

**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 RON JARMIN**

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

Respectfully submitted,

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# Exhibit 1

Summary: Ron Jarmin (August 20, 2018)

Questions on the census need to show a statutory or regulatory need, Tr. 17, as all questions on the decennial census are an imposition. Tr. 406-507. Accordingly, the Census is obligated to use administrative records in lieu of direct data collection if possible. Tr. 59-60. Dr. Jarmin described alternatives that are less burdensome than the citizenship question to get data to meet DOJ's stated need. Tr. 27-28, 48-49, 66-69. Technical meetings between the Census Bureau and the requesting agency are important to identify how best to meet the data need; in this case, there was no meeting with DOJ. Tr. 32-38, 58-62, 64-69, 88, 101, 105, 107-108, 37-3.

In October 2017, Dr. Jarmin believed the process for adding questions to the 2020 census was closed. Tr. 378-379. Dr. Jarmin learned of the possibility of a citizenship question shortly before the Gary letter dated December 12, 2017. Tr. 21, 24-25, 377. Dr. Jarmin was involved in finding stakeholders for Secretary Ross to speak with; since most stakeholders opposed the citizenship question, Jarmin sought out supporters for the record. Tr. 149, 153, 155, 408-409.

There is a well-established process of adding questions to the census, which was not followed here. Tr. 44-46, 44-46, 47-48, 50-52, 54-56, 138-139. There is typically a multi-year testing process for the census. Tr. 259-261. Testing is important and could have been done for citizenship question. Tr. 178-185, 223-224, 234-235. Many factors can impact how a question performs on the census and its sensitivity, including the political climate and order of questions. Tr. 194, 197, 289-292. It is not fair to assume a question will perform the same on different surveys. Tr. 220-221. The Bureau has not analyzed whether citizenship question will perform the same on the decennial census as on ACS. Tr. 221-222. In addition, there was an unusual absence of outside experts and census advisory committee input when deciding whether to add the citizenship question; the census advisory committees opposed adding it. Tr. 83-87, 236-257.

The Census Bureau believed that Alternative D would result in poorer quality citizenship data. Tr. 143-145. Dr. Jarmin agreed with the Census Bureau's recommendations. Tr. 117-118, 127-128, 405-406. The Census Bureau found that administrative data is more accurate than self-response data for citizenship data. Tr. 399. The Bureau provided Commerce with evidence of populations that would have responded to census without the citizenship question, but would not with a citizenship question. Tr. 308-309. Dr. Jarmin explained that the citizenship question adds burden to the census and is very likely to lead to decline in self-response. Tr. 274, 278-280, 306-307. Dr. Jarmin testified that he does not think the Census Bureau has analyzed the efficacy of its NRFU procedures for noncitizen households in comparison to other segments of the population. Tr. 280-284, 286-287.

Secretary Ross was the genesis of Alternative D. Tr. 122, 124. Census Bureau staff never had substantive conversations with Commerce officials about Alternative D. Tr. 167-168, 169. The Census Bureau did not have substantive input into the Ross decision memo. Tr. 171, 173.

# Exhibit 2

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

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

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

Washington, D.C.

Monday, August 20, 2018

Deposition of:

DR. RON JARMIN

called for oral examination by counsel for  
Plaintiffs, pursuant to notice, at the office of  
Arnold & Porter, 601 Massachusetts Avenue NW,  
Washington, D.C., before KAREN LYNN JORGENSEN,  
RPR, CSR, CCR of Capital Reporting Company,  
beginning at 9:03 a.m., when were present on  
behalf of the respective parties:

Veritext Legal Solutions

Mid-Atlantic Region

1250 Eye Street NW - Suite 350

Washington, D.C. 20005

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1     ALSO PRESENT:     Herman Habermann  
                                  Katherine Wallman

2

      VIDEOGRAPHER:   Solomon Francis

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

2 WHEREUPON,

3 MR. YEOMANS: I'd like the same order as  
4 Dr. Abowd.

5 VIDEOGRAPHER: Good morning. We're going  
6 on the record at 9:03 a.m., August 20, 2018. This  
7 begins Media Unit 1 of the video recorded  
8 deposition of Dr. Ron Jarmin taken in the matter  
9 of New York Immigration Coalition, plaintiffs  
10 v. U.S. Department of Commerce and all defendants,  
11 Case Number is 1:18-CV-05025-JMF and  
12 1:18-CV-2921-JMF filed in the U.S. District Court  
13 for the Southern District of New York.

14 This deposition is being held at the law  
15 office of Arnold & Porter Kaye Scholer, LLP,  
16 located 601 Massachusetts Avenue Northwest,  
17 Washington D.C.

18 My name is Solomon Francis with the firm  
19 of Veritext Legal Solutions. I am the  
20 videographer. The court reporter is  
21 Karen Jorgenson with Veritext Legal Solutions.  
22 Counsels' appearances will be noted on the

1 stenographic record.

2 Will the court reporter please swear in  
3 the witness, and you may proceed?

4 DR. RON JARMIN,  
5 called as a witness, and having been first duly  
6 sworn, was examined and testified as follows:

7 THE WITNESS: Yes, I do.

8 EXAMINATION BY MS. GOLDSTEIN:

9 Q Can you please state your name for the  
10 record?

11 A Ron Jarmin.

12 Q Good morning. My name is  
13 Elena Goldstein. I'm one of the attorneys for the  
14 State of New York in this case, and I'll be  
15 starting the deposition today.

16 Have you ever been deposed before?

17 A Not like this, no.

18 Q So I'm just going to go through some of  
19 the basic ground rules. I'm going to ask, because  
20 we have the court reporter who is taking down all  
21 of my questions and your answers, that you ask --  
22 answer questions orally rather than nodding your

1 Q So it is fair to say that questions on  
2 the census also need to show a statutory or  
3 regulatory need, correct?

4 A Uh-huh. Yes.

401/403

5 Q Thank you.

6 Does the Census Bureau solicit questions  
7 or new data requests from the agencies?

8 A So, yeah. There is a process where we  
9 inform people, and, you know -- so the ACS goes  
10 through a content review and agencies participate  
11 in that.

12 Q Does the Census also go through a contact  
13 review?

14 A Typically not, no. Not that I recall.

15 Q Is there a timeline by which the  
16 Census Bureau asks agencies if they have new data  
17 needs?

18 A So I would say -- I mean, there was a  
19 content review for the -- for the ACS, and I think  
20 agencies are informed of that. But agencies often  
21 approach us outside of that review, as well.

22 (Plaintiffs' Exhibit 1, Gary letter, was



1 employer, business in the country. A number of  
2 current economic indicator surveys, monthly retail  
3 trade, wholesale trade, those sorts of things.

4 Q Okay. I'll take that back.

5 When did you first learn of the  
6 possibility of adding a citizenship question to  
7 the census?

8 A So I think around the time that  
9 John Thompson was retiring, I had -- I had  
10 heard -- I think from John, but I'm not exactly  
11 sure -- that there was interest in a citizenship  
12 question, which is, you know, not a necessarily  
13 new thing. There was interest in the citizenship  
14 question in 2010, as well. So that's -- that's --  
15 but other than a vague notion that there may be  
16 folks asking for a citizenship question, that was  
17 the extent of my knowledge of that.

18 Q And when was that conversation with  
19 Mr. -- Dr. Thompson?

20 A So that would have been May, June-ish of  
21 2017.

22 Q And what do you recall Dr. Thompson



1     telling you about the citizenship question?

2           A     Basically what I just -- that there may  
3     be interest putting it on there.     It was not a  
4     particularly detailed conversation.

5           Q     Do you remember asking him questions  
6     about that?

7           A     No.

8           Q     Do you remember anything else about that  
9     conversation?

10          A     No.     It was a conversation about, you  
11     know, him leaving, and Enrique and I sort of  
12     taking over.     So it was, you know, all the fun  
13     stuff that was in store for us.

14          Q     I'm sure that's a big list.

15          A     It was a big list.

16          Q     Sure.

17                     When was the next time you heard about  
18     the possibility of a citizenship question being  
19     added to the census?                     401/403

20          A     Probably shortly before the -- the letter  
21     came from Art Gary.

22          Q     Tell me how you learned about this.

1 Q With Wendy Teramoto?

2 A No.

3 Q Any other communications with anyone from  
4 the Department of Commerce about the citizenship  
5 question --

6 A No.

7 Q -- before you received --

8 A No.

9 Q -- the letter?

10 A No.

11 Q And I'm just going to ask just for the  
12 record --

13 A That's fine.

14 Q -- I know that my questions are often  
15 going to be really predictable, and that's really  
16 just for the Court and for the transcript, if I  
17 can finish first and then you answer.

18 A Go ahead.

19 Q Thank you.

20 So how many days prior to receiving the  
21 Gary letter did you hear about the possibility of  
22 a citizenship question?

401/403

1           A    I don't recall for sure.   I would say not  
2   much more than a couple weeks.

3           Q    And after you learned a couple weeks  
4   before receiving this Gary letter that this  
5   request was coming, what did you do?

6           A    We didn't do anything in particular.

7           Q    What did you do in general?

8           A    I mean, nothing.   Kept an eye out for the  
9   letter.

10          Q    Did you tell anyone in Census to also  
11   keep an eye out for this letter?

12          A    So, yeah.   You know, my assistant, folks  
13   in -- in our correspondence office, you know.

14          Q    Anyone else?

15          A    I don't think so, no.

16          Q    Did you speak to Dr. Abowd about it?

17          A    I don't recall having a particular  
18   conversation about the citizenship letter or  
19   anything, but, you know, with anyone, other than  
20   front office staff before the -- so.

21          Q    Did you start any preparations for that  
22   letter prior to receiving it?



1 they wanted a question.

2 BY MS. GOLDSTEIN:

3 Q Do you remember any other details?

4 A Of -- prior to the letter?

5 Q Exactly.

6 A No.

7 Q Okay.

8 (Plaintiffs' Exhibit 2, Email, was  
9 marked.)

10 BY MS. GOLDSTEIN:

11 Q I'm showing you what's been marked as  
12 Plaintiffs' Exhibit 2. Is there a difference  
13 between wanting a question and wanting citizenship  
14 information?

15 MS. BAILEY: Objection. Vague.

16 THE WITNESS: So there -- there is.  
17 There's the need for the data, and then there's  
18 how you source the data to fulfill that need.

19 BY MS. GOLDSTEIN:

401/403

20 Q Can you explain a little bit more to me?

21 A So there's often multiple sources of  
22 information that could be used to either fully or

1 partially meet a particular measurement objective.  
2 And so the Census Bureau often explores whether  
3 there's a nonsurvey source that we could use  
4 rather than putting a burden on the public through  
5 a survey question.

6 Q So is it fair to say that a citizenship  
7 question is one way to get that data?

8 A Yes.

9 Q And there are other ways, as well?

10 A In this case, yes.

11 Q Okay. So let's look at this Exhibit 2.  
12 It is Bates number 1332. Do you recognize this  
13 document?

14 A Yeah, I guess.

15 Q What is it?

16 A An email.

17 Q This is an email from Aaron Willard dated  
18 12/15/2007 [sic] to you, correct?

19 A Uh-huh.

20 Q I'm sorry. You need yes or no.

21 A Yes.

22 Q Thank you.

1 Plaintiffs' Exhibit 4. It's Bates stamp 1357.

2 Do you recognize this document?

3 A Yes.

4 Q What is it?

5 A An email.

6 Q Are these emails that you received or  
7 sent?

8 A Looks like one of each.

9 Q So if you go to the bottom on  
10 Monday, December 18th, you email  
11 Karen Dunn Kelley, "any news"; is that correct?

12 A Yes.

13 Q What are you referring to?

14 A So I don't recall this exactly, but I  
15 think we were -- Barry Robinson, who was at OGC at  
16 the time, was reaching out to Art Gary at DOJ to  
17 see if we could set up a time to discuss the  
18 letter. 401/403/802

19 Q What is OGC?

20 A Office of General Counsel.

21 Q And is that -- which department is that?

22 A Commerce.



1 Q And why was Barry reaching out to Gary to  
2 set up a time to discuss the letter? 401/403

3 A So I believe that Barry knew Gary,  
4 and, you know, we wanted -- we wanted to meet with  
5 them to discuss their request.

6 Q Why is that?

7 A Because we typically meet with folks who  
8 have a data request.

9 Q And what's the purpose of that meeting?

10 A To understand their -- their needs.

11 Q Can you tell me a little bit more?

12 A So to have them describe what they need  
13 from a technical perspective so that we can best  
14 understand how we would go about seeing if we  
15 could fulfill it.

16 Q Who typically attends those meetings?

17 A Usually, methodologists and technical  
18 people.

19 Q From?

20 A From Census, along with the subject  
21 matter experts from the requesting organization.

22 Q Who are the subject matter experts that

1 would attend -- that would typically attend from  
2 the Department of Justice? 401/403

3 A So in this case, I guess it would be the  
4 folks that were involved in Voting Rights Act  
5 enforcement.

6 Q Do you know who those people are?

7 A I don't have firsthand knowledge, no.

8 Q Do you know what job titles they have?

9 A I can't tell you.

10 Q Are there statisticians or methodologists  
11 at the Department of Justice who are involved in  
12 voting rights enforcement? 602/401/403

13 MS. BAILEY: Objection.

14 THE WITNESS: I don't know.

15 BY MS. GOLDSTEIN:

16 Q Why is it important to have a meeting to  
17 understand their technical needs?

18 A So it's important so that when you go  
19 through the expense and effort of a data  
20 collection, that it actually solves the  
21 measurement objective that the subject matter  
22 experts have in mind.



1 Q How long do those meetings typically  
2 take?

3 A You know, they vary. Some requesting  
4 agencies have very well-defined requests and we  
5 understand it clearly and it could happen  
6 efficiently, and some requesting organizations are  
7 less organized. So, you know, it's context  
8 specific. 401/403

9 Q Can you give me a range?

10 A I mean, anywhere from, you know, one or  
11 two meetings to many months of negotiations.

12 Q Prior to the citizenship question, had  
13 you received requests for data from the  
14 Department of Justice specifically?

15 A Well, we do -- so I don't know if we  
16 received requests or not. I mean, we do produce  
17 Citizen Voting Age Population data from the ACS,  
18 and I know there had been conversations between  
19 Census and Justice regarding those data. So I  
20 would assume so, but I was not involved in any of  
21 those conversations or how that was initiated.

22 Q And those were prior to your becoming --

1 A Yes.

2 Q -- acting director?

3 A Yes.

4 Q Is it fair to say that part of the  
5 purpose for these technical meetings is to  
6 determine the fit between the data that the agency  
7 is requesting and the way in which the  
8 Census Bureau obtains that data?

9 MS. BAILEY: Objection. Vague.

10 THE WITNESS: So I'll answer what I think  
11 your question is

12 BY MS. GOLDSTEIN:

13 Q All right.

14 A The reason is there's a subject matter  
15 need for information, and the Census Bureau will  
16 try to understand what that need is and best  
17 design a data collection and processing  
18 methodology to meet the subject matter experts'  
19 requirement.

20 BY MS. GOLDSTEIN:

21 Q Has DOJ ever asked for a question to be  
22 added to the short form of the census prior and



1 persistent to the citizenship question?

2 MS. BAILEY: Objection.

3 THE WITNESS: Not that I know of.

4 BY MS. GOLDSTEIN:

5 Q Are you aware of any agency asking for a  
6 question to be added to the short form?

7 A Not to my knowledge, no.

8 Q Do agencies -- agencies typically request  
9 data, not questions, correct?

10 A No. That -- agencies often will request  
11 a question when they're really requesting data,  
12 because they don't know the difference.

13 Q And that's why you have those meetings,  
14 correct?

401/403

15 A Yes.

16 Q So turning back to Exhibit 4, did you get  
17 any more information from Barry about his efforts  
18 to reach out to Gary?

19 A I -- I don't think that we did. I mean,  
20 it was -- you know, this was coming up on the  
21 holidays. I'm getting -- communicating with folks  
22 was a little hit or miss. And so we certainly

1 didn't get anything that was substantive [sic]  
2 that I recall. But it was -- I think there was  
3 some -- some inefficiencies in the communication  
4 channel. So --

401/403

5 Q Why do you say that?

6 A -- I -- it didn't seem like, you know,  
7 that he was making himself available to talk to  
8 Barry, so.

802

9 Q And when you say he, "he," you're  
10 refer- --

11 A Gary, yeah.

12 Q It's a rhyme. It's like a limerick.

13 A Yeah.

14 Q But at some point, looking at the top  
15 email here, Barry did speak to Mr. Gary, correct?

16 A Correct. Yes.

17 Q And do you know what they conversed  
18 about?

19 A I think they were trying to set up a  
20 meeting, and that didn't happen.

21 Q Okay. Did Barry -- did you learn  
22 anything else from Barry, other than what you told

1 folks from the White House about the citizenship  
2 question?

3 A No.

4 Q Prior to receiving the Gary letter, did  
5 you have communications with anyone associated  
6 with the White House about the citizenship  
7 question?

8 A No.

9 Q And after receiving the Gary letter, did  
10 you have communications with anyone affiliated  
11 with the White House about the citizenship  
12 question?

13 A No.

14 Q I'll take that.

15 MS. GOLDSTEIN: I apologize I do not have  
16 a lot of those exhibits.

17 (Plaintiffs' Exhibit 6, 2020 Census:  
18 Adding Content to the Questionnaire, was marked.)

19 BY MS. GOLDSTEIN:

20 Q I'm showing you what's been Bates stamped  
21 Plaintiffs' Exhibit 6. It is a two-page document  
22 marked 9865 and 9867 entitled 2020 Census: Adding



1 Content to the Questionnaire.

2 Do you recognize this document? Let's  
3 look at the first page first. 401/403

4 A You know, I recognize -- I mean, I'm not  
5 sure where this came from, but I think this looks  
6 like the process, yes.

7 Q When you say this looks like the process,  
8 what does that mean?

9 A The process for adding questions to  
10 the -- the ACS and decennial.

11 Q And the process for adding to the ACS and  
12 decennial is the same, correct?

13 A Yes. We call it the ACS, used to be the  
14 long form of the census.

15 Q And when we refer to the decennial or the  
16 census, we're referring to the short form?

17 A The short form.

18 Q So if you look at the very top, it says,  
19 "The Census Bureau follows a well-established  
20 process when adding questions to the decennial  
21 census."

22 A Uh-huh.

1 Q Do you agree with that statement?

2 A Uh-huh. Yes. 401/403

3 Q And it says that -- and is it part of  
4 that well-established process having those  
5 technical meetings that you just referred to?

6 A Yes. I mean, it's not laid out in here,  
7 but that is generally part of the process.

8 Q So looking at Step 1 --

9 A Uh-huh.

10 Q -- do you agree that typ- -- the  
11 typical -- well -- or I'm sorry. Withdrawn.

12 Do you agree the well-established process  
13 first provides that upon receiving requests,  
14 lawyers at the Department of Commerce work closely  
15 with OMB to determine whether data fulfill legal,  
16 regulatory or constitutional requirements?

17 A Yes.

18 Q And Step 2, do you agree that upon  
19 determining that a new question is warranted, that  
20 the Census Bureau must notify Congress of its  
21 intent to answer the question?

22 A Uh-huh.



1 Q I'm sorry. I need --

2 A Yes. Yes.

3 Q Thank you.

4 And how does the Census Bureau determine  
5 that a new question is warranted?

6 A So, again, that's -- you know,  
7 there's -- whether there's a legal or statutory,  
8 regulatory reason, and then whether it's feasible  
9 to ask that question.

10 Q What does that mean?

401/403

11 A That we can actually get valid responses  
12 from respondents.

13 Q How do you -- how does the Census Bureau  
14 determine that?

15 A Often through testing or what have you.  
16 So we do cognitive testing to see if people  
17 understand questions.

18 Q What other kinds of testing do you do?

19 A That's really the primary type of  
20 testing. You know, look at the quality of the  
21 data we get back from that, determine how best to  
22 word the question.



1 Q Other than testing wording, are there  
2 other things the Census Bureau looks at to  
3 determine whether or not a question is feasible?

4 A So not -- so they -- the -- you know, on  
5 the business side, we look to see whether the  
6 companies keep records of the thing that we're  
7 requesting. On the household side, that's usually  
8 less formal. So it's whether they understand the  
9 question and can answer it, so. 401/403

10 Q Are there other issues that go into  
11 whether or not a question will lead to a valid  
12 response from respondents?

13 A So, you know, there's testing. There's  
14 comparing it to other sources of information,  
15 trying to understand whether we're getting  
16 high-quality responses. That's not always  
17 possible.

18 Q What do you mean?

19 A Sometimes there's not another source of  
20 data.

21 Q Is there another source of data for the  
22 citizenship information?

1           A    In this case, yes, there is another  
2   source of data. 401/403

3           Q    And what was that source of data?

4           A    Administrative records from, primarily  
5   from the Social Security Administration, but also  
6   from USCIS and the State Department.

7           Q    Are there any other aspects of this  
8   process of determining whether or not a new  
9   question is warranted?

10           MS. BAILEY:  Objection.  Vague.

11           THE WITNESS:  So the warranted is a  
12   different term.  Census Bureau is usually looking  
13   for feasible.  So the subject matter expert  
14   requesting the information is assumed to know  
15   whether the information is needed or not, and we  
16   look for a way to see if we can provide the  
17   information that they need.

18           BY MS. GOLDSTEIN:

19           Q    And that, again, goes back to those  
20   technical meetings --

21           A    Yes.

22           Q    -- between the subject matter experts at

1 Census and the subject matter experts at the  
2 agency --

3 A Correct.

4 Q -- correct?

5 A Correct.

6 Q So continuing on Step 2, this says,  
7 skipping down a line, "This is an intentionally  
8 [sic] process designed to give Congress the  
9 ability to review the topics and questions on the  
10 questionnaire before they're finalized?"

11 A Uh-huh.

12 Q Do you agree with that statement?

13 A Uh-huh. Yes. Sorry.

14 Q "If an additional topic is required, it  
15 is imperative that Congress be notified as soon as  
16 possible."

401/403

17 Do you agree?

18 MR. ROSENBERG: Excuse me. I think  
19 people that are dialed in can no longer hear the  
20 deposition.

21 MS. GOLDSTEIN: Can we go off the  
22 deposition for a minute?



1 VIDEOGRAPHER: The time is 9:46 a.m.

2 We're going off the record.

3 (Off the record.)

4 VIDEOGRAPHER: The time is 9:48 a.m. We  
5 are back on the record.

6 Please proceed, Counsel.

401/403

7 BY MS. GOLDSTEIN:

8 Q So we're still on 9865. And if we look  
9 to Step 3, "The Census Bureau must notify the  
10 public and invite comments regarding the change in  
11 the questionnaire with the Federal Register  
12 notice."

13 Is that correct?

14 A Yes.

15 Q And do you agree that that is also part  
16 of the well-established process?

17 A Yes.

401/403

18 Q And has this step of the process been  
19 followed for the citizenship question?

20 A It has not. This is in process. This  
21 part is to have the Paperwork Reduction Act  
22 package that goes to the Office of Management and

1 Budget, to Nancy Potok's office. I'm not sure  
2 where in the process, but the whole package for  
3 the census will be sent out. The citizenship  
4 question will be part of that package.

