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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 STATES OF NEW YORK, COLORADO,
5 CONNECTICUT, DELAWARE, ILLINOIS,
6 IOWA, MARYLAND, MINNESOTA,
7 NEW JERSEY, NEW MEXICO,
8 NORTH CAROLINA, OREGON,
9 RHODE ISLAND, VERMONT,
10 and WASHINGTON, *et al.*,

11 Plaintiffs,

12 v.

18 Civ. 2921 (JMF)

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

Trial

15 Defendants.

16 -----x
17 NEW YORK IMMIGRATION
18 COALITION, *et al.*,

19 Consolidated Plaintiffs,

20 v.

18 Civ. 5025 (JMF)

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

23 Defendants.

24 New York, N.Y.
25 November 13, 2018
9:00 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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1 (Trial resumed)

2 THE COURT: Good morning. Welcome back. I hope you
3 all had a good weekend. I'm told that you have some issues to
4 discuss. I have a couple housekeeping matters myself, but why
5 don't one of you go first.

6 MR. HO: Your Honor, plaintiffs wanted to raise the
7 issue of some untimely disclosed expert testimony that it
8 appears the defendants intend to introduce.

9 At 5 o'clock last night plaintiffs received 25 slides
10 from defendants' demonstratives that apparently they intend to
11 use with Dr. Abowd in contravention with their own request for
12 24 hours' notice for any such materials.

13 A number of the slides contain references to what look
14 like new analysis that was not disclosed, including what appear
15 to be eight different undercount estimates, different scenarios
16 flowing from reduced response rates as a result of the
17 citizenship question. None of this material is in Dr. Abowd's
18 expert disclosures in response to plaintiffs' expert reports.
19 None of this analysis appears to have been conducted at the
20 time of Dr. Abowd's deposition, which was on the last day of
21 discovery in this case, when we specifically asked him whether
22 or not he had attempted to calculate any undercount amounts.

23 The slide references the sources for these estimates
24 as the post-enumeration memo -- which is not listed as one of
25 the references on which Dr. Abowd relied on in his expert

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1 disclosure -- and it also references "Abowd calculations" --
2 which are not in his expert disclosure and have never been
3 provided to plaintiffs.

4 When we received this last night around 5 o'clock, we
5 immediately inquired about this with the defendants, and asked
6 them to please identify where in Dr. Abowd's disclosures these
7 analyses flow from. The defendants ignored that request, but
8 they continued to correspond with us about other issues in the
9 case. We inquired again, and the defendants ignored that
10 again.

11 I think it goes without saying, your Honor, that this
12 is highly prejudicial to receive such substantial undisclosed
13 expert analysis on the day before the final witness at trial is
14 set to testify. It's trial by ambush, and we would ask that it
15 be excluded.

16 THE COURT: You will note that we have a new court
17 reporter here today, so it's doubly important that you identify
18 yourself before you say anything.

19 MR. EHRLICH: Sure. This is Stephen Ehrlich on behalf
20 of defendants.

21 Your Honor, I think plaintiffs misunderstand what is
22 happening here. This is a slide -- and I'm happy to pull that
23 up for your Honor, it's demonstrative 25 -- and these aren't
24 new analyses of projections or anything; it's simply
25 illustrations of how the net undercount may be affected

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1 changing certain assumptions. These are not projections of
2 anything. This was discussed extensively in Dr. Abowd's expert
3 deposition as well as his 30(b)(6), his fact deposition.

4 If we want to pull up PX 310 at page 4.

5 As your Honor is aware, his entire opinion is
6 basically about net undercount, and he is just talking about
7 how the net undercount can change if you change certain
8 variables. He is not providing new analysis or anything. He
9 is not projecting what it would be in certain scenarios for
10 2020. He is simply changing the 2010 calculations in the Mule
11 report and showing how it changes different components.

12 I'm happy to bring up the deposition transcript where
13 that was extensively discussed, if your Honor would prefer
14 that, but, needless to say, plaintiffs were more than well
15 aware of this. They brought it up themselves at his
16 depositions; this is nothing new. His entire opinion is about
17 net undercount. These are just illustrations, your Honor.

18 THE COURT: All right. Is he the third witness today
19 I assume?

20 MR. HO: That's right, your Honor.

21 THE COURT: OK. So can you list for me the pages of
22 the deposition? And by the deposition I mean his expert
23 deposition. I don't think his fact deposition or 30(b)(6)
24 deposition are the relevant considerations here.

25 MR. EHRLICH: Sure, your Honor. So page 220 to 221 in

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1 the expert deposition is when there was a discussion of how
2 this was disclosed; and then it was discussed extensively from
3 pages 223 to 229 thereafter.

4 THE COURT: And page 4 of his expert report? Or is
5 there some other portion?

6 MR. EHRLICH: So page 4 states the key conclusion, and
7 then essentially the entire rest of the expert report explains
8 why there would be no net undercount, which is simply all this
9 was meant to illustrate. It's not a new opinion on projecting
10 anything, just illustrations of examples.

11 (Continued on next page)

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1 THE COURT: Mr. Ho had mentioned eight slides, but you
2 showed me one.

3 MR. HO: There were 25 slides, your Honor, but the
4 most pertinent one I think is the final one. It is not clear
5 to us what a few of the other slides -- it looks like a few
6 slides before this one, 25 I think, 23 and 24, also may have
7 some of this analysis on it.

8 This whole table -- I'm sorry, not 23, but this entire
9 table, your Honor. None of these numbers appear anywhere in
10 Dr. Abowd's report, which makes some assertions about NRFU and
11 the ability of NRFU to counteract the undercount. But there is
12 absolutely nothing --

13 I'm sorry, your Honor. I believe when you referenced
14 the number eight, that was in response to my point about eight
15 different scenarios. This slide lays out eight different, I
16 think, undercount scenarios, A through H, under different
17 assumptions, and none of these calculations which are
18 referenced at the bottom of this slide appear anywhere in
19 Dr. Abowd's expert disclosures.

20 MR. COYLE: Your Honor, I would also just point out,
21 again, this is a 26(a)(2)(C) report. It doesn't need to detail
22 every single fact as a non-retained expert. The net undercount
23 was discussed extensively, including these components.

24 THE COURT: All right. Tell you what. Since he is
25 not likely to testify this morning, I'll take this under

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1 advisement, I'll look at the report, I'll look at the
2 deposition.

3 I think I would like that slide, if that can be
4 e-mailed to me. I assume you have the capacity to do that from
5 here with Courtroom Connect. If you can take care of that,
6 that would be great. Then we will get back to it later. I may
7 well just reserve judgment on it and decide after the fact, but
8 I am aware of the issue.

9 MR. GARDNER: Thank you, your Honor.

10 THE COURT: Anything else?

11 MR. GARDNER: There is one other.

12 This is Josh Gardner, G-a-r-d-n-e-r.

13 It relates to one of Dr. Handley's demonstratives. It
14 is PDX36. If we can pull that up.

15 PDX 36 appears to be a map of part of New York. This
16 does not appear, at least to our knowledge, anywhere in her
17 expert report. So, again, this seems like an untimely expert
18 opinion or analysis we have not seen before.

19 MR. HO: If I may, your Honor.

20 THE COURT: All right.

21 MR. HO: This was disclosed to the defendants more
22 than 24 hours before Dr. Handley's testimony in conjunction
23 with our requests, and it is purely a demonstrative. It is not
24 intended as evidence.

25 It is really just meant to show what census tracts,

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1 census block groups and census blocks look like. There is no
2 sort of calculations that Dr. Handley is going to perform about
3 these particular areas of geography in Queens. It just meant
4 to try to illustrate these geographic concepts and how they are
5 used for calculating citizen voting age population at the block
6 level.

7 MR. GARDNER: With that understanding, your Honor, we
8 would withdraw the objection.

9 THE COURT: Very good.

10 Anything else that you all have to raise?

11 MR. HO: Nothing else from plaintiffs, your Honor.

12 MR. GARDNER: Nothing from the defendants.

13 THE COURT: I have a few matters.

14 First, I did get your two stipulations over the
15 weekend, both of which I have so ordered. I don't know if they
16 are yet on the docket, but they will be shortly.

17 Second, I thank you for the updated exhibit list with
18 the dates on which exhibits were entered and whether they were
19 part of the administrative record. I think it would be super
20 helpful to me, and frankly I think to you as well, if you
21 submitted a revised version at the end of the evidentiary
22 portion of the trial just so that everybody is on the same page
23 with respect to what is in evidence, what is part of the
24 administrative record, and so on.

25 On that score, I got plaintiffs' motion with respect

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1 to the one exhibit or portions of the one exhibit that they
2 believe should be made part of the administrative record.
3 Defendants' response is due tonight at seven. I will resolve
4 that as soon as I can.

5 I did get, but have not yet had an opportunity to
6 review, plaintiffs' motion filed late last night concerning
7 certain exhibits that they want to admit into evidence.

8 How would you like to deal with that?

9 Do defendants want to respond in writing?

10 Should we argue it later today?

11 MR. GARDNER: Your Honor, we would like the
12 opportunity to respond in writing.

13 THE COURT: OK. When can you do that.

14 MR. GARDNER: Could we do it by tomorrow at seven?

15 THE COURT: Sure. That's fine.

16 MR. GARDNER: Thank you.

17 THE COURT: I do also just want to say, with respect
18 to your post-trial briefing and the motion filed last night
19 sort of underscores this, I think there are a lot of exhibits
20 that have been admitted or will be admitted that have not
21 actually been reviewed or even displayed in court.

22 In that regard, it would be very helpful to me if you
23 marshaled -- I mean, to the extent that you think that evidence
24 is important to the analysis -- I would underscore the need to
25 make reference to it and cite it and discuss it and argue from

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Handley - Direct

1 it in your post-trial briefing, which is to say that I will
2 certainly be going through everything, but I wouldn't want to
3 miss something that you think is something critical.

4 My deputy just noted to me that I think one of the
5 stips references the 502 docket. Just a reminder, that is now
6 closed. You don't need to include that on any filings.

7 Anything else?

8 Very good.

9 Plaintiffs, please call your next witness.

10 MR. HO: The plaintiffs call Dr. Lisa Handley.

11 LISA HANDLEY,

12 called as a witness by the Plaintiffs,

13 having been duly sworn, testified as follows:

14 THE DEPUTY CLERK: Please state and spell your full
15 name for the record.

16 THE WITNESS: Lisa, L-i-s-a, H-a-n-d-l-e-y.

17 THE COURT: You can proceed.

18 DIRECT EXAMINATION

19 BY MR. HO:

20 Q. Good morning, Dr. Handley.

21 A. Good morning.

22 Q. I would like to start by asking you a few questions about
23 your professional background.

24 Do you have a demonstrative slide with some of the
25 highlights of your background?

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Handley - Direct

1 A. I do.

2 Q. Could we please bring up PDX 31.

3 Dr. Handley is this the slide we were talking about?

4 A. It is.

5 Q. Dr. Handley, what are your current occupations?

6 A. I am a consultant. I specialize in voting rights in
7 redistricting and in electoral district design more generally.
8 I do both on behalf of myself as a self-employed consultant and
9 for a company I co-founded 20 years ago called Frontier
10 International.

11 MR. HO: I think the court reporter was looking to see
12 if you can get a little bit slower to the microphone.

13 THE WITNESS: The chair is in opposition. I can't
14 seem to move it.

15 Does this help at all?

16 THE COURT: If you're a couple inches away from the
17 microphone, that is sort of the ideal. If you need to move
18 that, that's fine. If you need some help with the chair, we
19 can try with that.

20 THE WITNESS: Bringing the chair down would be cool,
21 but I'm afraid to do this.

22 MR. HO: Permission to approach, your Honor?

23 THE COURT: You try it.

24 THE WITNESS: I'm up too high. I can see myself
25 falling.

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Handley - Direct

1 MR. HO: Please don't do that.

2 (Pause)

3 THE WITNESS: This should help.

4 How's that? Can you hear better?

5 THE COURT: Just make sure you speak loudly, clearly,
6 and as much into the microphone as you can.

7 Go ahead.

8 BY MR. HO:

9 Q. You mentioned a company that you co-founded, Frontier
10 International Consulting.

11 Could you say a little bit about that?

12 A. I established this company with some colleagues. Mostly we
13 work with the UN and we do work in post-conflict countries or
14 in countries that are transitioning to democracy.

15 Q. Do you hold any academic positions?

16 A. I do. I am have visiting research academic at Oxford
17 Brookes in the UK.

18 Q. Do you have any other teaching experience?

19 A. I have taught on and off in the past, including some
20 graduate seminars, at George Washington University on
21 representation and redistricting.

22 Q. Have you received any grants?

23 A. I, along with a colleague of mine, Bernard Grofman,
24 received a National Science Foundation grant to look into
25 comparative redistricting practices.

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Handley - Direct

1 Q. I would like to bring up PX 331, purely for demonstrative
2 purposes, Dr. Handley's expert report in this case. I would
3 like to bring up pages four and five of her c.v., which are at
4 pages 26 and 27 of the PDF.

5 Dr. Handley, have you written any books?

6 A. I've written -- I've coauthored four books.

7 Q. Tell us about the first book that you wrote.

8 A. The first book Minority Representation and a Quest for
9 Voting Equality evolved out of my dissertation, which mapped
10 the history of the law cases leading up to Thornburg v.
11 Gingles, and then discusses some cases subsequent to Thornburg,
12 focusing on the three prongs in Gingles.

13 Q. Were those cases under the Federal Voting Rights Act?

14 A. Yes.

15 Q. Have you authored any academic articles?

16 A. I have.

17 Q. Roughly, how many?

18 A. There are -- I think there are 12 of them.

19 Q. Are any of them peer-reviewed?

20 A. All of the articles, except for the law review articles,
21 are peer-reviewed. So the Legislative Studies Quarterly,
22 American Politics Quarterly, Journal and Politics, those all
23 would have been peer-reviewed.

24 Q. Are any of your publications in the area of minority voting
25 rights?

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Handley - Direct

1 A. They are, I think.

2 Q. You mentioned law review articles.

3 Could you describe one of your law review articles for
4 the court?

5 A. Yes.

6 The one I'm most proud of is the North Carolina law review
7 piece that is entitled Drawing Effective Minority Districts: A
8 Conceptual Framework and Some Empirical Evidence.

9 This law review piece talks about how to go about doing a
10 district-specific functional analysis of whether a district
11 will provide minorities with an effective opportunity to elect
12 candidates of choice.

13 Q. Roughly how long have you been working in the areas of
14 redistricting and minority voting rights?

15 A. Oh, a long time. 30 years.

16 Q. Lets bring up page two of your c.v., which is page 24 of
17 this PDF.

18 Dr. Handley, what is this a list of?

19 A. This is a list of clients since 2000, when I started
20 keeping these kinds of lists.

21 Q. Clients, is it limited to domestic?

22 A. U.S., yes. Sorry.

23 Q. Have you done any redistricting related consulting work on
24 behalf of state and local governments?

25 A. I have.

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Handley - Direct

1 Q. Could you give us some examples?

2 A. Massachusetts, Maryland, Miami-Dade, Vermont.

3 Q. Kansas?

4 A. Kansas.

5 Q. Have you done any redistricting related work on behalf of
6 redistricting commissions?

7 A. I have. Alaska and Arizona, Colorado, those were all
8 redistricting commissions.

9 Q. Have you done redistricting related work on behalf of
10 private plaintiffs bringing Voting Rights Act litigation?

11 A. Yes. Arkansas is an example of that.

12 Q. Have you done any consulting work on behalf of the
13 United States Department of Justice?

14 A. I've done several cases in which I've served as an expert
15 for the voting rights section in the Department of Justice.

16 Q. Without going into too much detail, could you just give us
17 a few examples of some of your international work?

18 A. As I mentioned, I mostly do post-conflict. So I've been to
19 places like Afghanistan, Sudan, Sierra Leone, Liberia. If
20 there has been a war, chances are I've been invited to go there
21 anyway.

22 Q. What kinds of work do you do there?

23 A. Electoral system design, and if the country has decided to
24 go back to an electoral system that features constituencies or
25 single-member districts, I help to draw them.

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Handley - Direct

1 Q. In your US-based work, have citizenship rights ever been a
2 salient issue in your analysis?

3 A. Yes.

4 In cases in which I work with Hispanics as the minority of
5 interest, yes, citizenship has been an issue.

6 Q. Has your work where citizenship has become an issue
7 involved the use of census data?

8 A. Yes.

9 Q. Lets bring up page eight of your c.v., which is page 30 of
10 the PDF.

11 Dr. Handley, what is this a list of?

12 A. It is a list of court cases I've been involved in since
13 2005.

14 Q. Roughly how many cases have you testified in as an expert
15 since 2005?

16 A. 11.

17 Q. Were all of these cases, cases that involved minority
18 voting rights issues?

19 A. Yes.

20 Q. Did all of the cases in which you testified since 2005
21 involved issues under the Federal Voting Rights Act of 1965?

22 A. Yes.

23 Q. Did the court, in any of the 11 cases in which you have
24 testified dating back to 2005, deem you unqualified to be an
25 expert on minority voting rights issues?

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Handley - Direct

1 A. No.

2 Q. Did your work in any of these cases involve drawing
3 redistricting plans featuring districts in which minorities
4 constitute a majority of the citizen voting age population, or
5 CVAP?

6 A. Yes.

7 Q. Could you identify those cases?

8 A. Lopez v. Abbott is one. Perez v. Abbott. State of
9 Texas v. U.S. I think that's it.

10 Q. What about the last case on the list, Dr. Handley?

11 A. What is the last case?

12 Q. Did that case also involve drawing a redistricting plan
13 featuring a district in which minorities constituted a majority
14 of the citizen voting age population?

15 A. Yes, it did.

16 Now, I was not the demographer in the case as it
17 went to trial, so I didn't draw the districts then. I have
18 subsequently drawn districts for Port Chester just this year,
19 but I did not draw the districts when it was in trial.

20 Q. The cases that you've identified that involved drawing
21 districts in which minority voters constituted a majority of
22 the citizen voting age population, did these cases involve the
23 Census Bureau data?

24 A. Yes.

25 Q. Were a number of the cases in which you testified cases in

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Handley - Direct

1 which you testified for the United States Department of
2 Justice?

3 A. Yes.

4 Q. Do you have a slide of Department of Justice cases brought
5 under Section 2 of the Voting Rights Act?

6 A. I do.

7 Q. Could we bring up PDX 32.

8 Is this the slide?

9 A. Yes.

10 Q. Is this a list from the Department of Justice website of
11 Section 2 cases brought by the Department of Justice?

12 A. It is.

13 Q. Are you familiar with the first case on this list, the
14 United States v. City of Eastpointe?

15 A. I am.

16 I am an expert for the Department of Justice in that
17 case.

18 Q. Are you familiar with the third case listed, United States
19 v. Texas in the Western District of Texas?

20 A. I am.

21 Again, I was an expert for the Department of Justice
22 in that case.

23 Q. Are you familiar with the sixth case listed, United States
24 v. Euclid City School District?

25 A. Yes, I am.

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1 Again, I was an expert for the Department of Justice
2 in that case.

3 Q. Are you familiar with the case second from bottom on the
4 screenshot, United States v. Port Chester?

5 A. Yes.

6 Again, I was an expert for the Department of Justice
7 in that case.

8 Q. Are you familiar with the last case listed on this
9 screenshot, United States v. City of Euclid?

10 A. Yes.

11 Again, I was an expert for the Department of Justice
12 in that case.

13 Q. So in all, Dr. Handley, how many times have you served as
14 an expert to the United States Department of Justice in cases
15 brought under Section 2 of the Voting Rights Act dating back to
16 the year 2006?

17 A. Five.

18 Q. Were citizenship rates salient to the analyses that were
19 conducted in any of these cases?

20 A. We already talked about the Village of Port Chester,
21 although I didn't draw the boundaries. Citizenship was an
22 issue. It is also the case that the State of Texas court case,
23 that one and a Section 5 case I did for the Department of
24 Justice, citizenship was an issue.

25 Q. Could we bring back up PDX 31.

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Handley - Direct

1 Dr. Handley, how many times have you testified as an
2 expert in voting rights cases overall?

3 A. About 25 times.

4 MR. HO: Your Honor, at this time, the plaintiffs
5 offer Dr. Handley as an expert in redistricting minority voting
6 rights and the use of census data in assessing minority voting
7 opportunity under the Voting Rights Act?

8 THE COURT: Any objection?

9 MR. GARDNER: Defense have no objections beyond those
10 expressed in the motion in limine which you ruled on before
11 trial.

12 THE COURT: Thank you.

13 Those are preserved and she is so certified.

14 MR. HO: Thank you, your Honor.

15 BY MR. HO:

16 Q. Dr. Handley, do you have a slide summarizing what you were
17 asked to do in this case?

18 A. I do.

19 Q. Could you bring up PDX 33.

20 Is this the slide, Dr. Handley?

21 A. Yes.

22 Q. What were you asked to do in this case?

23 A. I was asked whether, in my expert opinion, working on these
24 kinds of issues, whether the current U.S. Census Bureau data,
25 that is decennial census data and American Community Survey

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Handley - Direct

1 data, was sufficient to determine whether the citizenship rate
2 of minority impacts their ability to participate and elect
3 their candidates of choice to office.

4 Q. Do you have a slide summarizing your opinion, Dr. Handley?

5 A. I do.

6 Q. Could we bring up PDX 34.

7 Is this that slide?

8 A. It is.

9 Q. What is your overall opinion in this case, Dr. Handley?

10 A. That currently available census data has proven perfectly
11 sufficient to ascertain whether an electoral system or
12 redistricting plan dilutes minority votes.

13 Q. I want to ask you now some questions about how you go about
14 conducting the sort of analysis that you do in cases brought
15 under Section 2 of the Voting Rights Act.

16 I want to start by asking you, you referenced this earlier,
17 the Gingles preconditions. I believe you're familiar with that
18 term?

19 A. I am.

20 Q. Do you have a slide summarizing what the Gingles
21 preconditions are?

22 A. I do.

23 Q. Could we bring up PDX 34.

24 Is this that slide, Dr. Handley?

25 A. Yes.

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Handley - Direct

1 Q. As you understand them, what are the Gingles preconditions
2 for liability under Section 2 of the Voting Rights Act?

3 A. In this Supreme Court opinion, justices laid out a
4 three-pronged test. They called them preconditions that
5 minority must satisfy in order to prevail in a Section 2 claim.

6 The three preconditions are:

7 First, the minority group must be sufficiently large
8 and geographically compact to constitute a majority in a
9 single-member district.

10 Second prong is that the minority group must be politically
11 cohesive.

12 And the third prong is the minority group must be able to
13 demonstrate that the white majority votes as a block, so as to
14 usually defeat the minority preferred candidates.

15 Q. I would like to ask you about the first Gingles
16 precondition.

17 Could you elaborate on it a bit and explain what it is
18 designed to show?

19 A. Yes.

20 The idea behind the first prong is if there is not a
21 remedy available, then the exercise would be somewhat
22 pointless. So the minority group has to show that a remedy,
23 that is a single-member district in which they are a majority,
24 it is possible to draw such a district.

25 Q. When you conducted analysis under the first Gingles prong,

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Handley - Direct

1 what kind of data do you use?

2 A. It depends on whether there are Hispanics involved. But
3 essentially the decennial census, and if you're looking at
4 citizenship rates because Hispanics are involved, then you
5 would also look at, depending on when in time we're talking
6 about, either the long form or the ACS data.

7 Q. Could you tell us a little bit about the second and third
8 Gingles' preconditions?

9 Elaborate on them a bit and what they are designed to
10 show.

11 A. The second precondition is designed to show that minorities
12 have a distinct interest, that is, in fact, different than the
13 majority, and the third precondition is required in order to
14 show that the minority candidates are being defeated. And both
15 of these, the linchpin of both of these, is doing a racial
16 block voting analysis, which is what I typically do in a Voting
17 Rights Act claim. That is, analyzed voting patterns by race to
18 determine if minorities are cohesive and if whites are block
19 voting against minorities.

20 Q. And at a high level, without going into too much detail,
21 what kind of analysis -- I'm sorry -- what kind of data do you
22 rely on when you conduct an analysis under the second and third
23 Gingles preconditions?

24 A. A database is created in which you are using both the
25 demographic composition of the election precincts and the

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1 voting patterns of the precincts. You do a series of
2 statistical analyses to determine what percentage of, say,
3 blacks are voting for a particular candidate and what
4 percentage of whites vote for that candidate. You need the
5 demographic composition of the precincts.

6 The best thing to have is turn-out by race, but not
7 very many states have that. The second best is registration
8 rates by race. A few more states have that. If you don't have
9 either of those, you use voting age population by race or
10 ethnicity. That relies on the census.

11 Q. When you assess whether or not a districting plan or
12 electoral arrangement actually provides minority voters with an
13 opportunity to elect their preferred candidates, how important
14 is it to know the precise citizen voting age population by race
15 and ethnicity at the individual census block level?

16 A. The larger the district you're drawing, the less important
17 it is. If you're drawing congressional districts, for example,
18 or judicial districts, the chances of even needing block-level
19 data is somewhat slim depending on where you're drawing these
20 districts.

