

**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.

18-CV-2921 (JMF)

NEW YORK IMMIGRATION
COALITION, et. al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et. al.,

Defendants.

18-CV-5025 (JMF) (Consolidated Case)

NOTICE OF FILING OF DEPOSITION DESIGNATIONS FOR EARL COMSTOCK

Plaintiffs hereby file with the Court the synopsis of deposition excerpts for Earl Comstock (Exhibit 1), and the deposition excerpts for Earl Comstock that will be offered as substantive evidence (Exhibit 2).

Respectfully submitted,

By: /s/ Dale Ho

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Summary: Earl Comstock (August 30, 2018)

Earl Comstock has no education, training or experience in voting rights law, redistricting, or election law. Tr. 14-15; 192-194. He started working at the Commerce Department on January 31, 2017. His current title is Deputy Chief of Staff and Director of Policy, and he reports to Secretary Ross. Tr. 33-40. No one from the Commerce Department was more involved than Comstock in the citizenship question. 340-341.

Comstock first heard about the possibility of adding a citizenship question to the Census from Secretary Ross shortly after the Secretary was confirmed in February 2017. Tr. 54-55. Comstock testified that Ross was interested in adding the citizenship question to the 2020 census. Tr. 137-146 and Ex. 9. By late July 2017, Comstock had been working on the citizenship question for months. Tr. 209-210. In March 2017, Ross asked Comstock whether noncitizens are counted for apportionment purposes. Tr. 62-66, 68, 78-82, 205-209 & Ex 2. Comstock testified that adding the citizenship question is a good idea to determine “how many undocumented citizens there are.” Tr. 262-264. Comstock did not review any materials in concluding that the citizenship question should be added, though he conducted an internet search to find out if other countries ask about citizenship on their censuses. Tr. 104, 109-110.

Comstock testified that did not know why Secretary Ross wanted to add the citizenship question to the Census, never had a discussion with the Secretary about why he wanted it added, and did not need that information in order to respond to Secretary Ross’s request to get the question added to the Census. Comstock Tr. 105, 112-113, 253-268, 285-287. Comstock believed his job was to find a rationale for adding the citizenship question. Tr. 266. Comstock reached out to DOJ, which referred him to DHS. DHS declined to request the citizenship question. This was reported to Ross, who then reached out directly to Attorney General Jeff Sessions about the citizenship question. Tr. 166-186, 213-218, 221-223, 269-273, 275-277, 277-285, 297, 337, 347-348, and Exs. 13-15, 19-24 and 27. In spring 2017, Ross was frustrated that there was no request for citizenship question yet on the Census. Tr. 196-197. AG Sessions agreed to look into the citizenship matter. Tr. 233 and Ex. 15.

Comstock did not discuss the citizenship question with people in DOJ’s Voting Section. Tr. 409-412. He is not aware of any Voting Rights Act cases DOJ declined to bring because of the lack of block-level CVAP data. Tr. 416. DOJ was not informed of the Census Bureau’s recommendation to use administrative records to satisfy their request. Tr. 419-422. The Commerce Department did not send DOJ the Census Bureau analyses of their request. Tr. 422-425.

Comstock and James Uthmeier were the principal drafters of Ross’s March 2018 decision memorandum. Tr. 242-243 and Ex. 30. The first draft of the June 21, 2018 supplemental memo came from DOJ. Tr. 94-97, 99, 100-102, 247-248 and Ex. 5. He does not know who the officials referenced in the memorandum are. Tr. 111-114 and Ex. 5. Comstock agrees that the Census Bureau never revised or withdrew their analysis as stated in the Abowd memo. Tr. 309-323. Comstock drafted the portion of the decision memo about Alternative D. Tr. 429-432 and Ex 30. He thought Alternative D made sense given his own experience and Ross’s intelligence. Tr. 433-434. Comstock was the primary assembler of the 35 questions that went to the Census Bureau. Tr. 369-372 and Ex. 31.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

vs. Case No. 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,
Defendants.

Washington, D.C.

Thursday, August 30, 2018

Deposition of:

EARL COMSTOCK

called for oral examination by counsel for
Plaintiffs, pursuant to notice, at the office of
Arnold & Porter, 601 Massachusetts Avenue NW,
Washington, D.C., before KAREN LYNN JORGENSEN,
RPR, CSR, CCR of Capital Reporting Company,
beginning at 9:08 a.m., when were present on
behalf of the respective parties:

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(Exhibits attached to transcript.)

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A P P E A R A N C E S

On behalf of New York Immigration
Coalition, CASA De Maryland, American-Arab
Anti-Discrimination Committee, ADC Research
Institute and Make the Road New York:
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ARNOLD & PORTER

REDACTED

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Daniel Grant, Esquire
COVINGTON & BURLING

REDACTED

On behalf of Los Angeles Unified School District:
Brian Park, Esquire (Telephonically)
DANNIS WOLIVER KELLEY

REDACTED

On behalf of County of Los Angeles:
David I. Holtzman, Esquire
HOLLAND & KNIGHT

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6 John C. Yang, Esquire
7 ASIAN AMERICANS ADVANCING Justice

8 REDACTED

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10 Ezra Rosenberg, Esquire
11 Dorian Spence, Esquire
12 LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

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16 Gabrielle Boutin, Esquire
17 R. Matthew Wise, Esquire (Telephonically)
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

18 REDACTED

1 On behalf of State of New York:
2 Danielle Fidler, Esquire
3 Elena Goldstein, Esquire
4 Matthew Colangelo, Esquire
5 Alex Finkelstein, Esquire
6 ASSISTANT ATTORNEY GENERAL
7 ENVIRONMENTAL PROTECTION BUREAU

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On behalf of Defendants:
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Joshua Gardner, Esquire
U.S. DEPARTMENT OF JUSTICE

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Michael Cannon, Esquire
David M.S. Dewhirst, Esquire
U.S. DEPARTMENT OF COMMERCE, OFFICE OF THE
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LITIGATION

REDACTED

Michael Walsh, Jr., Esquire
DEPUTY GENERAL COUNSEL

REDACTED

1 VIDEOGRAPHER: Dan Reidy

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P R O C E E D I N G S

WHEREUPON,

VIDEOGRAPHER: Good morning. We are going on the record at 9:01 a.m. on Thursday, August 30, 2018. Please note that the microphones are sensitive and may pick up whispering, private conversations and cellular interference. Please turn off all cell phones or place them away from the microphones, as that can interfere with the deposition audio. Audio and video recording will continue to take place unless all parties agree to going off the record.

This is Media Unit 1 of the video recorded deposition of Earl Comstock to be taken by counsel for the plaintiff in the matter of the New York Immigration Coalition, et al., v. The United States Department of Commerce, et al. This case is filed in the United States District Court for the Southern District of New York. This deposition is being held at the law office of Arnold & Porter located at 601 Massachusetts Avenue Northwest, Washington, D.C. 20001.

My name is Dan Reidy from the firm Veritext Legal Solutions, and I am the videographer. The court reporter is Karen Jorgenson from Veritext Legal Solutions.

I am not authorized to administer an oath. I am not related to any party in this action, nor am I financially interested in the outcome.

Also, counsel appearances will be noted on the stenographic report rather than orally at this time.

Will the court reporter please swear in
the witness? Global objecti

Global objection
401/403

EARL COMSTOCK, 401/403
called as a witness, and having been first duly
sworn, was examined and testified as follows:

THE WITNESS: I do.

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17 course that covers demography.

18 Q Okay. Do you have any education,
19 training or experience in voting rights law?

20 A No.

21 Q Do you have any education training or
22 experience in redistricting?

1 A No.

2 Q Do you have any education, training or
3 experience in election law?

4 A Again, other than as an attorney and the
5 ability to read laws, no.

6 Q Okay. By as an attorney and the ability
7 to read laws, you mean if you needed to read a
8 law, you could?

9 A Meaning if I had read a statute related
10 to those, then I would be able to understand it,
11 yes.

12 Q But you've never studied election law?

13 A I've never studied election law.

14 Q You've never practiced election law?

15 A No.

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12 When did you become the director of

13 policy?

14 A On January 31st --

15 Q January 31st.

16 A -- 2017.

17 Q The -- was January 31, 2017 your first

18 day in the office at the Commerce Department?

19 A Yes. If I'm recalling correctly, that

20 that was Monday, yes. It was the 30th or 31st.

21 It was whatever the Monday was at the end of

22 January.

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12 Q Okay. You mentioned that your title is

13 deputy chief of staff and director of policy.

14 When did you became deputy chief of

15 staff?

16 A In April of this year.

17 Q So from January 30, 2017 until

18 April 2018, you were director of policy?

19 A Correct.

20 Q Is director of policy a position within

21 the Office of the Secretary?

22 A Yes.

1 Q And is that the same as director of
2 policy and strategic planning?

3 A Correct.

4 Q Who do you report to?

5 A The Secretary.

6 Q Directly to the Secretary?

7 A Well, and to the chief of staff and to
8 the deputy secretary.

9 Q Okay. Was there a chief of staff on
10 January 30, 2017?

11 A There was not.

12 Q Okay. So until there was a chief of
13 staff, who would you say you reported to?

14 A Well, until the Secretary came on board,
15 sort of no one.

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3 Q So you mentioned you work on whatever the
4 Secretary wants you to work on?

5 A Correct.

6 Q How does he identify matters that he
7 wants you to work on?

8 A He says, Earl, can you get this done? Or
9 we attend this meeting, and he says, can you
10 follow up on that?

11 Q And how do you keep the Secretary
12 informed about what you are doing on important
13 matters or on assignments that he's given you?

14 A By email, by oral briefing, and sometimes
15 by memos.

16 Q How do you decide whether you're going to
17 update Secretary Ross by email, by briefing or by
18 memo?

19 A Just depends on the time frame, the speed
20 of which I need to get something to him, REDACTED

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13 Q You mentioned that the individuals in the
14 policy office monitor specific areas; is that
15 right?

16 A Correct.

17 Q Do you have somebody assigned to monitor
18 the Census Bureau?

19 A Yes.

20 Q Who is that?

21 A David Langdon.

22 Q And what is David Langdon's background?

1 A He is in the Economic & Statistics
2 Administration and knows -- knows the people down
3 there, knows how to get stuff done, so --

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16 Q When did you first hear about the notion
17 of adding a question about citizenship to the
18 decennial census?

19 A Sometime in -- shortly after the
20 confirmation.

21 Q And who did you hear it from?

22 A The Secretary.

1 Q And the Secretary was confirmed on
2 February 28, 2017; is that right?

3 A I -- like I said, you'd have to confirm
4 that date, but I think that was the date, yes.

5 Q And what did the Secretary tell you about
6 the idea of adding a question on citizenship to
7 the census during that first conversation shortly
8 after his confirmation?

9 A Again, the exact time frame of the
10 conversation, I can't tell you. It was sometime
11 in that spring period. I don't recall the
12 details. I think he simply inquired as to why
13 don't we have a citizenship question on the
14 census.

15 Q Okay. And what did you say to him when
16 he inquired?

17 A Short answer, I don't know. I'll check.

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10 Q And then Mr. Langdon then says, "Earl is
11 very" -- underlined very -- "interested and thinks
12 the Secretary will be, as well."

13 Do you see that?

14 A Yes.

15 Q On February 2nd of 2017 would have been
16 your fourth day on the job; is that right?

17 A Yep.

18 Q Okay. And do you recall telling
19 Mr. Langdon that you were very interested in
20 Congressional notification of decennial ACS
21 topics?

22 A I recall telling him that we were very

1 interested in the census and getting a briefing on
2 it.)

3 Q Okay.

4 A I don't specifically recall that, but --

5 Q Were you very interested in the decennial
6 topics on February 2, 2017?

7 A What probably would have caught my
8 attention is if we had to notify Congress about
9 something, I would want to make sure we were up to
10 speed on what we needed to notify them about.

11 Q As of this date, February 2, 2017, do you
12 recall if you had already had discussions
13 regarding adding a citizenship question to the
14 census?

15 A I don't recall having a discussion before
16 that.

17 Q Mr. Langdon's email says, quote, it would
18 make sense for John Thompson to touch on this
19 topic in his overview briefing and then to have a
20 follow-up briefing very soon.

21 Was Mr. Thompson the Census Bureau
22 director at the time?

1 A Yes.

2 Q And did that overview briefing take place
3 that's referred to in this email?

4 A I imagine it did.

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13 Q Were you shown this email in preparation
14 for your deposition today?

15 MR. GARDNER: I'm going to object and
16 instruct the witness not to answer on the grounds
17 of attorney work product.

18 I'm happy to let you answer when was the
19 last time you saw the document.

20 But you're asking about documents counsel
21 may have shown that would be protected.

22 BY MR. COLANGELO:

1 Q When's the last time you saw this
2 document, Mr. Comstock?

3 A Yesterday.

4 Q And do you see the subject line of this
5 email is your question on the census?

6 A Yep.

7 Q Okay. And Secretary Ross was confirmed
8 on February 28th, I think we agreed; is that
9 right?

10 A Like I said, if that's the date, yes.

11 Q Okay. So this would have been
12 Secretary Ross's eleventh day on the job as
13 Commerce Secretary, give or take?

14 A Approximately, yes.

15 Q And the subject line of this email is
16 your question on the census?

17 A Right.

18 Q What was the Secretary's question on the
19 census?

20 A He appeared to have asked whether
21 undocumented people were counted in the census.

22 Q Okay. And how did he ask you that

1 question?

2 A I don't recall. Probably at a meeting,
3 possibly following up on a census briefing. I
4 don't know.

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10 Q Okay.

11 A By the way, I wanted to add one point.
12 On the prior document, you need to understand that
13 at that time, there were a number of questions
14 that the prior administration had requested be
15 placed, potentially, on the census that would have
16 been involved in that notification. So that would
17 have been a reason of why I would have been
18 interested in that, on sexual orientation and
19 gender identity. So that was an issue that was
20 very at the forefront at the time of what to do
21 about those requests.

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5 Q Okay. Did he ask you whether noncitizen
6 people were counted for apportionment purposes?

7 A Well, based on the answer, it appears he
8 might have.

9 Q Appears he might have or appears he did?

10 A I couldn't tell you the answer on that.

11 Q Okay.

12 A I don't recall the question, so --

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19 Q So you think it's likely that his
20 question was about whether undocumented immigrants
21 were counted for apportionment purposes?

22 A That's entirely possible, but he might

1 have also just asked do we count undocumented
2 persons, and this is what I found on the Census
3 website.

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12 Q This link you've identified at
13 www.census.gov, that's the Census Bureau's
14 frequently asked web page for Congressional
15 apportionment; is that right?

16 A Again, without pulling it up, I couldn't
17 tell you specifically what it says.

18 Q Okay. If I represent to you that if you
19 pulled up that website, it would say frequently
20 asked questions for Congressional apportionment,
21 would that assist you?

22 A I'd be happy to take your word for it.

1 Q So does that assist you in recalling that
2 the Secretary asked whether noncitizens were
3 counted for apportionment purposes?

4 A And I have no recollection of the
5 question, so I can only go by the answer.

6 Q Okay. The email also includes a blog
7 post from the Wall Street Journal; is that right?

8 A Uh-huh.

9 Q Okay. And your email to the Secretary
10 says that this blog post, quote, confirms that
11 neither the 2000s, nor the 2010 census asked about
12 citizenship?

13 A Correct.

14 Q So does that lead you to conclude that
15 the Secretary asked about whether the decennial
16 census asks about citizenship?

17 A That would be a reasonable supposition,
18 based on the response.

19 Q And this blog post is called the pitfalls
20 of counting illegal immigrants; is that right?

21 A Yep.

22 Q And were you concerned on March 10, 2017

1 about counting illegal immigrants?

2 A I -- no, not personally.

3 Q Was the Secretary concerned on
4 March 10, 2017 about counting illegal immigrants?

5 A Again, I have no recollection of the
6 question, so I couldn't speculate as to what his
7 concern was.

8 Q But you testified that a significant part
9 of your job function involves answering questions
10 from the Secretary on issues that matter to him,
11 right?

12 A Correct.

13 Q And if he asked you a question, you would
14 try to be responsive?

15 A Generally, yes.

16 Q You wouldn't ordinarily send him
17 information that wasn't responsive to a question
18 he asked, would you?

19 A Not -- not characterized this way, no.

20 Q So you testified a minute ago that the
21 Secretary -- that you first heard about the notion
22 of adding a question about citizenship to the

1 census when the Secretary raised it with you
2 shortly after his confirmation. Does this email
3 indicate to you that it was by March 10th that the
4 Secretary first raised it with you?

5 A I wouldn't necessarily draw that
6 conclusion from this email.

7 Q Would you draw the conclusion that it was
8 later than March 10?

9 A No, I wouldn't. Again, this -- this
10 question does not directly address -- it's a
11 question about how -- who do we count, not whether
12 or not -- and whether there's a citizenship
13 question. So I don't know at this point whether
14 he indicated he was interested in such a question,
15 other than getting the factual information.

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17 Q Sure. The highlighted line says, "No
18 major government survey, including the decennial
19 census now underway, asks Americans about their
20 citizenship status."

21 And you see that this blog post is dated
22 May of 2010, correct?

1 A Uh-huh.

2 Q So the decennial census now underway, do
3 you understand we refer to --

4 A Would have been the 2010, yeah.

5 Q Remember to please wait for me to finish
6 my question before you answer.

7 A Sure.

8 Q Did you highlight this line?

9 A Well, unless you did, then I'm assuming I
10 did.

11 Q I can represent to you we did not
12 highlight this line.

13 A Okay. Then I will assume that it was
14 highlighted in the email.

15 Q And why did you highlight this line of
16 the blog post before sending it to the Secretary?

17 A Well, it appears that the question was
18 whether or not the citizenship question had been
19 asked, at least on the 2010 census, and so I'm
20 highlighting for him where in this article, so he
21 doesn't have to read the whole thing that I found
22 the information responsive to his question, which

1 is a statement by somebody in Wall Street Journal,
2 which is, you know, in some circles considered a
3 reasonably accurate paper. Stating that it was
4 not collected in the 2010 census.

5 Q Okay. And take a look -- let's do that
6 again. We had some interference from the
7 conference line.

8 Take a look at the second page of
9 Comstock Exhibit 2. This is the page marked 2522.

10 A Yep.

11 Q And, again, about two-thirds of the way
12 down the page, there's another highlighted line.

13 Do you see that?

14 A I -- yep.

15 Q I'll represent to you this line was
16 highlighted as the documents were produced to the
17 plaintiffs in this lawsuits. We did not
18 highlight.

19 A Okay.

20 Q That line reads --

21 A I can't read what it says.

22 Q -- "Many more foreign-born residents were

1 counted in 2000 than was expected based on annual
2 estimates produced by the Bureau."