5 Q And Step 4, "The Census Bureau must test  
6 the wording of the new question."

7 A Right.

8 Q Do you agree that that is also part of  
9 the well-established process of adding content to  
10 the census questionnaire?

401/403

11 A Yes.

12 Q And the citizenship question has not been  
13 tested, correct?

14 A That's -- that's not correct.

15 Q Okay. The citizenship question has not  
16 been tested in the context of the decennial  
17 census, correct?

18 A That's correct.

19 Q The next sentence says, "It is too late  
20 to add a question to the 2018 end-to-end test, so  
21 additional testing on a smaller scale would need  
22 to be developed and implemented as soon as

1 possible."

2 Do you agree that this is part of the  
3 well-established process of adding content to the  
4 questionnaire?

5 A No. No. This is in addition.

6 Q Can you explain?

7 A I'm just saying it's too late to add  
8 something to 2018 end-to-end test, and if there  
9 was a new question, we would have to find another  
10 way to test it.

11 Q Do you know when 9865, Exhibit 6, was  
12 created?

13 A I'm not sure.

14 Q Do you know who created it?

15 A Census staff, I believe.

16 Q Do you know who on census staff?

17 A I'm not sure.

18 Q What is the 2018 end-to-end test?

19 A It's a test in three different sites  
20 that's just wrapping up right now in  
21 Providence, Rhode Island, where we did a full  
22 end-to-end test to make sure all the systems and



1 everything work so we are ready to go into the  
2 field in 2020.

3 Q And when you say a full end-to-end test,  
4 can you just tell me a little bit what that means?

5 A So it wasn't all of the operations, but  
6 most of the major operations that are involved in  
7 the 2020, from address canvassing, all the way  
8 through nonresponse follow-up and publishing the  
9 data will be our test.

10 Q And what's the purposes of the end-to-end  
11 testing?

12 A To work out any bugs or kinks, things  
13 that -- that we didn't foresee in sort of the  
14 smaller scale system specific testing that we do  
15 all the time.

16 Q And why is that important?

17 A So that we're prepared.

18 Q Was the citizenship question tested on  
19 the -- on any of the end-to-end testing --

20 A No.

21 Q -- for the 2020 census?

22 A It was not.

401/403



1 Q And did additional testing on a smaller  
2 scale get developed for the 20- -- for the  
3 citizenship question --

4 A No.

401/403

5 Q -- for the 2020 census?

6 A No.

7 Q And was additional testing on a smaller  
8 scale implemented for the citizenship question on  
9 the 2020 census?

10 A No.

PL obj (55:11 to 56:1),  
FRE 701, 702, 703, 704,  
705

11 Q Why not?

12 A The citizenship question that we'll be  
13 using on the 2020 census is the same question  
14 that's on the American Community Survey and has  
15 been answered by between 40 and 50 million  
16 households over many years. The question performs  
17 quite well, so we're confident that -- that it's  
18 fully tested.

19 Q Step 4 was not followed with respect to  
20 the citizenship question, correct?

21 A The Step 4 was obviated by the fact that  
22 the -- it has been on the ACS for many years. We

1 did not think that this step was necessary.

2 Q So Step 4 was not followed, correct?

3 A No.

4 Q I'm sorry?

401/403

5 A It was not.

6 Q Okay. Step 5 is, "The Census Bureau must  
7 make additional operational adjustments beyond  
8 testing to include new content. This includes  
9 redesigning the paper questionnaire and adjusting  
10 the paper data capture system."

11 Has that occurred for the citizenship  
12 question?

13 A I believe this is ongoing.

14 Q So it's in progress for the citizenship  
15 question?

16 A Yes.

17 Q "For Internet self-response, the  
18 additional question will require system  
19 redevelopment, once for English and then again for  
20 Spanish."

21 Has that occurred for the citizenship  
22 question?

1 Q Is it fair to say it's another -- another  
2 version of the process that's listed on 9865?

3 A Yes.

4 Q And do you agree that this is another  
5 version of the well-established process when  
6 adding questions to the decennial census?

7 A Sure. Yes.

8 Q Anything you disagree with in 9867?

9 MS. BAILEY: Objection. Vague.

10 THE WITNESS: No.

11 BY MS. GOLDSTEIN:

12 Q I'll take that back.

13 After you learned of the citizenship  
14 question, were you given any instructions  
15 about -- withdrawn.

16 After you learned about this citizenship  
17 question, a couple of weeks before receiving the  
18 Gary letter, were you given any instructions?

19 A No.

20 Q After receiving the Gary letter, were you  
21 given any instructions about next steps? 401/403

22 A I don't think we were given explicit



1 instructions. I think it was taken for granted  
2 that we were going to start this process.

3 Q The well-established process for adding a  
4 question to the census?

401/403

5 A Yes.

6 Q The first step of which is the technical  
7 meetings.

8 A Technical meetings.

9 Q Did you have any conversations about  
10 getting this process started after you received  
11 the letter?

12 A Well, I recall meeting with my staff and  
13 discussing, you know, how we were going to  
14 proceed, and we were trying to take as broad a  
15 view as possible. So I believe, you know, it was  
16 agreed that we would -- we would explore the use  
17 of administrative records to fulfill the request,  
18 as well.

401/403

19 Q And why was that an area that you were  
20 exploring?

21 MS. BAILEY: Objection. Vague.

22 THE WITNESS: Well, it's an area that we

1 always explore. So for -- you know, it's often  
2 easier, potentially more accurate to  
3 administrative records, but it's also the  
4 intention of Congress in Title 13, the census  
5 code, that when possible, we use administrative  
6 records in lieu of direct collection. So this is  
7 something that we typically -- typically do.

401/403

8 BY MS. GOLDSTEIN:

9 Q Did you receive any direction from  
10 Secretary Ross at this point?

11 A No.

12 Q Did you receive any directions from  
13 Karen Dunn Kelley at this point?

14 A No. Other than, you know, proceed  
15 with, you know, our analysis.

16 Q Any other instructions from Ms. Kelley?

17 A No.

18 Q Any directions from anyone else at  
19 Commerce at this time?

20 A No.

21 Q So let's talk a little bit more about  
22 what you did after you first received the Gary



1 letter. What exactly did you ask your staff to  
2 do?

3 A So we -- you know, we knew that the  
4 question was already on the ACS, so the testing  
5 thing was not a priority. You know, I think we 401/403  
6 all agreed that the question on the ACS performed  
7 as well as it could. The focus was primarily on  
8 seeing whether the administrative records assets  
9 that we have at the Census Bureau were useful in  
10 this regard to do a comparison of administrative  
11 records and -- and survey responses on the ACS and  
12 to come up with a -- with an analysis and  
13 suggestions as to what's the best way to proceed.

14 Q Did you have a timeline that you were  
15 working on?

16 A So we were on a tight timeline because,  
17 obviously, we needed to provide the questions to  
18 Congress by the end of March. So the Secretary  
19 needed to make a decision prior to that, so we  
20 were trying to work as quickly as we could.

21 Q And had anyone from Commerce given you  
22 any interim timelines before the point at which



1 you knew Congress had to get these questions?

2 A No. I don't think -- I think everybody  
3 knew the time was short. 401/403

4 Q Who did you speak to on staff at the  
5 outset?

6 A So I primarily worked through  
7 John Abowd -- who you spoke with last week, I  
8 believe -- who is the chief scientist and  
9 associate director for research and methodology,  
10 and he assembled the team that did the analysis.

11 Q So you said a moment ago that the  
12 citizenship question on the ACS performed as well  
13 as it could. What do you mean by that?

14 A I'm not really sure what I meant by that,  
15 but it performs well. So it -- relative to other  
16 questions on the form, it has about, you know, a  
17 middle range of allocation rates, and that  
18 means, you know, what we have to do for imputation  
19 and whatnot. You know, compared to a question  
20 like income, it's a much better performing  
21 question.

22 Q And what do you mean by better

PL obj (62:11 to  
63:17), FRE 701,  
702, 703, 704, 705

1 performing?

2 A We have to impute much less than we do  
3 for other questions.

4 Q Is that related to the item nonresponse?

5 A Yes.

6 Q Can you explain?

7 A So item nonresponse is how many people  
8 fill out the survey that choose not to answer a  
9 particular question.

10 Q So when you say that the citizenship  
11 question on the ACS performs as well as it could,  
12 that is related to how many folks are answering  
13 that question on the ACS?

14 A Yeah.

15 Q I'm sorry?

16 A Yes.

17 Q Okay.

18 (Plaintiffs' Exhibit 7, Email, was  
19 marked.)

20 MS. GOLDSTEIN: Hold on one second,  
21 please.

22 BY MS. GOLDSTEIN:

1 Q So I'm showing you a document that's been  
2 marked as Plaintiffs' Exhibit 7. It is Bates  
3 number 3289.

4 COUNSEL: Can you repeat the Bates number  
5 again, please?

6 MS. GOLDSTEIN: 3289.

7 BY MS. GOLDSTEIN:

8 Q And it is a set of emails that were sent  
9 on December 22, 2017.

10 Do you recognize this email?

11 A Yes, I do.

12 Q What is this? 401/403

13 A In was an email from me to Art Gary with  
14 survey results of a preliminary analysis that our  
15 staff had put together very quick.

16 Q And why did you send this email?

17 A To try to motivate a meeting with  
18 Department of Justice technical experts.

19 Q So this response to Mr. Gary was sent  
20 about a week after the DOJ's request?

21 A Yep.

22 Q Is that a typical time frame for the



1 Census Bureau to respond to an agency's data  
2 response?

3 A It is when we have a tight deadline to  
4 get the questions to Congress.

5 Q Have you ever had such a tight deadline  
6 to get a -- the questions to Congress? 401/403

7 A So, I wouldn't know. I wasn't involved  
8 with prior decennials in this fashion. This is  
9 the only thing where we have to do this with, so.  
10 On the business side of the house, we have a  
11 luxury of not having to get Congress's permission  
12 on every change to a survey, so we didn't have  
13 this constraint.

14 Q So prior to your current role, you  
15 weren't involved in the question-making process  
16 for the census?

17 A For the decennial, no.

18 Q Okay. And the to line here is entirely  
19 redacted, but this email was sent to Art Gary,  
20 correct?

21 A Yes. I believe so.

22 Q And so this email says that you directed

1 staff to review all possible ways to address the  
2 needs expressed in the letter.

3 A Uh-huh.

4 Q I need yes or no. 401/403

5 A Yes.

6 Q That's the Gary letter, correct?

7 A Yes.

8 Q And your staff found that, "The best way  
9 to provide PL94 block-level data with citizen  
10 voting population by race and ethnicity would be  
11 used by outlining a linked file of administrative  
12 and survey data the Census Bureau already  
13 possessed."

401/403/802

14 Correct?

15 A Correct.

16 Q That is what your staff found?

17 A Yes.

18 Q And did you agree with that conclusion?

19 A I did.

20 Q And the next line says, "This would  
21 result in higher-quality data produced at a lower  
22 cost."

1 Do you agree with that conclusion?

2 A Yes.

3 Q And then you write that -- you suggest we  
4 schedule a meeting of Census and DOJ technical  
5 experts to discuss the details of this proposal,  
6 correct?

401/403/802

7 A Uh-huh. Yes.

8 Q And that's the technical meeting that we  
9 spoke about earlier, correct?

10 A Yes.

11 Q To your knowledge, had DOJ ever requested  
12 PL94 block-level data with citizen voting age  
13 population by race and ethnicity before?

14 A Not that I know of.

15 Q Did you communicate your conclusion in  
16 this email that you should use a linked file,  
17 administrative and survey data to the  
18 Department of Commerce prior to sending this email  
19 to DOJ?

20 A No. I don't believe I did, but I think I  
21 forwarded this email to Karen Dunn Kelley shortly  
22 afterwards, so.



1 Q When you sent this email to Mr. Gary, did  
2 Karen Dunn Kelley know that the Census Bureau had  
3 concluded that using this linked file of  
4 administrative records and survey data was the  
5 Census Bureau's preferred approach? 401/403

6 A So I don't think it's fair to say at this  
7 time that it was a conclusion necessarily.

8 Q Sure.

9 A I mean, this was sort of a preliminary  
10 finding, and we wanted to get together with folks  
11 at DOJ to discuss that, so.

12 Q Absolutely. So was Ms. Dunn Kelley aware  
13 of that preliminary finding?

14 A I don't recall discussing it with her  
15 before I forwarded this to -- to her, but she knew  
16 that we were trying to work with the folks from  
17 DOJ. So -- but I don't recall -- I mean, she knew  
18 we were also looking into administrative records.

19 So I mean -- 401/403

20 Q How did she know that?

21 A I think we said that we were.

22 Q When?

1           A   Probably shortly after getting the  
2   letter, that we were going to review our options  
3   and see what we could do.

4           Q   And do you recall how she responded to  
5   that? 401/403

6           A   I -- I don't actually, no, so.

7           Q   Do you remember any other communications  
8   between yourself and the folks at Commerce about  
9   the citizenship question in the time period  
10   between receiving the Gary letter and sending this  
11   email?

12          A   You know, other than we were getting to  
13   work and, you know -- the time frame was short and  
14   the people saying the time frame was short was  
15   primarily us, because I think we knew we needed to  
16   get the questions to Congress by the end of March,  
17   so.

18          Q   Any instructions from Commerce?

19          A   No.

20          Q   Typically, when an agency requests for  
21   data -- I'm sorry. Withdrawn.

22               Typically, when an agency requests data,



1 knowledge of what the sign off typically is, but  
2 we probably would not add questions to the ACS  
3 without Commerce knowing that we were doing so.

4 Q Do you know if the Secretary --

5 A So -- so I will add that there's -- you  
6 know, when PRA packages do go to OMB, they do get  
7 routed through Congress.

8 Q Do you know who they get routed through?

9 A Through the economic and statistics  
10 administration. So Karen Dunn Kelley's, you know,  
11 current role as Under Secretary, through that  
12 office.

13 Q Okay. Do you know if the Secretary  
14 typically reviews requests to add questions to the  
15 ACS? 401/403

16 A I'm not sure. I don't think that the  
17 Secretary usually gets involved in ACS questions.

18 Q Do you know if the Secretary --

19 A But I -- I'm not sure about that.

20 COUNSEL: Excuse me. Sorry. I got an  
21 email that apparently the folks on the phone can't  
22 hear again.

1 MS. GOLDSTEIN: Off the record, please.

2 VIDEOGRAPHER: The time is 10:11 a.m. We  
3 are going off the record.

4 (Off the record.)

5 THE VIDEOGRAPHER: Time is 10:13 a.m.  
6 We're back on the record.

7 Please proceed.

8 BY MS. GOLDSTEIN:

9 Q Do you know if the Secretary is typically  
10 involved in approving changes to the decennial  
11 census?

12 A So there hasn't been any changes to the  
13 long form -- or short form for some time, so I  
14 can't tell you what the typical practice is,  
15 because it hasn't been exercised. But a change to  
16 the short form census would get a lot of  
17 visibility at the Department and the  
18 Secretary -- it would seem reasonable that the  
19 Secretary would do that in a typical course if  
20 there was a typical course.

21 Q The Census Bureau considered changes to  
22 the decennial census for this year, correct, apart

1 from the citizenship question?

2 A Yes.

401/403

3 Q Changes to the race and ethnicity  
4 question?

5 A Changes to the race and ethnicity  
6 question, yes.

7 Q Any other changes?

8 A No.

9 Q And did the Secretary weigh in on those  
10 proposed changes to the race and ethnicity  
11 question?

12 A Not that I'm aware of. He was briefed on  
13 them, but I don't think he weighed in, one way or  
14 the other.

15 Q And did other folks at Commerce weigh in  
16 on the proposed changes to the race and ethnicity  
17 question?

18 A No.

19 Q Is it fair to say that the  
20 Commerce Department accepted the Census Bureau's  
21 recommendations with respect to the race and  
22 ethnicity question on the short form?



1           A    Yes.   There was a PRA package requesting  
2   that change that went to OMB.

401/403

3           Q    So turning back to this exhibit,  
4   Exhibit 7, what happened after you sent this email  
5   to Mr. Gary?

6           A    I'm not sure if he responded immediately,  
7   but he eventually responded that DOJ did not need  
8   to meet.

9           Q    Did you get any directions from  
10   Karen Dunn Kelley after you forwarded this email  
11   on to her?

12          A    Directions of what sort?

13          Q    Any instructions about how to proceed.

14          A    No.   She knew that we were trying to set  
15   up a meeting.

16          Q    Did you have any substantive  
17   conversations with Ms. Kelley about trying to set  
18   up this meeting?

19          A    Other than we're trying to set up the  
20   meeting, I don't think so, no.

21          Q    Did you have any substantive  
22   questions -- or discussions with anyone else at

1 data request?

2 A So, yes, probably.

3 Q Do you think you would remember if  
4 Department of Commerce told Census not to meet on  
5 the citizenship question?

6 MS. BAILEY: Objection. Calls for  
7 speculation.

8 THE WITNESS: So -- well, they didn't  
9 tell us no, so.

10 BY MS. GOLDSTEIN:

11 Q So no one at Commerce told you not to  
12 meet with the Department of Justice technical  
13 team, correct?

14 MS. BAILEY: Objection. Asked and  
15 answered.

16 BY MS. GOLDSTEIN:

17 Q Correct?

18 A No.

19 Q Okay. This email says, "Technical  
20 meetings will follow."

21 Does that refer to the technical meetings  
22 we've discussed?

1 A Yes.

2 Q And then it says, "We do not have a green  
3 light to approach outside experts or DOJ at this  
4 time."

5 What does that mean?

6 A That's the technical team reaching out  
7 directly. 401/403

8 Q You were reaching out directly in --

9 A Yes. I was reaching out directly.

10 Q Now, this reference to outside experts,  
11 what role do outside experts typically play in  
12 this process?

13 A So outside experts here could mean  
14 several things, but I think that this probably  
15 means folks that we would request peer review or  
16 something from to see if the methods that we were  
17 suggesting were appropriate. And that the  
18 methods, I think, that they're probably referring  
19 to is some sort of modeled approach using ACS and  
20 administrative data. So you would want other  
21 statisticians to weigh in on the appropriateness  
22 of that approach.



1 Q Is that a typical part of the process in  
2 meeting an agency's data needs?

3 A Often it is, yes.

401/403

4 Q Did that occur --

5 A Especially in a more -- but that's a  
6 relatively more complicated way of approaching the  
7 problem than strict survey methodology. But -- so  
8 we have a scientific advisory committee. We have  
9 regular contacts with other folks in the  
10 scientific community. Census Bureau tries to be  
11 as transparent in its methods as possible and  
12 have -- to the best as we can have some buy-in  
13 from the scientific community that we're doing  
14 things appropriate.

15 Q And did that happen with the citizenship  
16 question?

17 A Well, the citizenship question on the  
18 ACS, yes. In this case, you know, we did not have  
19 those discussions yet, so --

20 Q In this case, meaning the citizenship  
21 question --

22 A For --



1 Q -- on the decennial?

2 A -- at -- during this time frame.

3 Q After 12/19/2017, were outside experts  
4 approached about the citizenship question?

5 A No. The Census Scientific Advisory  
6 Committee did opine on it at a meeting, and now  
7 that we have a decision from the Secretary and the  
8 team -- the similar team is working on what the  
9 methodology of using the -- the combined census  
10 question and the administrative records that will  
11 be peer reviewed, both by the scientific advisory  
12 committee and others. 401/403/802

13 Q When you say that the Census Scientific  
14 Advisory Committee opined, what do you mean?

15 A So they -- they had -- during the opening  
16 of the meeting, they had some comments on the  
17 question, so --

18 Q Were those comments so listed  
19 by -- Census Bureau?

20 A I don't believe it was -- they were  
21 solicited, because the meeting was right after  
22 the decision, so the agenda had already been sent

1 prior to that.

2 Q And what did that advisory committee  
3 opine?

4 A That they were not in support of adding  
5 the question to the census. 401/403/802

6 Q What reasons did they give?

7 A The primary technical reason that they  
8 gave is that it wasn't tested, which we argued  
9 back against, but that was the primary technical  
10 reason.

11 Q Were there other reasons?

12 A I think they thought it would be  
13 disruptive to the -- to the decennial.

14 Q Do you agree?

15 A It can be disruptive, yes.

16 Q Why do you say that?

17 A We're here in a -- having a deposition.  
18 I think that's clear why it's disruptive.

19 So there are parts of society that would  
20 not like to have the question. There are parts of  
21 society that would like to have the question.

22 Q Any other reasons why the citizenship



1 question could be disruptive to the process?

2 A Just -- if there's controversy  
3 surrounding the census, which there always is any  
4 way, it makes conducting a full census more  
5 difficult. 401/403

6 Q What do you mean by a full census?

7 A Complete, accurate census.

8 Q What's a complete census?

9 A That we count everybody once in the right  
10 place.

11 Q Did you have any discussions with  
12 Earl Comstock about setting up a technical  
13 meeting --

14 A No.

15 Q -- with DOJ?

16 A No.

17 Q And did you -- you didn't have any  
18 conversations with anyone at Commerce about  
19 setting up a technical meeting with DOJ, other  
20 than Karen Dunn Kelley, correct?

21 A No. We have lots of -- we have regular  
22 meetings where there's many people in the room.

1 So Earl may have been in the room, but I did not  
2 have a conversation with Earl about this.

3 Q What happened after this email was sent?

4 MS. BAILEY: Objection. Vague.

5 THE WITNESS: After this email?

6 BY MS. GOLDSTEIN:

7 Q Yes. Did you receive a response from  
8 DOJ?

9 A I already sort of hinted at that  
10 eventually I got a response that they didn't need  
11 to meet, but I don't think that came at this time.

12 Q Do you remember how you first received a  
13 response from DOJ? Was it a phone call? Was it  
14 an email? 401/403/802

15 A So there was a couple emails back and  
16 forth with Art Gary and I about trying to set a  
17 meeting up and that he was working on that.

18 Q And then what happened?

19 A And then, eventually, I got a reply back  
20 that they did not want to meet.

21 Q Did you get a -- was that in a phone call  
22 or was that an email?



1 meeting was cancelled.

2 Q Do you remember if this cancelation came  
3 as a surprise to you?

4 A Well, meetings get cancelled all the  
5 time, so probably not.

6 Q Do you know if you had any -- did you  
7 have any conversations with Mr. Gary about this  
8 cancellation?

9 A No.

10 Q What did you do after you received this  
11 email?

12 MS. BAILEY: Objection. Vague.

13 THE WITNESS: I assume I probably tried  
14 to reach out to see if we could get it  
15 rescheduled, but I don't know if I did that for  
16 sure.

17 BY MS. GOLDSTEIN:

18 Q After Mr. Gary cancelled the meeting on  
19 January 16th, do you -- did you reach out to him  
20 again?

21 A I'm -- I'm not sure that I did, but I  
22 imagine that I probably would have tried.

1 Q Anything that would help you remember?

2 A Well, at some point, he sent me an email  
3 saying that they were not going to meet.  
4 So whether that was prompted by me or not, I don't  
5 know.