21 If you're drawing in a smaller jurisdiction, you certainly
22 could use block-level data, but I should say that in order to
23 determine if a remedy is effective or not, the demographic
24 composition of the district is not very important. What is
25 more important is the electoral behavior of those within the

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1 district, that is, what are the participation rates of the
2 whites and the minorities and how cohesive are the minorities
3 in support of their candidates and how much white cross-over
4 vote can they expect.

5 This sort of functional district-specific analysis will
6 tell me if a district will be effective or not.

7 Q. I would like to ask you now some more questions about the
8 first Gingles precondition and the kind of analysis that you
9 conduct under it.

10 What is the most recent legal guidance that you rely on
11 when conducting an analysis under the first Gingles
12 precondition?

13 A. The Supreme Court issued a decision in the Bartlett case
14 that indicated that with regard to block voters, you have to
15 look at the voting age population as opposed to, say, the total
16 population.

17 So it is voting age population when you're talking about a
18 minority that is black voters. There are a series of Appellate
19 Court decisions, or at least district court decisions, that
20 suggest when you're looking at Hispanics, you're looking at
21 citizen voting age population as opposed to just voting age
22 population.

23 Q. When you say looking at voting age population and looking
24 at citizen voting age population, you mean for purposes of
25 calculating a particular threshold?

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1 A. That's correct.

2 So the first prong of -- the first prong of Gingles under
3 Bartlett suggests that you need a 50 percent black voting age
4 population or a 50 percent Hispanic citizen voting age
5 population.

6 Q. Since the VRA was enacted in 1965, has CVAP, citizen voting
7 age population data, ever been available through the decennial
8 enumeration?

9 A. No. The last time that CVAP, that citizen information was
10 available, was 1950. The Act was passed in 1965, so the
11 analysis involved in a Voting Rights Act claim has always
12 rested on ACS data, if citizenship is an issue, or the long
13 form prior to the ACS.

14 Q. Lets talk about the long form.

15 What was the long form?

16 A. The long form was sent -- so every household got what was
17 called the short form, say, the ten questions -- I'm guessing
18 about the number of questions -- and it changed per census in
19 any case. But everybody received the short form that asked a
20 short number of questions, except for about one in, I think it
21 is, six households actually received a long form, which
22 included the same questions as the short form, but a great many
23 more questions, including a question on citizenship.

24 Q. Were citizenship data reported by the Census Bureau based
25 on responses to the long form, what you would describe as hard

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1 count data?

2 A. No. This was based on a sample. As I said, it was one in
3 six households, I believe.

4 Q. Did citizenship data reported from the Census Bureau based
5 on responses to the long form have standard margins of error
6 that are associated with sample-based estimates?

7 A. Well, they did. They weren't reported, but certainly there
8 would have been margins of error associated with them, yes.

9 Q. I want to ask about the levels of geography that this CVAP
10 data was reported at.

11 Before I do, are you familiar with different levels of
12 census geography, Dr. Handley?

13 A. I am.

14 Q. What are some examples?

15 A. Census tract, and then below that are block group, and then
16 the smallest unit are census block.

17 Q. Could we bring up PDX 36, please.

18 Dr. Handley, what is this?

19 A. This is a demonstrative I prepared a few days ago. I
20 simply went to the Census Bureau website and downloaded a map,
21 and this is the map that I downloaded.

22 Q. Lets pick a census tract.

23 What are the letters and numbers that refer to census
24 tracts on this map?

25 A. The CT census tracts, you can see there is CT 105, 103,

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1 101, 97, etc.

2 Q. Lets look at CT 101.

3 What are the boundaries of the CT 101?

4 A. They have been highlighted in red here. Everything within
5 the boundaries of the red lines is census tract 101.

6 Q. What is the relationship between census tracts and county
7 lines?

8 A. Well, census tracts would always fall within a county.
9 They wouldn't cross county lines.

10 Q. How many block groups are in census tract 101 here?

11 A. There are two block groups. You can see them identified as
12 BG 1 and BG 2.

13 Q. What is the boundary between BG 1 and BG 2?

14 A. It has been highlighted in, say, a bright teal maybe.

15 Q. Lets look at block group one within census tract 101.

16 How many individual blocks are within block group one?

17 A. There are nine blocks labeled 1000 through 1008.

18 Q. In terms of population size, how small or how big can an
19 individual census block be?

20 A. I don't know about these blocks, but in general, it can be
21 from zero to, I expect, thousands in some of these census
22 blocks.

23 Q. Is it common for a census block to have fewer than 100
24 people on it?

25 A. It is. I'm not sure about New York City, but certainly in

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1 other places, yes.

2 Q. Now, does the census long form still exist?

3 A. It does not. 2000 was the last year they used the census
4 long form.

5 Q. And what do you use now?

6 A. The ACS data is used for citizenship.

7 Q. Are citizenship data collected through the ACS and reported
8 by the Census Bureau, what you would describe as hard count
9 data?

10 A. No. Again, it is a sample.

11 Q. So do citizenship data from the ACS have standard margins
12 of error associated with sample-based estimates?

13 A. They do, and they are reported.

14 Q. How does the -- I'm sorry. Let me ask you: At what level
15 of geographic specificity are ACS citizenship data reported at?

16 A. The block group level, not the block level.

17 Q. What about long form data, what level of geographic
18 specificity were the citizenship data from the long form
19 published at?

20 A. The same. The block group level.

21 Q. How does the ACS compare to the long form in terms of
22 frequency?

23 A. Long form, of course, was done at the same time as the
24 census, so every ten years.

25 The ACS is a rolling annual sample survey, so every

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1 year is when the ACS is done.

2 Q. Are there different kinds of ACS estimates?

3 A. Do you mean, say, for example, one-year and five-year?

4 Q. Yes. Based on duration?

5 A. Yes, there are.

6 Q. What is the difference between one-year ACS estimates and
7 five-year ACS estimates?

8 A. The sample size for -- that is done annually is maybe one
9 in every 36 or 38 households, but by combining them over a
10 five-year period, you have a larger sample size. About one in
11 every eight households is included in the sample. And so these
12 estimates are more reliable at smaller areas of geography. The
13 one-year estimates are used for populations in 65,000 and over.

14 Q. Lets bring up Plaintiffs' Exhibit 504.

15 For the record, this has been admitted into evidence.

16 So this is a printout from the Census Bureau's website
17 entitled American Community Survey, when to use one-year,
18 three-year, or five-year estimates.

19 Do you see that, Dr. Handley?

20 A. Yes. Yes, I do.

21 Q. Lets look at the table on this screenshot.

22 As the Census Bureau explains it in its publicly available
23 information, how do the one-year and five-year estimates differ
24 in terms of sample size?

25 A. This says that the one-year is the smallest and the

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1 five-year is the largest and most reliable.

2 Q. How do the five-year ACS -- excuse me -- how do the
3 five-year ACS estimates compare to the long form in terms of
4 sample size?

5 A. The long form sample size was about one in every six
6 households, and the five-year sample size is one in every eight
7 households, I believe it is.

8 Q. Would you describe those as comparable?

9 A. Yes.

10 Q. You mentioned the geographic area that one-year ACS
11 estimates can be used for.

12 Is that on the table here?

13 A. I'm sorry. Repeat the question?

14 Q. Sure.

15 I think you mentioned the size of the -- in terms of
16 population, of the geographic areas that one-year ACS estimates
17 can be used for.

18 Is that on the table here?

19 A. It is.

20 Q. What does it say?

21 A. Data for areas with populations of 65,000 plus.

22 Q. What does the table say about the size of the population
23 areas for which five-year ACS estimates can be used?

24 A. It says data for all areas.

25 Q. Dr. Handley, could you give us an example of a recent case

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1 in which you testified as a voting rights expert where you
2 conducted an analysis under the first Gingles precondition
3 using citizenship data from the Census Bureau?

4 A. Yes.

5 The most recent was Lopez v. Abbott, a Texas statewide
6 judicial challenge by Hispanics.

7 Q. Do you have a slide or do you have a slide representing
8 some of your analysis in that case?

9 A. I do.

10 Q. Could we bring up PDX 37, please.

11 Dr. Handley, what is on the left side of this slide here?

12 A. This is a map of Texas. The county boundaries are marked.
13 It is shaded by percent Latino CVAP at the census tract level.
14 You can see the boundaries of the illustrative districts that
15 I drew to show that Hispanics met the first prong of Gingles in
16 this case.

17 Q. What was your goal in drawing these different district
18 lines here?

19 A. Again, to show that Hispanics could meet the first prong of
20 Gingles and that it was possible to draw at least one, and in
21 this case two districts, in which Hispanics, CVAP exceeded
22 50 percent.

23 Q. Was this map included in your expert report in the case?

24 A. It was.

25 Q. Lets talk about the right side, the table here.

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1 What is the table on the right side of this slide?

2 A. This is from -- this is data from the decennial census,
3 2010 decennial census, that shows the population and the
4 demographic composition in terms of voting age population for
5 the districts that I drew.

6 Q. Now, in addition to what is shown on the slide, did you
7 also analyze CVAP data to the districts that you drew?

8 A. I did.

9 Q. And do you have a slide showing that?

10 A. I do.

11 Q. Lets turn to PDX 38, please.

12 Is this that slide, Dr. Handley?

13 A. It is.

14 Q. The table on the right side, what is listed here and why
15 did you create it?

16 A. Again, to demonstrate that Hispanics met the first prong of
17 Gingles.

18 I calculated the percent Hispanic CVAP for each of the
19 illustrative districts.

20 Q. Did this table appear in your expert report in the case?

21 A. It did.

22 Q. When you started calculating the figures for this table,
23 what data did you start with?

24 A. The ACS data, five-year estimates, for Texas.

25 Q. At what level of geographic specificity did you start with

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1 when you started using the five-year ACS CVAP data?

2 A. 253 of the 254 counties are included whole within these
3 districted. So I could use the ACS estimates at the county
4 level for most of these districts.

5 The only county that had to be divided by district
6 boundaries was Harris County, where Houston is, which is, in
7 fact, too large a county to include within a single district.
8 So that county, I could not use county level ACS estimates for.

9 Q. Just so we understand here, Dr. Handley, for 253 out of
10 Texas' 254 counties, did you have to perform any kind of
11 estimation procedure to translate the ACS CVAP data as
12 published by the Census Bureau to any different level of
13 geographic specificity?

14 A. No.

15 I simply had to add up the county estimates to reflect
16 the district boundaries.

17 Q. OK. Lets talk about the one county for which you had to do
18 something, that was Harris County?

19 A. That's correct.

20 Q. So why didn't you just take the -- if you could explain,
21 again, the ACS CVAP data for Harris County as published by the
22 Census Bureau and just use that?

23 A. Again, because I had to divide Harris County across
24 district one boundaries. So I need the data at the level below
25 the county level.

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1 Q. When you went about conducting that work, at what level of
2 geographic specificity did you translate the ACS CVAP data for
3 Harris County; from what to what?

4 A. I brought it from actually the census tract down to the
5 block level in order to divide Harris County across the
6 districts.

7 Q. At a sort of high level of specificity -- I'm sorry -- a
8 high level of generality, excuse me, how do you go about
9 deriving individual block level CVAP data from the census tract
10 CVAP data?

11 A. I take the essentially the ratio of Hispanic voting age
12 population to citizen voting age population at the census tract
13 level, and I apply it to each block within that census tract.

14 It would be better maybe if I used some numbers and maybe
15 we had a picture up there.

16 Q. Sure. Lets bring back the map of Queens, PDX 36.

17 So lets use this map, and maybe I can give you some
18 assumptions and you can explain to the court how you go about
19 drawing this map -- calculating the individual census block
20 CVAP numbers.

21 Is that OK?

22 A. Yes.

23 Q. So to be clear, if we're looking at census tract 101, the
24 Census Bureau does provide CVAP and VAP by race and ethnicity
25 for the entire census tract, is that right?

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1 A. Yes.

2 Q. So lets assume that according to the ACS, census tract 101
3 has 1,000 voting age Hispanics in it. Lets also assume that of
4 those 1,000 voting age Hispanics, 900 of them are citizens.

5 A. Yes.

6 Q. OK?

7 A. These numbers are completely made up.

8 Q. Of course.

9 A. There is no relation to the map, but yes.

10 Q. Right.

11 So if those are the numbers that the ACS gives us,
12 what percentage of the voting age population in census tract
13 101, Hispanic voting age population, would be citizen?

14 A. 90 percent of Hispanics of voting age population would also
15 be citizens. 10 percent would not.

16 Q. Now lets look at an individual census block. Lets just say
17 census block 1001.

18 Now, there is no ACS CVAP data by race and ethnicity
19 for that individual block, right?

20 A. That's correct.

21 I am going to have to rely at this point on the
22 decennial census for the population makeup of the block.

23 Q. The decennial census gives you voting age population by
24 race and ethnicity for the block, is that right?

25 A. That's correct.

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1 Q. So lets say that the decennial census says that this census
2 block has 100 Hispanics of voting age.

3 How would you then go about estimating the number of
4 citizen voting age Hispanics for that census block?

5 A. I would use the ratio that I developed for the census
6 tract, and I would apply it here and I would assume that
7 90 percent of the Hispanics of voting age were also citizens.
8 So 90 would be citizens, 10 would not.

9 Q. Now, getting back to the Texas case and could we bring
10 PDX 38 back up.

11 THE COURT: Before you do that, I take it that
12 assumption essentially is better founded in a census tract that
13 is sort of eventually distributed racially or by citizenship,
14 is that correct?

15 I mean, that is to say that, to the extent that it is
16 heterogeneous or noncitizens or grouped in a particular -- I
17 mean, in theory, they could be grouped in a particular census
18 block, correct.

19 THE WITNESS: If you were -- if it were not the case,
20 then you could go down to the census block group level and use
21 the same methodology, the same approach, but even at a closer
22 level to the data.

23 THE COURT: But you said in doing your analysis, you
24 essentially obtained the percentages at the census tract level
25 rather than the block group level?

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1 THE WITNESS: For Texas, yes.

2 THE COURT: Why wouldn't you use block level on the
3 theory that is the smaller geographic boundary?

4 THE WITNESS: Two reasons. Number one, time. We did
5 this very quickly and the program that --

6 THE COURT: Just speak into the microphone.

7 THE WITNESS: This is very difficult with this chair.
8 So we had to produce this map very quickly, and the
9 program that was already written did it at the census tract.

10 However, as you can see, the actual percent Hispanic
11 citizens age population in these districts was over 59 percent.
12 So it really didn't matter one way or the other. You were
13 going to have districts that were heavily Hispanic in citizen
14 voting age population.

15 THE COURT: So if you had had more time, would it have
16 been preferable to use the block group data?

17 THE WITNESS: Again, like you pointed out, it depends
18 on whether you think the group is heterogeneous and whether it
19 is concentrated in a very specific area. But yes, you could
20 have done that and you might have done that.

21 THE COURT: Is there a way of finding out if it is
22 concentrated or heterogeneous?

23 THE WITNESS: Yes.

24 You could look at -- well, at the block group level,
25 you could see if there was a lot of variation across the block

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1 groups in the census tract. In the census tract, yes.

2 THE COURT: But that wouldn't necessarily tell you
3 within any given block group if there were concentration within
4 a particular block, is that correct?

5 THE WITNESS: That's correct.

6 THE COURT: Counsel.

7 BY MR. HO:

8 Q. Dr. Handley, the procedure that you described using the
9 Queens map, is that the same procedure that you used in the
10 Texas case for calculating the citizen voting age population of
11 the districts that had parts of Harris County?

12 A. Yes.

13 Q. In your opinion as an expert, Dr. Handley, were the current
14 forms of CVAP data available from the Census Bureau sufficient
15 to perform that analysis to a reasonable degree of scientific
16 certainty?

17 A. Yes, in my opinion, as well as in the court's opinion.

18 Q. Did the defendants criticize the accuracy of your CVAP data
19 in this case?

20 A. They did not.

21 Q. Did the court take any issue with the accuracy of your CVAP
22 data in this case?

23 A. They did not.

24 Q. What result ultimately happened in this case?

25 A. The court determined that Hispanics did meet the three

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1 prongs of Gingles, but ultimately decided against the
2 plaintiffs on the totality of the circumstances. The three
3 prongs of Gingles are preconditions, and then the court applies
4 the totality of circumstances, and determined that Hispanic
5 plaintiffs did not satisfy the totality of the circumstances.

6 Q. Well, did the accuracy of the ACS CVAP data that you used
7 play any role in the court's ruling against the plaintiffs?

8 A. It did not.

9 As I said, the court determined that Hispanics did
10 meet the three prongs of Gingles, including the first prong.

11 Q. Dr. Handley, this is statewide map.

12 Could you give us an example of how you have used ACS
13 CVAP data to draw districts at the local level?

14 A. Yes.

15 I mentioned the Port Chester case. And in the Port Chester
16 case, a consent decree was agreed upon or ordered by the court,
17 and Port Chester actually ultimately decided not to adopt
18 districts and instead adopted an alternative voting scheme
19 called cumulative voting.

20 This decree expired in 2016, and the jurisdiction was
21 deciding whether to keep the cumulative voting system to go to
22 single-member districts or to explore other options, and they
23 hired me to assist in this process.

24 Q. When you say "they," who are you referring to?

25 A. The board of trustees in Port Chester.

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1 Q. Do you have a slide that illustrates some of your work in
2 Port Chester?

3 A. I do.

4 Q. Could we bring up PDX 39, please.

5 Is this that slide, Dr. Handley?

6 A. Yes, it is. Yes, it is.

7 Q. Briefly, if you could describe for the court, what is on
8 this slide?

9 A. So on the left, you see the Village of Port Chester. It is
10 shaded by percent Hispanic CVAP at the block level. On the
11 right, you see the resulting tables using the decennial census
12 in the left-hand side of the table, and the decennial census in
13 combination with the ACS in the right-hand side.

14 Q. When did you draw this map?

15 A. Early this year.

16 Q. I think you referenced earlier that there is a history in
17 Port Chester.

18 So there was litigation in Port Chester earlier?

19 A. In 2006, the case began. I think it was ultimately
20 resolved in 2008, 2009, maybe.

21 Q. Who brought that case?

22 A. Department of Justice.

23 Q. And what was your role in that case?

24 A. I looked at the second and the third prong of Gingles. In
25 other words, I explored voting patterns by race and ethnicity

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1 in that case.

2 Q. But you were an expert for the Department of Justice?

3 A. That's correct.

4 Q. And what did the court ultimately rule in that case?

5 A. That the at-large system that Port Chester used to elect
6 board of trustees was in violation of Section 2, and so they
7 had to adopt another system that would not dilute Hispanic
8 votes.

9 Q. And was there a consent order in that case?

10 A. Yes.

11 Q. Is that consent order still in effect?

12 A. No. It expired in 2016.

13 Q. And I know you went over a little bit of this before.

14 So it is clear, how did you come to draw this map
15 represented on this slide?

16 A. The board of trustees hired me as a consultant to help them
17 explore various options, and one of the options they explored
18 was whether they should draw single-member districts.

19 Adopting cumulative voting, minus a consent decree, would
20 require a referendum. One thing they could do apparently under
21 state law was adopt single-member districts. So they had me
22 draw single-member districts just quickly to determine if and
23 how many majority Hispanic CVAP districts could be drawn.

24 Q. How did you develop the block level CVAP data that you used
25 in calculating the percentages shown on this table?

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1 A. There are several approaches to doing this.

2 In this particular case, I used the same approach that
3 I described in Texas.

4 Q. I believe the court asked you a question about using the
5 CVAP and VAP ratios at the census tract level instead of the
6 block group level.

7 My question, Dr. Handley, is: Is it reasonable to use
8 either of those when you're trying to -- and by "those," I mean
9 the ratios at the tract level or the block group level -- when
10 you're trying to estimate at the individual block level?

11 A. The chances of the proportion changing very much would --
12 is small. I would think it is reasonable to do either.

13 Q. In your opinion, Dr. Handley, were the current forms of
14 CVAP data currently available from the Census Bureau sufficient
15 to perform the analysis that you did for the board of Port
16 Chester to a reasonable degree of scientific certainty?

17 A. Yes.

18 Q. If we can return to PDX 34.

19 Dr. Handley, just overall, as an expert in voting rights,
20 are existing CVAP data produced by the Census Bureau sufficient
21 to a reasonable degree of scientific certainty for assessing
22 the first Gingles precondition?

23 A. Yes, I believe they are.

24 Q. We can take this slide down.

25 I want to ask you about VRA work a little more broadly,

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1 Dr. Handley.

2 When liability is established in a VRA case, what is the
3 next step that an expert is typically asked to do?

4 A. Jurisdiction that is found in violation gets the first
5 chance at drawing a remedy. And usually I'm asked to assess
6 that remedy and whether it would be effective or not.

7 To do that, again, I don't -- although CVAP or VAP is
8 considered, it is far more important to look at the electoral
9 behavior in that district to determine if the remedy is
10 effective or not.

11 Q. Why don't you just look at the CVAP or VAP and then see if
12 minorities are a majority in terms of CVAP?

13 Why doesn't that just conclude your analysis?

14 A. Well, a 50 percent district may or may not be effective.
15 In fact, a 50 percent district in a place like Virginia
16 actually packs minority into a district, because a district
17 that is 40 percent black would be effective.

18 In other places, it turns out that 50 percent is not
19 enough. If you want an effective remedy, you should draw the
20 district at, say, 55 percent or even 60 percent black voting
21 age population or Hispanic citizen voting age population.

22 Q. How do you go about making that assessment and what kinds
23 of data do you rely on in doing so?

24 A. This is based on the racial block voting analysis that I
25 described briefly earlier. You're going to look at the

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1 participation rates of minorities, for example, participating
2 at lower rates than whites. You are going to look at how
3 cohesive the minorities are. Are they voting in the instance
4 of, say, blacks, typically 95 percent for a particular
5 candidate, but Hispanics, it is more like 65 percent in support
6 of a particular candidate. You're going to look at the degree
7 of white crossover vote you might expect.

8 So if you are -- I just worked in a case in Alabama.
9 You are going to find somewhere along the lines of less than
10 20 percent of whites will vote for black preferred candidates,
11 but in other jurisdictions, like Virginia, it is a much more
12 high percentage of whites that will vote for black preferred
13 candidates.

14 All of these things will affect what a district will
15 look like in order to be an effective remedy and provide
16 minorities with an opportunity to elect candidates of choice.

17 Q. Do you have a name or shorthand name for this kind of
18 analysis?

19 A. Yes. I call it a functional district specific analysis.
20 The justice department also calls it a functional district
21 specific analysis.

22 Q. And how important is the precise number of minority
23 citizens of voting age at the individual block level for
24 purposes of conducting this district specific analysis?

25 A. At the block level, it is essentially irrelevant. I would

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1 be interested at the district level in order to identify those
2 districts that I might do a functional analysis of.

3 For example, if a district that is 25 percent Hispanic
4 CVAP is unlikely to provide an opportunity to elect. So I
5 wouldn't even do a district specific, but a district that was
6 50 or 55 percent, I would do such an analysis.

7 Q. Can you give an example of where you have used this kind of
8 district specific functional analysis before?

9 A. I have used it for the Department of Justice. I used it in
10 a Section 5 case involving congressional districts in Texas.

11 Q. What was the Hispanic citizen voting age population of the
12 district that you were asked to analyze in that case?

13 A. The State of Texas had proposed a district that was
14 58 percent -- a little over 58 percent, but less than
15 59 percent -- Hispanic CVAP to replace a district that was
16 currently 58 percent Hispanic CVAP.

17 However, I determined that the proposed district would not
18 provide Hispanics with an opportunity to elect while at that
19 time current district did.

20 Q. Why wasn't the fact that the district was 58 percent
21 Hispanic CVAP, why wasn't that just the end of your analysis?

22 A. What the State of Texas had done was move out Hispanics
23 that were likely to vote and replace them with Hispanic
24 citizens that were much less likely to vote so that that
25 district would no longer elect Hispanic preferred candidates.

IBDsNYS2

Handley - Direct

1 Q. Did you look at turnout in registration rates in conducting
2 this analysis?

3 A. Yes.

4 Q. And, again, when you conducted this analysis, how important
5 was the precise number of Hispanics of citizen voting age at
6 individual blocks within this district?

7 A. Not important at all.

8 Q. Is this district specific functional analysis
9 representative of the kind of analysis that you conduct as a
10 voting rights expert in litigation?

11 A. Yes.

12 Q. I want to bring up Plaintiffs' Exhibit 332.

13 These are the Department of Justice -- this is the
14 Department of Justice guidance concerning redistricting,
15 plaintiffs' Exhibit 332, which has already been admitted into
16 evidence.

17 Dr. Handley, are you familiar with this document?

18 A. I am.

19 Q. What is it, as far as you understand?

20 A. It is guidance -- the Department of Justice put this out as
21 guidance or jurisdictions covered by Section 5.

22 Q. Could we look at the right-hand column and the middle
23 paragraph there.

24 Have you read this paragraph before?

25 A. I have.

IBDsNYS2

Handley - Direct

1 Q. What is your understanding of what the Department of
2 Justice guidelines say with respect to the importance of
3 particular demographic percentages in assessing whether or not
4 a district affords voters an opportunity to elect their
5 preferred candidates?

