIBIT 2**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
COMMERCE, *et al.*,

Defendants.

No. 1:18-cv-2921 (JMF)

NEW YORK IMMIGRATION  
COALITION, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
COMMERCE, *et al.*,

Defendants.

No. 1:18-cv-5025 (JMF)

**DECLARATION OF EARL W. COMSTOCK**

I, Earl W. Comstock, make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I am the Deputy Chief of Staff and Director of Policy at the U.S Department of Commerce ("DOC"). I am responsible for reviewing submissions to the Secretary from the various bureaus for alignment with departmental policy and for overseeing general policy implementation. The following statements are based upon my personal knowledge or on information supplied to me



in the course of my professional responsibilities. These statements are provided in support of the DOC's assertion of the deliberative process privilege in the above-captioned case.

2. Attached to this declaration is a list of those documents at issue in Plaintiffs' Sixth Letter Motion to Compel for which DOC continues to assert deliberative process privilege. I have been advised that Plaintiffs do not contest whether the deliberative process privilege generally covers the material withheld but rather only contest whether the privilege should be overcome. I have been further advised that, to make this latter determination, the court will apply a five-factor balancing test that weighs (1) the relevance of the evidence the agency seeks to protect; (2) the availability of other evidence; (3) the seriousness of the litigation; (4) the role of the agency in the litigation; and (5) the possibility that disclosure will inhibit future candid debate among agency decision-makers.

3. I have reviewed each of these documents. Excluding privacy-related redactions, as well as any other privileges claimed,, which are not challenged by plaintiffs or addressed in this declaration or in the attached list, the material withheld pursuant to the deliberative process privilege that appears in these documents may generally be characterized into three broad categories – drafts, handwritten notes, and predecisional deliberative discussion among DOC personnel and with DOJ personnel. I will address one of the factors in the balancing test cited in my previous paragraph, the possibility that disclosure will inhibit further candid debate among agency decision-makers, as to each of these categories separately below:

#### **DRAFTS**

4. The material I have included in this category comprises a draft of responses to a reporter's inquiries (including comments on the draft) (Bates No. 2199-2204), a draft attorney-client privileged legal memo with preliminary analysis, advice, and recommendations (the attachment referenced in Bates No. 2461), drafts of proposed congressional testimony (Bates Nos. 3695-97 and

3698), drafts of response letters to Congress (Bates Nos. 5428 and 5440), and a draft of a memorandum analyzing alternatives regarding the citizenship question, with some handwritten notes (Bates No. 10351). These drafts represent essential steps in the process of responding to reporters or Congress, preparing for testifying before Congress, or making the decision at issue to reinstate a citizenship question. Disclosure of these drafts would discourage open and candid discussion between the individuals responsible for preparing those responses or making these decisions. This is especially true where, as here, the opinions and recommendations are utilized to make complicated and sensitive decisions related to the decennial census. If agency employees are aware that their opinions, deliberations, and recommendations as reflected in draft materials may be subject to public disclosure, as well as the scrutiny, second guessing, and criticism that would foreseeably follow, the quality and volume of input offered and received with regard to these matters could be adversely affected. Foreseeably, individual employees could be discouraged from sharing a full range of ideas or opinions -- for example, thoughts or opinions that are part of a brainstorming process, that are not necessarily fully formed, or that may later prove to be erroneous, unpopular, or controversial may no longer be freely offered. In addition, employees could become reluctant to engage in internal debates and disagreements that are critical to healthy decision making if they believe their drafts could later publicly exposed. Decision-making officials would thus be hindered in their ability to solicit and receive honest, unfiltered opinions and recommendations -- often from offices with divergent perspectives and priorities, which, in turn could jeopardize fulsome discussions of the issues, and ultimately, the desired goal of sound decision making.

5. For the foregoing reasons, release of the draft material withheld would harm DOC's deliberative process by revealing preliminary opinions, advice, and recommendations shared with decision makers and between agency employees, discouraging open, candid communications. These drafts should therefore be protected from disclosure.

## HANDWRITTEN NOTES

6. The documents I have included in this category are copies of memos or drafts of memos containing personal handwritten notes by Karen Dunn Kelley, Under Secretary for Economic Affairs, performing the nonexclusive duties of the Deputy Secretary of Commerce, on the margins or between the lines (Bates Nos. 10273, 10291, 102356, 11250-251, and 11252), or handwritten notes by Ms. Kelley written on notepaper (Bates No. 10299). For the same reasons discussed above, disclosure of these notes (and the drafts on which they are written) would discourage open and candid discussion by individuals responsible for making agency decisions. If agency employees are aware that their opinions, deliberations, and individual thoughts as reflected in their personal notes may be subject to public disclosure, as well as the scrutiny, second guessing, and criticism that would foreseeably follow, the quality and volume of input offered and received with regard to agency matters could be adversely affected. Foreseeably, individual employees could be discouraged from noting and thereby deliberating on and articulating a full range of ideas or opinions -- for example, thoughts or opinions that are part of a brainstorming process, that are not necessarily fully formed, or that may later prove erroneous, be unpopular or controversial may no longer be freely offered. In addition, employees could become reluctant to engage in internal debates and disagreements that are critical to healthy decision making, if they believe their notes supporting such debates could later publicly exposed. Decision-making officials would thus be hindered in their ability to solicit and receive honest, unfiltered opinions and recommendations -- often from offices with divergent perspectives and priorities -- which, in turn could jeopardize fulsome discussions of the issues, and ultimately, the desired goal of sound decision making.

7. For the foregoing reasons, release of these personal notes and the underlying drafts would harm DOC's deliberative process by revealing preliminary opinions of an agency employee,

discouraging open, candid deliberation on the issues. These notes should therefore be protected from disclosure.

### **DELIBERATIVE DISCUSSIONS**

8. In this category I have placed three distinct email chains from which have been redacted (1) a discussion of a potential revision to quotations provided to a reporter (Bates No. 2160-2162), (2) a summary of DOC's understanding of DOJ's preliminary responses to initial contact regarding the citizenship question (Bates No. 2458 and 9834), and (3) personal views about a call between Commerce and Census regarding the citizenship question (Bates Nos. 3984). For the same reasons discussed above, disclosure of these views and comments would discourage open and candid discussion by individuals responsible for making agency decisions. Free and frank exchanges of ideas, opinions, and impressions among DOC employees are critical to the agency's function, and release of these materials could chill the frank inter- and intra-agency exchange of ideas pertaining to complex and sensitive agency decisions and harm agency decision making. If agency employees are aware that their opinions, deliberations, and views may be subject to public disclosure, as well as the scrutiny, second guessing, and criticism that would foreseeably follow, the quality and volume of input offered and received could be adversely affected. Foreseeably, individual employees could be discouraged from sharing a full range of ideas or opinions -- for example, thoughts or opinions that are part of a brainstorming process, that are not necessarily fully formed, which may later prove erroneous, be unpopular or controversial may no longer be freely offered. In addition, employees could become reluctant to engage in internal debates and disagreements that are critical to healthy decision making, if they believe those details could later publicly exposed. Decision-making officials would thus be hindered in their ability to solicit and receive honest, unfiltered opinions and recommendations- often from offices with divergent perspectives and priorities, which, in turn

could jeopardize fulsome discussions of the issues, and ultimately, the desired goal of sound decision making.

9. For the foregoing reasons, release of these portions of these three email chains would harm DOC's deliberative process by revealing preliminary views and opinions, discouraging open, candid deliberation on the issues. This information should therefore be protected from disclosure.

A handwritten signature in dark ink, appearing to read 'Earl W. Comstock', written over a horizontal line.