6 Q Do you recall any phone calls with him at  
7 this time?

8 A No.

9 Q Were you ever given a reason why DOJ was  
10 cancelling this meeting?

11 A As I recall from the email that he  
12 sent -- that I imagine you have in your packet  
13 there -- that DOJ believed that their technical  
14 specifications were completely laid out in  
15 their -- in the December letter.

401/403

16 Q Do you agree with that?

17 A I probably don't agree with that because  
18 I think we wanted to understand how they used the  
19 data, so -- so we would have liked an  
20 additional -- additional meeting with them.

21 Q Let's go to that one. Can I have that  
22 back, please?

1 as surprised. You know, it was what it was.

2 Q What does that mean?

3 A It's business. They didn't want to meet,  
4 so.

5 Q Other than these communications with  
6 Mr. Gary that you've described so far, did you  
7 have any communications with anyone at the  
8 Department of Justice about the citizenship  
9 question?

10 A No. 401/403

11 Q To your knowledge, did the Census Bureau  
12 have any communications with the  
13 Department of Justice about the citizenship  
14 question?

15 A No.

16 Q After you spoke with Art Gary and he  
17 indicated that DOJ did not want to meet with the  
18 Census Bureau, did you speak to anyone at Commerce  
19 about that refusal?

20 A This is an email to Karen Dunn Kelley, so  
21 yes.

22 Q And did you speak to her about this



1 following this email?

2 A I mentioned that we probably discussed it  
3 at some point, but I think this was the gist of  
4 that conversation.

5 Q Did Ms. Dunn Kelley have any response to  
6 the DOJ's refusal to meet?

7 A I don't recall.

8 Q Is there anything that would help you  
9 recall?

10 A Whether she had a response? I doubt it.  
11 I don't -- so.

12 Q Did you ask anyone in Commerce to help  
13 you set up a meeting with DOJ?

14 A We'd already had Barry Robinson try to do  
15 that, so I think this is where we left it, or this  
16 is where we left it.

17 Q I'll take that, please.

PL obj (106:18 to  
107:4) - FRE 802

18 Do you believe that the letter requesting  
19 citizenship be added to the 2020 census from DOJ,  
20 the Gary letter, fully describes the DOJ request?

21 MS. BAILEY: Objection. Vague.

22 THE WITNESS: It does spell out the need

1 to have citizenship status added to the -- the  
2 PL94 level data. To that extent that it requires  
3 block level data, it is a pretty well-formulated  
4 request, so.

5 BY MS. GOLDSTEIN:

6 Q Does the Gary letter answer all of the  
7 Census Bureau's technical questions about the Gary  
8 letter's request?

9 MS. BAILEY: Objection. Form.

10 THE WITNESS: Yeah. We would have had  
11 additional questions.

12 BY MS. GOLDSTEIN:

401/403

13 Q What kind of questions would you have  
14 had?

15 A Questions that would have helped us  
16 strategize how we would perform disclosure  
17 avoidance on these files. You know, so that's  
18 another technical matter how we -- you know, by  
19 law, we can't disclose the identity of any  
20 particular individuals, so there's a process  
21 afterwards that we -- that we -- you know, sum of  
22 the data, perhaps add some noise. Understanding

1 how the data are used to help us do that in a way  
2 that optimizes the data for their intended use.

3 Q What else would have been discussed at  
4 the technical meeting between DOJ and the  
5 Census Bureau?

6 A So there might have been discussions  
7 about, you know, various cross tabulations of the  
8 data, what characteristics were the most important  
9 for their purposes. 401/403

10 Q And does that go to the fit between the  
11 method proposed and the data used?

12 A And what they're using.

13 Q What else?

14 A That's about it.

15 Q And so is it fair to say that the  
16 Census Bureau has never had conversations with the  
17 Department of Justice about that fit question?

18 A That's correct.

19 (Plaintiffs' Exhibit 14, Email, was  
20 marked.)

21 BY MS. GOLDSTEIN:

22 Q I'm showing you what's been marked as



1 Plaintiffs' Exhibit 14. It is a document Bates  
2 stamped 9008 to 9012. I would ask that you focus  
3 on the first page.

4 A Uh-huh.

5 Q Do you recognize the email here at the  
6 top?

7 A Yes.

8 Q What is this?

9 A An email from John to the technical team  
10 and others about how things were progressing.

11 Q So John reports that you report that you  
12 had discussed this with the Under Secretary,  
13 correct?


14 A Uh-huh. Uh-huh. Yes.

15 Q And the Under Secretary, that's  
16 Karen Dunn Kelley, correct?

17 A Yes.

18 Q Agrees with the recommendation of  
19 Alternative C but Alternative A remains a  
20 possibility, as well, correct?

21 A Yes.

 Q Can you explain to me what this all

1 means?

2 A So, you know, this is where I have to  
3 admit I have a vague recollection of this -- this  
4 stage of the process, but I think this was we had  
5 discussed -- I had discussed with Karen that the  
6 preliminary findings, which we -- you had earlier,  
7 and she was supportive of Alternative C and A, but  
8 I don't recall a detailed conversation about that  
9 with her. 401/403/802

10 Q What was recommended -- what was  
11 Alternative C?

12 A That was administrative records.

13 Q And what was Alternative A?

14 A Using the ACS combined -- or  
15 Alternative A was to do nothing but add some  
16 additional modeling, use -- use the ACS data.

17 Q The status quo?

18 A Yeah, essentially.

19 Q When did you discuss the Census Bureau's  
20 recommendation with -- first discuss them with  
21 Karen Dunn Kelley?

22 A I think -- well, shortly after getting

1 the stuff from John, I think we -- I forwarded  
2 that information to her, so.

3 Q Can you describe your conversations with  
4 Ms. Karen Dunn Kelley? 401/403

5 A I'm not sure there was a conversation,  
6 so.

7 Q So how do you know --

8 A So --

9 Q -- Ms. Karen Dunn Kelley?

10 A Again, I don't recall this conversation  
11 directly.

12 Q Do you recall that Ms. Dunn Kelley agreed  
13 with the recommendation of Alternative C?

14 A I don't recall her saying that.

15 Q Do you know why you put this in --

16 A I didn't put this in --

17 Q -- by you -- I'm sorry. Can I -- let me  
18 try again.

19 Do you recall telling John that  
20 Karen Dunn Kelley agrees with the recommendation  
21 of Alternative C?

22 A I don't recall telling John this. This



1 is -- so -- just so you know, this is, you know,  
2 January 4th. There was professional meetings  
3 about to happen. I was probably involved in  
4 several different things at the time. I don't  
5 recall this conversation. 401/403

6 Q Do you remember, separate from the email,  
7 what Ms. Dunn Kelley's view was with respect to  
8 which alternative was preferable, A, B, C, around  
9 the beginning of January 2018?

10 A So I don't recall a view so much as I  
11 think she was supportive of the process that the  
12 Census Bureau was following, and that, you know,  
13 she was looking for -- to see what -- where that  
14 came out. So I don't -- I don't recall her 802  
15 stating a preference on one alternative or the  
16 other.

17 Q Do you recall --

18 A Perhaps she did. I'm just saying I don't  
19 recall.

20 Q Do you recall Ms. Dunn Kelley disagreeing  
21 with any of the recommendations of the  
22 Census Bureau around this time with respect to

1 this question?

2 A Yeah. I don't recall her agreeing or  
3 disagreeing. 401/403/802

4 Q Now, this email was sent back in early  
5 January of 2018. And you were cc'd on this email,  
6 correct?

7 A Yes.

8 Q Do you recall writing back to Mr. -- to  
9 Dr. Abowd saying, no, this is not what I discussed  
10 with the Under Secretary?

11 A No. I don't -- I don't recall doing  
12 that.

13 Q Did you do that?

14 A I said, no, I do not recall doing that.

15 Q And did you write back to Dr. Abowd and  
16 say Karen Dunn Kelley does not agree with the  
17 recommendation of Alternative C? 401/403

18 A I don't think I did that, no.

19 Q Okay. So is it fair to say that you  
20 received this email back on January 4, 2018, yes?

21 A Yes.

22 Q And that you agreed with this email when



1 you received it?

2 MS. BAILEY: Objection. Form.

3 THE WITNESS: So I get lots of emails  
4 that I pay some attention to or less attention to.  
5 So as you might imagine, I get cc'd on lots of  
6 email. So -- so saying that I agreed with it,  
7 is -- is saying that I read it and fully  
8 internalized it when I was busy with other  
9 activities, as well. So I don't recall doing  
10 that.

401/403

11 BY MS. GOLDSTEIN:

12 Q If you received an  
13 email -- Ms. Dunn Kelley is your boss; is that  
14 correct?

15 A That's correct.

16 Q If you received an email that  
17 mischaracterized a conversation that you had with  
18 your boss, would you have corrected that  
19 mischaracterization?

20 A If I'd read the email, yeah.

21 Q Are you in the habit of not reading  
22 emails that you receive?



1 A There are many emails that I do not read.

2 Q Have you read this email before?

3 A So I do not recall getting this email on  
4 January 4th -- or -- yeah, January 4th.

5 Q Is it fair --

401/403

6 A Or that -- or in more particular, the  
7 conversation that I would -- I supposedly had with  
8 the Secretary -- Under Secretary.

9 Q Is it fair to say that if you had  
10 received this email, read it, and disagreed with  
11 the characterization, you would have said  
12 something about it?

13 MS. BAILEY: Objection. Asked and  
14 answered.

15 THE WITNESS: Yes. Probably.

16 BY MS. GOLDSTEIN:

17 Q Do you know what memo was attached to  
18 this email?

19 A No.

20 Q I'm going to show you what's been marked  
21 as Exhibit 6 to the Abowd deposition -- previously  
22 marked as Exhibit 6 to the Abowd deposition. It

1 is a January 19, 2018 memorandum entitled  
2 technical review of the Department of Justice  
3 request to add the citizenship question to the  
4 2020 census.

5 Do you recognize this document?

6 A I do.

7 Q What is this?

8 A This is the memo that we prepared for the  
9 Secretary.

10 Q We previously looked at a white paper  
11 from the Census Bureau, correct?

12 A Uh-huh. Yes.

13 Q Why was there -- was this nec- -- this  
14 memo necessary, given the prior white paper?

15 A I think it was just a more formal  
16 representation.

17 Q Did you have any input into this  
18 document?

19 A Not on a technical level, no.

20 Q Who do you rely on for the technical  
21 component?

22 A John and his team.

1 Q And when we're talking about the  
2 technical component, we're talking about the  
3 science of --

4 A Right. Yes.

5 Q So you rely on John Abowd and his team  
6 for the science with respect to the citizenship  
7 question?

8 A Yes. In this case, yeah. I don't have  
9 time to do science anymore.

10 Q And did you review the findings of this  
11 memo?

401/403

12 A Yes.

13 Q And did you agree with the findings of  
14 this memo?

15 A I did.

16 Q And when this memo says -- I'm looking  
17 here at the last paragraph on Page 1277.

18 A Correct.

19 Q "Alternative C best meets DOJ's stated  
20 uses, is comparatively far less costly than  
21 Alternative B, does not increase response burden,  
22 and does not harm the quality of the census



1 count."

2 You agree with that statement?

401/403

3 A I did.

4 Q And when you look at the last sentence of  
5 that paragraph, "However, Alternative B is very  
6 costly, harms the quality of the census count, and  
7 would use substantially less accurate citizenship  
8 status data that are available from administrative  
9 sources," you agree with that statement, correct?

10 A Yes.

11 Q Who -- do you know if Karen Dunn Kelley  
12 reviewed this memo?

13 A She did.

14 Q How do you know that?

15 A Because we gave it to her.

16 Q Did you speak with her in person about  
17 this memo?

18 A Yeah. We -- we met about this memo.

19 Q When?

20 A I'm not sure exactly the date, but I  
21 believe shortly after we sent it down. It was  
22 either late January or early February.

1           A    I don't recall.  Probably not much more  
2   than an hour.

3           Q    What happened at this meeting?

4           A    We had a discussion of the -- of the  
5   recommendations.

6           Q    Who is we?

7           A    The people I just mentioned at the  
8   meeting.

9           Q    Who led the meeting?

10          A    I think the meeting was led -- so the  
11   Secretary typically reads these things.  So to say  
12   that these meeting are led, it's kind of you come  
13   in the room and you are talking about it.  He'll  
14   ask questions, so.

15          Q    And did the Secretary ask questions?

16          A    He did.

PL obj: 802

17          Q    What did the Secretary ask?

18          A    He was -- he quickly honed in on that  
19   none of the three options were perfect.

20          Q    What do you mean?

21          A    So -- so each one has respective  
22   strengths and weaknesses.  In particular, when we

1 started focusing between Options B and Options C,  
2 you know, we don't have administrative records for  
3 every person in the country, so we would miss  
4 folks that we would have to impute citizenship  
5 status for. Obviously, Option B had cost  
6 ramifications and also would miss some people.  
7 And so that's when the discussion sort of turned  
8 to a sort of hybrid model.

9 Q Tell me what else was discussed at this  
10 meeting.

11 A That was essentially what was discussed.

12 Q What was the discussion of this hybrid  
13 model?

14 A So could we use both sources of data to  
15 produce sort of the block-level estimates  
16 that -- that DOJ needed?

17 Q And who asked for the hybrid model?

18 A So the Secretary asked for the hybrid  
19 model.

401/403/802

20 Q What else did the Secretary say at this  
21 meeting?

22 A That's about it.



1 Q Can you describe a bit more specifically  
2 what the Census Bureau was asked to do coming out  
3 of that meeting? 401/403/802

4 A To explore a fourth option, a hybrid  
5 option that included a question on the short-form  
6 census and administrative records.

7 Q Any other details that the Census Bureau  
8 was given?

9 A No.

10 Q Any timeline the Census Bureau was given?

11 A So, obviously, the timeline was very  
12 compressed, so we still needed to get the  
13 questions to Congress by March, so.

14 Q Were you given any more specifics about  
15 your time frame?

16 A No.

17 Q Do you recall anything that --

18 A As soon as possible, I think, is the time  
19 frame that we're dealing with here.

20 Q Do you recall anything that Mr. Comstock  
21 said in that meeting?

22 A So he asked similar questions to the

1 Q What is this?

2 A I think it was a summary of the white  
3 paper findings.

4 Q And this is a document that's  
5 Bates-stamped 8614 to 8616. It is a memorandum  
6 addressed to you entitled summary of  
7 costs -- quality/cost of alternatives for meeting  
8 Department of Justice's request for citizenship  
9 data.

401/403

10 A Yep.

11 Q If you turn to the last page of this  
12 document, it states that "Alternative C even  
13 better meets DOJ's stated uses."

14 Do you agree with that?

15 A I do.

16 Q "Is comparatively far less costly than  
17 Alternative B."

18 Do you agree with that?

19 A Yes.

20 Q "And does not harm the quality of the  
21 census count."

22 Do you agree?

1 A Yes.

2 Q "For these reasons, we recommend

3 Alternative C for meeting

401/403

4 the Department of Justice data request."

5 Who is we?

6 A The technical team.

7 Q And you agree with that, as well?

8 A Yes.

9 Q I'll take that back.

10 Other than the meeting you just described  
11 regarding the citizenship question with  
12 Secretary Ross, did you have any other questions  
13 for Secretary Ross about the citizenship question?

14 A Did I have any extra questions for the  
15 Secretary?

16 Q Any other discussions with Secretary Ross  
17 about the citizenship question?

18 A Nothing that I recall as being important,  
19 that's for sure. So probably not, no.

20 Q Do you recall anything that was  
21 unimportant?

22 A No.



1 scroll towards the back of it, it begins  
2 on -- sorry -- the first page of the document you  
3 have is what number, Dr. Jarmin?

4 A 1286. The first page?

5 Q Oh. I'm sorry. Can I have that back?

6 MS. GOLDSTEIN: Actually, can I have one  
7 of those, please? Let's do it this way, can you  
8 just mark that?

9 (Plaintiffs' Exhibit 16, Email, was  
10 marked.)

11 BY MS. GOLDSTEIN:

12 Q I'm showing you what's been marked as 16,  
13 Exhibit 16 to your deposition, and it begins 9812.  
14 It goes to 9833.

15 Can you please turn to 9822? Do you  
16 recognize this document?

17 A Yeah. This is responses to Commerce's  
18 questions about the memo to the Secretary.

19 Q How did this document come about?

20 A We received these questions, and these  
21 are the responses to them.

401/403

22 Q Who did you receive these questions from?

1 A I'm not sure. I think it might have been  
2 Earl Comstock.

3 Q Anyone else?

401/403

4 A These things are often cc'd across a  
5 number of people, so.

6 Q And when did you receive these questions?  
7 Do you recall?

8 A I believe it was shortly after meeting  
9 with the Secretary, but I'm not sure.

10 Q Who wrote the answers to these questions?

11 A Folks on the technical team, for the most  
12 part.

13 Q From the Census Bureau?

14 A Yeah.

15 Q And when you say for the most part, what  
16 do you mean?

17 A Well, that's my understanding of who  
18 answered these questions.

19 Q It was all folks from the technical  
20 team --

21 A Yeah.

22 Q -- correct? Yes?

1 A Yes.

2 Q And did you have a role in developing the  
3 answers to these questions?

4 A Not a -- I mean, I was cc'd on things,  
5 but I was not -- I did not play a role in  
6 addressing the questions directly.

7 Q Did you review the answers that the  
8 Census Bureau came up with? 401/403

9 A Yeah. I probably looked at some of this.  
10 Probably -- not all of this, because this came in  
11 drips and drabs, so.

12 Q How was this document transmitted to  
13 Commerce?

14 A I believe it was sent probably by Abowd  
15 or someone like that, or maybe by -- I mean, it  
16 might have been sent by me forwarding on what the  
17 team had done.

18 Q Do you --

19 A Someone would have forwarded down to  
20 them.

21 Q Is it fair to say you I agreed with what  
22 the technical team wrote in this document?



1 you.

2 Q Did the Census Bureau receive any  
3 feedback on these questions from Commerce?

4 A Other than the like, you know,  
5 clarifications or anything like that, no. No.

6 Q So it's my understanding that Dr. Abowd  
7 testified this was the final Census Bureau version  
8 of these questions and answers. Can you tell if  
9 that's accurate?

10 A As far as I -- I've never seen another  
11 set of them go out, so.

401/403

12 Q What do you mean?

13 A I mean, I never saw anything after this,  
14 so.

15 Q So, to your knowledge, this is --

16 A This is the final, yeah.

17 Q And if you go to 9832, Question 31 --

18 A Uh-huh.

19 Q -- it states, "The Census Bureau follows  
20 a well-established process when adding or changing  
21 content on the census for ACS to ensure the data  
22 fulfill legal and regulatory requirements

1 established by Congress."

2 Do you agree with that?

3 A Yep.

4 Q "Adding a question or making a change to  
5 the decennial census or the ACS involves extensive  
6 testing, review and evaluation."

7 Do you agree?

8 A Uh-huh.

9 Q I'm sorry. I need a yes or --

10 A Yes.

11 Q "This process ensures the changes  
12 necessary and will produce quality, useful  
13 information for the nation."

14 Do you agree?

15 A We've already gone over that, yes.

16 Q And when you look down at the steps here  
17 that are listed in Question 31, do you agree that  
18 each of these steps represents part of the  
19 well-established process when adding or changing  
20 content on the census?

21 A Yes.

22 Q "Including that final proposed questions

401/403

1 result from extensive cognitive and field testing  
2 to ensure their result and proper data"?

3 A Yes.

4 Q "With an integrity that meets the  
5 Census Bureau's highest standards"? 401/403

6 A Correct.

7 Q What's the difference between cognitive  
8 and field testing?

9 A So cognitive is making sure people  
10 understand the question. Field testing is making  
11 sure that we can actually implement the question  
12 in the field.

13 Q What does that mean?

14 A So does it work in a -- in -- on a  
15 survey.

16 Q How -- how do you tell if it works on a  
17 survey?

18 A Well, whether we get good response or  
19 not.

20 Q How do you test that?

21 A So by doing a test survey or in another  
22 survey.



PL obj (140:1 to 142:22), FRE 701,  
702, 703, 704, 705

Page 140

1 Q Can you help me understand the difference  
2 between cognitive and field testing?

3 MS. BAILEY: Objection. Asked and  
4 answered.

5 THE WITNESS: So cognitive is when I  
6 understand whether you can read and understand the  
7 question and what is being asked of you, so.

8 BY MS. GOLDSTEIN:

9 Q And field testing is about how a question  
10 performs on a survey instrument?

11 A Right. People may understand it and  
12 still choose not to answer it.

13 Q And that's --

14 A Or answer it incompletely or something,  
15 right.

16 Q And is that the sort of thing you find  
17 out from field testing?

18 A Yes.

19 Q Was the citizenship question field  
20 tested?

21 A Of course. It's been in the ACS for  
22 years. So it's been answered by 40 to 50 million

1 households.

2 Q So it was field tested in the context of  
3 the ACS, yes?

4 A Yes.

5 Q Was the citizenship question ever field  
6 tested in the context of the short form?

7 MS. BAILEY: Objection. Asked and  
8 answered.

9 THE WITNESS: We never asked it on the  
10 short form before. The only way to do that would  
11 be to ask it on the short form.

12 BY MS. GOLDSTEIN:

13 Q Couldn't you have put it on the  
14 end-to-end test?

15 A The end-to-end test goes to fewer people  
16 than the ACS does. So I don't know how that would  
17 achieve the objective.

18 Q When it says here that final proposed  
19 questions result from extensive cognitive and  
20 field testing, typically, final proposed questions  
21 are fielded before they're put on a survey,  
22 correct?

1 A Correct.

2 Q So, for example --

3 A This question has been field tested --

4 Q On --

5 A -- on the ACS, three and a half million  
6 households a year. Providence would have asked it  
7 of a couple hundred households.

8 Q Uh-huh.

9 A So it's been field tested.

10 Q In the context of the ACS, correct?

11 A Correct. There is no field test for the  
12 decennial. There's either the decennial or  
13 there's not.

14 Q The end-to-end test tests --

15 A Tests systems, not questions.

16 Q What does that mean?

17 A It tests all of our processes and systems  
18 to see if they work.

19 Q Take that back -- actually, if you flip  
20 to the first page of it. Is this the preliminary  
21 analysis of Alternative D?

22 A Uh-huh.



1 Q Combined B and C, can you tell me what  
2 this is?

3 A This is a short description of the  
4 analysis that the team did of Alternative D.

5 Q And did you review this document?

6 A Yes.

7 Q Do you agree with it?

401/403

8 A I do.

9 Q Who else reviewed this document?

10 A The team, John Abowd.

11 Q Karen Dunn Kelley reviewed it?

12 A Yeah.

13 Q Did Secretary Ross review it?

14 A I would assume so. Again, this was  
15 information provided for his review.

16 Q Did you have conversations about this  
17 memo with Ms. Dunn Kelley?

18 A Yeah. I don't recall a -- a discussion  
19 particularly about this memo, no.

20 Q Do you recall having any conversations  
21 with Secretary Ross about this memo?

22 A No.

1 Q Did you have any conversations with  
2 anyone else at Census -- at Commerce regarding  
3 this memo?

4 A At --

401/403

5 Q At -- did you have any conversations  
6 about this memo with anyone else at Commerce --

7 A So, again, I'm not recalling  
8 conversations about this memo. I mean, you know,  
9 obviously, when we came back with Alternative D,  
10 we said what, you know, we gave our, you  
11 know -- our assessment of Alternative D, and they  
12 took that into consideration. We did not have  
13 detailed conversations like we did about the  
14 original three alternatives.