6 A. It is quite clear that they do not rely on any
7 predetermined or fixed demographic percentage at any point in
8 the assessment. In fact, what they do rely on is an analysis
9 of electoral behavior retaliatory in that district.

10 Q. Was that the functional analysis you were describing?

11 A. That's correct, a functional analysis.

12 Q. I want to now bring up Plaintiffs' Exhibit 32, which has
13 been admitted into evidence and is part of the administrative
14 record.

15 Dr. Handley, are you familiar with this letter?

16 A. Yes, I read this letter.

17 Q. What is your understanding of what this letter is?

18 A. This is a request from the Justice Department to the -- I
19 guess it is to the Department of Commerce -- requesting the
20 citizenship question being included in the decennial census for
21 Voting Rights Act purposes.

22 Q. I want to draw your attention to the bottom paragraph on
23 the first page.

24 Do you see how there are a number of cases referenced in
25 this paragraph?

IBDsNYS2

Handley - Direct

1 A. I do.

2 Q. What observations, if any, do you have about these cases?

3 MR. GARDNER: Objection, your Honor. Beyond the scope
4 of Dr. Handley's expert report.

5 THE COURT: Overruled.

6 You may answer it.

7 A. I would simply note that, of course, all of these cases
8 would have been decided on the basis of a sample CVAP data for
9 Hispanics rather than decennial census data because it was not
10 available at any point in these cases.

11 All of these cases were -- they had to rely on the long
12 form or the more recent cases on the ACS to arrive at citizen
13 voting age population estimates.

14 Q. I now want to ask you about a paragraph on page two of this
15 letter. The last non-bulleted paragraph here.

16 The first sentence of this paragraph reads: The
17 2010 redistricting cycle was the first cycle in which the ACS
18 estimates provided the Census Bureau's only citizen voting age
19 population data.

20 Do you see that, Dr. Handley?

21 A. I do.

22 Q. Before the ACS, what was the source of the CVAP data that
23 was relied on for purposes of the VRA enforcement?

24 A. It was the long form.

25 Q. Were both long form CVAP data and ACS CVAP data statistical

IBDsNYS2

Handley - Direct

1 estimates?

2 A. They are both derived from samples, yes.

3 Q. Were either of them hard-to-count data?

4 A. No.

5 Q. So even before the ACS, is it accurate to say that if you
6 were using the long form CVAP data, you would be using an
7 estimate?

8 MR. GARDNER: Objection, leading.

9 THE COURT: Sustained.

10 Q. Before the existence of the ACS data, if you were using the
11 long form data, would that be a hard count or would that be an
12 estimate?

13 A. It is an estimate derived from a sample.

14 Q. OK. Dr. Handley, I want to look at the last line of this
15 paragraph where it reads: The ACS, however, does not yield the
16 ideal data for such purposes for several reasons.

17 Do you see that?

18 A. I do.

19 Q. Do you see the sentence, if we look at the letter, is
20 followed by four bulleted paragraphs?

21 A. Yes.

22 Q. I want to ask you about each of these bulleted paragraphs,
23 and lets start with the first one.

24 MR. GARDNER: Your Honor, I'm sorry. Can I just lodge
25 a continued objection? None of this is in her expert report.

IBDsNYS2

Handley - Direct

1 THE COURT: Duly noted.

2 You may proceed.

3 BY MR. HO:

4 Q. In the first bulleted paragraph, Dr. Handley, in the second
5 to last line, do you see where there is a reference to two
6 different data sets?

7 A. Yes, I do.

8 Q. What is your understanding of what that is a reference to?

9 A. That would be both the decennial census and then the
10 American Community Survey estimates. You would have to combine
11 them in order to evaluate districts on the basis of the Voting
12 Rights Act.

13 Q. Even before the American Community Survey, Dr. Handley, did
14 you, in your work as an expert, ever have access to a single
15 data set produced by the Census Bureau for public use that
16 combined total population data on the one hand and citizen
17 voting age population data on the other hand at the block
18 level?

19 A. No.

20 I should make clear, I mean, you take these two
21 databases and you combine them and, in fact, you're working
22 with a single database, so to speak, when you're working in GIS
23 and actually drawing districts. This is -- it is not that I am
24 drawing districts with two different databases. They are both
25 combined within my GIS system.

IBDsNYS2

Handley - Direct

1 Q. How difficult is it for you to combine those data sets into
2 a single data set?

3 A. Not difficult at all. As I said, this is done once, and
4 then I am drawing with the combined data set.

5 Q. Roughly how much of your time does it take to combine the
6 two data sets into a single data set?

7 A. Well, as long as it takes to look -- well, I have to run
8 the American Community Survey data, for example, through a
9 program to get the block level data, and then I simply put it
10 into the machine.

11 Q. How much --

12 A. A few minutes.

13 Q. I'm sorry.

14 How much time roughly would you bill the Department of
15 Justice or any other client for combining those two data sets?

16 A. Certainly less than an hour.

17 Q. What is your hourly rate?

18 A. 300.

19 Q. Has your work as a voting rights expert ever been impeded
20 by the fact that you had to combine two data sets, one having
21 total population and the other having citizen voting age
22 population?

23 A. No.

24 Q. Are you aware of any court rejecting a claim because the
25 plaintiffs had to combine two different data sets, one

IBDsNYS2

Handley - Direct

1 combining total population -- one containing total population
2 and the other containing citizen voting age population?

3 A. I am aware of no such case.

4 Q. I would like to look at the second bullet here.

5 The second to last line in this bulleted paragraph makes a
6 reference to to align in time.

7 Do you see that, Dr. Handley?

8 A. I do.

9 Q. What do you understand that to be a reference to?

10 A. The decennial census is taken at a specific time. The ACS,
11 if you're going to use five-year estimates, for example, it is
12 gathered over a five-year period.

13 Now, of course, the mid point of that five-year period
14 could align with the census, but, you know, any given year
15 there is, in fact, an ACS sample. I suppose if the
16 jurisdiction is over 65,000, it would align in time.

17 Q. Is the decennial census data collected instantaneously at
18 one point in time, or is it selected over a period of time?

19 A. The decennial census?

20 Q. Yes.

21 A. Over a short period of time.

22 Q. About a year. Does that sound right?

23 A. The decennial census?

24 Q. Yes.

25 A. I don't think so. I think it is less than that.

IBDsNYS2

Handley - Direct

1 Q. Are you able to use five-year ACS CVAP estimates that align
2 in time with the decennial census?

3 A. Yes, for 2010.

4 I would use the period of 2008 to 2012, and that mid
5 point would align with the decennial census of 2010.

6 Q. Has your work as a voting rights expert ever been impeded
7 by the fact that the decennial census occurs in one year,
8 whereas the ACS five-year estimates are collected over a
9 five-year period?

10 A. No.

11 Q. Are you aware of any court ever rejecting a plaintiffs'
12 claim because the decennial census is collected in one year
13 whereas the ACS five-year estimates are collected over a
14 five-year period?

15 A. I am aware of no such case.

16 Q. I would like to look at the third bullet in this letter.

17 The first line of the paragraph references the margins of
18 error of the ACS data.

19 Do you see that, Dr. Handley?

20 A. I do.

21 Q. Have you ever had access to block level CVAP data by race
22 and ethnicity that did not have a margin of error?

23 A. Well, it is reported at the block group level, but margins
24 of error are associated with the ACS data, not with the
25 decennial census.

IBDsNYS2

Handley - Direct

1 I'm sorry. I forgot the question.

2 Q. Have you ever had access to CVAP data by race and ethnicity
3 that did not have margins of error associated with it?

4 A. I have not.

5 Q. Has that fact ever impeded your work as a voting rights
6 expert?

7 A. It has not.

8 Q. Are you aware of any court ever rejecting a claim brought
9 by plaintiffs simply because of the fact that their ACS CVAP
10 data had a margin of error associated with it?

11 A. I have not.

12 Q. Lets look at the fourth and final bullet here.

13 There is a line here about or a phrase here in the third
14 line to perform further estimates.

15 Do you see that?

16 A. Yes.

17 Q. Do you understand that to be a reference to the kind of
18 estimation procedure you were describing earlier?

19 MR. GARDNER: Objection, leading.

20 THE COURT: Sustained.

21 Q. Dr. Handley, what do you understand the reference to
22 performing estimates in this sentence to be referenced to?

23 A. I am assuming it is talking about a methodological approach
24 of taking the block group or census tract and applying that to
25 the block group, similar to what I described to you as doing in

IBDsNYS2

Handley - Direct

1 Texas, for example.

2 Q. Have you ever had access to block level CVAP data by race
3 and ethnicity that was produced without performing such an
4 estimation procedure?

5 A. I have not.

6 Q. Has that fact ever impeded your work as a voting rights
7 expert?

8 A. It has not.

9 Q. Are you aware of any court ever rejecting a claim by
10 plaintiffs because of the fact that their block level CVAP data
11 was produced through an estimation procedure like described
12 here?

13 A. I am not.

14 Q. Dr. Handley, leaving all of these points aside, individual
15 points aside, has your work as a VRA expert ever in any way
16 been impeded by the fact that you have had to use five-year ACS
17 CVAP data?

18 A. It has not.

19 Q. Are you aware of any court ever rejecting a claim by
20 plaintiffs who relied on five-year ACS CVAP data?

21 A. I am not aware of any case like that.

22 Q. I just want to shift gears and talk about one other topic,
23 Dr. Handley, and that is about the plan to gather CVAP data
24 through a question on the decennial census.

25 Dr. Handley, what is your understanding of whether or not

IBDsNYS2

Handley - Direct

1 census data have any flaws?

2 A. Well, census data does -- the information gathered does
3 have flaws associated with it. It is the census data itself is
4 not important.

5 Q. What are some of those flaws?

6 A. There are coverage flaws, for example. Some people are
7 included when they shouldn't be. Other people are included
8 twice. Other people are omitted altogether, they are not
9 included when they should be.

10 There are also geographic errors. For example,
11 somebody might be assigned to have several part-time homes and
12 be assigned to the wrong one according to the rules of the
13 Census Bureau, or an address might be located incorrectly in
14 the wrong census block, and then there are demographic errors.

15 Somebody could report the information incorrectly, it
16 could be recorded incorrectly, or it can be imputed
17 incorrectly, but some of the demographic characteristics
18 associated with households might be incorrect.

19 THE COURT: Just to clarify, are you talking about,
20 when you say Census Bureau data or census data, are you refer
21 to the decennial census, the ACS, both?

22 THE WITNESS: To the decennial census.

23 BY MR. HO:

24 Q. Dr. Handley, has the Census Bureau documented these kinds
25 of errors in the decennial census?

IBDsNYS2

Handley - Direct

1 A. Yes. They conduct a post -- what is called a
2 post-enumeration survey that gives them the information that
3 allows them to report what they think the errors are.

4 Q. Dr. Handley, do you have any reason to think that
5 citizenship data gathered through the decennial census
6 enumeration would be immune from these kinds of flaws?

7 MR. GARDNER: Objection, leading.

8 THE COURT: Sustained.

9 Q. Dr. Handley, what, if any, views do you have about
10 decennial census citizenship information with respect to these
11 flaws that you have identified?

12 A. Well, I believe that, in fact, those flaws, certainly the
13 coverage flaw, would be exacerbated by including a citizenship
14 question.

15 Q. Let me ask you a different question, Dr. Handley.

16 Have you heard the term disclosure avoidance in relation to
17 census data?

18 A. I have.

19 Q. What is your understanding of what disclosure avoidance
20 means in reference to census data?

21 A. The census has to avoid disclosing confidential information
22 and so will mask information, particularly at the block level,
23 that would risk this confidentiality.

24 (Continued on next page)

IbdWnys3

Handley - Direct

1 BY MR. HO:

2 Q. Why does the Census Bureau engage in this masking?

3 A. Again, to avoid releasing confidential information.

4 Q. What, if anything, does that mean for whether the Census
5 Bureau can publish block-level CVAP data that reflects people's
6 responses to a citizenship question on the census?

7 A. I think that a disclosure-avoidance mechanism is going to
8 be operating to the degree that we won't really know how many
9 citizens of voting-age population exist within a particular
10 block in many blocks.

11 Q. Let's talk about what this looks about in practice.

12 MR. HO: If we could bring up Plaintiffs' Exhibit 535.
13 I believe this has been admitted into evidence. I just have to
14 confirm that.

15 Q. Dr. Handley, while we're confirming that, could you just --

16 MR. HO: OK, it's not. I'm sorry.

17 Q. Dr. Handley, could you describe what Plaintiffs' Exhibit
18 535 is?

19 MR. GARDNER: Objection, your Honor. This is, again,
20 beyond the scope of her expert report. This is not a document
21 she relied upon or identified in her expert report.

22 MR. HO: It's an exhibit that was disclosed to the
23 defendants, your Honor, and we're just using it to illustrate
24 concepts to show some census blocks and the number of people
25 that are on them, which help explicate Dr. Handley's opinion

IbdWnys3

Handley - Direct

1 about disclosure avoidance in her report.

2 THE COURT: All right. I think the exhibit will help
3 me understand her testimony, so with that and for that reason,
4 it is admitted, or the objection is overruled. I don't know
5 whether it's been offered yet.

6 MR. HO: Not yet.

7 THE COURT: Go ahead.

8 BY MR. HO:

9 Q. Dr. Handley, what is Plaintiffs' Exhibit 535?

10 A. This is a portion -- it is a map of a portion of
11 Westchester County, New York, that I downloaded from the census
12 website.

13 MR. HO: Could we turn to page 2.

14 Q. What is this, Dr. Handley?

15 A. This is a close-up of one particular area of Westchester
16 County, North Castle town.

17 Q. And what is the source for this map?

18 A. Again, this is from the Census Bureau website.

19 Q. It's publicly available?

20 A. That's correct.

21 MR. HO: Your Honor, at this time plaintiffs would
22 offer Exhibit 535 into evidence.

23 THE COURT: Any objection?

24 MR. GARDNER: We do object, your Honor. There's no
25 foundation to admit this for the truth of the matter asserted.

IbdWnys3

Handley - Direct

1 If they want to admit it as a 703 document, I'm still
2 concerned; this is not reflected in the report. But there's no
3 sponsored witness to testify that this actually comes from the
4 census website.

5 THE COURT: She just testified to that.

6 MR. GARDNER: I know that that's what she said, but
7 there's no documentation on this document itself to reflect the
8 provenance of this document. I understand what she testified
9 to, but this isn't even in her report.

10 THE COURT: Well, that is evidence. You're entitled
11 to cross-examine her on that if you think there's some reason
12 to question it, but if that's the basis for your objection, the
13 objection's overruled, and the document is admitted.

14 (Plaintiffs' Exhibit 535 received in evidence)

15 THE COURT: Go ahead.

16 BY MR. HO:

17 Q. Dr. Handley, is there a census block here that has a single
18 person on it?

19 A. There is. If you look over at the table over on the
20 left-hand side, I've recorded the total population figures for
21 each of the census blocks, and you can see that 3008 has one
22 person in it.

23 Q. Let's assume, Dr. Handley, this person is of voting age.
24 It's probably a safe assumption, right?

25 A. I don't think any children would be living alone, but --

IbdWnys3

Handley - Direct

1 Q. OK. Let's assume that this person is a noncitizen of
2 voting age and responds accurately to the 2020 census question
3 about citizenship. If the Census Bureau is going to produce
4 block-by-block CVAP data, as the Department of Justice has
5 requested, can the bureau produce the number for block 3008
6 that accurately reflects this person's response to the
7 citizenship question?

8 A. Not without disclosing information regarding the
9 citizenship of that one person.

10 Q. What's your understanding of what the Census Bureau will
11 do?

12 MR. GARDNER: Objection, your Honor. Calls for
13 speculation.

14 THE COURT: Overruled.

15 A. I'm -- I don't know if the Census Bureau knows what they
16 will do. They will go through some disclosure-avoidance
17 technique that -- again, it's not clear to me what they'll do,
18 and my reading of the deposition in this case by Dr. Abowd
19 suggests that it's not clear to him what they'll do.

20 Q. Well, you mentioned disclosure-avoidance masking
21 techniques. Is it your understanding that such techniques
22 would be applied to a district -- a census block like this?

23 A. Yes.

24 Q. And is it your understanding that those techniques would be
25 applied only to blocks with a single person on them?

IbdWnys3

Handley - Direct

1 MR. GARDNER: Objection, your Honor. Calls for
2 speculation.

3 THE COURT: Sustained.

4 Q. What's your understanding of how broadly the Census Bureau
5 will apply such disclosure-avoidance techniques?

6 MR. GARDNER: Same objection, your Honor.

7 THE COURT: Sustained.

8 Q. Have you read anything about the Census Bureau's
9 disclosure-avoidance practices that give you an understanding
10 of how the Census Bureau might apply disclosure-avoidance
11 techniques to individual census blocks?

12 A. I have read Dr. Abowd's deposition, or one of his
13 depositions in this case.

14 Q. And based on your reading of Dr. Abowd's deposition
15 transcript, what's your understanding of how broadly the Census
16 Bureau is going to apply those kinds of disclosure-avoidance
17 techniques to different census blocks?

18 A. Well, certainly it wouldn't involve just census blocks with
19 one person in them. Presumably, census blocks with three
20 people, 16 people, and depending on the demographic composition
21 of blocks with even 568 people, they might have to go through
22 some sort of disclosure-avoidance mechanism.

23 Q. As an expert in voting rights and the use of citizenship
24 data in voting rights analysis, Dr. Handley, do you have any
25 reason to believe, to a reasonable degree of scientific

IbdWnys3

Handley - Direct

1 certainty, that CVAP data collected through a citizenship
2 question on the census questionnaire will be any more accurate
3 than the CVAP data on which you currently rely?

4 A. No, I do not.

5 Q. Dr. Handley, do you have a slide summarizing your various
6 opinions in this case?

7 A. I do.

8 MR. HO: Let's bring up PDX-40.

9 Q. Is this your slide, Dr. Handley?

10 A. It is.

11 Q. Could you briefly summarize your opinions for the Court?

12 A. Yes.

13 First of all, I believe that currently available census
14 data is perfectly adequate. It's perfectly sufficient to
15 determine if there's a violation of Section 2 of the Voting
16 Rights Act;

17 Second, I believe that the significance associated with
18 citizen voting-age population data implied in the Gary letter
19 is misplaced, somewhat misleading because, in fact, the
20 functional, district-specific analysis does not rely on CVAP,
21 or it does indirectly, but far more important is the electoral
22 behavior of whites and minorities in a specific district; and

23 Finally, I don't believe there's any indication that adding
24 the citizenship question to the decennial census would be any
25 more reliable or useful for Voting Rights Act purposes.

IbdWnys3

Handley - Direct

1 MR. HO: Thank you, Dr. Handley. That's all the
2 questions I have for you now.

3 THE COURT: All right.

4 Proceed with cross-examination?

5 MR. GARDNER: Your Honor, I know it's a little bit
6 early. Might we be able to take our break now? I could use a
7 humanitarian break.

8 THE COURT: Sure. Before we do, let me ask Dr.
9 Handley a question or two.

10 Are you familiar with studies that suggest that the
11 citizenship data on the ACS has some potential flaws or
12 accuracy problems?

13 THE WITNESS: Well, it's sample data, so it does
14 have --

15 THE COURT: If you speak to the lawyers even though
16 I'm asking you the question, then you'll speak into the
17 microphone.

18 THE WITNESS: It is sample data, so it would have
19 margins of error associated with it.

20 THE COURT: Sorry. Let me clarify. I'm not asking
21 about the margins of error that are a product of it being
22 sample data but rather studies indicating that people don't
23 answer the citizenship question on the ACS accurately.

24 THE WITNESS: I am aware of that. Of course, I have
25 no reason to believe they would answer it any more accurately

IbdWnys3

Handley - Direct

1 on the decennial census.

2 THE COURT: But what effect, if any, does that --
3 those studies -- possibility have on your use of ACS data in
4 connection with the work that you do?

5 THE WITNESS: It might affect the first prong. It
6 could -- but in terms of, again, producing a remedy or looking
7 at the effectiveness of a proposed district, the ACS data --
8 any demographic data -- is not particularly important. The
9 electoral behavior in the district is far more important.

10 THE COURT: And with respect to the first prong, has
11 that potential problem with the ACS data impeded your work in
12 this area at all?

13 THE WITNESS: It has not.

14 THE COURT: And to your knowledge, have any parties in
15 litigation or courts cited or noted that in litigation of the
16 first precondition, general precondition?

17 THE WITNESS: Not to my knowledge.

18 THE COURT: All right. It's 10:34. Let's take our
19 ten-minute break now. We'll pick up at 10:45. I'll give you
20 11 minutes.

21 Thank you.

22 (Recess)

23 THE COURT: You may be seated.

24 MR. GARDNER: Thank you for the early break, your
25 Honor.

IbdWnys3

Handley - Cross

1 THE COURT: You're welcome.

2 Dr. Handley, you're still under oath.

3 Mr. Gardner, you may proceed with cross-examination.

4 MR. GARDNER: Thank you.

5 CROSS-EXAMINATION

6 BY MR. GARDNER:

7 Q. Good morning, Dr. Handley. We met right before your
8 testimony, but let me reintroduce myself. My name is Josh
9 Gardner with the Department of Justice.

10 I'd like to start with your demonstrative PDX-34 that'll
11 come right up on the screen. This reflects your overall
12 opinion in the case, correct?

13 A. I'm waiting.

14 Q. As soon as it comes up.

15 PDX-34 reflects your opinion in this case, correct?

16 A. That's correct.

17 Q. Now, as an initial matter, Dr. Handley, you'd agree that
18 where Hispanics are involved, citizenship data is critical to
19 enforcing the Voting Rights Act, correct?

20 A. No.

21 Q. You don't agree with that?

22 A. That's correct.

23 Q. That citizenship data generally is not necessary when
24 enforcing the Voting Rights Act, Section 2?

25 A. You said critical.

IbdWnys3

Handley - Cross

1 Because of the way that the three prongs of *Gingles* have
2 been interpreted by some appellate courts, it is necessary to
3 have CVAP data for Hispanics.

4 Q. And you'd also agree that in certain circumstances where
5 Hispanics are involved, block-level citizenship data is
6 necessary for enforcing Section 2 of the Voting Rights Act,
7 correct?

8 A. I'm not sure what you mean by necessary. We use Hispanic
9 CVAP data at the block level to determine if Hispanics meet the
10 first prong of *Gingles*.

11 Q. And so for that purpose, it's necessary, correct?

12 A. For some appellate courts, apparently, yes.

13 THE COURT: Can I just clarify? Your testimony is
14 that CVAP data, under existing law, at least in some circuits,
15 is necessary but not critical?

16 THE WITNESS: I'm not sure what courts would accept in
17 terms of voting-age population versus citizen voting-age
18 population. I'm not sure what the distinction is across the
19 appellate courts. I know that some courts have said that they
20 need citizenship data to show that Hispanics meet the first
21 prong.

22 THE COURT: So your testimony is it is necessary in
23 some, at least some, circuits, is that correct?

24 THE WITNESS: To show that Hispanics meet the first
25 prong of *Gingles*, you need citizenship data, not just

IbdWnys3

Handley - Cross

1 voting-age population data.

2 THE COURT: All right.

3 BY MR. GARDNER:

4 Q. And in fact, you've calculated the block-level citizenship
5 data in certain cases, correct?

6 A. Yes.

7 Q. For example, in the *Village of Portchester* case, which you
8 discussed on your direct testimony, the illustrative plans were
9 drawn at the census block level, correct?

10 A. Yes.

11 Q. And similarly, in *Lopez v. Abbott*, one of the other cases
12 you testified about on direct examination, the nine-district
13 plan for the state of Texas that you discussed, you had to
14 employ estimation techniques to derive block-level data for
15 Harris County, correct?

16 A. Yes.

17 Q. And you agree that it's important to use a reliable
18 calculation of the citizen voting-age population in localities
19 where voting rights violations are alleged or suspected where
20 citizenship is at issue?

21 A. I agree that some courts agree that you need that data.

22 Q. In fact, the Department of Justice has retained you in the
23 past to do precisely those types of calculations, correct?

24 A. Yes -- I'm sorry. What do you mean by those kinds of
25 calculations?

IbdWnys3

Handley - Cross

1 Q. The calculation of citizen voting-age population. Correct?

2 A. At the block level, yes.

3 Q. At the block level --

4 A. Yes.

5 Q. -- correct?

6 Now, the American Community Survey's not a count or
7 enumeration of the population, correct?

8 A. It is a sample.

9 Q. It's a sample, and the ACS samples about, what is it,
10 290,000 households each month for a total of approximately 3.5
11 million households a year, correct?

12 A. I don't know. I can tell you that the five-year estimates
13 that I use, the sample size is about one in every eight
14 households.

15 Q. But the one-year ACS, do you have an understanding of what
16 that captures?

17 A. I do not.

18 Q. OK. You don't know?

19 A. I do not know off the top of my head.

20 Q. And you'd agree, Dr. Handley, that the primary purpose of
21 the ACS is to measure the changing social and economic
22 characteristics of the U.S. population, correct?

23 A. It's annual, so it certainly does a better job than the
24 decennial census of telling us what's happening over shorter
25 periods of time.

