



U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L St. NW
Washington, DC 20530

By ECF

October 30, 2018

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

Re: *State of New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF)

Dear Judge Furman:

Defendants oppose Plaintiffs' October 28 letter motion to compel the production of seven documents, No. 18-cv-2921, ECF No. 414, and have submitted the documents for in camera review.¹

1. DOJ Properly Withheld Mr. Uthmeier's Note to AAG Gore as Deliberative, Attorney-Client Privileged, and Subject to the Attorney Work Product Doctrine

As an initial matter, Plaintiffs' challenge to the withholding of DOJ 15197 should be denied as untimely. At the October 24 status conference, the Court expressed skepticism of Plaintiffs' argument but nevertheless permitted Plaintiffs to challenge DOJ 15197 until 10 AM on October 25. Plaintiffs ignored that deadline and now claim opportunistically that "new information" obtained during Acting Assistant Attorney General (AAG) John Gore's deposition justifies their untimely challenge. Contrary to Plaintiffs' suggestion, that testimony instead further supports DOJ's privilege assertions, as discussed below. Plaintiffs' request for production of this document should be denied.

DOJ 15197 is a handwritten note from James Uthmeier, at the time an attorney in the Office of General Counsel at the Department of Commerce, to AAG Gore. It accompanied the Uthmeier memo, which this Court has already found properly withheld as attorney-client privileged. Defendants have properly withheld the entirety of DOJ 15197 for three independently sufficient reasons: the deliberative process privilege, attorney-client privilege, and the attorney work-product doctrine.²

First, the note is subject to the deliberative process privilege, as it pre-dates DOJ's December 12, 2017 letter requesting reinstatement of a citizenship question (the "Gary letter"), and was considered by AAG Gore in drafting the Gary Letter. Decl. of John Gore (Gore Decl.) ¶ 4, Ex. A; Uncertified Draft Transcript of Dep. of John Gore 110:21-11:7, Ex. 5, ECF No. 414-5 (Uncertified Gore Transcript). Plaintiffs agree that AAG Gore received the note "[s]hortly after" September 22, 2018, ECF No. 414 at 2, and any assertion that DOJ's actual decision preceded the Gary Letter has been squarely refuted by AAG Gore's deposition testimony. *Cf.* Gore Decl. ¶ 4. The note also reflects Mr. Uthmeier's deliberations and pre-dates the Commerce's March 2018 decision to reinstate the

¹ Plaintiffs' motion challenges documents received by Mr. Neuman from Commerce on the grounds of waiver. In some circumstances, the version of the document in Mr. Neuman's possession differs slightly from the version in Commerce's possession, because the Commerce version of a document may contain an extra page or marginalia. Defendants provided the Court with the version of the documents in Mr. Neuman's documents.

² Contrary to Plaintiffs' suggestion, ECF No. 414 at 2, the note was fully identified by DOJ in the privilege log provided to plaintiffs on October 3, 2018, ECF No. 414, Ex. 1.

citizenship question. Plaintiffs' arguments that the actual decision pre-dates the March 2018 memorandum is not supported by the record. The note is thus classic deliberative-process material.

Second, the note is subject to the attorney-client privilege, as it sought AAG Gore's legal advice on a topic of common interest between Mr. Uthmeier and AAG Gore. The attorney-client privilege protects communications "for the obtaining or providing of legal advice" "that are intended to be, and in fact were, kept confidential." *Schaeffler v. United States*, 806 F.3d 34, 40 (2d Cir. 2015). The privilege may be waived if the communications are shared with "an outsider." *Id.* However, the privilege is not waived when it is shared with an entity "engaged in a 'common legal enterprise' with the holder of the privilege"—for example, where "multiple clients share a common interest about a legal matter." *Id.* (citations omitted). Litigation need not be in progress, as long as the communications are "made in the course of an ongoing common enterprise and intended to further the enterprise." *Id.* (citations omitted). These requirements are met for the note, which Mr. Uthmeier shared with AAG Gore as part of a common enterprise concerning the 2020 Census. Gore Decl. 5; Decl. of James W. Uthmeier (Uthmeier Decl.) ¶ 23, Ex. B.³