15 Q You said you didn't have detailed  
16 conversations. Do you remember any conversations  
17 with Commerce about your analysis  
18 of Alternative D?

19 A I don't recall that.

20 Q If you go to 9816. You say that in  
21 sum -- this memo says that, "In sum, Alternative D  
22 would result in poorer quality citizenship data

1 than in Alternative C."

2 Do you agree?

401/403

3 A Yes.

4 Q "It would still have all the negative  
5 cost and quality implications of Alternative B  
6 outlined in the draft January 19th memo to the  
7 Department of Commerce."

8 Do you agree?

9 A Yes.

10 Q So you said a moment ago that the  
11 Secretary took this memo into consideration?

12 A I believe so.

802

13 MS. BAILEY: Objection. Mischaracterizes  
14 prior testimony.

15 BY MS. GOLDSTEIN:

16 Q Why do you say that?

17 A Say what?

18 Q That they took that into consideration.

19 A It was provided for his consideration.

20 Q Okay. But do you have any personal  
21 knowledge as to what was done with this memo after  
22 Census prepared it?



1 A So Karen -- I think Karen did.

2 Q Anyone else?

3 A I don't think so, no.

4 Q Do you remember exactly what Karen asked  
5 you to do?

6 A Can you help identify people that the  
7 Secretary should talk to?

8 Q And was there a parallel process for  
9 folks in the Census Bureau to talk to stakeholders  
10 about the citizenship question?

11 A A parallel process for us to talk to them  
12 about what?

13 Q About adding the citizenship question.

14 A So, no. So, I mean, the decision point  
15 laid with the Secretary, so Census was not  
16 involved in a side deliberative process on that.

17 Q And other than thinking about who would  
18 have a broad range of perspectives, were there  
19 other considerations in determining who the  
20 Secretary should talk to and who the Secretary  
21 shouldn't?

22 A So I may I -- I think he, you know,

1 wanted to get a broad set of interpretations, both  
2 pro and con.

3 Q Why do you say that?

4 A You know, because most of the feedback in  
5 the -- initially, was all in the con. So they  
6 were looking for, you know, was there somebody who  
7 would speak in favor of the addition of the  
8 question?

401/403/802

9 Q How did -- who told you that?

10 A So I think we were looking for -- we were  
11 trying to find -- the charge was to get a broad  
12 set of perspectives, and that's why we wanted to  
13 have people on both sides.

14 Q So you just testified that most of the  
15 feedback, initially, was all in the con.

16 A Yeah.

17 Q How did you know that most of the  
18 feedback, initially, was all in the con?

19 A Well, you know, it was in the newspaper.  
20 And, you know, people that we had dealt with  
21 before had sent letters to both Secretary and to  
22 me. So that's how we knew.

1           Q   Did anyone at Commerce instruct you to  
2   find stakeholders who were in favor of the  
3   citizenship question?

4           A   No.   It was not an instruction.   I mean,  
5   I think we sat around trying, talking about who  
6   the Secretary should talk to, and we wanted to  
7   find, you know, a full range of opinions.

8           Q   And we is you and Mr. Lamas?

9           A   And Karen, yeah.

10          Q   And Karen.

11               Anyone else?

12          A   I don't remember anyone else being there,  
13   but there -- you know, there often are others in  
14   the room, but that was the primary people.

15          Q   And do you remember anyone else in the  
16   room?

17          A   No.

18          Q   And do you remember anything else that  
19   Ms. Dunn Kelley said --

20          A   No.

21          Q   -- concerning this?

22          A   No.



1 Q What are these?

2 A This was -- I reached out to a person I  
3 know at AEI, Michael Strain, to see if he or  
4 anyone else would be willing to -- to talk to the  
5 Secretary more from the pro side, as opposed to  
6 con side. So, again, trying to get a more rounded  
7 set of stakeholders involved here.

8 Q Did anyone instruct you to reach out to  
9 AEI?

401/403

10 A No.

11 Q And AEI, for the record, stands for?

12 A American Enterprise Institute.

13 Q Whose idea was it to send solicitations  
14 like this out?

15 A So this was -- to sending it to -- I  
16 mean, it was the general idea that we would try to  
17 find somebody. I knew Michael. I reached out to  
18 him.

19 Q Who else did that team reach out to to  
20 try to find a pro side?

21 A I don't know. I mean, again, this  
22 is -- I think everyone was trying to reach out to

1 A No.

2 Q Are you aware of anyone else on that team  
3 that made phone calls seeking stakeholders for the  
4 pro side?

5 A I'm not aware.

6 Q And Mr. Strain advised you that no one at  
7 AEI was willing to speak favorably about the  
8 proposal, correct? 401/403/802

9 A That is correct.

10 Q Did you have any conversations about  
11 Mr. Strain with Karen Dunn Kelley?

12 A No. This is -- this is the complete  
13 record on that.

14 Q Did you have conversations with anyone  
15 else at Commerce about your communications with  
16 AEI?

17 A No.

18 Q Did you have communications with anyone  
19 else about your communications with AEI on the  
20 citizenship question?

21 A No.

22 (Plaintiffs' Exhibit 18, Email, was

1 Q Did she email you the decision memo?

2 A I don't recall.

3 Q Do you know if you saw the decision memo  
4 before it was finalized?

5 A I think we had a quick turnaround on  
6 something about Option D.

7 Q Did you ask --

8 A But that was -- that was, you  
9 know -- everything was hurried at that stage.

10 Q We'll talk about that in just a moment.

11 Did you ask Ms. Dunn Kelley why the  
12 Census Bureau's recommendations were overruled?

13 A I did not.

401/403/802

14 Q Did she tell you?

15 A She -- well, we were all in the meeting  
16 where the Secretary had expressed some interest in  
17 the -- in the hybrid solution, and that's what he  
18 chose. And so it was, essentially, the Secretary  
19 decided to go with the hybrid solution.

20 Q Is it fair to say, though, that census  
21 never had -- apart from the memos that were  
22 sent --



1 A Right.

2 Q -- that Census never had substantive  
3 conversations with anyone at Commerce about  
4 Option D? 401/403

5 A No. I mean, I'm not sure what you mean  
6 by substantive. Be more specific.

7 Q Other than the memos that were sent from  
8 Census to Commerce about Option D, did anyone from  
9 Census have any conversations about the  
10 Census Bureau's analysis of Option D?

11 A Not that I'm aware of, so.

12 Q And would you have been aware if there  
13 were conversations?

14 A I think I would have been aware, yes.

15 Q So let's talk about what you just  
16 mentioned with the quick turnaround on Option D.  
17 What happened?

18 MS. BAILEY: Objection. Vague.

19 THE WITNESS: So I don't know what you  
20 mean by what happened -- what happened.

21 BY MS. GOLDSTEIN:

22 Q Sure.

1           So we were talking about seeing a draft  
2           of the decision memo, correct?

3           A     Yes.

4           Q     When did you first see a draft of the  
5           decision memo?

6           A     I don't recall exactly when, but, I mean,  
7           it was -- we had an opportunity to make sure that  
8           it was technically correct.

9           Q     Who is we? 401/403

10          A     The Census Bureau.

11          Q     And what do you mean by technically  
12          correct?

13          A     That, you know, there wasn't any  
14          information about Census Bureau, you know,  
15          operations, costs, you know, that sort of stuff  
16          that wasn't accurate.

17          Q     So what was this opportunity that you had  
18          to make sure that the memo was technically  
19          correct?

20                MS. BAILEY:  Objection.  Vague.

21                THE WITNESS:  It was that.

22                BY MS. GOLDSTEIN:

1 A Yeah.

2 Q Led by Dr. Abowd?

3 A Yeah.

4 Q Did you discuss any of the changes that  
5 were proposed to the memo?

6 A I don't recall any major discussions  
7 about that.

8 Q Do you recall what any of the changes  
9 were?

10 A I don't.

11 Q Is there anything that would help you  
12 remember?

13 A Seeing the two versions, but I -- other  
14 than that, I don't recall.

15 Q Other than this process where the  
16 Census Bureau checked to make sure that the  
17 decision memo was technically correct, did the  
18 Census Bureau have any input into that decision  
19 memo?

401/403

20 A No.

21 Q How long did the process of the  
22 Census Bureau making sure that the decision memo



1 A Yes.

2 Q And looking at this document now, does  
3 this help -- are you able to identify any changes  
4 that the Census Bureau made to make this document  
5 more technically correct?

6 A I can't identify changes. But if I 401/403  
7 recall correctly, there were some issues  
8 about, you know, various response rates. You  
9 know, there were, like, corrections to numbers and  
10 stuff like that.

11 Q Do you remember what any of those  
12 corrections to numbers were?

13 A I don't.

14 Q Do you remember which direction the  
15 correction to numbers went, made corrections  
16 higher or lower?

17 A I don't that either.

18 Q Who would be the right person to ask  
19 that?

20 A You know, John Abowd might have  
21 better --

22 Q Anyone else?

1 A That's where I would start.

2 Q So who wrote this memo?

3 A I don't know.

4 Q Is there anyone who would know?

5 A I imagine the Secretary would know.

6 Q Anyone else?

7 A I don't know. I don't know who wrote  
8 this let- -- memo.

9 Q So if you go to Page 3, the second full  
10 paragraph references surveys from Nielsen. Do you  
11 see that?

401/403

12 A Uh-huh.

13 Q I'm sorry. I need a yes or no.

14 A Yes.

15 Q Did you ever see these surveys from  
16 Nielsen that are referenced in this decision memo?

17 A No.

18 Q Did anyone from the Census ever see the  
19 surveys that were referenced in this decision  
20 memo?

21 A I don't know. But as far as I know,  
22 nobody did.

1 Q When did you first hear about these  
2 surveys from the Nielsen?

3 A I think in the context -- I mean, you  
4 know, Nielsen obviously does surveys --

401/403

5 Q Sure.

6 A -- and we have some interaction with them  
7 on other things. So, you know, I think this was  
8 the first that I had heard about these surveys in  
9 this context, for sure.

10 Q So this was the first time reviewing --

11 A Right.

12 Q -- this March decision memo when you  
13 heard about Nielsen adding questions on the ACS --

14 A Uh-huh.

15 Q -- on sensitive topics?

16 A Uh-huh.

17 Q Sorry. I need a yes or no.

18 A Yes.

19 Q And I just want to make sure I'm clear.

20 No one at Census has reviewed the actual surveys,  
21 correct?

22 A Not that I know of.



1 Q Did you participate in any calls with  
2 anyone from Nielsen regarding the citizenship  
3 question?

401/403

4 A No.

5 Q Do you know if anyone at Census did?

6 A No.

7 Q Have you seen the underlying data from  
8 these Nielsen surveys?

9 A I have not.

10 Q Do you know if anyone at Census has?

11 A I don't.

12 Q I will take that back.

13 MS. GOLDSTEIN: I'm about to move on to  
14 another topic. So I don't know if you want to  
15 take a break for lunch or keep going.

16 MS. BAILEY: Do you know how lengthy that  
17 topic's going to be?

18 MS. GOLDSTEIN: It's going to be a little  
19 bit long.

20 MS. BAILEY: Do you have a preference?  
21 We're at three hours now.

22 How do you feel?

1 THE WITNESS: Just keep going.

2 MS. BAILEY: Okay.

3 BY MS. GOLDSTEIN:

4 Q Is there any reason why the procedures  
5 for adding questions to the decennial would be  
6 less rigorous than the process of adding questions  
7 to the ACS? 401/403

8 MS. BAILEY: Objection.

9 THE WITNESS: No.

10 BY MS. GOLDSTEIN:

11 Q No reason why adding changes to the short  
12 form would require less testing than changes to  
13 the ACS, correct?

14 A Not for an untested question, so, no.

15 Q There's no reason why adding changes to  
16 the short form would require less testing than  
17 changes to the ACS?

18 A No.

19 Q I'm going to hand you back what I had  
20 previously marked as Exhibit 16 to this  
21 deposition.

22 And let's go back to Question 31, which

1 is over on 9832. And we had talked before about  
2 the cognitive and field testing the question --  
3 the proposed questions typically undergo, correct?

4 A Right.

5 Q What testing was done for the proposed  
6 changes to the race and ethnicity question?

7 A So those were part of the  
8 National Content Test --

401/403

9 Q What is that?

10 A -- mid decade.

11 It's a survey that tried different  
12 versions of the race and ethnicity questions to  
13 see how people would answer them.

14 Q And what's the purpose of that?

15 A To understand the data quality for  
16 different versions of the question.

17 Q And I know that one thing that goes into  
18 data quality is the number of people responding.

19 A Yep.

20 Q Anything else that goes into data quality  
21 in that context?

22 A How -- how, you know, sort of easily,



1 people sort of respond to the questions and  
2 the -- in the case of the race and ethnicity,  
3 the -- you know, the number of people that are  
4 sort of classified as -- you know, that don't have  
5 a precise race and ethnicity category.

6 Q How can you tell?

7 A So, you know, the current method  
8 classifies lots of people as -- as -- you know,  
9 there are -- there's kind of a catchall category.  
10 I'm not the expert on this. 401/403

11 Q Who is?

12 A I would call Karen Battle. So I know  
13 that we were looking for ways to have more precise  
14 data, so.

15 Q What other kinds of testing was done for  
16 the purposed changes to the race and ethnicity  
17 question?

18 A I believe that's the primary testing that  
19 was done. I mean, there was a part of the 2020  
20 census, the alternative questionnaire experiment;  
21 that was an early version of that.

22 Q And what is that?

1           A    That was another -- you know, that was  
2   part of the census that was sent to a small number  
3   of housing units as a test.

4           Q    And what was it testing?

5           A    Alternative forms of questions that were  
6   already on the census, like race and ethnicity.

7           Q    And more than just race and ethnicity?

8           A    I think it was just race and ethnicity.

9           Q    And what's the goal of testing those  
10  alternative forms?

401/403

11          A    To get more precise data.

12          Q    And to determine the quality of the  
13  question?

14          A    Yeah.

15          Q    And the quality of the data received?

16          A    Yeah.   Yeah.

17          Q    And when a new question is added to the  
18  census, what kind of cognitive testing is done?

19          A    So -- so -- with a completely new  
20  question, there could be both some small scale  
21  tests done in a lab setting and then some sort  
22  of, you know, test questionnaire that would be



1 sent out.

2 Q What are these small scale tests that are  
3 done in a lab?

4 A Where you're actually administering the  
5 survey and getting immediate feedback from --  
6 like, people having difficulty understanding the  
7 question.

401/403

8 Q Why is that important?

9 A Just to understand what are the reasons  
10 that people don't -- can't answer the question  
11 correctly.

12 Q Any other reasons why that's important?

13 A No. That's -- to understand that when we  
14 ask a question, people understand it and are  
15 giving us an answer that meets the objective.

16 Q Sure. And you mention test  
17 questionnaires as a kind of cognitive research?

18 A Yeah.

19 Q Can you tell me what that entails?

20 A So the -- just -- so the -- then you'd  
21 send it out into the field and see if you get good  
22 responses. So there's a difference between



1 sitting in a lab and asking some more questions  
2 and somebody actually filling it out when they  
3 have it in their house.

4 Q Other kinds of testing to new or changed  
5 questions, other than the Content Test, the  
6 cognitive testing, and you discussed before the  
7 end to end.

8 A Yeah.

401/403

9 Q Anything else?

10 A That's about it.

11 Q So earlier, you testified that the  
12 end-to-end testing tests systems, correct?

13 A Correct.

14 Q What systems do you refer to?

15 A The systems with which we use to conduct  
16 the census.

17 Q What are those?

18 A So data capture, so the -- you know,  
19 electronic, you know, survey instrument.

20 Q Uh-huh.

21 A The paper data capture systems, all the  
22 mailing, all the receipt of mail, the electronic

1 systems, the telephone questionnaire assistance  
2 center, the iPhones that enumerators use out in  
3 the field, all of that.

4 Q Uh-huh. Does the Census Bureau test  
5 how -- the order of questions?

401/403

6 A Yes.

7 Q Where? What? Which of these tests?

8 A So like the National Content Test might  
9 be a place -- I don't think they did -- I don't  
10 think they did in that particular instance, so.

11 Q Does the end-to-end test test the order  
12 of questions?

13 A No. The end-to-end test doesn't have any  
14 test about the questions, at all.

15 Q There's no response rates for the  
16 end-to-end test?

17 A We track the response rates, but we're  
18 not -- it's not a life measurement exercise. It's  
19 really more of a testing systems exercise. So  
20 tracking response rates while we're live in the  
21 field is something we do in 2020, so we do that  
22 during the end-to-end test, as well. For



1 operational reasons, not for --

2 Q So if --

3 A -- not for quality assessment reasons.

4 Q If the citizenship question had been on  
5 the 2018 end-to-end test, would that provide data  
6 as to the response rates for the citizenship  
7 question?

8 MS. BAILEY: Objection. Calls for  
9 speculation.

401/403

10 THE WITNESS: We would have had  
11 some -- we could have gained some insight into the  
12 item nonresponse rates for that question.

13 BY MS. GOLDSTEIN:

14 Q And would you have also gained insight  
15 into effects on total response rate if this  
16 citizenship question was on the test questionnaire  
17 for the 2018 end-to-end test?

18 MS. BAILEY: Objection. Calls for  
19 speculation.

20 THE WITNESS: That would have to have  
21 been a test objective, and we would have to set up  
22 an experiment to do that.



1 BY MS. GOLDSTEIN:

2 Q How would you -- how could you do that?

3 MS. BAILEY: Objection. Calls for  
4 speculation.

5 BY MS. GOLDSTEIN:

6 Q How could you set up a test objective  
7 that would test response rates with the inclusion  
8 of a citizenship question?

9 MS. BAILEY: Same objection.

10 THE WITNESS: Some sort of randomized  
11 experiment.

12 BY MS. GOLDSTEIN:

401/403

13 Q What would that be?

14 A I can't tell you exactly what that would  
15 be. We'd have to have some methodologist work on  
16 that.

17 Q But that's the kind of thing the  
18 Census Bureau is equipped to do?

19 A Yes.

20 Q And it did not happen with the  
21 citizenship question, correct?

22 A No.

1 Q Why is it -- is it important to see how a  
2 question -- withdrawn.

3 The content testing that was performed,  
4 were all of the questions that are on the planned  
5 short form, other than the citizenship question,  
6 included in the content testing?

7 MS. BAILEY: Objection. Form.

8 THE WITNESS: I don't know, actually.

9 BY MS. GOLDSTEIN:

10 Q Who would know?

11 A Karen Battle.

12 Q Did the questionnaire that was used for  
13 the end-to-end testing include all questions on  
14 the short form except for the citizenship  
15 question? 401/403

16 A Yes.

17 Q Does the Census Bureau do focus group  
18 testing?

19 A So, for cognitive testing?

20 Q Is that the same thing?

21 A No.

22 Q Okay.

1 Q Can the political climate impact the  
2 sensitivity of a question?

3 MS. BAILEY: Objection. Calls for  
4 speculation. 401/403

5 THE WITNESS: Potentially.

6 BY MS. GOLDSTEIN:

7 Q Can you think of other things that might  
8 impact the sensitivity of a question?

9 MS. BAILEY: Objection. Calls for  
10 speculation.

11 THE WITNESS: Not off the top of my head,  
12 no.

13 BY MS. GOLDSTEIN:

14 Q Can the order of questions impact results  
15 to a survey? 401/403

16 A You know, I understand from the  
17 literature that it can. I'm not -- you know, I'm  
18 not an expert on that, but, you know, I think  
19 especially in a large survey, I think it can.

20 Q Is that something that the Census Bureau  
21 tests for the decennial?

22 A So for the decennial, the short form, I

PL obj (194:20 to 195:17), FRE 701 to 705



1 think, it's less of a concern than it is for  
2 something large, like the ACS, where you have  
3 different topic modules and stuff like that.

4 Q Why do you say that?

5 A So -- because I think that's when  
6 question order matters, is in a large complex  
7 survey. There's various framing issues and stuff  
8 like that for people.

9 Q Are you aware of any studies that say  
10 that question order does not matter for a shorter  
11 survey?

12 A So I know that people are more concerned  
13 about it on a longer survey. I've never seen  
14 anyone argue the counter -- you know, the other  
15 way, saying that it doesn't -- I've never seen  
16 anyone say it doesn't matter. I just see that it  
17 matters more for a large complex survey.

18 Q But it matters some for a short survey?

19 A Yeah, again, I'm not a survey  
20 methodologist, especially a household survey  
21 methodologist, so I can't speak expertly towards  
22 that.

1 that sort of stuff, you know, it all matters, so.

2 Q Is there a -- we talked a few minutes ago  
3 about the political climate might impact the  
4 sensitivity of a question?

5 A Uh-huh. Yes.

6 Q Can political climate impact how a  
7 question functions?

8 MS. BAILEY: Objection. Calls for  
9 speculation.

10 THE WITNESS: I don't know what you mean  
11 by how a question functions.

12 BY MS. GOLDSTEIN:

13 Q Fair enough.

14 Can the political climate impact response  
15 rates?

16 MS. BAILEY: Objection. Calls for  
17 speculation.

401/403

18 THE WITNESS: So, you know, if, you know,  
19 one of the factors in response rates is distrust  
20 in government generally, if the political climate  
21 increases or decreases that, it could have an  
22 impact on response rates.

1 THE WITNESS: Take this one back, too?

2 MS. GOLDSTEIN: Can you mark this for me,  
3 please?

4 (Plaintiffs' Exhibit 19, Email, was  
5 marked.)

6 BY MS. GOLDSTEIN:

7 Q I'm showing you what's been marked as  
8 Plaintiffs' Exhibit 19. It is Bates stamped 2292  
9 and 2293. It is an email from Earl Comstock dated  
10 2/2/18. 401/403

11 Do you recognize this document?

12 A You know, not per se, but this  
13 is -- looks like a transmission of the answers  
14 from Burton to Earl.

15 Q And does that comport with your  
16 recollection as to how those 35 questions and  
17 answers were sent over to Commerce?