IbdWnys3

Handley - Cross

1 Q. And you agree that's the primary purpose of the ACS?

2 A. I don't know what the primary purpose is.

3 Q. Now, in contrast, the decennial census is designed to
4 provide an actual count of people, correct?

5 A. Yes.

6 Q. The ACS does not provide official counts of population in
7 between censuses, correct?

8 A. It does not provide an enumeration.

9 Q. Rather, the Census Bureau's population-estimates program is
10 the official source for annual population totals by age, race,
11 Hispanic origin and gender, correct?

12 A. Repeat the question.

13 Q. The Census Bureau's population-estimate program is the
14 official source for annual population totals by age, race,
15 Hispanic origin and gender, correct?

16 A. I still missed the first part. The ACS is used for annual
17 data. The decennial is used for a count. I guess I'm not
18 getting what the distinction is that you want me to make.

19 Q. Let's see if we can do it this way. You agree that because
20 the ACS is based on a sample of the population rather than a
21 total count, as you testified on direct, the ACS is subject to
22 sampling errors, correct?

23 A. Correct.

24 Q. And ACS data are not publicly available at the block level,
25 right?

IbdWnys3

Handley - Cross

1 A. Correct.

2 Q. Rather, the ACS reports data at the block-group level?

3 A. Correct.

4 Q. And because of the limitations on the data contained in the
5 ACS, as you testified, you use estimation techniques on
6 occasion to estimate block-level data, correct?

7 A. Correct.

8 Q. Now, on direct examination, you testified that there are
9 certain sources of error associated with existing decennial
10 census enumeration data, correct?

11 A. Correct.

12 Q. And one of those errors that you testified about was
13 coverage errors, correct?

14 A. Correct.

15 Q. And you're aware, Dr. Handley, that those same coverage
16 errors that are contained in the decennial census are also
17 reflected in the ACS, correct?

18 A. Describe what you mean.

19 Q. I mean that the coverage errors, which you testified about
20 as being contained in the decennial census, are also manifested
21 in the data reflected in the ACS. Correct?

22 A. That would be part of the sampling error.

23 MR. GARDNER: Let's turn to PDX-40, which contains
24 your conclusions.

25 Q. Now, in the second bullet here, you state that the

IbdWnys3

Handley - Cross

1 district-specific, functional analysis I employ and DOJ
2 recommends focuses on factors such as voting patterns and
3 relies only indirectly on CVAP data, correct?

4 A. Correct.

5 Q. And the DOJ recommendation that you're referring to is the
6 Federal Register notice that you discussed on direct
7 examination, correct?

8 A. Yes, in part. At least in part, yes.

9 MR. GARDNER: Let's take a look at that. That's
10 PDX-332.

11 Q. Now, Dr. Handley, if we look at the summary here, you would
12 agree that this Federal Register notice addresses guidance
13 concerning the review of redistricting plans submitted to the
14 attorney general for review pursuant to Section 5 of the Voting
15 Rights Act, correct?

16 A. Yes.

17 Q. Now, the Gary letter, which you discussed on direct
18 examination, requesting the reinstatement of citizenship
19 question focuses on enforcement under Section 2, correct?

20 A. Correct.

21 Q. And by the way, you agree that after the Supreme Court's
22 decision in *Shelby County*, there are no longer any
23 jurisdictions covered by Section 5, preclearance, correct?

24 A. There are jurisdictions subject to preclearance, but under
25 a different -- I think it's Section 3.

IbdWnys3

Handley - Cross

1 Q. Correct. Not under Section 5?

2 A. That's correct.

3 Q. And so to your understanding, DOJ is no longer pursuing
4 Section 5 violations, correct, under preclearance, after *Shelby*
5 *County*?

6 A. Jurisdictions are no longer required to submit any changes
7 to the Department of Justice under Section 5.

8 Q. You also understand, Dr. Handley, that DOJ is not
9 conducting administrative reviews under Section 5,
10 preclearance, correct?

11 A. Because no jurisdiction is required to -- I don't know what
12 you mean by administrative reviews, but no jurisdiction is
13 required to submit something, so they wouldn't be reviewing
14 that submission under Section 5.

15 Q. That would stand to reason.

16 Now, Dr. Handley, you testified on direct examination that
17 there are three preconditions under the Supreme Court's *Gingles*
18 decision, correct?

19 A. Yes.

20 MR. GARDNER: Let's take a look at your demonstrative
21 PDX-35.

22 Q. Now, you agree that the functional analysis that you
23 discussed on direct examination does not relate to the first of
24 the *Gingles* factors, correct?

25 A. That's correct.

IbdWnys3

Handley - Cross

1 Q. Now, you agree that you can draw a district that has a bare
2 majority of minority voting-age citizens, you can satisfy the
3 first *Gingles* precondition, correct?

4 A. Yes. It's 50 percent plus, I guess, one.

5 Q. That's just math, right?

6 A. Yes.

7 Q. OK. And that doesn't require a functional analysis to
8 determine?

9 A. That's correct.

10 Q. You also agree, Dr. Handley, that the Gary memo focuses on
11 that first *Gingles* precondition, correct?

12 A. Yes.

13 Q. Now, you weren't involved in drafting the Gary letter,
14 correct?

15 A. I was not involved, no.

16 Q. OK. And you weren't involved in the Department of
17 Justice's decision-making process concerning the Gary letter,
18 correct?

19 A. That's correct.

20 Q. Now, Dr. Handley, you base your opinions on your experience
21 as a voting rights expert, right?

22 A. Yes.

23 Q. And part of that experience includes, among other things,
24 work that you've done on behalf of the Department of Justice
25 that involves VRA challenges in which Hispanic voting strength

IbdWnys3

Handley - Cross

1 was at issue, correct?

2 A. Yes.

3 Q. And so that included *Perry v. Perez*, correct?

4 A. Yes.

5 Q. *State of Texas v. United States*?

6 A. Correct.

7 Q. And *U.S. v. Village of Portchester*, right?

8 A. Yes.

9 Q. Now, in each of those cases, Dr. Handley, you were retained
10 by the Department of Justice after the complaint was filed,
11 correct?

12 A. Yes.

13 Q. And you aren't offering an opinion --

14 A. Oh, on --

15 Q. -- in this case about the decision-making process the
16 department uses in deciding whether to bring a Section 2 case,
17 correct?

18 A. I made a mistake about the question before that.

19 The Section 5 case, I'm not sure that you would call it a
20 complaint, but that's a quibble.

21 Now you're going to have to repeat the next question.

22 Sorry.

23 Q. Sure, and that's fine.

24 You are not offering an opinion in this case about the
25 decision-making process the department uses in deciding whether

IbdWnys3

Handley - Cross

1 to bring a Section 2 case, correct; that's not an opinion
2 you've offered here?

3 A. I -- I am, in some instances, aware of decisions --

4 Q. That's not my question.

5 A. OK.

6 Q. My question was you are not offering that opinion here,
7 correct? That opinion is not in your expert report, correct?

8 A. Correct.

9 Q. OK. Now, you're aware that DOJ investigates hundreds of
10 Section 2 matters, correct?

11 A. It -- they probably have over the course of their life,
12 yes.

13 Q. And you agree, Dr. Handley, that not all DOJ investigations
14 result in the filing of a complaint in district court, correct?

15 A. Yes.

16 Q. Now, you're not an attorney, right?

17 A. That's correct.

18 Q. And you're not a direct employee in the civil rights
19 division of the Department of Justice?

20 A. That's correct.

21 Q. And you're not a decision-maker for the Department of
22 Justice, correct?

23 A. That's correct.

24 MR. GARDNER: No further questions, your Honor.

25 THE COURT: Redirect.

IbdWnys3

Handley - Redirect

1 MR. HO: Very quickly, your Honor.

2 REDIRECT EXAMINATION

3 BY MR. HO:

4 Q. Dr. Handley, just a few questions. Mr. Gardener asked you
5 about the Department of Justice Section 5 guidelines. Do you
6 remember that?

7 A. Yes.

8 Q. Does the district-specific, functional analysis that you
9 employed for assessing whether or not districting arrangement
10 provides minority voters with an opportunity to elect their
11 preferred candidates, does that approach differ whether the
12 matter is brought under Section 5 or Section 2 of the Voting
13 Rights Act?

14 A. No. Under Section 2 you would also do a district-specific,
15 functional analysis to determine if any proposed plan or
16 remedial plan provided minorities with an opportunity to elect
17 candidates of choice.

18 Q. Mr. Gardener also asked you about errors in the decennial
19 census data and errors in the ACS data. Do you remember that?

20 A. I do.

21 Q. And I believe you testified about the margins of error that
22 are associated with ACS data. Do you remember that?

23 A. Yes.

24 Q. Are those margins of error reported by the Census Bureau?

25 A. For the ACS?

IbdWnys3

Handley - Redirect

1 Q. Yes.

2 A. Yes.

3 Q. So when you conduct your analysis, do you take those
4 margins of error into account?

5 MR. GARDNER: Objection. Leading.

6 THE COURT: Sustained.

7 Q. Do you ignore those margins of error when you conduct your
8 analysis, Dr. Handley?

9 MR. GARDNER: Same objection.

10 THE COURT: Same ruling.

11 Q. Dr. Handley, what, if anything, do you do with respect to
12 the fact that ACS data have margins of error when you conduct
13 your analysis?

14 A. While I'm aware of them, the analysis is the analysis. I
15 mean, you know that there are margins of error associated with
16 it. When you report, say, a 59 percent blacks -- 59 percent
17 Hispanic CVAP district, you know it might not be exactly 59
18 percent.

19 Q. And do you calculate those margins of error for the Census
20 Bureau?

21 A. The Census Bureau reports the margins of error for
22 estimates.

23 Q. Mr. Gardener asked you a few questions about the estimation
24 procedure for deriving individual block-level CVAP data. Do
25 you remember that?

IbdWnys3

Handley - Redirect

1 A. I -- refresh my memory.

2 Q. Let me just ask you this. As an expert in Voting Rights
3 Act analysis, what is your opinion, to a reasonable degree of
4 scientific certainty, about the reliability of the estimation
5 procedure that you use to translate ACS CVAP data at the
6 census-tracked level down to the individual block level?

7 A. I believe that this is perfectly reasonable. I guess I'm
8 not understanding your question.

9 Q. No, I think you answered it.

10 A. OK.

11 MR. HO: Thank you, Dr. Handley.

12 THE COURT: Are we done?

13 MR. GARDNER: We are done, your Honor.

14 THE COURT: All right. Dr. Handley, you may step
15 down.

16 (Witness excused)

17 THE COURT: Please call your next witness.

18 MS. BRANNON: Your Honor, plaintiffs call Dr. Chris
19 Warshaw as our next witness.

20 THE COURT: All right.

21 CHRISTOPHER WARSHAW,

22 called as a witness by the plaintiffs,

23 having been duly sworn, testified as follows:

24 THE COURT: You may proceed.

25 MS. BRANNON: Yes, your Honor.

IbdWnys3

Warshaw - Direct

1 And for the record, I'm Sarah Brannon on behalf of the
2 plaintiffs.

3 DIRECT EXAMINATION

4 BY MS. BRANNON:

5 Q. Dr. Warshaw, do you have a document with you?

6 A. I do.

7 Q. Can you please describe what that is?

8 A. This is the declaration I submitted in this case with
9 review of my findings and analysis.

10 Q. And is that a true and accurate version of your
11 declaration?

12 A. It is.

13 Q. And do you have any changes?

14 A. No.

15 MS. BRANNON: Counsel would submit Dr. Warshaw's
16 declaration in this case.

17 THE COURT: All right. And I gather there were no
18 objections. Is that correct?

19 MS. FEDERIGHI: That's correct, your Honor. No
20 objection.

21 THE COURT: It is admitted.

22 MS. BRANNON: Your Honor, we have a few exhibits we
23 want to admit through Dr. Warshaw.

24 Can we call up PX-324.

25 Q. Dr. Warshaw, can you describe what this document is?

IbdWnys3

Warshaw - Direct

1 A. This is the effect of a 2 percent undercount on state
2 population enumerations in 2020.

3 Q. Is this a document that you created as part of your
4 analysis in this case?

5 A. Yes, it is.

6 MS. BRANNON: Your Honor, we would move to admit this
7 as part of Dr. Warshaw's testimony in this case.

8 THE COURT: Any objection?

9 MS. FEDERIGHI: Yes, your Honor. We object on the
10 basis of our standing 401, 403 objections, anything outside the
11 administrative record. In addition, we object on the basis
12 that it's hearsay if we are OK with admitting it under 703.

13 THE COURT: Why wouldn't it be admissible under 1006?

14 MS. FEDERIGHI: I'm not --

15 THE COURT: Summary or chart.

16 MS. FEDERIGHI: I think it contains hearsay, your
17 Honor. I think it's admissible for the purpose of 703.

18 THE COURT: I'll admit it under 1006.

19 (Plaintiffs' Exhibit 324 received in evidence)

20 MS. BRANNON: Your Honor, it is a summary.

21 Q. Dr. Warshaw, is this a summary of your analysis in this
22 case?

23 A. It is.

24 MS. BRANNON: Can plaintiffs see PX-325.

25 Q. Dr. Warshaw, what is this document?

IbdWnys3

Warshaw - Direct

1 A. This is an academic publication that was published in
2 "Political Analysis" in 2009 that examines the effect of
3 reapportionment on distributive spending in the U.S. states.

4 Q. Who is the author of this document?

5 A. It was Roy Elis, Neil Malhotra and Marc Meredith. I think
6 we could refer to it as Elis *et al.*

7 Q. Did you refer to this article in forming your opinions in
8 this case?

9 A. I did.

10 Q. Is this a kind of article that a political scientist would
11 typically rely upon in forming expert opinions?

12 A. Yes.

13 MS. BRANNON: Plaintiffs would offer PX-325 under 703.

14 THE COURT: Any objection, with that caveat?

15 MS. FEDERIGHI: No objection to it being offered under
16 703, your Honor.

17 THE COURT: All right. Admitted for that purpose and
18 that purpose only.

19 (Plaintiffs' Exhibit 325 received in evidence)

20 MS. BRANNON: And then plaintiffs would call up
21 PX-326.

22 Q. Dr. Warshaw, are you familiar with this document?

23 A. Yes, I am.

24 Q. And can you briefly describe what this document is?

25 A. This was an academic article published in "American

IbdWnys3

Warshaw - Cross

1 Political Science Review" in 2002 that examined the effect of
2 malapportionment in court-ordered redistricting on distribution
3 of funds in American states.

4 Q. Can you describe who the authors of this document are?

5 A. Yes. Stephen Ansolabehere, Alan Gerber and Jim Snyder. We
6 can refer to this document as Snyder *et al.*

7 Q. Is this a document you relied upon in reaching your expert
8 opinion in this case?

9 A. It is.

10 Q. Is this article the kind of thing a political scientist
11 would typically rely upon in reaching an expert opinion?

12 A. Yes, absolutely.

13 MS. BRANNON: Plaintiffs would move to submit PX-326
14 also under Federal Rule of Evidence 703.

15 THE COURT: Any objection, with that understanding?

16 MS. FEDERIGHI: No objection to it being offered under
17 703, your Honor.

18 THE COURT: All right. So admitted.

19 (Plaintiffs' Exhibit 326 received in evidence)

20 THE COURT: Anything else?

21 MS. BRANNON: That's it, your Honor.

22 THE COURT: All right. Cross-examination.

23 CROSS-EXAMINATION

24 BY MS. FEDERIGHI:

25 Q. Good morning, Dr. Warshaw. Thank you for coming today.

IbdWnys3

Warshaw - Cross

1 And for the record, I'm Carol Federighi.

2 Dr. Warshaw, you've provided an opinion on the likely
3 effects of some possible undercounts caused by the citizenship
4 question on the apportionment of representatives across states
5 for the U.S. House of Representatives, correct?

6 A. I have.

7 Q. And in performing your analysis for that opinion, you also,
8 first, provided an opinion as to the effects of those possible
9 undercounts caused by the citizenship question on the
10 population estimates for each state, correct?

11 A. I did.

12 Q. You have determined the effects on the estimated state
13 populations using four potential undercount percentages, and
14 for three of those percentages, you examined two variations.
15 Is that a correct summary?

16 A. I examined four sets of scenarios, and you could view two
17 of those scenarios as providing a range around the 5.8 percent
18 estimate.

19 Q. So, I just want to make sure we get our, understand our
20 terminology. You have four different scenarios, and with three
21 of those scenarios you had two variations as to whether you
22 would impose the percentages on noncitizen households or
23 noncitizen plus Hispanic households, correct?

24 A. In three of those scenarios, I imposed the percentages on
25 noncitizen households and Latinos, Latino persons. In the

IbdWnys3

Warshaw - Cross

1 fourth scenario I examined Latino people and non-Hispanic,
2 foreign-born people.

3 Q. So, I want to look at each, summarize each of your four
4 scenarios. In the first scenario you used 5.8 percent for the
5 percent increase of the undercount. Is that correct?

6 A. That's correct.

7 Q. And that number is based on an internal study by the Census
8 Bureau, correct?

9 A. That's correct.

10 Q. Under the second and third scenarios, you used 10 percent
11 and 2 percent, respectively, for the percent increase in the
12 undercount, correct?

13 A. That's correct.

14 Q. And those, counsel provided you with those percentages,
15 correct?

16 A. I discussed those percentages with counsel, and I agreed
17 with them that based on the evidence I had available to me,
18 they provided a reasonable range of possible effects.

19 Q. And then under the last scenario, you used numbers derived
20 from the survey conducted by another of plaintiffs' experts,
21 Dr. Barreto, correct?

22 A. For the fourth scenario, I used the survey conducted by
23 Dr. Barreto as the foundation for my analysis, but I conducted
24 all of the analysis myself and didn't discuss my conclusions
25 with any other expert.

IbdWnys3

Warshaw - Cross

1 Q. Now, you're aware that in the census, a substantial number
2 of people are enumerated through nonresponse follow-up,
3 correct?

4 A. I am.

5 Q. But none of your scenarios expressly take into account the
6 results of nonresponse follow-up on the potential increase in
7 undercount, correct?

8 A. One could view the 2 percent scenario as taking into
9 account follow-up relative to the 5.8 or 10 percent scenarios.

10 Q. But the other scenarios do not take into account
11 nonresponse follow-up, correct?

12 A. The other scenarios assume that nonresponse would lead to
13 an undercount.

14 Q. You're also aware, aren't you, that the Census Bureau uses
15 imputation to account for at least some of the missing people,
16 correct?

17 A. I am.

18 Q. None of your scenarios takes into account the result of
19 imputation either, correct?

20 A. Again, I think the 2 percent scenario one could view as
21 taking into account both follow-up and imputation. The other
22 scenarios don't directly take it into account.

23 Q. OK. So let's look at that 2 percent scenario, which you
24 said can be viewed as taking into account some NRFU after an
25 initial larger nonresponse rate, correct?

IbdWnys3

Warshaw - Cross

1 A. That's right.

2 MS. FEDERIGHI: Let's look at table 6 from page 23 of
3 your trial testimony.

4 Sorry about the technical glitch.

5 Q. This is a table that represents your calculations of the
6 effect of the undercount on congressional apportionment,
7 correct?

8 A. This is -- that's correct.

9 Q. But this table -- let's look at the header here that, which
10 is popped out. This table shows that you didn't calculate the
11 effect on apportionment for the 2 percent scenario, correct?

12 A. I calculated the effect on state populations, which is
13 displayed in the table in the appendix that I believe we were
14 discussing -- or you and the attorneys were discussing earlier.
15 I didn't look at, I didn't look at the effect on apportionment
16 for the 2 percent scenario.

17 Q. OK. We'll get to that table in a second.

18 MS. FEDERIGHI: Let's look at the line for New York in
19 table 6.

20 Q. So the highlighted line shows the effect on the undercount
21 of whether New York would lose a seat in the scenarios you
22 addressed, correct?

23 A. Yes, that's correct.

24 Q. And again, none of those scenarios take into account NRFU,
25 correct?

IbdWnys3

Warshaw - Cross

1 A. None of these scenarios directly take into account NRFU.
2 They assumed that nonresponse would lead to an undercount.

3 Q. Now, this table shows that the probability that New York
4 will lose a seat in any of your scenarios is less than 50
5 percent, correct?

6 A. That's correct.

7 Q. OK.

8 A. I'd just say in each scenario I find there's a risk that
9 New York would lose a seat, but it's less than 50 percent --
10 sorry, four of the five scenarios, I think, not in each of the
11 scenarios. But I think in most of the scenarios I find there's
12 a risk that New York would lose a seat.

13 Q. And are you saying in some scenarios there's no risk that
14 New York would lose a seat?

15 A. In some scenarios there may be a risk, but it's outside of
16 the 95 percent confidence interval likelihood, not to say
17 there's no risk at all.

18 Q. In fact, the only states that are more likely than not to
19 lose a seat in any of your scenarios are California, Florida
20 and Texas, correct?

21 A. If you put the table back up, I think I'd want to answer
22 that with a table in front of me.

23 MS. FEDERIGHI: Yes, can we have -- can you unpop
24 out -- can you undo the pop out. Yeah. And can you pop out,
25 maybe, the whole table.

IbdWnys3

Warshaw - Cross

1 A. Sure. I believe that Arizona we find would also lose a
2 seat in the 10 percent scenario, which in my view the census
3 documents suggest that the 5.8 percent assumption could be a
4 conservative estimate of the undercount -- or of the
5 nonresponse, so I view the 10 percent scenario as very
6 reasonable potential nonresponse, so I think that there is a
7 risk. There is a likelihood in that scenario that Arizona
8 would lose a seat as well.

9 Q. But that 10 percent is just the effect on the
10 self-response, correct?

11 A. That's correct.

12 Q. You would expect after NRFU, after nonresponse follow-up
13 and imputation that that would be quite less than 10 percent?

14 A. I think it could be. I didn't have information to evaluate
15 that, but I think it could be.

16 Q. You don't have an opinion as to whether New York is likely
17 to lose a seat after the actual census, which takes into
18 account nonresponse follow-up and imputation, correct?

19 A. The -- well, the baseline estimate that I provide in
20 table -- sorry, the actual census if it included a citizenship
21 question.

22 Q. Right.

23 A. I don't have in front of me -- well, I think across these
24 scenarios, I think there's a risk that New York would lose a
25 seat, and in the 2 percent scenario, I haven't analyzed the

IbdWnys3

Warshaw - Cross

1 apportionment implications of that scenario.

2 MS. FEDERIGHI: I'd like to turn back to that 2
3 percent undercount scenario on the, and this is a table in your
4 appendix, on page 33.

5 Q. You calculated the 2020 projected population assuming a 2
6 percent undercount and the two subpopulations here, correct?

7 A. That's correct.

8 Q. You started with the baseline population assuming, you
9 know, with no citizenship question of 19.9 million, correct?

10 A. That's correct.

11 Q. The confidence interval or margin of error for that
12 projection is about 100- to 200,000 people, right?

13 A. I don't have that number in front of me exactly what it is,
14 but that sounds possible. I don't -- I couldn't say for sure.

15 Q. Do you remember taking your deposition -- do you remember I
16 took your deposition in this case?

17 A. I do. I think in deposition I said that 1- or 200,000 was
18 the possible range of the uncertainty.

19 Q. And that is about .5 percent to 1 percent of the 19.9
20 million, correct?

21 A. Yeah.

22 Q. But your calculated undercount for New York in the 2
23 percent scenario is minus .4 percent or minus .6 percent,
24 correct?

25 A. That's correct.

IbdWnys3

Warshaw - Redirect

1 MS. FEDERIGHI: I have no further questions.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MS. BRANNON:

5 Q. Just a few questions, Dr. Warshaw.

6 First, just to clarify an answer that you provided, when
7 you did your evaluation that is in your declaration, the 10
8 percent evaluation that you did is an assumption that there
9 will be a 10 percent undercount, correct?

10 A. That's correct.

11 Q. And you found like that -- it's your opinion that that was
12 a reasonable range to look at in terms of evaluating what the
13 impact of the citizenship question might be?

14 A. It is. It is, and that's because the census documents that
15 I had in front of me suggested that the 5.8 percent that they
16 found in their own analysis could be quite conservative. So it
17 could have been much higher than 5.8 percent or even higher
18 than 10 percent.

19 I'll also say that the survey, the randomized control trial
20 that I did as part of the survey provided -- yielded an
21 estimate somewhere between the 5 and 10 percent of the effect
22 of an undercount -- or the undercount due to a citizenship
23 question.

24 Q. And 10 percent of the noncitizen --

25 MS. BRANNON: Just give me one minute.

IbdWnys3

Warshaw - Redirect

1 Sorry, your Honor. And counsel had up table 2. I
2 just want to ask a couple of follow-up questions about table 2.
3 Can we see table 7.

4 Q. And in this column, can you describe what table 7 is and
5 then explain specifically what the 2 percent undercount that's
6 reflected in this table is?

7 A. Of course. So, this is the analysis I conducted of the
8 effect of each of the undercount scenarios on the enumerated
9 populations in various cities and counties that are plaintiffs
10 in this lawsuit. The 2 percent undercount here is the scenario
11 we discussed earlier that could be viewed as the five, the
12 equivalent of a 5.8 percent that also includes some nonresponse
13 follow-up and imputation.