Third, the note is subject to the attorney work-product doctrine, as it contains Mr. Uthmeier's mental impressions in anticipation of litigation. Uthmeier Decl. ¶ 24. Nor would such protection be waived by AAG Gore's receipt of the note, because Mr. Uthmeier's and AAG Gore's interests were aligned such that sending the note did not increase the odds of widespread dissemination. *See Williams v. Bridgeport Music, Inc.*, 300 F.R.D. 120, 123 (S.D.N.Y. 2014) (noting that "work-product protection is not necessarily waived by disclosure to third parties," but is waived "only if the disclosure substantially increases the opportunity for potential adversaries to obtain the information" (citation omitted)). Here, AAG Gore was consulted for the express purpose of assisting Commerce, at a time when Mr. Uthmeier anticipated litigation. Uthmeier Decl. ¶¶ 23-24. (Contrary to Plaintiffs' suggestion, Commerce *did* anticipate litigation in this matter very early on. *See* ECF No. 414, Ex. 4, Bates No. 12476 (statement by Earl Comstock on August 9, 2017 that "this issue will go to the Supreme Court")).

Nor should the deliberative process or work-product doctrine be overcome as to the note. (Plaintiffs do not attempt a showing of need for the documents discussed below.) In considering the balancing factors to overcome the deliberative-process privilege, Plaintiffs contend that the note contains relevant evidence "not available from another source." ECF No. 414 at 3. But the note at best reflects Mr. Uthmeier's mental processes, and cannot shed light on Secretary Ross's intent, which is reflected in his March 2018 memorandum. Plaintiffs further ignore the voluminous discovery in this case, including the production of more than 140,000 pages of documents, hundreds of responses to requests for admissions, numerous interrogatory responses, and 11 depositions of high-level Commerce and DOJ employees. The suggestion that this note contains "important" evidence not already produced defies credulity. Furthermore, Plaintiffs acknowledge that "disclosure may inhibit future candid debate among agency actors," ECF No. 414 at 2, a critical factor weighing against disclosure. Finally, the note contains *opinion* work product, or documents that "tend[] to reveal the attorney's mental process" and Plaintiffs have not come close to meeting the high bar to overcome the "special protection" for such material. *United States v. Adlman*, 134 F.3d 1194, 1197 (2d Cir. 1998) (citing *Upjohn Co. v. United States*, 449 U.S. 399, 339 (1981)); Fed. R. Civ. P. 26(b)(3)(B) (requiring a

³ Plaintiffs characterize AAG Gore's testimony as "conflicting" because he initially stated that the note did not solicit legal advice, before immediately noting—twice—that he provided legal advice *in response* to the note, Uncertified Gore Transcript 108:5-109:8, and clarifying that it sought his legal advice, 110:14-19. And, contrary to Plaintiffs' suggestion, the fact that AAG Gore is not "counsel of record" and has not drafted briefs or pleadings in this case, Uncertified Gore Transcript 35:16-36:13, has no relevance to whether Mr. Uthmeier sought confidential legal advice from Mr. Gore before Plaintiffs filed their lawsuit.

court to “protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party’s attorney or other representative concerning the litigation.”).

2. Defendants Properly Withheld the Remaining Six Documents as Deliberative, Attorney-Client Privileged, and Subject to the Attorney Work Product Doctrine

Plaintiffs also challenge Commerce’s withholding of six documents (AR 2021, AR 3731, AR 10249, AR 10285, AR 10296, and COM_DIS 20920) incorrectly contending that any privilege attaching to the documents has been waived by their disclosure to A. Mark Neuman. ECF 414 at 1. Mr. Neuman is a subject-matter expert who worked on three censuses, served on the Census’s advisory committee and the Presidential Transition Team, and regularly advised Secretary Ross and other senior Commerce officials both during and after the transition as a trusted adviser. Uthmeier Decl. ¶¶ 3-4.

