

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

18-CV-2921 (JMF)

NOTICE OF FILING OF DEPOSITION DESIGNATIONS FOR DAVID LANGDON

Plaintiffs hereby file with the Court the synopsis of deposition excerpts for David Langdon (Exhibit 1), and the deposition excerpts for David Langdon that will be offered as substantive evidence (Exhibit 2) (Plaintiffs' designations are indicated in purple, and Defendants' counter-designations are indicated in green).

Respectfully submitted,

BARBARA D. UNDERWOOD

Attorney General of the State of New York

By: /s/ Matthew Colangelo

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49(c)(3).*

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Exhibit 1

Summary: David Langdon (October 26, 2018)

David Langdon has been an employee of the Department of Commerce (“DOC”) since 2011, and currently serves as an employee in the Office of Policy and Strategic Planning at the Department of Commerce. Tr. 31-32. In mid-March 2017, Earl Comstock, Mr. Langdon’s direct supervisor, informed Mr. Langdon that he and Secretary Ross were interested in understanding the process by which Congress is notified of new subjects to be added to the Census or the American Community Survey. Tr. 95-98. Mr. Langdon first learned of Secretary Ross’s interest in adding the citizenship question during the summer of 2017. Tr. 106. In the summer of 2017, Commerce leadership asked him to research whether undocumented immigrants were included in census totals for the apportionment count. Tr. 112, 144-147, 148 – 149, 157-158, Ex. 6, 167-168, 172-177, 182-184, 185-186, Ex. 6.

Despite being the most senior career staffer at the Commerce Department for issues of policy and strategy for the Census, Mr. Langdon did not have input on the citizenship question until at least December 2017, when he reviewed the Census Bureau’s technical analyses of the citizenship question. Tr. 294-295. In addition, he is not aware of any external analyses solicited for evaluating the impact of the citizenship question, beyond what the Census Bureau prepared. Tr. 282 – 283.

The urgency and timeframe of adding the citizenship question did not accommodate any sort of testing of the question or otherwise, a departure from previous practice. Tr. 243.

Until consideration of this decennial census, Mr. Langdon had also never heard of the Department of Justice’s interest in block-level citizenship data for purposes of Voting Rights Act enforcement. Tr. 248-249. The manner in which he found out about this interest – or data need – deviated from the process by which agencies communicate their data needs; which includes a dialogue between agencies at different levels and then a quick turn around on meeting those needs. Tr. 248-249. Discussions about adding the citizenship question were not part of regular census briefings, but occurred at “the senior level.” Tr. 293.

Exhibit 2

Standard Transcript Report

PL Designations

Langdon, Sanford 10-26-2018



1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MARYLAND

3 ----- x

4 ROBYN KRAVITZ, et al., : Plaintiffs, :

5 vs. : Civil Action No. U.S. DEPARTMENT OF COMMERCE, : 8:18-
cv-01041-GJH

6 et al., : Defendants. :

7 ----- x LA UNION DEL PUEBLO ENTERO, :

8 et al., : Plaintiffs, :

9 vs. : Civil Action No. WILBUR L. ROSS, sued in his : 8:18-CV-
01570-GJH

10 official capacity as U.S. : Secretary of Commerce, et al.,:

11 Defendants. : ----- x

12 VIDEOTAPED DEPOSITION OF: DAVID SANFORD LANGDON

13 DATE: Friday, October 26, 2018

Global Objection--Rules 401,
403

14 TIME: 9:08 a.m.

15 LOCATION: Covington & Burling

16 850 Tenth Street, D.C.

17 Washington, D.C.

18 REPORTED BY: Denise M. Brunet, RPR,

19 Reporter/Notary

20 Veritext Legal Solutions

21 1250 Eye Street, D.C., Suite 350

22 Washington, D.C. 20005

1 A. P P E A R A N C E S

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22 (Appearances continued on the next page.)

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4 Eric Xi

5 Glen Fortner, Videographer

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1 C O N T E N T S

2 EXAMINATION BY: PAGE:

3 Counsel for Kravitz Plaintiffs 11

4

5 DEPOSITION EXHIBITS: PAGE:

6 1 - E-mail from Herbst to Langdon dated

7 2/2/17 71

8 2 - E-mail from Langdon to Comstock dated

9 3/10/17 93

10 3 - E-mail from Langdon to Comstock and

11 Herbst dated 3/15/17 95

12 4 - E-mail chain starting with e-mail from

13 Comstock to Ross dated 5/2/17 125

14 5 - E-mail from Comstock to Ross dated

15 3/10/17 137

16 6 - E-mail chain starting with e-mail from

17 Langdon to Blumerman dated 5/24/17 143

18 7 - E-mail from Langdon to Comstock and

19 Herbst dated 5/24/17 171

20

21

22 (Exhibits continued on the next page.)

1 DEPOSITION EXHIBITS: PAGE:

2 8 - E-mail chain starting with e-mail from

3 Langdon to Comstock and Herbst dated

4 5/24/17 190

5 9 - Memo from Ross dated 6/21/18 205

6 10 - E-mail chain starting with e-mail from

7 Langdon to Park-Su dated 6/22/18 211

8 11 - E-mail chain starting with e-mail from

9 Uthmeier to Langdon dated 1/29/18 232

10 12 - Letter and attachment from Gary to

11 Thompson dated 11/4/16 249

12 13 - E-mail from Quinley to Kelley dated

13 1/10/18 253

14 14 - Agenda for steering committee meeting

15 dated 1/11/18 253

16 15 - Questions on the January 19 draft

17 census memo on the DOJ citizenship

18 question reinstatement request 264

19 16 - E-mail chain starting with e-mail from

20 Comstock to Langdon, et al., dated

21 1/30/18 268

22 (Exhibits continued on the next page.)

1 DEPOSITION EXHIBITS: PAGE:

2 17 - E-mail chain starting with e-mail from

3 Abowd to Reist and Lamas dated 1/31/18 268

4 18 - Memo from Abowd dated 1/19/18 296

5

6 (*Exhibits attached to the transcript.)

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good morning. We are
3 going on the record at 9:08 a.m. on October 26th,
4 2018. Please note the microphones are sensitive
5 and may pick up whispering, private conversations
6 and cellular interference. Please turn off all
7 cell phones or place them away from the
8 microphones as they can interfere with the
9 deposition audio. Audio and video recording will
10 continue to take place unless all parties agree to
11 go off the record.

12 This is media unit 1 of the
13 video-recorded deposition of David Langdon taken
14 in the matter of Robyn Kravitz, et al., v. U.S.
15 Department of Commerce, et al., and La Union Del
16 Pueblo Entero, et al., v. Wilbur Ross, et al.,
17 filed in the United States District Court for the
18 District of Maryland.

19 This deposition is being held at
20 Covington & Burling, LLP, located at 850 10th
21 Street, Northwest, Washington, D.C.
22 My name is Glen Fortner from the firm

1 Veritext, and I am the videographer. The court
2 reporter is Denise Brunet from the firm Veritext.
3 I am not related to any party in this action, nor
4 am I financially interested in the outcome.
5 Counsel and all present in the room and
6 everyone attending remotely will now state their
7 appearances and affiliations for the record. If
8 there are any objections to proceeding, please
9 state them at the time of your appearance,
10 beginning with the noticing attorney.

11 MR. DURAISWAMY: Shankar Duraiswamy for
12 the Kravitz plaintiffs.

13 MR. ALTVATER: B.J. Altvater, law clerk,
14 Covington & Burling, for the Kravitz plaintiffs.

15 MS. SHAH: Niyati Shah for the Lupe
16 plaintiffs and the District of Maryland case
17 number 8:18-01570.

18 MR. YOUNG: Dylan Young from Arnold &
19 Porter for the NYIC plaintiffs.

20 MR. CANNON: Michael Cannon, U.S.
21 Department of Commerce agency counsel.

22 MS. WELLS: And Carlotta Wells from the

1 Department of Justice representing the defendants.

2 THE VIDEOGRAPHER: The court reporter

3 will please swear in the witness.

4 WHEREUPON,

5 DAVID SANFORD LANGDON,

6 called as a witness, and having been sworn by the

7 notary public, was examined and testified as

8 follows:

9 EXAMINATION BY COUNSEL FOR KRAVITZ PLAINTIFFS

10 BY MR. DURAISWAMY:

11 Q. Good morning, Mr. Langdon. As you just

12 heard, my name is Shankar Duraiswamy. I represent

13 the plaintiffs in one of the cases that we're here

14 about today. Let me start with a simple question.

15 Could you please state and spell your name for the

16 record.

17 A. State and spell?

18 Q. Yes.

19 A. David Sanford Langdon. D-A-V-I-D,

20 S-A-N-F-O-R-D, L-A-N-G-D-O-N.

21 Q. And could you provide your home and work

22 addresses for the record, please?

1 At a later point in time, you received a
2 master's in applied economics from Johns Hopkins;
3 is that right?

4 A. Yes.

5 Q. That was in 2003?

6 A. Yeah.

7 Q. Is there any other educational background
8 that we've missed?

9 A. In terms of university education, no.

10 Q. What about -- how about non-university
11 education?

12 A. I mean, all federal employees, we take,
13 you know, training courses and, you know,
14 continuing education.

15 Q. Understood. Why did you decide not to
16 finish the degree in Spain?

17 A. It was a personal lifestyle decision. So
18 my later wife and I decided that we wanted to look
19 for work in the United States, settle down, and we
20 chose Washington, D.C.

21 Q. And as I understand it, when you settled

22 down in D.C., you took a job with the Bureau of

1 Labor Statistics; is that right?

2 A. Correct.

3 Q. What was your job there?

4 A. I was an economist, a staff economist, at

5 BLS. I worked on the current employment

6 statistics program, which is part of the Office of

7 Employment and Unemployment Statistics.

8 Q. How did you end up in that job?

9 A. They were hiring a lot. This was 1998.

10 I interviewed -- I started in July, interviewed in

11 January. And they had a lot of open positions,

12 and I chose that office to work in.

13 Q. And how long did you have that position?

14 A. Around seven years.

15 Q. What were your job responsibilities?

16 A. So we -- this office was in charge of

17 producing the monthly payroll survey numbers. So

18 there's two major sets of employment data that go

19 in the monthly jobs report, typically published on

20 the first Friday of the month. It's a principal

21 federal economic indicator.

22 My office was responsible for the editing

1 of microdata, the preparations of the analysis,
2 and discussion and economic analysis of them with
3 senior BLS management. We also did --

4 THE REPORTER: Senior --

5 THE WITNESS: BLS, Bureau of Labor
6 Statistics. It's the acronym.

7 Senior BLS management. And we did
8 research reports as well.

9 BY MR. DURAISWAMY:

10 Q. And that describes your responsibilities
11 during the entire seven years that you had that
12 position?

13 A. Yeah. I mean, I became a supervisory
14 economist. So at some point in that time -- I
15 became a team lead and, later, a supervisory
16 economist. So, you know, staff economists, you
17 know, reported to me. But we did -- it was the
18 same office, same, you know, general
19 responsibilities.

20 Q. Did you have any responsibility for the
21 design or administration or execution of the
22 payroll survey?

1 A. Yeah.

2 Q. Could you describe what your

3 responsibilities were?

4 A. So we -- I mean, it varied, really. I

5 mean, we worked with the data collection team.

6 There's a separate collection data team. So the

7 monthly payroll surveys is a massive business

8 survey. It goes to around 300,000 U.S. -- between

9 300 and 400,000 U.S. business establishments every

10 month, and it collects information on their

11 payrolls, so employment, female employment, total

12 payroll dollars, total hours worked, and then

13 manufacturing total overtime hours.

14 And we -- during that period, we went

15 through a major transition in how the -- and the

16 industry framework that was used to assign a

17 company to a specific industry within

18 manufacturing, a shift from the standard

19 industrial classification system to the North

20 American industry classification system. So we

21 were involved with that.

22 We were involved with a potential

1 decision to remove -- to stop collecting data on

2 female employment --

3 THE REPORTER: Stop collecting data on...

4 THE WITNESS: Data on the number of women

5 employed by companies. So, I mean, it was a

6 variety of things.

7 BY MR. DURAISWAMY:

8 Q. Did you have any prior background in

9 survey methodology or design?

10 A. Some. I mean, I took classes on it when

11 I was in Seville. So I took classes on survey

12 methodology and survey design. And I learned a

13 lot on the job.

14 Q. Did you have any involvement with any

15 other surveys or survey data while you were there?

16 A. On BLS? As an analyst. I used data from

17 other BLS programs in research reports I did. So

18 I used data -- we worked closely with the people

19 on the current population survey. So it's a

20 monthly household survey that actually the Census

21 Bureau administrates -- administers, but BLS is

22 one of the major users.

1 Q. Other than the current population survey,
2 did you have any -- did you do any work related to
3 any other surveys administered by the Census
4 Bureau during that period of time?

5 A. A little bit on the American Time Use
6 Survey, which is also administered by the Census
7 Bureau, mostly as an analyst. We used the data.

8 Q. So with respect to both of those, you
9 weren't working at the Census Bureau, you weren't
10 involved in the execution of the survey --

11 A. No.

12 Q. -- but you were analyzing the data that
13 came out of the survey?

14 A. Correct.

15 Q. Okay. Other than the census surveys, any
16 other surveys that you had any experience with
17 while you were at BLS?

18 A. No, not that I recall.

19 Q. As I understand it, you then moved in
20 2006 to the Office of Chief Economist at the
21 Department of Labor; is that right?

22 A. Within the Office of the Assistant

1 Secretary for Policy. And the chief -- at that
2 time, the chief economist was -- this was in the
3 Bush 43 administration. The chief economist at
4 that point was housed within that, the policy
5 office.

6 Q. How did you end up in that position?

7 A. I applied for the job. There was an
8 opening on USAJobs. It looked interesting and I
9 applied for it and got it.

10 Q. What were your responsibilities there?

11 A. So we -- it varied. It varied quite a
12 bit. We did a lot of -- principally, a lot of
13 economic analysis for the Secretary and for her
14 team. It was Secretary Chao at that point. So
15 macroeconomic analysis, labor market analysis --

16 THE REPORTER: I'm sorry. Could you slow
17 down a little bit?

18 THE WITNESS: Sure. I'm sorry.

19 Macroeconomic analysis, labor market
20 analysis, some of it connected to the policy
21 agenda of the department at that point.

22 BY MR. DURAISWAMY:

1 jointly between two statistical agencies, and
2 there's lots of modules to it, and there's an
3 opportunity for all sorts of conversations about
4 what content there might be in specific pieces and
5 for what purposes. So, I mean, really -- I just
6 can't answer that.

7 Q. Is it fair to say that, generally, the
8 Labor Department determined the priorities for
9 what it needed from survey data -- for what the
10 Labor Department needed?

11 A. The Labor Department sets its policy
12 priorities, but as far as the content goes, I
13 mean, I think it just -- it depends.

14 Q. Any other work related to surveys while
15 you were at the Labor Department in the Office of
16 Chief Economist?

17 A. Not that I recall.

18 Q. Okay. And your tenure there ended around

19 2011; is that right?