14 MS. BRANNON: And then can we highlight New York in
15 that table.

16 Q. And can you just explain for the Court what the
17 significance of the calculations that you did for New York
18 City?

19 A. Sure. What I found was that if you only look at
20 noncitizens, this 2 percent scenario would yield a .6 percent
21 reduction in the enumerated population in New York City, and if
22 you look at noncitizens plus Hispanics, it would lead to an
23 undercount of 1 percent in New York City.

24 Q. And why is the result of this calculation on table 7
25 important?

IbdWnys3

Warshaw - Redirect

1 A. Well, I think it's important to look at cities and
2 counties, because we know that in situations where there's vote
3 dilution due to malapportionment was essentially what happened
4 here. If we had -- if we didn't properly enumerate the
5 population of these cities and counties, they'd be effectively
6 malapportioned in the legislature, and so we know that they
7 would get less representation in the legislature than they
8 would if they were given -- if we had a full population count,
9 and there's a large political science literature that shows
10 that having less representation in the legislature -- in the
11 legislature leads to having less distributive spending in
12 particular cities and counties, so it's likely that these
13 cities and counties would get less money for roads and schools
14 and things like that from the state and federal government.

15 Q. Was the Snyder equal-vote-equal-money article that we
16 referenced earlier one of the examples of the body of political
17 science that you just referenced?

18 A. Yes.

19 MS. BRANNON: And then can we look at table 8, and
20 again, can we look at New York City and the 2 percent
21 undercount.

22 Q. And can you explain the importance of what the numbers here
23 in table 8 mean?

24 A. So, this table examines the effect of an undercount on the
25 relative proportion of each state's population that each city

IbdWnys3

Warshaw - Redirect

1 and county would constitute. And of course, this is important
2 because redistricting happens at the state level. So after
3 we've gone through apportionment, then states will draw both
4 congressional and state legislative districts based on the
5 enumerated population of geographic areas within their state.
6 And in this case we can see even that in the 2 percent
7 scenario, New York City would have somewhere between .3 and .4
8 percent less calculation as percentage of the state's
9 population than it should. And if we turn all the way to the
10 right-hand scenario and look at the randomized control trial
11 that we conducted, in that scenario New York City would have --
12 would be undercounted by 1.6 percent relative to state
13 population, and my view is this is likely to have large
14 consequences for redistricting.

15 MS. BRANNON: And then can we just turn quickly to
16 figure 2.

17 Q. And can you explain to us what the significance of figure 2
18 is?

19 A. This figure shows my findings of the effect of an
20 undercount based on our randomized control trial that we
21 conducted in a survey, that the plaintiffs conducted in a
22 survey in each county in the United States. What you can see
23 is the largest effects are concentrated in border counties and
24 cities with large metropolitan areas where there's large
25 Hispanic and foreign-born populations. And the labels on the

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Warshaw - Redirect

1 map show the locations of all of the plaintiff cities and
2 counties in this lawsuit, and you can see that all of the
3 plaintiffs in this lawsuit are located in areas that are likely
4 to be heavily impacted by a citizenship question on the census.

5 Q. And then defense counsel asked you about the confidence
6 intervals for the New York population estimate of the state of
7 New York. In your -- would your opinions change if your
8 population estimates in your declaration are not exactly
9 correct?

10 A. No, they would not. And in fact, my analysis of
11 apportionment took into account uncertainty in the population
12 estimates. I think when you're analyzing uncertainty in the
13 population estimate, it's important to include the uncertainty
14 both at our baseline population apportionment based on the
15 census current population estimate as well as in our estimate
16 of the effect of the undercount. And when I take both
17 uncertainties into account, that yields the analyses that I
18 used for apportionment and that's how I developed the 95
19 percent confidence interval. So in fact, my analysis directly
20 takes into account these kinds of uncertainties in the
21 population projections.

22 Q. So your population projections aren't intended to be
23 specific points that are exactly correct?

24 A. No, of course not. We're forecasting three years into the
25 future and we're always going to be estimating with some

IbdWnys3

1 uncertainty as we forecast into the future. But the models'
2 are accurate enough that none of my substantive conclusions
3 would change, and indeed, as I said, I take those uncertainties
4 into effect, into account for my apportionment estimates.

5 MS. BRANNON: Nothing further, your Honor.

6 THE COURT: Any recross?

7 MS. FEDERIGHI: No, your Honor.

8 THE COURT: All right.

9 Dr. Warshaw, you may step down.

10 (Witness excused)

11 MR. HO: Your Honor, the plaintiffs call Dr. John
12 Abowd.

13 THE COURT: Just so I understand the plan here, I
14 assume the testimony that you'll elicit will basically be his
15 fact testimony as part of your case, and then cross will be a
16 mix of that and his expert testimony on behalf of defendants?

17 MR. HO: I think that's essentially correct, your
18 Honor. There's a little bit of bleed between his expert and
19 his fact testimony, because some of his expert testimony is
20 based on the factual research that he did in the process of the
21 citizenship question being studied by the Census Bureau, so
22 it's a little hard to treat them as discrete entities, but for
23 the most part, I think you're right.

24 THE COURT: All right.

25 MR. EHRLICH: Your Honor, can we have a brief sidebar?

IbdWnys3

THE COURT: Sure.

(Page 875 SEALED)

IbdWnys3

Abowd - Direct

1 (In open court)

2 JOHN MARON ABOWD,

3 called as a witness by the plaintiffs,

4 having been duly sworn, testified as follows:

5 THE COURT: You may proceed, Mr. Ho.

6 DIRECT EXAMINATION

7 BY MR. HO:

8 Q. Dr. Abowd, you're the chief scientist at the United States
9 Census Bureau, correct?

10 A. Yes, sir.

11 Q. You're also associate director for research and methodology
12 at the United States Census Bureau, correct?

13 A. That's correct.

14 Q. And in that role, you lead a directorate of research
15 centers across all statistical programs of the Census Bureau,
16 correct?

17 A. That's correct.

18 Q. You're one of the senior executives at the Census Bureau,
19 correct?

20 A. That's correct.

21 Q. And you testified on behalf of the Census Bureau at a
22 30(b)(6) deposition, correct?

23 A. Yes, sir.

24 Q. You assumed your current role at the Census Bureau on June
25 1, 2016, correct?

IbdWnys3

Abowd - Direct

1 A. Yes.

2 Q. You had previously been a part-time employee at the Census
3 Bureau dating back to 1998, correct?

4 A. Yes.

5 MR. HO: I'd like to bring up Plaintiffs' Exhibit 26.

6 For the record, your Honor, this has been admitted in
7 evidence, and it is part of the administrative record.

8 Q. Dr. Abowd you recognize this as Secretary Ross's decision
9 memo, dated March 26, 2018, directing the inclusion of a
10 citizenship question on the 2020 census questionnaire, correct?

11 A. Yes.

12 MR. HO: I'd like to highlight on the first page the
13 second paragraph.

14 Q. Dr. Abowd, when this memo was issued, it was your
15 understanding that Secretary Ross set out to take a hard look
16 following receipt of a December 2017 request from the
17 Department of Justice for census block-level citizen voting-age
18 population data for purposes of enforcing the Voting Rights
19 Act, correct?

20 A. Yes.

21 MR. HO: Let's turn to page 8 of this letter, please,
22 and let's look at the first paragraph.

23 Q. Dr. Abowd, you understand that Secretary Ross wrote that a
24 citizenship question on the decennial census is necessary to
25 provide complete and accurate data in response to the DOJ

IbdWnys3

Abowd - Direct

1 request, correct?

2 A. Correct.

3 Q. And with that conclusion, Secretary Ross ordered the
4 inclusion of a citizenship question on the 2020 census,
5 correct?

6 A. That's correct.

7 Q. And Secretary Ross ordered the bureau to combine data
8 collected through a citizenship question on the 2020 census
9 with the use of administrative records for developing
10 block-level CVAP, or citizenship voting-age population, for the
11 Department of Justice, correct?

12 A. He instructed us to use both the citizenship responses on
13 the 2020 census and administrative data and to produce a
14 citizen voting-age population by race and ethnicity table as we
15 deemed best.

16 Q. And Secretary Ross refers to that as option D in his memo,
17 is that correct?

18 A. That's correct.

19 Q. Dr. Abowd, as the chief scientist at the Census Bureau, you
20 do not think that adding a citizenship question to the 2020
21 census is a good idea, correct?

22 A. Correct.

23 Q. And Dr. Abowd, the leadership of the Census Bureau does not
24 think that adding a citizenship question to the 2020 census is
25 a good idea, correct?

IbdWnys3

Abowd - Direct

1 A. Correct.

2 Q. And Dr. Abowd, your consistent recommendation has been not
3 to include a citizenship question on the 2020 census, correct?

4 A. Correct.

5 Q. And Dr. Abowd, the consistent recommendation from the
6 leadership of the Census Bureau has been not to include a
7 citizenship question on the 2020 census, correct?

8 A. Correct.

9 Q. Let's back up for a moment, Dr. Abowd. I want to talk
10 about how you arrived at those recommendations. Now, you first
11 learned about the Department of Justice's December 12, 2017,
12 request to add a citizenship question to the 2020 decennial
13 census from Acting Census Bureau Director Ron Jarmin, correct?

14 A. That's correct.

15 Q. And you learned about that via email on December 15, 2017,
16 correct?

17 A. That's correct.

18 Q. And your understanding is that the reason for the request
19 was that the Department of Justice wants block-level citizen
20 voting-age population data, which I'll sometimes call CVAP, for
21 purposes of enforcing the Voting Rights Act of 1965, correct?

22 A. That's correct.

23 Q. Now, Acting Director Jarmin asked you to assemble a team of
24 experts to begin discussing how the Census Bureau might respond
25 to the DOJ request, correct?

IbdWnys3

Abowd - Direct

1 A. He asked me to assemble a team of technical experts, that's
2 correct.

3 Q. And you refer to that team of technical experts as your
4 SWAT team, right?

5 A. That's correct.

6 Q. And over the course of discussions with Dr. Jarmin, it
7 became clear to you that he wanted a technical report as to how
8 the Census Bureau could respond to the DOJ request, correct?

9 A. That's correct.

10 Q. And so you asked the SWAT team to write a white paper to
11 summarize what they could learn about citizenship data that
12 might be used to satisfy the DOJ request, correct?

13 A. That's correct.

14 Q. And you eventually wrote a memo addressed to Secretary Ross
15 summarizing the work of the SWAT team, correct?

16 A. Summarizing the opinions of the senior executive staff that
17 were based on that work and other research done by other
18 persons in the Census Bureau.

19 MR. HO: Let's look at Plaintiffs' Exhibit 26, the
20 Ross decision memo again. Let's look at page 4, the first
21 paragraph on the page, the last sentence.

22 Q. Secretary Ross writes: "So while there is widespread
23 belief among many parties that adding a citizenship question
24 could reduce response rates, the Census Bureau's analysis did
25 not provide definitive, empirical support for that belief." Do

IbdWnys3

Abowd - Direct

1 you see that, Dr. Abowd?

2 A. Yes, I do.

3 MR. HO: We can take that down.

4 Q. Dr. Abowd, the memo that you wrote to Secretary Ross, in
5 your opinion, that memo memorialized the Census Bureau's
6 credible, quantitative evidence that the addition of a
7 citizenship question to the 2020 census could be expected to
8 lower the self-response rate in households that may contain
9 noncitizens, correct?

10 A. Yes, that's correct.

11 Q. And you would describe noncitizens as an identifiable and
12 large subpopulation, correct?

13 A. We identified households that either contained a noncitizen
14 or might contain a noncitizen or a person of unknown
15 citizenship status as a large subpopulation, yes.

16 Q. And that opinion is based upon the work of the SWAT team
17 that was conducted under your direction, correct?

18 A. That's correct.

19 Q. And Dr. Abowd, you agree that the balance of evidence
20 available suggests that adding a citizenship question to the
21 2020 census would lead to a lower self-response rate in
22 households that potentially contain a noncitizen, correct?

23 A. Yes, I agree with that conclusion.

24 Q. And the Census Bureau agrees with that conclusion, right,
25 Dr. Abowd?

IbdWnys3

Abowd - Direct

1 A. Yes, they do.

2 Q. And reducing the self-response rate in that way, that's a
3 bad thing, right, Dr. Abowd?

4 A. I have consistently characterized data produced by lower
5 self-response rates as being less accurate.

6 Q. OK. I want to talk about your memo, Plaintiffs' Exhibit
7 22.

8 MR. HO: For the record, this has been admitted into
9 evidence and is in the administrative record.

10 Q. Dr. Abowd, this is a memo that was prepared under your
11 supervision, correct?

12 A. I'd like to clarify that the memo that I'm familiar with
13 contains a watermark with a version number on it, and this
14 doesn't.

15 Q. I think it may just be a function of it being on the
16 screen. Do you see at the bottom of the page, Dr. Abowd, on
17 the right-hand side, it has a Bates number, 1277?

18 A. Yes, I see that.

19 Q. Is your understanding that that number reflects the fact
20 that this memo was part of the administrative record in this
21 case?

22 A. Yes, Bates 1277 is definitely my memo.

23 Q. OK. Great.

24 So this is a memo that was prepared under your supervision,
25 correct?

IbdWnys3

Abowd - Direct

1 A. Yes.

2 Q. And the views are expressed in this memo are the views of
3 the technical team, the SWAT team that assisted you, correct?

4 A. The views in this memo are a summary of the technical work
5 that that SWAT team did and the contributions made by other
6 senior executives at the Census Bureau.

7 Q. You agree with the conclusions in this memo, right,
8 Dr. Abowd?

9 A. Yes, I do.

10 Q. And Acting Census Bureau Director Ron Jarmin reviewed and
11 approved this memo, correct?

12 A. Yes, he did.

13 Q. And this is the last version of this memo, correct?

14 A. Yes, it is.

15 Q. This memo was routed to the secretary of commerce, correct?

16 A. Yes, that's correct.

17 Q. And you eventually had a meeting to discuss this memo with
18 Secretary Ross on February 12, 2018, correct?

19 A. Yes, that's correct.

20 Q. Now, before your meeting with Secretary Ross that day, you
21 had a premeeting on the same day with Undersecretary Karen Dunn
22 Kelley in the Department of Commerce, correct?

23 A. Yes, that's correct.

24 Q. And during that premeeting with the undersecretary, you
25 discussed this memo, correct?

IbdWnys3

Abowd - Direct

1 A. We all discussed it, yes.

2 Q. And when you met with Undersecretary Kelley, she did not
3 express any disagreements with the analysis in this memo,
4 correct?

5 A. That's my recollection from the meeting, yes.

6 Q. And during the meeting that you had with Secretary Ross
7 later that day, he asked you questions that indicated to you
8 that he had a thorough understanding of the issues in this
9 memo, correct?

10 A. Yes, that's correct.

11 Q. And that was the only meeting that you had with Secretary
12 Ross to discuss the citizenship question before Secretary Ross
13 issued his March 26 decision memo, correct?

14 A. Yes, that's correct.

15 Q. So let's be clear. Secretary Ross had only one meeting
16 with the chief scientist at the Census Bureau about the
17 citizenship question before he issued his decision memo,
18 correct?

19 A. Yes, that's correct.

20 Q. Now, your memo here, it addresses -- I'm sorry.

21 MR. HO: Let's bring up your memo, Plaintiffs' Exhibit
22 22.

23 Q. It addresses three alternatives in response to the
24 Department of Justice request, correct?

25 A. Yes, that's correct.

IbdWnys3

Abowd - Direct

1 Q. And those alternatives are, A, make no change in data
2 collection; B, add a citizenship question to the 2020 census;
3 and, C, obtain citizenship status from administrative records,
4 correct?

5 A. You didn't finish the sentence, but yes, that's correct.

6 Q. You don't disagree with how I characterized it, do you,
7 Dr. Abowd?

8 A. I do not.

9 MR. HO: Let's look at the last paragraph on the page
10 and highlight it.

11 Q. Dr. Abowd, you did not recommend alternative B, which was
12 adding a citizenship question, correct?

13 A. The memo does not recommend it, and I supervised the
14 preparation of the memo, that's correct.

15 Q. So you did not recommend alternative B, correct?

16 A. That's correct.

17 Q. In fact, you described alternative B in the memo as "very
18 costly, harms the quality of the census count and would use
19 substantially less accurate citizenship status data that are
20 available from administrative sources," correct?

21 A. Yes, that's correct.

22 Q. That's adding a citizenship question, correct?

23 A. Alternate B is the addition of the citizenship question to
24 the 2020 census, yes.

25 Q. OK. So instead of alternative B, you recommended either

IbdWnys3

Abowd - Direct

1 alternative A, no change, or alternative C, using
2 administrative records, correct?

3 A. Yes, that's correct.

4 Q. And your memo's conclusion was that using administrative
5 records instead of asking the citizenship question -- that is,
6 alternative C -- would best meet DOJ's stated uses, correct?

7 A. Yes, that's correct.

8 Q. And your memo concluded that that using administrative
9 records instead of asking a citizenship question "is
10 comparatively far less costly than alternative B, does not
11 increase response burden and does not harm the quality of the
12 census count," correct?

13 A. That's correct.

14 MR. HO: Let's talk about the analysis of alternative
15 B in your memo, and I want to look at page 4 of PX-22. I'm
16 looking at the header under -- I'm looking at the header in
17 Section B2, self-response rate analysis, and I want to ask you
18 about the first paragraph here.

19 Q. This paragraph is describing an analysis of unit
20 nonresponse rates to the 2000 census questionnaire as compared
21 to the 2000 long form, right, Dr. Abowd?

22 A. Yes, that's correct.

23 Q. And by unit nonresponse, we mean the rate at which people
24 fail to respond to a survey, correct?

25 A. Fail to self-respond, correct.

IbdWnys3

Abowd - Direct

1 Q. The 2000 short-form census questionnaire did not have a
2 citizenship question on it, correct?

3 A. Yes, that's correct.

4 Q. But the 2000 census long form did have a citizenship
5 question on it, correct?

6 A. Yes, that's correct.

7 Q. And so what you did here is you compared unit self-response
8 rates on these two questionnaires between noncitizens, on the
9 one hand, and citizen households, on the other, correct?

10 A. That's not all we did, but you got the first step right,
11 yes. Correct.

12 Q. OK. Let's just talk about the long-form analysis. We'll
13 talk about the ACS analysis in a second.

14 A. Well, I meant that you hadn't completely characterized how
15 we did the short and long-form analysis in 2000.

16 Q. You compared the decline in self-response on the census
17 long form as compared to the census short form for households
18 that contain a noncitizen to that same decline for households
19 that were all citizens, correct?

20 A. Yes, that's correct.

21 Q. OK. And when you conducted this analysis, you found that
22 for both citizen households and households that had one
23 noncitizen, the response rate on the long form was lower than
24 on the short form?

25 A. The self-response rates on the long form were lower than

IbdWnys3

Abowd - Direct

1 those on the short form, that's correct.

2 Q. But for households that had one or more noncitizen in them,
3 the decline in the self-response rate between the long form and
4 the short form was 3.3 percentage points more than it was for
5 all citizen households, correct?

6 A. Yes, that's correct.

7 Q. And you considered that decline to be evidence that a
8 citizenship question causes households containing a noncitizen
9 to self-respond to a survey at lower rates, correct?

10 A. We considered that credible, quantitative evidence that
11 such a question might cause a decline on the magnitude of 3.3
12 percent in 2000.

13 Q. OK. Now, you also conducted similar analyses for the
14 American Community Survey, correct?

15 A. That's correct.

16 Q. And that analysis in your memo -- and that analysis is
17 reflected in your memo here, correct?

18 A. As it existed as of January 19, that's correct.

19 Q. OK. We'll get to the later analysis. Let's just stick to
20 the January 19 for now. Is that all right?

21 A. Yes, sir.

22 Q. OK. Now, just to pause for a moment here, Dr. Abowd, I
23 want to just make sure the record's clear here. Your analysis
24 of unit nonresponse rates here applies not just to alternative
25 B but also to option D, the choice that the secretary of

IbdWnys3

Abowd - Direct

1 commerce ultimately made, correct?

2 A. It would apply to any alternative in which the citizenship
3 question was asked on the short form.

4 Q. And that includes option D, what Secretary Ross ultimately
5 ordered, correct?

6 A. Yes, that's correct.

7 Q. Now, before we talk about your analysis of ACS data, I just
8 want to back up and ask a few questions about the ACS.

9 The ACS is an ongoing sample survey, correct?

10 A. Yes, that's correct.

11 Q. Sent to a little more than 2 percent of the population
12 annually, correct?

13 A. It's sent to a larger percentage than that, but the
14 responses come from between two and two and a half percent of
15 the population annually.

16 Q. Responses to the ACS are required by law, correct?

17 A. That's correct, but the nonresponse follow-up is a sample,
18 not universally selected households.

19 Q. We'll talk about the nonresponse follow-up to the ACS in a
20 second. I just want to make clear that just like responses to
21 the decennial enumeration questionnaire are required by law,
22 responses to the ACS are also required by law, correct?

23 A. Yes, that's correct.

24 Q. Now, the ACS contains dozens of questions, correct?

25 A. Yes, at least dozens.

IbdWnys3

Abowd - Direct

1 Q. And one of the questions on the ACS is a question about
2 citizenship status?

3 A. Yes, that's correct.

4 Q. Now, your memo here has three different kinds of analyses
5 of American Community Survey, or ACS, data that bear upon the
6 potential adverse impact of a citizenship question on the 2020
7 census, correct?

8 A. I think you're referring to the Section B1, 2 and 3 in the
9 memo?

10 Q. I'm referring to your analysis of unit nonresponse rates,
11 item nonresponse rates and breakoff rates.

12 A. Yes, that's correct.

13 Q. OK. All three of those analyses bear upon the potential
14 effect of a citizenship question on the 2020 census, correct?

15 A. Yes, that's correct.

16 Q. And it's the opinion of the executive staff of the Census
17 Bureau that all three analyses were appropriate in support of
18 your conclusion that using administrative records would be a
19 better option for producing block-level CVAP data for VRA
20 enforcement purposes than adding a citizenship question to the
21 census, correct?

22 A. Yes, that's correct.

23 Q. And this memo included that all three analyses support the
24 conclusion of an adverse impact on self-response and as a
25 result on the accuracy and quality of the 2020 census, correct?

IbdWnys3

Abowd - Direct

1 A. I don't remember it using adverse impact, but they support
2 the conclusion that there would be a lower self-response rate
3 and the consequences of that lower self-response rate, yes.

4 MR. HO: OK. Let's just look at the bottom of -- I'm
5 sorry. At page 4 in your memo, the first two sentences there
6 at the top. I'm sorry. Not the bottom but just the top,
7 "before these reasons" sentence, the top paragraph on the page.

8 Q. You used the term "adverse impact" to describe the effect
9 of the citizenship question on self-response rates, right,
10 Dr. Abowd?

11 A. Thank you for refreshing my memory. Yes, I did.

12 MR. HO: OK. Let's talk about your analysis of unit
13 self-response rates, and let's stay on page 4 and let's look at
14 the bottom paragraph, starting with "we compared."

15 Q. Now, Dr. Abowd, in this paragraph, you're describing an
16 analysis comparing response rates on the 2010 census to the
17 2010 American Community Survey, correct?

18 A. That's correct.

19 Q. And the 2010 census, let's just be clear, that
20 questionnaire did not have a citizenship question on it, right?

21 A. That's correct.

22 Q. But the 2010 ACS did have a citizenship question, right?

23 A. Yes, that's correct.

24 Q. And when you conducted this analysis, you found that
25 self-response rates to the 2010 ACS declined more for

IbdWnys3

Abowd - Direct

1 households that had one or more noncitizens in comparison to
2 the 2010 census, on the one hand, as in comparison to
3 households that consisted solely of citizens, correct?

4 A. Yes, you've got the contrast correct.

5 Q. OK. And the magnitude of that difference was 5.1
6 percentage points, correct?

7 A. Yes, that's correct.

8 MR. HO: Let's bring up page 5 of your memo, and I
9 want to ask about the first paragraph, last sentence.

10 Q. You wrote that, "It is therefore a reasonable inference
11 that a question on citizenship would lead to some decline in
12 overall self-response because it would make the 2020 census
13 modestly more burdensome in the direct sense and potentially
14 much more burdensome in the indirect sense that it would lead
15 to a larger decline in self-response for noncitizen
16 households." Did I read that right?

17 A. Yes, you did.

18 Q. And when you say noncitizen households, you mean a
19 household, for purposes of this analysis, that has one or more
20 noncitizens in it, correct?

21 A. Yes, that's correct.

22 Q. Now, it's fair to say that this 5.1 percentage point
23 estimate at the time, that you considered that a conservative
24 estimate of the differential impact of a citizenship question
25 on the self-response rates of noncitizens as compared to

IbdWnys3

Abowd - Direct

1 citizens if you were to place such a question on the 2020
2 census, correct?

3 A. Yes, I believe I have characterized that estimate as
4 conservative, but we haven't discussed exactly what a
5 statistician might mean by conservative. What I mean in this
6 context is that it is performed in the context of a natural
7 experiment, although you haven't used those words yet.