Earl W. Comstock  
*Deputy Chief of Staff and Director of Policy*  
Office of the Secretary  
United States Department of Commerce

**TABLE OF DOCUMENTS AT ISSUE IN PLAINTIFFS' SIXTH MOTION TO  
COMPEL WITHHELD IN FULL OR IN PART PURSUANT TO THE  
DELIBERATIVE PROCESS PRIVILEGE<sup>1</sup>**

**Drafts**

<b>Bates Nos.</b>	<b>WIF or RIP</b>	<b>Date of Doc</b>	<b>Document Description</b>	<b>Reasons for DPP Redactions/Withholding</b>
2199-2204	RIP	2/28/18	Email from Christa Jones to Earl Comstock containing draft responses to reporter and comments on draft	Release of draft responses to reporters' inquiries could chill the frank exchange of ideas among DOC employees pertaining to providing such responses and harm agency's ability and willingness to provide accurate and detailed responses
Attachment to 2461 (listed in log under Bates No. 11363)	WIF	8/11/17	Draft legal memo by James Uthmeier to Wilbur Ross, Wendy Teramoto and Earl Comstock, analyzing various issues and history associated with citizenship question	Draft legal research, advice and recommendations presented for review and input for further consideration, release of which would harm the agency's ability and willingness to provide advice and recommendations
3695-3697	RIP	5/1/17	Email from Earl Comstock to Wilbur Ross, containing preliminary draft testimony for congressional hearing	Release of draft congressional testimony could chill the frank exchange of ideas among DOC employees pertaining to finalizing such testimony and harm the agency's ability and willingness to provide accurate and detailed testimony
3698	RIP	5/1/17	Attachment to email above, containing preliminary draft testimony for congressional hearing	Release of draft congressional testimony could chill the frank exchange of ideas among DOC employees pertaining to finalizing such testimony and harm agency's ability and willingness to provide accurate and detailed testimony

<sup>1</sup> Some of these documents also contain personal identifying information which has also been redacted. As Plaintiffs have not challenged these redactions, the table does not address them.

<b>Bates Nos.</b>	<b>WIF or RIP</b>	<b>Date of Doc</b>	<b>Document Description</b>	<b>Reasons for DPP Redactions/Withholding</b>
5428	WIF	1/12/18	Draft letter responding to Congressional inquiries re citizenship question	Release of draft responses to congressional inquiries could chill the frank exchange of ideas among DOC employees pertaining to finalizing such responses and harm agency's ability and willingness to provide accurate and detailed responses
5440	WIF	1/12/18	Draft letter responding to Congressional inquiries re citizenship question	Release of draft responses to congressional inquiries could chill the frank exchange of ideas among DOC employees pertaining to finalizing such responses and harm agency's ability and willingness to provide accurate and detailed responses
10351	WIF	unknown	Draft memo analyzing Alternatives C and D, with handwritten annotations by Karen Dunn Kelley	Release of draft memo analyzing alternatives could chill the frank exchange of ideas among DOC employees pertaining providing advice regarding issues before the agency and harm agency's ability to reach sound decisions

**Handwritten Notes**

<b>Bates Nos.</b>	<b>WIF or RIP</b>	<b>Date of Doc</b>	<b>Document Description</b>	<b>Reasons for DPP Redactions/Withholding</b>
10273	RIP		Copy of January 19 memo from John Abowd with Karen Dunn Kelly's handwritten notes	Release of handwritten notes reflecting personal thoughts and reactions could chill the frank exchange of ideas among DOC employees providing advice regarding issues before the agency and harm the agency's ability to reach sound decisions

<b>Bates Nos.</b>	<b>WIF or RIP</b>	<b>Date of Doc</b>	<b>Document Description</b>	<b>Reasons for DPP Redactions/Withholding</b>
10291	WIF	unknown	Copy of January 19 memo from John Abowd with Karen Dunn Kelly's handwritten notes	Release of handwritten notes reflecting personal thoughts and reactions could chill the frank exchange of ideas among DOC employees providing advice regarding issues before the agency and harm the agency's ability to reach sound decisions
10299	WIF	unknown	Karen Dunn Kelley's handwritten notes on various issues relating to citizenship question	Release of handwritten notes reflecting personal thoughts and reactions could chill the frank exchange of ideas among DOC employees providing advice regarding issues before the agency and harm the agency's ability to reach sound decisions
10356	RIP	unknown	Draft of comparison of Alternatives C and D, with handwritten annotations from Karen Dunn Kelley	Release of handwritten notes reflecting personal thoughts and reactions could chill the frank exchange of ideas among DOC employees providing advice regarding issues before the agency and harm the agency's ability to reach sound decisions
11250-11251	WIF	unknown	Partial list of questions for John Abowd from Secretary Ross with Karen Dunn Kelley's handwritten notes	Release of handwritten notes reflecting personal thoughts and reactions and of the draft on which they are written could chill the frank exchange of ideas among DOC employees providing advice regarding issues before the agency and harm the agency's ability to reach sound decisions



<b>Bates Nos.</b>	<b>WIF or RIP</b>	<b>Date of Doc</b>	<b>Document Description</b>	<b>Reasons for DPP Redactions/Withholding</b>
11252	WIF	unknown	Partial list of questions for John Abowd from Secretary Ross with Karen Dunn Kelley's handwritten notes	Release of handwritten notes reflecting personal thoughts and reactions and of the draft on which they are written could chill the frank exchange of ideas among DOC employees providing advice regarding issues before the agency and harm the agency's ability to reach sound decisions

**Other**

<b>Bates Nos.</b>	<b>WIF or RIP</b>	<b>Date of Doc</b>	<b>Document Description</b>	<b>Reasons for DPP Redactions/Withholding</b>
2160-2162	RIP	3/16/18	Email from Michael Walsh to Wendy Teramoto and James Rockas, containing discussion of potential revision to quotations provided to a reporter	Release of discussion of proposed revision to response to reporter could chill the frank exchange of ideas among DOC employees pertaining to providing such responses and harm agency's ability and willingness to provide accurate and detailed responses
2458	RIP	9/16/17	Email from Earl Comstock to Wendy Teramoto discussing calls with DOJ and DHS	Release of preliminary, deliberative communication from DOJ regarding the census citizenship question could chill the frank exchange of ideas among DOC employees and between DOJ and DOC and harm the agency's ability to reach sound decisions
3984	RIP	8/10/17	Email from Wilbur Ross to Earl Comstock, discussing personal views on call with Census on citizenship question	Release of personal views on call with Census on citizenship question could chill the frank exchange of ideas among DOC employees and harm the agency's ability to reach sound decisions

<b>Bates Nos.</b>	<b>WIF or RIP</b>	<b>Date of Doc</b>	<b>Document Description</b>	<b>Reasons for DPP Redactions/Withholding</b>
9834	RIP	9/1/17	Email from Earl Comstock to Wilbur Ross discussing calls with DOJ and DHS	Same as 2458

## **EXHIBIT 3**

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**From:** Christa Jones (CENSUS/ADEP FED) [Christa.D.Jones@census.gov]  
**Sent:** 2/28/2018 8:57:28 PM  
**To:** Comstock, Earl (Federal) [REDACTED] PII  
**CC:** Kelley, Karen (Federal) [REDACTED] PII  
**Subject:** Re: Seeking comment - citizenship question.

Here's the revised response, in its entirety.

A separate suggestion, because there is confusion in the media and public with people assuming that we are asking about immigration status, here's another sentence potentially to add to the end of the first paragraph-- up to you if you think it is helpful or unnecessary.

Currently, the Census Bureau does ask citizenship on its American Community Survey (ACS) and the Current Population Survey. The ACS is a survey conducted nationwide every year among 3.5 million addresses. The Current Population Survey is a monthly survey that is the primary source of labor force statistics for the population of the United States. However, while it has asked about citizenship status, the Census Bureau has never asked about the legal status of respondents.

The Census Bureau first asked a citizenship question in 1820 when the census separately counted "foreigners not naturalized." The question was asked this way until 1850 when officials asked place of birth, a question that also appeared on the 1860 census.

The 1870 census asked the same questions on nativity, as well as questions on the nativity of each individual's parents. The 1870 census also had questions on citizenship for males over the age of 21. The 1880 census kept questions on individual and parental nativity, but removed questions on citizenship.

The 1890 census also asked individual and parental nativity, but included additional questions on naturalization and tenure in the United States for foreign-born men over the age of 21. The questions for 1900 and 1910, although slightly different, followed the same general outline as those of 1890. In 1920 and 1930, all foreign-born respondents, regardless of age and sex, received questions on naturalization status.