18 A Yeah. There was drips and drabs.

19 Q And the subject of this is citizenship  
20 question complete set?

21 A Yeah.

22 Q So it is your understanding that on



1 February 2, 2018 the complete set of those 35  
2 questions were sent to Commerce, correct?

3 A If that's what that means, yeah.

4 Q Let me give you the attachment to this  
5 email.

6 (Plaintiffs' Exhibit 20, Questions on the  
7 Jan 19 draft Census Memo on the DOJ Citizenship  
8 Question Reinstatement Request attachment, was  
9 marked.) 401/403

10 BY MS. GOLDSTEIN:

11 Q I'm showing you what's been marked as  
12 Plaintiffs' Exhibit 20 -- I'm sorry.

13 MS. BAILEY: Thank you.

14 BY MS. GOLDSTEIN:

15 Q It is 2294 --

16 A Right.

17 Q -- to 2305. It is another copy of the 35  
18 questions that we had just reviewed on Exhibit 16,  
19 correct?

20 A Okay.

21 Q Yes?

22 A Yes.

1 Q And this is, as I understand it, the  
2 attachment to Exhibit 19.

3 A Okay.

4 Q So would this be the final version that  
5 is sent over to Commerce?

6 A I'm not sure that's the final version,  
7 but it's probably pretty close.

8 Q Do you recall any changes that were made  
9 after this?

10 A I -- after February 2nd, I -- you know, I  
11 can't tell you whether there were or not.

12 Q From Census? 401/403

13 A Yeah.

14 Q Do you recall asking for any changes  
15 after December 2nd to the 35 questions?

16 A No.

17 Q If someone had made changes, from Census,  
18 to these questions, would you have seen it?

19 A Probably. But I'm just saying I  
20 don't -- I don't recall whether this was the last  
21 version or not, so.

22 Q If you go to Question 31 --

1 A Okay.

2 Q -- it begins on 2303 to 2304, this is the  
3 same language that we saw on Exhibit 16, correct?

4 A I think so.

5 Q And, to your knowledge, is this -- this  
6 is the well-established process, correct?

7 A Yes, a summary of it.

8 Q And this Question 31 on 2303 and 2304,  
9 this is the language that the Census Bureau  
10 believes describes that well-established process,  
11 correct?

401/403

12 MS. BAILEY: Objection. Form.

13 THE WITNESS: Yes.

14 BY MS. GOLDSTEIN:

15 Q The Census Bureau wrote the language in  
16 31?

17 A Yes.

18 Q To your knowledge, did Census ever change  
19 the language in Question 31?

20 A Again, I don't know. I don't know for  
21 sure that this is the last version we sent.

22 Q Do you recall anyone at Census proposing



1 any changes to the language in Question 31?

2 A No. I mean, but, obviously, we're still  
3 editing responses here, so that -- that could  
4 happen. It's a relatively longer answer than most  
5 of the other ones, so.

6 Q But you do not recall anyone at Census  
7 changing the language of Question 31 following  
8 this language, correct?

9 A No. I don't recall, one way or the  
10 other.

401/403

11 Q And is there anything that would help  
12 your recollection?

13 A I mean, again, if this is not the last  
14 version, the last version would answer that  
15 question.

16 Q Well, this one was in -- okay.  
17 So who is Mr. Reist?

18 A He works for Al.

19 Q Who is Al?

20 A Al Fontenot.

21 Q And what is Al Fontenot's job?

22 A He's the head of decennial.

1 Q And what is Mr. Reist's job?

2 A So he's the head of their budget and  
3 communications area.

4 Q And Mr. Reist sends this, to among  
5 others, Earl Comstock, correct?

6 A Uh-huh.

7 Q I'm sorry. I need a yes or no.

8 A Yes.

9 Q And you were cc'd on this?

10 A Yes.

11 Q And had you reviewed these responses  
12 before Mr. Reist sent them to Mr. Comstock?

13 A You know, I probably perused them. I  
14 certainly didn't proof them or anything like that.

15 Q But as we had talked about before, these  
16 responses, these 1 to 35 questions were, in your  
17 view, accurate, correct?

401/403

18 A Yes.

19 Q Because you wouldn't --

20 So -- and that includes Question 31,  
21 correct?

22 A Yes.



1 Q I'll take that back.

2 I'm going to show you what had been  
3 previously marked as Exhibit 16 to the Abowd  
4 deposition. If you bear with me for just a  
5 moment.

6 It is another version of those 35  
7 questions, this time that were received in the  
8 original administrative record. It is Bates  
9 stamped 1286 to 1297. And if we could go back  
10 over to Question 31, it is on 1296. 401/403

11 The answer to Question 31 in this version  
12 says, "Because no new questions had been added to  
13 the decennial census for nearly 20 years, the  
14 Census Bureau did not feel bound -- bound by past  
15 precedent when considering the  
16 Department of Justice's request. Rather, the  
17 Census Bureau is working with all relevant  
18 stakeholders to make ensure that the legal and  
19 regulatory requirements are filled and that  
20 questions will produce quality and useful  
21 information for the nation. As you're aware, that  
22 process is ongoing at your direction."



1 That's pretty different than the language  
2 of Question 31 we've seen before, right?

3 A Yes.

4 Q It does not describe the well-established  
5 process we've been discussing, correct?

6 A It does not.

401/403

7 Q It does not talk about the  
8 well-established process, at all, correct?

9 A Correct.

10 Q It doesn't --

11 A Well, it sort of summarizes.

12 Q Where?

13 A To work with all relevant stakeholders to  
14 ensure the legal and regulatory requirements are  
15 filled and questions will produce quality  
16 information, so --

17 Q Does this --

18 A -- that's what the process is meant to  
19 do.

20 Q Does this answer to Question 31 discuss  
21 the process by which agencies evaluate their data  
22 needs?

1 A No.

2 Q And does it say that in order to be  
3 included, proposals must demonstrate a clear  
4 statutory and regulatory need for data?

5 A It does say legal and regulatory  
6 requirements are filled.

7 Q Does it mention testing, at all?

8 A No.

9 Q Does it mention public comment?

401/403

10 A No.

11 Q Does it mention --

12 A No -- I don't -- it says all relevant  
13 stakeholders. That includes public comment.

14 Q Okay. Does it mention OMB specifically?

15 A It says relevant stakeholders, so, you  
16 know --

17 Q Does it mention OMB specifically?

18 A No. It does not.

19 Q Okay. Do you know who wrote the language  
20 in Number 31?

21 A I do not.

22 Q When was the first time you saw the

1 language in -- on 1296?

2 A On 1296, I think I've seen a version like  
3 this before, but, you know, I'm not sure where  
4 this came from.

5 Q Have you seen it before today?

6 A Yes.

7 Q On Question 31?

401/403

8 A On Question 31.

9 Q Do you know if Commerce wrote this  
10 language or Census Bureau wrote this language?

11 A I don't know.

12 Q What would tell you?

13 A I -- you know, seeing who wrote -- who  
14 sent the last version. So, I don't know.

15 Q So I previously showed you a version that  
16 Dr. Abowd represented was the final version --

17 A Right.

18 Q -- do you recall?

19 A Yeah.

20 Q And that version had the longer  
21 Question 31 language --

22 A Right.



1 Q -- correct?

2 A Yes.

3 Q Yeah?

4 A Yes.

5 Q And so if we understand the version that  
6 Dr. Abowd said was final to include the longer  
7 Question 31, does that tell you anything about who  
8 changed the language on 1296?

401/403

9 MS. BAILEY: Objection. Form.

10 THE WITNESS: Yeah. I don't -- no, not  
11 particularly. Probably -- not Dr. Abowd, but --  
12 BY MS. GOLDSTEIN:

13 Q Did you change the language in 31?

14 A I did not.

15 Q Did anyone at Census change the language  
16 in 31?

17 A I don't know.

18 Q Did you review this language in 31 before  
19 it was sent to Commerce?

20 A I --

21 MS. BAILEY: Objection. Asked and  
22 answered.

1 THE WITNESS: I don't recall.

2 BY MS. GOLDSTEIN:

3 Q Is there anything that would help you  
4 recall?

5 A I don't know.

6 Q Do you know why this language was  
7 changed?

8 MS. BAILEY: Objection. Asked and  
9 answered.

10 THE WITNESS: I assume it's an attempt to  
11 summarize the longer answer of the question.

12 BY MS. GOLDSTEIN:

401/403

13 Q Were there any discussions that you took  
14 part in as to why this language was changed?

15 MS. BAILEY: Objection. Asked and  
16 answered.

17 THE WITNESS: Do not recall.

18 BY MS. GOLDSTEIN:

19 Q If the Census Bureau had changed this  
20 language, would John Abowd have been aware of the  
21 change?

22 A Yes. I would think so.

1 Q Yes, you would?

2 A Yes.

3 Q Had Census Bureau, to your knowledge,  
4 ever taken the position that it was not bound by  
5 past precedent when considering an agency's  
6 request before?

7 A No. And I think -- I think the only  
8 degree to which the Census Bureau in this instance  
9 was not following past procedures is because the  
10 Census Bureau took the position that the question  
11 had been tested via the ACS. That's the only  
12 aspect of the process that -- that we believed  
13 didn't need to be undergone.

14 Q And when you say the Census Bureau took  
15 that position, who in the Census Bureau?

16 A You know, I think the technical team,  
17 every -- you know, management, everybody agreed  
18 that this question has been thoroughly tested on  
19 the ACS.

20 Q Are there -- has a question ever moved  
21 from the ACS to the short form before?

22 A Not that I know of.

PL obj: 802  
(lines 14-19)



1 Q And are there any quality standards that  
2 address moving questions from one survey to  
3 another?

4 A Not in particular. I mean, quality  
5 standards are roughly the same across all the  
6 surveys. Obviously, the census is different than  
7 the surveys in the sense that it's a census. We  
8 ask everybody. So, you know, generally, you get  
9 better quality on the census than you would in a  
10 survey because you're asking everybody.

11 Q Any statistical standards that govern  
12 moving a question from the ACS to the decennial?

13 A Not standards that don't apply everywhere  
14 else.

15 Q What do you mean?

16 A I mean, the statistical standards  
17 are -- count for everything, not just -- so --

18 Q But you're not aware of any guidance that  
19 goes to the process of moving a question from the  
20 long form to the short form or the ACS to the  
21 short form, correct?

22 A No.

1 Q Some are on paper?

2 A Yes.

3 Q Some are in person?

4 A Well, most surveys are multimode --

5 Q Okay.

6 A -- any more, so.

7 Q Is it fair to conclude that a question is  
8 going to perform the same way on one survey that  
9 it might on a different survey?

10 MS. BAILEY: Objection. Calls for  
11 speculation.

12 THE WITNESS: It isn't necessarily.

13 BY MS. GOLDSTEIN:

401/403

14 Q Why not?

15 A Well, the -- you know, the modes will  
16 matter.

17 Q What else matters?

18 A The -- you know, the length and  
19 complexity of the survey.

20 Q What other sorts of things can cause a  
21 question to perform different ways on different  
22 surveys?



1       A     You know, we talked earlier about, you  
2     know, changing attitudes about the government and  
3     stuff like that.     So if one survey is seen as --  
4     as, you know, coming from the government or a part  
5     of the government that they have bigger issues  
6     with, it may perform differently than, you  
7     know -- so Census Bureau does pretty well with the  
8     surveys because the public generally tends to  
9     trust the Census Bureau, so.

10 Q But even within the same survey, can a  
11 changing political climate impact how a question  
12 performs?

13 MS. BAILEY: Objection. Calls for  
14 speculation.

15 THE WITNESS: Again, it might. There's  
16 been no analysis to say that, one way or the  
17 other.

18 BY MS. GOLDSTEIN:

19 Q And that's my next question. Has the  
20 Census Bureau performed any analysis as to whether  
21 or not the citizenship question will perform the  
22 same way on the short form as it has on the ACS?



1           A    No.   We don't -- but I'll come back to  
2   say we don't have a good way of doing that.   401/403

3           Q    Would the National -- if the citizenship  
4   question had been included in the  
5   National Content Test --

6           A    So that -- go ahead.

7           Q    I'm sorry.

8                If the citizenship question had been  
9   included in the National Content Test, would that  
10   have given the Census Bureau any information as to  
11   response rates?

12           MS. BAILEY:   Objection.   Hypothetical.

13           THE WITNESS:   Most likely not.   So you  
14   have to remember that the context of the decennial  
15   census is done as a nationwide activity with a  
16   huge advertising outreach and partnership campaign  
17   that you're never going to replicate in a small  
18   scale test.   You're not going to replicate it on  
19   the ACS.   To the degree that you think the  
20   political environment is something that might  
21   impact response rates to a particular question,  
22   you need to mimic the political environment that

1 will exist when they're doing it. And the -- you  
2 know, the amount of exposure that the census will  
3 get during the live census is, you know, part of  
4 that environment, and we just can't test that. So  
5 the only thing we can test right now is whether  
6 people understand the question, and whether they  
7 can answer it, and whether they answer it at a  
8 rate sufficient to provide high-quality data. The  
9 answer to those questions is all in the  
10 affirmative.

11 BY MS. GOLDSTEIN:

12 Q In the context of the ACS, correct?

13 A In the context of the ACS. Or in the  
14 context of -- of that 2018 end-to-end test. We  
15 wouldn't have learned anything in addition to  
16 that, so.

17 Q The -- if the citizenship question had  
18 been included in the 2018 end-to-end test, would  
19 you have gotten item nonresponse rate data?

20 MS. BAILEY: Objection. Calls for  
21 speculation.

401/403

22 THE WITNESS: Yes. We would have gotten



1 item nonresponse rate data. It would not  
2 have -- it would not have answered the question of  
3 what things would look like during the 2020  
4 census, no more than the ACS does. 401/403

5 BY MS. GOLDSTEIN:

6 Q Why do you say that?

7 A Because they're both done outside of that  
8 context.

9 Q So the race and ethnicity proposed  
10 changes were tested, correct?

11 A They were tested to see if people  
12 understood and could answer the question and what  
13 the relative data quality of the different  
14 questions was. The experiment was against the  
15 different questions.

16 Q Is it possible to test a survey -- so --

17 A We could have tested two versions of a  
18 citizenship question --

19 Q And the census --

20 A -- that might have been informative, but  
21 not whether a, you know, citizenship question  
22 versus no citizenship question.



1 Q Why couldn't you have tested that?

2 A What?

3 Q Why could -- a citizenship question  
4 versus a non- -- no citizenship question?

5 A I think -- I just argued that. Without  
6 doing it in decennial, we won't know what  
7 that -- in that context.

8 Q So just to make sure I understand. It's  
9 your position that we can't know how the  
10 citizenship question performs on the census until  
11 you have a census?

12 MS. BAILEY: Objection. Mischaracterizes  
13 prior testimony.

14 BY MS. GOLDSTEIN:

15 Q Is that a fair summary?

16 A So that in -- in the 2020 census, the  
17 environment will be radically anything that we can  
18 mimic in a test.

19 Q Which is always the case for the  
20 decennial?

21 A Which is always the case.

22 MS. GOLDSTEIN: Why don't we take a break

1 A Uh-huh.

2 Q I'm sorry?

3 A Yes.

4 Q And if we look at F, explore nonfederal  
5 surveys for research on the impact of citizenship  
6 questions on survey response rates, do know you if  
7 the Census Bureau has done that?

8 A I -- I don't know.

9 Q And, again, would Ms. Battle be the  
10 person who knows this?

11 A Yes.

12 Q Anyone else?

13 A Well, members of her team.

14 Q Sure. And what would nonfederal surveys  
15 for research on the impact of citizenship  
16 questions on survey response rates tell us?

17 A Same thing that E would, what other  
18 people have experienced.

19 Q And let's look at G, conduct a  
20 National Content Test with a split sample where  
21 half the respondents received the citizenship  
22 question and half do not. Comparing the response

1 rates across the two groups would be the primary  
2 way to test the impact of the citizenship question  
3 on survey response rates.

4 Has this sort of test been run for the  
5 citizenship question? 401/403

6 A It has not, as far as I know.

7 Q And do you agree that this methodology  
8 set forth in Subparagraph G would be a way to test  
9 the impact of the citizenship question on survey  
10 response rates?

11 MS. BAILEY: Objection. Form.

12 THE WITNESS: It -- yes. It could be.

13 BY MS. GOLDSTEIN:

14 Q Do you know of any plans to test the  
15 citizenship question in this form?

16 A No, I do not.

17 Q I'll take that back. Thank you.

18 Part of your job, Dr. Jarmin, is to  
19 appoint people to advisory committees; is that  
20 correct?

21 A Yes.

22 Q And what is the role of advisory



1 committees in the decennial census?

2 MS. BAILEY: Objection. Vague.

3 THE WITNESS: So advisory committees,  
4 largely, are to give advise on various  
5 Census Bureau methods and operations, how Census  
6 can reach out to various communities to do our  
7 job.

8 BY MS. GOLDSTEIN:

9 Q Why does the Census Bureau have advisory  
10 committees?

11 A Well, I think we try to be, generally,  
12 transparent in how we do our business. The  
13 advisory committees are one way of achieving that.

14 Q How many advisory committees does the  
15 Census Bureau have that are involved in the  
16 decennial census?

17 A Two.

401/403

18 Q What are those two?

19 A The National Advisory Committee and the  
20 Census Scientific Advisory Committee.

21 Q Can you tell me what the responsibilities  
22 of the National Advisory Committee are?

1           A    So National Advisory Committee is largely  
2   made up of stakeholder -- representative  
3   stakeholder groups, largely from hard-to-count  
4   communities to advise us on how to properly reach  
5   out to be able to make sure those communities are  
6   counted. 401/403

7           Q    And the Census Scien- -- the Census  
8   Scientific Advisory Committee, what is that?

9           A    Sort of all scientific methodology  
10   matters across the Bureau.

11          Q    So can you talk to me about how the  
12   National Advisory Committee is typically involved  
13   in the decennial census process?

14          A    So -- well, we have, you know, two  
15   meetings a year, and, you know, they've been kept  
16   apprised of all the planning and development of  
17   the 2020 design throughout the decade. So, you  
18   know, been able to comment on it all along.

19          Q    When you say they've been kept apprised  
20   of the 2020 design, what do you mean?

21          A    Of how we're going to do the 2020 census.

22          Q    When was, if at all, was the



1 National Advisory Committee notified of the  
2 citizenship question?

3 A So I believe when it became public, that  
4 the request from Art Gary had come in.

5 Q Is the National Advisory Committee  
6 typically consulted by Census Bureau before the  
7 Census Bureau makes decisions --

8 MS. BAILEY: Objection. Vague.

9 BY MS. GOLDSTEIN:

401/403

10 Q -- regarding the decennial census?

11 A With a subset of decisions.

12 Q What kind --

13 A We can't consult them on every decision  
14 we make on a huge program like the census --

15 Q Of course.

16 A -- but generically, they're kept apprised  
17 of our plans and in a timely input, that they  
18 could have input on ultimate decisions.

19 Q And why is it important for the  
20 National Advisory Committee to have input on these  
21 decisions?

22 A We think that it helps us do a better



1 census.

2 Q And you just distinguished between some  
3 decisions that you're not able to keep the  
4 National Advisory Committee in the loop for and  
5 some that you are.

401/403

6 A Right.

7 Q Can you explain the kinds of decision  
8 that the National Advisory Committee is brought  
9 into the loop on?

10 A So they were brought in, you know, on our  
11 basic, you know, multimode collection strategy.  
12 They're -- they have some input on our  
13 communications and outreach program that's been  
14 particularly interesting to them. They were  
15 apprised of the National Content Test and other  
16 sort of mid-decade testing activities.

17 Q Is it fair to say that the  
18 National Advisory Committee is involved in the  
19 bigger decisions of the Census Bureau with respect  
20 to the decennial census?

21 A Generally, yeah.

22 Q Okay. And is there a specific mechanism

1 for the --

2 A So can I go back?

3 Q Absolutely.

4 A They have input on -- let's be clear.

5 They are not involved in any decision-making

6 processes.

7 Q So that's what I'm curious about. How --

8 what's the process for the National Advisory

9 Committee to give input, and how does that get

10 back to the Census?

401/403

11 A So there's --

12 MS. BAILEY: Objection. Compound.

13 THE WITNESS: There's a formal way that

14 all the advisory committees, CSAC and NAC, after

15 each meeting, they give written recommendations to

16 the Bureau.

17 BY MS. GOLDSTEIN:

18 Q What form do those recommendations take

19 place?

20 A What do you mean, what form? They're

21 written.

22 Q It's like a memo?



1 A Yeah.

2 Q Who does it go to?

3 A The director.

4 Q Who is you, right now?

5 A And then, you know, disbursed to various  
6 parts of the Bureau for response and action.

7 Q And typically, when you get a memo from  
8 NAC or CSAC, what is your process for dealing with  
9 it? 401/403

10 MS. BAILEY: Objection. Vague.

11 THE WITNESS: So we have a relatively  
12 formal process by which it gets disseminated to  
13 the various subject matter experts that need to  
14 weigh in on it, and then responses are drafted  
15 and, you know, it's all, you know, delivered back  
16 to NAC or CSAC, whichever the case may be.

17 BY MS. GOLDSTEIN:

18 Q And it's the same for NAC and CSAC?

19 What's the timeline for delivering back  
20 to the NAC?

21 A So we usually try do it as quickly as  
22 possible, but sometimes some of these things take,



1 you know, some time to sort through. But  
2 certainly before the next meeting.

3 Q Does the NAC play any role in changing or  
4 adding questions to the census?

5 A When we've contemplated changes, they've  
6 weighed in on that, but they don't play a role  
7 in -- I mean, they can suggest, like anybody else  
8 can, but they don't have a -- they don't have any  
9 more formal role than anybody else does in that  
10 regard. 401/403

11 Q Did the NAC weigh in on the proposed  
12 changes to the race and ethnicity question?

13 A I believe they did. I was not an active  
14 NAC meeting attendee at that time, but it's my  
15 understanding that they -- that they weighed in on  
16 that.

17 Q Do you know how they weighed in?

18 A You know, I think the NAC is a diverse  
19 group of people. Race and ethnicity questions are  
20 something that never make everybody happy, so I  
21 think there was lots of discussion amongst  
22 different viewpoints of the NAC about what was the

1 best approach to make.

2 Q Did the NAC ultimately make a  
3 recommendation?

4 A I'd have to go back to see what their  
5 recommendation was.

6 Q You don't recall? 401/403

7 A I don't recall.

8 Q What about the MENA changes?

9 A Yes. That would be one of the  
10 controversial issues that was discussed amongst  
11 the NAC, so.

12 Q For the record, can you just explain what  
13 the proposed MENA changes were?

14 A It was to add MENA as a separate category  
15 on a combined race and ethnicity question.

16 Q So when we talk about changes to the race  
17 and ethnicity question, are the MENA changes part  
18 of that conversation?

19 A Yes.

20 MS. GOLDSTEIN: Can we stamp this,  
21 please?

22 I'm going to apologize. These are not



1 stamped.

2 (Plaintiffs' Exhibit 22, U.S. Department  
3 of Commerce Census Bureau National Advisory  
4 Committee on Racial, Ethnic and Other Populations  
5 Charter, was marked.)

401/403

6 BY MS. GOLDSTEIN:

7 Q I'm showing what's been marked as  
8 Plaintiffs' Exhibit 22. It's titled U.S.  
9 Department of Commerce Census Bureau National  
10 Advisory Community on Race and Ethnicity and Other  
11 Populations Charter. It is a four-page document.

12 Do you recognize this document?

13 A I'm not sure I've seen this or not. It  
14 looks like pretty standard -- standard boilerplate  
15 for advisory committee charter.

16 Q So you've seen charters like this before?

17 A Yes.

18 Q Okay. And if we go to Section 3,  
19 objectives and scope of activities, it states that  
20 "The committee will advise the director of the  
21 Census Bureau."