8 THE WITNESS: Your Honor, "natural experiment" is the
9 technical name for the way this analysis was conducted. Happy
10 to elaborate if you have questions.

11 BY MR. HO:

12 Q. I'll have plenty of questions unpacking what you mean by
13 conservative, and we're going to spend some talking about what
14 a natural experiment means too, Dr. Abowd. Don't worry. But
15 let's just stick with my questions for now, and my question is
16 at the time that you wrote this memo, 5.1 percentage points was
17 your best conservative estimate of the effect of adding a
18 citizenship question in terms of the differential impact of
19 self-responses of noncitizen households as compared to citizen
20 households if you were to put that question on the 2020 census.
21 Correct?

22 A. Yes, that's correct.

23 MR. HO: Let's turn to page 6 of your memo. I want to
24 ask you about the middle paragraph, the last sentence. I'm
25 sorry. Not the last sentence, just the middle paragraph here.

IbdWnys3

Abowd - Direct

1 Q. Now, in this memo, for purposes of calculating some of your
2 estimates, you expect there are about 126 million occupied
3 households to be enumerated in the 2020 census, is that right?

4 A. Yes, that's correct.

5 Q. And you estimate that 9.8 percent of households contained
6 at least one noncitizen, correct?

7 A. Yes, that's correct.

8 Q. And so a reduction of 5.1 percentage points in the
9 self-response of those households would translate to about
10 630,000 households, correct?

11 A. 630,000 households in NRFU that would not otherwise have
12 been there, yes.

13 Q. OK. And that likely translates into millions of people,
14 right, Dr. Abowd?

15 A. At average household sizes, it's more than a million
16 people, yes.

17 Q. Now, today, the Census Bureau's best conservative estimate
18 of the differential effect of adding a citizenship question to
19 the census in terms of self-responses of all citizen households
20 to other households is not 5.1 percentage points, right,
21 Dr. Abowd?

22 A. Yes, that's correct.

23 Q. Today, the best conservative estimate of the Census Bureau
24 for that differential effect in self-response is 5.8 percentage
25 points, correct?

IbdWnys3

Abowd - Direct

1 A. Best estimate we have at the moment is 5.8 percentage
2 points.

3 MR. HO: OK. Let's bring up Plaintiffs' Exhibit 162,
4 which is also Defendants' Exhibit 2. For the record, it's been
5 admitted.

6 Q. Dr. Abowd, we talked about a white paper earlier and how
7 you were charged with putting a white paper together. Do you
8 remember that?

9 A. Yes, I do.

10 Q. Is this the white paper?

11 A. This is the most recent version of the technical report
12 performed under my supervision, yes.

13 Q. And you've been sitting through trial for the last week or
14 so; sometimes people have referred to this as the Brown memo
15 during their testimony, right?

16 A. Yes, I believe that's right.

17 Q. OK, so white paper, Brown memo, different colors, different
18 names, but the same document, right?

19 A. Yes, in deference to the authors, I usually call it Brown
20 *et al.*

21 Q. OK. The analysis in Brown *et al.*, or the white paper, that
22 was begun in response to the Department of Justice's request
23 for block-level CVAP data, correct?

24 A. Yes, that's correct.

25 Q. And the authors of this paper, they're a subset of the SWAT

IbdWnys3

Abowd - Direct

1 team that you assembled, right?

2 A. Yes, that's correct.

3 Q. And you chose the best people at the Census Bureau for
4 conducting the analysis that's reflected in the Brown memo,
5 correct?

6 A. Yes, I did.

7 Q. And this white paper, this version here, dated August 6,
8 2016, you've described this as an extended and more up-to-date
9 version of the analysis that you relied on when you prepared
10 your January memo to Secretary Ross, Plaintiffs' Exhibit 22,
11 right?

12 A. Yes, I did.

13 Q. Now, this is the most recent version of the white paper
14 available, correct?

15 A. Yes, it is.

16 MR. HO: Just as a brief aside, I want to bring up
17 Plaintiffs' Exhibit 4, and I want to look at page AR-11634,
18 which should be about page 8,000-something in here. Sorry.

19 Q. While he's bringing this on the screen, I just want to ask
20 you, Dr. Abowd, your understanding is that there's an earlier
21 draft of the Brown *et al.* paper, the white memo that is
22 contained in the administrative record in this case, right?

23 A. It's my understanding that an earlier draft was produced in
24 discovery, yes.

25 Q. And is part of the administrative record in this case,

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Abowd - Direct

1 correct?

2 A. I believe there's some discussion on the record of finding
3 the Bates number for it, but that is my understanding, yes.

4 Q. OK. We'll come back to this and identify it at a later
5 time, but I just want to ask you, Dr. Abowd, you believe that
6 the analysis reflected in the Brown *et al.* memo was
7 methodologically appropriate, right?

8 A. Yes, I do.

9 Q. And you believe that the Brown memo constitutes the best
10 analysis that the Census Bureau can do of the consequences of
11 adding the citizenship question to the 2020 census, right?

12 A. With the available data, correct.

13 Q. And there are no conclusions in the Brown memo that the
14 Census Bureau disagrees with, correct?

15 A. That's correct.

16 Q. OK. The analysis that produced the 5.8 percentage point
17 estimate, the best conservative estimate of the differential
18 effect of the citizenship question on self-responses, that's
19 contained in the Brown memo, right?

20 A. Yes, it is.

21 MR. HO: Let's turn to page 39 of the Brown memo.

22 Q. And looking at table 9, the second panel here on table 9,
23 on the bottom half of the table, with the minus 5.8 percentage
24 point figure there, that's the, where the .58 percentage point
25 estimate is found in this paper, correct?

IbdWnys3

Abowd - Direct

1 A. Yes, that's correct.

2 Q. Now, several factors account for the difference between
3 your current best estimate of 5.8 percentage points and your
4 older estimate of 5.1 percentage points, correct?

5 A. Yes, that's correct.

6 Q. OK. I want to talk through some of these. One difference,
7 one factor that accounts for the difference is you compared
8 different households at this time, right?

9 A. The comparison households are constructed differently,
10 that's correct.

11 Q. Right, so for the 5.1 percentage point estimate, you
12 compared households that were all citizen, as identified in the
13 administrative records, to households that had one or more
14 noncitizens, as identified in the administrative records,
15 right?

16 A. That's correct.

17 Q. And for the 5.8 percent comparison, you compared households
18 for which their ACS response was "all members of the household
19 are citizens" and the administrative records indicate that
20 they're all citizens, on the one hand, and all the other
21 households, on the other hand, correct?

22 A. Yes, that's correct.

23 Q. Another difference is that the 5.8 percentage point
24 estimate is based on more recent ACS data, correct?

25 A. It's based on the 2016 ACS data, that's correct.

IbdWnys3

Abowd - Direct

1 Q. Right, so the 5.1 percentage point estimate, that's based
2 on a comparison of 2010 decennial census response rates and
3 2010 ACS response rates whereas the 5.8 percentage point
4 estimate, that's based on a comparison of 2010 decennial
5 response rates to 2016 ACS response rates, correct?

6 A. Yes, that's correct.

7 (Continued on next page)

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Abowd - Direct

1 BY MR. HO:

2 Q. And the reason you like the 5.8 percentage point estimate
3 better is because you think that when you're trying to assess
4 the impact of a citizenship question today, it is more reliable
5 to use more recent ACS data, correct?

6 A. You wanted more currency, that's correct.

7 Q. And you view this five point -- I'm sorry. Let me start
8 that question again.

9 When you look at that 5.8 percentage point estimate and you
10 view it in light of the 3.3 percentage point estimate from the
11 2000 short form and long form comparison and the 5.1 percentage
12 point estimate from the 2010 census and ACS 2010 ACS
13 comparison, you agree that this 5.8 percentage point figure is
14 an indicator that nonresponse rates to surveys with a
15 citizenship question are increasing for households that might
16 have a noncitizen, right?

17 A. I think we discussed this before. I've said that I am
18 reluctant as a statistician to fit a trim line to those three
19 numbers, but I did say that 5.8 is bigger than 5.1 and 5.1 is
20 bigger than 3.3.

21 Q. Dr. Abowd, the 5.8 percentage point estimate, that is a
22 conservative estimate, right?

23 A. We still haven't discussed what a statistician would mean
24 by conservative, but assuming we are using that as an undefined
25 term for the moment, yes.

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Abowd - Direct

1 Q. Lets define it.

2 One of the reasons why you consider the 5.8 percentage
3 point estimate conservative is that it is based on ACS data,
4 right, but the citizenship question could have more prominence
5 on the decennial census questionnaire, correct?

6 A. The reason that I have characterized the 5.8 percentage
7 point estimate as conservative is because it was translated
8 into what I believe, and others at the Census Bureau believe,
9 is a conservative estimate of the cost implications of that
10 self-response.

11 As a point estimate itself, it is what it is. It
12 is the best available point estimate of the decline in
13 self-response that the data could produce. So it was used in a
14 conservative way in the sense that it produced a conservative
15 cost estimate. A point estimate has a standard error band
16 around it, and in that sense, it is as good as the analysis
17 that led up to it can be for the purposes of estimating the
18 decline in self-response rates.

19 Q. Dr. Abowd, I didn't ask you about all the different reasons
20 why you would describe it as a conservative estimate. My
21 question was much simpler than that. It was simply this.

22 One reason why the 5.8 percentage point estimate is
23 conservative is because it is based on a comparison of
24 self-response rates on the ACS, but a citizenship question on
25 the decennial census questionnaire, which is much shorter,

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Abowd - Direct

1 could have much more prominence.

2 You agree with that, right, Dr. Abowd?

3 A. I didn't think I heard the "could" the first time, but yes,
4 I do agree with that statement.

5 Q. Now, the greater prominence of a citizenship question on
6 the decennial census questionnaire means that it could have a
7 larger effect in terms of depressing self-response rates to the
8 questionnaire than a citizenship question would have when
9 placed among the dozens of questions on the ACS, correct?

10 A. That's what could have a greater impact means, yes.

11 Q. Now, another issue is that the 5.8 percentage point
12 estimate as we discussed earlier, that is based on 2016 data,
13 which is more recent than 2010 data, right?

14 A. Yes, that's correct.

15 Q. And, Dr. Abowd, you agree that a question that was already
16 sensitive at one point could become more sensitive at a later
17 time due to a change in the political environment, right?

18 A. Yes, it could.

19 Q. And it is safe to say that if something happened after 2016
20 that might have made citizenship a more salient issue, that
21 that would not be reflected in your 5.8 percentage point
22 estimate, correct?

23 A. Anything that happened after 2016 would not be reflected in
24 that estimate, correct.

25 Q. OK. We'll come back to that later.

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Abowd - Direct

1 But just to round out the issues, Dr. Abowd, one other
2 issue is that the 5.8 percentage point estimate, that's only an
3 estimate about the reduction in self-response for households
4 where everyone has not been confirmed to be a citizen, correct?

5 A. That's correct.

6 Q. So it doesn't take into account any reduction in
7 self-response rates from all citizen households, correct?

8 A. That's correct.

9 Q. You would agree that the assumption that a citizenship
10 question on the census in 2020 will have no effect on all
11 citizen households, that that assumption is probably wrong,
12 right, Dr. Abowd?

13 A. That is an assumption and there is no evidence in the data
14 to say whether it is right or wrong.

15 Q. But you think, Dr. Abowd, that to assume that a citizenship
16 question would have no effect on all citizen households, that
17 to make that assumption, that would probably be wrong, right
18 Dr. Abowd?

19 A. It would be better to have information about how all
20 citizen households actually responded to a citizenship question
21 on the census.

22 Q. Dr. Abowd, do you remember giving a deposition in this case
23 on October 12, 2018?

24 A. There were so many. Yes, I do.

25 Q. I believe it was your fourth deposition in the case.

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Abowd - Direct

1 A. Yes, it was.

2 Q. OK. Can we bring up that deposition transcript and page
3 198, starting at line 7, please.

4 Dr. Abowd, you were under oath that day, correct?

5 A. Yes, I was.

6 Q. And you told the truth that day, correct?

7 A. Yes, I did.

8 Q. All right.

9 "Q. And what's your basis for saying it would fall in that
10 part of the range?

11 "A. The -- the recent data that we analyzed underlies the 5.8
12 percent and 28.6 percent that's in column two, give you -- on
13 this estimate, 82.5 million and, in the working paper, 91.2
14 million. No significance should be attributed to that
15 difference in the estimate. It has to do with the base that
16 was used in calculating them.

17 We said in our advice to the secretary, and I continue to
18 believe in my expert opinion, that that's a lower bound, a
19 cautious estimate, and that the hypothesis underlying that
20 estimate that there won't be any effect in the households that
21 have citizens is probably wrong. It's only maintained in order
22 to be able to say something about the target population, which
23 is the ones that might have a noncitizen or that definitely
24 have a noncitizen.

25 Q. Was that the question that was posed to you that day and

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Abowd - Direct

1 your answer to it?

2 A. Yes, they were.

3 Q. Dr. Abowd, to the best of your knowledge, no one at the
4 Census Bureau has conducted any statistical analysis
5 specifically addressing the question of whether even among
6 households that are all citizens, the inclusion of a
7 citizenship question could have some effect on their response
8 rates, correct?

9 A. That's correct.

10 Q. I want to talk about a different analysis in your January
11 memo, Plaintiffs' Exhibit 22, about the effect of the
12 citizenship question that's not exclusively about noncitizen
13 households. And lets turn to page four in your memory and the
14 header B1, quality of citizenship responses.

15 Now, in this section of your memo, Dr. Abowd, you discuss
16 item nonresponse rates for the citizenship question on the
17 American Community Survey, correct?

18 A. Yes, that's correct.

19 Q. And item nonresponse is different from unit nonresponse,
20 right?

21 A. Yes, that's correct.

22 Q. Item nonresponse is when someone returns a survey, but they
23 don't answer a particular question on that survey, correct?

24 A. That's correct.

25 Q. OK. I want to focus on the second paragraph under this

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Abowd - Direct

1 header. Starting with in the period.

2 Now, in this paragraph, you're describing an analysis of
3 item nonresponse rates to the citizenship question on the
4 American Community Survey, right?

5 A. Yes, that's correct.

6 Q. And you're looking at item nonresponse rates on the
7 American Community Survey from 2013 to 2016, right?

8 A. Yes, that's correct.

9 Q. And in that analysis, you're comparing racial and ethnic
10 subgroups, correct?

11 A. Yes.

12 Q. And you found that the item nonresponse rate to the
13 citizenship question for the mail in ACS for non-Hispanic
14 whites during this period ranged from 6 to 6.3 percent, correct?

15 A. Yes.

16 Q. And you also found that during the same period, the item
17 nonresponse on the citizenship question for the mail in ACS for
18 non-Hispanic blacks ranged from 12 percent to 12.6 percent,
19 correct?

20 A. Correct.

21 Q. So that is twice as high as the item nonresponse rate
22 during this period on the ACS citizenship question for blacks
23 as compared to non-Hispanic whites, correct?

24 A. Correct.

25 Q. You also found during this period that the item nonresponse

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Abowd - Direct

1 rate on the citizenship question for the mail-in ACS for
2 Hispanics ranged from 11.6 percent to 12.3 percent, correct?

3 A. Correct.

4 Q. And you also looked at the ISR instrument.

5 That's the Internet version of the ACS, correct?

6 A. Yes, that's correct.

7 Q. So in 2016, the Internet ACS item nonresponse rates for the
8 citizenship question for non-Hispanic whites was 6.2 percent,
9 correct?

10 A. Yes.

11 Q. But for Hispanics, the item nonresponse rate to the
12 citizenship question on the Internet version of the ACS was
13 more than twice as high, it was 15.5 percent, correct?

14 A. I am pausing because you highlighted the 2013 answer first,
15 and then the 2016 answer, I think. Unless I'm just confused
16 reading the text.

17 Q. I think you're right. But the numbers for item nonresponse
18 on the 2013 and 2016 ISR for non-Hispanic whites were the same,
19 right, Dr. Abowd, 6.2 percent?

20 A. Yes. OK. All right.

21 Q. If we compare the 2016 ACS item nonresponse for
22 non-Hispanic whites to Hispanics, it is 6.2 percent for
23 non-Hispanic whites, 15.5 percent for Hispanic whites?

24 A. That's correct.

25 Q. More than twice as high for Hispanics, correct?

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Abowd - Direct

1 A. Correct.

2 Q. You would characterize the item nonresponse rate for
3 Hispanics on the 2016 ACS Internet version for the citizenship
4 question as much higher than they are for non-Hispanic whites,
5 right?

6 A. I believe that is what I said, yes.

7 THE COURT: Can I interrupt for one moment?

8 Can you tell me what the Internet version of the ACS
9 is, who does that, and how it differs?

10 THE WITNESS: Yes, your Honor.

11 American Community Survey has a fixed set of
12 questions, but they are delivered in two formats. One is a
13 paper questionnaire that you fill out with pencil and mail
14 back, but you can also elect to do it online. And you go to
15 our website and you bring up the questionnaire and put in your
16 invitation to respond, and then you're asked the questions in
17 an online instrument. You are still self-administering. You
18 take the ACS in an Internet instrument, which we call an
19 Internet self-response instrument.

20 THE COURT: All right. When you say invited to, is
21 that you received the form in the mail and it instructs you
22 that you can either fill it out and mail it back, or
23 alternatively, you can go online and do it online?

24 THE WITNESS: That's correct.

25 THE COURT: What proportion of the people who respond

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Abowd - Direct

1 use the Internet version versus the paper version?

2 THE WITNESS: Oh, I have memorized so many numbers
3 for this trial. I don't have that one memorized.

4 It is a substantially higher proportion use the
5 Internet self-response instrument than the mail-back
6 instrument, but I don't recall the exact proportions, your
7 Honor.

8 THE COURT: Do you know or do you have an opinion why
9 the rates would differ on the Internet version versus the paper
10 version?

11 Is there some difference that you know of or
12 understand with respect to the population that does it on the
13 internet versus mailing it in?

14 THE WITNESS: Generically, the reason why the item
15 nonresponse rates differ on an Internet self-response
16 instrument is because we sometimes prompt and we sometimes let
17 the items go through without prompting. We generally prompt on
18 demographic items, including items, like, race and ethnicity.

19 THE COURT: When you say prompt, what do you mean?

20 THE WITNESS: Make sure that the respondent didn't
21 want to respond to that question.

22 THE COURT: So in other words, you would say are you
23 sure you didn't want to respond to the previous question or
24 something of that nature?

25 THE WITNESS: Yes, something like that.

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Abowd - Direct

1 THE COURT: And obviously you can't do that on the
2 paper form?

3 THE WITNESS: That's correct.

4 THE COURT: Mr. Ho.

5 MR. HO: Thank you, your Honor.

6 BY MR. HO:

7 Q. Dr. Abowd, you included this analysis of item nonresponse
8 to the citizenship question on the American Community Survey
9 because it suggests or, I'm sorry, because it is suggestive
10 statistical evidence that a citizenship question on the census
11 could see higher nonresponse rates from Hispanics as compared
12 to non-Hispanic whites, correct?

13 A. Yes.

14 Q. I just want to talk about change over time here.

15 According to your memo for non-Hispanic whites, the item
16 nonresponse rate to the citizenship question on the ACS between
17 2013 and 2016 either didn't change at all on the Internet or
18 didn't change much for the mail-in version, right?

19 A. For which group?

20 Q. Non-Hispanic whites.

21 A. Correct.

22 Q. But item nonresponse to the citizenship question on the ACS
23 increased for Hispanics during the same period of time,
24 correct?

25 A. Yes, it did. I think it is called out on the paragraph

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Abowd - Direct

1 there.

2 Q. OK. Lets look at how you analyzed this in the Brown,
3 et al. memo, Plaintiffs' Exhibit 162. I want to look at page
4 nine, figure two.

5 THE COURT: While we're doing that, let me go back to
6 what I asked before.

7 I would think, just intuitively, that the prompt would
8 actually increase the response rate because it would catch some
9 people who might not have meant to skip it.

10 Why would you point to that as a reason that it would
11 actually be higher?

12 THE WITNESS: I apologize, your Honor. I gave you the
13 explanation for why we generally get low nonresponse rates on
14 self-response than on paper.

15 In this case, it is probably a difference in the
16 proportion of people from the different sub populations who
17 respond in the two modes.

18 THE COURT: Meaning?

19 THE WITNESS: I don't have any specific data with me.

20 THE COURT: So your opinion or speculation is that
21 when you say difference just in terms of the kinds of the
22 people who elect to respond online versus on paper, that there
23 is some difference in that population?

24 THE WITNESS: Yes. Yes, that's right.

25 THE COURT: All right.

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Abowd - Direct

1 You may proceed, Mr. Ho.

2 MR. HO: Thank you, your Honor.

3 BY MR. HO:

4 Q. Now, during this same period that we have been discussing,
5 2013 to 2016, item nonresponse for Hispanic to the question
6 about sex, that is, are you male or female on the American
7 Community Survey declined, correct?

8 A. So that is the blue checkered or dotted bars, and they are
9 all below the zero line. So yes, correct.

10 Q. Just so the record is clear, between 2013 and 2016, item
11 nonresponse for Hispanic on the citizenship question increased
12 but item nonresponse on the question about sex decreased,
13 correct?

14 A. Yes.

15 Q. So, Dr. Abowd, it is correct to say that the increase in
16 item nonresponse to the citizenship question on the ACS among
17 Hispanic does not reflect a trend of item nonresponse to all
18 questions increasing during that same period, correct?

19 A. Yes, that would be a correct conclusion.

20 Q. I want to talk about the third analysis in your January
21 memo, the one related to breakoff rates.

22 Lets turn back to Plaintiffs' Exhibit 22.

23 THE COURT: Before we do that, this chart is for
24 Hispanic respondents?

25 THE WITNESS: Your Honor, the chart has three

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Abowd - Direct

1 different questions on it. The item nonresponse rate for sex,
2 which is the blue bar; for age, which is the -- I think that is
3 orange, might be red hashed bar; and for citizenship, which is
4 the gray bar.

5 Then the first set of three bars is for all
6 respondents. The next set is non-Hispanic white.

7 THE COURT: I missed the bottom labels. Sorry about
8 that. Thank you.

9 THE WITNESS: No problem.

10 MR. HO: I'm sorry. I should have pointed that out,
11 your Honor.

12 BY MR. HO:

13 Q. Can we now turn to the breakoff rate analysis, the third
14 analysis in your January memo, page five of Plaintiffs'
15 Exhibit 22. I want to look under header B3, breakoff rate
16 analysis.

17 This is the part of your memo where you describe the
18 analysis of breakoff data for the 2016 ACS, correct?

19 A. Yes, it is.

20 Q. Just to define it, a breakoff rate is the rate at which,
21 when people are responding to the ACS questionnaire online,
22 they stop answering the survey upon encountering a screen with
23 a particular question, correct?

24 A. Yes, that is how it is defined.

25 Q. In 2016, breakoff rates on the citizenship question on the

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Abowd - Direct

1 ACS for Hispanic were much higher than they were for
2 non-Hispanic whites, correct?

3 A. I think you're summarizing the second sentence in the
4 second paragraph, and that's correct.

5 Q. As the data is presented in this memo, the breakoff rate on
6 the citizenship question on the 2016 ACS for Hispanic was eight
7 times what it was for non-Hispanic whites, correct?

8 A. Yes, that's correct.

9 Q. This breakoff rate analysis indicates that the citizenship
10 question is more sensitive for Hispanic than for non-Hispanic
11 whites, correct?

12 A. That is what we concluded, correct.

13 Q. Now, it is also correct, Dr. Abowd, that the difference in
14 breakoff rates for Hispanic as compared to non-Hispanic whites
15 is much higher for questions concerning year of entry and
16 citizenship than for any other of the questions on the ACS with
17 the exception of English proficiency, correct?

18 A. So I'm happy to go over those data with you if you bring up
19 the chart, but I don't have them memorized. It is one of the
20 high breakoff rates. I am willing to say that without seeing
21 the table.

22 Q. OK. Lets bring up the white paper, Plaintiffs' Exhibit
23 162, and page ten. Lets look at the last paragraph here.

24 Starting with the second to last sentence, citizenship
25 related questions. Why don't you go ahead and read that to

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Abowd - Direct

1 yourself, Dr. Abowd, and let me know when you're ready.

2 (Pause)

3 A. Yes, I've read it.

4 Q. So it is correct, right, Dr. Abowd, that breakoff rates for
5 the citizenship question on the ACS for Hispanics are much
6 higher than for non-Hispanic whites generally, first of all,
7 that's correct, right?

8 A. That's correct.

9 Q. And that the difference between those breakoff rates is
10 higher for questions concerning year of entry and citizenship
11 than for any other question on the ACS, with the exception of
12 English language proficiency, correct?

13 A. Yes, that's correct.

14 Q. Now, your January memo presents only 2016 ACS breakoff
15 data, correct?

16 A. That's correct.

17 Q. But the Brown memo here also has 20 -- I'm sorry. Strike
18 that.

19 The reason why your memo to Secretary Ross only has 2016
20 breakoff data in it is because the 2017 ACS breakoff data was
21 incomplete as of that time, correct?