20 A. Yep.

21 Q. And that's when you transitioned to the

22 Department of Commerce, correct?

1 A. Correct.

2 Q. What brought about that transition?

3 A. Same answer as previously. So I learned

4 about a job posting. It was on USAJobs. I

5 applied for it, interviewed and was accepted.

6 Q. What was the job?

7 A. It was as a senior economist in the

8 Economics and Statistics Administration and then,

9 within the Economics and Statistics

10 Administration, the Office of the Chief Economist.

11 Q. What -- well, let me do this first. Is

12 that the position you still hold today?

13 A. No.

14 Q. Can you just walk me through the

15 different positions that you've held in the

16 Commerce --

17 A. Yeah. It can be a --

18 Q. -- Department since 2011?

19 A. -- bit confusing. So I --

20 Q. Sorry. I just want to --

21 MR. DURAISWAMY: Do you need him to slow

22 down?

1 THE REPORTER: You're going fast and

2 you're talking over each other.

3 Can you just walk me through the

4 different position that you've held in the

5 Commerce Department in 2011 --

6 MR. DURAISWAMY: Since 2011.

7 BY MR. DURAISWAMY:

8 Q. So -- sorry, Mr. Langdon. If you could

9 do you -- you talk fast, as I do naturally. If

10 you could just try to slow down and wait till I

11 get my question out and then start, that will make

12 it easier --

13 A. Understood.

14 Q. -- for Denise, I think.

15 So, yeah. Could you just walk me through

16 the different positions you've held at the

17 Commerce Department since 2011?

18 A. Yeah. I started at Commerce in

19 January 2011. I was hired as a senior economist

20 in -- the acronym is ESA. And I continued in that

21 position until about a month or so ago, actually.

22 But in addition to that, in October of 2012, I was

1 asked to also go on detail, essentially a
2 part-time detail, in the office of policy --
3 Office of Policy and Strategic Planning, which is
4 part of the Office of the Secretary of Commerce.
5 So I was basically doing two jobs. And I was on
6 detail in the policy office and I was an economist
7 in ESA.
8 I actually subsequently became a
9 supervisory economist in ESA. So I had a staff.
10 So I was managing a staff of economists. And then
11 I was doing policy work under various Secretaries.
12 And I've continued to do that policy work up until
13 now.
14 Because of a reorganization that was
15 announced in March of 2017, the Office of the
16 Chief Economist was eliminated, and the staff of
17 that office and actually the staff of ESA were
18 reassigned to different positions in the
19 Department of Commerce, some in the Census Bureau,
20 some in the Bureau of Economic Analysis and some
21 in other areas.
22 I was assigned to -- actually, moved

1 full-time as a permanent employee of the Office of

2 Policy and Strategic Planning, and so that's my

3 single job now.

4 And there's a lot of overlap of sort of

5 research and responsibilities and content area

6 between those two jobs.

7 Q. So just to be clear, from about

8 October 2012 until March 2017, you essentially had

9 a dual role as a senior economist in ESA and as a

10 senior policy advisor; is that fair to say?

11 A. That's exactly right.

12 Q. In the Office of Policy and Strategic

13 Planning?

14 A. Yes.

15 Q. Is it possible to estimate roughly how

16 much of your time was devoted to one role versus

17 another during that period of time?

18 A. It varied a lot. It varied by

19 assignment, by work flow. I mean, at times -- it

20 was never 50/50. Actually, somebody joked it was

21 more like 70/70.

22 Q. What were your responsibilities with

1 respect to ESA?

2 A. As a policy advisor?

3 Q. I guess I'm referring to the first role

4 you identified as a senior economist in ESA.

5 A. So think about the -- sort of talk about

6 the structure of ESA. Okay? So ESA is an

7 umbrella -- or was an umbrella organization that

8 had three pieces underneath: The Census Bureau,

9 the Bureau of Economic Analysis, and then the

10 small Office of the Chief Economist. And so the

11 chief economist's office essentially was -- like

12 an on-call research -- a group of research -- a

13 research agency within the Department of Commerce

14 that would largely support the missions of the two

15 statistical agencies. So -- and also, you know --

16 they would also conduct research to support

17 whichever administration's policy agenda.

18 So I, or my staff later on, would do a

19 lot of either internal or external research

20 reports on all sorts of topics. A lot of mine had

21 a labor focus, and there was a strong demand for

22 that. But the office itself, I mean, did a

1 variety of research.

2 Q. And you said the research was done in

3 part to support the work of the other two

4 statistical agencies that fell within the ESA,

5 correct?

6 A. Yeah.

7 Q. What kinds of work did you do to support

8 the work of the Census Bureau?

9 A. So, I mean, one thing we could do would

10 be research reports that would demonstrate the

11 value or the utility of data that they produced.

12 So for example, we -- I co-authored a few studies

13 on the STEM workforce, you know, so the science,

14 technology, engineering and math workforce. And

15 for those studies, we used American Community

16 Survey data a lot, and current population survey

17 data. So -- and we showed, you know, interesting

18 analysis you could do about that workforce and

19 interesting aspects of those data sets.

20 Q. Did any of the work you did have an

21 impact or relate to the content of the surveys

22 administered by the Census Bureau?

1 A. It related to, yes.

2 Q. Let me try to be more specific. Did it

3 relate to decisions about what the content of

4 those surveys should be?

5 A. I'm not -- I'm not sure. Maybe

6 indirectly. So to be specific, like, one of the

7 studies we did looked at -- used a variable on the

8 degree -- the major of -- that bachelor degree

9 holders had. So, basically, like, the survey form

10 asked people about their educational attainment.

11 If you indicated you had a bachelor's degree, you

12 would receive a subsequent question on what your

13 first major or second major was. And so our STEM

14 studies looked at that.

15 And during a subsequent content review

16 that I was not involved with for the American

17 Community Survey, that was one of the questions

18 that, you know, was up for potential elimination.

19 And I think -- you know, so there was some overlap

20 and discussion with, you know, probably Census

21 Bureau staff about, you know, things along those

22 lines.

1 I was indirectly involved in some studies
2 that were done in the Obama administration
3 regarding the utility of the American Community
4 Survey that tried to demonstrate use cases. You
5 know, so how -- you know, the Census Bureau and --
6 all statistical agencies put out data. And a lot
7 of times you don't really know -- you don't track
8 who is using it and how it's being used. And
9 knowing -- tracking that information can help you
10 determine what content is useful.

11 There were -- in the Obama administration
12 there were -- and previously, too, there were
13 questions from Congress about the utility of the
14 American Community Survey, the burden associated
15 with the American Community Survey, the questions
16 that were on the survey. And the research that
17 the chief economist's office did helped inform a
18 lot of their conversations. So if you look at how
19 the use cases -- or the utility of the survey,
20 that would demonstrate whether or not you should
21 keep asking certain questions or not.

22 Q. What particular questions on the ACS were

1 considered in these -- in these discussions?

2 A. Essentially, the whole -- ultimately, the

3 content review of the ACS, like I said, I was not

4 really directly involved with, looked at

5 everything, every single question. All the

6 questions on the ACS have to have a federal use.

7 And so part of the study was determining, you

8 know, which federal agencies needed the data and

9 how it was useful to them.

10 Q. I'm not sure I fully understand your

11 answer. The content review that the bureau does

12 for the ACS obviously considers the full content

13 of the ACS.

14 A. Yeah.

15 Q. The input into that or the participation

16 in that discussion that people in the Office of

17 the Chief Economist were involved in, did that

18 relate to particular questions on the ACS survey

19 or to all of the questions on the ACS survey?

20 A. Ultimately, to all of them.

21 Q. Do you --

22 A. But that doesn't mean we were involved in

1 Q. Well, maybe I misunderstood, but I
2 thought you told me a minute ago that you were
3 involved in conversations about the potential uses
4 of the -- of the --

5 A. Correct, and --

6 Q. -- questions, correct?

7 A. -- I also indicated that, you know, we
8 looked potentially at the entire survey, but we
9 didn't -- I can't say that we were involved with
10 looking at every single question.

11 Q. Right. My question now is, do you have
12 any reason to believe that you would have been
13 focused on a citizenship question or place of
14 origin question as part of your efforts to assist
15 in evaluating the uses of ACS survey?

16 A. I don't recall that.

17 Q. I know you don't recall. I'm saying, do
18 you have any reason to believe that you would have
19 been involved? Is that the type of thing that
20 potentially the people in the Office of Chief
21 Economist would have been analyzing or opining on?
22 A. Absolutely, but I don't recall it coming

1 up.

2 Q. What possible analysis could you imagine

3 the Office of Chief Economist providing regarding

4 the utility of the citizenship question?

5 MS. WELLS: Object to the form.

6 BY MR. DURAISWAMY:

7 Q. You can answer.

8 A. Okay. So a lot of the analysis that was

9 done at that point was basically around use cases,

10 so how -- you know, among researchers, the public

11 states, all the different stakeholders who might

12 use ACS data would say, okay, well, you know, how

13 are they -- just what examples are that -- you

14 know, where the data is being disseminated in some

15 way, input, created as an input into some sort of

16 data tool, things like that. So use cases.

17 Q. Can you think of any use for the

18 citizenship question on the ACS survey that

19 relates to economic/statistical analysis that the

20 Office of Chief Economist was concerned about?

21 A. I can't say to it specifically, but I

22 mean, throughout -- I mean, when I was at the

1 Labor Department and the Commerce Department, you
2 know, we would look at labor force status, so
3 employment, unemployment, labor force
4 participation. And we certainly looked at it at
5 times with respect to foreign-born population. So
6 not as much, maybe, with respect to citizenship
7 that I can recall, but certainly foreign-born and
8 unforeign-born. That's a regular thing that's
9 looked at.

10 Q. Do you have an understanding as to why
11 the citizenship question was included on the ACS
12 survey?

13 A. Do I have an understanding as to why? I
14 mean, I've looked at the information at times. I
15 mean, there's a whole Census Bureau report I've
16 read that outlines all the different federal uses
17 of that data. So I've certainly looked at that.

18 Q. What's your understanding of why the
19 citizenship question is on the ACS survey?

20 A. I mean, there's a -- well, first of all,
21 there's a historical need for that. I mean, it
22 dates from the -- I mean, it's been on the census

1 form at different points in time going back
2 decades. And it's been -- it was a regular part
3 of the long form of the decennial census. And the
4 long form eventually became the American Community
5 Survey. So that content carried over.
6 There's some federal uses tied to it.
7 The one that pops to mind right now is the DOJ has
8 used it. But I believe other ones -- there's
9 other ones as well, other federal uses as well.

10 Q. Any that you can remember, sitting here
11 today?

12 A. I can't recall. But there's abundant
13 online documentation that goes through that.

14 Q. Do you have an understanding as to why it
15 was on the long form before it was on the ACS?

16 A. You know, general idea, but I can't speak
17 specifically to it.

18 Q. What's your general idea?

19 A. I mean, there's -- you know, when -- it's
20 one of a variety of demographic -- standard
21 demographic questions that help people understand
22 the portrait of the U.S. population, you know,

1 along with sex, age, race, ethnicity, place of
2 birth, educational attainment, and citizenship.
3 It's a natural part of the catalog of data you
4 would need to understand what the U.S. population
5 looks like nationally on a local level [sic].

6 Q. That's your understanding of why it might
7 have been on the long form, but do you have a
8 specific understanding as to why it was, in fact,
9 included in the long form?

10 A. No.

11 Q. This work that you described in the
12 Office of the Chief Economist that related to
13 content reviews for Census Bureau surveys, did any
14 of that relate to decennial census content
15 reviews?

16 A. No.

17 Q. Could you describe your responsibilities
18 in the office with respect to your role in the
19 Office of Policy and Strategic Planning from
20 October 2012 to March 2017?

21 A. So the -- there's a team of policy
22 advisors that supports the director of policy and,

1 ultimately, the Secretary of Commerce. The policy
2 advisors represent and are assigned a portfolio of
3 bureaus. In the Department of Commerce, we have
4 13 bureaus. But assignments can change over time.
5 But as representing those bureaus, you
6 would engage -- review documents for policy
7 content. And documents can be anything from, you
8 know, research reports to press releases to
9 actually -- you know, actually, serious policy
10 memos. You would represent the department or
11 sometimes the bureaus in interagency policy
12 discussions, both internally and externally. You
13 represent the Secretary.
14 My -- my portfolios varied a little bit
15 over time, but one constant piece has been our
16 statistical agencies, so the Census Bureau and the
17 Bureau of Economic Analysis.

18 Q. In that role, have you been involved in
19 content reviews for Census Bureau surveys?

20 A. I mean, involved, yeah, for example --
21 yeah. Yeah. More on the tail end, but yeah.

22 Q. Can you describe those instances?

1 A. So -- I mean, it varies, but, I mean,
2 there's been -- I'm trying to think with ACS. I
3 mean, I've attended meetings that dealt, for
4 example, with the race and ethnicity questions and
5 the -- that review that was contacted over several
6 years. In the Obama administration, I attended
7 some meetings that dealt with potential inclusion
8 of questions that covered the LGBTQ community.
9 Some on health insurance coverage.
10 I mean, I can't recall everything, but
11 it's -- you know, the thing about the policy job
12 is that it's -- it's quite variable, and the
13 engagement can be deep or light depending on the
14 needs of the Secretary. So I can't recall
15 everything, but, yeah, it's a natural part of the
16 job.

17 **Q. Do I recall attending meetings concerning**
18 **the addition of a citizenship question to the**
19 **decennial census?**

20 **A. So the content of the 2020 census came up**
21 **in -- I mean, like, organically in this**
22 **administration. And we -- it's something -- the**

1 content, in general, would come up as a natural
2 part of larger meetings regarding Census Bureau
3 operations and planning. And that's where I've
4 been in meetings that related to that.
5 In other words, the Secretary would hold
6 regular meetings with Census Bureau staff to
7 review all sorts of issues: Budget, operations,
8 you know, IT, cyber security. And content -- I
9 mean, I believe it came up sometimes certainly,
10 so -- yeah.

11 Q. Any other -- let's -- strike that.

12 Any other Census Bureau survey content
13 issues that you recall being involved in as part
14 of your role in the Office of Policy and Strategic
15 Planning?

16 A. I mean, I've been -- dealt with -- I've
17 worked with the Census Bureau on a variety of
18 issues related to their business and their
19 household surveys. And questions that would come
20 up would, I mean, naturally be, you know, what
21 questions are asked, you know -- you know, a
22 broad -- a recurring issue with all surveys in the

1 United States is just response rates, and
2 something that relates to response rates is the
3 length of the surveys and the burden.
4 And so a natural part of conversations
5 along those lines are, well, what questions do you
6 ask, how you ask them? And so that -- those types
7 of policy discussions have come up, I mean, in all
8 sorts of contexts in a variety of the household
9 and business surveys for the Census Bureau and the
10 Bureau of Economic Analysis.

11 Q. As a general proposition, the longer the
12 survey, the greater the burden on the respondent,
13 correct?

14 A. Yes.

15 Q. And the greater the burden, the lower the
16 response rate, correct?

17 A. Generally, yeah. That's a general...

18 Q. Any involvement in evaluating the
19 citizenship question on the ACS survey as part of
20 this role that you had?

21 A. No. It never -- it never came up
22 specifically. Like, I do not recall any times

1 where we examined the specific need for the
2 citizenship question. Or at least I was not part
3 of those conversations. I mean, I was part of the
4 content review, obviously, but nothing that
5 specifically I was involved with.