3 Do you see that line?

4 A Yep. I'm -- I see the highlighted line,
5 but I'm taking it at your word that that's what it
6 says.

7 Q Okay. The -- do you know why you
8 highlighted that line when you sent this blog post
9 to the Secretary?

10 A Again, it would appear to indicate that
11 the census may have underestimated the number of
12 undocumented folks.

13 Q Okay. So you told me that the Secretary
14 first raised the idea of adding a citizenship
15 question to the census shortly after he was
16 confirmed. You've testified that on March 10th,
17 you emailed him information showing that
18 undocumented residents are included in the
19 apportionment counts. You've testified on
20 March 10th, you emailed him a blog post from the
21 Wall Street Journal highlighting a line that no
22 major government survey asks American's about

1 their citizenship status.

2 Does that help you remember when the
3 Secretary first expressed interest in adding a
4 citizenship question to the decennial census?

5 A No.

6 Q And does that help you remember that it
7 was no later than March 10th that the Secretary
8 first asked you that question?

9 A Again, you're speculating as to when he
10 asked. But he appeared to have inquired about
11 some relevant aspects of it --

12 Q Okay.

13 A -- on March 10th.

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Q When's the first time you saw this document?

A Probably when we reviewed a draft in the Justice Department.

Q Okay. When was that?

A I couldn't tell you the date.

Q Was it near in time to the date below Secretary Ross's signature, which is June 21, 2018?

A I'd say that's likely, yes.

Q When's the last time you saw this document?

A Right now.

Q When's the last time before right now that you saw this document?

A I think maybe yesterday. I can't recall.

Q Okay. Did you draft this memo?

A I did not draft this memo, no.

1 Q Did you assist in drafting this memo?

2 A I provided some edits to this memo.

3 Q Okay. Who else assisted in providing
4 edits to the memo?

5 A The Office of General Counsel.

6 Q Who in the Office of General Counsel?

7 A I believe Mike Walsh.

8 Q Anyone else?

9 A There may have been other counsel. I
10 don't know.

11 Q Did Peter Davidson provide edits to this
12 memo?

13 A It's entirely possible he did.

14 Q Did James Uthmeier provide edits to this
15 memo?

16 A It's possible, yes.

17 Q The second sentence of this memo says,
18 "Soon after my appointment as Secretary of
19 Commerce, I began considering various fundamental
20 issues regarding the upcoming 2020 census,
21 including funding and content. Part of these
22 considerations included whether to reinstate a

1 citizenship question, which other senior
2 administration officials had previously raised."

3 A Yes.

4 Q Do you see that?

5 A I do.

6 Q Do you recall when -- strike that.

7 Do you know what time period the
8 Secretary is referring to in this memo when he
9 says, "Soon after my appointment, I began
10 considering various fundamental issues"?

11 A Well, it appears that he would be talking
12 about spring of 2017.

13 Q And the Secretary says in this memo, "My
14 staff and I thought reinstating a citizenship
15 question could be warranted."

16 Do you see that line?

17 A Yep.

18 Q Okay. Who is the Secretary referring to
19 when he says my staff and I?

20 A That probably includes me and could
21 include other staff.

22 Q Which other staff?

1 A Other staff involved in this process
2 would include James Uthmeier, Mike Walsh,
3 Wendy Teramoto, the Census staff. You know,
4 again, the entire department that works for him,
5 so --

6 Q Okay. He refers in that line to, "My
7 staff and I thought reinstating a citizenship
8 question could be warranted."

9 Is that right?

10 A Right. So he's likely talking about me.
11 And, again, whether he discussed this with
12 Eric Branstad, I have no idea. Izzy Hernandez was
13 working on this for a while, so he might have
14 talked to him about it. And then, obviously,
15 James Uthmeier was working on this. Ellen Herbst,
16 whether he discussed it with her, I don't know.

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Q Okay. I thought you said it came over

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from the Justice Department.

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A It did, the first draft.

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13 Q Did you discuss the draft of this memo

14 with anybody outside the Office of the General

15 Counsel at Commerce?

16 A Other than when the Secretary signed it,

17 no.

18 Q Okay. Tell me who you discussed it with

19 when the Secretary signed it?

20 A The Secretary.

21 Q And what did you discuss with him when he

22 signed it?

1 A Mr. Secretary, the Justice Department
2 recommends that we file this supplemental memo,
3 and so we recommend you sign it.

4 Q And did he read it when you showed it to
5 him?

6 A I believe he did, yes.

7 Q Had you shown it to him before that
8 conversation?

9 A I -- I don't know.

10 Q Do you know if OGC had shown it to him
11 before that conversation?

12 A It's entirely possible, yes.

13 Q Do you know if the Justice Department
14 showed it to him before that conversation?

15 A I don't believe the Justice Department
16 came over to meet with them.

17 Q Did you talk with anyone other than the
18 Secretary or your colleagues from the Office of
19 General Counsel about this memo before June 21st?

20 A Not that I recall.

21 Q Did you discuss with it
22 Karen Dunn Kelley?

1 A That's entirely possible, yeah.

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21 You mentioned that you were likely one of

22 the people the Secretary's referring to when he

1 says my staff and I thought reinstating a
2 citizenship question could be warranted.

3 A Uh-huh!

4 Q Why did you think in the spring of 2017
5 that reinstating a citizenship question could be
6 warranted?

7 A Because a citizenship question had
8 previously been asked. It's asked by every other
9 major democracy in the world, so why wouldn't we
10 ask?

11 Q And why did you want a citizenship
12 question?

13 A Again, I think it provides important
14 information that's used for all kind of programs.
15 And if you want a complete and accurate census,
16 you would provide it.

17 Q What caused you to form a view on whether
18 the citizenship question should or should not be
19 added?

20 A When I was -- and I didn't really know
21 that it wasn't included in the census, but once I
22 became informed of that, it struck me as odd that

1 we don't ask the question.

2 Q And you testified earlier that the
3 Secretary is the first person who raised it to
4 you?

5 A In my employment at the Department of
6 Commerce, yes.

7 Q Do you recall discussing it before you
8 worked at the Commerce Department?

9 A Probably sometime in the last 30-odd
10 years, I'm in -- you know, in political science
11 and politics, so I'm sure I discussed at.

12 Q But the first time in 2017 that you
13 recall considering this issue is when the

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7 A Okay. Well, again, I think you need to

8 separate this out. My decision or my belief that

9 a -- a citizenship question should be included

10 does not in any way change the process by which it

11 might get included. So they're two separate

12 things. I can hold the belief that a certain

13 action might be warranted or should be taken

14 independent of any analysis of whether or not that

15 should be done. That's two separate things. So I

16 think you're conflating the two.

17 The fact that I may think that as an

18 objective, hypothetical question should one be

19 added, I can form that belief quite quickly and

20 hold that. That's, then, separate from is that

21 the right decision to make for a variety of

22 reasons, including some of the issues that you

1 just outlined.

2 Q And so in forming your view that a
3 citizenship question should be added --

4 A Again, you're characterizing it in a way
5 that I'm not. In forming my view that a
6 citizenship question would be appropriate to
7 include in a census, that's one thing.

8 Q Okay.

9 A Should be added is a separate --

10 Q Hang on a second. I haven't added a
11 question yet.

12 The Secretary's memo says my staff and I
13 thought reinstating a citizenship question could
14 be warranted, right? And you've testified that
15 you were among the people he was referring to when
16 he says my staff and I.

17 A Right.

18 Q So you were of the view that the
19 citizenship -- adding a citizenship question could
20 be warranted?

21 A Yes.

22 Q And I'm asking in forming the view that

1 adding a citizenship question could be warranted,
2 you relied only on common sense; is that what you
3 testified?

4 MR. GARDNER: Objection.

5 Mischaracterizes the witness's prior testimony.

6 BY MR. COLANGELO:

7 Q What did you rely on in forming that
8 view?

9 A So, again, the key word is could. Could
10 be warranted, meaning it is worthy of
11 investigating further. That is what the document
12 says.

13 Q What did you rely on in forming that
14 view?

15 A The fact that other countries ask this
16 information; the fact that we ask it on the ACS of
17 a percentage of the population every year; the
18 fact that as a citizen, most people wouldn't be
19 concerned with answering that question. All of
20 those things are relevant.

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3 Q When did you -- did there come a time
4 when you researched the statistical practices of
5 other countries?

6 A Why would that be relevant?

7 Q Mr. Comstock, you just testified that in
8 forming the view that adding a citizenship
9 question could be warranted, among the things you
10 considered was that other countries do. So I'm
11 asking you --

12 A Okay.

13 Q -- did you research the practices of
14 other countries?

15 A By that, you mean did I -- did I
16 determine that other countries ask the question?
17 Yes.

18 Q In the spring of 2017?

19 A Yeah. I think we did a quick Google
20 search, you know.

21 Q So you Googled the census practices of
22 other countries in order to determine that adding

1 a citizenship question could be warranted?

2 A Again, my formulation of a -- of a
3 decision that it could be warranted is largely
4 based on common sense.

5 Q Okay. I just want to make sure that I
6 understand. That as to the part of your answer
7 that related to the practices of other countries,
8 in the spring of 2017, you formed that view by
9 Googling it?

10 A I may have asked if other countries did
11 it or I may have gotten online and looked. I
12 don't recall.

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1 Q Who are those other senior administration
2 officials?

3 A You'd have to ask the Secretary.

4 Q You don't know yourself?

5 A I don't.

6 Q You have no idea which other senior
7 administration officials raised this question,
8 other than the Secretary?

9 A No.

10 Q You never asked him where the idea came
11 from?

12 A Nope.

13 Q He never told you where the idea came
14 from?

15 A Nope.

16 Q You spent a lot of time on this issue?

17 A Not relative to a lot of other things I
18 work on, no.

19 Q How would you characterize the amount of
20 time you spent on this issue?

21 A One one-hundredth of my time.

22 Q You agree that it's an important issue?

1 A Correct.

2 Q It was important to the Secretary?

3 A Correct.

4 Q He was motivated to get this done?

5 A He was working on a lot of different
6 issues at the time.

7 Q But this one was important to him?

8 A Yes. Absolutely.

9 Q Okay. And when you saw the draft of this
10 memo before June 21st and it refers to other
11 senior administration officials, you didn't
12 yourself have any view or understanding of who
13 those other administration officials were?

14 A I did not, no.

15 Q You didn't ask the secretary who those
16 other administration officials were?

17 A No.

18 Q Okay. When recommending that he sign the
19 memo, he didn't say to you who are the other
20 senior -- who the other senior administration
21 officials were?

22 A We did not discuss that, no.

1 Q And you said this came over from the
2 Justice Department?

3 A Correct.

4 Q Who sent it over, do you remember?

5 A I don't know.

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2 Q Did the Secretary speak with Mr. Bannon
3 that night?

4 A I don't know.

5 MR. GARDNER: Objection. Calls for
6 speculation. Lack of foundation.

7 THE WITNESS: I do not know.

8 BY MR. COLANGELO:

9 Q Did the Secretary speak with Kris Kobach
10 on April 7, 2017?

11 A No idea.

12 Q Did you join a call with the Secretary
13 regarding the census on April 5th of 2017?

14 A I have no idea.

15 Q You don't know if you joined the call
16 with the Secretary on April 5th of 2017?

17 A I don't know what I was doing on
18 April 5, 2017 without looking at a calendar or
19 something else that would remind me. I'd have to
20 go through my emails that day. I could not tell
21 you what I was doing on that day.

22 Q Do you know who Kris Kobach is?

1 A I believe he's somebody with State of
2 Kansas maybe.

3 Q And have you spoken to Mr. Kobach before?

4 A I've never spoken to Mr. Kobach.

5 Q Have you emailed with Mr. Kobach?

6 A I've never emailed with Mr. Kobach.

7 Q And after the call that's referred to in
8 this email, did the Secretary tell you what he
9 discussed?

10 A No.

11 MR. GARDNER: Objection. Lack of
12 foundation.

13 THE WITNESS: No.

14 BY MR. COLANGELO:

15 Q Who would know what was discussed on this
16 phone call?

17 MR. GARDNER: Objection. Calls for
18 speculation. Also, lack of foundation.

19 BY MR. COLANGELO:

20 Q You can answer.

21 A The parties to the call.

22 Q You were working on the census in the

1 spring of 2017, correct?

2 A Yes.

3 Q And the Secretary frequently asked you
4 for updates on the census-related matters in the
5 spring of 2017, right?

6 A I wouldn't characterize it as frequently.

7 Q Did the Secretary ever ask you for
8 updates on census matters in the spring of 2017?

9 A Yes, he did.

10 Q Did he ever update you on developments
11 that he was aware of regarding the census in the
12 spring of 2017?

13 A It's unusual for the Secretary to update
14 me on anything.

15 Q Would the Secretary have told you if he
16 had a conversation with Steven Bannon about the
17 census?

18 A Not necessarily.

19 Q Would he have told you if he had a
20 conversation about the census with Kris Kobach?

21 A Not necessarily.

22 Q Why not?

1 MR. GARDNER: Objection. Form.

2 THE WITNESS: I wouldn't speculate, but
3 he's the Secretary. He makes his own decisions.

4 BY MR. COLANGELO:

5 Q So has the Secretary ever told you about
6 a conversation he had with someone else?

7 MR. GARDNER: Objection. Form.

8 THE WITNESS: Yes. He reports to me
9 sometimes if he feels that it's essential that I
10 know the substance of conversation.

11 BY MR. COLANGELO:

12 Q Okay.

13 MR. COLANGELO: Can we mark this
14 Exhibit 7?

15 (Plaintiffs' Exhibit 7, Email, was
16 marked.)

17 THE WITNESS: Thank you very much.

18 BY MR. COLANGELO:

19 Q Handed the witness a document stamped 763
20 and marked Exhibit 7.

21 Mr. Comstock, do you have Exhibit 7 in
22 front of you?

1 A I do.

2 Q Have you seen this email before?

3 A No, I haven't.

4 Q This is the first you've ever seen this
5 email?

6 A Yes.

7 Q Okay. If you turn to the second page --

8 A I'm sorry. I'm just reading the
9 document.

10 Okay.

11 Q Do you see at the bottom of page -- of
12 the first page of this exhibit, Mr. Comstock,
13 there's an email from Kris Kobach to
14 Wendy Teramoto --

15 A Right.

16 Q -- on July 21, 2017; is that right?

17 A That's what it says.

18 Q And the email says, "Wendy, nice meeting
19 you on the phone this afternoon. Below is the
20 email that I sent to Secretary Ross. He and I had
21 spoken briefly on the phone about this issue at
22 the direction of Steven Bannon a few months

1 earlier."

2 Do you see that?

3 A I see that.

4 Q Okay. That was the call on April 5th
5 that we were just talking about, right?

6 MR. GARDNER: Objection. Lack of
7 foundation. Calls for speculation.

8 THE WITNESS: Doesn't specify when the
9 phone call took place.

10 BY MR. COLANGELO:

11 Q And did Wendy tell you she got this email
12 from Kris Kobach in July of 2017?

13 A No.

14 Q You've never spoken to Wendy about
15 Kris Kobach, at all?

16 A Not that I recall.

17 Q Is there anyone else that you're aware of
18 that Steven Bannon directed the Secretary to talk
19 to about the census, other than Kris Kobach?

20 MR. GARDNER: Objection. Lack of
21 foundation.

22 THE WITNESS: I have no knowledge of any

1 conversations with Steven Bannon, so I wouldn't
2 know who he might have suggested the Secretary
3 talk to.

4 BY MR. COLANGELO:

5 Q Have you ever spoken to Steven Bannon
6 yourself?

7 A I have never spoken to Steven Bannon
8 myself.

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5 Q And if you're considering adding a
6 citizenship question, it would also be important
7 to know the response rates on all demographic
8 questions; is that right?

9 A That would be one of the questions you
10 would ask, yes.

11 REDACTED

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4 Q Did he ever tell you that he spoke with
5 Mr. Newman about the citizenship question?

6 A I'm fairly certain he was -- he did talk
7 to him at some point.

8 Q Okay. When was that?

9 A I couldn't tell you.

10 Q Did Mr. Newman ever say to you that he
11 had spoken to the Secretary about adding a
12 citizenship question?

13 A It's possible, yeah.

14 Q Okay. When did he tell you?

15 A Again, I don't recall the exact date.

16 Q Try to place it, roughly.

17 A To your question, was there discussion of
18 the possibility of adding a citizenship question
19 in the spring? Yes. That does not mean any firm
20 decision had been made. We were exploring the
21 opportunity.

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3 Q Can you tell me what you mean by decision
4 memo?

5 A The memo that the Secretary produced
6 documenting his decision. There was a reference
7 to other response rates and demographic. So,
8 clearly, at some point, the information became
9 available.

10 Q And you're referring to the
11 March 26, 2018 from the Secretary to Karen
12 Dunn Kelley?

13 A Yes.

14 REDACTED

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16 MR. COLANGELO: Let's mark Exhibit 9.

17 (Plaintiffs' Exhibit 9, Email, was
18 marked.)

19 BY MR. COLANGELO:

20 Q We have marked a document stamped 3694 as
21 Exhibit 9. Do you have this email in front of
22 you?

1 A I do.

2 Q Have you seen this email before?

3 A Yes.

4 Q Before today, when is the last time you
5 saw this email?

6 A Yesterday.

7 Q And this is an email from
8 Brooke Alexander to you with a copy to
9 Wendy Teramoto; is that right?

10 A Correct.

11 Q Dated April 20, 2017?

12 A Yep.

13 Q And did you understand this to be a
14 message from the Secretary?

15 A That's what Brooke's message says.

16 Q Brooke has access to the Secretary's
17 email?

18 A Yes.

19 Q And is it -- okay. Withdrawn.

20 Are you familiar with the National
21 Advisory Committee on Racial, Ethnic and Other
22 Populations?

1 A No.

2 Q You have no idea what the National
3 Advisory Committee is?

4 A I mean, I know it's an advisory committee
5 to Census, but outside of that, I -- I couldn't
6 tell you what they do, other than what their title
7 suggests that they do.

8 Q So you're aware that there's a National
9 Advisory Committee on Racial, Ethnic and Other
10 Populations that advises the Census Bureau?

11 A I take that from this email that's
12 correct, yes.

13 Q And what do you understand the role of
14 the advisory committee to be?

15 A To provide advice to the Census Bureau.

16 Q Okay. The message from Brooke speaking
17 for the Secretary to you says, "Earl, Census
18 director has on April 29th a meeting of the
19 National Advisory Committee. We must get our
20 issue resolved before this" -- exclamation point,
21 and the must is underlined.