22 A. That's correct.

23 Q. But the swat team has looked at 2017 ACS breakoff data,
24 right?

25 A. Yes, they are.

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Abowd - Direct

1 Q. And the Census Bureau has now made the 2017 ACS breakoff
2 data available as part of this litigation, correct?

3 A. We released it as a public document, yes.

4 Q. OK. Lets turn to Plaintiffs' Exhibit 9. This has been
5 admitted.

6 Dr. Abowd, this is a table summarizing the rate at which
7 different groups break off on the ACS on different questions,
8 correct?

9 A. Yes. That's correct.

10 Q. If we go down to citizenship, the left-hand column, the
11 breakoff rate for non-Hispanic whites on the citizenship
12 question in the 2017 ACS is .03489, correct?

13 A. Yes, I see it. Yes, that's correct.

14 Q. OK. The citizenship question breakoff rate on the 2017 ACS
15 for Hispanic is .4343, correct?

16 A. The highlighting just disappeared.

17 Yes, that's correct.

18 Q. OK. So just to summarize this, it is correct to say that
19 the citizenship question breakoff rate on the 2017 ACS for
20 Hispanic is more than 12 times what it is for non-Hispanic
21 whites, correct?

22 A. Yes, that's correct.

23 Q. OK. So just to summarize, in 2016, the Hispanic breakoff
24 rate was eight times what it was for whites, in 2017, it was
25 12 times what it was for whites, correct?

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Abowd - Direct

1 MR. EHRLICH: Objection, asked and answered.

2 THE COURT: Overruled.

3 A. Yes, it's correct.

4 Q. It is fair to say that in your January memo to Secretary
5 Ross, you concluded that adding a citizenship question would be
6 a sensitive question for Hispanics, correct?

7 A. I believe we did, yes.

8 Q. You believe, Dr. Abowd, that Hispanic are more sensitive to
9 survey questions about citizenship than they were a few years
10 ago, correct?

11 A. Yes, that is what's the data appear to show.

12 Q. That increased sensitivity, you would agree, is reflected
13 in the 2017 ACS data, correct?

14 A. Increased sensitivity is reflected in the 2017 data, yes.

15 Q. That postdates your 5.8 percentage point estimate, which
16 was based only on data through the 2016 ACS, correct?

17 A. That's correct.

18 Q. Non-Hispanic whites by contrast, Dr. Abowd, are not more
19 sensitive to survey questions about citizenship than they were
20 a few years ago, correct?

21 A. I think, are you characterizing all the evidence?

22 In which case I think that is probably right.

23 Q. Yes.

24 A. OK.

25 Q. I am characterizing all of the evidence.

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Abowd - Direct

1 Is that correct?

2 A. Yes.

3 Q. Dr. Abowd, the Census Bureau believes that Hispanics will
4 respond to the citizenship question on the 2020 census at lower
5 rates than non-Hispanic whites, correct?

6 A. To the extent that Hispanicity is related -- to ethnic
7 origin Hispanic is related to a household that potentially
8 contains at least one noncitizen, we have credible quantitative
9 evidence that there could be a lower self-response rate, yes.

10 Q. Dr. Abowd, it is fair to say that you believe that unit
11 self-response rates, that is, refusing to self-respond to the
12 2020 census questionnaire at all, that that will happen at a
13 higher rate for Hispanics than non-Hispanic whites as a result
14 of the citizenship question, correct?

15 A. So what I think I've said consistently is the Hispanic
16 origin, Hispanic ethnicity, is highly correlated with being in
17 what we would call the treatment group from that natural
18 experiment. To the extent that that correlation is true. The
19 conclusions of the natural experiment hold.

20 Q. The answer to my question is yes, Dr. Abowd?

21 A. I am trying to qualify that we didn't specifically analyze
22 it for Hispanics, because that is not the question that the
23 data analysis addressed.

24 But I concur that they are highly correlated with the
25 households that may include a noncitizen or person of unknown

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Abowd - Direct

1 citizenship status.

2 To that extent, the conclusion is correct.

3 Q. Dr. Abowd, you agree, do you not, that the analysis of item
4 nonresponse on the ACS and breakoff rates to the ACS for
5 Hispanics suggests that response rates to the 2020 census will
6 fall more for Hispanics than for non-Hispanic whites as a
7 result of the citizenship question, correct?

8 A. Item response rates on the citizenship question, that's
9 what that shows.

10 Q. That's not my question, Dr. Abowd.

11 A. That is why I answered what I did.

12 Q. OK. But my question, Dr. Abowd, is this: You agree, do
13 you not, that the item nonresponse rate analysis that you
14 conducted for the ACS and the breakoff rate analysis that you
15 conducted for the ACS, suggest that unit nonresponse on the
16 2020 census will decline more for Hispanics than for
17 non-Hispanic whites as a result of the citizenship question,
18 correct?

19 MR. EHRLICH: Objection.

20 THE COURT: Basis?

21 MR. EHRLICH: Asked and answered several times, your
22 Honor.

23 THE COURT: I don't think it has been answered.

24 Overruled.

25 A. I imagine you're going to show me in the record why you

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Abowd - Direct

1 think I've already said that.

2 All I want to say is that, to the extent that Hispanic
3 and being in the treatment group for the natural experiment are
4 highly correlated, that would justify that conclusion.

5 The breakoff analysis and the item analysis justify
6 the conclusion that the citizenship question itself won't be
7 responded to as at higher rate by Hispanics.

8 THE COURT: Is there a high correlation between the
9 treatment group and Hispanic origin?

10 THE WITNESS: Yes, your Honor, there is.

11 MR. HO: Thank you, your Honor.

12 BY MR. HO:

13 Q. You used the phrase natural experiment or the term natural
14 experiment before.

15 Do you remember that, Dr. Abowd?

16 A. Yes, I do.

17 Q. Would you agree that a natural experiment is an
18 observational study in which one group of individuals has been
19 exposed to control conditions while another group has been
20 exposed to treatment conditions, such that a change in outcome
21 between the two groups could plausibly be ascribed to the
22 treatment?

23 A. I agree with everything that you said and would add that
24 the definitions that put you into either the treatment or the
25 control group have to contain some element of natural

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1 randomization.

2 Q. Here, the control is for purpose -- when we talk about the
3 natural experiments that you conducted here, the control is the
4 2010 decennial census questionnaire without a citizenship
5 question, and the treatment is the 2010 ACS or the 2016 ACS,
6 which has a citizenship question, correct?

7 A. Technically, the treatment is the change, but yes, that's
8 basically right.

9 Q. The premise then behind this natural experiment is that it
10 is reasonable to infer that a differential lower self-response
11 on the ACS questionnaire for households that have a noncitizen
12 or a person of unknown citizenship status is due to the
13 citizenship question on the ACS, which is sensitive for that
14 population, correct?

15 A. So the goal of the natural experiment is to do that
16 difference indifference with the plausible, the actual
17 randomization, which in this case is who got the ACS -- that's
18 a random subset of the population -- and then to explore the
19 answer you get to make sure that there aren't confounders that
20 could have explained that difference in the case of the
21 comparison of the ACS to the 2010 census. There are potential
22 confounders. So the initial analysis did not make any effort
23 to control for those confounders and the subsequent analyses
24 did.

25 Q. Dr. Abowd, you would characterize the analysis that is

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1 reflected in your January memo as a well-designed natural
2 experiment, correct?

3 A. Yes.

4 Q. Dr. Abowd, notwithstanding what Secretary Ross says in his
5 memo about evidence of an effect of a citizenship question on
6 self-response rates, you believe that the Census Bureau did
7 provide empirical support for its belief that adding a
8 citizenship question will reduce response rates to the 2020
9 census, correct?

10 A. Self-response rates, correct.

11 Q. And, in fact, Dr. Abowd, when you met with Secretary Ross
12 on February 12, you told him that the Census Bureau thought
13 that the difference in self-response rates on the ACS and the
14 census, when comparing citizen and noncitizen households, was
15 probably related to the citizenship question on the ACS,
16 correct?

17 A. That's my recollection, yes.

18 Q. Dr. Abowd, I want to bring up again your January memo,
19 Plaintiffs' Exhibit 22, page five. I want to look at the last
20 sentence.

21 I'm sorry. We want Dr. Abowd's January memo, which I
22 believe is Plaintiffs' Exhibit 22. Maybe I have that number
23 wrong.

24 THE COURT: I believe that is right.

25 MR. HO: It is 22, page five. I want to look at the

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1 last sentence.

2 Sorry. The last sentence of the first paragraph.

3 Excuse me.

4 Sorry. I guess I have this wrong again. The top
5 paragraph, last sentence.

6 Thanks.

7 BY MR. HO:

8 Q. You wrote in your memo: It is therefore a reasonable
9 inference that a question on citizenship would lead to some
10 decline in overall self-response because it would make the
11 2020 census modestly more burdensome in the direct sense and
12 potentially much more burdensome in the indirect sense that it
13 would lead to a larger decline in self-response for noncitizen
14 households, correct?

15 A. That is what it says, yes.

16 Q. And here, that is consistent with what your opinion is
17 about having produced credible qualitative evidence of the
18 effect of the citizenship question on self-response rates,
19 correct?

20 A. Yes, that's correct.

21 Q. Now, this opinion, which is based on a natural experiment,
22 Dr. Abowd, that is not the same as a randomized control test or
23 RCT, correct?

24 A. That's correct.

25 Q. If you had done an RCT, that would have been if you had

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1 conducted a new randomized experiment with control and
2 treatment groups instead of trying to observe something that
3 had already occurred, correct?

4 A. There is more to it than that, but that is -- all that you
5 said is correct.

6 Q. OK. An RCT, that would provide what you would describe
7 as gold standard evidence for assessing the effect of a
8 citizenship question on response rates, correct?

9 A. Yes, that's correct.

10 Q. OK. If the Census Bureau had conducted an RCT, it would
11 have had quantitative data that could isolate the effect of a
12 citizenship question in terms of how that would perform in the
13 context of the decennial census enumeration questionnaire,
14 correct?

15 A. If there had been an RCT available, we would have been able
16 to make an internally valid comparison of a questionnaire with
17 and without a citizenship question as to its effect on
18 self-response rates for the whole population.

19 Q. Do you remember in Secretary Ross' memo where he uses the
20 word isolate and he said that the Census Bureau could not
21 isolate the percentage in the self-response decline that could
22 be attributable to the citizenship question?

23 Does that ring a bell?

24 A. A sentence like that rings a bell, yes.

25 Q. If you had conducted an RCT, you could have isolated the

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1 effect of the citizenship question on self-response rates in
2 the way that Secretary Ross described, correct?

3 A. I think I've said consistently that I am very reluctant to
4 interpret what the Secretary meant by sentences in his memo.
5 If we had run a randomized control trial on self-response
6 rates, we would have been able to say, without qualification,
7 that the difference between the self-response rate with and
8 without a citizenship question was X.

9 THE COURT: And putting aside what the Secretary may
10 or may not have meant, I take it an RCT would allow you to
11 isolate the effect of a particular question on response rates?

12 THE WITNESS: Yes, it would, your Honor.

13 Q. Dr. Abowd, there has been no RCT of the census enumeration
14 questionnaire with the citizenship question, correct?

15 A. That's correct.

16 Q. A group of decision-makers, including Commerce Under
17 Secretary Karen Dunn Kelley decided not to conduct an RCT of
18 the citizenship question, correct?

19 A. A group of decision-makers at the Census Bureau with
20 collaboration of the Under Secretary decided not to conduct a
21 randomized controlled trial of the content of the citizenship
22 question.

23 Q. But if you had conducted that RCT, you would have had the
24 data that would have allowed you to isolate the effect of a
25 citizenship question in the context of the decennial census

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1 enumeration questionnaire, correct?

2 A. So you haven't shown me the RCT we're talking about, but
3 I'll assume it is the one we've talked about several other
4 occasions.

5 That RCT did have a treatment and control that would have
6 isolated the effect of the citizenship question by itself on
7 self-response, yes.

8 Q. We'll get back to that in a minute, Dr. Abowd.

9 I just want to ask you, even in response of that RCT, you
10 agree that the Census Bureau can use the results of its
11 analysis of the natural experiment to draw conclusions about
12 the effect of a citizenship question on the 2020 census,
13 correct?

14 A. You're using the results of the natural experiment to do
15 planning for the 2020 census based on its quantitative
16 implications, yes.

17 Q. You believe that the results from your natural experiment
18 are sufficiently reliable for the census Bureau to make
19 decisions planning for the 2020 census, correct?

20 A. We believe they are the best available data, correct.

21 Q. Dr. Abowd, you agree that the macro environment can affect
22 response rates?

23 A. Yes.

24 Q. Part of the macro environment is the political context,
25 right?

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Abowd - Direct

1 A. Yes, it is.

2 Q. So the political context can affect response rates,
3 correct?

4 A. Yes, it can.

5 Q. You agree that the political environment around immigration
6 could amplify the effect of a citizenship question on response
7 rates in comparison to, say, 2010, correct?

8 A. Yes, it could.

9 Q. And it could do that in comparison to, say, 2016, correct?

10 A. Yes, it could.

11 Q. You know, the last time there was an inquiry of the
12 citizenship status of every member of every household in the
13 United States was 1950, correct?

14 A. Yes, that's correct.

15 Q. You would agree that the macro environment is a little
16 different now, right, Dr. Abowd?

17 A. Well, I'm not a macro economist, but I think it is, yes.

18 Q. I want to ask you about CBAMs research, Dr. Abowd.

19 CBAMs stands for census barriers, attitudes, and
20 Motivator studies, correct?

21 A. Excuse me. Yes, it is.

22 Q. The CBAMs research, that tells you a little something about
23 the macro environment, right?

24 A. That is what it was designed to do, yes.

25 Q. OK. CBAMs consists of a survey of 50,000 households in a

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1 series of more than 40 focus groups, correct?

2 A. 42 focus groups.

3 Q. The primary reason for conducting CBAMs is to inform the
4 integrated partnership and communication program for the 2020
5 census, correct?

6 A. Yes, that's correct.

7 Q. The Census Bureau finds that the CBAMs research that you do
8 is sufficiently reliable as to provide actionable information
9 that informs the communication and partnership campaigns
10 conducted by the Census Bureau predicting, correct?

11 A. Yes, that's correct.

12 Q. Lets look at Plaintiffs' Exhibit 163. I believe this has
13 been admitted into the record.

14 Dr. Abowd, this is a PowerPoint summarizing rising
15 information from the 2018 CBAMs focus groups, correct?

16 A. I am only pausing because I am not sure it is exclusively
17 the focus groups, but it is about the CBAMs research.

18 Q. This PowerPoint was created by Young & Rubicam at the
19 direction of the Census Bureau, correct?

20 A. Young & Rubicam is the prime contractor on the integrated
21 communication contract. It is working with a team of internal
22 Census Bureau specialists. They jointly prepared this
23 PowerPoint labeled with both logos, I believe.

24 Q. This PowerPoint was presented to Under Secretary Kelley and
25 to Secretary Ross, correct?

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1 A. I believe I testified at deposition that I believe that is
2 correct, but I wasn't at either of those -- I wasn't at the
3 presentation of the Under Secretary, so I'm not sure whether
4 this is exactly the same one that she saw and the Secretary
5 saw. I believe the content was very similar, but that is what
6 I know.

7 Q. You were in the room when this was presented to Secretary
8 Ross?

9 A. I was in the room when a similar presentation was made to
10 Secretary Ross that had a different date on it.

11 Q. But it was materially identical to the PowerPoint here
12 before you, correct?

13 A. Yes, that's right.

14 Q. You're not aware of any revised or more recent versions of
15 this PowerPoint?

16 A. No, I'm not.

17 Q. Lets turn --

18 A. Actually, excuse me, I haven't compared this PowerPoint to
19 the recent presentation to the National Advisory Committee, so
20 I think, absent that comparison, I didn't notice any big
21 differences. They give a more comprehensive version than what
22 I remember being presented to the Secretary, but I don't think
23 that the general conclusions or even a lot of the specific
24 conclusions are very different.

25 Q. We'll go over that PowerPoint too, Dr. Abowd.

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Abowd - Direct

1 Lets stick with this one for now.

2 A. All right.

3 Q. And look at page five, which I believe is page six of the
4 PDF. So the next page. Thank you.

5 The title of this slide is Distrust in Census and
6 Government May Complicate Outreach to Some Communities,
7 correct?

8 A. Yes, it is.

9 Q. OK. The second bullet from the bottom reads: A number of
10 focus group participants responded negatively to adding the
11 citizenship question, most notably Spanish (U.S. mainland) as
12 well as Vietnamese, Chinese, NHPI, and members of the female
13 MENA group.

14 Did I read that right?

15 A. Yes, you did.

16 Q. Now, most of these focus groups were conducted after the
17 announcement of a citizenship question to be included in the
18 census, correct?

19 A. 30 of 42, yes.

20 Q. And people recruited into the focus groups referenced in
21 that bullet that we just discussed, they mentioned the
22 citizenship question as a barrier to census participation,
23 correct?

24 A. Yes, that's correct.

25 Q. This bullet in this PowerPoint was included to draw the

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Abowd - Direct

1 attention of the people for whom the PowerPoint was intended,
2 correct?

3 A. Would you mind restating that question? I couldn't unpack
4 it.

5 Q. Sure.

6 This bullet, starting with the number of focus group
7 participants, that was included in this PowerPoint in order to
8 draw the attention of the people for whom the PowerPoint is
9 intended, right, Dr. Abowd?

10 MR. EHRLICH: Objection.

11 THE COURT: Sustained.

12 Q. Dr. Abowd, why was this bullet included in the PowerPoint?

13 A. The PowerPoint was prepared, as I understand it, to inform
14 the Under Secretary.

15 Q. But why was this particular bullet included in the
16 PowerPoint?

17 A. It summarizes one of the conclusions of the CBAMs focus
18 group studies.

19 Q. Dr. Abowd, do you remember your third deposition in this
20 case which occurred on October 5, 2018?

21 A. Yes.

22 Q. You were under oath that day, right?

23 A. Yes, I was.

24 Q. And you told the truth that day, right?

25 A. Yes, I did.

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Abowd - Direct

1 Q. OK. Lets bring that up and look at page four 43, starting
2 with line five.

3 "Q. And why was this bullet included in the PowerPoint?

4 "A. I believe to draw the attention of people who are using
5 this to -- that finding of the focus groups.

6 Q. Was that my question -- was that the question that was
7 posed to you and your answer that day, Dr. Abowd?

8 A. Yes, it was.

9 Q. OK. And during the presentation of this PowerPoint to
10 Secretary Ross, it was acknowledged that the citizenship
11 question would be a challenge in conducting the 2020 census,
12 correct?

13 A. Yes, it was.

14 Q. OK. Lets bring up Plaintiffs' Exhibit 152 now. This has
15 also been admitted into the trial record.

16 Dr. Abowd, this is the 2020 CBAMs focus group audience
17 summary reports, correct?

18 A. Yes, that's what they are.

19 Q. You've seen this document before, right?

20 A. Yes, I have.

21 Q. Lets go to page 22 of this document, which is Bates number
22 13046.

23 This is part of the summary for focus groups
24 consisting of participants who are U.S. mainland residents who
25 speak Spanish, correct?

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Abowd - Direct

1 I believe that is at the top of the page.

2 A. This is the top of the page you said who speaks Spanish. I
3 know there was both a Spanish-speaking Spanish and an
4 English-speaking Spanish, so I'm not sure whether this
5 particular page is both or one.

6 Q. When you say Spanish U.S. mainland, what does that refer
7 to?

8 A. It means that the people recruited for this focus group
9 were Hispanic origin and living in the U.S. mainland.

10 Q. Lets look at the third bolded paragraph on this summary.

11 The title or the first sentence is the citizenship question
12 is a determining factor for participation, correct?

13 A. Yes.

14 Q. It reads: All four Spanish, U.S. mainland focus groups
15 took place after the March 27, 2018, announcement that the 2020
16 census will include a question on citizenship, correct?

17 A. Yes.

18 Q. And Spanish means Hispanic, Dr. Abowd, in that sentence?

19 A. I believe so, yes.

20 Q. OK. It goes on to read: Participants in all locations
21 mentioned the citizenship question before the moderator asked
22 about it, except for Houston group one participants, correct?

23 A. Yes.

24 Q. And it goes on to read: Most participants said that though
25 they personally are citizens or legal residents and are not

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1 afraid to answer the citizenship question, they know many
2 others who will not fill out the question or the form
3 altogether out of fear. While all participants expressed the
4 desire to be counted, fear of deportation outweighs any
5 benefit.

6 Did I read that right?

7 A. Yes, you did.

8 Q. Dr. Abowd, you agree that this focus group result is an
9 indication from a hard-to-count population that the citizenship
10 question viewed as extremely problematic for that population,
11 correct?

12 A. It is an indicator of that, yes.

13 Q. And you acknowledge that with the citizenship question on
14 the census, people who are afraid of deportation will be an
15 extremely difficult group to count, correct?

16 A. They will be a very difficult group to count.

17 Q. Extremely, right, Dr. Abowd?

18 A. So I suppose we can discuss what the difference between
19 "very" and 'extremely' is.

20 Q. In your words, Dr. Abowd, you would describe people, who
21 are fearing deportation, as extremely hard to count in the 2020
22 census, when you put a citizenship question on it, correct?

23 A. So very hard to get to self-respond. Whether they are hard
24 to count or not depends on other operations in the 2020 census.

25 Q. All right. Dr. Abowd, lets go back to your October 5, 2018

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Abowd - Direct

1 deposition, page 451, line three.

2 MR. EHRLICH: Your Honor, I would note that the
3 deposition testimony we're using here is his 30(b)(6) testimony
4 in his capacity as a representative of the Census Bureau, and
5 would object on that basis, to the extent it is asking him for
6 personal knowledge that he may have.

7 THE COURT: Mr. Ho, that seems well founded.

8 MR. HO: I mean, he is testifying as a representative
9 of the Census Bureau under the 30(b)(6), but, I mean, he uses
10 the first person quite frequently in the deposition and
11 expresses his understanding of events in his capacity as the
12 chief scientist of the Census Bureau. I don't think there is
13 any reason that I can't use his deposition testimony to impeach
14 him on that basis.

15 MR. EHRLICH: His first person use was for ease of
16 reference during the deposition, your Honor. You can't draw
17 from this personal knowledge of what he may or may not know
18 based on what the agency knows and what he testified on behalf
19 of the agency.

20 THE COURT: All right. Tell you what. You'll have an
21 opportunity to conduct cross-examination.

22 I think in that context, you can elicit from him the
23 extent to which this testimony, if it is being offered as an
24 inconsistent statement, is actually not his personal statement
25 as opposed to his representative statement.

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Abowd - Direct

1 With that, you may proceed, Mr. Ho.

2 MR. HO: Thank you, your Honor.

3 BY MR. HO:

4 Q. Page 451, line three.

5 "Q. And aren't people afraid of deportation the least likely
6 to participate at all in the census or to be swayed by NRFU
7 efforts?

8 "A. I'm not prepared to say the least likely to participate at
9 all. I'm tried to acknowledge that they're an extremely
10 difficult group to count.

11 Q. Was that the question posed to you and was that your
12 answer?

13 A. Yes, it was.

14 Q. Now, going back to the focus group summary, page 22 of it.
15 It indicated here that Hispanic focus group members, that
16 members of their community care about participation in the
17 census, correct?

18 A. Yes.

19 Q. They express that they understood the benefits to their
20 community of participating in the census, correct?

21 A. Yes, they did.

22 Q. And, Dr. Abowd, it is reasonable to conclude that they
23 would like to participate in the census, correct?

24 A. That seems reasonable, yes.

25 Q. And what you get from this focus group is an indication

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Abowd - Direct

1 that members of this group would be more likely to self-respond
2 if there was not a citizenship question on the 2020 census,
3 correct?

4 A. Yes.

5 Q. I'm sorry?

6 A. Yes.

7 Sorry. Am I fading?

8 Q. Thank you.

9 This also indicates that if there is a citizenship question
10 on the census, that trusted partners who try to carry forth the
11 Census Bureau's message are going to have additional challenges
12 in convincing members of this community to participate,
13 correct?

14 A. I don't think you called out those sentences, but I assume
15 they're in there.

16 Q. But you agree with that, right, Dr. Abowd, that given the
17 results of this focus group, that you would conclude that the
18 trusted partners that the Census Bureau relies on to carry
19 forth the message that it is important to participate in the
20 census, that they are going to have additional challenges
21 carrying that message out than if there were no citizenship
22 question on the census, correct?

23 A. Yes.

24 Q. I want to ask about a different document now, a different
25 PowerPoint I think you referred to earlier why.

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1 This is Plaintiffs' Exhibit 662, entitled 2020 Census
2 Barriers, Attitudes, and Motivators study (CBAMs) Survey and
3 Focus Groups: Key Findings for Creative Strategy. October 31,
4 2018.

5 For the record, it has been admitted.

6 This is the PowerPoint that you were talking about earlier
7 which includes both CBAMs survey results and focus group
8 information, right, Dr. Abowd?

9 A. That's correct.

10 Q. Lets go to page 16 of the PowerPoint. It is page 16 of the
11 PowerPoint, but 17 of the PDF.

12 This slide has some results of the CBAMs survey, correct?

13 A. Yes, it does.

14 Q. The fifth line here indicates that: 10 percent of
15 respondents to the CBAMs survey think that the census is used
16 to locate people living in the country without documentation,
17 right?