22 That's you, correct?



1 A Yep.

2 Q "On the full range of economic housing,  
3 demographic socioeconomic, linguistic,  
4 technological, methodological, geographic,  
5 behavioral and operational variables affecting the  
6 cost accuracy and implementation of Census Bureau  
7 programs and surveys, including the decennial  
8 census."

9 Correct?

401/403

10 A Uh-huh. Yes.

11 Q And so this charter -- does the  
12 citizenship question fall within this scope of  
13 activities?

14 MS. BAILEY: Objection. Form.

15 THE WITNESS: Yes, it would.

16 BY MS. GOLDSTEIN:

17 Q If you go further down, it explains that  
18 "The committee will address census policies,  
19 research and methodology tests, operations,  
20 communications/messaging and other activities to  
21 ascertain the need -- ascertain needs and best  
22 practices to improve Census's surveys, operations

1 and programs."

2 Correct?

3 A Correct.

4 Q As part of this mandate, did the  
5 NAC -- you've mentioned that the NAC weighed in on  
6 the citizenship question, correct?

401/403

7 A Yes, they did.

8 Q And --

9 A I was not in attendance at that meeting,  
10 though, so.

11 Q Other than the meeting that you've  
12 referred to before, did the NAC weigh in, at all,  
13 on the citizenship question?

14 A Not that I know of.

15 Q If you go to the next paragraph, it  
16 mentions that the committee, the NAC, will review  
17 and provide formal recommendations and feedback on  
18 working papers, reports and other documents  
19 related to the design and implementation of  
20 Census Bureau programs and surveys, correct?

21 A Yes.

22 Q Did the NAC review any of the memos that



1 the Census Bureau prepared regarding the  
2 citizenship question?

3 A Not that I know of.

4 Q Did you or anyone on your staff, to your  
5 knowledge, provide the NAC with copies of those?

6 A No. What this refers to is the items  
7 that are part of an agenda of a meeting. There  
8 was not an agenda of a meeting --

401/403

9 Q Okay.

10 A -- in that early 2018 time frame, so.

11 Q When were the meetings for the NAC?

12 A I think the NAC meeting was June, if I'm  
13 not mistaken.

14 Q And then there would be a second one?

15 A You know, late in December.

16 Q Did the NAC provide any formal  
17 recommendations or feedback on the citizenship  
18 question?

19 A I mean, they certainly have not read the  
20 recommendation, the -- or at least I don't recall  
21 reading the recommendation on this. They  
22 certainly verbally and have PowerPoint slides in



1 relationship to this, so.

2 Q Is there a process by which the  
3 Census Bureau formally reaches out to ask for the  
4 NAC's advice?

5 A So --

6 Q Is that what you described before?

7 A So -- so we have a group that's in charge  
8 of the -- the advisory committees. They meet with  
9 the chair and sometimes other parts of the  
10 committee to discuss upcoming meetings and ongoing  
11 response to recommendations, and so there's  
12 relatively regular communications between our  
13 staff and the committees. 401/403

14 Q And who is the group that's in charge of  
15 the NAC?

16 A So they're in our communications area,  
17 so.

18 Q Who is that?

19 A Tara Dunlop Jackson.

20 Q Anyone else?

21 A She's the person in charge.

22 Q And is that also for the CSAC?

1 A CSAC, yep. And the FESAC.

2 Q What is the FESAC?

3 A The Federal Economic Statistics Advisory  
4 Committee.

5 Q So can I have that one back?

6 (Plaintiffs' Exhibit 22, Email, was  
7 marked.)

401/403

8 BY MS. GOLDSTEIN:

9 Q Did you see the PowerPoint presentation  
10 that the NAC prepared that you referred to  
11 earlier?

12 MS. BAILEY: Objection. Vague.

13 THE WITNESS: Are you referring to the  
14 one by Arturo Vargas?

15 BY MS. GOLDSTEIN:

16 Q Yes.

17 A Yes.

18 (Plaintiffs' Exhibit 23, Emails, was  
19 marked.)

20 BY MS. GOLDSTEIN:

21 Q I'm showing what has been marked as  
22 Plaintiffs' Exhibit 23. It is an email chain

1 Bates-stamped 8630, 8631. Do you recognize this  
2 document?

3 A I think so, yeah.

4 Q What is this?

5 A So I think we were referring back to  
6 their recommendations.

7 Q What were the NAC's recommendations with  
8 respect to the citizenship question?

9 A To not ask it. 401/403/802

10 Q After the NAC made the recommendation to  
11 not ask the citizenship question, what was the  
12 Census Bureau's next steps in response to that  
13 recommendation?

14 A I'm sure we're working on the response.  
15 Say, you know, decision's been made, as was  
16 communicated in the meeting.

17 Q Has that response gone out yet?

18 A No. I don't know.

19 Q Who would know?

20 A Tara.

21 Q So in this email, it states towards the  
22 very bottom on 8630 that, "The committee believes



1 the situation is so dire that it considers it a  
2 crisis and requires the immediate attention of the  
3 U.S. Secretary of Commerce and the Acting Deputy  
4 Secretary of Commerce."

5 Did the NAC ever have any direct  
6 communications or meetings with the U.S. Secretary  
7 of Commerce?

8 MS. BAILEY: Objection. Foundation.

9 (Thereupon, the court reporter  
10 clarified.)

11 THE WITNESS: So I don't believe that the  
12 NAC as a committee has.

401/403

13 BY MS. GOLDSTEIN:

14 Q Okay.

15 A It's my understanding that Arturo was one  
16 of the people that the Secretary spoke to.

17 Q Was there -- what was the result of this  
18 email?

19 A I don't know what you mean by that.

20 Q So you mentioned that Arturo Vargas met  
21 with Ross?

22 A Prior to the decision.

1 Q Prior to the decision.

2 Do you know how, if at all, the NAC's  
3 recommendation with respect to the citizenship  
4 question was taken into account by the Commerce  
5 Department?

6 MS. BAILEY: Objection. Form.

7 THE WITNESS: I don't know. I am pretty  
8 sure that Arturo and the Secretary spoke and  
9 Arturo had his opportunity to state his case to  
10 the Secretary. 401/403/802

11 BY MS. GOLDSTEIN:

12 Q And other than that one meeting that  
13 you've referred to, the NAC meeting, did the  
14 Census Bureau have any additional meetings about  
15 the citizenship question with NAC?

16 MS. BAILEY: Objection. Foundation.

17 THE WITNESS: No.

18 BY MS. GOLDSTEIN:

19 Q Other than the meeting that you've  
20 described with the NAC, did the Census Bureau have  
21 any meetings --

22 A I'm sorry.



1 Q Go ahead.

2 A I mean, so they're -- on other work,  
3 there are ongoing discussions with the NAC and a  
4 range of matters. The NAC has subcommittees that  
5 work with staff directly.

6 Q Uh-huh.

7 A You know, I'm sure in those meetings the  
8 topic came up.

9 Q What are those subcommittees where you  
10 think the topic came up?

11 A So I think there's -- you know, I can't  
12 remember the names of the subcommittees, but  
13 there's some that work on the ACS. I think one  
14 that's roughly on administrative records. So  
15 various sort of subtopics. CSAC has them, as  
16 well.

401/403

17 Q And what is the CSAC's role?

18 A Very similar. I'm sure if you go back  
19 and read the charter, it reads almost probably  
20 exactly the same.

21 (Plaintiffs' Exhibit 24, U.S. Department  
22 of Commerce Bureau of the Census Scientific



1 Advisory Committee Charter, was marked.)

2 BY MS. GOLDSTEIN:

3 Q I'm showing what has been marked as  
4 Plaintiff's Exhibit 24. It is the U.S. Census  
5 Scientific Advisory Committee Charter. Is this  
6 the CSAC charter?

7 A Yes.

8 Q And this charter also provides that it  
9 will provide formal review and feedback on  
10 internal and external working papers, reports and  
11 other documents related to the design and  
12 implementation of census programs and surveys?

13 A Yep.

401/403

14 Q Did the CSAC provide any formal review of  
15 the memos relating to the citizenship question?

16 A No.

17 Q Did the CSAC provide any feedback on any  
18 of the memos relating to the citizenship question?

19 A No.

20 Q Why not?

21 A Again, it was not part of an organized  
22 agenda in the meeting where they were -- where

1 those -- this was something that happened in the  
2 compressed time frame, and we didn't have the  
3 normal period through which we could have these  
4 sorts of engagements.

5 Q Is it fair to say in the normal course,  
6 when a change is proposed to the decennial census,  
7 it's on a longer time frame?

8 MS. BAILEY: Objection. Speculation.

9 THE WITNESS: I mean --

10 BY MS. GOLDSTEIN:

401/403

11 Q For example, the --

12 A No.

13 Q -- race and ethnicity proposed changes?

14 A Yes. It was on a longer time schedule  
15 that allowed more feedback from the advisory  
16 committees.

17 Q And typically, in the ordinary course,  
18 when there is a proposed change to a question,  
19 that proposed change is raised to the advisory  
20 committees, correct?

21 A If it's significant.

22 Q So, typically, in the ordinary course,

1 where there is a proposed significant change to  
2 the census questionnaire, that proposed change is  
3 raised to the advisory committees, correct?

4 A Yes.

5 Q Including the NAC?

6 A Yes.

7 Q And including the CSAC?

8 A Correct.

9 Q But that did not happen with the  
10 citizenship question, correct?

11 A It did not.

401/403

12 Q Because there wasn't time?

13 A Because there wasn't time.

14 Q Were there any other reasons why the  
15 citizenship question was not raised to the  
16 advisory committee?

17 MS. BAILEY: Objection, speculation.

18 THE WITNESS: No.

19 That timing was the primary issue, yeah.

20 BY MS. GOLDSTEIN:

21 Q Were there any --

22 A No.



1 Q -- other issues?

2 A Not that I know of.

3 Q Okay. Did CSAC, which is the  
4 Census Scientific Advisory Committee, right?

5 A Yes.

6 Q Provide any feedback on the citizenship  
7 question?

8 A Yes, they did.

9 Q What was their feedback on the  
10 citizenship question?

11 A So they had a short presentation about it  
12 at the spring CSAC meeting where they argued  
13 against it.

401/403/802

14 Q For what reasons?

15 A For many of the normal reasons, the short  
16 time frame. They were concerned about it not  
17 being tested.

18 Q Has the Census Bureau responded to CSAC's  
19 recommendation yet?

20 A I think we have, but I'm not sure. I'd  
21 have to see if that's gone out or not.

22 Q Who would know?

1 I'd like to follow up on something you  
2 said earlier. I believe your testimony was that  
3 it's difficult to simulate the decennial census  
4 because it's unique. Is that a fair  
5 characterization?

6 A Correct.

7 Q Okay. But, in fact, that the  
8 Census Bureau does the multiyear testing program  
9 to prepare for the census; is that correct?

10 A That's correct.

11 Q Do you know when that testing process  
12 started?

401/403

13 A 2013.

14 Q So seven years in advance of the  
15 decennial census, correct?

16 A Correct.

17 Q And from that testing, the Census Bureau  
18 determines -- obtains various pieces of  
19 information that are useful for development of the  
20 2020 census?

21 A Correct.

22 Q For example, self-response rates?

1 A That's one thing that --

2 Q Okay.

3 A So a testing self-response rate is not  
4 that indicative of a census self-response rate  
5 because of the lack of advertising and --

6 Q But, in fact, you do do tests to  
7 determine self-response rates in preparation for  
8 the decennial census?

9 A I don't think we did any tests whose  
10 purpose it was to determine what the self-response  
11 rate was.

12 Q Do you also use these tests to determine  
13 or to obtain information about nonresponse  
14 follow-up procedures?

401/403

15 A About procedures, yes.

16 Q And about the use of administrative  
17 records?

18 A And about -- yes.

19 Q And about the use of data capture systems  
20 or the functionality of the those systems?

21 A Correct.

22 Q How about for language support



1 systems --

2 (Conference call interruption.)

3 THE WITNESS: Okay. All right. Please  
4 say the question again. 401/403

5 BY MR. TILAK:

6 Q And how about language support systems or  
7 translations services?

8 MS. BAILEY: Objection. Vague.

9 THE WITNESS: So there was some stuff  
10 done with language, yes.

11 BY MR. TILAK:

12 Q So in short, this multiyear testing  
13 program does provide meaningful information that  
14 the Census Bureau uses to prepare for the 2020  
15 census?

16 A Yes.

17 Q Did you do any tests where the sole  
18 purpose was not self-response rates but one of the  
19 items that was looked at was self-response rates?

20 MS. BAILEY: Objection. Form.

21 THE WITNESS: So we always look at the  
22 self-response rate as a matter of course.

1 that's not necessarily the rule.

2 Q It's not a prerequisite to be hired as a  
3 decennial census enumerator?

4 A Not if you're going to try to hire  
5 hundreds of thousands of people, it's not.

6 Q Earlier today you mentioned the concept  
7 of a hard-to-count population. What is a  
8 hard-to-count population?

9 A So there are certain subpopulations that  
10 are lower self-response rates. You know, recent  
11 immigrants, you know, people in poverty, you know,  
12 folks on tribal lands. 401/403

13 Q How about noncitizen?

14 MS. BAILEY: Objection. Vague.

15 THE WITNESS: Noncitizen, their recent  
16 immigrants would be included in that.

17 BY MR. TILAK:

18 Q How about households with limited English  
19 proficiency, are they considered --

20 A Yes.

21 Q -- considered a hard-to-count population?

22 A Yes.

1 Q In general, isn't it the case that more  
2 nonresponse follow-up is needed for hard-to-count  
3 populations compared to the population at large?

401/403

4 A Yes.

5 Q Now, for the 2020 census, what is the  
6 maximum number of times that an enumerator will  
7 visit a household that has not self-responded?

8 A I think, by design, six times.

9 Q And six is not the number at which the  
10 Census Bureau expects every household to have  
11 responded, correct?

12 MS. BAILEY: Objection. Vague.

13 THE WITNESS: So most households that  
14 respond to NRFU will respond before six visits.  
15 It's just some households are harder to get than  
16 others.

17 BY MR. TILAK:

18 Q Sir, so after six visits, some households  
19 may still not have responded?

401/403

20 A Correct.

21 Q And as compared to the U.S. population as  
22 a whole, is it more likely that hard-to-count



1 populations would still not be counted after those  
2 maximum of six visits?

401/403

3 MS. BAILEY: Objection. Form.

4 THE WITNESS: It is. Hard-to-count  
5 populations will have a higher proportion in the  
6 higher count of NRFU visits.

7 BY MR. TILAK:

8 Q And would they also have a higher  
9 proportion in the amount of people who have not  
10 been enumerated after the maximum of NRFU visits?

11 MS. BAILEY: Objection. Form.

12 THE WITNESS: That's actually more  
13 difficult to say.

14 BY MR. TILAK:

15 Q Are you aware of any studies assessing  
16 that question?

17 A I know that imputation rates are slightly  
18 higher, but it's hard to -- you know, the -- what  
19 happens at the end of NRFU is -- is -- you know,  
20 we seek proxy responses and that sort of thing, as  
21 well. So proxy rates are definitely higher  
22 for hard-to-count communities.

1 Q And are proxy rates -- are proxies sought  
2 for households that do not respond to nonresponse  
3 follow-up?

4 A Yes.

5 Q Are they sought in any other circumstance  
6 in the context of the decennial census?

7 A If we received a response, we wouldn't  
8 use a proxy response.

9 Q So the only time you would use a proxy  
10 response is if a household didn't respond in NRFU?

11 A Yes.

12 Q Now, the maximum of six visits, is that  
13 set, in part, based on budgetary and staffing  
14 considerations?

15 A Yes.

16 Q Because the census has a limited staff?

17 A Yes.

18 Q And limited budget?

19 A And a limited budget --

20 Q Budget?

21 A -- and a limited schedule.

22 Q And we just mentioned proxies. Who

1 qualifies as a proxy for a nonresponding  
2 household?

3 A I don't understand the --

4 Q Is it neighbors or landlords --

5 A So you're asking who could give a proxy  
6 response for --

7 Q Right.

8 A Typically, neighbors or other -- you  
9 know, neighbors, sometimes maybe a postal worker.  
10 You know, somebody with direct knowledge of the  
11 number of people living in that house.

12 Q How does the Census Bureau go about  
13 identifying who has this knowledge, minimum  
14 knowledge --

15 MS. BAILEY: Objection. Vague.

16 THE WITNESS: So there are procedures and  
17 NRFU training about what to do. And, you know,  
18 obviously, asking a neighbor is the key.

19 BY MR. TILAK:

20 Q For the 2020 census, is there a maximum  
21 number of proxy visits?

22 A So we try -- if we haven't found anybody



1 by four or five, we start looking for a proxy  
2 then.

3 Q Is there a point in which you stop  
4 looking for a proxy?

5 A So, you know, the design is to stop at  
6 six.

7 Q And it's possible that after six visits,  
8 you haven't gotten the response in nonresponse  
9 follow-up and you also haven't gotten the response  
10 in proxy; is that right?

11 A That is true, yes.

12 Q And is that the situation -- where you  
13 haven't gotten the response in nonresponse  
14 follow-up or proxy, is that a situation where you  
15 would apply imputation?

16 A Yes.

17 Q And I think you mentioned this earlier,  
18 but compared to the U.S. population generally, are  
19 proxy rates for hard-to-count populations higher?

20 A Yes.

21 Q Are administrative records another way  
22 that the Census Bureau can use to enumerate a

1 household that has not self-responded?

2 A Yes.

3 Q And to determine the number of people who  
4 live in a household, what administrative records  
5 does the Census Bureau look at?

6 A So a variety of administrative records.  
7 So, importantly, you know, income tax returns,  
8 other government administrative records from  
9 Social Security or -- or various, you know,  
10 assistance programs, SNAP or -- but also using  
11 other information like, you know, whether the mail  
12 is being delivered to the house at the current  
13 time and that sort of stuff.

14 It's actually a pretty small share of  
15 the -- you know, it's only like 4 percent of the  
16 households can be enumerated that way, where we  
17 have high -- high-quality records that are very  
18 stable over a period of time.

19 Q So the ability to use administrative  
20 records applies to a fairly small portion of the  
21 population; is that correct? 401/403

22 A Of the NRFU population, yes.

1 Q Of the NRFU population.

2 Compared to the U.S. population at large,  
3 is the -- can administrative records be used to  
4 enumerate hard-to-count populations at a smaller  
5 rate than the U.S. population at large? 401/403

6 MS. BAILEY: Objection. Form.

7 THE WITNESS: That is the case.

8 BY MR. TILAK:

9 Q Is whole person imputation a mechanism  
10 that the Census Bureau uses to enumerate  
11 households that have failed to self-respond?

12 A And failed -- non- -- didn't respond in  
13 nonresponse follow-up.

14 Q Does the Census Bureau try to obtain a  
15 proxy response before resorting to --

16 A Yes.

17 Q -- whole person imputation?

18 A Yes.

19 Q And briefly, what is whole person  
20 imputation? 401/403

21 A It's when the count in the house is  
22 imputed and their characteristics are imputed.



1 Q How is that done?

2 A Using neighborhood characteristics

401/403

3 and -- so --

4 Q Where does the Census -- sorry. Finish  
5 your answer.

6 A From the other people that have  
7 responded.

8 Q From what sources does the Census Bureau  
9 determine the neighborhood characteristics that it  
10 then uses to impute to the households?

11 A So from the ACS, from administrative  
12 records, but also, really important here, from the  
13 other responses to the Census.

14 Q Now, besides NRFU and proxy responses and  
15 administrative records and whole person  
16 imputations, are there any other methods that the  
17 Census Bureau can use to enumerate a household  
18 that fails to self-respond?

19 A That's pretty much it.

20 Q That's the whole list.

21 If there is a decline in the  
22 self-response for a subpopulation within the U.S.

1 population, is it your understanding that this  
2 will be associated with an increase in the net  
3 undercount of that population?

4 A That's not necessarily the case. It  
5 would be an increase in the NRFU workload for that  
6 population.

7 Q And so if there's a decline in 401/403  
8 self-response, then the NRFU workload would be  
9 increased, correct?

10 A Yes.

11 Q Are you aware of any studies that have  
12 analyzed the relationship between a decline in  
13 self-response in a particular subpopulation and  
14 the net undercount for that subpopulation?

15 A I'm not familiar with any. That doesn't  
16 mean they don't exist, so -- again, this is -- I'm  
17 an economist, not a demographer.

18 Q Do you know who would be the right person  
19 to ask about this at the Census Bureau?

20 A Karen Battle I would start with. Or I  
21 would add -- no. Karen is a good person.

22 Q And if there's a decline in the

PL obj (274:22 to 275:19), FRE 701 to 705

1 self-response for a hard-to-count population,  
2 would that be associated with the net undercount  
3 for that hard-to-count population?

4 A Again, not necessarily. It means that we  
5 would have a higher NRFU workload for that  
6 population, and we may capture all of those folks  
7 being NRFU.

8 Q So the net undercount would be avoided if  
9 the NRFU procedures were as effective for that  
10 hard-to-count population as for the population at  
11 large; is that a fair statement?

12 A Or as is -- as good as they were for that  
13 subpopulation before.

14 Q Could you explain that?

15 A Well, you know, you're trying to  
16 enumerate this subpopulation, so if only the  
17 self-response is now at issue but NRFU is not an  
18 issue, you should be able to pick everybody else  
19 up with NRFU, so.

20 Q Now, you testified earlier about the  
21 memos that Dr. Abowd prepared on January 19th and  
22 March of 2018. Was it your testimony that you



1 A No.

2 Q So you would agree that the  
3 inclusion -- or the citizenship question could  
4 potentially be much more burdensome and would lead  
5 to a larger decline in self-response for  
6 noncitizen households?

7 A Correct.

8 Q And noncitizen households here are any  
9 households with at least one noncitizen?

10 A Correct.

11 Q And then if we could turn to Exhibit 16,  
12 which I believe is the March 2018 memo, starting  
13 Bates was 0009812, I believe.

14 A I don't have it.

15 Thank you. This is the questions. It's  
16 not the -- you're looking for the Secretary's  
17 memo?

18 Q Correct. Yes. I apologize for that  
19 confusion.

20 If I can direct you to Bates ending on  
21 15, the last full paragraph that starts, "how  
22 might inclusion."

1 A Uh-huh.

2 Q Halfway through that paragraph,  
3 "Inclusion of a citizenship question on the 2020  
4 census questionnaire is very likely to reduce the  
5 self-response rate pushing more households into  
6 NRFU."

7 Do you agree with that statement?

8 A Yes.

9 Q And then the last statement in that -- or  
10 the second to last sentence in that paragraph,  
11 "Those refusing to self-respond to the citizen  
12 question are particularly likely to refuse to  
13 respond in NRFU, as well, resulting in a proxy  
14 response."

15 A Uh-huh.

16 Q Do you agree with that statement?

17 A Yes.

18 Q So would it be fair to say between these  
19 two memos, that it is likely that a citizenship  
20 question will lead to a decline in self-response  
21 among noncitizen households?

22 A That's what the analysis predicted, yes.

1 Q And then these noncitizen households who  
2 did not respond because of the citizenship  
3 question were particularly likely to refuse to  
4 respond in NRFU, as well?