In 1940, while the questions about individual nativity and naturalization remained, questions about parental nativity moved to the supplemental questions, which were only asked of 5% of respondents. In 1950, that sampling size grew to 20%. In 1960, although questions about individual and parental nativity remained for all, there were no questions about citizenship or naturalization.

Starting with 1970, the census moved to a mailout/mailback format. Questions about nativity appeared on the "long form" census form sent to 20% of households and only foreign-born were asked to answer questions about citizenship status and time period of arrival to the United States. From 1980-2000 the long form asked citizenship status of all sample respondents, not just foreign-born. Foreign born were asked for a time range or year that they arrived in the United States. In 2005, the ACS replaced the long-form decennial census questionnaire.

As we move through this formal evaluation process, we will keep the public updated as we look forward to delivering the planned questions for the 2020 Census and the ACS to Congress by March 31, 2018.

Our goal is to conduct a complete and accurate 2020 Census. The Census Bureau remains committed to reflecting the information needs of our changing society as we continue to examine the effectiveness of decennial census questions to collect accurate data on America's people, places, and economy.

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**From:** Comstock, Earl (Federal) [PII]  
**Sent:** Wednesday, February 28, 2018 2:40:13 PM  
**To:** Christa Jones (CENSUS/ADEP FED)  
**Cc:** Kelley, Karen (Federal)  
**Subject:** Re: Seeking comment - citizenship question.

Sorry to trouble you Christa, [Deliberative]  
[Deliberative] Thanks. Earl

**From:** "Christa Jones (CENSUS/ADEP FED)" <Christa.D.Jones@census.gov>  
**Date:** Wednesday, February 28, 2018 at 2:09 PM  
**To:** "Comstock, Earl (Federal)" [PII]  
**Cc:** Karen Dunn Kelley [PII]  
**Subject:** Re: Seeking comment - citizenship question.

[Deliberative] Do you need any more information for these responses?

On Feb 28, 2018, at 1:56 PM, Comstock, Earl (Federal) [PII] wrote:  
Christa – please review asap. Thanks. Earl

**From:** "Manning, Kevin (Federal)" [PII]  
**Date:** Wednesday, February 28, 2018 at 1:54 PM  
**To:** James Rockas [PII], "Comstock, Earl (Federal)" [PII], Wendy Teramoto [PII], Karen Dunn Kelley [PII]  
**Subject:** RE: Seeking comment - citizenship question.

To quickly interject, Census has received an inquiry from the same reporter. The draft responses and questions are below. These have not gone back to the reporter as he states as they are still correcting some elements in the fourth question that Earl brought up. The only thing they've given the reporter is pointing to the PMR.

#### Census Bureau Interview Request Form

*Name of Newspaper/Radio Show/TV Show:* Newsday

*Reporter Name and Contact:* Victor Manuel-Ramos

*Deadline for Response:* 28, 2018 Feb / 4:00pm

*Interview Topic and Story Angle:* About concerns raised by a coalition of immigrant advocates in our region about a request from the U.S. Department of Justice for your agency to include a question about citizenship in the 2020 census.

# Deliberative



# Deliberative

**From:** Rockas, James (Federal)

**Sent:** Wednesday, February 28, 2018 1:19 PM

**To:** Manning, Kevin (Federal) [PII]; Comstock, Earl (Federal) [PII]; Teramoto, Wendy (Federal) [PII]; Kelley, Karen (Federal) [PII]

**Subject:** Fwd: Seeking comment - citizenship question.

**Deliberative**

James Rockas

Press Secretary & Deputy Director of Public Affairs

U.S. Department of Commerce

**PII**

Office: [\(202\)482-4883](tel:2024824883)

**PII**

\*typed on an iPhone - please excuse the brevity

Begin forwarded message:

**From:** DOC Public Affairs <[PublicAffairs@doc.gov](mailto:PublicAffairs@doc.gov)>  
**Date:** February 28, 2018 at 1:16:17 PM EST  
**To:** "Rockas, James (Federal)" [REDACTED] PII  
**Subject:** FW: Seeking comment - citizenship question.

Fyi

**From:** Ramos, Victor [<mailto:Victor.Ramos@newsday.com>]  
**Sent:** Wednesday, February 28, 2018 11:08 AM  
**To:** DOC Public Affairs <[PublicAffairs@doc.gov](mailto:PublicAffairs@doc.gov)>  
**Subject:** Seeking comment - citizenship question.

Hello,

I'm a reporter with Newsday on Long Island, New York, and I'm writing to seek the department's response to a coalition of advocacy organizations in our region raising concerns about a U.S. Department of Justice request for the U.S. Census Bureau to include a citizenship question in the next census.

These 19 organizations in our region, among them immigrant and labor advocates, have crafted a letter that they're sending to Secretary of Commerce calling the administration's proposal "a reckless request" that "would threaten the prospect of an accurate count" in our region and state.

I have already reached out to the U.S. Census Bureau and received a response, but thought of asking the department directly since the local advocates' letter is addressed to your Secretary.

Their main concern is that immigrants who are in the country illegally or who face expiration of deportation protections might be afraid of specifying their status in forms that will go to the federal government and could be used for enforcement purposes. They also worry that an undercount would translate going forward into fewer resources allocated to communities and regions where immigrants and minority communities are concentrated.

Among questions:

1. How does your department balance these concerns with the administration's request?
2. Does the department favor including the citizenship question in the census forms? Why or why not?
3. Are there any issues with the current method of estimating citizenship numbers?
4. Could such a policy change have other intended or unintended consequences beyond Voting Rights Act enforcement?

You may call me at the office number below or email me a statement here. **My deadline is 4 p.m. today.**

Much appreciated,

**Víctor Manuel Ramos**  
Staff Writer, [Newsday](#)

**Office: 631-843-2286** \* Fax: 631-843-2953  
Snail mail: c/o Newsday, 235 Pinelawn Rd, Melville, N.Y. 11747

*For social media updates:*

<[image001.jpg](#)><[image002.jpg](#)><[image003.jpg](#)><[image004.jpg](#)>



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**From:** Comstock, Earl (Federal); [PII]  
**Sent:** 5/1/2017 10:31:41 AM  
**To:** Wilbur Ross; [PII]  
**CC:** Teramoto, Wendy (Federal); [PII]; Branstad, Eric (Federal); [PII]  
**Subject:** FW: Census Testimony for Wed. May 3 House CJS Hearing  
**Attachments:** John Thompson 05 03 17 Written Testimony - Version 6sa - for Final Clearance.docx  
**Importance:** High

Mr. Secretary –

I apologize for the rush. This testimony wasn't provided until Friday mid-day. Attached is the proposed testimony for John Thompson, the Director of the Census Bureau, to give the House Appropriation Subcommittee this Wednesday. I have reviewed the testimony and there are a couple of points that I wanted to bring to your attention and be sure you approved of. Those are:

**Not Responsive / Deliberative**

# Not Responsive / Deliberative

On page 10 the testimony reports on the Census questions. Note that in March of 2018 the Census Bureau will report to Congress the specific questions that will be asked.

In March we fulfilled a major milestone, on time, when we delivered the planned subjects for the 2020 Census and the American Community Survey to Congress before the statutory deadline. The Census Bureau followed a rigorous, multi-year process collaborating with the Office of Management and Budget (OMB) and other federal agencies to complete this process. Federal agencies provided support to demonstrate a clear need for all data we plan to collect. The submission to the Congress describes that the planned subjects remain unchanged from the 2010 Census and will cover gender, age, race/ethnicity, relationship and homeownership status.