Five of the documents have been properly withheld pursuant to the deliberative-process privilege (AR 3731, AR 10249, AR 10285, AR 10296, and COM_DIS 20920). The privilege is not waived by providing them to Mr. Neuman because he functioned as a trusted adviser and consultant to the agency. Uthmeier Decl. ¶¶ 5-7. The deliberative-process privilege’s protections for intra-agency communications apply where an agency consults with an outside advisor who acts analogously to an agency employee (the “consultant corollary” doctrine). *See, e.g., Nat’l Inst. of Military Justice v. Dep’t of Def. (NIMJ)*, 512 F.3d 677, 679 (D.C. Cir. 2008) (opinions solicited by the Department of Defense from non-governmental academics were protected); *Formaldehyde Inst. v. HHS*, 889 F.2d 1118, 1120 (D.C. Cir. 1989) (comments sent to HHS from an epidemiology journal’s outside reviewers were protected); *cf. Dep’t of Interior v. Klamath Water Users Prot. Ass’n*, 532 U.S. 1, 10 (2001). This rule exists because “efficient government operation requires open discussions among all government policy-makers and advisors, whether those giving advice are officially part of the agency or are solicited to give advice only for specific projects.” *NIMJ*, 512 F.3d at 680. Plaintiffs do not disagree with this well-established rule, but argue that Mr. Neuman was not acting as a consultant. But, having successfully argued to the Court that Mr. Neuman was “a key external advisor on legal and policy aspects of the citizenship question . . . whose input Defendants solicited on multiple occasions and through multiple, senior points of contact,” in connection with seeking his deposition, ECF No. 338 at 1, 3, Plaintiffs should be judicially estopped from now contending that Mr. Neuman is not a trusted advisor covered by the “consultant corollary.” *See Intellivision v. Microsoft Corp.*, 484 F. App’x 616, 619 (2d Cir. 2012) (citing *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001)).

Three of the documents are shielded by the attorney work-product doctrine (AR 10249, AR 10285, and AR 3731), which is likewise unaffected by Mr. Neuman’s access. As discussed above, work product privileged is generally waived “only if the disclosure substantially increases the opportunity for potential adversaries to obtain the information,” *Williams*, 300 F.R.D. at 123—for example, when a business shares a memorandum with a government investigator. Here, Mr. Neuman was clearly not an adversary to the Department of Commerce, indeed he was a trusted adviser and these documents were shared with him in anticipation and furtherance of litigation. Uthmeier Decl. ¶ 8, 21.

Four of the documents are withheld pursuant to the attorney-client privilege (AR 2021, AR 10249, AR 10285, and AR 3731). That privilege also has not been waived by sharing the documents with Mr. Neuman. As discussed above, although sharing attorney-client materials with “an outsider” may waive the privilege, no waiver is effected if the entity is acting toward a common enterprise with the holder of the privilege. *Schaeffler*, 806 F.3d at 40. Here, because Mr. Neuman was operating as a trusted advisor to Commerce, he and Commerce were engaged in a common enterprise of seeking to improve the 2020 Census. Uthmeier Decl. ¶ 7, 19; *cf. Trs. of Elec. Workers Local No. 26 v. Tr. Fund Advisors*, 266 F.R.D. 1, 7-9 (D.D.C. 2010). Contrary to Plaintiffs’ argument, the common-interest doctrine does not apply only when the recipient is a “lawyer, paid advisor, or fiduciary,” ECF No. 414 at 1, indeed, in *Schaeffler* the recipient was a consortium of banks. *Schaeffler*, 806 F.3d at 38.

Conclusion

For the foregoing reasons, Defendants request that this Court deny Plaintiffs' letter motion.

Respectfully submitted,

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CC: All Counsel of Record (by ECF)

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

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

Defendants.