5 A Yes.

6 Q And that would result in a proxy  
7 response?

8 A Correct.

9 Q In evaluating the citizenship question,  
10 did anyone at the Bureau look at the efficacy of  
11 non-response follow-up procedures for noncitizen  
12 households in comparison to other segments of the  
13 population?

14 A Not in -- I don't think that was -- we  
15 have other things that look at efficacy of NRFU  
16 procedures. That was not done as part of this  
17 analysis.

18 Q Apart from this analysis, was any study  
19 of the efficacy of nonresponse follow-up  
20 procedures for noncitizen households compared to  
21 other parts of the population done at the  
22 Census Bureau?



1           A    So I'm not sure if there -- I'd have to  
2   go back and see if there was really a study that  
3   had that as its goal, but analyzing the -- you  
4   know, procedures and how well, you know, our  
5   instruments work and stuff like that was,  
6   obviously, a big part of the '18 test, so --

7           Q    But you're not aware of a study that  
8   focused specifically on looking at efficacy for  
9   the noncitizen --

10          A    No.

11          Q    -- households --

12          A    No.

13          Q    And you said that was tested in the  
14   end-to-end test?

15          A    NRFU procedures were, yes.

16          Q    And the end-to-end test did not contain  
17   the citizenship question, correct?

18          A    Correct.

19          Q    Did anyone at the Bureau evaluate the  
20   efficacy of nonresponse follow-up procedures for  
21   Hispanic households or households with limited  
22   English proficiency as compared to the general

1 U.S. population?

2 A So, again, you know, the answer there is  
3 the same. We do try to have in-language people as  
4 enumerators. So there's often an after-event  
5 analysis of how well that seems to work, so. 401/403

6 Q But you're not aware of any specific test  
7 that targeted that question?

8 A No, not -- not specifically.

9 Q How about -- did the Bureau evaluate the  
10 efficacy of nonresponse follow-up procedures based  
11 on census tract or based on state?

12 A On census or state?

13 Q Yes.

14 A I mean, obviously, we look at -- we look  
15 at things by the characteristics of different  
16 units of geography, but, you know, I'm not sure  
17 what you mean by -- what -- what specifically are  
18 you trying to get at here?

19 Q Are there any tests that look at whether  
20 certain census tracts are harder to enumerate  
21 through nonresponse follow-up procedures than  
22 other citizen tracts?



1           A     So, I mean, we already -- we already know  
2     that, to some degree, because we know that those  
3     tracts are made up of higher proportions of  
4     hard-to-count populations, so that's -- I don't  
5     know what the test is that you're looking for  
6     here.   So --

7           Q     And then you mentioned for these  
8     noncitizen households that are likely to not  
9     self-respond and then will refuse to answer in  
10    NRFU, that a proxy response would be required.   In  
11    evaluating the citizenship question, did the  
12    Bureau consider whether -- consider the  
13    availability of proxies -- let me rephrase.

14                   In evaluating the citizenship question,  
15    did anyone at the Bureau consider whether the  
16    availability of proxy was the same for noncitizen  
17    households as for other parts of the U.S.  
18    population?

19           A     Not that I know of.

20           Q     How about for Hispanic households or  
21    households with limited English proficiencies?

22           A     Yeah.   I don't think we've broken



1 that -- I mean, neighbors are neighbors, so.

2 Q And has the Bureau done any analysis of  
3 the availability of proxies that's broken down by  
4 census tract or by state?

401/403

5 A No.

6 Q Has any analysis been done by the Bureau  
7 on the willingness of proxies to respond for  
8 noncitizen households versus the U.S. population  
9 at large?

10 A Not that I know of.

11 Q The same question with respect to proxies  
12 for Hispanic households or households with limited  
13 English proficiency.

14 A No.

15 Q If proxies were less available for  
16 noncitizen households, then fewer of these  
17 noncitizen households that did not respond to NRFU  
18 would be enumerated through proxies, correct?

19 MS. BAILEY: Objection. Calls for  
20 speculation.

21 THE WITNESS: Presumably.

22 BY MR. TILAK:

1 Q We already briefly discussed  
2 administrative records. In evaluating the  
3 citizenship question, did anyone at the Bureau  
4 consider the differential quality or availability  
5 of administrative records for noncitizen  
6 households as compared to the U.S. population?

7 MS. BAILEY: Objection. Form.

8 THE WITNESS: Yeah. That was analyzed in  
9 2010.

401/403

10 BY MR. TILAK:

11 Q What test was that analyzed in?

12 A I believe it was called the census 2010  
13 match study.

14 Q What was the impetus for that test?

15 A It was one of the regular tests we ran as  
16 part of the 2010 program.

17 Q Briefly, what were the findings of that  
18 study?

19 A So the study basically documented how  
20 well we could match census responses, including  
21 NRFU and proxy responses, to administrative  
22 records.

1 Q And did that study also look at the  
2 availability of administrative records for  
3 Hispanic households --

4 A That --

5 Q -- and households of --

6 A That --

7 Q -- limited English --

8 A That would --

9 Q -- proficiency?

10 A -- so it was able to demonstrate that  
11 hard-to-count populations had lower-quality  
12 administrative records.

13 (Thereupon, reporter requested to speak  
14 one at a time.)

15 BY MR. TILAK:

16 Q And when you say lower-quality  
17 administrative records, that means that the  
18 administrative records could be used to enumerate  
19 those households less of the time?

20 A Correct.

21 Q Now, with respect to whole person  
22 imputation, in evaluating the citizenship



1 question, did anyone evaluate whether whole person  
2 imputation was less accurate for households with  
3 noncitizen as opposed to the population at large?

4 A I'm not sure that that -- that's been  
5 done. I imagine it probably would be, but I don't  
6 know what study that is.

7 Q You haven't seen any study that looks at  
8 this question? 401/403

9 A I don't recall seeing it, no.

10 Q Has anyone evaluated the accuracy of  
11 whole person imputation for Hispanic or households  
12 with limited English proficiency compared to the  
13 population at --

14 A Same.

15 Q -- large?

16 A Same.

17 My guess is there's a study out there,  
18 I'm just not familiar with it.

19 Q Was any such study, to your knowledge,  
20 part of the review of the citizen question in  
21 preparation for the decennial --

22 A No.

1 Q -- census?

2 Did anyone evaluate the accuracy of whole  
3 person imputation based on census tract or state?

4 A I -- I don't know, but that would have  
5 been done, probably, in a post-enumeration survey  
6 type thing. Would not have been able to evaluate  
7 it by state, so.

8 Q And by post-enumeration survey, what do  
9 you mean by that?

10 A So that's something we do afterwards to  
11 assess the quality of the census.

12 Q So the last time that that would have  
13 been done would have been after the 2010 census?

14 A 2010, yes.

15 Q Do you know if any such survey was used  
16 in preparations for this 2020 census?

17 A So you can only do a post-enumeration  
18 survey after you do a census. So we did use those  
19 results to inform our plans and procedures for  
20 2020.

21 Q Are you aware of any specific calculation  
22 of the additional costs that would be incurred to

1 make up for a decline in self-response or failure  
2 to not -- failure to answer a NRFU as a result of  
3 this citizenship question?

4 MS. BAILEY: Objection. Compound.

5 THE WITNESS: So I believe in the -- in  
6 the -- not this memo -- well, it probably is in  
7 this memo, too -- but there was a computation of  
8 what the expected increase in nonresponse  
9 follow-up costs would be. 401/403

10 BY MR. TILAK:

11 Q Do you remember what the calculation was?

12 A Offhand, I think it was in the, you know,  
13 20 to \$40 million range, something like that.

14 Q Was that a conservative estimate?

15 A A conservative -- yeah. I think they  
16 thought it -- that that was potentially a lower  
17 bound.

18 Q Are you aware of any calculation at the  
19 upper bound of what the cost might be?

20 A Not of an upper bound, no.

21 Q Earlier today we discussed sensitive  
22 questions. Is it accurate that if a question is



1 sensitive to a particular population, that  
2 population might fail to respond to that  
3 particular question? 401/403

4 MS. BAILEY: Objection. Calls for  
5 speculation.

6 THE WITNESS: So to the degree that  
7 sensitive questions have lower self-response  
8 rates, that could potentially be true, yeah.

9 BY MR. TILAK:

10 Q And if there's a sensitive question on a  
11 questionnaire, does the presence of that question  
12 increase the likelihood that a person will not  
13 respond to the questionnaire as a whole?

14 A Again, that -- that could happen, yes.

15 Q We -- you also talked about cognitive  
16 testing at some length this morning. What does it  
17 mean for a question to be cognitively difficult?

18 A So the person doesn't understand what  
19 we're asking.

20 Q And if a question is cognitively  
21 difficult, does that increase the likelihood that  
22 the respondent will fail to answer that specific

1 question on the questionnaire?

2 A Yes.

3 Q Does it also increase the likelihood that  
4 the respondent will fail to respond to the  
5 questionnaire as a whole?

6 A That, I -- I -- I'd have to see studies  
7 on that. As surveys go, census questions are  
8 typically not that cognitively difficult. Health  
9 surveys are far more cognitively difficult, just  
10 to give you a -- some parameters.

11 Q Is there -- is there a threshold in your  
12 mind for when a question is cognitively difficult?

13 A Not in my mind. I would leave that up to  
14 the folks that would evaluate that sort of thing.

15 Q And who would those people be?

16 A So we have some survey methodologies that  
17 look at that type of thing, as do other survey  
18 organizations.

19 Q For the 2020 census, the citizenship  
20 question will be placed at the end, correct?

21 A Correct.

401/403

22 Q What was the reason for that?

1           A    Since it was added late, it was placed at  
2   the end.

3           Q    That particular ordering was not tested  
4   in any way, correct? 401/403

5           A    No, it wasn't.

6           Q    But households are still required to  
7   answer the citizenship question, correct?

8           A    Yes, they are.

9           Q    Even though it's placed at the end?

10          A    Yes.

11          Q    The Census Bureau has not communicated to  
12   the public that the citizenship question is  
13   optional, to your knowledge?

14          A    No.

15          Q    Do you know if DOJ has communicated to  
16   the public whether the citizenship question is  
17   optional?

18               MS. BAILEY:  Objection.  Foundation.

19               THE WITNESS:  Well, the Census Bureau's  
20   position is that it is not, so.

21   BY MR. TILAK:

22          Q    In fact, a person faces penalty for



1 questionnaires must satisfy some statutory or  
2 regulatory need; is that correct?

3 A Correct.

4 Q And generally, the Census Bureau only  
5 asks questions that are requested by an agency,  
6 correct?

7 A Yes. That's correct.

8 Q And the impetus for adding the  
9 citizenship question here was the DOJ's Gary  
10 letter --

11 A Yes.

12 Q -- correct?

13 And this letter asked for block-level  
14 citizenship data, correct?

15 A Correct.

16 Q And the Census Bureau decided to use the  
17 ACS question, correct?

18 A That's correct.

19 Q When in the process did the Census Bureau  
20 decide that if they were going to ask a  
21 citizenship question, it would be the ACS  
22 question?

1           A    Early in the process. Given the tight  
2   time constraint, we didn't really have time to  
3   consider an alternative, and this has the added  
4   benefit that it's completely comparable with the  
5   ACS data.

6           Q    The ACS question asks for more than just  
7   citizenship, though, correct? 401/403

8           A    It has multiple questions.

9           Q    It asks whether someone was born in the  
10   United States or U.S. territories?

11          A    Correct.

12          Q    Did DOJ ask for data on where a person  
13   was born?

14          A    They did not.

15          Q    To your knowledge, was this information  
16   necessary to satisfy DOJ's needs?

17               MS. BAILEY: Objection. Foundation.

18               THE WITNESS: Which information?

19   BY MR. TILAK:

20          Q    The information on whether someone was  
21   born, for example, in the U.S. territories?

22          A    I don't think that -- that -- I'm not

1 sure what you're asking here.

2 Q Well, the DOJ asked for citizenship  
3 information?

4 A Right.

5 Q Is information on where someone was born  
6 responsive to that request apart from the earlier  
7 question, are you a citizenship or not?

8 A No. So, I mean, that's the way the ACS  
9 question is read, so that's what we went with, so.

10 Q The ACS question also requests whether  
11 individuals were born abroad to U.S. citizens?

12 A Correct. 401/403

13 Q DOJ did not specifically ask for that  
14 information, correct?

15 A No. They did not.

16 Q The ACS question asks if a citizen is  
17 naturalized, correct?

18 A Correct.

19 Q And, again, that was not specifically  
20 requested by DOJ?

21 A No.

22 Q It also asks the year someone was



1 naturalized, if they were a naturalized citizen?

2 A Yes.

3 Q And DOJ doesn't ask for this information  
4 either, correct?

401/403

5 A No, it does not.

6 Q At any point, did the Census Bureau ever  
7 consider a question that simply asked, are you a  
8 citizen; yes or no?

9 A Again, that would have required a much  
10 lengthier period of time. It would have required  
11 testing and what have you. And so given the time  
12 frame and the desire to have comparability to the  
13 ACS, a decision was made to go with the ACS.

14 Q So is it a fair statement that because of  
15 the compressed timeline, the Census Bureau went  
16 with a question that asks for extraneous  
17 information not responsive to the DOJ's request?

18 MS. BAILEY: Objection.

19 THE WITNESS: That information is  
20 currently used by -- by DOJ right now. I would  
21 assume that, you know, they would still find that  
22 useful.

1 BY MR. TILAK:

2 Q Did they specifically request it --

3 A They did not.

4 Q Now, we talked a little bit about some of  
5 the evidence that Dr. Abowd cites in his memos for  
6 why there might be a decline in self-response  
7 rates. 401/403

8 Was there any affirmative evidence you're  
9 aware of suggesting that there would not be a  
10 decrease in response rates as a result of this  
11 citizenship question?

12 A No.

13 Q To go back for a second, when the  
14 decision was made to use the ACS formulation, who  
15 made that decision?

16 A That was a conversation within the  
17 Census Bureau.

18 Q Was the Commerce Department involved in  
19 any way?

20 A No.

21 Q Do you know if DOJ was involved in any  
22 way?

1 Q And how are they different?

2 A Well, they're meant to test procedures  
3 and processes and --

4 Q If the Census Bureau had known about the  
5 citizenship question request in February of 2017,  
6 would it have been able to do more testing of that  
7 question?

8 A We certainly would have had more time to  
9 do testing. Whether it would have been as  
10 definitive as we would have liked, I doubt it. It  
11 still would not have been in the decennial  
12 environment of, you know, this spring, summer of  
13 2020.

14 Q Would it have been -- let me rephrase.

15 If the citizenship question had been  
16 requested in February of 2017, would the  
17 Census Bureau have been able to include it in the  
18 2018 end-to-end test?

19 MS. BAILEY: Objection. Calls for  
20 speculation.

21 THE WITNESS: So if a decision had been  
22 made prior to the development of the materials for



1 the 2018 end-to-end test, we would have included  
2 it because it was part of the census. We ran what  
3 we thought was the census. Again, we weren't  
4 testing the questions in the 2018 end-to-end test.  
5 We were testing the systems and procedures.

6 BY MR. TILAK:

7 Q And what systems and procedures,  
8 specifically?

9 A All of the data collection procedures,  
10 all of the data processing procedures, the review  
11 and publication of the data products.

12 Q Did that include nonresponse follow-up  
13 procedures?

14 A It did.

15 Q And did it include proxy response  
16 procedures?

17 A It did.

18 Q And whole person imputation procedures?

19 A It will.

20 Q And based on Dr. Abowd's analysis, is it  
21 accurate that the inclusion of a citizenship  
22 question will increase the NRFU workload?

1 A That's -- we believe that to be the case,  
2 yes.

3 Q And is it also an accurate statement  
4 because people who chose to -- who refuse to  
5 respond -- self-respond because of a citizenship  
6 question will also not respond to NRFU and the  
7 proxy workload will also be increased --

8 MS. BAILEY: Objection.

9 BY MR. TILAK:

10 Q -- in the 2020 census?

11 A So we do believe it will lead to an  
12 increase in the proxy rate. Less confident about  
13 that rate, though, because it's a smaller rate.

14 Q What do you mean by that?

15 A Well, the number of proxy responses at  
16 the end is relatively small compared to the NRFU  
17 workload.

18 Q And of that proportion that's left over  
19 for proxy are hard-to-count populations a  
20 disproportionate part of the proxy response  
21 population as it --

22 A Yeah. That's part of what it means to be



1 hard to count, I believe.

2 Q Turning to 1317 on this memo, the last  
3 sentence -- well, let's start with the sentence  
4 above that. "No one provided evidence that there  
5 are residents who would respond accurately to a  
6 decennial census that did not contain a citizen,  
7 but would not respond if it did, although many  
8 believe that such residents had to exist."

9 Does the Census Bureau have any evidence  
10 responsive to this question here?

11 A So I think the Census Bureau's analysis  
12 suggested that there would be some folks who would  
13 have answered the question through  
14 self-response -- or responded via self-response  
15 that would now have to go to NRFU. Accuracy of  
16 NRFU responses is less than self-response and  
17 proxy response is less than NRFU responses.

18 Q So this is -- it's your testimony that  
19 this is not an accurate statement, that the  
20 Census Bureau did, in fact, provide evidence?

21 A So this is the Secretary's assessment of  
22 the evidence that was provided to him total, so.



1 Q But your testimony is the Census Bureau  
2 did provide evidence; is that correct?

3 A Yes.

4 MR. TILAK: We can go off the record for  
5 five minutes.

6 MS. BAILEY: Oh. Taking a break?

7 MR. TILAK: Yeah.

8 VIDEOGRAPHER: The time is 3:44 p.m.  
9 This completes Media Unit Number 3. We are now  
10 off the record.

11 (Off the record.)

12 VIDEOGRAPHER: The time is 3:56 p.m.  
13 This begins Media Unit Number 4. We're now on the  
14 record.

15 Please proceed, Counsel.

16 EXAMINATION BY MS. SHAH:

17 Q Good afternoon. My name is Niyati Shah,  
18 and I represent the plaintiffs in Lupe v. Ross in  
19 the District of Maryland, Case Number 8:1801570.

20 Dr. Jarmin -- of course.

21 I'd like to actually just go back to the  
22 discussion we had earlier today about the race and

1 ethnicity question.

2 Would you characterize combining the two  
3 census questions on race and ethnic origin for the  
4 2020 census as modifying the 2020 census  
5 questionnaire, as compared to 2020 census, or  
6 adding a new question to the 2020 census?

7 MS. BAILEY: Objection. Compound.

8 THE WITNESS: As modifying.

9 BY MR. SHAH:

10 Q Okay. Is it your understanding that the  
11 Census Bureau fielded a National Content Test or  
12 the NCT in 2015 in large part to evaluate the best  
13 way to collect race and ethnicity data for the  
14 2020 census?

15 A Yes.

16 Q And that included the possibility of a  
17 combined race and ethnicity question, correct?

18 A It did.

19 Q Among other things, did the NCT test for  
20 the wording of a combined race and ethnicity, as  
21 well as revised wording for a separate race and  
22 ethnicity question?

1 A I --

2 MS. BAILEY: Objection. Compound.

3 THE WITNESS: I believe it did both.

4 BY MS. SHAH: 401/403

5 Q And did the NCT test for a design and  
6 placement of the combined race and ethnicity  
7 question?

8 A I'm not sure if it did placement or not.

9 Q And did the NCT test for instructions for  
10 each iteration of the race and ethnicity question?

11 A Yes.

12 Q And as well for the questionnaire, as  
13 well?

14 A I'm not sure for the -- entire  
15 question -- I mean, I know for each of the  
16 versions of the question, it had different  
17 versions of the instructions.

18 Q And would you characterize the NCT as a  
19 randomized controlled test?

20 A It was.

21 Q And would the NCT also be considered  
22 field testing?



1 A Yes.

2 Q And from the NCT, would the Census Bureau  
3 be able to tell how certain demographic subgroups  
4 responded to the race and ethnicity question?

5 A Yes.

401/403

6 Q Would they be able to tell how Hispanics  
7 responded?

8 A Yes.

9 Q How about Asians?

10 A Yes.

11 Q What about Native Americans?

12 A I believe so, yes.

13 Q And would they also be able to show how  
14 populations in certain geographic regions  
15 responded?

16 A I'm not sure about geographic regions, so  
17 I'd have to go back and review the -- it was a  
18 large test, because it needed to be able to  
19 breakdown by these various race and ethnic  
20 categories. But, obviously, some of those get  
21 pretty small if you break it into smaller  
22 geographies. So I'm not sure that it had much to

1 say geographically, but I'd have to go back and  
2 review the parameters of the test to answer that  
3 more fully.

4 Q Okay. Fair enough.

5 And it's correct that the Census Bureau  
6 staff recommended that the 2020 census include a  
7 combined race and ethnicity question with a new  
8 MENA category and check boxes for collection of  
9 racial subgroup data pending a parallel effort at  
10 OMB to revise the official standards?

401/403

11 A Yes.

12 Q After the Census Bureau staff made this  
13 recommendation to the Census director, they  
14 initially planned to include this race and  
15 ethnicity question in the 2018 end-to-end test in  
16 Rhode Island, correct?

17 A That is correct.

18 Q And if that combined race and ethnicity  
19 question stayed in the testing -- the end-to-end  
20 testing, would that represent a redesign of the  
21 questionnaire for 2020 census?

22 A So --

1 Q Would it have -- I asked if it would have  
2 informed the Census Bureau's development of the  
3 data collection instruments for the nonresponse  
4 follow-up?

5 MS. BAILEY: Same objection.

6 THE WITNESS: So I'm not sure how it  
7 would have informed. The other forms, when you  
8 asked if it was going to be on there --

9 BY MS. SHAH:

10 Q Yeah.

11 A -- the answer was yes, so.

12 Q Okay. And would -- would the results of  
13 the end-to-end test, if the race and ethnicity  
14 question was -- remained in there as recommended  
15 by the staff, would it have informed the  
16 development of training modules for enumerators?

17 MS. BAILEY: Objection. Calls for  
18 speculation. 401/403

19 THE WITNESS: So part of the end-to-end  
20 test is to review procedures. So regardless of  
21 what form of various questions are on there, it's  
22 going to inform refinements to training



1 procedures.

2 BY MS. SHAH:

3 Q Okay. Just, generally speaking, how  
4 would the Census Bureau go about estimating costs  
5 for a nonresponse follow-up program?

6 A So a lot of it is based on past practice.  
7 So we know, approximately, what the workload's  
8 going to be. We know what we're going to pay our  
9 enumerators, sort of a -- there's a rough formula  
10 that they use to estimate these things, based  
11 on -- you know, historical practice of NRFU and  
12 other things we've learned from the ACS and what  
13 have you.

14 Q Anything else?

15 A No.

16 Q Would a scientifically-rigorous  
17 calculation of these costs include basing  
18 estimates on iterative field testing and other  
19 research conducted over the years in the census  
20 planning phase?

21 MS. BAILEY: Objection. Compound.

22 Objection. Form.

401/403

1 THE WITNESS: So we try to update the  
2 cost models as best we can with relevant  
3 information. If some of that was gleaned from  
4 mid-decade tests, we would have added that in  
5 there.