6 Q. Even beyond just examining the specific
7 need for the citizenship question, do you recall
8 any other conversations, discussions about the
9 citizenship question on the ACS survey?

10 A. On the ACS?

11 Q. Let's say, prior to 2017.

12 A. I don't recall any. I mean, I could have
13 had them. I certainly don't recall any.

14 Q. Okay. What's your understanding of the
15 history and status of the consideration of the
16 merged race/ethnicity question?

17 A. Can you --

18 MS. WELLS: Object to the form.

19 BY MR. DURAISWAMY:

20 Q. I'm sorry. Let me -- that's an objection
21 well taken.

22 You mentioned, I think, that you were

1 involved in discussions about the race/ethnicity

2 question on the decennial census; is that right?

3 A. Uh-huh.

4 Q. Did that relate to a possible merge to

5 the race/ethnicity question?

6 A. Yes.

7 Q. And what discussions were you involved

8 in?

9 A. I mean, there was an OMB -- if I recall

10 the process correctly, there was an OMB working

11 group that dated back quite a few years that was

12 involved with research on potential changes to the

13 way that federal surveys asks about race and

14 ethnicity, going from -- basically from two

15 questions to one, and whether or not the quality

16 of the responses was better in one approach or the

17 other.

18 And there's other nuances as well. But,

19 I mean, that's the broad difference.

20 Q. And what's your recollection of what was

21 done within the department generally to evaluate

22 whether to move from two questions to one

1 question?

2 A. I mean, the typical approach that the

3 Census Bureau uses is to conduct research, so

4 to -- you know, either focus groups or surveys. I

5 can't speak -- remember specifically this one,

6 but, you know, focus groups or surveys to field

7 and test different questions and see what the

8 results are and understand why there might be

9 differences in the types of responses that people

10 give.

11 Q. Do you recall the period of time over

12 which this research was done?

13 A. For race and ethnicity? I mean, it was

14 much of the last decade. I don't recall -- I

15 mean, it came out -- it followed the 2010 census,

16 but I don't recall what year it started.

17 Q. Is it still ongoing, to your knowledge?

18 A. I don't know. Not to my knowledge, but I

19 don't know.

20 Q. Do you have an understanding as to what

21 decisions were made about whether to consider

22 including a single race/ethnicity question on the

1 A. I'm not a political appointee. I've
2 worked for political appointees in the Bush
3 administration, the Obama administration, and now
4 the Trump administration.

5 Q. And you've never been a political
6 appointee, correct?

7 A. No. No.

8 Q. How many people are there in the Office
9 of Policy and Strategic Planning?

10 A. Currently?

11 Q. Sure. Currently.

12 A. There are a policy director, special
13 assistant and five advisors. There's a vacancy
14 right now, but it will be filled soon.

15 Q. You're one of the advisors?

16 A. Correct.

17 Q. Who is the policy director?

18 A. Earl Comstock.

19 Q. Who is the special assistant?

20 A. Annie Teague. T-E-A-G-U-E.

21 Q. You report to Mr. Comstock?

22 A. Yes.

1 Q. Has that been the case since he took that

2 position at the outset of the Trump

3 administration?

4 A. So I reported to whoever was the policy

5 director, and Earl is the current policy director.

6 Q. And he has been since the start of the

7 Trump administration, as far as you recall?

8 A. He was one of the first political

9 appointees to arrive. I can't recall -- I don't

10 know which date, but yeah.

11 Q. Who did you report to before him?

12 A. The last policy director under Secretary

13 Pritzker was John Ratliff.

14 Q. Has the size of the office in terms of

15 personnel changed since 2011?

16 A. It's smaller.

17 Q. Could you just describe the -- how the

18 numbers have changed over time?

19 A. Yeah. We're about, I'd say, less than

20 half as large as we were previously.

21 Q. Previously, about -- maybe about 15 --

22 A. So we maybe had 15 people under Secretary

1 Secretary Pritzker, but there were -- we've
2 suggested ways in which the Office of the
3 Secretary, Penny herself, could engage with
4 businesses to encourage them to respond to the
5 surveys, because there were issues with response
6 rates.

7 And so that -- you know, that was -- we
8 had a lot of conversations with the Census Bureau
9 about how she could support them. That was sort
10 of the way she operated.

11 Q. Also fair to say that sometimes policy
12 ideas come either from policy director or from the
13 Secretary or others within the Office of the
14 Secretary?

15 A. Yeah. They can come from many locations.
16 We take all good ideas.

17 Q. And once the Secretary makes a policy
18 decision, part of your job is to implement that
19 decision or execute on it, correct?

20 A. And communicate it.

21 Q. Communicate it. And advocate for it; is
22 that right?

1 A. Yeah. I mean, to -- yeah, to -- I would

2 call it communication, really, yeah.

3 Q. Both with external stakeholders and with

4 others within the government, correct?

5 A. Yes.

6 Q. In your position, how often do you

7 interact directly with the Secretary?

8 A. With Secretary Ross?

9 Q. Yes.

10 A. Infrequently.

11 Q. In the last two years, how many meetings

12 have you been in with him?

13 A. With him one-on-one? Well, I mean, it

14 varies. I've had very, very, very few, like,

15 one-on-one conversations with him. I have

16 attended a handful of meetings in his office. And

17 where I've seen him most frequently are as part of

18 the regular oversight meetings he conducts for --

19 regarding the 2020 census. Those are large group

20 meetings.

21 Q. How many in the group?

22 A. It can be anywhere from 20 or more. I

1 census. Can you recall any meetings other than
2 the monthly oversight meetings that you referenced
3 in which the Census Bureau surveys generally have
4 been discussed, including perhaps the ACS?

5 MS. WELLS: Object to the form.

6 THE WITNESS: No, not that I can recall.

7 BY MR. DURAISWAMY:

8 Q. Has your role changed substantively since
9 the transition from one administration to the
10 next?

11 A. It changes depending on who the policy
12 director is and who the Secretary is. It's not
13 really -- it's not an administration question.
14 It's who the boss is and their needs can vary
15 pretty dramatically.

16 Q. Understood. How did your role change

17 when Secretary Ross came into office and when

18 Mr. Comstock, you know, came into his position?

19 A. So I -- we're a smaller office, so my

20 policy portfolio is broader. So I now cover

21 also -- like, I cover the Economic Development

22 Administration and the U.S. Patent and Trademark

1 Office, in addition to the two statistical

2 agencies.

3 Q. And before that, you covered only the two

4 statistical agencies?

5 A. I covered some -- it was more nebulous

6 under Penny. But, I mean, I covered some EDA

7 issues. And I interact with other agencies as

8 well. But, you know, there's -- as far as, like,

9 clearances go and sort of the regular sort of

10 paper movement -- that part of our job, it was

11 basically those two, and some Economic Development

12 Administration.

13 MR. DURAISWAMY: Why don't we take, like,

14 a five-minute break.

15 THE VIDEOGRAPHER: Going off the record.

16 The time is 10:04.

17 (Whereupon, a short recess was taken.)

18 THE VIDEOGRAPHER: Going back on the

19 record. The time is 10:15.

20 BY MR. DURAISWAMY:

21 Q. Mr. Langdon, do you recall that

22 Mr. Comstock started at the Commerce Department

1 Q. Did you have an understanding as to what
2 his transition team responsibilities were relative
3 to others --

4 A. No.

5 Q. -- that you were meeting with?

6 A. Not really.

7 Q. Did the question of the content of the
8 decennial census come up at any transition team
9 meetings?

10 A. No, not that I recall. That's a very
11 weighty subject for a transition team meeting.

12 Q. How long were these meetings, typically?

13 A. Half an hour, an hour. Honestly, that
14 period is kind of a blur to me, really. You know,
15 there was a lot of new faces, a lot -- you know,
16 just a lot of upheaval when you're, you know,
17 having many people exit and many people enter.
18 (Deposition Exhibit Number 1 was marked
19 for identification.)

20 BY MR. DURAISWAMY:

21 Q. I'll hand you what we've marked as

22 Exhibit 1. So this is an e-mail from you to Ellen

1 Herbst dated February 2nd, 2017 with the subject

2 line "Census Bureau briefing for OS politicals,"

3 correct?

4 A. I'm sorry, I didn't catch that.

5 Q. Is that what this is? Just for the

6 record --

7 A. Yeah.

8 Q. -- confirming this is an e-mail from you

9 to Ellen Herbst dated February 2nd, 2017, correct?

10 A. That's what I'm reading, yeah.

11 Q. And the subject of the e-mail is, "Census

12 Bureau briefing for OS politicals," correct?

13 A. Yeah.

14 Q. Did you review this e-mail in preparing

15 for your deposition?

16 A. No.

17 Q. OS is a reference to Office of the

18 Secretary, correct?

19 A. Correct.

20 Q. And what are OS politicals?

21 A. Political appointees working in the

22 Office of the Secretary.

1 be brought up on a temporary detail while there's
2 no political staff in certain positions. So he
3 was the acting head of that office.

4 Q. And that's another office within the
5 Office of the Secretary?

6 A. Correct.

7 Q. Do you have -- well, strike that.

8 During this period of time, did you have
9 regular communications with him?

10 A. With Jim?

11 Q. Yeah.

12 A. Sure. Yeah.

13 Q. About what?

14 A. The transition, basically. Transition
15 issues.

16 Q. When you say -- you say in this sentence,

17 "I ask because Jim S. reminded me about the

18 upcoming congressional notification of decennial

19 and ACS topics and the need to gauge Earl's

20 interest in it."

21 Do you see that?

22 A. Uh-huh.

1 Q. When you say he reminded you about the

2 upcoming congressional notification of decennial

3 and ACS topics, what is that referring to?

4 A. So by calendar -- and I may not get all

5 the details right on this -- but, basically, by --

6 by law and by calendar, the Census Bureau has to

7 notify Congress first of the subjects on the

8 ACS -- on the decennial census, and the ACS would

9 have been by the end of March of 2017. And then

10 the year after that, it would actually notify

11 Congress of the questions on those surveys. So, I

12 mean, that was -- you know, March 2017 was

13 right -- you know, shortly after this.

14 Q. And this is your -- personally, your

15 first experience with this process, correct?

16 A. No, it's not my first transition. I was

17 at the Labor Department at the transition from --

18 working with politicals from the transition from

19 the Bush administration to the Obama

20 administration.

21 Q. I apologize. I was unclear. When I said

22 "this process," I mean the congressional

1 notification of decennial and ACS topics.

2 A. Correct.

3 Q. How did this come up in conversation with

4 Jim?

5 A. I would have to be guided by what the

6 e-mail says here. I don't recall the

7 conversation. But it indicates that he initiated

8 the conversation or reminded me about it.

9 Q. Do you have any recollection of whether

10 it was just part of a general conversation about

11 transition-related issues or whether he

12 specifically reached out about this issue?

13 A. I have no idea. I do not recall.

14 Q. You said that Jim reminded you about the

15 need to gauge Earl's interest in it. Why was

16 there a need to gauge Earl's interest in it?

17 A. So if I understand the e-mail correctly,

18 you know, there's -- we're referring to a briefing

19 that is going to cover a large bureau, actually,

20 one of our largest, and that could cover a lot of

21 different topic. And so it's important to make

22 sure that that briefing is not overwhelming as a

1 first briefing, but it touches on topics of policy

2 content that are going to be immediately relevant.

3 And that was, you know, a congressional

4 notification about our most -- our flagship survey

5 and the decennial census -- rises to that level.

6 Q. And so, according to the e-mail, you then

7 did reach out to Mr. Comstock to gauge his

8 interest in hearing about that issue at the

9 briefing. Is that fair to say?

10 A. Yeah. I mean, based on what I'm reading

11 here, yeah.

12 Q. But I'm just trying to -- if I understand

13 what you're -- the answer you just gave, you were

14 reaching out to gauge his interest in including

15 that in the briefing that he was going to receive;

16 is that right?

17 A. Yep. Exactly.

18 Q. Then you asked -- and you say, "Earl is

19 very interested and thinks the Secretary will be

20 as well," correct?

21 A. Uh-huh. Yep.

22 Q. Was the conversation in which you asked

1 him about this, was that by phone? By e-mail? In

2 person?

3 A. I can only guess. I don't -- yeah, I

4 don't recall.

5 Q. Well, based on your typical practice and

6 how you interact with him, what's your --

7 A. Earl is hard to track down --

8 Q. -- belief?

9 A. -- is hard to track down, so probably

10 would have been me popping into his office at some

11 point and being lucky to find him and asking him

12 quickly.

13 Q. And what was the substance of the

14 discussion?

15 A. I don't recall. I mean, obviously,

16 what's reflected here. I don't know if we had

17 talked about other things.

18 Q. What was your understanding of why he was

19 very interested in this issue?

20 A. So Secretary Ross -- this is across the

21 board -- is -- is very interested in all aspects

22 of, you know, policy decisions across the

1 department. And this was actually one of the
2 first indications we got that, you know, that --
3 you know, a lot of decisions that -- you know,
4 would begin rising to his level that maybe under
5 other Secretaries might not.

6 Q. My question was a little bit different, I
7 this.

8 A. Okay.

9 Q. What was your understanding as to why
10 Earl was very interested?

11 A. Actually, what I just said. That's a
12 process question. I think it's a process response
13 as much as maybe a content response.

14 Q. He was very interested -- your
15 understanding is he was very interested because
16 Secretary Ross was very interested; is that right?

17 A. Yeah. But like I say, I think it's
18 probably -- keep in mind that, you know, if we're,
19 as a department, notifying Congress about
20 something that's a major policy decision, across
21 the board, he wanted to know. And so this was a
22 major one. This was one that touched on me and --

1 you know, so in that vein, that -- that's

2 consistent with how things have operated under

3 Secretary Ross.

4 Q. When you say he wanted to know, you're

5 referring to Secretary Ross?

6 A. Yeah.

7 Q. Okay. So just so I understand, your

8 understanding as to why Earl was very interested

9 in this is because Secretary Ross was very

10 interested in it?

11 A. I -- I don't know. I mean, he -- Earl,

12 you know, represents the Secretary's views. He --

13 you know, obviously, he interacts with him

14 regularly. And so he can -- somehow, you know,

15 felt that the Secretary, you know -- I'm not sure

16 based on what, but felt that the Secretary would,

17 you know, want to be briefed on this.

18 Q. Did you say why he thought the Secretary

19 would be interested?

20 A. I don't recall.

21 Q. Did he indicate whether he had discussed

22 the issue with the Secretary?

1 A. I don't understand the -- certainly?

2 I -- I don't know.

3 Q. Okay. Well, let's try to refresh your

4 recollection since --

5 A. Okay.

6 Q. -- it's -- apparently some of these

7 things are challenging for you to recall.

8 (Deposition Exhibit Number 2 was marked

9 for identification.)

10 BY MR. DURAI SWAMY:

11 Q. I'm handing you what we've marked as

12 Exhibit 2.

13 A. Okay.

14 Q. So this is an e-mail from you to

15 Mr. Comstock dated March 10, 2017, correct?

16 A. Correct.

17 Q. And it was sent at 7:50 p.m., right?

18 A. Yep.

19 Q. Do you recall this e-mail?

20 A. This specific e-mail? I don't recall it,

21 but it looks -- looks like an e-mail I would have

22 written.