22 Do you see that?

1 A I see that.

2 Q What is our issue?

3 A I couldn't tell you.

4 Q Our issue is the citizenship question,
5 right?

6 MR. GARDNER: Objection. Calls for
7 speculation. Lack of foundation.

8 THE WITNESS: I would say likely not,
9 actually, given there's no reason to believe the
10 National Advisory Committee on Racial, Ethnic and
11 Other Populations would be advising on a
12 citizenship question.

13 BY MR. COLANGELO:

14 Q Were there other issues that you'd been
15 talking about with the Secretary involving the
16 census in the spring of 2017 that would relate to
17 the National Advisory's mandate?

18 A Certainly the SOGI question would, and
19 the MENA question would.

20 Q But the notification date for the SOGI
21 question was at the end of March in 2017 -- for
22 the SOGI topics, I should say, correct?

1 A Correct.

2 Q So that was already resolved by April,
3 right?

4 A I'm not certain of the timing, but MENA,
5 I think, was not resolved until sometime in the
6 spring or summer.

7 Q And sticking with the SOGI question --
8 and for the record, that' S-O-G-I. SOGI stands
9 for sex orientation and gender identity.

10 A Correct.

11 Q Would you conclude if the Secretary
12 referred to a National Advisory Committee on
13 Racial and Ethnic, Populations that the SOGI
14 question would be what he had in mind?

15 A I would guess. Again, this is
16 speculation, but my best guess, based on this
17 reference, is probably more like the MENA issue is
18 what was in front of us.

19 Q Okay. And describe the MENA issue?

20 A The Middle Eastern North African
21 question. There's a question as to whether you
22 ask two questions or you ask one question. And

1 it's not a topic I spent a tremendous amount of
2 time on, but it was something that the Census was
3 very much discussing at the time.

4 Q And had you discussed that issue with the
5 Secretary?

6 A We had a conversation or two about it.
7 And, again, it was largely in the context of which
8 way to go on that question.

9 Q And why would the Secretary have said
10 that that issue must be resolved by April 29th?

11 MR. GARDNER: Objection. Calls for
12 speculation. Lack of foundation.

13 BY MR. COLANGELO:

14 Q You can answer.

15 A You know, again, at that point -- this is
16 shortly before a -- if I recall correctly, a
17 Congressional hearing that was going to go into
18 the census and probably wanted to have a position
19 to recommend to Director Thompson as to what he
20 should say to the advisory group. Again, I don't
21 recall this reference or precisely what he was
22 speaking to.

1 Q Okay. This isn't a topic you'd spent a
2 lot of time on, right, the Middle Eastern
3 North African question?

4 A Correct.

5 Q There's no reason the Secretary would
6 have referred to it as our issue, is there?

7 MR. GARDNER: Objection. Calls for
8 speculation. Lack of foundation.

9 THE WITNESS: Again, depending on if his
10 perception was that there was an administration
11 policy call to make on it, he would refer to it as
12 our issue.

13 BY MR. COLANGELO:

14 Q He could also have referred to the
15 citizenship issue as your issue, right?

16 MR. GARDNER: Objection. Calls for
17 speculation. Lack of foundation.

18 THE WITNESS: Again, I would say looking
19 at the context of the email, I would say that's an
20 unlikely connection.

21 BY MR. COLANGELO:

22 Q And by April 20th of 2017, how many times

1 had you discussed the citizenship question with
2 Secretary Ross?

3 A I have no idea.

4 Q More than a handful?

5 A Possibly.

6 Q Okay. Would you say he was extremely
7 interested in the issue?

8 A Certainly, when he raised it, he was
9 interested in it.

10 Q Okay. You wouldn't say he was extremely
11 interested in the MENA question, right?

12 A When we discussed it, he was equally
13 interested in that.

14 Q He didn't raise it with you with the same
15 frequency he raised the citizenship question,
16 right?

17 A That's correct.

18 Q Why was Wendy Teramoto copied on this
19 email?

20 MR. GARDNER: Objection. Calls for
21 speculation.

22 THE WITNESS: Couldn't tell you.

1 BY MR. COLANGELO:

2 Q Did you speak with her about this issue
3 after you got this message?

4 A It's possible. I don't recall.

5 MR. COLANGELO: Can we mark this
6 Exhibit 10?

7 (Plaintiffs' Exhibit 10, Email, was
8 marked.)

9 BY MR. COLANGELO:

10 Q Handed the witness a document stamped
11 3710 and we've marked it as Exhibit 10.

12 A Okay.

13 Q Have you read this email?

14 A Yep.

15 Q Okay. You've seen this email before?

16 A I have.

17 Q When's the last time you saw this email?

18 A Yesterday.

19 Q When you saw this email yesterday, was it
20 redacted as it is in the form I've shown it to you
21 now or was it unredacted?

22 A It was redacted.

1 Q Okay. And you see that the Secretary has
2 written you an email on May 2, 2017 that says,
3 quote, worst of all, they emphasize they have
4 settled with Congress on the questions to be
5 asked. I am mystified why nothing has been done
6 in response to my months' old request that we
7 include the citizenship question. Why not?

8 Do you see that?

9 A I see that.

10 Q When did the Secretary make his months'
11 old request to include the citizenship question?

12 A Again, sometime in the spring.

13 Q Probably on March 10th when you emailed
14 him the Wall Street Journal blog post?

15 A Potentially. I don't recall.

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8 MR. COLANGELO: Can we mark this Exhibit
9 Number 11?

10 (Plaintiffs' Exhibit 11, Email, was
11 marked.)

12 BY MR. COLANGELO:

13 Q Okay. This is -- have you had a chance
14 to look at this email?

15 A Lot of black spots on it. Okay.

16 Q Have you seen this email before?

17 A Apparently I must have seen it when I
18 wrote it.

19 Q When's the last time before today you saw
20 this email?

21 A Probably May 1, 2017.

22 Q Okay. And does this email reflect that

1 you sent the Secretary, Director Thompson's House
2 appropriation subcommittee written testimony?

3 A Yes.

4 Q And his testimony was for, quote, this
5 Wednesday?

6 A Right. That's what it appears.

7 Q And if I told you that -- oh, if you look
8 at the subject line it says, Wednesday, May 3rd;
9 is that right?

10 A That's correct.

11 Q Okay. So let's refer back to Exhibit 10.

12 A Yep.

13 Q Now that you see the day before you had
14 sent the Secretary Mr. Thompson's written
15 testimony for the House appropriation subcommittee
16 hearing --

17 A Right.

18 Q -- what do you understand, worst of all
19 they emphasize they have settled with Congress to
20 mean?

21 MR. GARDNER: Same objection. Calls for
22 speculation.

1 THE WITNESS: Again, I'm not sure without
2 further context who they is. He could be
3 referring to that advisory committee that you had
4 had in a previous email. He could be referring to
5 Census.

6 BY MR. COLANGELO:

7 Q Does the advisory committee establish the
8 content for the census?

9 A Again, the context of this email is that
10 somebody appears to be emphasizing that they've
11 settled with Congress on the questions. That
12 clearly is not the case, because questions aren't
13 due until March of 2018. So they couldn't have
14 settled on the questions.

15 Q And you see that at the top of
16 Exhibit 10, you email the Secretary saying, "On
17 the citizenship question, we will get that in
18 place"?

19 A Uh-huh.

20 Q Do you see that?

21 A Yep.

22 Q What did you mean by that?

1 A Well, it means that we're, as instructed,
2 going to continue to work on developing a
3 citizenship question, and that process -- again,
4 it's probably helpful at this point to explain on
5 the policy side, right, you formulate -- you
6 formulate something that you think you would like
7 to do, and then you go explore that. That's my
8 job, is to go. Secretary says, I think this might
9 be a good idea, you run it down, and you track
10 down the issues, and you say -- you know, first
11 question I usually ask is, okay, is this something
12 that Department of Commerce does? Do we have
13 legal authority to do this? Once you clear those
14 two thresholds, now you get to work.

15 But I don't spend a lot of time chasing
16 down things that people are not planning on doing.

17 Q So you --

18 A So there has to be some initial threshold
19 decision that this is worth pursuing.

20 Q Now, let me stop you there, because you
21 said a minute ago, as instructed. And you're
22 referring to instructions from the Secretary,

1 correct?

2 A To pursue, exploring the question.

3 Q This was instructions to add the question
4 in response to my months' old request that we
5 include the citizenship question, correct?

6 A This would be instructions to review and
7 consider and present to him information that would
8 allow him to make a decision on whether or not to
9 take final action.

10 Q Mr. Comstock, I'm just asking you what
11 you understood on May 2nd --

12 A And that's what I'm telling you I
13 understood on May 2nd.

14 Q Hold on one second. Let me finish the
15 question.

16 A Uh-huh.

17 Q The Secretary wrote, "I am mystified why
18 nothing has been done in response to my months'
19 old request that we include the citizenship
20 question."

21 And you responded, "On the citizenship
22 question, we will get that in place"?

1 A Correct.

2 Q Okay. So my question is: By we will get
3 that in place, what did you mean?

4 A I meant that I will present to you the
5 information and the process necessary for you to
6 decide if you would like to pursue this question.

7 Q Your email says we will get that in
8 place, correct?

9 A I mean, we will get in front of you the
10 necessary information for you to make a decision.
11 Part of my role in this process is explaining to
12 people who have never worked in government before
13 that there are processes that you have to follow
14 in order to make an action happen. You're dealing
15 with people who are used to being able to make a
16 decision and it simply goes into effect.

17 Q Okay.

18 A That's not the way the U.S. government
19 works.

20 Q So the process that you then go on to
21 tell the Secretary he has to follow is later in
22 your message; is that right?

1 A That part of the process, yes.

2 Q And that email says we need to work with
3 Justice to get them to request that citizenship be
4 added back as a census question; is that right?

5 A That's right.

6 Q Why would you say you needed to work with
7 the Justice Department to get them to request that
8 citizenship be added back?

9 A Because based on a very preliminary
10 review, they appeared to be the most likely
11 government body that would have a specific need
12 for the information that would support adding a
13 citizenship question to the decennial census.

14 Q Who conducted that preliminary review?

15 A We were told by the Census Bureau that
16 the Justice Department was the person that had
17 requested the citizenship question on the ACS and
18 that they utilized the ACS data for Voting Rights
19 Act information.

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22 Q And why did you need a request from

1 Justice?

2 A Again, based on the preliminary review,
3 the understanding we had was questions are added,
4 based on requests from a government agency. There
5 is such a thing as the Paperwork Reduction Act
6 where you have to justify to OMB why do I need
7 this information? That has to get cleared. So
8 there are certain hurdles you have to get through.
9 So if at the end of the day the Secretary decided
10 to pursue this question, we would need to clear
11 certain legal thresholds.

12 Q Why not just tell the Census Bureau to
13 add the citizenship question and say the Secretary
14 wanted it?

15 A Because I'm not sure that that would be
16 the process they would necessarily agree to
17 follow.

18 Q So you had to have it come from DOJ in
19 order for the Census Bureau to agree to follow it?

20 A Again, that was a preliminary conclusion
21 based on a cursory analysis.

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3 What court cases were your referring?

4 A I don't recall the exact court cases.

5 Q Did you research those court cases?

6 A I did research a court case where there
7 was a scenario in which you would need -- it would
8 be important to have Citizen Voting Age Population
9 data in order to make a Voting Rights Act claim.

10 Q How did you identify that case?

11 A By a legal research.

12 Q What do you mean by legal research?

13 A Well, I think I talked to -- I'm trying
14 to think -- I think Mark Neuman may have provided
15 a case name. I talked to James Uthmeier, who
16 looked at some cases. Basically said, okay, if
17 this is the question -- I mean, it's what you do
18 as an attorney all day long, is to go find cases
19 to support what you're looking for.

20 Q So Mark Neuman identified for you a case
21 that would support DOJ's need for this
22 information?

1 A Yeah. I said I may have spoken to
2 Mark Neuman on that. I think he may have provided
3 it. I don't recall. I know James Uthmeier looked
4 at some cases.

5 Q Would he have provided that case for you
6 on a phone call or by email?

7 A James?

8 Q Pardon me?

9 I'm sorry. Withdraw that question.

10 Would Mr. Newman have provided that case
11 to you by email or on the phone?

12 A Well, if he provided it by email, you'd
13 have it. I don't have the emails in front of me,
14 so I can't tell you.

15 Q So by May of 2017, you'd come to the view
16 that you needed another agency to request a
17 citizenship question on the census?

18 A That was based on the preliminary
19 analysis, yes.

20 Q You then say in your email, "I will
21 arrange a meeting with DOJ staff this week to
22 discuss."

1 Do you see that?

2 A Yes.

3 Q Okay. So before May 2, 2017, you had not
4 had any discussions with the Department of Justice
5 about the citizenship question, right?

6 A Not to my knowledge.

7 Q What did you do to arrange a meeting with
8 DOJ staff to discuss?

9 A I asked Eric Branstad for a name over at
10 DOJ, and he provided me the name of
11 Mary -- Mary Jane [sic] Hankey I think it was,
12 whom I then contacted.

13 Q Okay. Your email refers to the court
14 cases to illustrate that DOJ has a legitimate need
15 for the question to be included.

16 A That's what it says, yes.

17 Q What were the other needs that you had
18 talked about for including the citizenship
19 question?

20 A I don't recall.

21 Q Okay. And by legitimate need, were you
22 concerned that other needs that didn't come from

1 DOJ would not be legitimate needs?

2 A No. I think that's just an
3 imprecise -- the use of the term legitimate,
4 something to say that it would be a need that
5 would be considered a government need for the
6 information.

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19 Q Had you attended the meetings with the

20 Secretary and Mr. Neuman on the citizenship

21 question before May 2, 2017?

22 A I don't know. I had attended meetings

1 with the Secretary and Mr. Newman on the census.

2 Q Before May 2017?

3 A Yes.

4 Q How many times?

5 A I don't know. Two times, three times.

6 I'd -- you'd have to check his count.

7 Q Okay. And the citizenship question was
8 discussed in those earlier meetings?

9 A I don't recall.

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Q So on May 2nd, the Secretary asked you why nothing had been done in response to his months' old request. You told him you needed to get the Justice Department to request the question. You also told him that you would set up meetings with the Justice Department to discuss. And then after that, you asked Eric Branstad to get you a point of contact at the Justice Department and he did, right?

MR. GARDNER: Objection. Form.

THE WITNESS: That appears to be the sequence.

BY MR. COLANGELO:

Q Okay. And you testified earlier that you hadn't ever spoken to the Justice Department before that on the citizenship issue?

A That's correct.

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Q And why were you contacting Mary Blanche?

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Her surname is redacted on this email, I assume

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for personal privacy reasons. But this is Mary

11

Blanche Hankey, correct?

12

A Yes.

13

Q Why were you contacting Mary Blanche

14

Hankey?

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A That was the name that Eric Branstad said

16

he'd provide me.

17

Q Okay. And do you know where in the

18

White House -- strike that.

19

Do you know where in the

20

Justice Department she worked?

21

A She was advisor for -- to

22

Attorney General Sessions.

1 Q So she worked for the Attorney General?

2 A Correct.

3 Q And you reached out to her to talk about
4 the citizenship question, right?

5 A Amongst other things, yes.

6 Q And you reached out to her and asked her
7 for times for a call that day, right?

8 A That's what I'm asking for, yes.

9 Q Okay. Is that because this was an urgent
10 priority for the Secretary?

11 A I think you can divine from his prior
12 email that he was hoping I might take a quick
13 action on this, so I was trying to be responsive.

14 Q So the answer is yes?

15 A I'm not going to speculate as to whether
16 he thought it was urgent or not, but he was
17 conveying he would like me to get moving.

18 Q You were treating it as an urgent matter?

19 A Correct.

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2 A I met with her -- I think I spoke with
3 her by phone and then met with her in her office.

4 Q When did you speak with her by phone?

5 A I couldn't tell you.

6 Q Was it on May 4th?

7 A It's possible.

8 Q And then you met with her in her office,
9 you said?

10 A Yes.

11 Q When was that meeting?

12 A I don't know the exact date.

13 Q When you spoke to her on the phone, was
14 anyone else on the call with you?

15 A No.

16 Q Was anyone else on the call on her end?

17 A Not that I was aware of, no.

18 Q When you met with her in person, did
19 anyone from the Commerce Department go with you?

20 A No.

21 Q Did anyone from the Census Bureau go with
22 you?

1 A No.

2 Q Was there anyone else in the meeting that
3 she brought?

4 A No.

5 Q What did you say to her when you spoke to
6 her on the phone?

7 A That I'd like to come over and discuss
8 what issues the Justice Department might have with
9 Commerce that I could be helpful on and talk to
10 her about an issue that we were interested in.

11 Q And that issue was the citizenship
12 question?

13 A Correct.

14 Q And what did she say about that?

15 A Let's get together and meet.

16 Q So then you went over to meet with her.
17 Did she have any issues that she wanted to raise
18 with you?

19 A I don't recall that Justice had any
20 particular Commerce issues, no.

21 Q So this was a meeting about the
22 citizenship question?

1 A I'd say that was the primary topic.

2 Q Okay. And what did you say to her when
3 you met with her in person?

4 A That we -- the Secretary had asked us to
5 look into the possibility of adding a citizenship
6 question, and that since the Justice Department
7 was the agency that had sponsored the question for
8 the ACS, it seemed that that was a logical place
9 to start, and was there someone in the
10 Justice Department with whom I should speak about
11 that.

12 Q And what did she say?

13 A Let me look into it.

14 Q How long was the meeting?

15 A Well, we met for about 20 minutes.

16 Q Did you explain why the Secretary wanted
17 the citizenship question?

18 A No.

19 Q Did you have an understanding at that
20 point as to why the Secretary wanted the
21 citizenship question?

22 A I've never asked the Secretary why he

1 wanted a citizenship question.

2 Q Did she ask you why it was important to

3 Commerce Department to add a citizenship question?

4 She being Ms. Hankey.

5 A No.

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2 Q And after you met with Ms. Hankey and she
3 said she'd look into it, what was the next that
4 you heard from the Justice Department on this
5 issue?

6 A I think when she contacted me, provided a
7 name.

8 Q How long after your meeting did she
9 contact you and provide a name?

10 A There's an email that documents it, you
11 could tell from that, but otherwise, I have no
12 idea.

13 Q Okay.

14 A I mean, it was sometime in the next
15 couple weeks, but --

16 Q And what name did she give you?

17 A I -- I know I put it in a memo to the
18 Secretary later on, so you'd have to look at that
19 memo.

20 Q Is it James McHenry?

21 A That sounds like the right name.

22 Q When she spoke to you to pass along

1 James McHenry's name, what did she say about why
2 she was directing you to him?

3 A She didn't say much. Just said this
4 would be the best guy to talk to.

5 Q Okay. Had you spoken to James McHenry
6 before?

7 A Never talked to him before.

8 Q Did she tell you what his position was in
9 the Department of Justice?

10 A She might have.

11 Q What was his position?

12 A I don't know, actually.

13 Q After she gave you Mr. McHenry's name,
14 what did you do next to contact him?

15 A I called him on the phone.

16 Q And when you spoke to him on the phone
17 what did you say?

18 A I outlined that we were interested in
19 seeing what kind of level of interest the
20 Justice Department would have in requesting the
21 citizenship question be asked -- added to the
22 decennial census.