18-CV-2921 (JMF)

DECLARATION OF JOHN GORE

I, John Gore, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am the Acting Assistant Attorney General for Civil Rights. As the Acting Assistant Attorney General, I am the senior management official of the Civil Rights Division. As a part of my official duties, I am responsible for the overall supervision of the Division's enforcement of the federal statutes and regulations that fall within the Division's mission, including the Voting Rights Act of 1965. I report directly to the Acting Associate Attorney General. 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 Department of Justice's (DOJ) assertion of the deliberative process privilege over a document in the above-captioned case.

2. Based upon my review and personal consideration of the document, I hereby formally assert the deliberative process privilege on behalf of DOJ for document DOJ 15197.

3. DOJ 15197 is a handwritten note provided to me soon after September 22, 2017, by James Uthmeier, an attorney in the Office of General Counsel at the Department of Commerce. This note was accompanied by a memorandum that also was prepared by Mr. Uthmeier.

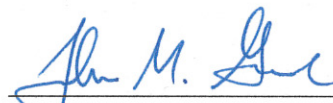
4. DOJ 15197 constitutes part of DOJ's deliberative process concerning whether to request that the Census Bureau reinstate a citizenship question on the decennial census. The note, which contains deliberative material, was provided to me in advance of DOJ's December 12, 2017 final decision to make such a request, and was considered by DOJ in making that determination. DOJ is responsible for policymaking in a variety of areas, including law enforcement and, as applicable here, enforcement of the Voting Rights Act. In order to effectively carry out these important responsibilities, DOJ at times relies on intra-agency information and opinions. Disclosure of this sensitive intra-agency material would discourage open and candid communication and would chill DOJ's policymaking process. These concerns are especially heightened in highly controversial areas where, as this litigation demonstrates, an intense degree of scrutiny by the public would ultimately be aimed at inputs from other agencies.

5. DOJ 15197 was also provided to me in service of my role providing legal advice to the Attorney General of the United States, and James Uthmeier's role providing legal advice to Secretary Ross. The note contained preliminary legal analysis, sought my legal advice, and also was sent to me in service of my and Mr. Uthmeier's common interest in advising our agencies concerning the possibility of reinstating a citizenship question on the 2020 Census, and in enabling the Department of Commerce, as an agency of the United States, to complete its duties in a lawful fashion. The information in the note was intended to be kept confidential, and was, in fact, kept

confidential.

I declare under penalty of perjury that the foregoing is true and correct.

Washington, DC
October 30, 2018



John Gore
Acting Assistant Attorney General
United States Department of Justice

EXHIBIT B

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 JAMES W. UTHMEIER

I, James W. Uthmeier, 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 serve as a Senior Advisor and counsel to the Office of the Secretary at the U.S Department of Commerce (“DOC” or “Department”). I am also the Department’s Regulatory Reform Officer. In these capacities I am responsible for assisting with key Department initiatives including regulatory reform, space commercialization, infrastructure permitting and environmental

review, and economic development, among others. Before my current role, I served as Senior Counsel to the General Counsel within DOC and as a member of the Presidential Transition Team for Commerce. 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. I have reviewed the following documents, of which all or portions have been provided to A. Mark Neuman: AR 2021, AR 3731, AR 10249, AR 10285, AR 10296, and COM_DIS 20920. All six of these documents were withheld in full. AR 2021 is a draft iteration of a legal memo from the Office of General Counsel (OGC). AR 3731 is an initial draft of a legal memo from Census' Chief Counsel's office. AR 10249 is an initial draft of a legal memo from the Office of General Counsel to Under Secretary for Economic Affairs Karen Dunn Kelley. AR 10285 and AR 10296 are draft lists of documents to be included in the Secretary's decision making process concerning the possibility of reinstating a citizenship question on the 2020 census. COM_DIS 20920 is a draft list of questions raised by the Secretary and various Commerce advisors for further clarification after reviewing the Census Bureau's January 19 memo.

MR. NEUMAN'S ROLE AT THE DEPARTMENT

3. Mr. Neuman has extensive experience working on Census matters. He advised previous Secretaries of Commerce on Census issues, including Secretary Mosbacher, Secretary Daley, and Secretary Evans. Mr. Neuman also worked on the Census Executive Staff during the 1990 Decennial Census and worked closely with seven different directors of the Census. Mr. Neuman has worked with most of the stakeholders in the Decennial Census: the Bureau, the Department of Commerce, Congressional Oversight and Appropriations Committees, GAO, NAS, the Census Advisory Committees, and numerous other stakeholders including NALEO, MALDEF, and the Leadership Conference on Civil Rights.