1 Q. Do you recall e-mails about this topic?

2 A. About this briefing?

3 Q. Yes.

4 A. Not specifically. I mean, like I say, it

5 was -- we were in a period of transition where we

6 would normally schedule briefings for Earl or for

7 others on specific topics that they cared about.

8 So this is consistent with the way things operate,

9 yeah.

10 Q. For the record, in this e-mail, you ask

11 Mr. Comstock, "What does your schedule look like

12 to receive a one-hour (max) briefing on 2020

13 census and ACS topics later next week?"

14 Correct?

15 A. Correct.

16 Q. And you say, "The goal is help you

17 understand the congressional notification process

18 as well as the actual topics themselves," correct?

19 A. Correct.

20 Q. Do you know if this is the follow-up

21 briefing that you were referring to in your

22 February 2nd e-mail?

1 A. I don't know if it's that specific
2 briefing, but it's -- that's -- it's consistent
3 with what the goal would have been. The goal
4 would have been to help them understand the
5 subject, so how we notified Congress and the --
6 you know, the actual -- what we ask in these
7 surveys. You know, they didn't -- yeah.

8 Q. And if you -- let me hand you what we've
9 marked as Exhibit 3.

10 (Deposition Exhibit Number 3 was marked
11 for identification.)

12 BY MR. DURAISWAMY:

13 Q. This is an e-mail from you to
14 Mr. Comstock and Ellen Herbst, copying Dennis
15 Alvord, dated March 15th, 2017. Do you see that?

16 A. Yes.

17 Q. And in this e-mail you say, "Earl and
18 Ellen: I would like to schedule a Census Bureau
19 briefing on the 2020 census and ACS topics before
20 the Census Bureau does its Hill notifications on
21 March 31," correct?

22 A. Yep.

1 Q. And you say, "The goal is for all to be
2 on the same page about the notification process
3 for the topics this year and questions next year."

4 A. Uh-huh.

5 Q. Correct?

6 A. Yep.

7 Q. So this is five days after the last
8 e-mail. You're still trying to schedule this
9 briefing, correct?

10 A. That's par for course, yeah.

11 Q. Okay. And you're trying to schedule this
12 particular briefing because Mr. Comstock had
13 indicated to you that this was a topic of
14 particular interest to him and the Secretary,
15 correct?

16 MS. WELLS: Object to the form.

17 THE WITNESS: So -- yeah. I mean, so
18 this is -- like I say, this is par for course with
19 Earl and with the Secretary. They -- you know,
20 when we're notifying, in this case, the Hill on a
21 major policy decision, they want to know how it
22 works and what the content is.

1 BY MR. DURAISWAMY:

2 Q. Why did you understand it to be a major

3 policy decision?

4 A. Well, I mean, you know, it's the nature

5 of the surveys. It's the 2020 census. It's, you

6 know, one of our, you know, congressionally -- or

7 constitutionally mandated operation that we do.

8 And on the ACS which is our -- you know, the

9 largest survey that the Census Bureau conducts.

10 And there's -- you know, there's a lot of

11 sensitivity around topics, particularly at that

12 point. The background I'm coming into this with

13 is probably largely on the ACS as well. There was

14 a lot of sensitivity about the topics actually on

15 that, so...

16 Q. When you say there was a lot of

17 sensitivity about the topics, what are you

18 referring to?

19 A. Kind of what I mentioned earlier. I

20 mean, there's a history that that survey in

21 particular has had with the Hill that's perceived

22 as burdensome. That includes topics that don't

1 really need -- that some members of the Congress

2 or the public feel shouldn't be on there.

3 And so, you know, notifying Congress

4 that, you know, these -- that we're going to ask

5 about any number of things could, you know,

6 trigger concerns. Yeah. It's been a sensitive --

7 the ACS part has been sensitive for years and

8 so...

9 Q. Was there any change to the content of

10 the ACS that was being contemplated at the time

11 that would make you think it was a major issue?

12 A. I'm trying to think. So, I mean, there

13 had been -- let's see. I mean, there was

14 sensitivity about health -- health insurance and

15 then the -- sexual orientation. I mean, some --

16 you know, some -- there had been discussions about

17 that as well, so...

18 Q. I assume that all these efforts to

19 schedule this briefing on the notification process

20 regarding decennial and ACS topics was in response

21 to some conversations you had with Mr. Comstock

22 about his interest in these issues, correct?

1 A. Yeah. That would be natural, yeah.

2 Q. Okay. And what do you recall about those

3 conversations by roughly mid-March of 2017?

4 A. Like I say, I don't recall specific

5 conversations, but this is consistent with how --

6 you know, Earl would indicate interest in a topic,

7 and we would work with his tricky schedule to make

8 sure that he would get briefed on it.

9 Q. I'm not asking you to recall specific

10 conversations. I'm asking you, what do you recall

11 about conversations generally with Mr. Comstock

12 regarding this issue by March 15, 2017?

13 A. I don't really -- help me understand the

14 question.

15 Q. What do you recall talking to

16 Mr. Comstock about with respect to notifying the

17 Hill about census and ACS topics?

18 A. What this indicates, that it would be --

19 that he wanted to understand the process and what

20 we were -- what was going to Hill and how -- you

21 know, basically.

22 Q. I understand that's what this indicates.

1 Q. Roughly later?

2 A. And to be clear, I mean, I think I would

3 distinguish between interest in the topics and an

4 interest in -- or the need for adding topics or

5 changing them.

6 You know, a lot of the conversations at

7 this point, you know -- you have to understand

8 that people come in, in this job, with -- you

9 know, unless they have worked with these surveys

10 before or have some sort of background on the

11 Census Bureau, they have a lot to learn.

12 And so -- and the 2020 census is complex.

13 The ACS is complex. And so there's a lot of just

14 a natural learning process that the principals

15 have to go through. And this is part of it.

16 MR. DURAISWAMY: Move to strike as

17 nonresponsive.

18 BY MR. DURAISWAMY:

19 Q. Do you recall that at some point --

20 strike that.

21 At some point, you came to understand

22 that Secretary Ross was interested in adding a

1 question to the decennial that inquired about

2 citizenship or immigration status, correct?

3 A. Correct.

4 Q. When was that, approximately?

5 A. It would have been in the summer of that

6 year. I can't say if it was early or late summer,

7 but it was --

8 Q. How did you come to that understanding?

9 A. I think it would have been in -- most

10 likely, it would have been in, like, one of these,

11 like, regular meetings that he was holding

12 regarding, you know -- the large group meetings

13 that we had.

14 Q. And what do you recall he communicated at

15 that meeting?

16 A. Specifically? I -- I don't remember.

17 Q. But you recall that he communicated that

18 he was interested in adding a question about

19 citizenship status to the decennial; is that

20 right?

21 A. Yeah, I'm trying to think about how to

22 characterize that. Yeah, I mean, that's probably

1 about right. Yeah. I mean, there was -- he was

2 interested in -- in the topics, yeah. I mean,

3 yeah, so...

4 Q. And do you recall -- strike that.

5 What do you recall about why he was

6 interested in adding a citizenship question to the

7 decennial?

8 A. I don't think the why ever came up.

9 Q. Is your recollection that he simply

10 communicated to everyone that he was interested in

11 adding a question about citizenship but didn't say

12 why?

13 A. Uh-huh. I mean, that's -- yeah.

14 Q. And is it your recollection that nobody

15 asked why?

16 A. I do not recall anybody asking why.

17 Q. And you don't recall any conversations

18 with anyone at the Commerce Department about why

19 Secretary Ross might be interested in adding a

20 citizenship question?

21 A. Well, you know, it would come up

22 subsequently. And -- yeah. Obviously, it would

1 come up. But -- I mean, yeah.

2 Q. When you say subsequently, roughly when

3 are we talking about?

4 A. Again, I mean, from summer onward.

5 Right? I mean, yeah.

6 Q. And as it came up, what was your

7 understanding as to why he was interested?

8 A. That there was -- you know, so we already

9 collect data on citizenship through the ACS. And

10 so the question about why it would be added to the

11 2020 census is, you know, that there was a need

12 for more geographically granular data than the ACS

13 could provide. So, my recollection, it would be

14 along those lines, you know, that there was a data

15 need for it.

16 Q. Is it your recollection that that need --

17 the articulation of that need originated with

18 Secretary Ross himself?

19 A. Yeah. I mean, we didn't question, you

20 know -- I mean, I guess Secretary Ross versus,

21 like, what?

22 Q. Well, let me ask you. Who came up with

1 the idea that there was a need for citizenship

2 data at a more granular geographic level?

3 MS. WELLS: Object to form.

4 THE WITNESS: I -- so I can't recall. I

5 mean, if the Secretary asked us to look into it,

6 we look into it. Now, then -- I mean, the

7 actual -- the need for it? The way the 2020

8 census and the ACS work, particularly the ACS, is

9 that there is a federal nexus -- right? There's a

10 federal need for data to be collected.

11 I don't recall when that federal need was

12 articulated, but it was associated with -- you

13 know -- like I say, I guess I'm trying to -- I'm

14 trying to think about how that came up, but -- I'm

15 not quite sure how it was. But, I mean, at some

16 point, you know, I learned that there was -- you

17 know, that the need was tied to a need from the

18 DOJ for more data.

19 I mean, again, it goes back to the nexus

20 between 2020 census and ACS. The main customer

21 for the -- the main federal --

22 THE REPORTER: You need to slow down,

1 please.

2 The main...

3 THE WITNESS: The main federal customer

4 for the ACS is the Department of Justice. And so

5 the question was whether DOJ -- you know, so given

6 that as a baseline, the question is, you know,

7 does DOJ need more -- like, more specific data?

8 But how -- you know, how that came up, I don't

9 know.

10 BY MR. DURAISWAMY:

11 Q. Just to be clear, when you say the

12 Secretary asked us to look into it, we look into

13 it, the actual -- the need for it, et cetera,

14 what's the "it" that you're referring to in your

15 answer?

16 A. Which -- where are you referring to?

17 Q. I'm sorry. I'm reading your answer,

18 which I'm getting --

19 A. Oh.

20 Q. -- a real time transcript. The answer

21 you just gave, you used the word "it" several

22 times. For example, you said, the Secretary asked

1 us to look into it, we look into it, the need for

2 it, and so forth.

3 What's the "it" that you're referring to?

4 A. So I think part of it was that there was

5 a need to understand, like, the historical context

6 for asking about citizenship. So it could well be

7 that, you know, when -- you know, does -- where

8 does the Census Bureau ask about citizenship?

9 When has it asked about citizenship? You know,

10 why did it ask about citizenship?

11 Q. And you did look into those things,

12 correct?

13 A. Uh-huh. Yeah.

14 Q. You were specifically asked to, correct?

15 A. I -- yeah. At least at one point early

16 on. I mean, I think Ellen and -- yeah, briefly.

17 Q. And you understood that that request was

18 related to the Secretary's interest in that issue,

19 correct?

20 A. I don't recall the context. You know,

21 like I say, if somebody like Earl or Ellen asks

22 for something, I don't need to ask, like, well,

1 why do you need it? I mean, they ask for it and,

2 you know, I do it.

3 Q. And they were interested in -- or they

4 asked you to research the history of whether

5 undocumented immigrants were included in the

6 apportionment count, correct?

7 MS. WELLS: Object to form.

8 THE WITNESS: I'd have to go back and

9 look into it. But, I mean, there's one thing

10 that -- I mean, comes up sometimes, and probably

11 came up, was, you know, who is in scope of the

12 decennial census? Who -- who responds to the

13 survey? Who's counted? Yeah.

14 BY MR. DURAISWAMY:

15 Q. And that was something that you didn't

16 raise. It was something that the political in

17 the Office of Secretary raised, correct?

18 A. Ellen is not a political.

19 Q. Well, was it --

20 A. Leadership. Leadership.

21 Q. Are you telling me that it was Ellen who

22 raised it or that it was Earl or someone else?

1 oh, I didn't know this was -- so, yeah.

2 Q. Right. And you understand that there was

3 a deadline of March 31st, 2017 to identify the

4 topics that were to be included on the decennial

5 census, correct?

6 A. Yeah.

7 Q. And that, after that date, you would have

8 less leeway to modify the topics to be included on

9 the census, correct?

10 A. Less leeway.

11 Q. And that's why it was important to get on

12 the same page about it, right?

13 A. Uh-huh. Yeah. It's a public statement.

14 And -- I mean, so when I say -- it's a

15 congressional notification, but it's also --

16 there's a public aspect to it. So the Census

17 Bureau is saying to the world and to Congress --

18 you know, and principally to Congress, but to the

19 world, here's what we're asking on these two

20 instruments.

21 Q. And you understood, from your

22 conversations with Mr. Comstock about his interest

1 in this issue, that he did want to consider

2 changing the topics to be included on the census,

3 correct?

4 MS. WELLS: Object to the form. And

5 mischaracterizes testimony. I think that question

6 has been asked.

7 MR. DURAISWAMY: I just asked it. It is

8 a question. And, please, no speaking objections.

9 BY MR. DURAISWAMY:

10 Q. Go ahead.

11 A. So, yeah, I -- the -- my desire to make

12 sure Earl and I and everybody were on the same

13 page wasn't with respect to him necessarily coming

14 in and -- and saying there needed to be a change.

15 And I don't recall him asking for a change at that

16 point. I think it was just to make sure that he

17 understood -- you know, that, like I say, there

18 were no surprises.

19 Q. Yeah, but you understood that he was

20 considering a change, correct?

21 MS. WELLS: Object to the form.

22 THE WITNESS: As of this date?

1 BY MR. DURAISWAMY:

2 Q. Yes.

3 A. No. Not really, no.

4 Q. When did you first come to understand

5 that he was considering a change to the topics on

6 the decennial census?

7 A. I believe I've said, and I stand by my

8 answer, that it was summer of 2017.

9 Q. Okay. At this time, your testimony is

10 all you understood is that he was interested in

11 knowing more about the process, correct?

12 A. That's my understanding of it, yeah.

13 Q. But you have no recollection as to why he

14 was concerned about -- why he was interested in

15 knowing more about the process; is that right?

16 A. I can't recall that, yeah.

17 Q. All right. During these discussions

18 about the process for notifying Congress,

19 presumably, you pointed out to Mr. Comstock that

20 there was this March deadline -- strike that --

21 this March -- let me start over.

22 During these discussions with

1 Mr. Comstock, I assume that you informed him that
2 there was a March 2017 deadline for identifying
3 the topics to be included on the 2020 census,
4 correct?

5 A. For notifying Congress of these topics.

6 Like I say, you asked -- you raised a question
7 about leeway. I'm not -- even today, I'm not sure
8 what the specific leeway is for changing these
9 topics afterwards, or what the process would be
10 for saying to Congress, actually, we're going to
11 roll out -- we're going to do something different.

12 Q. Okay. Did you also explain to him that

13 there was a March 2018 deadline for notifying
14 Congress of the questions to be included on the
15 decennial?

16 A. It was in the earlier e-mail you showed
17 me. At least I thought so. I thought so. No,
18 maybe not. No. Okay. It's not.