1 Q And did you tell him why the
2 Commerce Department wanted the Justice Department
3 to make that request?

4 A Because that was our understanding of the
5 process. They were the people that needed it for
6 ACS, and our understanding was that it might be
7 useful for them to have it at a more granule
8 level, which would be needed -- you'd need to put
9 it on the decennial census to do that.

10 Q So you were -- you told him that the
11 Commerce Secretary wanted the question and wanted
12 to know if DOJ would ask for the Census Bureau to
13 add the question; is that right?

14 A Those are your words.

15 Q Well, I'm asking you to tell me yes or
16 no.

17 A Well, if the question is yes or no, then
18 the answer is no.

19 Q Okay. How would you put it in your
20 words?

21 A In my words, what I told him was that we
22 were exploring the possibility and wanting to know

1 the level of interest at the Justice Department in
2 making such a request, would this be information
3 they could use?

4 Q So this is the shortly -- this is shortly
5 after the Secretary of Commerce emailed you and
6 said I am mystified why nothing had been done in
7 response to my months' old request?

8 A Right.

9 Q But your testimony is that you conveyed
10 to the Justice Department that you were exploring
11 the issue?

12 A As I explained before, when -- when the
13 Secretary says he would like to do something,
14 there's a presumption that we will attempt to do
15 that. That's subject to revision as more
16 information is made available. So I'm exploring
17 what is necessary to follow through on the
18 Secretary's request. That request may be modified
19 or changed, based on the information that I
20 provide.

21 Q Okay. How many times did you speak to
22 Mr. McHenry?

1 A I think three or four times.

2 Q And what was the next time you spoke to
3 him after the initial phone call?

4 A Maybe a week later.

5 Q Okay. And what did he say when he -- did
6 he call you or did you call him?

7 A I don't recall.

8 Q And what did you discuss on that
9 conversation?

10 A That he was still exploring the question.

11 Q How long was that conversation?

12 A Five minutes.

13 Q Okay. So he didn't have anything new to
14 report?

15 A Right.

16 Q Okay. And you said you spoke to him at
17 least a couple more times; is that right?

18 A Again, I don't recall the exact number of
19 times, but somewhere in the vicinity of three or
20 four times.

21 Q So after the second call where he said he
22 was still exploring it, tell me about the next

1 conversation?

2 A Memory serves, I think the next
3 conversation was a similar one. He was still
4 looking into the matter and then -- and then the
5 last conversation he and I had, he directed me to
6 somebody at the Department of Homeland Security.

7 Q Okay. And over what period of time were
8 you talking to Mr. McHenry on the phone?

9 A Probably over the course of a month.

10 Q So this was primarily in May of 2017?

11 A I honestly don't recall, but sometime in
12 May, early June.

13 Q And who did he direct you to at the
14 Department of Homeland Security?

15 A I don't remember the person's name.

16 Q Was it Gene Hamilton?

17 A Again, I know I prepared a memo for the
18 Secretary that had the name. So if that's the
19 name that was on the memo, then, yes, that would
20 be the person I spoke with.

21 Q How many times did you speak to your
22 point of contact at the Department of

1 Homeland Security?

2 A Again, I think it was -- I think this was
3 like two or three times.

4 Q And what did you say when you first spoke
5 to Mr. Hamilton?

6 A Same -- same basic message, we're looking
7 into the -- exploring the possibility of putting a
8 census question on -- a citizenship question on
9 the decennial census, would this be information
10 that the Department of Homeland Security would
11 need or use, and could he answer that, and his
12 response was, let me look into it.

13 Q Now, the Department of Homeland Security
14 wasn't the original requester for the ACS
15 citizenship question, to your understanding,
16 correct?

17 A Correct.

18 Q Was it your view that the Department of
19 Homeland Security would also be a legitimate
20 requester of this information?

21 A Legitimate is not the right word, but
22 the -- I think my view was, let me see if

1 there's -- what their explanation would be, but
2 they were obviously not our first choice.

3 Q So you were looking for an agency to make
4 this ask?

5 A Again, my understanding of the process,
6 based on the research I've been able to do, and
7 consequently was advising the Secretary was an
8 agency needed to make the request; therefore, you
9 have to find an agency that would have a reason to
10 be using this information. And Justice,
11 obviously, was the primary recipient of the CVAP
12 data from the ACS, so they were the logical place
13 to start. Justice then says go to
14 Homeland Security, and I say, okay, maybe there's
15 something about Homeland Security that I don't
16 know about that might justify this data. So you
17 follow up on a call, get more information, informs
18 your decision, you might change it.

19 Q And so my question was: So you were
20 looking for an agency to make this ask and --

21 A Correct. In order to implement the
22 process that had been outlined to us, you needed

1 an agency. So that was my task at the time.

2 Q Thank you.

3 MR. COLANGELO: Let's mark this

4 Exhibit --

5 MR. GARDNER: 15.

6 MR. COLANGELO: -- 15.

7 (Plaintiffs' Exhibit 15, Memo, was
8 marked.)

9 THE WITNESS: The very memo I was
10 speaking of.

11 BY MR. COLANGELO:

12 Q Exhibit 15 is document stamped 9834.

13 Mr. Comstock, do you have Exhibit 15 if
14 front of you?

15 A I do.

16 Q Is this the very memo you were just
17 speaking about?

18 A It's the very memo I was just speaking
19 about.

20 Q And what's the date on this memo?

21 A September 8th.

22 Q And you see in the second paragraph of

1 this memo, the sentence that says, "James directed
2 me to Gene Hamilton at the Department of
3 Homeland Security."

4 A Correct.

5 Q So the person you were speaking to at DHS
6 was Gene Hamilton, right?

7 A Apparently so, yes.

8 Q The -- in that paragraph -- strike that.
9 This is a memo from you to the Secretary
10 dated September 8th of 2017, correct?

11 A Correct.

12 Q Why did you prepare this memo?

13 A Because the Secretary was asking about
14 the lack of progress and said he was prepared to
15 call the Attorney General, and so he needed the
16 timeline of who I had spoken to.

17 Q Okay. What do you mean by lack of
18 progress?

19 A Well, obviously, we're now September 8th,
20 and he inquired on May -- May whatever the date
21 was, 2nd, 5th, whatever it was, saying how come we
22 haven't made more progress? Three months later we

1 don't have any response from the

2 Justice Department, so --

3 Q In his May 2nd email it said, why has
4 nothing been done in response to my months' old
5 request?

6 A That is what it says, yes.

7 Q So the Secretary had been asking about
8 this since the early spring of 2017?

9 A Yes.

10 Q And you testified and this memo says you
11 met in person with Mary Blanche and she said what?

12 A Well, as I said, she directed me to
13 James McHenry.

14 Q And then after speaking with Mr. McHenry,
15 he told you what?

16 A He directed me to Gene Hamilton.

17 Q Okay. And then after several phone calls
18 with Gene Hamilton, according to this memo, he
19 relayed that, "After discussion, DHS really felt
20 it was best handled by the Justice Department."

21 Do you see that?

22 A I see that.

1 Q Why did Mr. Hamilton feel this was best
2 handled by the Justice Department?

3 A As relayed to me, DHS felt the agency
4 that would most utilize this data was
5 Department of Justice, which was our
6 original conclusion.

7 Q So DHS said they were not going to make
8 this request, right?

9 A Well, Gene never made a commitment, one
10 way or the other, for the department. He simply
11 directed me back to the other department. It's
12 not an uncommon experience in the federal
13 government.

14 Q Tell me what's not uncommon in the
15 federal government.

16 A Being directed to somebody.

17 Q Your memo then says at that point the
18 conversation ceased.

19 A Correct.

20 Q What do you mean by that?

21 A Means that I did not talk to
22 Mary Blanche, James McHenry or Gene Hamilton after

1 that point in time.

2 Q You didn't, at this point, have a request
3 from the Justice Department, right?

4 A That's correct.

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Q And which call with the Attorney General

1 was that?

2 A A call from the Secretary to talk to the
3 Attorney General about whether or not Justice
4 would be interested in a citizenship question.

5 Q And why was the Secretary talking to the
6 Attorney General about whether or not Justice
7 would be interested in the citizenship question?

8 A Again, if -- if the -- if the
9 Justice Department was not going to request the
10 question, had no use for the information, then
11 that would probably put an end to the citizenship
12 question.

13 Q And the Secretary wanted the citizenship
14 question?

15 A I think he felt -- well, I don't know
16 what he felt. Yes. He was continuing to explore
17 that possibility.

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19 REDACTED

20 THE WITNESS: I don't know what he felt,
21 but he was continuing to explore the possibility.

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4 Q How did you come to the view before ever

5 talking to DOJ that DOJ should request this

6 information?

7 A Again, if DOJ was the governmental

8 organization that had questioned the information

9 on the ACS, then it would stand to reason that

10 they would be the people that would also be

11 interested in the information on the decennial,

12 and they're also the party responsible for

13 enforcing the voting rights.

14 Q And how did you come to the view before

15 ever talking to DOJ that DOJ had a legitimate need

16 for the question to be included?

17 A If they enforced the Voting Rights Act --

18 if you're going to make a Voting Rights Act case,

19 then they would be the people that would

20 have -- need the information.

21 Q And you researched those Voting Rights

22 Act cases or that Voting Rights case on your own?

1 A Again, I think in doing some basic
2 research on it, it was pointed out there was a
3 case where the Court had said you could -- you
4 would need more granule information to answer this
5 question, which would then support a citizenship
6 question.

7 Q And you told me before that you're not a
8 voting rights lawyer, right?

9 A Again, what do you mean by a voting
10 rights lawyer?

11 Q Have you ever practiced voting rights
12 law?

13 A No.

14 Q Have you ever tried a voting rights case?

15 A No.

16 Q Have you ever advised a client on a
17 voting rights matter?

18 A No.

19 Q Have you ever practiced redistricting
20 law, tried a redistricting case --

21 A No.

22 Q -- or advised a client on a redistricting

1 matter?

2 A No.

3 MR. GARDNER: Make sure he finishes his
4 question before you answer.

5 THE WITNESS: No.

6 BY MR. COLANGELO:

7 Q Have you ever litigated a case under the
8 Voting Rights Act?

9 A No.

10 Q Have you ever litigated a redistricting
11 case?

12 A No.

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17 Q -- in the spring of 2017, were you
18 keeping the Secretary informed of those
19 conversations?

20 A I might have mentioned them.

21 Q In what context would you have mentioned
22 them?

1 A Mr. Secretary, I contacted the
2 Justice Department today. I would not have
3 given -- I mean, there was nothing to report. So
4 I hadn't made any progress.

5 Q Well, he was frustrated there was no
6 request yet?

7 A Right.

8 Q So one of the things to report might have
9 been --

10 A That I contacted them, yes.

11 Q Okay. And did you keep Ms. Teramoto
12 informed during that time period?

13 A Again, I might have. At that time
14 period, we operated in bullpens, so we were
15 all -- there were five people in the same room.
16 So it's entirely possible I might have mentioned I
17 was going to the Justice Department or I had
18 spoken with the Justice Department, yes.

19 Q I'm sorry. If you were not finished.

20 A Nope.

21 Q Who was sitting in the bullpen with you?

22 A Wendy Teramoto, Eric Branstad,

1 James Rockas, me, and occasionally Izzy Hernandez.

2 Q Who is James Rockas?

3 A He was acting press secretary at the
4 time.

5 Q And who is Izzy Hernandez?

6 A Israel Hernandez, he was the acting -- or
7 I'm not sure what his formal title was. I think
8 he was deputy chief of staff.

9 Q And where was the bullpen you referred
10 to?

11 A It was the -- what is now the chief of
12 staff.

13 Q And there were five of you working in the
14 office?

15 A Correct.

16 Q How long were the five of you working in
17 that office together?

18 A Maybe nine months.

19 Q So from January of 2018 through the
20 end -- strike that.

21 From January 2017 through the end of
22 the --

1 A No.

2 Q -- summer --

3 A No. The bullpen was set up, I think, in

4 March through the end of the year.

5 Q Why did you work in a bullpen?

6 A Because that was the form that the

7 Secretary and Ms. Teramoto felt was most

8 effective.

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3 Q Okay. And Exhibit 7 is the email
4 exchange with Kris Kobach; is that right?

5 A It's an email exchange between
6 Kris Kobach and Wendy Teramoto.

7 Q And the Secretary, correct, on the second
8 page?

9 A Yes. Appears to be one to the Secretary
10 on the second page.

11 Q Okay.

12 A Though it's blanked out as to who it goes
13 to.

14 Q If I represent to you that the government
15 has represented to us that this was an email to
16 the Secretary and that they've blanked out his
17 name for personal privacy reasons, can we agree
18 that it's an email to the Secretary on July 14th?

19 A I'll stipulate to that, yes.

20 Q And Mr. Gardner will tell me after lunch
21 if that's wrong.

22 The -- so you see that the -- that

1 Mr. Kobach, who identifies himself as the Kansas
2 Secretary of State, emailed the Secretary on
3 July 14, 2017, correct?

4 A Correct.

5 MR. GARDNER: Objection. Lack of
6 foundation.

7 BY MR. COLANGELO:

8 Q And you'll see that it says I'm following
9 up on our telephone discussion from a few months
10 ago, correct?

11 MR. GARDNER: Objection. Lack of
12 foundation.

13 THE WITNESS: And you're reading from the
14 email. So I have no idea if the email is correct
15 or not.

16 BY MR. COLANGELO:

17 Q Did the Secretary ever tell you that he
18 spoke to Kris Kobach?

19 MR. GARDNER: Objection. Asked and
20 answered.

21 BY MR. COLANGELO:

22 Q You can still answer.

1 A No.

2 Q Sorry. We were speaking at the same
3 time.

4 A I don't recall him ever telling me that
5 he spoke to Kris Kobach.

6 Q This email reads, "As you may recall, we
7 talked about the fact that the U.S. Census does
8 not currently ask respondents their citizenship."

9 Do you see that?

10 A I see that.

11 Q The email also reads, "It also leads to
12 the problem that aliens who do not actually reside
13 in the United States are still counted for
14 Congressional apportionment purposes."

15 Do you see that?

16 A I see that.

17 Q Did the Secretary ever tell you he was
18 concerned about the problem that aliens who do not
19 reside in the United States are still counted for
20 Congressional apportionment purposes?

21 A He never expressed an opinion on that.

22 Q And when the Secretary asked you on

1 March 10, 2017 about the census and the
2 citizenship question, did he ask you in the
3 context of whether noncitizens should be included
4 for Congressional apportionment purposes?

5 A He discussed Congressional apportionment
6 purposes. If asked were the noncitizens counted,
7 and we answered the question, which is they are
8 counted.

9 Q Well, you testified the link you sent him
10 was the link to the Census Bureau's web page on
11 whether noncitizens are counted for apportionment?

12 A That's correct. Well, I don't believe
13 you can find a web page on the Census that doesn't
14 speak to it in that context, whether noncitizens
15 are counted other than for apportionment. That's
16 the question that we asked. Do we count
17 noncitizens? The answer is yes. What is the
18 Census used for? It's used for apportionment.
19 That's its primary function.

20 Q And you'll see that -- going back to the
21 first page of Exhibit 7, Ms. Teramoto has written
22 to Mr. Kobach, "Kris, can you do a call with the

1 Secretary and Izzy tomorrow at 11:00 a.m.?"

2 A Correct.

3 Q And that's Izzy Hernandez, correct?

4 A I would believe that's the reference
5 she's making, yes.

6 Q And he's copied at the top of this page,
7 correct?

8 A Yes, he is.

9 Q Did you ever discuss with Izzy Hernandez
10 a call with Mr. Kobach and the Secretary?

11 A I did not.

12 Q Did you ever discuss the citizenship
13 question with Mr. Hernandez, at all?

14 A I think we discussed it once or twice.

15 Q And when were those conversations?

16 A I don't recall exactly.

17 Q Was it in the summer of 2017?

18 A It was sometime in the spring/summer of
19 2017.

20 Q Okay. So you had been working on the
21 citizenship question for some number of months by
22 late July of 2017; is that right?

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2 Q Okay. This is an email from the
3 Secretary to you on August 8, 2017, and the
4 Secretary asks were you on the call this morning
5 about census?

6 Do you see that?

7 A Uh-huh.

8 Q What call is he referring to?

9 A I don't know. I'm not sure I was on it.

10 Q Okay. Did you hear from anybody about a
11 call on the census on August 8th?

12 A I have no idea.

13 Q And you'll see that later in the email,
14 the Secretary says, "Where is the DOJ in their
15 analysis? If they still have not come to a
16 conclusion, please let me know your contact person
17 and I will call the AG. Wilbur Ross."

18 Do you see that?

19 A I see that.

20 Q And what analysis is the Secretary
21 referring to?

22 A Again, this pre-dates the memo I wrote

1 outlining my contacts with the DOJ. So this is a
2 question about where are we with the DOJ?

3 Q Okay. And you wrote back that evening
4 saying, "We'll be back shortly with an update on
5 the census question."

6 A Yes.

7 Q I have two attorneys in the DOC's general
8 counsel's office working on it?

9 A Yes.

10 Q And you testified one of those two
11 attorneys was James Uthmeier; is that right?

12 A That's correct.

13 Q And who was the other?

14 A I don't recall.

15 Q Okay. Going back to the Secretary's
16 email where he says, "If they still have not come
17 to a conclusion, please let me know your contact
18 person and I will call the AG."

19 A Yes.

20 Q Did you understand that to mean that the
21 Secretary was concerned this was not done yet?

22 A He was concerned that we had not made

1 more progress.

2 Q Okay. How did he communicate that
3 concern to you?

4 A By saying let me know who your contact
5 person is and I will call the AG.

6 Q This email that you sent in your response
7 doesn't identify your contact person; is that
8 right?

9 A That -- well, at least not in the part
10 that's not blacked out.

11 Q Okay. Do you recall identifying for the
12 Secretary before the September 8, 2017 memo who
13 your contact person was at DOJ?

14 A I might have. I probably would have had
15 to go back and look and see who I spoke to.

16 Q Okay.

17 MR. COLANGELO: Let's mark Document 3984
18 as Exhibit 20.

19 (Plaintiffs' Exhibit 20, email, was
20 marked.)