# Deliberative

**Not Responsive / Deliberative**

# Not Responsive / Deliberative

Please advise. Thank you. Earl

**From:** "Grossman, Beth (Federal)" [PII]

**Date:** Friday, April 28, 2017 at 12:09 PM

**To:** "Comstock, Earl (Federal)" [PII], David Langdon [PII]

**Cc:** "McClelland, Michelle (Federal)" [PII], "Holmes, Colin (Federal)" [PII]

"Schufreider, Jim (Federal)" [PII], "Lenihan, Brian (Federal)" [PII], "VanHanswyk, Beth (Federal)" [PII]

**Subject:** Census Testimony for Wed. May 3 House CJS Hearing

Earl -

Attached is John Thompson's draft testimony on behalf of the Census Bureau for the Wednesday, May 3, 2017, oversight hearing before the House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies. Census CIO Kevin Smith will be joining Director Thompson at the witness table. The testimony has been circulated through the Department and reviewed by OGC, OLIA, Budget Office, as well as David Langdon in your office. The subcommittee has asked Census to provide its testimony by Monday, so we would like to get the testimony over to OMB as soon as possible for their review and interagency circulation.

Please let me know if you have any questions or edits, and if it is OK to send the testimony to OMB.

- Beth

**PREPARED STATEMENT OF**

**JOHN H. THOMPSON**

**DIRECTOR**

**U.S. CENSUS BUREAU**

**Before the Appropriations Committee's Subcommittee on  
Commerce, Justice, Science and Related Agencies**

**U.S. House of Representatives**

**3 May 2017**

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# Not Responsive / Deliberative

## 2020 Status Update

### *Topics and Questions for the 2020 Census*

In March we fulfilled a major milestone, on time, when we delivered the planned subjects for the 2020 Census and the American Community Survey to Congress before the statutory deadline.

The Census Bureau followed a rigorous, multi-year process collaborating with the Office of Management and Budget (OMB) and other federal agencies to complete this process. Federal agencies provided support to demonstrate a clear need for all data we plan to collect. The submission to the Congress describes that the planned subjects remain unchanged from the 2010 Census and will cover gender, age, race/ethnicity, relationship and homeownership status.

# Deliberative

# Not Responsive / Deliberative

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<sup>1</sup> 2015 National Content Test: Race and Ethnicity Analysis Report available at: <https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/final-analysis/2015nct-race-ethnicity-analysis.html>

**Not Responsive / Deliberative**

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**Not Responsive / Deliberative**

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<sup>2</sup> Other T-Rex subcontractors include: Z, Inc, General Dynamics Information Technology, SES, Whirlwind Technologies, LLC, Vidoori, and Octo.





UNITED STATES DEPARTMENT OF COMMERCE  
Economics and Statistics Administration  
U.S. Census Bureau  
Washington, DC 20233-0001

January 19, 2018

**MEMORANDUM FOR:** Wilbur L. Ross, Jr.  
Secretary of Commerce

**Through:** Karen Dunn Kelley  
Performing the Non-Exclusive Functions and Duties of the Deputy Secretary

Ron S. Jarmin  
Performing the Non-Exclusive Functions and Duties of the Director

Enrique Lamas  
Performing the Non-Exclusive Functions and Duties of the Deputy Director

**From:** John M. Abowd  
Chief Scientist and Associate Director for Research and Methodology

**Subject:** Technical Review of the Department of Justice Request to Add  
Citizenship Question to the 2020 Census

The Department of Justice has requested block-level citizen voting-age population estimates by OMB-approved race and ethnicity categories from the 2020 Census of Population and Housing. These estimates are currently provided in two related data products: the PL94-171 redistricting data, produced by April 1st of the year following a decennial census under the authority of 13 U.S.C. Section 141, and the Citizen Voting Age Population by Race and Ethnicity (CVAP) tables produced every February from the most recent five-year American Community Survey data. The PL94-171 data are released at the census block level. The CVAP data are released at the census block group level.

We consider three alternatives in response to the request: (A) no change in data collection, (B) adding a citizenship question to the 2020 Census, and (C) obtaining citizenship status from administrative records for the whole 2020 Census population.

We recommend either Alternative A or C. Alternative C best meets DoJ's stated uses, is comparatively far less costly than Alternative B, does not increase response burden, and does not harm the quality of the census count. Alternative A is not very costly and also does not harm the quality of the census count. Alternative B better addresses DoJ's stated uses than Alternative A. However, Alternative B 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.

<i>Summary of Alternatives</i>			
	<i>Alternative A</i>	<i>Alternative B</i>	<i>Alternative C</i>
<b>Description</b>	No change in data collection	Add citizenship question to the 2020 Census (i.e., the DoJ request), all 2020 Census microdata remain within the Census Bureau	Leave 2020 Census questionnaire as designed and add citizenship from administrative records, all 2020 Census microdata and any linked citizenship data remain within the Census Bureau
<b>Impact on 2020 Census</b>	None	Major potential quality and cost disruptions	None
<b>Quality of Citizen Voting-Age Population Data</b>	Status quo	Block-level data improved, but with serious quality issues remaining	Best option for block-level citizenship data, quality much improved
<b>Other Advantages</b>	Lowest cost alternative	Direct measure of self-reported citizenship for the whole population	Administrative citizenship records more accurate than self-reports, incremental cost is very likely to be less than \$2M, USCIS data would permit record linkage for many more legal resident noncitizens
<b>Shortcomings</b>	Citizen voting-age population data remain the same or are improved by using small-area modeling methods	Citizenship status is misreported at a very high rate for noncitizens, citizenship status is missing at a high rate for citizens and noncitizens due to reduced self-response and increased item nonresponse, nonresponse followup costs increase by at least \$27.5M, erroneous enumerations increase, whole-person census imputations increase	Citizenship variable integrated into 2020 Census microdata outside the production system, Memorandum of Understanding with United States Citizen and Immigration Services required to acquire most up-to-date naturalization data

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

John M. Abowd, Chief Scientist  
and Associate Director for Research and Methodology

## Detailed Analysis of Alternatives

The statistics in this memorandum have been released by the Census Bureau Disclosure Review Board with approval number CBDRB-2018-CDAR-014.

### *Alternative A: Make no changes*

Under this alternative, we would not change the current 2020 Census questionnaire nor the planned publications from the 2020 Census and the American Community Survey (ACS). Under this alternative, the PL94-171 redistricting data and the citizen voting-age population (CVAP) data would be released on the current schedule and with the current specifications. The redistricting and CVAP data are used by the Department of Justice to enforce the Voting Rights Act. They are also used by state redistricting offices to draw congressional and legislative districts that conform to constitutional equal-population and Voting Rights Act nondiscrimination requirements. Because the block-group-level CVAP tables have associated margins of error, their use in combination with the much more precise block-level census counts in the redistricting data requires sophisticated modeling. For these purposes, most analysts and the DoJ use statistical modeling methods to produce the block-level eligible voter data that become one of the inputs to their processes.

If the DoJ requests the assistance of Census Bureau statistical experts in developing model-based statistical methods to better facilitate the DoJ's uses of these data in performing its Voting Rights Act duties, a small team of Census Bureau experts similar in size and capabilities to the teams used to provide the Voting Rights Act Section 203 language determinations would be deployed.

We estimate that this alternative would have no impact on the quality of the 2020 Census because there would be no change to any of the parameters underlying the Secretary's revised life-cycle cost estimates. The estimated cost is about \$350,000 because that is approximately the cost of resources that would be used to do the modeling for the DoJ.

### *Alternative B: Add the question on citizenship to the 2020 Census questionnaire*

Under this alternative, we would add the ACS question on citizenship to the 2020 Census questionnaire and ISR instrument. We would then produce the block-level citizen voting-age population by race and ethnicity tables during the 2020 Census publication phase.

Since the question is already asked on the American Community Survey, we would accept the cognitive research and questionnaire testing from the ACS instead of independently retesting the citizenship question. This means that the cost of preparing the new question would be minimal. We did not prepare an estimate of the impact of adding the citizenship question on the cost of reprogramming the Internet Self-Response (ISR) instrument, revising the Census Questionnaire Assistance (CQA), or redesigning the printed questionnaire because those components will not be finalized until after the March 2018 submission of the final questions. Adding the citizenship question is similar in scope and cost to recasting the race and ethnicity questions again, should that become necessary, and would be done at the same time. After the 2020 Census ISR, CQA and printed questionnaire are in final form, adding the citizenship question would be much more expensive and would depend on exactly when the implementation decision was made during the production cycle.