19 Q. But presumably, you did, correct?

20 A. Yeah, I would have, yeah. It's a
21 two-stage -- sorry, my misrecollection. But it's
22 a two-stage process. First topics -- no, it's

1 actually in this e-mail right here, yeah. The

2 goal is for -- the March 15th e-mail from

3 8:30 p.m.

4 Q. Right. I see. You're referring to the

5 process for the topics this year and questions --

6 A. And questions next year. Okay. Yeah.

7 Q. Did you have any discussion about the

8 significance of the two different deadlines?

9 A. I didn't hear you, I'm sorry.

10 Q. Did you have any discussions with

11 Mr. Comstock or any of the other individuals in

12 the Office of the Secretary about the significance

13 of those two deadlines?

14 A. Probably. I can't remember specific

15 conversations, but I'm sure I did. Yeah. When

16 you say significant, it's, like -- I would say the

17 difference, like, what -- you know, what's the

18 difference between talking about topics and what

19 delivering the questions actually means.

20 Q. Did you have any discussion about what

21 leeway you would have to change the questions on

22 the decennial census after submitting the

1 year there was discussion about adding a
2 citizenship question to the census, correct?
3 A. Uh-huh. Uh-huh.
4 Q. Was there any discussion about whether
5 the citizenship question fell within one of the
6 topics that was identified in the submission to
7 Congress in March 2017?
8 A. I guess I don't understand the question
9 in the sense it's sort of black and white. Right?
10 I mean, you can look on paper and say, here's what
11 Congress got. Right? I mean, there's no -- I
12 mean, there's not much to discuss there, is there,
13 really? I don't recall. I mean, is the question,
14 you know, did we say we would include citizenship
15 on the 2020 census, for example?

16 Q. No. Well, what's your understanding of

17 the difference between the notification deadline

18 for topics and questions? What's the difference

19 between topics and questions?

20 A. Okay. So topic is just a list of, like,

21 data fields. We're going to ask about age. The

22 question would be, how do you ask about age? You

1 know, is it multiple choice? How do you phrase
2 the question? These are actual questions on the
3 survey form that people would be getting.

4 Q. And agree that citizenship or immigration
5 status was not one of the topics that was
6 identified in the March 2017 submission to
7 Congress?

8 A. Immigration status has never come up.
9 The Census Bureau doesn't ask about that in any of
10 its surveys and it's never come up, as far as I
11 know, in any conversations. So we can set that
12 aside.

13 Citizenship -- yeah, like I say, I
14 don't -- the actual notification -- I guess, if
15 the question is, you know, did Earl ask about how
16 we would let Congress know or if we decided to
17 change things, I don't recall that. That's not
18 typically, like, an area where I would work.

19 Yeah.

20 Q. That's -- so that's not the question.

21 A. Okay.

22 Q. My question now is, you agree that in the

1 March 2017 submission of decennial census topics

2 to Congress, citizenship was not included,

3 correct?

4 A. It was included only for the ACS.

5 Q. And it was not included for the decennial

6 census, correct?

7 A. I do not recall -- yeah, I don't think

8 so, no.

9 Q. Okay. And so to try to go back to my

10 previous question, and keeping in mind why you

11 were struggling with it, agree, then, that when

12 the citizenship question came up for discussion

13 later that year, it was clear that it was not

14 included or among the topics that had been

15 identified for Congress --

16 A. That's demonstrable. I mean, that's --

17 you can look it up online and -- in the March

18 submission and then -- I'm pretty certain it

19 wasn't on there as something on the 2020 census.

20 Q. Do you have an understanding of the

21 circumstances in which the department can add --

22 include questions in its March 2018 submission to

1 Congress that are not covered by the topics in its

2 March 2017 submission?

3 A. Yeah, I don't know the specific process.

4 And that's a legal question, and I'm not a

5 department lawyer.

6 Q. And to be clear, you don't recall being

7 involved in any discussions or conversations about

8 that?

9 A. Like, how are we going to tell Congress?

10 No.

11 Q. No. About the circumstances in which you

12 can include a question in the March 2018

13 submission that wasn't in the March 2017 topics.

14 A. That's a process question that I don't

15 recall being a part of.

16 MR. DURAISWAMY: Why don't we take a

17 five-minute break?

18 THE VIDEOGRAPHER: Going off the record.

19 The time is 11:08.

20 (Whereupon, a short recess was taken.)

21 THE VIDEOGRAPHER: Going back on the

22 record. The time is 11:23.

1 Q. When were those discussions?

2 A. When I was aware of them? I don't know

3 when the discussions were. I mean, I became aware

4 of them, like, you know, later in the summer and

5 the fall. Yeah.

6 Q. What discussions with DOJ did you become

7 aware of?

8 A. You know, just around sort of -- I mean,

9 around the process. Like I said, I never -- I

10 don't know specifically -- I've never looked into,

11 like, the analytical need for the data. Right? I

12 mean, the actual -- you know, how the data was

13 specifically going to be used.

14 Q. Your sentence kind of broke up there, so

15 I'm not sure which part goes with which.

16 A. We can start over.

17 Q. Okay. Fair enough. What do you -- what

18 did you become aware of with respect to

19 conversations with DOJ about this in the summer

20 and fall?

21 A. That there were conversations with DOJ

22 about their need for the data.

1 Q. And did you have an understanding of who

2 was involved in those conversations?

3 A. On our side? James Uthmeier was the --

4 you know --

5 THE REPORTER: Say it again, please.

6 THE WITNESS: James Uthmeier. U-T-H --

7 THE REPORTER: No. On our side...

8 THE WITNESS: Yeah. On our side, it was

9 James Uthmeier. U-T-H-M-E-I-E-R.

10 BY MR. DURAI SWAMY:

11 Q. Who else do you recall was involved in

12 those discussions?

13 A. I don't know. I don't know. I wasn't

14 part of the discussions, so you're asking me sort

15 of secondhand who was part of conversations I

16 wasn't part of.

17 Q. Well, just to your knowledge. I mean,

18 you know that Mr. Uthmeier was involved in those

19 discussions, right?

20 A. Yeah.

21 Q. Okay. Do you know if anyone else was

22 involved in those discussions?

1 Q. Handing you what we've marked as

2 Exhibit 6.

3 A. Okay.

4 Q. You see this is a series of e-mails

5 between you and Census Bureau staff from May 24th,

6 2017?

7 A. Correct.

8 Q. And the subject of these e-mails is

9 regarding requested information - legal review all

10 residents. Do you see that?

11 A. Yeah.

12 Q. Do you want to take a minute to review

13 this e-mail?

14 A. Yeah. Uh-huh. Yeah.

15 Q. Okay. Look at the second e-mail from the

16 bottom from Burton Reist to you dated May 24,

17 2017. Do you see that?

18 A. Yeah.

19 Q. Who is Burton Reist?

20 A. He is a senior executive in the Census

21 Bureau. I can't exactly remember his, you know,

22 title. He's a go-to person for me in the Census

1 Bureau.

2 Q. Is it correct that he is the -- provides

3 oversight for the Census Bureau's redistricting

4 data program?

5 A. Like I say, I can't remember his exact

6 role. I mean, I work with a lot of different

7 people at the Census Bureau who contribute to the

8 2020 program. So, I mean, if -- I don't recall if

9 he's a part of that piece or not -- part of that

10 operation or not.

11 Q. He says, "This is the more complete set

12 of documents that I referenced in my earlier

13 e-mail," correct?

14 A. Uh-huh.

15 Q. Do you know what the earlier e-mail is

16 that he's referring to?

17 A. I'd have to see it. I mean, I can't --

18 you're asking me to recall, like, one of 10,000

19 e-mails.

20 Q. Fair to say that it relates to a subject

21 matter that's similar to this e-mail?

22 A. That would be a reasonable conclusion.

1 Q. Okay. The subject line, legal review all

2 residents, what does that refer to?

3 A. I don't know. I didn't write that

4 subject line. Based on these e-mails, the subject

5 line originally -- originated from Misty Reed. So

6 I can't speak to why they phrased it that way.

7 Q. Could be that it relates to a legal

8 review pertaining to whether all residents are

9 accounted in the census?

10 MS. WELLS: Object to form.

11 THE WITNESS: It could be that, yeah.

12 BY MR. DURAISWAMY:

13 Q. Could be that it relates to a legal

14 review of whether all residents are included in

15 the apportionment counts?

16 MS. WELLS: Object to form.

17 THE WITNESS: It could be that as well.

18 Like I say, I don't know. It's a -- it's a

19 subject line in a e-mail which is, by definition,

20 abbreviated.

21 BY MR. DURAISWAMY:

22 Q. Do you know what the documents are that

1 Mr. Reist is referring to in his e-mail?

2 A. I can't remember. Based on the next

3 e-mail up, it looks like it references to some

4 court cases, but I don't know.

5 Q. Right. What's Louisiana v. Bryson?

6 A. That specific case? I don't know.

7 Q. Could be that it relates to including

8 undocumented residents in apportionment counts?

9 MS. WELLS: Object to form.

10 THE WITNESS: It could be, yeah.

11 BY MR. DURAIWAMY:

12 Q. It could be that the 1989 DOJ letter

13 relates to the same thing?

14 A. Yeah. It's not a subject area I'm, like,

15 fluent in. But, yeah, it could be.

16 Q. Okay. It was a subject matter that you

17 were asked to research, right?

18 MS. WELLS: Object to form.

19 THE WITNESS: It looks like, I'm -- yeah.

20 I'm gathering those documents. So...

21 BY MR. DURAIWAMY:

22 Q. You recall -- sir, you recall being asked

1 to look into this, don't you?

2 MS. WELLS: Object to the form.

3 THE WITNESS: From Earl?

4 MR. DURAISWAMY: What's wrong with the

5 form of the question?

6 MS. WELLS: It's, like, argumentative and

7 leading. And you could have -- you haven't laid

8 the foundation for what the context might have

9 been. Just -- to me, I don't think it's a totally

10 appropriate question.

11 MR. DURAISWAMY: I can ask leading

12 questions. It's not argumentative. All I've

13 asked is -- it is a foundational question, if he

14 recalls being asked to look into this.

15 MS. WELLS: You didn't ask it that way.

16 But, I mean, that's fine. He can go ahead and

17 answer.

18 BY MR. DURAISWAMY:

19 Q. You recall being asked to look into this,

20 correct?

21 A. Yeah.

22 Q. Okay. And what do you recall about that?

1 A. I was asked to look into it. I gathered

2 information, provided an answer.

3 Q. Okay. And the "it" is this question of

4 whether certain populations, including certain

5 immigrant populations, are counted in the census

6 and included in the counts for apportionment

7 purposes, right?

8 A. So who's in scope of the 2020 census, who

9 it measures, and then what data tabulations are

10 produced with that information.

11 Q. Right. And you were --

12 A. Apportionment counts are one of the set

13 of data tabulations.

14 Q. Right. And you were asked to look into

15 it around this time, in May 2017, correct?

16 A. Yeah. Based on these e-mails, yeah.

17 Q. And this related to consideration of

18 whether to include a citizenship question on the

19 census, correct?

20 A. I don't believe Earl gave me the context

21 about why he was asking about it.

22 Q. Do you recall that you had subsequent

1 content of the decennial census at this meeting?

2 MS. WELLS: Object to form.

3 THE WITNESS: Like I say, I don't recall

4 the specific agenda of that meeting. But it's all

5 documented.

6 BY MR. DURAISWAMY:

7 Q. Documented where?

8 A. In the PowerPoints that I, you know,

9 mentioned earlier. The Census Bureau, when it has

10 meetings like this, you know, prepares slide

11 decks. Makes it easier for everybody to follow

12 what's going on.

13 Q. If you go up to the next e-mail, which is

14 the third one on the first page.

15 A. Okay.

16 Q. There's an e-mail from Mr. Reist back to

17 you.

18 A. Uh-huh.

19 Q. Actually, strike that.

20 Just to be clear, on the e-mail that you

21 sent at 5:24 p.m., you write, "This is a lot to

22 digest, but Louisiana v. Bryson seems the most

1 timely, along with the 1989 DOJ letter," correct?

2 A. Uh-huh.

3 Q. What does "this is a lot to digest" refer

4 to?

5 A. I'm not a lawyer, so, like, to read

6 through, you know, like, court cases and legalese

7 is not something I enjoy or am good at.

8 Q. And your point being that he had

9 apparently sent you several documents related to

10 legal issues, correct?

11 A. Either several or just dense ones.

12 Q. Okay. And just so I'm clear, sitting

13 here today, you have no recollection of what

14 Louisiana v. Bryson is about?

15 A. No.

16 Q. Or what the 1989 DOJ letter was about?

17 A. No.

18 Q. Okay. So then Mr. Reist responds at

19 5:42 p.m. Did you have any follow-up

20 conversations with either him or Melissa Creech or

21 James Dinwiddie or Lisa Blumerman about the

22 contents of the materials that Mr. Reist had sent

1 included him, which would have been Burton.

2 Q. Do you have a sense of what his

3 responsibilities were that related to the subject

4 matter of these e-mails?

5 A. No. I think I just answered that. So

6 no.

7 Q. You don't?

8 A. No.

9 Q. Okay. You respond at 5:53 p.m. and you

10 say, "Actually, the Secretary seemed interested on

11 subjects and puzzled why citizenship is not

12 included in 2020."

13 What subjects was Secretary Ross

14 interested in at that meeting on May 24th?

15 A. So "subjects" references the -- you know,

16 the actual topics of the -- that are on the 2020

17 census, you know, what -- what gets asked, like

18 the topic areas, you know, like, age -- you know,

19 as examples of subjects would be like age, race,

20 ethnicity, number of people in your household.

21 That's what that refers to.

22 And citizenship is not on the list, or at

1 that point wasn't on the list.

2 Q. Why -- why was he puzzled?

3 MS. WELLS: Object to form.

4 THE WITNESS: I can't answer why the

5 Secretary was puzzled or not. I don't know.

6 BY MR. DURAISWAMY:

7 Q. Did he express puzzlement about why

8 citizenship was not included in the 2020 --

9 A. Yeah, he would have.

10 Q. -- topics?

11 A. Based on this e-mail -- I don't recall

12 the meeting, but, yeah, based on this e-mail, he

13 would have inquired -- not understood why

14 citizenship was not part of it.

15 Q. And what was your understanding as to why

16 he was puzzled about that?

17 A. I don't know. I don't know why he was

18 puzzled about that.

19 Q. Was there a discussion about that at the

20 meeting?

21 A. Like I not, I don't recall the specific

22 aspects of the meeting. But, you know, this --

1 like I say, there's a learning process that --

2 this is one example of it -- that people go

3 through when they're dealing with these surveys,

4 in trying to figure out what we ask, why we ask

5 it, why things are on there.

6 Q. Right. But he didn't -- you didn't write

7 that he was puzzled about why some other --

8 A. Yeah.

9 Q. -- topics or questions --

10 A. That's true.

11 Q. -- were not included.

12 A. Yeah.

13 Q. You wrote only that he was puzzled about

14 why citizenship was not included, correct?

15 A. That's right. Yep.

16 Q. Can you recall any other issues that

17 Secretary Ross was concerned about or took an

18 interest in with respect to the content of the

19 2020 census questionnaire?