21 THE WITNESS: Thank you.

22 BY MR. COLANGELO:

1 Q Mr. Comstock, have you seen this email
2 before?

3 A It's to me, so, yes.

4 Q Okay. And this is in further response to
5 the Secretary's August 8th question; is that
6 right?

7 A Would appear to be, yes.

8 Q Okay. And it says, "Mr. Secretary, we
9 are preparing a memo and full briefing for you on
10 the citizenship question. The memo will be ready
11 by Friday, and we can do the briefing whenever you
12 are back in the office."

13 Do you see that?

14 A Yes.

15 Q And at this point, you had not received
16 any information from the Justice Department; is
17 that right?

18 A That's correct.

19 Q Okay. So the memo that you're referring
20 to is a memo on the citizenship question that
21 includes no input from DOJ; is that right?

22 A I -- I don't know. I had not spoken to

1 DOJ, no.

2 Q You're not aware that anyone else had
3 spoken to DOJ on it?

4 A Actually, I believe counsel might have
5 been talking to DOJ, but I don't know who they
6 were talking to.

7 Q And which counsel is that?

8 A James Uthmeier.

9 Q And did he tell you he was talking to
10 DOJ?

11 A I don't recall.

12 Q So you're not aware that anybody had been
13 in touch with DOJ in order to get information for
14 this memo going to the Secretary?

15 A I -- I'm not sure exactly the contents of
16 the memo to which you're referring, so I don't
17 know if it contained information from DOJ or not.

18 Q And the Secretary responded by saying, "I
19 would like to be briefed on Friday by phone."

20 A Yes.

21 Q So it's fair to say that this reflects
22 the Secretary's continued impatience about getting

1 an answer to his question?

2 A I would say he clearly wanted to keep

3 moving forward.

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1 Q And we just saw an email from a few weeks
2 earlier where Ms. Teramoto says let's keep
3 Mr. Davidson and Ms. Kelley involved in a
4 conversation about this, right?

5 A I wouldn't say keep, but --

6 Q Introduce them to this conversation?

7 A Introduce, yes.

8 Q So to your understanding, this was a
9 meeting to discuss the citizenship question?

10 A Again, my understanding of this was to
11 discuss key legal issues regarding the census.

12 Q Do you remember this meeting?

13 A Not specifically, no.

14 Q Do you remember any meetings with the
15 Secretary and with this group on the census?

16 A Again, not specifically, no.

17 MR. COLANGELO: Okay. Let's have this
18 marked as Exhibit 23. It's Document 2424.

19 (Plaintiffs' Exhibit 23, Email, was
20 marked.)

21 BY MR. COLANGELO:

22 Q Do you have Exhibit 23 in front of you,

1 Mr. Comstock?

2 A I do.

3 Q And do you recognize this document?

4 A Again, it's an email from the Secretary
5 to me, so presumably I saw it then. There's a lot
6 blanked out.

7 Q And you understand that the
8 Justice Department has applied those redactions,
9 correct?

10 A I do.

11 Q And in this email dated September 1,
12 2017, the Secretary says, "I have received no
13 update, nor has there been an updated," -- blocked
14 out -- "nor the issue of the census question, nor
15 whether KDB thinks we have our arms around the
16 census cost data."

17 Do you see that?

18 A Yes.

19 Q And by KDB, do you think he meant KDK?

20 A I believe that would be who he would be
21 referring to, yes.

22 Q Referring to Karen Dunn Kelley?

1 A Yes.

2 Q And did you understand this to be a
3 request for information on the status of the
4 citizenship question?

5 A Well, I understood this to be a request
6 for information on a whole series of information
7 that were presented in the census.

8 Q Including the citizenship question?

9 A Including the citizenship. He mentions
10 that.

11 Q And the Secretary is frustrated, right?

12 A That would appear so, yes.

13 Q He's frustrated because he's asked for it
14 repeatedly and hasn't seen anything yet telling
15 him that it's done; is that right?

16 A Well, I would not agree with your
17 characterization. I think what this memo -- this
18 email shows is that there were a tremendous number
19 of issues connected to Census. At this time, we
20 were working a tremendous amount on the lifecycle
21 cost estimate.

22 So we -- I mean, we had a huge issue.

1 They were \$3 billion -- basically, 25 percent of
2 their budget off, which is a shocking figure --

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5 THE WITNESS: -- that does not inspire
6 confidence in the Census Bureau or its current
7 leadership at the time. So we were dealing with
8 quite a few issues connected with Census,
9 primarily related to the budget, trying to find
10 people to run the Census that we could count on.
11 So, yes, citizenship was one small piece
12 of this, but it was by no means the driving piece.

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2 BY MR. COLANGELO:

3 Q And why would the Secretary have asked
4 for an update by the next day?

5 MR. GARDNER: Objection. Calls for
6 speculation.

7 THE WITNESS: As I've mentioned before,
8 we like to get things done. We're not here to do
9 this all year long. So I was asked similar
10 questions on numerous other issues I was working
11 on.

12 BY MR. COLANGELO:

13 Q But it's fair to say the Secretary wanted
14 an answer quickly?

15 A He always wants an answer quickly.

16 MR. COLANGELO: Let's mark Document 2395
17 as Exhibit 25.

18 (Plaintiffs' Exhibit 25, Email, was
19 marked.)

20 BY MR. COLANGELO:

21 Q Mr. Comstock, do you have Exhibit 25?

22 A I do.

1 Q Okay. Have you seen this document
2 before?

3 A Yes.

4 Q When's the last time you saw it before
5 today?

6 A Yesterday counsel pointed it out to me.

7 Q And did you review a version yesterday
8 that was redacted like this or unredacted?

9 A I did.

10 Q Pardon me?

11 A It was redacted.

12 Q Okay. Like this?

13 A Exactly like this.

14 Q And this is an email from Mr. Uthmeier to
15 you on the evening of September 7th saying, "Earl,
16 I touched base with Peter," redacted, "He spoke
17 with Kassinger this evening."

18 Do you see that?

19 A Yes.

20 Q Who is Kassinger?

21 A That would be Ted Kassinger, former
22 general counsel for the Department of Commerce.

1 Q And where does Mr. Kassinger work now?

2 A He works at O'Melveny & Myers.

3 Q A law firm?

4 A Correct.

5 Q In Washington?

6 A Yes.

7 Q And what did Mr. Davidson and

8 Mr. Kassinger discuss?

9 MR. GARDNER: Objection -- sorry.

10 Restate that one more time.

11 BY MR. COLANGELO:

12 Q What did Mr. Davidson and Mr. Kassinger

13 discuss?

14 A I don't know.

15 Q Did Mr. Davidson tell you what he and

16 Mr. Kassinger discussed?

17 A Not to my knowledge.

18 Q Did Mr. Uthmeier tell you what he and

19 Mr. Kass- -- what Mr. Davidson and Mr. Kassinger

20 discussed?

21 A Well, it appears he might have, but it's

22 blanked out.

1 Q And Mr. Kassinger doesn't work for the
2 government, correct?

3 A Correct.

4 Q And did not at the time, correct?

5 A Correct.

6 I would just observe, based on the all
7 blanked out here, we really have no idea what this
8 email is referring to. It says a Census matter,
9 but it could have been any number of things,
10 including the numerous budget issues we were
11 talking about. So let's make clear I don't know
12 what this email was in reference to.

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16 Q Okay. So it would also be your
17 conclusion that Mr. Davidson and Mr. Kassinger
18 were talking about the citizenship question; is
19 that right?

20 A No. It would not.

21 Q Why not?

22 A Because I get lots of email that start on

1 one chain that go to another matter. So it's
2 possible, but it's also possible it was discussing
3 something else.

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17 Q And after the Secretary spoke with the

18 Attorney General, was the substance of that

19 conversation relayed to you?

20 A Beyond -- beyond the fact that they had

21 spoken and that the Attorney General was going to

22 look into the matter, no.

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1 Q Okay. What did you say to the Secretary
2 about the December 2017 letter when it came in?

3 A Justice Department has requested this, so
4 now we can start the formal process.

5 Q And what formal process are you referring
6 to?

7 A Well, as I've outlined before, in order
8 for the government to take an action, you have to,
9 basically, create a record and make your decision
10 on the basis of that record. So without a request
11 from an agency to ask for the inclusion of
12 citizenship, you were -- this was, basically, a
13 hypothetical question.

14 Q Okay. But you had told the Secretary in
15 May, we will get the Justice Department to request
16 the question?

17 A I am going to do everything I can to
18 carry out the Secretary's wishes, if they are
19 legal, and so I will do my best. I can't promise
20 things.

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8 You recall there was a time,
9 March 26, 2018, when the Secretary issued a
10 decisional memorandum regarding his decision to
11 add a citizenship question?

12 A Yes.

13 Q You worked on that memorandum?

14 A Yes.

15 Q Okay. Were you the principal drafter?

16 A I was one of the principal drafters.

17 Q Who were the other principal drafters?

18 A James Uthmeier was the primary other
19 drafter.

20 Q Did you have a division of responsibility
21 between the two of you?

22 A No. I believe he did the first draft.

1 Q He did the first draft?

2 A Well, the Secretary actually probably
3 made -- indicated what he wanted in a draft and
4 then James would have put it together.

5 Q And then you would have worked on it
6 after James?

7 A Correct.

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21 And did anyone else work on the draft
22 besides you, the Secretary and Mr. Uthmeier?

1 A Yes. I think numerous other people

2 reviewed the draft, and --

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THE WITNESS: Once again, the

1 Department of Justice, who are our counsel,
2 suggested that a supplemental memorandum was
3 needed. This was not something Department of
4 Commerce generated. This was something the
5 Department of Justice, as our counsel, recommended
6 be provided. Following up on that advice, we
7 worked on the document and then had the Secretary
8 sign it. We were following advice of counsel.

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21 Q All right. I want to go back to the

22 spring of 2017 when Secretary Ross requests the

1 inclusion of a citizenship question on the census.
2 At that point in time, the Department of Justice
3 had made no request to Commerce for the addition
4 of a citizenship question, correct?

5 A That's correct.

6 Q And they certainly hadn't
7 asked -- withdrawn.

8 The Department of Justice certainly
9 hadn't asked Commerce to add a citizenship
10 question because of the VRA. That's also correct;
11 isn't it?

12 A Well, they didn't ask us to add a
13 citizenship question at that point. So
14 speculating as to why they would ask is
15 irrelevant.

16 Q I'm not asking you to speculate. The one
17 thing we can be sure of is they didn't ask about
18 the VRA is because they didn't ask at all?

19 A Correct.

20 Q All right. And when Secretary Ross says
21 to you in the spring, in whatever words he used,
22 that he wants a citizenship question added to the

1 census, wouldn't you have had a discussion with

2 him at the time about why he wants that?

3 MR. GARDNER: Objection. Asked and

4 answered.

5 THE WITNESS: Again, the answer is no, I

6 would not have a discussion. My boss, if he asked

7 me to investigate something, I investigate it and

8 report back the results.

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Q My question, sir, is: Wouldn't it be helpful to you in your job of assisting the Secretary to have a complete understanding of why the Secretary wants to add a citizenship question?

MR. GARDNER: Objection. Form.

THE WITNESS: Again, it's not relevant to the question of whether or not he needs -- of whether or not a question should be added, so, no.

BY MR. GERSCH:

Q Is it your testimony that why he wants a citizenship question to be added is not relevant to whether it should be added? Did I -- did I hear that right?

MR. GARDNER: Objection. Mischaracterizes the witness's prior testimony.

THE WITNESS: My test- --

MR. COLANGELO: That's exactly what he said, Counsel.

THE WITNESS: No. My testimony is: The

1 rationale for why he would want it added is not
2 relevant to my initial inquiry as to whether or
3 not a question can be added.

4 BY MR. GERSCH:

5 Q Yeah. My question was a little
6 different. The question I am trying to get you to
7 focus on is: In your work for the Secretary,
8 wouldn't it be helpful to you to understand as
9 fully as possible why he thinks it's a good idea
10 to add a citizenship question?

11 A And let --

12 MR. GARDNER: Objection. Asked and
13 answered.

14 THE WITNESS: And let me get you to
15 understand my answer, which is, no, it would not
16 make a difference, because I don't need that
17 information to investigate the question.

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14 Q And in your time there, did you never see
15 a document analyzing why it was a good idea for
16 Census to add a citizenship question?

17 A Again, you're -- we have a fundamental
18 disagreement on the premises of your question.
19 Your premise is that somehow a reason needs to be
20 provided. The question before us is the Secretary
21 has the legal authority to add questions to the
22 census. Is there a governmental need? And if

1 there is, then you're off to the races.

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It couldn't possibly assist you in your work, in any way, to know why the Secretary wanted to add a citizenship question? Do I understand that correctly?

A It's not relevant to my analysis.

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Q Well, that's my question -- withdrawn.

Well, is there any way in which knowing what the Secretary's reason was for wanting to add a citizenship question, is there any way that could assist you in your work at Department of Commerce?

A Assist me on my work at the Department of Commerce, no.

Q Is there any way that it could help you

1 help the Secretary add a citizenship question?

2 A If I had found it difficult or
3 challenging, yes. Knowing more about why he
4 wanted it would have been helpful, but I didn't
5 say that there was an issue. It had been asked
6 for hundreds of years, and it had been asked on
7 the ACS. So, clearly, there's a need for it. And
8 so, no, that was not a particularly troublesome
9 aspect of the question I was being asked to look
10 into.

11 Q When you said if I had found it difficult
12 or challenging, what did you mean? What's the it?

13 A If -- if what I had been requested to do
14 seemed to have significant legal obstacles to the
15 ability to do that question or take that action,
16 then I would probably inquire more fully to see if
17 there's an alternative way to address what the
18 Secretary is trying to get to. In this particular
19 case, you have something that has been on the
20 decennial census before that is currently being
21 asked on the ACS. There's clear legal authority
22 for him to add the question. So, frankly, the

1 reasons that he wants to add it doesn't add
2 anything to the analysis. There is a governmental
3 need for this information. That's a question
4 that's already established, so I don't need to
5 inquire further as to what his personal beliefs
6 regarding this question might be.

7 Q What's the governmental need for the
8 question?

9 A Enforcement to the Voting Rights Act,
10 determining how many undocumented citizens there
11 are. You name it, there's a whole bunch of
12 reasons. That's why every government in the world
13 collects this information.

14 Q Well, correct me if I'm wrong, we're
15 talking about at a period in the spring of 2017
16 when the Voting Rights Act hadn't come up, the
17 Department of Justice hadn't made a request for
18 it. What does the Voting Rights Act got to do
19 with it in the spring of 2017?

20 A When you inquire as to what does the
21 Department of Justice use the citizenship data
22 on --

1 Q That wasn't my question. My question
2 is --

3 A I'm answering your --

4 Q -- why is it a good idea, why does the
5 government need it back in the spring of 2017?

6 A Finished with your question?

7 Q That's my question.

8 A The answer is for the same reason they've
9 been collecting it for the last 200-plus years.

10 Q What's the government need in the spring
11 of 2017?

12 A I already answered that question. If
13 they collect the data under the ACS for Voting
14 Rights Act enforcement, that is one of the primary
15 reasons they collect the data.

16 Q Okay. It's on the ACS. What's the
17 need -- governmental need for it to be on the
18 census?

19 MR. GARDNER: Objection. Asked and
20 answered.

21 THE WITNESS: The governmental need is,
22 again, if you're going to get more detailed

1 information, then you need that information.

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7 Q So you decided on your own in the spring
8 of 2017 that it would be a good idea for the
9 government to have more information than was
10 available from the ACS about citizenship to
11 enforce the Voting Rights Act, even though you're
12 not a voting rights lawyer?

13 A I don't agree with that characterization,
14 at all. I decided that there was sufficient
15 information for me to pursue the Secretary's
16 request to consider placing a citizenship question
17 on the decennial census and that there was
18 sufficient potential reason to collect that
19 information to warrant moving forward. If I'd
20 come to an opposite conclusion that there was not
21 sufficient potential reason or that there was some
22 insurmountable legal bar, then I would have

1 reported back to the Secretary, I'm sorry,
2 Mr. Secretary, it does not appear we can
3 accomplish this objective.

4 Q Why did you need to come up with a reason
5 for asking the question, separate and apart from
6 whatever reason the Secretary had in his own head?

7 A Again, my job is to figure out how to
8 carry out what my boss asks me to do. So you go
9 forward and you find a legal rationale. Doesn't
10 matter what his particular personal perspective is
11 on it. It's not -- it's not going to be the basis
12 on which a decision is made.

13 Q That's your understanding, that the way
14 you should do it, is come up with a rationale that
15 has nothing to do with what's in the Secretary's
16 mind as to why he wants it; is that your
17 understanding of how it's supposed to work?

18 A No. Again, you continue to characterize
19 things in a way that you believe may be correct,
20 but not the way I believe to be correct. My job,
21 as a person who has been doing this for 30-plus
22 years for clients and people in the government, is

1 if they would like to accomplish an objective, I
2 see if there's a way to do that. And, again, if
3 it's not legal, you tell them that. If it can't
4 be done, you tell them that. If there's a way to
5 do it, then you help them find the best rationale
6 to do it. That's what a policy person does.

7 And so, again, if I came up with a
8 rationale that the Secretary didn't agree with or
9 didn't support, then he was going to tell me that.
10 I have no doubt about that. But in the meantime,
11 he doesn't -- I don't need to know what his
12 rationale might be, because it may or may not be
13 one that is -- that is something that's going to a
14 legally-valid basis.

15 So, again, he's got -- he's asked, can we
16 put -- can we put a question on? The job of a
17 policy person is go out and find out how you do
18 that. Whether that decision is going to be made
19 ultimately to do it or not, that's up to the
20 decision-maker.

21 Q Are you saying you're better off not
22 knowing what the Secretary's own rationale is for

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21 Q All right. So you went -- you called

22 Mary Blanche Hankey --

1 A Correct.

2 Q -- with regard to adding a citizenship
3 question to the census, right?

4 A Correct.

5 Q And you wanted to see if the
6 Department of Justice would sponsor the question?

7 A Correct.

8 Q And you had a phone call with her, and
9 you had at least a meeting with her, right?

10 A Right.

11 Q So at least two contacts?

12 A Three, when she called me back with
13 somebody else's name.

14 Q Fair enough.

15 Didn't -- didn't Ms. Hankey say, why do
16 you want to have a citizenship question?

17 A No, she didn't.

18 Q Didn't come up, at all?

19 A Nope.

20 Q She referred you to a Mr. McHenry; is
21 that right?

22 A Correct.

1 Q And he's not a voting rights guy, right?

2 A I don't actually know what his background
3 is.

4 Q Well, you went ahead, back and forth with
5 him over about a month; is that right?

6 A I mean, we spoke on the phone probably
7 three or four times, yeah.

8 Q Going from, I think, the period you
9 mentioned was --

10 A Yeah. It was --

11 Q -- early May to early June, roughly?

12 A Approximately a month, yeah.

13 Q And didn't you learn in that time that
14 he's not a voting rights guy?

15 A No.

16 Q Never came up?

17 A We didn't get into great detail on the
18 rationale.

19 Q You did ask him would you sponsor a
20 census question for -- I'm sorry. Withdrawn.

21 You did ask Mr. McHenry if he would be
22 willing to sponsor a request for the addition of a

1 citizenship question on the census, right?