For these reasons, we analyzed Alternative B in terms of its adverse impact on the rate of voluntary cooperation via self-response, the resulting increase in nonresponse followup (NRFU), and the consequent effects on the quality of the self-reported citizenship data. Three distinct analyses support the conclusion of an adverse impact on self-response and, as a result, on the accuracy and quality of the 2020 Census. We assess the costs of increased NRFU in light of the results of these analyses.

### *B.1. Quality of citizenship responses*

We considered the quality of the citizenship responses on the ACS. In this analysis we estimated item nonresponse rates for the citizenship question on the ACS from 2013 through 2016. When item nonresponse occurs, the ACS edit and imputation modules are used to allocate an answer to replace the missing data item. This results in lower quality data because of the statistical errors in these allocation models. The analysis of the self-responses responses is done using ACS data from 2013-2016 because of operational changes in 2013, including the introduction of the ISR option and change in the followup operations for mail-in questionnaires.

In the period from 2013 to 2016, item nonresponse rates for the citizenship question on the mail-in questionnaires for non-Hispanic whites (NHW) ranged from 6.0% to 6.3%, non-Hispanic blacks (NHB) ranged from 12.0% to 12.6%, and Hispanics ranged from 11.6 to 12.3%. In that same period, the ISR item nonresponse rates for citizenship were greater than those for mail-in questionnaires. In 2013, the item nonresponse rates for the citizenship variable on the ISR instrument were NHW: 6.2%, NHB: 12.3% and Hispanic: 13.0%. By 2016 the rates increased for NHB and especially Hispanics. They were NHW: 6.2%, NHB: 13.1%, and Hispanic: 15.5% (a 2.5 percentage point increase). Whether the response is by mail-in questionnaire or ISR instrument, item nonresponse rates for the citizenship question are much greater than the comparable rates for other demographic variables like sex, birthdate/age, and race/ethnicity (data not shown).

### *B.2. Self-response rate analyses*

We directly compared the self-response rate in the 2000 Census for the short and long forms, separately for citizen and noncitizen households. In all cases, citizenship status of the individuals in the household was determined from administrative record sources, not from the response on the long form. A noncitizen household contains at least one noncitizen. Both citizen and noncitizen households have lower self-response rates on the long form compared to the short form; however, the decline in self-response for noncitizen households was 3.3 percentage points greater than the decline for citizen households. This analysis compared short and long form respondents, categories which were randomly assigned in the design of the 2000 Census.

We compared the self-response rates for the same household address on the 2010 Census and the 2010 American Community Survey, separately for citizen and noncitizen households. Again, all citizenship data were taken from administrative records, not the ACS, and noncitizen households contain at least one noncitizen resident. In this case, the randomization is over the selection of household addresses to receive the 2010 ACS. Because the ACS is an ongoing survey sampling fresh households each month, many of the residents of sampled households completed the 2010 ACS with the same reference address as they used for the 2010 Census. Once again, the self-response rates were lower in the ACS than in the 2010 Census for both citizen and noncitizen households. In this 2010 comparison, moreover, the decline in self-response was 5.1 percentage points greater for noncitizen households than for citizen households.



In both the 2000 and 2010 analyses, only the long-form or ACS questionnaire contained a citizenship question. Both the long form and the ACS questionnaires are more burdensome than the shortform. Survey methodologists consider burden to include both the direct time costs of responding and the indirect costs arising from nonresponse due to perceived sensitivity of the topic. There are, consequently, many explanations for the lower self-response rates among all household types on these longer questionnaires. However, the only difference between citizen and noncitizen households in our studies was the presence of at least one noncitizen in noncitizen households. It is therefore a reasonable inference that a question on citizenship would lead to some decline in overall self-response because it would make the 2020 Census modestly more burdensome in the direct sense, and potentially much more burdensome in the indirect sense that it would lead to a larger decline in self-response for noncitizen households.

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Hispanics and non-Hispanic non-whites (NHNW) have greater break-off rates than non-Hispanic whites (NHW). In the 2016 ACS data, breakoffs were NHW: 9.5% of cases while NHNW: 14.1% and Hispanics: 17.6%. The paradata show the question on which the breakoff occurred. Only 0.04% of NHW broke off on the citizenship question, whereas NHNW broke off 0.27% and Hispanics broke off 0.36%. There are three related questions on immigrant status on the ACS: citizenship, place of birth, and year of entry to the United States. Considering all three questions Hispanics broke off on 1.6% of all ISR cases, NHNW: 1.2% and NHW: 0.5%. A breakoff on the ISR instrument can result in follow-up costs, imputation of missing data, or both. Because Hispanics and non-Hispanic non-whites breakoff much more often than non-Hispanic whites, especially on the citizenship-related questions, their survey response quality is differentially affected.

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## B.4. Cost analysis

Lower self-response rates would raise the cost of conducting the 2020 Census. We discuss those increased costs below. They also reduce the quality of the resulting data. Lower self-response rates degrade data quality because data obtained from NRFU have greater erroneous enumeration and whole-person imputation rates. An erroneous enumeration means a census person enumeration that should not have been counted for any of several reasons, such as, that the person (1) is a duplicate of a correct enumeration; (2) is inappropriate (e.g., the person died before Census Day); or (3) is enumerated in the wrong location for the relevant tabulation ([https://www.census.gov/covage\\_measurement/definitions/](https://www.census.gov/covage_measurement/definitions/)). A whole-person census imputation is a census microdata record for a person for which all characteristics are imputed.

Our analysis of the 2010 Census coverage errors (Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States, Memo G-01) contains the relevant data. That study found that when the 2010 Census obtained a valid self-response (219 million persons),

the correct enumeration rate was 97.3%, erroneous enumerations were 2.5%, and whole-person census imputations were 0.3%. All erroneous enumeration and whole-person imputation rates are much greater for responses collected in NRFU. The vast majority of NRFU responses to the 2010 Census (59 million persons) were collected in May. During that month, the rate of correct enumerations was only 90.2%, the rate of incorrect enumeration was 4.8%, and the rate of whole-person census imputations was 5.0%. June NRFU accounted for 15 million persons, of whom only 84.6% were correctly enumerated, with erroneous enumerations of 5.7%, and whole-person census imputations of 9.6%. (See Table 19 of 2010 Census Memorandum G-01. That table does not provide statistics for all NRFU cases in aggregate.)

One reason that the erroneous enumeration and whole-person imputation rates are so much greater during NRFU is that the data are much more likely to be collected from a proxy rather than a household member, and, when they do come from a household member, that person has less accurate information than self-responders. The correct enumeration rate for NRFU household member interviews is 93.4% (see Table 21 of 2010 Census Memorandum G-01), compared to 97.3% for non-NRFU households (see Table 19). The information for 21.0% of the persons whose data were collected during NRFU is based on proxy responses. For these 16 million persons, the correct enumeration rate is only 70.1%. Among proxy responses, erroneous enumerations are 6.7% and whole-person census imputations are 23.1% (see Table 21).

Using these data, we can develop a cautious estimate of the data quality consequences of adding the citizenship question. We assume that citizens are unaffected by the change and that an additional 5.1% of households with at least one noncitizen go into NRFU because they do not self-respond. We expect about 126 million occupied households in the 2020 Census. From the 2016 ACS, we estimate that 9.8% of all households contain at least one noncitizen. Combining these assumptions implies an additional 630,000 households in NRFU. If the NRFU data for those households have the same quality as the average NRFU data in the 2010 Census, then the result would be 139,000 fewer correct enumerations, of which 46,000 are additional erroneous enumerations and 93,000 are additional whole-person census imputations. This analysis assumes that, during the NRFU operations, a cooperative member of the household supplies data 79.0% of the time and 21.0% receive proxy responses. If all of these new NRFU cases go to proxy responses instead, the result would be 432,000 fewer correct enumerations, of which 67,000 are erroneous enumerations and 365,000 are whole-person census imputations.