20 A. No.

21 Q. You then say, "It might be good to have

22 in our back pocket the criteria used to pick

1 Q. When did you become more fluent on the
2 subject matter?

3 A. I mean, over time, really. I mean, it
4 was, like -- it was engaging with -- you know,
5 with Melissa -- particularly with Melissa, but
6 also with Lisa on basically trying to gain an
7 understanding of a lot of the questions. I was
8 particularly interested for one -- one that's
9 unrelated to this, but was on the 2020 census I
10 didn't understand was, for example, the housing
11 tenure question. There's a question on there, do
12 you own or rent your house? And it didn't really
13 enter into my mind why --

14 Q. Right. So --

15 A. -- that question was on the form.

16 Q. Okay. So in the context of pursuing this

17 idea of adding a citizenship question to the

18 decennial census, you developed a greater

19 understanding of why some -- the criteria for

20 including some topics on the ACS versus the

21 decennial, correct?

22 A. Yeah. And why -- why every question

1 that's on the decennial is actually on there. It

2 was something at that point that I was not -- I

3 was generally aware of, but not specifically aware

4 of.

5 Q. Why were you asking for an answer that

6 evening at 10:51 at night?

7 A. Good question. Yeah, good question. I

8 don't know.

9 Q. It suggests there was some urgency to

10 this, correct?

11 A. Oh, yeah. Yeah. Based on the e-mails,

12 probably just given, like, the fact that the

13 Secretary himself was asking as opposed to, like,

14 me just, you know, interested and trying to do

15 some, you know, research.

16 Q. Right. So this is -- you're trying to

17 respond promptly to questions that he asked at

18 this meeting on May 24th about why citizenship --

19 the citizenship question is on the ACS but not the

20 Census; is that right?

21 A. Well, not just -- that is one example. I

22 mean, it's the broader question of what's on each

1 Q. You see that this is an e-mail that you
2 sent to Earl Comstock and Ellen Herbst on the
3 evening of May 24th after the meeting with
4 Secretary Ross?

5 A. Yes.

6 Q. And it's in the midst of the other
7 e-mails that you were exchanging with census
8 staff --

9 A. Yep.

10 Q. -- that are in Exhibit 6, correct?

11 A. Yeah, exactly.

12 Q. Okay. I assume that you were sending
13 e-mails late at night like this because you felt
14 it important to respond to urgent inquiries raised
15 by the Secretary at the meeting with him, correct?

16 A. That's one possibility. Other times I
17 might be doing evening work because I had to,
18 like, leave work early to do kids' stuff, and so
19 I'm trying to catch up late at night. So it could
20 be urgency or because I was making up for lost
21 time.

22 Q. Okay. Presumably that was not the case

1 on this date, because you had a very long meeting

2 with the Secretary --

3 A. That's probably true, yeah.

4 Q. -- that you just got out of in the late

5 afternoon, right?

6 A. Yeah. So I'm probably trying to be

7 responsive to Earl on something that was

8 important.

9 Q. Okay. And the important issue in this

10 e-mail is the counting of illegal immigrants,

11 correct? That's the subject?

12 A. Let me take a look at it.

13 Q. Sure.

14 A. Uh-huh. Okay. Can you ask the question

15 again?

16 Q. Yeah. So the important issue that you

17 were trying to be responsive to Earl about on the

18 night of May 24th, after the meeting with

19 Secretary Ross, was the counting of illegal

20 immigrants, correct?

21 A. So the -- the two cases I was looking

22 into here, based on these e-mails, dealt

1 specifically with illegal immigrants.

2 Q. Right.

3 A. And so I was answering that question.

4 Q. Right. And that was the important issue

5 that you were trying to be responsive to Earl

6 about, correct?

7 A. Uh-huh. Because that's what the two

8 documents dealt with.

9 Q. Right. And the subject -- the subject --

10 in fact, the subject of the e-mail is counting of

11 illegal immigrants, correct?

12 A. Yeah. That's correct.

13 Q. Okay. And you say, in the first

14 paragraph, "Earl and Ellen: Long story short is

15 that the counting of illegal immigrants (or of the

16 larger group of non-citizens) has a solid and

17 fairly long legal history," correct?

18 A. Correct.

19 Q. And you go on to discuss a case,

20 Louisiana v. Bryson, in which the courts rejected

21 a challenge to including illegal immigrants in the

22 census totals for apportionment purposes, correct?

1 A. Uh-huh.

2 Q. And that's the same case, Louisiana v.

3 Bryson, that you referenced in your e-mail

4 exchange with Mr. Geist [sic] in Exhibit 6,

5 correct?

6 A. Unless there's another Louisiana versus

7 Bryson, it's the same case, yeah.

8 Q. Fair to say it's the same case, given the

9 timing of these e-mails?

10 A. Yeah.

11 Q. Okay. And that's a case that was passed

12 along to you as part of the research package that

13 Mr. Geist [sic] sent to you, correct?

14 A. Yeah, exactly.

15 Q. And you were sending this to address the

16 question of whether certain immigrants should not

17 be included in the apportionment count, correct?

18 MS. WELLS: Object to the form.

19 THE WITNESS: Yeah, I can't say that. I

20 mean, what I'm answering here is actually just --

21 it goes back to sort of scoping questions --

22 right? -- I mean, who is counted and who is not

1 counted in the surveys.

2 BY MR. DURAISWAMY:

3 Q. But specifically whether illegal

4 immigrants are counted in the census counts for

5 apportionment purposes, correct?

6 A. That's what these cases dealt with.

7 Yeah. So --

8 Q. Right. And that's --

9 A. -- Earl asked -- let me finish.

10 Q. Go ahead.

11 A. Earl asked me to basically review these

12 and summarize them from my non-lawyerly point of

13 view. And that's what I did.

14 Q. Okay. He wanted you to provide some

15 information about the history of including or

16 excluding illegal immigrants from the census

17 counts for apportionment purposes, correct?

18 MS. WELLS: Object to the form.

19 THE WITNESS: He wanted me to answer the

20 question of how -- of what these cases actually

21 looked at, which was whether or not illegal

22 immigrants were part of the -- first of all -- two

1 things here. There's whether they're counted and
2 then whether they're part of the apportionment
3 counts, and distinguish between them.

4 BY MR. DURAISWAMY:

5 Q. And which was it that you were
6 addressing?

7 A. Both, according to -- I mean, I'm just
8 summarizing the cases. Right? So --

9 Q. Right.

10 A. -- I mean, the one case was dealing with
11 apportionment. And the second one was actually
12 just the broader question, based on this e-mail,
13 of just whether or not illegal immigrants even
14 should be counted.

15 Q. Right. And you were conveying that
16 there's a long history of both including illegal
17 immigrants in the census count and including them
18 in the counts for apportionment purposes, correct?

19 A. Yeah.

20 Q. Okay. Because Mr. Comstock wanted you to
21 look into that issue, right?

22 A. Yeah, he asked me to look into the --

1 Let me start over.

2 That evening, as you were exchanging

3 e-mails with census staff about issues raised at

4 the meeting with Secretary Ross, you were also

5 exchanging e-mails with census staff and with

6 Mr. Comstock and Ms. Herbst about the history of

7 counting or not counting illegal immigrants in the

8 census or in the apportionment counts, correct?

9 A. So it's two related lines of -- it's two

10 related questions. So I was getting information

11 on both. One question was Earl's, and it was

12 specific to these court cases dealing with illegal

13 immigrants.

14 A. related issue is whether or not -- you

15 know, whether or not or how we count citizens in

16 the decennial census.

17 Q. Right. And why is it related?

18 A. Well, because illegal immigrants are a

19 subset of non-citizens.

20 Q. In fact, you state that in this e-mail,

21 correct?

22 A. Which e-mail?

1 Q. In this e-mail that we're looking at

2 right now.

3 A. I've got a couple --

4 Q. Exhibit 7. You say, "Illegal immigrants

5 (or of the larger group of non-citizens)," right?

6 A. Yep. Actually, yeah. Making that

7 connection right there. There you go.

8 Q. Right. So this question of counting

9 illegal immigrants is fundamentally connected to

10 this issue of whether you are identifying citizens

11 or non-citizens in the census, right?

12 A. They're related, but that -- yeah. I

13 mean, they're related, because you're talking

14 about different subsets of, you know, the

15 non-citizen population.

16 Q. Right. And presumably they came up

17 together in the meeting earlier that day, correct?

18 A. I wouldn't --

19 MS. WELLS: Object to the form.

20 THE WITNESS: I don't share that

21 presumption.

22 BY MR. DURAISWAMY:

1 Q. You think it's a coincidence that you
2 just happened to be writing an e-mail about
3 counting of illegal immigrants at the same time
4 that you're exchanging e-mails about Secretary
5 Ross' curiosity about the citizenship question?

6 MS. WELLS: Object to the form.

7 THE WITNESS: Yeah. I do not recall the
8 Secretary ever asking specifically about illegal
9 immigrants that are counting [sic] on the decennial
10 census. Citizenship, certainly, but not illegal
11 immigrants specifically.

12 BY MR. DURAISWAMY:

13 Q. So what prompted this e-mail?

14 MS. WELLS: Objection.

15 THE WITNESS: A request from Earl.

16 BY MR. DURAISWAMY:

17 Q. When did you receive that request?

18 A. I don't know. I'd have to go back and
19 check. You know, if he sent me an e-mail,
20 whenever I got that e-mail, if he asked me,
21 then -- or Ellen, who is also on this.

22 Q. What did he tell you about why he was

1 asking you to look into this?

2 MS. WELLS: Object to the form. You're

3 assuming that he told you [sic]. He said he

4 wasn't sure.

5 BY MR. DURAISWAMY:

6 Q. You can answer.

7 A. I do not recall whether Earl asked me or

8 e-mailed me about it. And what the context was,

9 you know, I can't give you the context on an ask

10 that I don't remember.

11 Q. Okay. You attached a memo to this

12 e-mail, correct?

13 A. The DOJ memo, somebody else's memo, yeah.

14 Q. Well, those are my next questions. But

15 there's an attachment to this e-mail that says --

16 it's titled Crawford letter and DOJ memo.PDF,

17 correct?

18 A. Yeah.

19 Q. What is that?

20 A. I'd have to go back and look at it to see

21 exactly what it was. I don't know.

22 Q. It presumably relates to the subject of

1 your e-mail, correct?

2 A. I hope so. Or Earl would not have been

3 happy.

4 Q. Fair to say that it is a memo addressing

5 the counting of illegal immigrants either in the

6 decennial census, period, or for purposes

7 apportionment?

8 A. Yeah.

9 MS. WELLS: Object to the form.

10 THE WITNESS: I would presume it relates

11 to, as I reference in the e-mail, a Bush era --

12 Bush 41 era DOJ opinion that proposed legislation

13 excluding illegal immigrants from the decennial

14 census.

15 BY MR. DURAISWAMY:

16 Q. Okay. Do you know if you were involved

17 in preparing the document?

18 A. The DOJ opinion?

19 Q. The attachment to your e-mail.

20 A. Like, assembling it?

21 Q. Drafting it.

22 A. Well, there's nothing -- if I'm

1 AFTERNOON SESSION

2 (1:16 p.m.)

3 THE VIDEOGRAPHER: Going back on the

4 record. The time is 1316.

5 (Deposition Exhibit Number 8 was marked

6 for identification.)

7 Whereupon,

8 DAVID SANFORD LANGDON,

9 was called for continued examination, and having

10 been previously duly sworn was examined and

11 testified further as follows:

12 EXAMINATION BY COUNSEL FOR KRAVITZ PLAINTIFFS

13 BY MR. DURAISWAMY:

14 Q. Good afternoon, Mr. Langdon. Handing you

15 what we've marked as Exhibit 8.

16 Have you had a chance to review the

17 document, Mr. Langdon?

18 A. This one, yes.

19 Q. Okay. This is a further e-mail exchange

20 in response to what I believe is Exhibit 7, the

21 e-mail that you sent to Mr. Comstock and

22 Ms. Herbst on May 24th about the counting of

1 illegal immigrants, correct?

2 A. Correct.

3 Q. Okay. And in his response, Mr. Comstock

4 raises the question of whether the -- strike that.

5 In response to Mr. Comstock asks about

6 why the decennial census does not include the

7 citizenship question, but the ACS does, correct?

8 A. Yeah.

9 Q. Okay. And then he identifies a case that

10 he believes is relevant to the governmental need

11 for citizenship data, correct?

12 A. Uh-huh.

13 Q. Okay. And you respond and say that you

14 have asked the Census Bureau team for more clarity

15 on how they decide what topics to include in the

16 decennial versus ACS, correct?

17 A. Yes.

18 Q. And that is consistent with the e-mail

19 that I believe we saw in Exhibit 6 where you were

20 posing that question, I believe, to Lisa

21 Blumerman, correct?

22 A. And Burton Reist and Melissa Creech, yes.

1 Q. Right. And you say that your hunch is
2 "that the policy change on the citizenship
3 question is tied to the creation of the ACS. I
4 will share what they say and will review the court
5 case."

6 You recall that they, meaning the Census
7 Bureau staff, came back to you with an explanation
8 as to why the citizenship question was on the ACS,
9 but not the decennial?

10 A. I can't remember the exact answer. My
11 hunch wasn't entirely correct, actually, so, I
12 mean, the -- it was only a hunch. The -- I mean,
13 the -- there was confusion here between the --
14 what used to be the short-form --

15 Q. Right.

16 A. -- census, which is now the regular
17 census, the long-form census and then ACS.

18 Q. So what do you recall that the Census

19 Bureau staff told you after looking into this

20 question?

21 A. Regarding the citizenship specifically?

22 Q. Yes. As to why it was on the ACS but not

1 the decennial.

2 A. Actually, I don't recall exactly why it

3 was not on, like, what would have been, like, the

4 short form or the decennial. The question -- I

5 think a lot of the conversation was about -- more

6 about what actually is on there and what the

7 justifications are for it, what the legal

8 justifications are.

9 I mean, to be frank, I mean, if nobody

10 asks for something to be on the census, it's not

11 on there. Right? So I mean -- so I'm not sure if

12 they could have answered why -- I don't know. I

13 don't recall the specific answer to the question.

14 Probably well documented.

15 But in any case, I mean, there's always a

16 decision on -- going back to, actually, our much

17 earlier conversation about this survey length and

18 response rates and such -- I mean, there's a

19 decision about what needs to be asked of the

20 entire U.S. and what could be asked of a really

21 large sample.

22 Q. And to your recollection, that was part

1 of the consideration as to why the citizenship

2 question was asked on the ACS but not on the

3 decennial, correct?

4 A. It presumes that somebody actually

5 asked whether there should be -- I mean, the

6 citizenship question hadn't been on what was the

7 short form in, if I recall right, you know, at

8 least a couple of -- a few decades. And so, I

9 mean, that would suggest that there hadn't been a

10 strong case made for it to be on there at that

11 point. There hadn't been a need. But I don't

12 know specifically. I'm just, you know...

13 Q. Right. And you indicate in your previous

14 answer that it's also presumably connected to this

15 concern about survey length and response rates as

16 well, correct?