2 A I didn't ask Mr. McHenry if he would. I
3 asked if the Department of Justice would be
4 inclined to send a letter asking us to add the
5 citizenship question.

6 Q Fair enough.

7 And when you did that, you didn't explain
8 to Mr. McHenry why the Secretary wanted a
9 citizenship question?

10 A I would have no reason to.

11 Q And Mr. McHenry never asked, hey, you
12 want me to do this? Why do you need it? He never
13 asked you that?

14 A I think I explained at the outset that
15 the department currently got a report from the ACS
16 on citizenship level -- I mean, on
17 census -- certain census size, Citizen Voting Age
18 Population, and if they were to get it from the
19 decennial, that would allow them a greater
20 granularity and would that be useful to them, and
21 he said he would inquire.

22 Q You asked Mr. McHenry if the

1 Department of Justice would find it useful to have

2 more granularity about citizenship?

3 A Correct.

4 Q But at no point did Mr. McHenry say,

5 look, if we want it, we'll ask for it, but how

6 come you want it? Didn't he ask you something

7 like that?

8 A No.

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5 THE WITNESS: Again, I already provided
6 the reason for Department of Justice. I said,
7 would it be useful for you to have more granular
8 voting data at the census lock level? He said he
9 would inquire. That answers your question. I'd
10 already provided the answer.

11 REDACTED

12 Q Mr. McHenry comes back at some point and
13 he says he's not interested, right, in words or
14 substance?

15 A He suggested that I contact the
16 Department of Homeland Security.

17 Q But I take it he makes it clear to you in
18 some fashion -- withdrawn.

19 Let's start with this. What did he say
20 to you?

21 A He suggested I talk to the Department of
22 Homeland Security.

1 Q Did he also say, listen, I don't really
2 need that information, or my guys don't need that
3 information, or my department doesn't need that
4 information or something like that?

5 MR. GARDNER: Objection to form.

6 THE WITNESS: Again, no, he did not
7 indicate that they did not need the information.
8 He simply suggested that they were rather busy and
9 why don't I talk to the Department of
10 Homeland Security.

11 BY MR. GERSCH:

12 Q It's your testimony that he said they
13 were too busy to do it?

14 A Unfortunately, that's not an uncommon
15 response from other agencies. They don't
16 necessarily look for extra work.

17 Q Okay. So they were too busy to ask for
18 it, that's what you understood them to say?

19 A Yeah. Their inclination was they weren't
20 inclined to do the work, to ask for it, yeah.

21 Q Okay. Okay. So Mr. McHenry let's you
22 know he's not inclined or the department is not

1 inclined to do the work, to ask for it, and he

2 refers you to Homeland Security, correct?

3 A Correct.

4 Q And you speak to a Mr. Hamilton, right?

5 A Right.

6 Q And Mr. Hamilton, he's not a VRA guy,

7 right?

8 A I have no idea what his background is.

9 Q Certainly, it's your understanding that
10 the Department of Homeland Security has nothing to
11 do with enforcing the Voting Rights Act?

12 A It would not normally be something I
13 would think they would do, no.

14 Q And you talked to Mr. Hamilton how many
15 times?

16 A I don't know, three or four times.

17 Q Over what period?

18 A Again, two weeks. I don't know.

19 Q And don't you say to Mr. Hamilton, here's
20 why we want the information, here's why we want
21 you to ask for the citizenship question?

22 A Again, it was the same explanation as I

1 gave the Department of Justice. And as you
2 pointed out, DHS doesn't really do that. So I was
3 simply following up on the suggestion that
4 Mr. McHenry had made, and perhaps there was
5 something that DHS did that I was unaware of that
6 would have them -- have the need for this
7 information. Turns out they didn't, so back to
8 Square 1.

9 Q Yeah. My question is -- and maybe I
10 didn't phrase it exactly right.

11 Did you explain to Mr. McHenry [sic] in
12 any of these several calls, here's why it's
13 important to the Department of Commerce, or your
14 boss or whomever, here's why it's important
15 that -- to get a citizenship question added?

16 MR. GARDNER: I think you mean
17 Mr. Hamilton. You said Mr. McHenry.

18 MR. GERSCH: Withdrawn. Let me rephrase.
19 Thank you, Counsel.

20 BY MR. GERSCH:

21 Q In any of these several calls, you say to
22 Mr. Hamilton, here's why it's important to

1 Department of Commerce to have you folks request
2 the addition of a citizenship question.

3 A No. I never explained that to him.

4 Q And is it your testimony that in your
5 several conversations with Mr. Hamilton, he never
6 says, hey, why do you want this?

7 A That's correct.

8 Q He never says, why do you want a
9 citizenship question added?

10 A Again, when somebody calls up and says --
11 my boss, you know, Secretary Ross, AG Sessions,
12 whomever has asked us to pursue this, I don't
13 typically question back and say, well, why do you
14 think -- does your boss think this is needed? I
15 just don't do that. It's kind of discourteous to
16 other staff. So no, he took me at face value.
17 I'm calling to inquire, would they find this
18 useful? He gets back to me, no.

19 Q I just want to make sure I caught part of
20 what you're saying correctly.

21 Are you saying it would have been
22 discourteous for Mr. Hamilton at Homeland Security

1 to say, hey, why do you guys at Commerce want us
2 to ask for a citizenship question?

3 A For him to challenge why my boss might
4 ask for it.

5 Q I didn't say challenge.

6 Is it your testimony it would be
7 discourteous for him to say, hey, you're asking me
8 to do something --

9 A Uh-huh.

10 Q -- something which involves some work --

11 A Uh-huh.

12 Q -- would you just explain to me why it's
13 important for you to have me ask for a citizenship
14 question?

15 MR. GARDNER: Objection. Form.

16 THE WITNESS: No such conversation
17 occurred.

18 BY MR. GERSCH:

19 Q Yeah. My question is: Would that have
20 been discourteous for him to say that to you?

21 A Depends on how he phrased it.

22 Q He could have phrased it in a way that

1 was properly respectful, right?

2 A Theoretically, yes.

3 Q In the time that you were dealing with

4 Mr. McHenry or getting ready to deal with

5 Mr. McHenry -- this is back at the Justice

6 Department now -- did you ever learn that he was

7 director of the Executive Office of Immigration

8 Review?

9 A I never learned that, no.

10 Q How about Ms. Hankey, did she say why she

11 was going to refer you to Mr. McHenry?

12 A No, she didn't.

13 Q Is it common for you to call people like

14 Mr. McHenry without knowing what their position

15 is?

16 A Certainly at that time, yes.

17 Q What was it about that time?

18 A Well, it was shortly into the

19 administration, and titles are not necessarily

20 informative of what people do, so --

21 Q Did you have an understanding of what

22 Mr. McHenry's portfolio was, independent of his

1 title?

2 A No.

3 Q About what his expertise was independent
4 of his title?

5 A No.

6 Q You didn't know -- withdrawn.

7 You're trying to accomplish something for
8 your boss, right?

9 A Correct.

10 Q And you're calling another agency and
11 you're going to ask them to do some work, right?

12 A Right.

13 Q And you know from your vast experience
14 that sometimes people just say no because they
15 just don't want to do the work, right?

16 A Correct.

17 Q That's not uncommon, right?

18 A It's been my experience.

19 Q So in order to have the best possible
20 chance of persuading a person like Mr. McHenry,
21 don't you want to do a little research beforehand?

22 A Again, I was dealing with, literally,

1 hundreds of issue, as well as clearing
2 correspondence, clearing Federal Register notices,
3 no. I did not have time to research this guy's
4 background. That's why I went through
5 Eric Branstad to say, hey, get me somebody over at
6 DOJ who I can talk to. I want to Hankey -- and I
7 don't know her from Adam, but relying on the fact
8 that she was recommended by folks over at the
9 White House as somebody who was connected with
10 AG Sessions, I'm assuming she's going to steer me
11 in the right direction. So I take on faith who
12 she suggested I talked to. Turned out they
13 weren't the right person, so we didn't get
14 anywhere.

15 Q Did you have an assistant during this
16 period?

17 A No.

18 Q Any staff?

19 A I had my OPSP staff.

20 Q Who's that?

21 A Office of Policy and Strategic Planning.
22 They were the detailees I discussed earlier.

1 Q Got it.

2 You couldn't ask one of them, hey, I'm
3 supposed to have a call with Mr. McHenry, can one
4 of you figure out what he is and why --

5 A No.

6 Q Excuse me. I got to -- just a second.
7 I've got to finish the question. You can answer
8 it any way you want.

9 Didn't you want to call -- talk to one of
10 your staff people and say, listen, I got a call
11 with Mr. McHenry, I got to persuade him to do some
12 work he's not going to want to do, to help out our
13 boss, Mr. Ross, Secretary Ross, and can one of
14 your look up and tell me who he is and what levers
15 we might be able to pull to persuade him to do
16 this work for us?

17 MR. GARDNER: Objection.

18 BY MR. GERSCH:

19 Q You didn't want to ask someone on your
20 staff to do some work like that for you?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: Again, that's a view of

1 both the workload I was under and the workload
2 that they're under that I think is misinformed.

3 In fact, several of my calls with
4 Mr. McHenry were made while I was driving into
5 work, so there was no opportunity to call somebody
6 and do that research.

7 And, besides, this wasn't about getting
8 leverage on Mr. McHenry. This was simply to
9 ask -- following up on the person I'd been
10 directed to, who, based on the fact that it was
11 recommended by an assistant to the AG, I'm
12 assuming is going to at least be somewhat
13 receptive. Probably an error on my part, but
14 that's -- I've got a dozen other things I'm
15 dealing with at the same time. So, no, I'm not
16 going to spend a lot of time researching this guy.

17 BY MR. GERSCH:

18 Q You didn't spend any time researching
19 this guy?

20 A Correct. I didn't.

21 Q Secretary Ross certainly knows why he
22 wanted a citizenship question back in the spring

1 of 2017, right?

2 A You'd have to ask him.

3 Q Is there anyone besides Secretary Ross

4 who we could go to who would have that

5 information?

6 MR. GARDNER: Objection. Lack of

7 foundation. Calls for speculation.

8 THE WITNESS: I'm not aware of anybody.

9 BY MR. GERSCH:

10 Q Do you have any reason to believe that

11 Secretary Ross's rationale for wanting to add a

12 citizenship question is some kind of supersecret?

13 A No.

14 Q Doesn't involve national security, right?

15 MR. GARDNER: Objection. Lack of

16 foundation. Calls for speculation.

17 THE WITNESS: I don't know what the

18 Secretary's rationale is. You'd have to ask him.

19 BY MR. GERSCH:

20 Q But you don't think it involves national

21 security?

22 MR. GARDNER: Same objections.

1 THE WITNESS: I'm not going to speculate
2 on that.

3 BY MR. GERSCH:

4 Q You heard about this suit back when it
5 was filed, right, this lawsuit?

6 A Yeah.

7 Q Okay. And there's several lawsuits,
8 right?

9 A Lost count, but yes.

10 Q And you've known that you were going to
11 sit for a deposition for a while, also?

12 A Maybe for two weeks or so.

13 Q Okay. Well, at any time since these
14 lawsuits started to get filed, did you have a
15 discussion with anyone about why it is the
16 Secretary wanted a citizenship question added?

17 A No.

18 Q Secretary Ross gave Congressional
19 testimony in March of 2018 in advance of his
20 decisional memorandum. Do you remember that?

21 A I'll take your word for it.

22 Q Testified before committees of both --

1 both House, right?

2 A Again, I'd have to look at a calendar to
3 refresh my memory as to when he testified. But,
4 yes, he testified to Congress during the course of
5 the year.

6 Q Fair enough.

7 And he was asked questions about a
8 citizenship question?

9 A I believe that's correct.

10 Q Who prepared him to testify on that
11 subject?

12 A He -- he does a lot of his own hearing
13 prep, but we would have -- I would have been
14 involved, as well as James Uthmeier,
15 Peter Davidson, of course, Karen Dunn Kelley. I
16 mean, this was not a hearing specifically on the
17 citizenship question, so we mostly would have been
18 preparing for the broad range of questions on
19 whatever the topic was. We were going up and
20 testifying on the steel tariffs. We were going up
21 and testifying on the lifecycle cost estimate, a
22 whole series of things, so --

1 Q Sure. You want to get him prepped on
2 everything, though, right?

3 A Yeah.

4 Q And one of the things that you
5 anticipated would come up was the question about
6 the citizenship question, right?

7 A Seems reasonable if that was the time
8 frame, yes.

9 Q And were you the one who worked with
10 Secretary Ross on how he was going to answer those
11 questions?

12 A I would have been one of the people, yes.

13 Q Was there a division of responsibility
14 between the folks you mentioned just a minute ago,
15 the people who helped prepare him?

16 A Not per se. I think he's fairly open to
17 suggestions from staff of what to consider. So if
18 somebody had an idea, he would consider it.

19 Q Did you tell the Secretary, listen, you
20 can expect that someone is going to ask
21 whether -- whether you're going to add a
22 citizenship question? Did you have that

1 discussion with him? That would have been normal,
2 right?

3 A Well, again, if this is in the time
4 period after we received the DOJ letter and while
5 he was considering making his decision, then, yes,
6 we might have anticipated. But the answer would
7 have been fairly straightforward, which is we have
8 that matter under review, and I'm considering
9 all -- all information. So there would have been
10 very little we're prepping for on that.

11 Q Didn't you discuss with the
12 Secretary -- withdrawn.

13 First of all, I'll represent that he
14 did -- the Secretary did, in fact, testify before
15 multiple committees after the
16 Department of Justice request came in in December
17 of 2017 and before the issuance of the March
18 decisional memorandum.

19 A Okay.

20 Q And my question to you is: In those
21 discussions that you had with the Secretary to
22 prepare him, wasn't it discussed whether the

1 Secretary was going to reveal the reasons he had
2 wanted to the addition of a citizenship question?

3 A No.

4 Q Subject never came up?

5 A Never came up.

6 Q Didn't it come up whether the Secretary
7 would reveal that the reason that Commerce had
8 received a request from DOJ to add a citizenship
9 question is because Commerce had gone to DOJ and
10 asked DOJ to make that request?

11 A No.

12 Q Never came up?

13 A Never came up.

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4 transcript, but presuming your person transcribed

5 this correctly, that appears to be what I said.

6 Q And this squares with your memory of what

7 you said, right?

8 A Correct.

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9 Q Sure. But the reason the
10 Department of Justice made this request of the
11 Department of Commerce was that the Department of
12 Commerce went to the Justice Department and said,
13 will you please make this request of us, right?

14 A We asked them if they could use this
15 information. That was an independent decision on
16 their part.

17 Q You asked them if they could use
18 information from a citizenship question, right?

19 A At the block level, which is not
20 currently available.

21 Q And you asked them if they would be
22 willing to request that from the

1 Department of Justice [sic]?

2 A If that was information that they found
3 useful, then they could request it, yes.

4 Q You asked them to request it from the
5 Department of Justice, correct?

6 A Again, what we asked them was if they
7 could use this information, and if so, then they
8 would need to request it.

9 Q Do you deny that you personally went to
10 representatives in the Department of Justice and
11 asked them if they would request the addition of a
12 citizenship question?

13 MR. GARDNER: Objection. Asked and
14 answered.

15 THE WITNESS: To answer, once again, I
16 went to representatives of the
17 Department of Justice and asked them if this would
18 be information that they would find useful, and if
19 so, they could request it.

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2 Q Didn't you say to the
3 Department of Justice when you were talking to
4 them, in words or substance, we would appreciate
5 it if you would ask us to include a citizenship
6 question?

7 A I never made such a request.

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3 Q When Representative Norton asks you the
4 why question, don't you think it's responsive to
5 the why question that the Secretary of Commerce
6 wanted to add a citizenship question independent
7 of the Department of Justice's request?

8 A No. I don't think it's relevant. His
9 decisional memo laid out very clearly the
10 rationale that was the basis of his decision.
11 Whatever his personal feelings may have been are
12 irrelevant to that decision.

13 Q It laid out a rationale. We can agree on
14 that, right?

15 A That's what he's required to do under the
16 law, is lay out a rationale. That is the
17 rationale for his decision and that's what he's
18 standing on.

19 Q Okay. He laid out a rationale. Is it
20 your understanding, under the law, that if the
21 rationale is not his real reason for doing it, we
22 should ignore the real reason, and we should only

1 focus on the pretextual reasons that he offers up?

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4 THE WITNESS: The Secretary's decision
5 memo lays out a valid reason that's consigned to
6 his discretion under the law, and that is the
7 rationale he provided to staff, and that is the
8 rationale that we placed in the record. So that
9 is his reason for having the question.

10 BY MR. GERSCH:

11 Q My question is a little different. If
12 the Secretary's real rationale is something
13 different than the rationale he lays out in his
14 decisional memo, is it your understanding, under
15 the law, that we're to ignore the real reason and
16 only focus on what's in the decisional memorandum?

17 MR. GARDNER: Objection. Calls for a
18 legal decision.

19 THE WITNESS: Your hypothetical is
20 premised on the false conclusion that there is
21 some illegal rationale that would be provided and
22 be exposed and be referenced. There is none.

1 It's committed to his discretion to add a
2 question, as long as you make it through the other
3 things, Paperwork Production Act, et cetera. So
4 it's -- I don't understand the basis for your
5 question. But there's -- at the base of your
6 question is this hypothetical that there's some
7 supposed illegal reason that would be -- that
8 would nullify a perfectly valid decision. I don't
9 agree with that assessment.

10 BY MR. GERSCH:

11 Q Mr. Comstock, I want you to listen to my
12 question carefully, because there was no reference
13 to any illegal rationale, and I'm going to put it
14 to you again and there will be no reference to an
15 illegal rationale. And my only question -- and,
16 by the way, I'm happy if you want to take this as
17 a hypothetical.

18 My only question is: If the Secretary
19 lays out a rationale in his decisional memorandum
20 which is different than his real rationale, is it
21 your understanding that we're supposed to ignore
22 the real rationale and only focus on what's in the

1 decision memo?

2 MR. GARDNER: Given your introductory
3 clause, objection. Calls for a hypothetical.
4 Objection. Calls for a legal conclusion.

5 THE WITNESS: Again, a decision is valid
6 if a valid reason has been spelled out, and that
7 is what we did.

8 BY MR. GERSCH:

9 Q Could you answer my question?

10 A Again, I don't accept the premise of your
11 question, which is that there's some other reason
12 besides what was provided in the memo.