For Alternative B, our estimate of the incremental cost proceeds as follows. Using the analysis in the paragraph above, the estimated NRFU workload will increase by approximately 630,000 households, or approximately 0.5 percentage points. We currently estimate that for each percentage point increase in NRFU, the cost of the 2020 Census increases by approximately \$55 million. Accordingly, the addition of a question on citizenship could increase the cost of the 2020 Census by at least \$27.5 million. It is worth stressing that this cost estimate is a lower bound. Our estimate of \$55 million for each percentage point increase in NRFU is based on an average of three visits per household. We expect that many more of these noncitizen households would receive six NRFU visits.

We believe that \$27.5 million is a conservative estimate because the other evidence cited in this report suggests that the differences between citizen and noncitizen response rates and data quality will be amplified during the 2020 Census compared to historical levels. Hence, the decrease in self-response for citizen households in 2020 could be much greater than the 5.1 percentage points we observed during the 2010 Census.

*Alternative C: Use administrative data on citizenship instead of add the question to the 2020 Census*

Under this alternative, we would add the capability to link an accurate, edited citizenship variable from administrative records to the final 2020 Census microdata files. We would then produce block-level tables of citizen voting age population by race and ethnicity during the publication phase of the 2020 Census using the enhanced 2020 Census microdata.

The Census Bureau has conducted tests of its ability to link administrative data to supplement the decennial census and the ACS since the 1990s. Administrative record studies were performed for the 1990, 2000 and 2010 Censuses. We discuss some of the implications of the 2010 study below. We have used administrative data extensively in the production of the economic censuses for decades. Administrative business data from multiple sources are a key component of the production Business Register, which provides the frames for the economic censuses, annual, quarterly, and monthly business surveys. Administrative business data are also directly tabulated in many of our products.

In support of the 2020 Census, we moved the administrative data linking facility for households and individuals from research to production. This means that the ability to integrate administrative data at the record level is already part of the 2020 Census production environment. In addition, we began regularly ingesting and loading administrative data from the Social Security Administration, Internal Revenue Service and other federal and state sources into the 2020 Census data systems. In assessing the expected quality and cost of Alternative C, we assume the availability of these record linkage systems and the associated administrative data during the 2020 Census production cycle.

*C.1. Quality of administrative record versus self-report citizenship status*

We performed a detailed study of the responses to the citizenship question compared to the administrative record citizenship variable for the 2000 Census, 2010 ACS and 2016 ACS. These analyses confirm that the vast majority of citizens, as determined by reliable federal administrative records that require proof of citizenship, correctly report their status when asked a survey question. These analyses also demonstrate that when the administrative record source indicates an individual is not a citizen, the self-report is "citizen" for no less than 23.8% of the cases, and often more than 30%.

For all of these analyses, we linked the Census Bureau's enhanced version of the SSA Numident data using the production individual record linkage system to append an administrative citizenship variable to the relevant census and ACS microdata. The Numident data contain information on every person who has ever been issued a Social Security Number or an Individual Taxpayer Identification Number. Since 1972, SSA has required proof of citizenship or legal resident alien status from applicants. We use this verified citizenship status as our administrative citizenship variable. Because noncitizens must interact with SSA if they become naturalized citizens, these data reflect current citizenship status albeit with a lag for some noncitizens.

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noncitizen: 0.9% and missing: 0.3%. By contrast, when the administrative data indicated that the respondent was not a citizen, the self-report was citizen: 29.9%, noncitizen: 66.4%, and missing: 3.7%.

In the same analysis of 2000 Census data, we consider three categories of individuals: the reference person (the individual who completed the census form for the household), relatives of the reference person, and individuals unrelated to the reference person. When the administrative data show that the individual is a citizen, the reference person, relatives of the reference person, and nonrelatives of the reference person have self-reported citizenship status of 98.7%, 98.9% and 97.2%, respectively. On the other hand, when the administrative data report that the individual was a noncitizen, the long-form response was citizen for 32.9% of the reference persons; that is, reference persons who are not citizens according to the administrative data self-report that they are not citizens in only 63.3% of the long-form responses. When they are reporting for a relative who is not a citizen according to the administrative data, reference persons list that individual as a citizen in 28.6% of the long-form responses. When they are reporting for a nonrelative who is not a citizen according to the administrative data, reference persons list that individual as a citizen in 20.4% of the long-form responses.

We analyzed the 2010 and 2016 ACS citizenship responses using the same methodology. The 2010 ACS respondents were linked to the 2010 version of the Census Numident. The 2016 ACS respondents were linked to the 2016 Census Numident. In 2010, 8.5% of the respondents could not be linked, or had missing citizenship status on the administrative data. In 2016, 10.9% could not be linked or had missing administrative data. We reached the same conclusions using 2010 and 2016 ACS data with the following exceptions. When the administrative data report that the individual is a citizen, the self-response is citizen on 96.9% of the 2010 ACS questionnaires and 93.8% of the 2016 questionnaires. These lower self-reported citizenship rates are due to missing responses on the ACS, not misclassification. As we noted above, the item nonresponse rate for the citizenship question has been increasing. These item nonresponse data show that some citizens are not reporting their status on the ACS at all. In 2010 and 2016, individuals for whom the administrative data indicate noncitizen respond citizen in 32.7% and 34.7% of the ACS questionnaires, respectively. The rates of missing ACS citizenship response are also greater for individuals who are noncitizens in the administrative data (2010: 4.1%, 2016: 7.7%). The analysis of reference persons, relatives, and nonrelatives is qualitatively identical to the 2000 Census analysis.

In all three analyses, the results for racial and ethnic groups and for voting age individuals are similar to the results for the whole population with one important exception. If the administrative data indicate that the person is a citizen, the self-report is citizen at a very high rate with the remainder being predominately missing self-reports for all groups. If the administrative data indicate noncitizen, the self-report is citizen at a very high rate (never less than 23.8% for any racial, ethnic or voting age group in any year we studied). The exception is the missing data rate for Hispanics, who are missing administrative data about twice as often as non-Hispanic blacks and three times as often as non-Hispanic whites.

## *C.2. Analysis of coverage differences between administrative and survey citizenship data*

Our analysis suggests that the ACS and 2000 long form survey data have more complete coverage of citizenship than administrative record data, but the relative advantage of the survey data is diminishing. Citizenship status is missing for 10.9 percent of persons in the 2016 administrative records, and it is missing for 6.3 percent of persons in the 2016 ACS. This 4.6 percentage point gap between administrative and survey missing data rates is smaller than the gap in 2000 (6.9 percentage points) and 2010 (5.6



percentage points). Incomplete (through November) pre-production ACS data indicate that citizenship item nonresponse has again increased in 2017.

There is an important caveat to the conclusion that survey-based citizenship data are more complete than administrative records, albeit less so now than in 2000. The methods used to adjust the ACS weights for survey nonresponse and to allocate citizenship status for item nonresponse assume that the predicted answers of the sampled non-respondents are statistically the same as those of respondents. Our analysis casts serious doubt on this assumption, suggesting that those who do not respond to either the entire ACS or the citizenship question on the ACS are not statistically similar to those who do; in particular, their responses to the citizenship question would not be well-predicted by the answers of those who did respond.

The consequences of missing citizenship data in the administrative records are asymmetric. In the Census Numident, citizenship data may be missing for older citizens who obtained SSNs before the 1972 requirement to verify citizenship, naturalized citizens who have not confirmed their naturalization to SSA, and noncitizens who do not have an SSN or ITIN. All three of these shortcomings are addressed by adding data from the United States Citizen and Immigration Services (USCIS). Those data would complement the Census Numident data for older citizens and update those data for naturalized citizens. A less obvious, but equally important benefit, is that they would permit record linkage for legal resident aliens by allowing the construction of a supplementary record linkage master list for such people, who are only in scope for the Numident if they apply for and receive an SSN or ITIN. Consequently, the administrative records citizenship data would most likely have both more accurate citizen status and fewer missing individuals than would be the case for any survey-based collection method. Finally, having two sources of administrative citizenship data permits a detailed verification of the accuracy of those sources as well.