17 A. Yeah. Exactly.

18 Q. You also say that you're going to look

19 into -- review the court case, correct?

20 A. Yep.

21 Q. Your understanding that this court case

22 regarding the governmental need for citizenship

1 Q. Okay. Prior to learning about the
2 discussions with DOJ regarding this issue in late
3 summer or early fall of 2017, did you have any
4 discussions with anyone about the need for
5 citizenship data for voting rights purposes other
6 than what's reflected in Exhibit 8? Let me try
7 that again, because it's kind of a long question.

8 A. Yeah, it was. Thank you.

9 Q. What I'm trying to understand is, in
10 Exhibit 8, Mr. Comstock e-mails you with this,
11 quote/unquote, relevant court case on the
12 governmental need for citizenship data, correct?

13 A. Uh-huh.

14 Q. And then some months later you become
15 aware of conversations between Commerce Department
16 and Department of Justice regarding the potential
17 need for citizenship data for DOJ purposes,
18 correct?

19 A. Uh-huh.

20 Q. Prior to your becoming aware of those
21 conversations and separate and apart from this
22 communication, do you recall any other discussions

1 with anyone else about whether DOJ had a need for

2 citizenship data?

3 A. So I've looked on the ACS side -- yeah --

4 I mean, conversations isn't the right word. But

5 in my -- as I gathered background just to

6 become -- to gain a better understanding of why

7 topics are included on the ACS in particular --

8 and I looked at, you know, the publicly available

9 documentation --

10 THE REPORTER: And I looked at the...

11 THE WITNESS: Publicly available

12 document, you know, the report the Census Bureau

13 does on federal uses, and I looked at, for

14 example, citizenship, and there it outlined

15 pretty -- you know, all the different uses,

16 including the Voting Rights Act uses.

17 And so that, at some point -- I mean, it

18 probably fell within this window of time. And at

19 some point, I would have discussed it or shared

20 with it James Uthmeier.

21 BY MR. DURAIWAMY:

22 Q. When?

1 A. I don't know. I mean, it would have
2 been -- it could have been, like, probably late
3 fall. There was, like, a point where I, like,
4 gained better understanding, and there was a
5 point, like, later on where, like, I actually
6 discussed it with him.

7 Q. Do you recall if it was before or after
8 the late summer, early fall time period when
9 you --

10 A. After. It was after.

11 Q. Okay.

12 A. Yeah. It was -- yeah.

13 Q. Okay. So prior to the late
14 fall -- strike that.

15 Prior to late summer, early fall time
16 period, and separate and apart from what's in
17 Exhibit 8, do you recall any other discussions
18 with anyone else about whether DOJ had a need for
19 citizenship data from the decennial census?

20 A. I don't think so, no. I mean, no, I
21 don't think so.

22 Q. You don't remember anything?

1 mentioned this earlier -- that he's been heavily
2 engaged with Census Bureau staff practically since
3 he came on as Secretary on a whole variety of
4 issues -- actually, kind of -- basically what it
5 says here, on a whole variety of issues regarding
6 the census.

7 MR. DURAISWAMY: Move to strike as
8 nonresponsive everything after "it would be
9 unusual for somebody to do it on their own."
10 (Deposition Exhibit Number 10 was marked
11 for identification.)

12 BY MR. DURAISWAMY:

13 Q. Mr. Langdon, I'm handing you what we've
14 marked as Exhibit 10.

15 A. Uh-huh.

16 Q. This is an e-mail that you sent to Sahra

17 Park-Su --

18 A. Yep.

19 Q. -- a few months ago, June 22nd, 2018. Do

20 you see that?

21 A. Uh-huh.

22 Q. And you forwarded her a news article

1 titled, "Commerce Secretary suggested citizenship
2 question to Justice Department, according to memo,
3 contradicting his congressional," correct?
4 A. Uh-huh.
5 Q. And that's a reference to the memo that
6 we just looked at in Exhibit 9, correct?
7 A. Uh-huh.
8 Q. Why did you send this to her?
9 A. Sahra and I were colleagues. We worked
10 together both on Census Bureau issues, and so it's
11 par for the course that we would share, you know,
12 relevant press articles about things we're working
13 on.

14 Q. What was your reaction to this article
15 when you read it?

16 A. My reaction to the article?

17 Q. Yeah.

18 A. Surprise, yeah.

19 Q. Why were you surprised?

20 A. Well, I mean, the idea of saying

21 something and then contradict -- you know, saying

22 something else that appears to contradict it is --

1 it surprised me.

2 Q. What he had testified to in Congress
3 appeared to be contradicted by the memo that's
4 Exhibit 9, correct? That's what the article
5 indicated?

6 A. Yeah.

7 Q. Was that -- that was concerning to you?

8 A. Concerning to me? No. I thought it was
9 interesting.

10 Q. Surprising?

11 A. Yeah, surprising.

12 Q. Okay. Is there a particular reason that
13 you wanted Ms. Park-Su to be aware of this?

14 A. As I stated before, we worked a lot on
15 Census Bureau issues in the policy office
16 together. We sit also literally right next to
17 each other, from here -- we sat from here to
18 there, so we --

19 Q. No, I understand. And I'm trying to
20 understand if this was more of, like, here's
21 something related to the census that you might be
22 interested in, or if there was something specific

1 sometime during the summer, give or take a month.

2 When I say late summer, it would be, like, August.

3 Maybe August -- August could have been July; July

4 could have been September. I don't know exactly,

5 to be frank.

6 Q. But the conversation -- the first

7 conversation with Earl that you recall would have

8 been roughly around the time that you first

9 remember learning that Secretary Ross was

10 interested in adding the question to the census,

11 correct?

12 A. Yeah. I mean, because that's -- that --

13 the Secretary expressing interest in it would lead

14 to follow-up activity, and that would include

15 conversation with Earl or others.

16 Q. Okay. That's all I'm trying to

17 understand. It's not a trick question. I'm just

18 trying to make sure I understand what you remember

19 and what you don't remember.

20 A. Yeah.

21 Q. Okay. So apart from reviewing the draft

22 Abowd memo, what other involvement did you have in

1 assessing this issue or pursuing it between the

2 summer of 2017 and March 2018?

3 A. I don't think anything, really. I mean,

4 the main case was reviewing that memo.

5 THE REPORTER: I'm sorry.

6 THE WITNESS: Nothing that I can recall.

7 That was -- that was the meat of it, really, was

8 that analysis.

9 BY MR. DURAISWAMY:

10 Q. Do you recall attending meetings where

11 this issue was discussed?

12 A. No. I mean, I knew that -- I was aware,

13 certainly, that the Secretary was scheduling quite

14 a few meetings and calls regarding this, you know,

15 different experts and such. I was aware of that.

16 But I didn't -- I didn't take part of in any of

17 them.

18 Q. Do you believe the issue being discussed

19 at any of the monthly oversight meetings?

20 A. No. Because it was sort of a -- it was

21 a -- sort of separate line of work. Right? I

22 mean, it was something that -- it was something --

1 correct?

2 A. Yeah. I'd have to go back and see

3 when -- I think the memo came in December, maybe.

4 I don't remember exactly.

5 **Q. Did you ever do any work assessing the**

6 **possible effects of adding a citizenship question**

7 **to the decennial census?**

8 **A. Analysis? No. No, we relied on what the**

9 **Census Bureau prepared.**

10 Q. My question is whether you ever did any

11 work related to that issue.

12 A. I guess I don't understand the question.

13 Q. Well, let me ask it differently. Did you

14 ever have any discussions with anyone about the

15 potential effects of adding a citizenship question

16 to the decennial?

17 A. I talked to John a couple of times after

18 we got the memo, just to make sure I understood

19 some of the analysis, had some questions about it.

20 Q. What was the substance of those

21 conversations?

22 A. I'd have to go back and look. I mean, I

1 making in your previous answer? How --
2 A. That it's not easy. It's not easy. It
3 takes a lot of work. And you have to -- the
4 reason it takes a lot of work is because the
5 administrative data may not measure what you think
6 it's measuring, how you think it's measuring it.

7 Q. Are you aware of any testing that's been

8 done to evaluate the effects of including a

9 citizenship question on the 2020 decennial on

10 response rates or the accuracy of -- and quality

11 of survey data?

12 A. So the -- no, so there hasn't been.

13 There hasn't been any testing to date. And the

14 time frame wouldn't -- the Secretary's decision

15 wouldn't -- you know, wouldn't accommodate that

16 kind of testing.

17 That said, the Census Bureau presented a

18 reasonable -- very reasonable alternative to get

19 at those kinds of issues, which was looking at,

20 you know, the impacts -- there was no change.

21 Citizenship has always been part of the American

22 Community Survey, but nonetheless, looking at

1 how -- you know, just how that plays out, you

2 know, what impact -- the John Abowd memo goes into

3 that --

4 THE REPORTER: I'm sorry.

5 THE WITNESS: The John -- the memo he

6 prepared goes into how citizenship might

7 potentially -- how information from the American

8 Community Survey and how it's collected may

9 indicate potential impacts on self-response rates

10 in the 2020 census.

11 BY MR. DURAISWAMY:

12 Q. Did you have any conversations with

13 outside stakeholders or parties outside the

14 Commerce Department about the effects of adding a

15 citizenship question to the 2020 census?

16 A. No. I did not.

17 Q. Do you know who was principally

18 responsible for those conversations?

19 A. For organizing them? For, like -- or for

20 scheduling them?

21 Q. Both organizing and actually

22 participating in the conversations.

1 number of reasons, because of the quality of the
2 answers, because they're burdensome, or whatever,
3 and whether or not we should consider using
4 administrative data as a substitute for that. And
5 nowhere in that content review had any problems
6 with the question ever surfaced in terms of either
7 people not wanting to respond to it ever or in
8 terms of quality issues with the responses.

9 Q. In the time that you've worked at the
10 Commerce Department and had a responsibility for
11 issues related to the work of the Census Bureau,
12 do you recall ever hearing about the Department of
13 Justice being interested in census block-level
14 citizenship data for purposes of Voting Rights Act
15 enforcement?

16 A. No.

17 Q. There's a process by which government
18 agencies communicate with the Census Bureau about
19 their data needs, correct?

20 A. Yeah. I mean, "process" is maybe a
21 generous word for it. But, yeah, there's a
22 protocol by which -- that the Census Bureau has

1 actually developed with the -- actually, as part
2 of the last content review for the American
3 Community Survey --
4 THE REPORTER: Part of the last...
5 THE WITNESS: The content review for the
6 American Community Survey through which, you know,
7 they conducted outreach on to the need for data
8 and examined that need and weighed it. And it's
9 come up in a few different contexts, most recently
10 with the same SOGI, the sexual orientation and
11 gender identification question. It came up with a
12 health insurance question in the last couple of
13 years related to the Affordable Care Act.
14 And so there's -- there's not -- I
15 wouldn't say there's a linear process. There's
16 frequently a dialogue between agencies at
17 different levels and the Census Bureau regarding
18 data needs and the right way to meet those needs.

19 BY MR. DURAISWAMY:

20 Q. Let me hand you what we've marked as

21 Exhibit 12.

22 (Deposition Exhibit Number 12 was marked

1 Q. Right. But my question is, does the
2 bureau periodically seek input from other
3 agencies, not just as to the ACS, but to other
4 surveys that it administers?

5 A. Yeah. So keep in mind that the Census
6 Bureau has a lot of reimbursable surveys. So
7 these are surveys that it conducts for any number
8 of agencies. An agency has a need, like, say, HUD
9 or DOJ, to have a specific survey on a specific
10 topic, and it will come to the Census Bureau, pay
11 them for it, and develop the survey together. So
12 that's one venue of dialogue. This -- so, yeah,
13 absolutely.

14 And this is another venue, which was part
15 of the ACS content review, and reaffirmations from
16 agencies about what data they needed.

17 Q. You don't see any indication in this
18 letter that the Department of Justice is
19 dissatisfied with the nature or quality or --
20 nature or quality of the citizenship data that's
21 provided from the ACS survey, do you?

22 A. They don't make any statement about the

1 make sure that the 2020 census is operationally
2 ready.

3 **Q. Have you had any conversations with**

4 **Mr. Comstock regarding the citizenship question**

5 **that you can recall since late summer 2017?**

6 **A. No.**

7 Q. Apart from Mr. Uthmeier, do you recall
8 any conversations -- well, strike that.
9 Apart from Mr. Uthmeier and whatever
10 conversations you have had at these meetings
11 related to responding to citizenship inquiries, do
12 you recall any other conversations with folks at
13 the department about the citizenship question?

14 MS. WELLS: Object to the form.

15 THE WITNESS: Okay. Actually, to go back
16 on the question about Earl, I would have -- I
17 mean, to be clear, as far as, like, the clearances
18 go, that's quite -- I'm sure I've, you know,
19 brought, you know, responses to him and discussed
20 with him, you know, edits and such that he's had
21 to the citizenship question. That's certainly the
22 case.

1 THE REPORTER: Slow down, please.
2 THE WITNESS: It's an implementation
3 phase. The Secretary -- it's on the Census Bureau
4 now to implement his decision to add this question
5 and, you know, get the systems ready. And
6 that's -- there's really not much more to discuss
7 in a way. We're not Monday morning -- I'm not the
8 Monday morning quarterback for the Secretary's
9 decision on this.

10 (Deposition Exhibit Number 15 was marked
11 for identification.)

12 BY MR. DURAISWAMY:

13 Q. I'm handing you what we've marked as
14 Exhibit 15. Have you seen this document before?

15 A. Let me take a look at it.

16 Q. Sure.

17 A. Not this exact one. I've seen, like,
18 versions of it.

19 Q. What is it?

20 A. As I look at it, it's sort of a Q&A,
21 right, regarding the -- so it's -- basically, it's
22 a Q&A document regarding aspects of the decision

1 to include the citizenship question.

2 Q. Were you involved in preparing this

3 document?

4 A. Not drafting it.

5 Q. Well, what involvement did you have?

6 A. I might have sort of -- like, you know,

7 like in my policy role, I reviewed or cleared

8 parts of it. I can't remember specifically. I've

9 seen the document before.

10 And some of it -- the reason I'm waffling

11 on it is because some of the pieces are -- I've

12 seen in different contexts, you know, in, you

13 know, letter responses or other places. I'm

14 generally familiar with the content.

15 Q. What was the purpose of the document?

16 MS. WELLS: Object to the form.

17 BY MR. DURAI SWAMY:

18 Q. Why was the document prepared?

19 A. I can't say specifically why it was

20 prepared, but its purpose is -- essentially, it's

21 a Q&A document, almost like an FAQ. That's the

22 way I see it.

1 Q. For whom?

2 A. I don't know. I mean, I'm not sure. I

3 can't remember the context under which it was put

4 together.

5 Oh, wait a second. No, actually, this

6 may have been -- actually, no, this is my mistake.

7 This is -- it looks like it's a response -- it's

8 responses from the Census Bureau regarding

9 questions from -- about John's memo.

10 BY MR. DURAISWAMY:

11 Q. Questions prepared by whom?

12 A. By the department. I would have had a

13 role in preparing -- you know, in raising issues

14 to include. I didn't -- I think the questions

15 probably came from Earl, ultimately. But, you

16 know, there are a variety of people who reviewed

17 John's memo and provided -- you know, had

18 questions about the content of it, analytical

19 questions. I mean, these are all, like, you

20 know...