13 Q It's a hypothetical question, sir. The
14 question is --

15 A I'm not going to answer a hypothetical on
16 that basis.

17 Q I'm asking you to answer it, and you're
18 here to answer questions, and I think I'm fairly
19 following up on your testimony.

20 My question to you is real simple: If
21 the Secretary lays out a rationale in his
22 decisional memorandum and it's not his real

1 rationale, is it your understanding that what
2 we're supposed to focus on is what's in the
3 decisional memorandum and we're not supposed to
4 look at the rationale?

5 MR. GARDNER: Objection. Calls for
6 hypothetical. Objection. Calls for legal
7 conclusion.

8 THE WITNESS: Again, we're at loggerheads
9 here because you keep spelling out something that
10 is -- that presupposes there is some other
11 rationale that would be sufficient to outweigh a
12 legitimate rationale and, therefore, must be
13 noticed and taken care of. I mean, the government
14 makes decisions all the time and spells out a
15 rationale. Do some of decision-makers have,
16 perhaps, other reasons, maybe, but it's not
17 relevant to the legal analysis.

18 Q We shouldn't know what Secretary --
19 withdrawn.

20 We shouldn't know what the real rationale
21 is; is that testimony?

22 A I --

1 MR. GARDNER: Objection. Calls for a
2 legal conclusion.

3 THE WITNESS: Again, I have no reason to
4 believe that the rationale is anything other than
5 what's in the memo.

6 BY MR. GERSCH:

7 Q Well, sir, actually, you testified
8 previously that the Secretary had a rationale for
9 asking this question, which he didn't reveal to
10 you and had nothing to do with the
11 Department of Justice's request.

12 A I disagree with that statement.

13 Q Let's try this one other way. You don't
14 disagree with the proposition that a
15 decision-maker could have a rationale that is
16 different than what he chooses to spell out in his
17 decisional memorandum, right?

18 MR. GARDNER: Objection. Calls for
19 hypothetical.

20 THE WITNESS: Again, I don't know -- I
21 don't -- it's impossible to answer that question,
22 because you -- I'm not sure where you're going

1 with it.

2 BY MR. GERSCH:

3 Q I'm not asking you to know where I'm
4 going with it. I'm asking you to answer the
5 question. I'll put it to you again.

6 You don't disagree with the proposition
7 that it's possible for the decision-maker to have
8 one rationale which he puts in the decisional
9 memorandum and a completely different rationale
10 which is the real reason he wants the decision
11 done?

12 MR. GARDNER: Objection. Calls for a
13 hypothetical.

14 THE WITNESS: Again, in the context we're
15 dealing with, I don't agree with that statement.

16 BY MR. GERSCH:

17 Q It's not possible for that to happen,
18 it's not possible for the decision-maker to put
19 one rationale in the decisional memo and have a
20 completely different rationale for why he wants
21 the decision?

22 MR. GARDNER: Objection. Calls for a

1 hypothetical.

2 THE WITNESS: In my experience with the
3 federal government service across 30 years, both
4 Democrat and Republican, I'm not aware of
5 decision-makers who would do such a thing.

6 BY MR. GERSCH:

7 Q This would never happen, in your view,
8 right?

9 A I'm not going to use the word never.
10 Clearly, in the course of human history, things
11 like that do happen. That's not been my
12 experience that it generally is the case.

13 Q That's fine. Put aside your experience.
14 I'm just asking you conceptually, you don't have
15 difficulty understanding that a decision-maker
16 could say I'm doing this for one reason without
17 revealing that he is actually doing it for a
18 different reason. You understand that concept,
19 right?

20 MR. GARDNER: Objection. Calls for a
21 hypothetical.

22 THE WITNESS: Yeah. It's a hypothetical

1 to which the answer is always going to be yes. So

2 to the extent that makes you happy, sure.

3 BY MR. GERSCH:

4 Q Okay. So you do understand that concept.

5 So when that occurs, when it is the case that the

6 decision-maker puts forth a stated rationale,

7 which is, in fact, not his real rationale, is it

8 your understanding that we should pay no attention

9 to his real rationale and focus only on his stated

10 rationale?

11 MR. GARDNER: Objection. Calls for

12 hypothetical objection. Calls for a legal

13 conclusion.

14 THE WITNESS: I'm not going to answer

15 that question.

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7 After the Department of Justice made
8 their formal request for the addition of a
9 citizenship question in December of 2017, you
10 understand that the Census Bureau did some
11 analysis with respect to that request, right?

12 A Correct.

13 Q All right. And one of the things that
14 the Census Bureau produced is a document that's
15 been marked Exhibit 28.

16 A Okay.

17 Q Is that fair to say?

18 A It appears to be a memo from John Abowd
19 to the Secretary, so will -- oh, it's marked
20 draft, so --

21 Q Dated January 19, 2018, as you say, from
22 John Abowd, Chief Scientist at the Census Bureau,

1 to Secretary Ross through Karen Dunn Kelley.

2 You've seen this before, haven't you?

3 A I don't know that I've seen this
4 particular draft. It's marked draft, so I don't
5 know that this document ever made it up to the
6 Secretary's office.

7 Q Did you see a form of this document,
8 whether it was this one or not?

9 A I saw some form of this document, yes.

10 Q I want to direct your attention to the
11 one, two, three -- third full paragraph, last
12 sentence, and in it Mr. Abowd addresses
13 Alternative B -- and, by the way, you understand
14 Alternative B is adding a citizenship question to
15 the census, right?

16 A That appears to be what the memo says,
17 yeah.

18 Q So what Mr. Abowd reports is
19 Alternative B -- that is adding a citizenship
20 question -- is, quote, very costly, harms the
21 quality of the census count, and would use
22 substantially-less active citizenship status data

1 that are available from administrative sources.

2 You knew that that is what the

3 Census Bureau had concluded, right?

4 A Well, again, that's a -- this is a draft
5 pre-decisional memo. So I'm not sure if this was
6 the final document that was sent to us or not.

7 Q I'll represent to you that this
8 is -- that the record made in this case so far is
9 that this is the last draft produced. Does that
10 help you --

11 A Is that -- okay.

12 Q I'm happy if you want to consult with
13 your counsel.

14 MR. GARDNER: If you -- you can answer
15 the question, yes.

16 THE WITNESS: Sure. Assuming this is the
17 final version, then that's what the document says,
18 yes.

19 BY MR. GERSCH:

20 Q That's not my question. You came to
21 understand, isn't that right, that the view of the
22 Census Bureau was that asking the citizenship

1 question is very costly, harms the quality of the
2 census count and would use substantially-less
3 citizenship status than are available from
4 administrative sources?

5 A I would agree that that's the summary
6 statement here. That it overstates the case they
7 made further in the document. But that is not an
8 accurate representation of what's actually
9 reflected in the document.

10 Q I want to make sure I understand your
11 testimony. You're saying you disagree with their
12 conclusion?

13 A I disagree with that characterization as
14 being the final conclusion of the Census Bureau,
15 yes.

16 Q Ah. Okay. So you think that what I just
17 read to you doesn't fairly reflect the view of the
18 Census Bureau; is that right?

19 A I think that reflects the view of
20 Dr. Abowd and that it's very imprecisely stated.
21 If you read the rest of the memo, it provides more
22 detail, and so I would not agree with the

1 statement, because it's not backed up in the
2 document that it would be very costly. That's a
3 relative term. And that it would use
4 substantially-less accurate, I disagree with those
5 statements.

6 Q Yeah. I understand, and I stipulate that
7 you disagree with them. My question is a little
8 different. I'm asking if you understand this is
9 the position of the Census Bureau, whether you
10 agree with it or not, and I stipulate that you
11 don't.

12 A And just, again, I'm being very clear
13 that this sentence taken out of context, I would
14 say is not the position of the Census Bureau. The
15 position of the Census Bureau is reflected in this
16 full memo, which provides greater detail, which is
17 not, I would say, accurately characterized in this
18 summary statement at the front.

19 Q Did you ever meet with the folks at the
20 Census Bureau about this analysis?

21 A Yes, we did.

22 Q Okay. When did you do that?

1 A I couldn't tell you the exact date.

2 Q Who did you meet with?

3 A Dr. Abowd, Dr. Jarmin. It was a large
4 meeting.

5 Q And Dr. Abowd and Dr. Jarmin, they stood
6 by this analysis, right, the analysis in
7 Exhibit 28?

8 A I'd say that, yeah, they stood by the
9 entire analysis, not necessarily that statement.

10 Q And the entire analysis includes the
11 statement that I read to you, right?

12 A Again, you're -- I think you're taking a
13 single statement out of context.

14 Q My question is a little different. I'm
15 saying when you said, they stood by the entire
16 analysis, that includes the statement that I read
17 you?

18 A And, again, I will say that I think
19 you're trying to get me to say that particular
20 statement represents the view of the
21 Census Bureau, and that is not my understanding.

22 Q Okay. When you say it's not your

1 understanding, at no point did Dr. Jarmin or
2 Dr. Abowd say, no, we don't believe that
3 Alternative B is very costly, harms the quality of
4 the census count and would use substantially-less
5 accurate citizenship status data that are
6 available from administration sources; isn't that
7 right? They never took it back?

8 A We never asked them to take it back.

9 Q And they never did?

10 A I don't know if they took it back or not.

11 Q In your presence, sir.

12 A Again, they were never asked, to my
13 knowledge, to take that statement back, so there
14 would be no reason for them to take it back.

15 Q And they didn't take it back, did they?

16 A I don't know whether they took it back.

17 Q In your presence, they didn't take it
18 back?

19 A Again, I look at their entire memo, not
20 that statement.

21 Q I'm not asking that question. They
22 didn't take this statement back that I just read

1 to you three times?

2 A Again, my point is, they were never asked
3 to take it back, so there would be no reason for
4 them to take it back.

5 Q I just want there to be no
6 misunderstanding, Mr. Abowd [sic], if at trial
7 you're going to say they took it back, I want to
8 hear that right now.

9 MR. GARDNER: He's not Mr. Abowd.

10 BY MR. GERSCH:

11 Q I'm sorry, Mr. Comstock. It's late in
12 the day.

13 Mr. Comstock, if you're going to say at
14 trial that Dr. Abowd or Dr. Jarmin took this
15 statement back, I want to hear that right now.
16 Can we agree on that, that you'll tell me right
17 now?

18 A I will agree -- I will agree that I would
19 say that is not representative of the data that
20 was presented to us in the course of extensive
21 discussions. That that statement is an early
22 statement that mischaracterizes the final

1 conclusions that we understood.

2 Q When you say earlier, it's the statement
3 as of the January 19th memo, you don't disagree
4 with that?

5 A Again, I'm not contesting they provided
6 this investigation.

7 Q Focus on timing. You said this was an
8 early statement and you don't think it was
9 reflective of their final conclusions.

10 My question is: You're not saying it
11 doesn't reflect their position as of January 19th,
12 are you?

13 A I am saying, again, that I think you're
14 taking a single statement out of context and
15 trying to represent it has the position of the
16 Bureau as conclusive, and I'm saying I disagree
17 with that statement.

18 Q Let me show you -- let's mark this as
19 Exhibit 29.

20 (Plaintiffs' Exhibit 29, Memo, was
21 marked.)

22 BY MR. GERSCH:

1 Q You see what's been marked as Comstock
2 Exhibit 29, it is a March 1, 2018 memo from
3 Dr. Abowd for Secretary Ross, Bates stamp first
4 Page 001308.

5 Do you have that in front of you?

6 A I do.

7 Q Have you seen this document before?

8 A I believe I've seen this document.

9 Q Okay. And this document relates to an
10 Alternative D, right?

11 A Correct. But I'll note, again, it's
12 marked draft, and I'm just mystified as to why we
13 keep getting draft documents as opposed to finals.
14 Certainly draft documents don't normally come to
15 us.

16 MR. WALSH: Counsel, would it be possible
17 to hand out --

18 MR. GERSCH: Oh, I'm sorry.

19 MR. WALSH: Thanks.

20 BY MR. GERSCH:

21 Q This is about Alternative D; is that
22 right?

1 A That's correct. But I'm still asking a
2 question, why am I getting a draft version of this
3 instead of a final?

4 Q I don't get to testify. All I can do is
5 ask the questions.

6 And Alternative D was the idea of
7 Secretary Ross, that perhaps you could combine
8 Alternative B, which is asking the citizenship
9 question of every household in the decennial
10 census, and Alternative C, which was don't ask the
11 question but use administration data to figure out
12 citizenship status, correct?

13 A Correct.

14 Q And at the back of this memo, the last
15 sentence says, "In sum, Alternative D would result
16 in poorer quality citizenship data than
17 Alternative C. It would still have all the
18 negative cost and quality implications of
19 Alternative B outlined in the draft January 19th
20 memo to the Department of Commerce."

21 You saw this at the time, right?

22 A Again, I can't say that this was the

1 document I saw, because I did not see something
2 marked draft pre-decisional V10.

3 Q You think you saw a version of it that
4 didn't have draft on it?

5 A I have no idea. But we don't typically
6 see documents that say draft.

7 Q I'll represent that we've never seen a
8 version of either of these documents that aren't
9 marked draft. If there is one -- if there are
10 versions, I would like them right now.

11 MR. GARDNER: I represent we've produced
12 what we have.

13 BY MR. GERSCH:

14 Q Regardless of the format, you became
15 acquainted with the views of Census that
16 Alternative B would result in poorer quality
17 citizenship data than Alternative C and still have
18 all the cost and quality implications of
19 Alternative B outlined in the draft January 19th
20 memo to the Department of Commerce; you became
21 acquainted with that conclusion of theirs, right?

22 A I did.

1 Q Okay. By the way, you'll notice it
2 says -- this refers to the January 19th memo as
3 being a draft.

4 A Okay. Like I said --

5 Q Do you see that?

6 A I see it. That it says that, yes.
7 Perhaps that is what they provided to us. I don't
8 know. We produced whatever is in the record, so
9 if this is what's in the record -- as long as I'm
10 being given the final version, then okay.

11 Q All right. You're not saying that the
12 Census Bureau took back the conclusion reflected
13 in this last paragraph that I've read you from
14 Exhibit 29, are you?

15 A Again, I think there was iterative
16 exchange in which the conclusions of the
17 Census Bureau to staff and some of their
18 assertions did not hold up under
19 cross-examination.

20 Q Whether you think they held up or not, my
21 question to you is: Did the Census Bureau ever
22 take back the conclusion that's in the last

1 paragraph of this March 1 memo?

2 A You'd have to ask them.

3 Q In your presence, did they say any such
4 thing?

5 A I didn't ask them to take it back.

6 Q I'm not asking whether you asked them.
7 I'm asking -- withdrawn.

8 There were other people in the meeting
9 besides you, right?

10 A There were a series of meetings, so --

11 Q How many meetings did you have about this
12 memo, this March 1 memo?

13 A I couldn't tell you.

14 Q About?

15 A Might have met once or twice. I really
16 couldn't tell you.

17 Q And who did you remember being there
18 besides Dr. Abowd and Dr. Jarmin?

19 A Again, I don't know if it was
20 specifically on this memo or this presentation or
21 whether they sent it to us. There were multiple
22 meetings on the question. Who was at each

1 meeting, I couldn't tell you.

2 Q I think it would be fair to say there
3 were multiple meetings about Census Bureau's
4 analysis of the citizenship question, right?

5 A Yes.

6 Q Okay. And what's your best recollection
7 of how many meetings there were?

8 A I don't know. Two or three.

9 Q And if this memo is dated March 1 and the
10 decisional memo is dated March 26th. What's your
11 best recollection about when the last -- the last
12 meeting was, the last of these two or three
13 meetings?

14 A Probably somewhere in the vicinity of
15 March 20th.

16 Q Okay. And my question simply to you is,
17 sir: Did the Census Bureau people ever say we're
18 taking it back, you've convinced us, we don't
19 agree with the conclusion we put forth in the last
20 paragraph?

21 A No.

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16 Q Did you ever have any analysis of the
17 citizenship question prepared by experts other
18 than the folks at the Census Bureau?

19 A Not that I know of, no.

20 Q Did you ever get any input from somebody
21 with technical expertise with respect to the
22 Census Bureau's analysis of the citizenship
question who was not from the Census Bureau?

1 A No.

2 Q Did anyone review the Census Bureau's
3 analysis of what was wrong with the citizenship
4 question who was not a lawyer?

5 A The Secretary.

6 Q Other than the Secretary?

7 A Karen Dunn Kelley.

8 Q Other than the Secretary and Karen Dunn
9 Kelley?

10 A Obviously, Dr. Jarmin, Dr. Abowd.

11 Q I'm talking about people outside the
12 Census Bureau.

13 A Census Bureau.

14 Well, let's see -- well, Wendy Teramoto
15 might have. But, no, primarily would have been
16 Office of General Counsel doing the review.

17 Q And you?

18 A And me.

19 Q And you're a lawyer?

20 A Yes, I am a lawyer.

21 Q All right. Let's mark the decisional
22 memorandum as Exhibit 30.

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12 Q Okay. How about a randomized control

13 study of some kind, randomized controlled testing?

14 A We already have that.

15 Q You think you already have that?

16 A Sure, through the ACS.

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1 Q The initial impetus for putting the
2 citizenship question on the 2020 census was not
3 DOJ's idea; is that correct?

4 A That's correct.

5 Q It was Secretary Ross's idea, I think
6 you've testified to that, correct?

7 A He was the one who asked me to
8 investigate it, yes.

9 Q He told you sometime shortly after he was
10 confirmed that he wanted the question on the 2020
11 census, correct?

12 A He asked me to explore putting it on,
13 yes.

14 Q Well, he actually said he requests the
15 question be put on the census, correct?

16 A That was the way he phrased it, yes.

17 Q You said you would make that happen,
18 correct?

19 A I said I would do my best.

20 Q And you would get the citizenship
21 question in place, I think was -- were your words?

22 A I said I would work to get that in place.

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22 Q Anyone at Commerce who was more involved

1 in the citizenship question other than you during
2 the period from the time you came to Commerce
3 until the citizenship question issue was resolved?

4 A Probably not, no.

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20 Q Well, but prior to that, you had been

21 directed by the Secretary of the Commerce to put

22 the citizenship question on the census --

1 A I'd --

2 Q -- isn't that correct?

3 A I'd been directed to explore putting a
4 citizenship question on the census.

5 Q He said he wanted it on the census,
6 correct?

7 A That was certainly his expressed
8 interest.

9 Q It was an expressed statement, was it
10 not?

11 A That's the way he phrased it. But,
12 again, he can't put something on the census
13 without having the legal authority or process in
14 place to do so.