401/403

6 BY MS. SHAH:

7 Q Okay. And would the final calculation or  
8 estimate also factor in results from the  
9 end-to-end test?

10 A So, yes. It may. So, I mean, we have  
11 changed procedures that affect the productivity of  
12 the enumerators, which is a large cost driver, so  
13 that will be incorporated into updated models.

14 Q But cal- -- so would calculations be  
15 based solely on the self-response rate from the  
16 previous census or ACS?

17 A No. So it's based on the self-response  
18 rate. It's based on the productivity of the  
19 enumerators in the field, based on wages and what  
20 have you. So, you know, those are the three main  
21 cost drivers. What's the workload? What's  
22 productivity? What's the cost per hour of

1           A     So this was a team put together that  
2     consisted of both Census and Commerce Department  
3     officials at the direction of the Secretary. So  
4     shortly after he came on board, there was some --  
5     some cost overruns on various things, and this was  
6     an attempt to get a broad handle on things.

7           Q     And the -- did this assumption of a  
8     3 percent increase factor in the addition of a  
9     citizenship question? 401/403

10          A     No.

11          Q     Okay. I'd like to mark the next document  
12     as Exhibit 25, I believe.

13                 (Plaintiffs' Exhibit 25, Memorandum, was  
14     marked.)

15     BY MS. SHAH:

16          Q     So are you familiar with this memo?

17          A     I am, yes.

18          Q     What is this memo about?

19          A     This was some work that was being done  
20     looking at, you know, sort of various response  
21     propensity type things for the ACS, I believe.

22          Q     What do you mean by various response



1 Q Where enumerators are --

2 A Temporary.

3 Q And are they trained differently, field  
4 representatives?

5 A Well, field representatives are trained  
6 to do the surveys that they conduct. So they go  
7 out in the field and do far more complex surveys  
8 than the decennial. So they're trained for each  
9 of surveys that they do. So they do the current  
10 population surveys, the SIPP, the ACS, the  
11 American Housing -- you know, there's a long list  
12 of surveys that they do that are either  
13 Census Bureau surveys or surveys we do on a  
14 reimbursable basis for government agencies.

15 Q So is it fair to say field  
16 representatives have more training than  
17 enumerators? 401/403

18 A They would certainly have more experience  
19 and training.

20 Q And then on Page 2, field representatives  
21 have asked for additional training to help them  
22 overcome these fears regarding confidentiality and

1 So there's a lot of stuff in here that doesn't  
2 refer to the technical characteristics that Census  
3 did not opine on.

4 BY MS. SHAH:

5 Q And from the technical perspective, was  
6 there anything that they opined on?

7 MS. BAILEY: Objection. Vague.

8 THE WITNESS: No. I think we took what  
9 we -- what we perceived from this letter as the  
10 technical requirements from DOJ for block-level  
11 data and tried to come up with a solution for that  
12 problem.

13 BY MS. SHAH:

14 Q And did you discuss this letter with any  
15 knowledge of jurisdictions actually going about  
16 drawing districts?

17 A No, not really. I mean, we have people  
18 in our redistricting office that had some input on  
19 this. But they provide the data. They're not  
20 involved in redrawing districts.

21 Q Did you discuss this letter with anyone  
22 who had knowledge or experience with litigating

1 Section 2, voting rights cases?

401/403

2 A No.

3 Q And what was your understanding of why  
4 DOJ needs to have this citizenship question asked  
5 on the short form?

6 A So they needed more geographically  
7 granular data. So right now, the no PL94 data at  
8 the block level, these data for the five-year ACS  
9 are at the block group level, and they have to  
10 model them down to the block level. They just  
11 wanted the data at the same level of geographic  
12 specificity that would be more accurate data.

13 Q Okay. If you look at the bottom of  
14 Page 2, the General Counsel sets out a bulleted --  
15 bulleted reasons why he believes the ACS does not  
16 yield annual data for enforcing the Voting Rights  
17 Act. The first bullet contends jurisdictions  
18 conducting redistricting use -- redistricting use  
19 total population data from Census to determine  
20 compliance with the Constitution's one-person,  
21 one-vote requirement. What is your understanding  
22 of that requirement?



1 on what we're going to do. So --

2 Q And what would be the purposes of talking  
3 points in this context?

4 A So to be able to have a clear message  
5 about, you know, how we were responding with the  
6 citizenship -- the process that we were following  
7 on the citizenship question.

8 Q And if I can turn your attention back to  
9 the draft, which is marked as Exhibit 28, do you  
10 recall if that letter and the content in that  
11 letter seemed to you to be an appropriate basis  
12 for creating talking points to address questions  
13 about the citizenship question?

401/403

14 A Yeah. And it wasn't about the  
15 citizenship question. It was about what we were  
16 doing in response to the question. So --

17 Q And -- and to clarify, what you were  
18 doing in response to DOJ's inquiry about --

19 A Right.

20 Q -- adding a citizenship question?

21 A Right.

22 So this seems to be a consistent -- so I

1 don't remember if this is exactly what we agreed

2 to, but --

401/403

3 Q And the middle of this letter, it goes  
4 through five steps, correct?

5 A Uh-huh.

6 Q And those five steps are summarized in  
7 numerous documents that we've looked at today --

8 A Right.

9 Q -- for your deposition?

10 A Yes.

11 Q Is this a standard process that the  
12 Census Bureau uses for adding questions to the ACS  
13 and then also to the decennial census?

401/403

14 A Correct.

15 Q Okay. I want to mark this as Exhibit 30?  
16 (Plaintiffs' Exhibit 30, Letter, was  
17 marked.)

18 BY MS. BRANNON:

19 Q Are you familiar with this document?

20 A I'm not sure if I've seen this or not,  
21 but I think I've seen other letters like this,  
22 though.

1 Q Would you typically approve a letter like  
2 this?

3 A I mean, especially if it's a form and we  
4 were discussing it in, you know, sort of the  
5 correspondence group, I probably would have seen  
6 it.

7 Q Would your log show whether you approved  
8 this letter or not?

9 A I'm not sure that it would show that I  
10 approved it or not.

11 Q Would it show whether you received a  
12 letter that was dated January -- January 31, 2018?

13 A So it -- it would show if I received a  
14 letter, yes.

15 Q Would it show if you received a draft of  
16 a letter that was to go out on January 31, 2018  
17 from Secretary Ross?

18 A That, I'm not sure.

19 Q This letter is markedly different than  
20 what we have marked as Exhibit 28, correct?

21 A Correct.

401/403

22 Q And none of the five steps are



1 removed -- or all of the five steps were removed,  
2 none of those are in the January 31, 2018 letter?

3 A That's correct. 401/403

4 Q Do you remember any discussions with  
5 anyone at Commerce about the changes of this  
6 letter to the draft of the version that Secretary  
7 Ross sent out?

8 A I don't -- not offhand, no.

9 Q Would you have had any conversations with  
10 Karen Dunn Kelley about this letter?

11 A I don't know.

12 Q I'm going to turn your attention to what  
13 I'm going to mark as Exhibit 31.

14 (Plaintiffs' Exhibit 31, Email, was  
15 marked.)

16 BY MS. BRANNON:

17 Q Are you familiar with this document?

18 A This sounds like KDK responding to my  
19 original email that we discussed earlier.

20 Q And she says, "Gentlemen, can you please  
21 sort through the issues below?"

401/403/802

22 Do you know what she meant by that?

1           A    I think we were trying to track down the  
2 changes, yeah.

3           Q    And when you say track down the changes,  
4 these were changes that were made by somebody at  
5 the Commerce Department? 401/403

6           A    I think so, yeah.

7           Q    And that would have been at some point  
8 before January 24, 2018?

9           A    The changes?

10          Q    Yes.

11          A    Yeah. I assume so, yeah.

12          Q    And do you have any recollection as to  
13 whether you received those changes?

14          A    So I don't recall, per se.

15          Q    Do you remember having any conversations  
16 with anyone about -- at Commerce about the content  
17 of the letters that Secretary Ross was sending to  
18 members of Congress in response to inquiries about  
19 the citizenship question?

20          A    No. I mean, again, this was -- you know,  
21 there was lots going on. This was not a -- you  
22 know, a key focus point. We were trying to

1 A I think this looks familiar.

2 Q I'm going to direct your attention to the  
3 email from Burton Reist on January 24, 2018, which  
4 I acknowledge you were not cc'd on, but I just  
5 have a question for you, if you know. In the  
6 middle of the email that's at the bottom of  
7 Page 8558, it says, "We pulled the residence  
8 criteria topics from the PMR."

9 What is the PMR?

10 A Program management review. We do one  
11 quarterly for the decennial census.

12 Q Was there a program management review  
13 done in January of 2018?

14 A I have to go back and look, but there  
15 probably would have been one in there -- at some  
16 point. 401/403

17 Q Okay. And then if you'll turn the page  
18 over to 8559 it says, "We also haven't heard  
19 anything about the response to the  
20 senator" -- "about the response to Senator Harris  
21 on the citizenship question. That response is to  
22 inform the talking points we use on this issue for



1 the PMR."

2 A Correct.

3 Q And that's the performance management  
4 review?

401/403

5 A Program management review.

6 Q Program management review.

7 A Right. And we're only two days out from  
8 the PMR, so there you go.

9 Q Right. Okay. So we're only two days  
10 out, so there was one coming?

11 A So there's some urgency that we were  
12 going to be expected to say something about this.

13 Q Right. Are you involved in the drafting  
14 materials for the PMR?

15 A No, we're not directly.

16 Q Not directly.

17 A No.

18 Q Do you have any awareness of whether the  
19 materials drafted for the PMR that was done two  
20 days after this email was sent relied on that  
21 draft email -- that draft letter from  
22 Senator Harris?

1 Q In the middle, the second thing down says  
2 testing, correct?

3 A Uh-huh.

4 Q Let me go back. This looks similar to  
5 the five points that were outlined in that draft  
6 letter to Senator Harris, correct?

401/403

7 A Correct.

8 Q So it doesn't appear that there were any  
9 changes that were made between the time that email  
10 took place on the 24th and when this presentation  
11 was done?

12 A That's correct.

13 Q So then I'm going to direct your  
14 attention to the testing, which is the second  
15 point down on Page 23.

16 A Right.

17 Q And it says, "Question performance is  
18 evaluated in a field test."

19 A Uh-huh.

20 Q What do you mean -- what is meant by  
21 question performance?

22 A So, again, there's sort of the cognitive

1           A    I don't understand the -- so we've jumped  
2   to NRFU here?

3           Q    Yes.

4           A    So are you talking about NRFU generally  
5   or are you --

6           Q    Yes. When you're doing field testing,  
7   are you looking for things like the efficacy of  
8   nonresponse follow-up?

9           A    So I don't know what you mean by  
10   efficacy, per se. But certainly in the, like,  
11   2018 end-to-end field test --

12          Q    Yes.

13          A    -- we tested our systems and procedures  
14   for NRFU during that test.

15          Q    And when you say you tested your system  
16   and procedures, that was to do an evaluation of  
17   how effective the nonresponse follow-up was during  
18   the 2018 end-to-end test?

401/403

19          A    Yes.

20          Q    So that is something you would learn from  
21   a field test?

22          A    Yes. And primarily to see that the



1 systems and procedures worked as planned.

2 Q And is that an evaluation as part of the  
3 evaluation that is currently going on right now  
4 for -- of the results of the end-to-end field  
5 test? 401/403

6 A Yes.

7 Q All right. I'm going to switch gears,  
8 and I just have a few more questions, and then I  
9 think we have one more person who is going to  
10 -- and then we'll be done with you for tonight.

11 I think you testified earlier citizenship  
12 is on the CPS, this --

13 A Current Population Survey.

14 Q -- Current Population Survey; is that  
15 correct?

16 A That's my understanding, yes.

17 Q And then I think you said the  
18 Census Bureau is tracking item nonresponse rates  
19 on the CPS to the citizenship question; is that  
20 correct?

21 A We tracked item nonresponse rates for all  
22 of the questions.

1 A I'm not sure.

2 MS. BRENNAN: That's all I have. Can we  
3 go off the record just for a minute?

4 VIDEOGRAPHER: Time is 5:07 p.m. We're  
5 going off the record.

6 (Off the record.)

7 VIDEOGRAPHER: The time is 5:17 p.m.  
8 We're back on the record.

9 Please proceed, Counsel.

10 EXAMINATION BY MR. CASE:

11 Q Dr. Jarmin, my name is Andrew Case. I'm  
12 from Manatt Phelps & Philips. We represent the  
13 City of San Jose and Black Alliance for  
14 Just Immigration in the Northern District of  
15 California, Case Number 18-CV-2279.

16 Did the Census Department submit a list  
17 of topics to be included in the 2020 decennial  
18 census to Congress in March of 2017? 401/403

19 A Yes.

20 Q Was citizenship one of those topics?

21 A Not for the census.

22 Q Not for the short-form decennial census?

1 A Correct.

2 Q Did you discuss with anyone at Commerce  
3 that submission prior to receiving the letter from  
4 the DOJ in December?

5 A So I did not. So I wasn't involved in  
6 the submission of that document prior to that, and  
7 that probably would have been when those  
8 conversations would have taken place, so. 401/403

9 Q After you took over, as we'll call it,  
10 acting director --

11 A Much easier.

12 Q -- did you have conversations about the  
13 submission of topics that had previously been  
14 made?

15 A Not that I recall, no.

16 (Plaintiffs' Exhibit 34, Email, was  
17 marked.)

18 BY MR. CASE:

19 Q Give you a document that's been marked as  
20 Exhibit 24. This is Bates number 3470. I know  
21 you're not on the forwarded email, but you're on  
22 the email below dated October 11, 2017. I'd like



1 you first to identify the people on this email.

2 A On which one?

3 Q The one below, the October 11th one.

4 A So Joanne Crane is our CFO.

5 Lisa Blumnerman was, I think, still at that time  
6 the head of decennial, and Enrique as acting  
7 deputy director.

8 Q And in the subject line, there's two  
9 questions from Molly McCarthy on citizenship as a  
10 topic. Who is Molly McCarthy?

11 A She's a Hill staffer, I believe.

12 Q For whom?

13 A I don't know.

14 Q Do you know which party?

15 A No.

16 Q Okay. And the first question, in short,  
17 is whether the topics are closed or whether a new  
18 question can be added that's not one of the  
19 topics. Is that a fair summary of that? 401/403

20 A Yes.

21 Q And what was your answer to that question  
22 in October of 2017?

1           A    You know, I don't recall what we told  
2   Molly at the time.

401/403/802

3           Q    What did you believe the answer to that  
4   question was in October of 2017?

5           A    I think -- in October of 2017, I think we  
6   thought it was closed.

7           Q    Okay. And you see that Enrique Lamas  
8   sends this to Karen Dunn Kelley?

9           A    Correct.

10          Q    Did he speak to you about sending this to  
11   Karen Dunn Kelley?

12          A    I mean, I think it was something that we  
13   often -- you know, we like to keep Karen in the  
14   loop on things, and so we got an inquiry from the  
15   Hill, so we let her know. I don't recall talking  
16   to Enrique directly about it, but, obviously, I  
17   would have agreed, obviously, to forward it to  
18   her.

19          Q    Did it surprise you that someone from the  
20   Hill was asking about adding a citizenship  
21   question to the census in October of 2017?

22          A    I don't think -- you know, again, this

1           A     Yes.  That's -- that's the one we  
2     discussed this morning.

3           Q     So at least two?

4           A     Yeah.

5           Q     Okay.  During that second  
6     meeting -- you're talking about the February 19th  
7     letter, but I think it was a January 19th letter.  
8     Is that -- is there a February 19th letter, as  
9     well?

10          A     I think -- wasn't it February 19th?

11          Q     Well, there's a lot of letters,  
12     but -- during the meeting where Secretary Ross  
13     expressed concern about imputation --

14          A     Right.

15          Q     -- whatever day it took place on, did  
16     Secretary Ross state that he had scientific data  
17     to suggest that asking the citizenship question  
18     would provide better information than imputation?

19          A     So the total number of cases that you  
20     would have to impute asking the question is lower  
21     than if you used administrative data.

22          Q     What did Secretary Ross say regarding his



1 concerns about imputation?

2 A I think his concern is the same concern  
3 that we all have, that imputed data is lower  
4 quality than nonimputed data. 401/403/802

5 Q Did he say there was any scientific basis  
6 he was relying on that had -- that said asking the  
7 question would produce better results?

8 A He did not cite any, no.

9 Q And did anyone from Census cite data that  
10 imputation would provide better results?

11 A So I think that the comparison on our end  
12 was that -- that there would be an increase in the  
13 NRFU workload, and that, you know, for some  
14 cases, you know, the administrative data appeared  
15 to be more accurate than self-response data.

16 Q Does the Census impute data for any items  
17 that are on the ACS and are not on the  
18 short-form census?

19 A We impute data for almost every item,  
20 yeah.

21 Q And did Secretary Ross express any  
22 concern about the quality of that data?

1 A He did not.

2 Q Grandparents as caregivers?

3 A We don't -- weren't discussing that,  
4 though. 401/403

5 Q Has he ever -- has anyone from Commerce  
6 ever expressed concern about imputed data for  
7 items on the ACS that weren't on the short form?

8 MS. BAILEY: Objection. Foundation.

9 THE WITNESS: No.

10 BY MR. CASE:

11 Q In either of the meetings that you had  
12 where Secretary Ross was present, did he say that  
13 he had been interested in the question before the  
14 DOJ letter?

15 A He did not.

16 Q Did he say that the Census Department had  
17 reached out to DOJ to create that letter?

18 MS. BAILEY: Objection. Assumes facts  
19 not in evidence.

20 THE WITNESS: That the Census Department  
21 had reached out --

22 BY MR. CASE:

1 A Right.

2 Q -- or when --

3 A Right.

4 Q -- the document is talking about

5 Alternative B will result in erroneous

6 enumerations.

401/403

7 Do you agree with that statement?

8 A Yes.

9 Q That Alternative B will result in

10 erroneous enumerations?

11 A Yes.

12 Q I'd like you to look to your Exhibit 16,

13 which is that March 1 letter I gave you before.

14 A Which one? This one?

15 Q Yeah, 9182. Look on Page 9816, if you

16 would, near the front, the cover letter.

17 Do you see the statement of how

18 Alternative D will include all the negative -- I

19 don't have it in front of me -- but all the

20 negative impacts --

21 A Right.

22 Q -- of Alternative B?



1 A Right.

2 Q Do you agree with that statement?

3 A Yes.

4 Q Do you agree, therefore, that

5 Alternative D will include the erroneous

6 enumerations for Alternative B?

7 A Yes.

8 Q Alternative D will result in erroneous

9 enumerations?

10 A Yes.

11 Q Just -- yeah. One quick thing on the  
12 actual decisional memo, which is Abowd Exhibit 12.

13 Page 5, which is 1317, on the top of the page,

14 fourth line down, "For the approximately

15 90 percent of the population who are citizens,

16 this question is no additional imposition."

17 What do you understand that sentence to

18 mean?

401/403

19 A So that's -- that those -- those people

20 will not have any objections to filling out the

21 questionnaire.

22 Q But it will be an imposition, won't it?

1 A All questions are an imposition, yes.

2 Q So -- okay. So, yes, it would be an  
3 imposition.

4 And one quick thing, on the front here,  
5 first page, bottom paragraph, "I also met with  
6 Census Bureau leadership on multiple occasions."

7 A Uh-huh.

8 Q How many times did you meet with  
9 Secretary Ross to discuss the DOJ request?

10 A I don't know the number. I'd have to go  
11 back and look at my calendar.

12 Q More than once?

13 A We've already established at least twice.

14 Q At least twice.

15 More than twice?

16 A So, you know, I mean, there was -- there  
17 was discussions where we didn't have much of a  
18 discussion, just that we were looking at it and  
19 then there was more meeting discussions that  
20 happened later.

21 Q What were the discussions where you were  
22 just looking at it like --

1           A     That we were beginning our process and  
2     doing a technical review.

3           Q     Were these face-to-face meetings or phone  
4     calls?

5           A     Face-to-face.

6           Q     Okay. You testified this morning with  
7     regard to finding people to speak to the  
8     Secretary, that you reached out to AEI because  
9     they are, quote, I believe this is correct, on the  
10    conservative side of D.C. politics; is that  
11    correct?

401/403

12          A     Correct.

13          Q     What about the citizenship question led  
14    you to believe that a group on the conservative  
15    side of the D.C. politics would be in favor of it?

16          A     Because that's where the support for the  
17    question has been generated in the past.

18          Q     And what groups in the past have  
19    supported this question?

401/403/802

20               MS. BAILEY: Objection. Calls for  
21    speculation.

22    BY MR. CASE:



1 Q The support that you just referenced?

2 A Republicans in Congress.

3 Q Which Republican specifically that you  
4 recall. 401/403/802

5 A I believe it was Vitter.

6 Q And what is Vitter's reason for adding a  
7 citizenship question, if you know?

8 MS. BAILEY: Objection. Calls for  
9 speculation.

10 THE WITNESS: I don't recall his exact  
11 reason.

12 BY MR. CASE:

13 Q But your association with the citizenship  
14 question is with the David Vitter amendment of  
15 2009?

16 A That's -- that -- my association?

17 Q You understand --

18 A I recall that that happened, yes.

19 Q Do you recall any groups that are  
20 associated with voting rights having support for  
21 the citizenship question on the census?

22 A No.

1 MR. CASE: Can I ask just one question  
2 based on that?

3 FURTHER EXAMINATION BY MR. CASE:

4 Q You testified that the process is for the  
5 short form. Is there any reason that there should  
6 be --

7 MS. BAILEY: Mischaracterizes testimony.

8 MR. CASE: I'm sorry.

9 BY MR. CASE:

10 Q Tell me what you understood the answer to  
11 be there about the five-step process.

12 A So we've not entertained additions to the  
13 long form of the census. The process was for the  
14 census generally -- I mean, the short form. So  
15 prior to the ACS, people requested new questions,  
16 they were put on the long form, not on the short  
17 form. The short form has gotten shorter over the  
18 years, not longer.

19 Q Is there any reason to engage a less  
20 robust process for the short-form census than for  
21 the long-form census?

401/403

22 A No.

1                                   \* \* \* \* \*

2                                   CERTIFICATE OF REPORTER

3                   I, KAREN LYNN JORGENSEN, RPR, CSR, CCR the  
4                   officer before whom the foregoing deposition was  
5                   taken, do hereby certify that the witness whose  
6                   testimony appears in the foregoing deposition was  
7                   duly sworn by me; that the testimony of said  
8                   witness was taken by me in stenotype and  
9                   thereafter reduced to typewriting under my  
10                  direction; that the said deposition is a true  
11                  record of the testimony given by said witness;  
12                  that I am neither counsel for, related to, nor  
13                  employed by any of the parties to the action in  
14                  which this deposition was taken; and further, that  
15                  I am not a relative or employee of any counsel or  
16                  attorney employed by the parties hereto, nor  
17                  financially or otherwise interested in the outcome  
18                  of this action

19                                   *Karen Lynn Jorgenson*

20                                  KAREN LYNN JORGENSEN, RPR, CSR, CCR

21                  Dated this 23rd day  
22                  of     August , 2018.