21 Q. You had a role in drafting these

22 questions, correct?

1 A. Yeah, I did.

2 Q. At whose direction?

3 A. At -- either Earl or James.

4 Q. What did they -- what did they tell you

5 when they asked you to prepare these questions?

6 A. Well, not -- I mean, when they asked me

7 to review the memo and provide input, it was

8 basically, you know, review it and give me your

9 opinion on it, really.

10 Q. Well, these are -- this is a list of

11 questions.

12 A. Yeah.

13 Q. And you said that --

14 A. And my opinion would be through -- like,

15 what -- in other words, what -- you know, go

16 through it, and sort of like I mentioned earlier,

17 so I go through and I flag things that weren't

18 clear to me or that, you know, the analysis wasn't

19 clear or, like -- you know, it's like a peer

20 review almost.

21 Q. Somebody decided that you should respond

22 to the Abowd memo in the form of a series of

1 MS. WELLS: Thanks.

2 MR. DURAISWAMY: Sure.

3 THE WITNESS: So this was -- yeah.

4 There's John's reference to our conversation.

5 Yeah. So, I mean, the nature of the

6 questions was, you know, probably just -- it was a

7 very tactical memo. It wasn't written for, like,

8 a lay audience, I thought. And so part of our

9 questions were just to help us understand it

10 better just in general. And part of it was to

11 actually question -- you know, to raise questions,

12 like a peer review, of aspects of the analysis.

13 BY MR. DURAISWAMY:

14 Q. To raise questions to push back on

15 aspects of the analysis, correct?

16 A. Push back is not the word -- phrasing I

17 would use. But it's just to -- you know, it's

18 like a peer review. So you're picking apart

19 different aspects of it. That's -- this is

20 something we do, like, when we do economic

21 reports. We would send things around and --

22 and -- yeah, you know, you're just, you know,

1 trying to, you know, make sure that the analysis

2 is rock solid and all the implications of it are

3 clear.

4 Q. You understood at the time that senior

5 officials in the Commerce Department wanted to

6 move forward with the citizenship question on the

7 2020 census, correct?

8 A. Uh-huh.

9 Q. And you understood that this memo from

10 John Abowd was taking the position that it would

11 be a bad idea to do that, correct?

12 A. Yep.

13 Q. And --

14 A. Well, let me -- bad idea. He

15 presented -- what's "it" here? I guess "it" is,

16 is it adding -- he provided -- the Secretary

17 wanted data on citizenship at a granular level.

18 And the options -- he laid out options for doing

19 that. It was an options memo. So one of the

20 options was not get it, not do it. The second

21 option I remember was relying on the ACS. The

22 third option was add it to the Census Bureau

1 survey. And another option was, like,
2 administrative data.
3 So it's, like -- you know, the analytical
4 question is, okay, we want more granular
5 citizenship data; how are we going to get it?
6 Does it make sense to use the 2020 census for
7 those purposes?
8 And so -- I mean, bad idea, I think, is
9 an exaggeration of it, but it's a -- he -- John
10 advocated for administrative data and not for
11 using it on the 2020 census.

12 Q. The -- he characterized the proposal to
13 add a citizenship question to the 2020 census as
14 something that would be very costly, harm the
15 quality of the census count, and use substantially
16 less accurate citizenship status data than are
17 available from administrative sources, correct?

18 A. Uh-huh.

19 Q. This was not a recommendation to proceed
20 with the plan to add a citizenship question to the
21 2020 census, correct?

22 A. So he was -- he was not a fan of it, to

1 say the least, but --

2 Q. It was critical of the idea, correct?

3 A. Yeah, but --

4 Q. Okay.

5 A. -- so -- but then my role was to sort

6 of -- that draft -- that draft. I didn't see the

7 final memo. And then our -- my job was to read

8 through it and say, okay, well, there's a

9 narrative here, and there's data that supports it,

10 and then there's sort of the way the Census Bureau

11 operates. And not all those aspects actually

12 added up.

13 And so, for example, his statement -- and

14 I raised this for Earl -- was, you know, his

15 statement about the quality of the data. So my

16 reaction was, well, if there are data quality --

17 he basically suggested the survey question is not

18 going to get you good data. And so my response

19 was, well, you're trying to have it both ways as

20 the Census Bureau. You're flagging this issue,

21 but at the same point, we've had this question on

22 the ACS for years. We've been giving it to DOJ

1 and other users, through special tabulations, for
2 years. It's never surfaced until now. And even
3 now that the Census Bureau is arguing that there
4 are these data quality issues -- and we can set
5 aside whether or not there actually are data
6 quality issues, but let's say there are. Then I
7 questioned him, why is the Census Bureau not
8 taking action to address the fact that they're
9 still using this question on the American
10 Community Survey? And there was the dissonance
11 there that didn't make sense. It still doesn't
12 make sense to me.

13 Q. So you don't know if there are data
14 quality issues with asking people to self-report
15 citizenship or not?

16 A. So you could --

17 Q. Or you don't have an opinion about that?

18 A. He argued in the memo that there were --
19 there were, you know, problems with the
20 non-citizenship estimate. And so my response is,
21 okay, that's fine. You're saying this. I
22 understand your point. But then if it's such an

1 questions you put on it, but it's the flow of
2 them. So that's -- you know, it's not a minor
3 issue. It's not something you take lightly.
4 Q. I agree.

5 A. The other thing I just wanted to flag --
6 the other thing I thought was inconsistent was
7 this question about his recommendation to use
8 administrative records. And so again, I raised
9 for Earl that the Census Bureau was pretty much on
10 the tail end of having done, you know, a lot of
11 years of research on how to use administrative
12 records to conduct a successful decennial census.
13 A. lot of work. And so -- and it was good work.
14 And it's inconsistent with that long,
15 thoughtful, methodological, careful approach to
16 say, okay, well, here's this data field that the
17 Secretary would like to add to the decennial
18 census, and we think we should just go ahead and,
19 two years from now, get this data through
20 administrative records. That's not consistent
21 with the way the Census Bureau tends to approach
22 those kinds of decisions.

1 It's a very short time frame. And they
2 had a limited -- at least at that point -- I don't
3 know what they have now, but they had a limited
4 set of administrative records to go on.

5 Q. Did you participate in any meetings with
6 Secretary Ross in January, March -- February or
7 March regarding this addition of a citizenship
8 question to the census?

9 A. No. Like -- like, reviewing the
10 research, do you mean? Like -- or pondering it
11 or...

12 Q. Any meetings with Secretary Ross
13 regarding the additional of a citizenship question
14 to the 2020 census?

15 A. I don't think so, no. No. I mean, the
16 kind of meetings with the agenda you just showed
17 me, like the steering committee? Those kind of
18 things?

19 Q. Any meetings. Is there something unclear
20 about my use of the word "meeting"?

21 A. No. Meeting is very clear. I appreciate
22 that.

1 the questions in -- I believe it's Exhibit 15?

2 A. Like, specifically?

3 Q. Yeah.

4 A. No, I can --

5 Q. Or generally.

6 A. I mean, generally, it probably would have

7 been John, and then it would have been cleared

8 through -- you know, all the way up through Ron

9 Jarmin.

10 Q. Do you know if anyone at the Commerce

11 Department changed any of the answers that the

12 Census Bureau provided?

13 A. I don't know. I did not. I don't have

14 any reason to believe anybody else did. It's a

15 Census Bureau product.

16 Q. Do you think it would be appropriate if

17 someone at the Commerce Department changed answers

18 that were provided by the Census Bureau?

19 MS. WELLS: Object to form.

20 THE WITNESS: I mean -- appropriate? I

21 mean, look, when we receive materials of any

22 nature -- this could be an example from the Census

1 Bureau -- there can be questions about it and
2 there can be a process by which it gets reviewed
3 and edited or revised. You know, that would
4 involve a dialogue with the Census Bureau about
5 what did you mean here, you know, what -- what is
6 this, and it could involve Commerce Department
7 staff taking a pen and -- you know, and revising
8 an answer, but not on a sort of one-off, freelance
9 basis.

10 BY MR. DURAISWAMY:

11 Q. Are you aware of any external analyses
12 that were solicited regarding the impact of the
13 citizenship question on the quality or accuracy of
14 the census data?

15 A. Like, written analyses? Not that I'm
16 involved with, no, I don't know of any. I mean,
17 the Secretary had a lot of outside meetings, you
18 know, like, for example, with former Census Bureau
19 directors, people like that, but not that I'm
20 aware of. Certainly nothing I reviewed.

21 Q. I mean, is the answer, no, you're not
22 aware of any external analyses beyond what the

1 Census Bureau did regarding the effects of adding

2 a citizenship question to the census?

3 A. That's a good summary of my answer.

4 Q. Okay. Do you know if your e-mail files

5 were searched for purposes of producing documents

6 in this lawsuit?

7 A. I do know that and, yes, they were

8 searched.

9 Q. Were your paper files searched?

10 A. Yes, I provided a folder of paper files.

11 Q. You mentioned that you have -- sometimes

12 take notes on the PowerPoint presentations that

13 are essentially -- it sounds like pre-reads for

14 these monthly census team meetings, correct?

15 A. They're more handouts during the meetings

16 as opposed to pre-reads. But, yeah, I had a

17 file -- I have a file and I provided that.

18 Q. For purposes of responding to discovery

19 in this case?

20 A. Yes.

21 Q. Do you ever send text messages for work

22 purposes?

1 A. Yeah, I don't know.

2 Q. Did you have any involvement in preparing

3 the March 26th memo announcing the decision to add

4 a citizenship question for the 2020 census?

5 A. No.

6 Q. Do you know who was involved in that

7 process?

8 A. Not off the top of my head. I don't

9 know.

10 Q. So you testified earlier that you were

11 not -- strike that.

12 You testified earlier that you first

13 learned about Secretary Ross' intent to add a

14 citizenship question around late summer of 2017,

15 correct?

16 A. Mid to late summer, I think I said, yeah.

17 Q. Okay. And I believe you testified that

18 you were not aware of or involved in any

19 discussions regarding the need for a citizenship

20 question for DOJ or voting rights purposes before

21 that time, correct?

22 A. Not that I recall, no.

1 Q. Okay. And the discussions about adding a
2 citizenship question to the census were not part
3 of the monthly census briefings that you
4 participated in, correct?

5 A. No, not -- no. Like the -- like the
6 analysis, you mean? Not that I can recall, no.

7 Q. And, in fact, I believe you testified
8 that there was sort of a separate process at the
9 senior level that was handling that, correct?

10 A. I did testify to that, yep.

11 THE REPORTER: I'm sorry?

12 THE WITNESS: I did testify to that.

13 BY MR. DURAI SWAMY:

14 Q. You are the senior policy advisor for
15 statistical agencies at the Department of
16 Commerce, correct?

17 A. Uh-huh.

18 Q. And you are the senior-most career
19 staffer for issues of policy and strategy as it
20 relates to the Census Bureau, correct?

21 A. Yeah. Although at that time I shared a
22 lot of the policy duties regarding -- specific to

1 to 2020 census with Sahra Park-Su. So we -- we

2 shared a lot of that work for a while.

3 Q. She was a policy advisor as well?

4 A. Yes.

5 Q. Do you know if she was involved in any of

6 those discussions that you were not involved in?

7 A. I don't know.

8 Q. There's no one else in the Office of the

9 Secretary who has more experience dealing with

10 issues of policy and strategy as it pertains to

11 the Census Bureau than you, correct?

12 A. Currently, yeah. I mean, just by merit

13 of age and experience in the department, that's

14 probably accurate, yeah.

15 Q. And you were basically not involved in

16 the process of deciding to add a citizenship

17 question, right?

18 MS. WELLS: Object to the form.

19 THE WITNESS: I was not involved in --

20 yeah. I mean, I provided input -- I mean, this is

21 the way I operate -- I mean, the way I work. I

22 mean, I -- I respond to the needs of my boss.

1 And, you know, when he engaged me on specific

2 matters, I responded and provided input.

3 But if he didn't engage me and ask for my

4 input, then I didn't provide it. I had no

5 shortage of policy matters to deal with. So...

6 BY MR. DURAISWAMY:

7 Q. And you can't recall being engaged on --

8 for your input on the issue of whether to add a

9 citizenship question until, at the earliest,

10 January 2018; is that correct?

11 MS. WELLS: Object to the form.

12 THE WITNESS: I provided input to John's

13 memo, whenever that came in -- I mean, whatever

14 the date is on that. That came in. That was a --

15 you know, that was the Census Bureau's analysis

16 regarding, you know, what they -- their views on,

17 you know, how to provide citizenship data to the

18 Secretary at the level that DOJ was asking for.

19 And I provided input into that.

20 BY MR. DURAISWAMY:

21 Q. Take a look at Exhibits 15, 16 and 17.

22 Does that refresh your recollection that that was

1 day. Right?

2 Q. Did you review any other memos prepared

3 by John Abowd regarding the addition of a

4 citizenship question?

5 A. No.

6 Q. Did you review the memo analyzing

7 alternative D?

8 A. So alternative D, just to be clear, is

9 that the one with the blending of the survey and

10 administrative data?

11 Q. Is that your understanding of

12 alternative D?

13 A. I'm asking. I mean, like I say, this was

14 an iterative process, so...

15 Q. Well, do you recall reviewing a memo

16 analyzing alternative D?

17 A. I'm aware of alternative D. I mean, I

18 think I may have seen a version of it, yeah,

19 but it's...

20 Q. Did you ever have any discussions with

21 the Secretary about alternative D?

22 A. No. I mean, as I stated earlier, the

1 Secretary and I have not had conversations about

2 this -- this matter, really.

3 Q. So when these parallel meetings were

4 going on regarding the addition of a citizenship

5 question that were taking place outside the

6 context of the monthly census briefings, who was

7 participating in those meetings, if not you?

8 MS. WELLS: Object to form.

9 THE WITNESS: I believe you asked this

10 earlier, and --

11 BY MR. DURAISWAMY:

12 Q. If you know.

13 A. -- I said I don't know. Yeah, you've

14 asked this before. But -- yeah.

15 Q. You have, like, not the slightest idea --

16 like, you don't even have a reasonable basis to

17 believe that Earl Comstock was involved in those

18 meetings?

19 A. And, of course -- I mean, yeah, but, I

20 mean, that's -- you know, it's a question of who

21 is meeting when on what. And it's not my -- I can

22 hypothesize, of course. I mean, it would be

1 CERTIFICATE OF NOTARY PUBLIC

2 I, Denise M. Brunet, the officer before

3 whom the foregoing deposition was taken, do hereby

4 certify that the witness whose testimony appears

5 in the foregoing deposition was sworn by me; that

6 the testimony of said witness was taken by me

7 stenographically and thereafter reduced to print

8 by means of computer-assisted transcription by me

9 to the best of my ability; that I am neither

10 counsel for, related to, nor employed by any of

11 the parties to this litigation and have no

12 interest, financial or otherwise, in the outcome

13 of this matter.

14 <%14541,Signature%>

15 _____

16 Denise M. Brunet

17 Notary Public in and for

18 The District of Columbia

19

20 My commission expires:

21 December 14, 2022

22