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14 Q But the Census Bureau, nevertheless,
15 recommended from a standpoint of accurate and
16 completeness and quality of the census that there
17 should not be a citizenship question added to the
18 census, as opposed to continuing to rely on ACS
19 data supplemented by the administrative records?

20 A No. In the process of this memorandum,
21 back and forth, they could not articulate a
22 rationale to support their belief that there would

1 be this decline in this response rate. Their
2 entire analysis relied on the assumption that
3 there would be this decline in response rate of a
4 certain percentage and that that would, therefore,
5 make the data less reliable.

6 What they couldn't refute was the fact
7 that under their proposed approach, they would
8 have had to impute -- again, based on statistical
9 models -- the citizenship of 25 million voting age
10 citizens. That was not a complete and accurate
11 picture as far as the Secretary was concerned. So
12 the Secretary said this is why we need to look at
13 combining the two approaches, B and C, to come up
14 with Alternative D. Because in the absence of
15 that, we don't have good enough data on which to
16 build the formula to impute those people that we
17 would have to because we don't have answers on
18 what their citizenship is. So that's the
19 rationale that's laid out in this memo, and as far
20 as I know, that's been the rationale that's been
21 the Secretary's all along.

22 Q But not the rationale that was accepted

1 by the Census Bureau, which nevertheless, rejected
2 as -- from a technical perspective, the
3 Secretary's rationale; isn't that correct?

4 A I disagree that they rejected it from a
5 technical perspective. They made some assumptions
6 in making their recommendation -- and that's
7 exactly what it is, it's a recommendation -- that
8 this would be the case.

9 Q Let me turn your attention to C30,
10 Page 001314, which is Page 2 of the March 26th
11 memo. And turning your attention to the Option A,
12 the third line in the sentence that says,
13 "Additionally, the block group levels CVAP data
14 currently obtained through the ACS has associated
15 margins of error" --

16 A Correct.

17 Q -- "because the ACS is extrapolated based
18 on the sample servers of the population."

19 A That's correct.

20 Q Do you know what the margins of errors
21 are that are referred to in this sentence?

22 A I think you go on and see, you'll see it

1 described later in the same memo, which is that
2 they have an error of approximately 30 percent, 28
3 to 34, I believe, is the range.

4 Yeah. If you look on Page 4,
5 "Census Bureau analysis showed that between 28 and
6 34 percent of citizenship self-responses for
7 persons with administrative records show are
8 noncitizen were inaccurate. In other words, when
9 noncitizens respond to long form or ACS questions
10 on citizenship, they inaccurately mark citizen
11 about 30 percent of the time. However, the
12 Census Bureau is still evolving its use of
13 administrative records. The Bureau does not have"
14 --

15 (Thereupon, the court reporter
16 clarified.)

17 THE WITNESS: This is in the -- under
18 Option C of Page 4.

19 MR. GARDNER: You're going to have to
20 slow down for the court reporter.

21 THE WITNESS: "So they inaccurately mark
22 noncitizen about 30 percent of the time. However,

1 the Census Bureau is still evolving its use of
2 administrative records, and the Bureau does not
3 yet have a complete administrative record set for
4 the entire population. Thus, using administrative
5 records alone would provide DOJ data with CVAP
6 data that was not a" -- "that would provide an
7 incomplete picture."

8 BY MR. ROSENBERG:

9 Q And that's your understanding of what
10 margins of error means as used on Page 01314?

11 A Well, yes. They're referring to that --
12 that margin of error they're referring to is the
13 28 to 34 percent they were off.

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4 Q Let me draw your attention to the period
5 around January 2018. Do you recall taking part in
6 the signing of the list of 35 questions to the
7 Census Bureau to answer?

8 A Yes. I helped prepare that list.

9 Q Do you -- who else helped prepare that
10 list?

11 A The Secretary, Karen Dunn Kelley,
12 James Uthmeier, myself. There may have been
13 others.

14 Q Were you the prime drafter?

15 A Of that particular list, I may have been
16 the prime assembler. I was not necessarily the
17 prime drafter of all the questions.

18 Q And what was your purpose -- what was the
19 purpose in proposing those questions?

20 A Basically, it has -- I think it was
21 pointed out earlier we got an analysis from the
22 Census Bureau that seemed to have a particular

1 viewpoint, and it wasn't well supported in some
2 cases. So those are the questions that arose
3 after reviewing their memo.

4 Q And when you -- after the questions were
5 formulated, whom did you send them to?

6 A I believe they were sent to the
7 Census Bureau.

8 Q And the idea was the Census Bureau would
9 answer the questions; is that correct?

10 A They would provide that input, yes.

11 Q And you gave them a deadline, did you
12 not?

13 A I imagine we did, yeah.

14 Q Four days; is that correct?

15 A I don't recall.

16 Q Was it your understanding that the
17 answers were going to be provided solely by the
18 Census Bureau to those questions?

19 A I believe all the questions were directed
20 to the Census Bureau, but if they were directed to
21 somebody else, then, obviously, they would provide
22 them.

1 Q But it was your understanding that the
2 Census Bureau would answer them; is that correct?

3 A Again, without going back and looking at
4 the documents and the accompanying emails, I can't
5 tell you exactly who it was. But my understanding
6 was, yes, they were drafted for the Census Bureau.

7 Q Did there come a time when you reviewed
8 the answers for the questions?

9 A I imagine there was.

10 Q Well, was there?

11 A Again, I know all of you are focused on
12 this case and everything else. This was one small
13 fraction of the work I was doing at that time. So
14 I'm quite certain I reviewed the answers. Exactly
15 when, I can't tell you. But, clearly, they
16 went -- the responses to those questions were
17 considered in the decision memo. So I, obviously,
18 reviewed them at some point.

19 Q Do you recall whether you reviewed those
20 responses all at once or some kind of rolling
21 basis?

22 A If memory serves, I believe the Census

1 responded back to some, and then provided
2 follow-up answers to others that took more time.

3 Q Do you recall whether in connection with
4 any of the questions the Census Bureau was asked
5 to change their answers to any questions?

6 A I believe -- well, I believe in one case,
7 they provided a response that indicated that there
8 was a very set format for putting questions on the
9 census. And we went back to them and said, how
10 can that be? You haven't -- there hasn't been a
11 question added to the long form? They went back
12 and reviewed and said, yes, that's correct. This
13 was the process we used for the ACS.

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18 Q Let's have this marked as -- one question
19 on that. Turning our attention to Question 31 --

20 A Okay.

21 Q -- is that the question you were
22 referring to before as a question whose answer was

1 changed at some point?

2 A Yeah. Because this was -- as I said,
3 when we explored the question further, it became
4 evident that this was not, in fact, an accurate
5 representation for the process for the decennial.

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18 Q Have you spoken to anyone at
19 Department of Justice's voting rights section?

20 A Not to my knowledge.

21 Q So you were never referred to anyone or
22 you never inquired from anyone, a contact within

1 the voting rights section, to discuss this

2 request --

3 MR. GARDNER: Objection. Form.

4 BY MS. SENTENO:

5 Q -- for a citizenship question?

6 MR. GARDNER: Sorry. Objection to form.

7 THE WITNESS: No. Again, as I think we
8 established in the earlier testimony, I was
9 referred to Mary Blanche Hankey by someone in the
10 Department of Commerce, by Eric Branstad, who I
11 think got her name from a contract of his at the
12 White House. She referred me to -- I'm already
13 blanking on his name -- John McHenry. I did not
14 investigate John McHenry's position in the
15 department. I just took it on face value he would
16 be the right person to talk to and those are the
17 two people I spoke to at Department of Justice,
18 so -- outside of litigation counsel, obviously.

19 BY MS. SENTENO:

20 Q You testified earlier in the memo that
21 you drafted for the Secretary that stated that
22 once you had been told by DHS that your request

1 would be more appropriately handled by the
2 Department of Justice, you said that the
3 interaction ceased; is that correct?

4 A Well --

5 Q From you?

6 A My efforts at that point to track down
7 somebody ceased because they had run into a dead
8 end. I mean, our initial conclusion was that
9 Department of Justice was the right place to go.
10 They seemed occupied on other matters, so they
11 referred us to DHS. DHS referred us back, so now
12 I'm back to where I started.

13 Q So once you were referred back to DOJ,
14 you didn't ask another follow-up as to who in the
15 voting section would be more appropriate to talk
16 about this particular issue?

17 A Again, I was working on literally dozens
18 of issues that consumed a lot of time. And so I
19 had put the time into it that I could afford to
20 put into it and had come up empty. So I reported
21 that to my boss, and basically, said if absent
22 some instruction from higher up, it appears that

1 the DOJ staff is not particularly interested in

2 expending resources on this right now.

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2 BY MS. SENTENO:

3 Q Okay. Are you aware of any VRA cases
4 that the Department of Justice declined to bring,
5 only because they needed block-level citizenship
6 data?

7 A I'm not aware of that, but I didn't
8 research that either.

9 Q So no -- neither yourself or anyone else
10 at the Department of Commerce asked DOJ for this
11 information?

12 A I did not. I can't say whether anybody
13 else did.

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1 Q But the data suggests -- the data that
2 the Census Bureau provided suggests that the
3 break-off rate for noncitizens was higher with
4 respect to a citizen question; is that correct?

5 A Higher than noncitizen?

6 Q Yes.

7 A Yes. That's true.

8 Q Okay. So if the same people who did not
9 respond to the citizen question on the ACS also
10 didn't respond to the short form of the decennial
11 census, that would cause a drop in the total head
12 count, correct?

13 A No. It would not.

14 Q Could you explain?

15 A Secretary Ross placed the question at the
16 end of the census so they would be able to not
17 answer that and still complete the census. We
18 also have administrative records and
19 Secretary Ross directed we use administrative
20 records, which we're actively doing for a variety
21 of reasons, not just citizenship.

22 So we have every confidence between the

1 increased outreach that's planned, the additional
2 money and resources that are to be put into the
3 advertising and other things, that we will more
4 than compensate -- in fact, our objection is to
5 have a complete and accurate count above and
6 beyond the count that was done in 2010.

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Q Sir, I'd like to talk about the time
period between the December 12th DOJ letter
requesting the citizenship question and before

1 Secretary Ross issued the March 26 memo --
2 decision memo.

3 A I'm sorry. Could you tell me who you're
4 with?

5 Q Sure. My name is Gabrielle Boutin. I'm
6 with the Attorney General's of the State of
7 California, and I represent plaintiffs, the
8 State of California -- excuse me -- State of
9 California v. Ross in the Northern District of
10 California.

11 A Okay. Thank you.

12 Q So during the time period between the
13 December 12th DOJ letter and the issuance of
14 Secretary Ross's March 26th memorandum, that's
15 what we're talking about.

16 A I understand.

17 Q Do you understand?

18 A So far so good.

19 Q Good.

20 During that time period, did the
21 Department of Commerce ever inform the
22 Department of Justice that the Census Bureau

1 recommended using administrative records alone to
2 meet Justice's December 12th request rather than
3 adding the citizenship question to the census?

4 A I believe that was part of the purposes
5 of the meeting they were seeking with the -- the
6 Census Bureau was seeking with the
7 Justice Department.

8 Q Okay. My question is: Did the
9 Commerce Department ever inform DOJ that the
10 Census Bureau recommended using administrative
11 records alone to meet their requests, rather than
12 adding a citizenship question to the census?

13 A Again, I'm not privy to all the
14 conversations with the Justice Department, so --

15 Q Do you --

16 A -- I was not --

17 Q -- know --

18 A I was not involved in such a discussion,
19 no.

20 Q Okay. But you were one of the primary
21 people working on this at Commerce; isn't that
22 right?

1 A Yes.

2 Q Do you think you would have known if
3 someone from Commerce conveyed that information to
4 the Department of Justice?

5 MR. GARDNER: Objection. Calls for
6 speculation.

7 BY MS. BOUTIN:

8 Q Do you think it's likely you would have
9 known?

10 A It's possible, yes.

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21 Q Did Commerce ever transmit to

22 Department of Justice any of the Census Bureau's

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1 memos that analyzed the options for providing to
2 DOJ block-level citizenship data?

3 MR. GARDNER: Objection. Lack of
4 foundation.

5 THE WITNESS: I would just note it's the
6 Secretary of Commerce's decision as to whether
7 this goes forward. His focus is on a complete and
8 accurate count.

9 And as explained earlier, the Option C
10 alternative, which was to use the administrative
11 records only, would have inquired us to impute --
12 so, in other words, fill in the blanks -- for 25
13 million voting age citizens. That was not
14 something Secretary Ross was prepared to have the
15 department do.

16 BY MS. BOUTIN:

17 Q Mr. Comstock, I understand that. Your
18 counsel is -- wants us to limit the amount or time
19 that we're here today, and the best way to do that
20 is if you would answer my questions directly. So
21 I'll ask you again.

22 Did the Department of Justice ever --

1 A Not to my knowledge.

2 Q Okay. Thank you.

3 And again, we're talking about between
4 December 12th and the March 26th.

5 A Right.

6 Q Did the Department of Commerce ever
7 inform DOJ that the Census Bureau believed that
8 administrative records alone would be more
9 complete -- would create more complete and
10 accurate citizenship data than asking a
11 citizenship question on the census and then
12 combining the data from that question with
13 administrative records?

14 MR. GARDNER: Objection. Form.
15 Objection. Lack of foundation.

16 BY MS. BOUTIN:

17 Q Do you want me to re-ask that question?

18 A Sure.

19 Q Did the Department of Commerce ever
20 inform Justice that the Census Bureau believes
21 that admin -- using administrative records alone
22 would provide more complete and accurate data than

1 instead of doing that asking the citizenship
2 question on the census and then combining that
3 with the use of administrative records?

4 MR. GARDNER: Same objection.

5 THE WITNESS: Again, I think you
6 mischaracterize the Census Department's -- Census
7 Bureau's analysis. But, again, it's the
8 Secretary of Commerce's decision as to what to
9 make, and so he would only transmit to the
10 Justice Department what he considered that would
11 provide complete and accurate data.

12 BY MS. BOUTIN:

13 Q But the Commerce Department did inform
14 the Department of Justice about that belief by the
15 Census Bureau?

16 MR. GARDNER: Same objections.

17 THE WITNESS: Again, not to my knowledge.

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18 Q It says, "Finally placing the question on
19 the decennial census and directing the
20 Census Bureau to determine the best means to
21 compare the decennial census responses with
22 administrative records will permit the

1 Census Bureau to determine the inaccurate response
2 rate for citizens and noncitizens alike using the
3 entire population. This will enable the
4 Census Bureau to establish, to the best of its
5 ability, the accurate ratio of citizen to
6 noncitizen responses to impute for that small
7 percentage of cases where it is necessary to do
8 so."

9 A Yes.

10 Q So with respect to those two sentences
11 starting with the word finally, who wrote that
12 language?

13 A I couldn't say for certain, but I likely
14 had a hand in drafting that.

15 Q Okay. Can you explain, how does adding a
16 citizenship question to the census and determining
17 the incorrect response rate for citizens and
18 noncitizens help the Census Bureau impute with
19 respect to people who did not respond at all and
20 did not have administrative records?

21 A I mean, you could ask the Census Bureau
22 for a fuller explanation of imputation, but

1 basically, they do a formula that looks at data
2 that they have. And so if they know for the
3 people -- let's say 95 percent of the population
4 that they have accurate records for and which they
5 have responses for, if they discover that -- pick
6 a number -- it's now 10 percent of the people who
7 aren't citizens, are, in fact, noncitizens, then
8 they would probably apply that to 5 percent
9 remaining. So they would take whatever number of
10 people who are citizens, multiply that by that 5
11 percent, and then they would take the noncitizens
12 and say, okay, we now know the accurate count,
13 based on the entire population of what we have,
14 there's a 10 percent error rate, 10 percent of the
15 people that might say they're citizens are
16 noncitizens, so we're going to multiply that
17 number out. That's going to give you the most
18 accurate count that you can get.

19 Q So what's your source of that
20 explanation?

21 A Based on the briefings.

22 Q So you're saying that the Census Bureau

1 supports this statement here?

2 A This is the Secretary's statement.

3 Whether the --

4 Q But did the Census Bureau explain,

5 say -- explanation you just offered me -- did

6 they -- did they explain it that way to you?

7 A More or less, yeah.

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14 Q So do you have any source, other than the

15 Census Bureau, for believing in the scientific

16 empirical accuracy of these last two sentences of

17 this paragraph?

18 MR. GARDNER: Objection. Form.

19 THE WITNESS: Yes. My experience, my

20 knowledge and other people who also, including the

21 Secretary, who is a very smart man, who also came

22 to a similar conclusion.

1 BY MS. BOUTIN:

2 Q Do you believe you have more expertise in
3 the science of imputation than the experts at the
4 Census Bureau?

5 A I'm not going to get caught in making
6 such a statement, but I'm perfectly capable of
7 looking at the analysis they provided and deciding
8 whether or not I agreed with that analysis.

9 Q What's your background in statistical
10 imputation?

11 A I --

12 (Conference call interruption.)

13 BY MS. BOUTIN:

14 Q What is your background in statistical
15 imputation?

16 A I don't have one.

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4 VIDEOGRAPHER: This concludes today's
5 video deposition. The time on the video is
6 6:02 p.m. We are off the record.

7 (Whereupon, at 6:04 p.m., the deposition
8 of EARL COMSTOCK was concluded.)
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CERTIFICATE OF REPORTER

I, KAREN LYNN JORGENSEN, RPR, CSR, CCR the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that the said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



KAREN LYNN JORGENSEN, RPR, CCR, CSR

Dated this 3rd day
of September , 2018.

ACKNOWLEDGEMENT OF DEPONENT

I, EARL COMSTOCK, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes or corrections, if any, appear in the attached errata sheet signed by me.

Date

EARL COMSTOCK

Joshua E. Gardner, Esquire

U.S. DEPARTMENT OF JUSTICE

20 Massachusetts Avenue

Washington, D.C. 20530

IN RE: New York Immigration Coalition, et al., v.
United States Department of Commerce, et al.

1 Dear Mr. Gardner:

2 Enclosed please find your copy of the
3 deposition of EARL COMSTOCK, along with the
4 original signature page. As agreed, you will be
5 responsible for contacting the witness regarding
6 signature.

7 Within 21 days of receipt of transcript,
8 please forward errata sheet and original signed
9 signature page to counsel for, John Freedman and
10 all counsel of record.

11 If you have any questions, please do not
12 hesitate to call. Thank you.

13 Yours,



14 Karen Lynn Jorgenson, RPR, CCR, CSR
15 Capital Reporting Company

16 **REDACTED**

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18 cc: All counsel of record
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E R R A T A S H E E T

Case Name: New York Immigration Coalition, et
al., v. United States Department of Commerce, et
al.,

Witness Name: EARL COMSTOCK

Deposition Date: Thursday, August 30, 2018

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Signature

Date

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

REDACTED

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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