### *C.3. Cost of administrative record data production*

For Alternative C, we estimate that the incremental cost, except for new MOUs, is \$450,000. This cost estimate includes the time to develop an MOU with USCIS, estimated ingestion and curation costs for USCIS data, incremental costs of other administrative data already in use in the 2020 Census but for which continued acquisition is now a requirement, and staff time to do the required statistical work for integration of the administrative-data citizenship status onto the 2020 Census microdata. This cost estimate is necessarily incomplete because we have not had adequate time to develop a draft MOU with USCIS, which is a requirement for getting a firm delivery cost estimate from the agency. Acquisition costs for other administrative data acquired or proposed for the 2020 Census varied from zero to \$1.5M. Thus the realistic range of cost estimates, including the cost of USCIS data, is between \$500,000 and \$2.0M.

**Summary Analysis of the Key Differences Between Alternative C and Alternative D**

This short note describes the Census Bureau's current assumptions about two alternatives to address the need for block level data on citizen voting age populations. The goal is to measure the citizenship status of all people enumerated in the 2020 Decennial Census. Both alternatives utilize administrative data on the citizenship status of individuals, however one option, Alternative D, proposes to also include the current American Community Survey (ACS) question on citizenship status on the 2020 Decennial Census short form.

In both alternatives described here, the methodology requires linking 2020 census response data and administrative records. However, as illustrated both alternatives would also need to assign/impute citizenship for a portion of the population. The Census Bureau will have to assign citizenship in cases of questionnaire non-response and item non-response. Additionally, it is important to note, that even when a self-response is available it is not always possible to link response data with administrative records data. Poor data quality (e.g., name and age) and nonresponse or incomplete 2020 Census responses mean that we will not have a direct measure of citizenship status for all residents enumerated in 2020. The Census Bureau will need to employ an imputation model for these cases.

One of the key differences between the two alternatives described below is the number of cases requiring imputation. The other key difference is the impact of errors in the citizenship status reported on the 2020 Census.

In the most recent version of the 2020 Decennial Life Cycle Cost Estimate, the Census Bureau projects counting 330 million residents in 2020. Figure 1 summarizes how citizenship status will be measured under Alternative C that does not employ a citizenship question on the 2020 Census. Figure 2 summarizes how this will be done using both administrative records and a 2020 citizenship question under Alternative D.

Alternative C is a simplified process for assigning citizenship through direct linkage and modelling, without including the question on the 2020 Census. The Census Bureau will link the responses for the 330 million census records to administrative records that contain information on the citizenship status of individuals. The Census Bureau expects to successfully link and observe this status for approximately 295 million people. The Census Bureau would need to impute this status for approximately 35 million people under Alternative C whose 2020 responses cannot be linked to administrative data. Although the Census Bureau has fully developed and tested the imputation model, it has high confidence that an accurate model can be developed and deployed for this purpose. Further, we will most likely never possess a fully adequate truth deck to benchmark it to.

Measuring citizenship status is slightly more complex under Alternative D where all U.S. households will be given the opportunity to provide the citizenship status of each household member. Based on response data for the ACS citizenship and other response data research, we know that not all households that respond to the 2020 Census will answer this question, leaving the question blank or with otherwise invalid responses. Additionally, Alternative D, must also account for those households that do not respond at all or will have proxy responses. Due to these reasons, we estimate that we will get 2020 citizenship status responses for approximately 294.6 million people, a slightly higher estimate

than Alternative C. For the 35.4 million people without a 2020 citizenship response, the Census Bureau will employ the same methodology as in Alternative C, linking the 2020 Census responses to the administrative records. The Census Bureau estimates that it will be able to link these cases to administrative records where we observe citizenship status for approximately 21.5 million people. For the remaining 13.8 million will be imputed through a model as described above. Thus, there will be a need for imputing many cases across either alternative.

The Census Bureau will link the 294.6 million records from the 2020 Census with the administrative records. This will be done both for potential quality assurance purposes and to improve the quality of future modeling uses. Based on the current research from the ACS, the Census Bureau expects to successfully link approximately 272.5 million of these cases. Of these, 263 million will have citizenship statuses that agree across the 2020 response and administrative record. The Census Bureau estimates there will be 9.5 million cases where there is disagreement across the two sources. Historic Census Bureau practice is to use self-reported data in these situations. However, the Census Bureau now knows from linking ACS responses on citizenship to administrative data that nearly one third of noncitizens in the administrative data respond to the questionnaire indicating they are citizens, indicating that this practice should be revisited in the case of measuring citizenship. Finally, for those 22.2 million cases that do not link to administrative records (non-linkage occurs for the same data quality reasons discussed above), the Census Bureau will use the observed 2020 responses. Again, Census Bureau expect some quality issues with these responses. Namely, the Census Bureau estimates that just under 500 thousand noncitizens will respond as citizens.

The relative quality of Alternative C versus Alternative D will depend on the relative importance of the errors in administrative data, response data, and imputations. To be slightly more but not fully precise consider the following description of errors under both alternatives. First note that all possible measurement methods will have errors. Under Alternative C, there will be error in the administrative records, but we believe these to be relatively limited due to the procedure following by SSA, USCIS and State. In both Alternative, the modeled cases will be subject to prediction error. Prediction error occur when the model returns the incorrect status of a case. As there are more models cases in Alternative C, prediction error will be a bigger issue there. Alternative D has an additional source or error, response error. This is where 2020 respondent give the incorrect status. Statisticians often hope these error are random and cancel out. However, we know from prior research that citizenship status responses are systematically biased for a subset of noncitizens. Response error is only an issue in alternative D. Unfortunately, the Census Bureau cannot quantify the relative magnitude of the errors across the alternatives at this time.

Figure 1

Alternative C

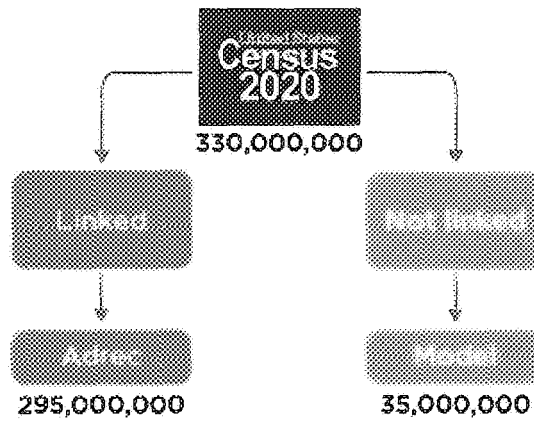
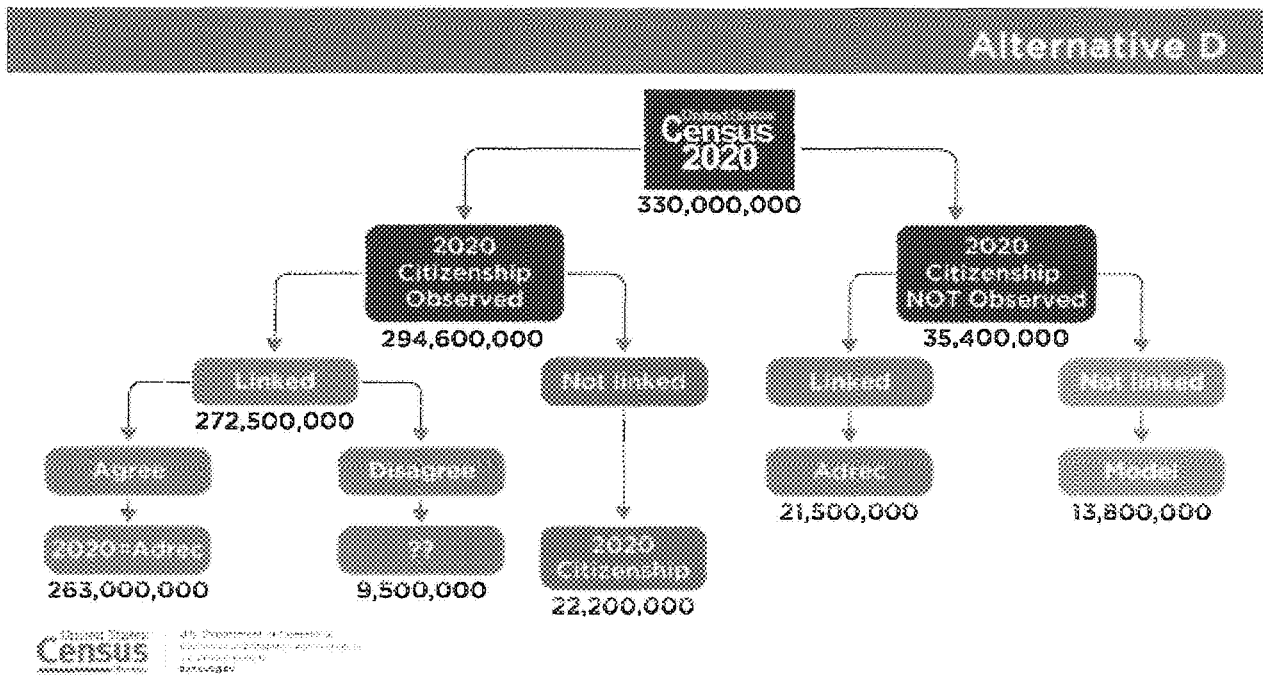