4. As such, Mr. Neuman was chosen by the Administration to be the Department of Commerce Presidential Transition team member assigned to the Census, beginning December 21, 2016. In this role Mr. Neuman was responsible for briefing the Secretary on the wide number of Census priorities and be the initial liaison between the Office of the Secretary and the Census Bureau. Mr. Neuman created briefing materials and provided background information to the Secretary.

5. The Secretary of Commerce consulted Mr. Neuman as an expert advisor on several Census Bureau matters after Mr. Neuman proved himself to be a knowledgeable and trustworthy Census expert. Mr. Neuman's significant institutional knowledge and established relationship with the Secretary made him one of the Secretary's most senior advisors on Census topics. Following the transition, he was frequently solicited by the Secretary and DOC officials to answer questions regarding Census policy, programmatic, and budget considerations. He also met with Secretary Ross and DOC officials on multiple occasions to discuss the black-white undercount and related DOC efforts to achieve a more complete and accurate 2020 Census. As such, Mr. Neuman was solicited for advice on predecisional matters with the mutual understanding that the conversations were confidential and in furtherance of the agency's deliberative process.

6. Further, Mr. Neuman was affirmatively consulted due to his extensive experience in the Census Bureau working on the 1990, 2000, and 2010 Decennial Censuses; as a former member of a Census Bureau advisory committee; and his lengthy government policy experience.

7. In fulfilling this advisory role, the Department understood that Mr. Neuman did not provide advice stemming from his own or any client's interest, but rather as a resource for the Secretary of Commerce on Census issues. Mr. Neuman's advisory capacity was modeled on the previous advisory role performed by John Thompson (former Census Bureau Director) for Secretary Carlos Gutierrez during President George W. Bush's second term.

8. As such, Mr. Neuman was consulted during the Secretary's deliberations in response to the Department of Justice's request. During this process, Mr. Neuman was made aware of the possibility of litigation following the Secretary's decision.

DELIBERATIVE PROCESS PRIVILEGE

9. DOC formally asserts the deliberative process privilege over the following six documents: AR 3731, AR 10249, AR 10285, AR 10296, and COM_DIS 20920.

10. I have personally reviewed each of these documents. The documents withheld pursuant to the deliberative process privilege contain predecisional deliberative discussions among DOC personnel that predate a final decision on whether to reinstate a citizenship question on the 2020 decennial census.

11. AR 3731 is a memo from the Census Chief Counsel's office and was created to communicate legal advice and discuss the legal authority for the Secretary to conduct the Decennial Census and consider the Department of Justice's request. It contains draft analysis, recommendations, and advice concerning the legal authority for the Department of Justice's request for block level CVAP data. This memo was created to assist in the Secretary's decision-making process as it provided legal analysis of potential actions the Secretary could take in response to the DOJ request.

12. AR 10249 is a draft OGC memo to Under Secretary Karen Dunn Kelley (AR 10249). It conveys legal advice to her regarding censuses conducted around the world. It contains draft legal analysis and some factual material regarding census practices in other countries. However, the material is inextricably intertwined with the legal analysis and reflects the attorney's selection of what she viewed to be relevant to her client's request for advice and for her provision of her advice to that client. This memo was created to assist in the Secretary's decision-making process

as it provided legal analysis of potential actions the Secretary could take in response to the DOJ request.

13. AR 10285 is a predecisional draft list of administrative record documents considerations. This draft list is a product of a legal analysis of the Administrative Procedure Act and lists the documents the Secretary had reviewed in his decision-making process thus far. The document was explicitly created as part of the deliberative process to track the views and information collected for the Secretary's decision.