Figure 2



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**From:** Walsh, Michael (Federal) [PII]  
**Sent:** 3/16/2018 1:23:10 PM  
**To:** Teramoto, Wendy (Federal) [PII]; Rockas, James (Federal) [PII]  
**CC:** Kelley, Karen (Federal) [PII]; Comstock, Earl (Federal) [PII]  
**Subject:** RE: Updated with his further edits below - For your approval

If not, I [Deliberative] I spoke to Karen and she is OK with it.

**From:** Teramoto, Wendy (Federal)  
**Sent:** Friday, March 16, 2018 9:20 AM  
**To:** Rockas, James (Federal) [PII]  
**Cc:** Kelley, Karen (Federal) [PII]; Walsh, Michael (Federal) [PII] Comstock, Earl (Federal) [PII]  
**Subject:** Re: Updated with his further edits below - For your approval

Did you already send this to Reporter?

Sent from my iPhone

On Mar 16, 2018, at 9:18 AM, Rockas, James (Federal) [PII] wrote:

**QUOTES FOR GILLIAN:**

We will present the decision to Congress by March 31 but we are still working on the decision.

We have had letters from both sides - from elected officials and think tanks and others - we have been spending a lot of time reaching out telephonically to stakeholders on both sides. Whichever way we go it will be a controversial decision.

The decision will be made at the Commerce Secretary level.

A question on citizenship is already asked on the American Community Survey, which is a limited sample taken each year - not the full decennial census.

We are doing tons of analysis of this whole thing; we don't yet have a decision; we are still in the research phase; making sure that we have considered every aspect.

The cost of the 2010 Census in today's money is \$12.1bn and the estimate that the Census Bureau prepared in October 2015 for the 2020 Census was \$12.3bn.

The former administration did not use certified cost estimators.



We brought in outside consultants, and after careful work by them and certified cost estimators, we have now raised the estimate to \$15.6bn, which includes risk-based contingency but not a contingency for unknown risks to the 2020 Census.

There are unknowable risks.

We have a very, very complicated situation now with the Census because of technology changes and in hiring process - we have to hire 500,000 enumerators for part time work for a limited time period!

That wasn't too hard in 2010 because you didn't have very full employment.

But given the way that the economy is now, the physical act of hiring people is going to be quite a problem -this is a unique management challenge."

We will spend \$480m on marketing and advertising, up from \$376m in 2010, and outreach will be done in many different languages.

The online response forms will come in 13 languages, the enumerators will have 59 different non-English language guides, and further outreach through call centers and other means will be in dozens of different languages, as suitable to the population.

We certainly won't have any advanced notice of cyber-attacks, but if one does occur, we will deal with it with help from other government agencies.

We understand the importance of ensuring the highest levels of cybersecurity and the need to continuously monitor and enhance our ability, in real time, to identify, detect, protect, respond, and recover from potential cyber and fraud threats.

Working independently, and with industry and federal partners like NIST and DHS, the Census is implementing a multilayered approach that ensures the safety and security of our systems and data throughout our processes of survey data collection, data analysis, and dissemination of information.

Census incorporates fraud analytics and detection to ensure that the data collected has the highest authenticity and validity so as to maintain the Public Trust and Confidence.

Part of the partnerships are with business groups. We think we will have very good cooperation from the business community because it is a very major consumer of census data.

Another issue will be cost.

We will be spending 107 dollars per housing unit in the whole country on this Census - up from 91 inflation adjusted dollars for the 2010 Census. In 2010 dollars, we spent 77 dollars per household in the 2010 Census.

Census management assumes 60.5 of households will respond voluntarily, down from 63.5 in 2010.

Gillian, please add: Violation of the secrecy of Census responses is a criminal offense punishable by multiple years in prison and a fine of \$250,000. This is why there never has been a violation and I believe there never will be. Every Census employee takes a life-time oath not to disclose any data.

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James Rockas

Press Secretary & Deputy Director of Public Affairs

U.S. Department of Commerce

**PII**





To: Teramoto, Wendy (Federal) [REDACTED]@doc.gov] Case 1:18-cv-02921-JMF Document 315-3 Filed 09/11/18 Page 39 of 41  
From: Comstock, Earl (Federal)  
Sent: Sat 9/16/2017 11:33:38 AM  
Importance: Normal  
Subject: Calls with DoJ  
Received: Sat 9/16/2017 11:33:38 AM

Morning Wendy –

Here is the memo I gave SWLR regarding my discussions with DoJ.

Earl

\*\*\*

September 8, 2017

To: Secretary Wilbur Ross  
Fr: Earl Comstock  
Re: Census Discussions with DoJ

In early May Eric Branstad put me in touch with Mary Blanche Hankey as the White House liaison in the Department of Justice. Mary Blanche worked for AG Sessions in his Senate office, and came with him to the Department of Justice. We met in person to discuss the citizenship question. She said [REDACTED]  
[REDACTED] 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 [REDACTED]  
[REDACTED]  
[REDACTED] James directed me to Gene Hamilton at the Department of Homeland Security.

Gene and I had several phone calls to discuss the matter, and then Gene relayed that after discussion DHS 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 [REDACTED]  
[REDACTED]

**From:** Wilbur Ross [PII]  
**Sent:** 8/10/2017 7:38:25 PM  
**To:** Comstock, Earl (Federal) [PII]  
**Subject:** Re: Census Matter

I would like to be briefed on Friday by phone. I probably will need an hour or so to study the memo first. We should be very careful, about everything, whether or not it is likely to end up in the SC. WLR

Sent from my iPad

> On Aug 9, 2017, at 10:24 AM, Comstock, Earl (Federal) [PII] wrote:

>  
 > PREDECISIONAL AND ATTORNEY-CLIENT PRIVILEGED  
 >

> Mr. Secretary - we are preparing a memo and full briefing for you on the citizenship question. The memo will be ready by Friday, and we can do the briefing whenever you are back in the office. Since this issue will go to the Supreme Court we need to be diligent in preparing the administrative record.

>  
 > Earl

> On 8/8/17, 1:20 PM, "Wilbur Ross" [PII] wrote:

>  
 > **Not Responsive / Deliberative**  
 > **Not Responsive / Deliberative** Were you on the call this morning about Census? **Deliberative**  
 > **Deliberative** where is the DOJ in their analysis? If

they still have not come to a conclusion please let me know your contact person and I will call the AG.  
 Wilbur Ross

>  
 > Sent from my iPhone  
 >

>> On Aug 8, 2017, at 10:52 AM, Comstock, Earl (Federal) [PII] wrote:

>> [PII]  
 >> **Not Responsive / Deliberative**  
 >  
 >

September 8, 2017

To: Secretary Wilbur Ross

Fr: Earl Comstock

Re: Census Discussions with DoJ

In early May Eric Branstad put me in touch with Mary Blanche Hankey as the White House liaison in the Department of Justice. Mary Blanche worked for AG Sessions in his Senate office, and came with him to the Department of Justice. We met in person to discuss the citizenship question. She said she [REDACTED]  
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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 [REDACTED]  
[REDACTED]

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