14. AR 10296 is another predecisional draft list of administrative record documents and considerations and is withheld as deliberative. This draft list begins with a description of the Secretary's deliberative process and lists the documents the Secretary had reviewed in his decision-making process thus far. The document is explicitly created as part of the deliberative process to track the views and information collected for the Secretary's decision.

15. COM_DIS 20920 is a draft list of questions raised by various Commerce advisors for further clarification after reading the January 19 Census Memo. These questions are indisputably part of the deliberative process as the Secretary considered both the questions and the answers the Census Bureau was able to provide in response during his decision-making process.

16. These documents would have been discussed during DOC senior leadership deliberative meetings at which Mr. Neuman was an occasional participant and provided consultation in his role as a trusted adviser. Mr. Neuman was invited to attend these meetings based on his role as a trusted advisor to the Commerce Department, and the Commerce Department solicited his opinions in its deliberations regarding the reinstate of a citizenship question on the 2020 census. Mr. Neuman received the six challenged documents from the Department of Commerce in his capacity as a trusted advisor and for the purposes of facilitating the Department's deliberative process concerning the citizenship question.

17. Disclosure of the views and comments contained in the five deliberative documents, which include draft legal memos and other draft documents, would unquestionably discourage open and candid discussion by individuals responsible for making agency decisions. Free and frank exchanges of ideas, opinions, and impressions among DOC personnel and trusted consultants are critical to the agency's function, and release of these materials could chill the frank inter- and intra-agency exchanges of ideas pertaining to complex and sensitive agency decisions, which would 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. Public disclosure would further chill the agency's willingness to seek outside advice from trusted advisers for fear that such predecisional consultations and deliberations would be subject to premature public scrutiny. This in turn would degrade the quality of the decision-making process. 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.

18. For the foregoing reasons, release of these previously withheld documents and drafts prepared by DOC and the Census Bureau and provided to Mr. Neuman would harm DOC's deliberative process by revealing preliminary views and opinions, discouraging open, candid

deliberation on the issues Mr. Neuman received these documents from the Department to facilitate the deliberative process and it was the Department's understanding and expectation that by providing these documents to Mr. Neuman, the documents would retain their confidential nature.

ATTORNEY-CLIENT PRIVILEGE

19. DOC has asserted—and continues to assert—the attorney-client privilege over the following of the six documents: AR 2021, AR 10249, AR 10285, and AR 3731. These documents were shared with Mr. Neuman by DOC in recognition of the common interest he shared with DOC in developing and improving the 2020 Census. DOC disclosed these documents to Mr. Neuman to facilitate DOC's Office of General Counsel's legal advice to the Secretary concerning the possible reinstate of a citizenship question, and the documents were provided to Mr. Neuman with DOC's understanding and expectation that these documents would maintain their confidential nature.

20. AR 2021 is an OGC memo that contains draft analysis, recommendations, and advice concerning the legal considerations in Administrative Procedure Act cases and communicates legal advice. It was created to advise clients and is properly withheld under the attorney-client privilege.

ATTORNEY WORK-PRODUCT DOCTRINE

21. DOC has asserted—and continues to assert—the attorney-work product doctrine over the following of the six documents: AR 10249, AR 10285, and AR 3731. These documents were prepared in anticipation of litigation concerning the citizenship question, and DOC shared these documents with Mr. Neuman in his role as a consultant working with DOC toward a common aim, and with the understanding that these documents would maintain their confidential nature.

22. I am also familiar with a handwritten note, referred to in this litigation as DOJ 15197, that I authored and provided to Acting Assistant Attorney General John Gore shortly after September 22, 2017.

23. I wrote and provided the note to AAG Gore for the purpose of obtaining his legal review and assessment, enabling me to provide legal advice to Secretary of Commerce Ross. I understood AAG Gore and I to be engaged in a common enterprise regarding the 2020 decennial census.

24. This note includes my mental impressions written in anticipation of litigation concerning the possible future reinstatement of a citizenship question to the Census.

Washington, DC
October 30, 2018



James W. Uthmeier
Senior Advisor
Office of the Secretary
United States Department of Commerce