18 A. Yes.

19 Q. And 37 percent aren't sure one way or the other whether or
20 not that is the case, correct?

21 A. That's correct.

22 Q. All right. Lets turn to page 19 of the PowerPoint, which
23 is page 20 of the PDF.

24 Dr. Abowd, this slide indicates that 19 percent of Asian
25 and black CBAMs survey respondents think that the census is

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Abowd - Direct

1 used to locate people without documentation, correct?

2 A. Yes.

3 Q. Lets turn to the next page of the PowerPoint.

4 This slide summarizes some comments from Hispanic CBAMs
5 focus group participants, correct?

6 A. Yes.

7 Q. And one Hispanic focus group participant said, I feel that
8 it does go to the immigration agency, in regard to census
9 responses, correct?

10 A. I think you're calling out the first quote there?

11 Yes.

12 Q. Yes.

13 Another Hispanic focus group participant said that
14 they would not participate in the census because they --
15 meaning immigration -- will know where we are and what our
16 names are and where we live, correct?

17 A. That's what the quote says, yes.

18 Q. And another Hispanic focus group participant stated, I
19 feel -- I'm sorry -- stated a concern that immigration
20 enforcement, quote, will know where we are and what our names
21 are and where we live, correct?

22 I'm sorry. I already did that one.

23 Lets look at page 29 of the PowerPoint, slide 30.

24 This has results from the CBAMs survey, correct?

25 A. Yes.

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Abowd - Direct

1 Q. The title of the slide is Respondents Worry About
2 Confidentiality, correct?

3 A. That's correct.

4 Q. Specifically, 41 percent of Asians CBAMs survey respondents
5 expressed worry about confidentiality, correct?

6 A. Yes, that is correct.

7 Q. And so did 41 percent of low English proficiency CBAMs
8 survey respondents, correct?

9 A. Yes.

10 Q. Great. Lets turn to page 31 of the PowerPoint.

11 This had some results about concerns about data sharing of
12 census responses, correct?

13 A. Yes.

14 Q. 37 percent of low English proficiency CBAMs respondents
15 expressed concern about data sharing, right?

16 A. Yes.

17 Q. 36 percent of CBAMs respondents who responded in Spanish
18 did too, correct?

19 A. Yes.

20 Q. And 32 percent of CBAMS respondents born outside of the
21 United States did as well, correct?

22 A. Yes.

23 Q. And 32 percent of Hispanics overall believe that the census
24 shares data with other agencies, correct?

25 A. Concerned about the census sharing data, correct.

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Abowd - Direct

1 Q. Thank you.

2 Can we turn to page 35. According to this slide, one in
3 four CBAMS survey respondents fear that their answers to the
4 2020 census will be used against them, correct?

5 A. Yes.

6 Q. And that's true for 41 percent of Asian CBAMs respondents,
7 correct?

8 A. Yes.

9 Q. And true of 39 percent of CBAMs respondents born outside of
10 the United States, correct?

11 A. Yes.

12 Q. And 34 percent of CBAMs respondents who responded in
13 Spanish, correct?

14 A. Yes.

15 Q. Lets turn to page 42 of the PowerPoint. Page 43 of the
16 PDF.

17 The title of this slide is The Citizenship Question
18 May Be a Major Barrier, correct?

19 A. Yes, that is the title.

20 Q. And focus group participants expressed concern that the
21 purpose of the question is to find undocumented immigrants,
22 correct?

23 A. The call-outs in red up at the top?

24 Q. Yes.

25 A. Yes, that's correct.

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Abowd - Direct

1 Q. And there also was an indication from focus group
2 participants that there is a concern due to the political
3 discourse that we currently have, correct?

4 A. Yes, that is what it says.

5 Q. OK. In the bottom left-hand corner, there is a Hispanic
6 focus group participant who stated, A lot of people are afraid.
7 It doesn't matter if they ask you whether or not you're a
8 citizen. The first question they ask you, are you Hispanic or
9 Latino? And that's enough. That's all they need and people
10 are scared.

11 Do you see that?

12 A. Yes, I do.

13 Q. Do you see the one on the right that reads: Latinos will
14 not participate out of fear. There was practically a hunt for
15 us. Latinos are going to be afraid to be counted because of
16 the retaliation that could happen. It's like giving the
17 government information saying, oh, there are more here.

18 Correct?

19 A. That is what the quote says, correct.

20 Q. Lets turn to page 57 of the PowerPoint. Page 58 of the
21 PDF.

22 This is a summary of Hispanics participating in the
23 CBAMS research, correct?

24 A. Yes.

25 Q. So among Hispanics, 10 percent believe that the census is

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Abowd - Direct

1 used to locate people living in the country without
2 documentation, correct?

3 A. That's not on this slide, I don't think, but you already
4 showed it to me. That -- there it is. Yes, correct.

5 Q. And 34 percent express concern about the confidentiality of
6 their answers, correct?

7 A. Correct.

8 Q. 32 percent express concern that their answers will be
9 shared with other government agency, correct?

10 A. Correct.

11 Q. 33 percent express fear of repercussions from their census
12 answers, correct?

13 A. Correct.

14 Q. The bullet under other considerations reads, focus group
15 participants expressed intense fear that information will be
16 shared with other government agency to help them find
17 undocumented immigrants. Participants worried that their
18 participation in the census could harm them personally or
19 others in their communities/households they care about,
20 correct?

21 A. Yes, that is what it says.

22 Q. That is Hispanic focus group participants, correct?

23 A. Correct.

24 Q. Now, Dr. Abowd, overall, you would describe this focus
25 group research as qualitative research, correct?

IBDsNYS4

Abowd - Direct

1 A. That's correct.

2 Q. And all of the CBAMS focus group research that we have
3 discussed happened in 2017 and '18, correct?

4 A. I think it all happened in 2018.

5 Q. All happened in 2018?

6 A. Yes.

7 Q. OK. You agree, Dr. Abowd, that the CBAMS focus group
8 research conducted by the Census Bureau suggests a greater
9 sensitivity to a citizenship question today than there was a
10 few years ago, correct?

11 A. The CBAMS research, both the focus group and the survey,
12 have alerted us to what we consider a major difficulty in
13 fielding the 2020 census to regain the trust of the Hispanic
14 community, yes.

15 Q. The research suggests that the macro environment today,
16 which affects the sensitivity of citizenship questions on
17 Census Bureau surveys, is different than it was a few years
18 ago, correct, Dr. Abowd?

19 A. So the research that you just showed me doesn't support an
20 inference of change, so I won't make one.

21 But it does support that it is a major concern now, whether
22 it is greater or less than it was for the 2010 census. It
23 wasn't supported by what you said, but it does support that it
24 is a major concern now.

25 Q. Dr. Abowd, the sensitivity to a citizenship question that's

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Abowd - Direct

1 reflected in the 2018 CBAMS research, that degree of
2 sensitivity would not be captured in the 5.8 percentage point
3 estimate that is based on data only up through 2016, correct?

4 A. It is -- yes, that is right.

5 Q. Dr. Abowd, you're aware that there are recent news reports
6 that President Trump is contemplating an executive order that
7 provide that citizenship will no longer be conferred on all
8 persons born on United States soil?

9 A. I have read the news reports, yes.

10 Q. Dr. Abowd, you would agree that that is something that
11 could affect the macro environment around the census, correct?

12 A. Yes.

13 Q. You're aware that on November 2 of this year, the Census
14 Bureau's National Advisory Committee on racial, ethnic, and
15 other populations, recommended that the Census Bureau evaluate
16 and report on the potential effects of such an order on census
17 operations for 2020, correct?

18 A. So I was called to litigation on the day the
19 recommendations were read out loud. I assume you're quoting
20 them right, but I wasn't there, and they haven't been delivered
21 to my inbox yet.

22 Q. But you're aware of that recommendation, right, Dr. Abowd?

23 A. You just made me aware of it, yes.

24 Q. The Census Bureau has not conducted any analysis that
25 you're aware of about how the macro environment may have

IBDsNYS4

Abowd - Direct

1 changed in light of that announcement of the executive order
2 that President Trump is contemplating, correct?

3 A. That's correct.

4 THE COURT: Mr. Ho, would this be a good time to take
5 our lunch break?

6 MR. HO: Sure.

7 THE COURT: All right. Question. We're technically
8 on direct, but in some respects, this is more properly viewed
9 as cross.

10 Does anyone have a view on whether Dr. Abowd should be
11 permitted to speak with defense counsel during the break?

12 MR. HO: Our view, your Honor, is that he should not
13 be permitted to because it is like a cross. It is an adverse
14 direct like a cross-examination, so we think he should be
15 sequestered from speaking about the substantive subject of the
16 litigation while he remains on the stand.

17 THE COURT: Mr. Ehrlich, any objection to my so
18 instructing Dr. Abowd?

19 MR. EHRLICH: No objection, your Honor.

20 THE COURT: Dr. Abowd, because you're on what is
21 functional equivalent of cross-examination, the rules dictate
22 that you shouldn't speak with defense counsel concerning the
23 substance of your testimony.

24 If you have logistical conversation with them or the
25 like, that is fine, but please don't speak about the substance

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Abowd - Direct

1 of your testimony. And if it would be easier not to speak with
2 them at all, don't speak with them at all.

3 It is 1:01. We'll pick up again at 2:00 p.m.

4 Enjoy your break. Thank you.

5 (Luncheon recess)

IbdWnys5

Abowd - Direct

AFTERNOON SESSION

2:00 p.m.

THE COURT: You may be seated.

Apologies for a slightly late start. Something came up that I needed to deal with.

We will continue with the direct examination.

Dr. Abowd, I remind you that you are under oath.

Mr. Ho, you may proceed.

MR. HO: Thank you, your Honor.

Q. Dr. Abowd, I just wanted to go back to a couple of exhibits that we talked about before the lunch break briefly before we move on.

MR. HO: I'd like to go back to Plaintiffs' Exhibit 4, which is a portion of the administrative record in this case. This is page 7,913 of this exhibit, AR No. 11634. This is a document in the administrative record that's been admitted into evidence.

Q. Dr. Abowd, is this an earlier draft version of the Brown et al. memo that we were discussing earlier?

A. Yes, it is.

Q. It's dated December 22, 2017?

A. Yes, it is.

Q. And it's in the administrative record in this case?

A. Yes, it is.

Q. And this draft contains earlier versions of the same

IbdWnys5

Abowd - Direct

1 analyses of ACS data, unit nonresponse, item nonresponse, etc.,
2 that we discussed earlier?

3 A. Contains many of the analyses we discussed earlier, yes.

4 Q. Thank you.

5 I want to talk about, briefly, Plaintiffs' Exhibit 448.
6 This is a different PowerPoint, one given to the national
7 advisory committee on racial, ethnic and other populations. Do
8 you see that, Dr. Abowd?

9 A. Yes, I do.

10 MR. HO: This has been admitted into the record. I'd
11 like you to look at page 13 of this document, and the third
12 bullet.

13 Q. That's a quote from an interviewer from the CBAMS work,
14 right?

15 A. It's a quote from an interviewer during field studies that
16 the center for survey methods -- survey measurement was
17 conducting before this report was written.

18 Q. Sorry. My apologies. Thank you for that correction,
19 Dr. Abowd.

20 The interviewer from the Census Bureau stated: "Three
21 years ago was so much easier to get respondents compared to now
22 because of the government changes and trust factors. Three
23 years ago I didn't have problems with the immigration
24 questions." Did I read that correctly?

25 A. Yes, you did.

IbdWnys5

Abowd - Direct

1 Q. And that's some qualitative evidence suggesting that
2 questions related to immigration status asked by the Census
3 Bureau have a greater sensitivity today than they did a few
4 years ago, correct?

5 A. Yes, it is.

6 MR. HO: Dr. Abowd, I want to go back to your January
7 memo to Secretary Ross, Plaintiffs' Exhibit 22, and I want to
8 ask you about a passage on page 5 under the header B4, cost
9 estimates.

10 Q. Dr. Abowd, the lower self-response rates resulting from the
11 addition of a citizenship question to the 2020 census, you
12 would expect would increase the cost of conducting the 2020
13 census, correct?

14 A. That's correct.

15 Q. And the reason why that is is that when you have lower
16 self-response rates, you have to try to enumerate more people
17 through nonresponse follow-up efforts, or NRFU, correct?

18 A. That's correct.

19 Q. And NRFU costs money, right?

20 A. Yes, it does.

21 Q. Part of the NRFU process includes sending Census Bureau
22 enumerators in person to nonresponding households, correct?

23 A. That's correct.

24 MR. HO: Let's turn to page 6 of your memo and the
25 second-to-last paragraph, if we could blow it up.

IbdWnys5

Abowd - Direct

1 Q. This paragraph describes the cost estimates that you
2 presented in this memo for the estimated cost of including the
3 citizenship question on the 2020 census, correct?

4 A. That's correct.

5 Q. And in this memo, you estimated that the inclusion of the
6 question could increase NRFU costs by at least \$27.5 million,
7 correct?

8 A. Yes, that's correct.

9 MR. HO: And if we could blow up the last paragraph on
10 this page.

11 Q. Dr. Abowd, as you presented your findings in this memo, you
12 describe the \$27.5 million estimate as a conservative estimate,
13 is that correct?

14 A. That's correct.

15 Q. And one reason why it's a conservative estimate is because
16 the differences in self-response rates to the 2020 census
17 between citizen and noncitizen households may be even greater
18 than estimated in this memo, correct?

19 A. That's correct.

20 Q. And so, the memo describes the \$27.5 million cost as a
21 lower-bound estimate, correct?

22 A. Yes, that's correct.

23 Q. Now, one reason why you describe it as a lower-bound
24 estimate in your memo is that the estimate assumes that --
25 well, strike that.

IbdWnys5

Abowd - Direct

1 MR. HO: Let me try that again.

2 Q. One reason why you describe this as a lower-bound estimate
3 in your memo is that it may take more NRFU visits to enumerate
4 households that don't respond to the citizenship question than
5 you assumed in generating the \$27.5 million estimate, correct?

6 A. That's one of the reasons, yes.

7 Q. And another reason is that this lower-bound cost estimate
8 does not incorporate any estimate about the effect of a
9 citizenship question on reducing self-response rates from all
10 citizen households, correct?

11 A. That's correct.

12 Q. And another reason why this estimate is conservative and a
13 lower-bound estimate is that it does not capture increased
14 communication campaign costs that may be needed as a result of
15 the citizenship question, correct?

16 A. That's correct.

17 MR. HO: I want to bring us back to page 1 of the
18 memo, and I just want to look at the last sentence on page 1.

19 Q. Given everything that we've described, Dr. Abowd, your memo
20 describes adding a citizenship question to the 2020 census as
21 very costly, correct?

22 A. Correct.

23 Q. Now, the lower self-response rates resulting from the
24 addition of the citizenship question will also reduce the
25 quality of the data resulting from the 2020 census, correct?

IbdWnys5

Abowd - Direct

1 A. That's correct.

2 Q. And one reason for that is that when you get lower
3 self-response rates, you have to try to enumerate people
4 through NRFU efforts like proxies, correct?

5 A. That's correct.

6 Q. And generally speaking, when you do nonresponse follow-up,
7 you don't get answers that are as reliable as when you get
8 self-responses, correct?

9 A. By the coverage error measures that we use, that's correct,
10 yes.

11 Q. Your memo, in this same last sentence on the first page,
12 concludes that adding a citizenship question to the census
13 would harm the quality of the census count, correct?

14 A. That's correct.

15 Q. And that applies to both alternatives B and option D, which
16 Secretary Ross ultimately chose, correct?

17 A. That's correct.

18 Q. Dr. Abowd, harming the quality of the census data, that's a
19 bad thing, right?

20 A. Something we try to avoid, yes.

21 Q. I'd like to ask you about different data quality issue with
22 respect to the citizenship question. Dr. Abowd, you agree --
23 I'm sorry.

24 MR. HO: Let me start that again.

25 Q. Dr. Abowd, sometimes it happens that there's disagreement

IbdWnys5

Abowd - Direct

1 between a person's citizenship status as reflected in
2 administrative records and what that person reports or what's
3 reported for that person in response to the citizenship
4 question on the American Community Survey, correct?

5 A. That's correct.

6 Q. So sometimes administrative records indicate that someone
7 is a noncitizen but the ACS response indicates that that
8 person's a citizen, right?

9 A. Yes, that's correct.

10 Q. And in your memo, Plaintiffs' Exhibit 22, you describe
11 citizenship status as reflected in the administrative records
12 as "verified," correct; that's the term you use?

13 A. Yes, that's the term we use.

14 Q. And the reason you use the term "verified" is because the
15 person's citizenship status as reflected in administrative
16 records is based upon a legal document indicating that person's
17 citizenship status, correct?

18 A. That's correct.

19 Q. Now, by contrast, someone's citizenship status as reported
20 in response to the ACS citizenship question is based on a
21 survey response, not a legal document, correct?

22 A. That's correct.

23 Q. And so, you would describe that person's citizenship status
24 as referred to -- as reported, I'm sorry, in the ACS as
25 unverified, correct?

IbdWnys5

Abowd - Direct

1 A. Or a survey response, yes.

2 Q. Now, you agree, Dr. Abowd, that if someone is coded in
3 administrative records as a noncitizen, then it's reasonable to
4 conclude that that person is, in fact, a noncitizen, correct?

5 A. At the time at which the coding was done, yes.

6 Q. And you believe that when someone's ACS response says that
7 they are a citizen but the administrative records says that
8 they're not a citizen, then the most likely conclusion is that
9 the person is, in fact, a noncitizen, correct?

10 A. The survey response was citizen and the administrative
11 record response was noncitizen?

12 Q. Yes.

13 A. Correct, insofar as the administrative record is
14 contemporaneous with the survey response, yes.

15 Q. If all you have is an administrative record and all you
16 have is a survey response, the administrative record says
17 noncitizen, survey response says citizen, then you'd agree that
18 it's more likely than not that that person's a noncitizen,
19 right?

20 A. That's correct.

21 Q. So, Dr. Abowd, is it correct to say that citizenship status
22 is one characteristic where you believe that administrative
23 records tend to be more accurate than survey responses?

24 A. Yes, that's correct.

25 MR. HO: Let's bring back up Plaintiffs' Exhibit 22,

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Abowd - Direct

1 your January memo, page 8. I want to look at the second full
2 paragraph.

3 Q. Now, according to your memo, in the 2016 ACS, individuals
4 whom the administrative records indicate are noncitizens
5 responded "citizen" 34.7 percent of the time on the ACS
6 citizenship question, correct?

7 A. Did you say 2016; that's the number you read?

8 Q. Yes.

9 A. Yes.

10 Q. And overall, in the Census Bureau's research on this issue,
11 you've determined that for people for whom the administrative
12 records indicate that they're noncitizens, there's disagreement
13 between the administrative record and the ACS survey response
14 between 30 to 37 percent of the time, correct?

15 A. That's correct.

16 Q. And you'd agree, then, given what we discussed earlier,
17 that it's likely that for more than 30 percent of noncitizens
18 who provide a response to the ACS citizenship question, the
19 response is incorrect, right?

20 A. Response is in disagreement with the administrative record
21 and probably incorrect.

22 Q. Now, the Census Bureau has no empirical basis to believe
23 that noncitizens for whom a response is provided to a
24 citizenship question on the census will have more accurate
25 responses than they do to the citizenship question on the ACS,

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Abowd - Direct

1 correct?

2 A. That's correct.

3 Q. And in fact, Dr. Abowd, the Census Bureau believes that
4 there are definitely indications that responses by noncitizens
5 to a citizenship question on the 2020 census will be even less
6 accurate than they have historically been on the ACS, correct?

7 A. That's correct.

8 Q. The Census Bureau still hasn't made any determination about
9 how it will address disagreement between survey responses and
10 the administrative records when producing block-level CVAP data
11 for the Department of Justice after the 2020 census, correct?

12 A. For a public-use tabulation that will be used by the
13 Department of Justice, that's correct.

14 Q. Now, alternative C, Dr. Abowd, is to use administrative
15 data and no citizenship question to collect citizenship data
16 and then to rely principally on that administrative data to
17 produce block-level CVAP data for the Department of Justice,
18 correct?

19 A. That's correct.

20 Q. And under alternative C, you would take responses to the
21 census questionnaire and then link those responses to
22 administrative data with citizenship information in it,
23 correct?

24 A. That's correct.

25 Q. And the particular administrative records that you would

IbdWnys5

Abowd - Direct

1 use under alternative C are the social security numerical
2 identification system, or NumIdent, data, correct?

3 A. I've never heard the acronym expanded, but yes, NumIdent is
4 the correct file.

5 MR. HO: Let's bring your memo back up, Plaintiffs'
6 Exhibit 22. I want to look at the first page, the last
7 paragraph, second sentence.

8 Q. Dr. Abowd, the conclusion that you reached in your memo is
9 that unlike including a citizenship question, using
10 administrative records to provide DOJ with block-level CVAP
11 data would not harm the quality of the census count, correct?

12 A. As long as it's done without simultaneously asking the
13 question on the census, yes.

14 Q. And if you just used the administrative records, you didn't
15 ask the citizenship question, under alternative C, you would
16 have to deal with a problem of survey responses and
17 administrative records that disagree, correct?

18 A. Correct.

19 Q. And so, the Census Bureau concluded that using
20 administrative records would deliver higher quality block-level
21 CVAP data by race and ethnicity than including a citizenship
22 question on the census, correct?

23 A. Yes.

24 Q. The Census Bureau's proposal to generate such block-level
25 CVAP data using administrative records rather than a

IbdWnys5

Abowd - Direct

1 citizenship question had the backing of the Census Bureau's
2 redistricting office, correct?

3 A. Yes, it did.

4 Q. Now, this memo also concludes that using administrative
5 records would be far less costly than including a citizenship
6 question on the 2020 census, correct?

7 A. That's correct.

8 Q. And part of the reason is that if you use administrative
9 records but you don't include a citizenship question on the
10 census, you don't have increased NRFU costs, correct?

11 A. That's correct.

12 Q. And the conclusion of the Census Bureau that was reached in
13 this memo is that using administrative records and not
14 including a citizenship question on the census would best meet
15 DOJ's stated uses, correct?

16 A. That's correct.

17 Q. And you communicated that conclusion to Secretary Ross
18 during your meeting with him on February 12, 2018, correct?

19 A. Yes, we did.

20 Q. Now, the Census Bureau, during this period of time, also
21 offered to meet with the Department of Justice to discuss its
22 recommendations, correct?

23 A. That's correct.

24 Q. The analyses that we've been discussing, those began after
25 Arthur Gary -- or after a letter signed by Arthur Gary from the

IbdWnys5

Abowd - Direct

1 Department of Justice was sent to the Census Bureau requesting
2 a citizenship question on December 12, correct?

3 A. We got it on December 15, but that's correct, yes.

4 Q. And you're aware that Acting Census Bureau Director Ron
5 Jarmin subsequently wrote an email to Arthur Gary, correct?

6 A. Yes, I'm aware of that email.

7 MR. HO: OK. Let's bring up Plaintiffs' Exhibit 109.
8 This is in the administrative record and has been admitted into
9 evidence.

10 Q. Dr. Abowd, this is the email that we discussed from Acting
11 Census Bureau Director Ron Jarmin to Arthur Gary at the
12 Department of Justice, correct?

13 A. That's correct.

14 Q. And the top email on this thread is Acting Director Jarmin
15 forwarding to you and someone else the email that he had
16 written to Arthur Gary, correct?

17 A. That's correct.

18 MR. HO: Let's look at the email that Acting Director
19 Jarmin forwarded to you, the one that he wrote to Mr. Gary.
20 Acting Director Jarmin wrote to Mr. Gary on December 22:

21 "Thank you for your letter dated 12/12/2017 regarding
22 improving the quality of citizenship information for DOJ
23 enforcement of the Voting Rights Act. Let me start by saying
24 the bureau is fully supportive of providing DOJ with the
25 highest quality statistical information possible. To that end

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Abowd - Direct

1 I've directed staff to review all possible ways to address the
2 means expressed in the letter."

3 Q. Did I read that correctly?

4 A. Yes, you did.

5 Q. Dr. Abowd, when Acting Director Jarmin wrote this email,
6 you understand him to be making -- you understand him to be
7 referring to the analysis that you were working on with the
8 SWAT team, correct?

9 A. That's correct.

10 Q. This email, dated February 22, 2017, that's the same date
11 as the draft version of the Brown et al. memo in the
12 administrative record that we talked about, beginning after the
13 lunch break, correct?

14 A. That's correct.

15 MR. HO: Now, the next two sentences of Acting
16 Director Jarmin's email to Mr. Gary read:

17 "They have now briefed me and their findings suggest
18 that the best way to provide PL 94 block level data with
19 citizen voting population by race and ethnicity would be
20 through utilizing a linked file of administrative and survey
21 data the Census Bureau already possesses. This would result in
22 higher quality data produced at lower cost."

23 Q. Did I read that right?

24 A. Yes, you did.

25 Q. When Acting Director Jarmin referred to a linked file of

IbdWnys5

Abowd - Direct

1 administrative and survey data, your understanding is that's a
2 reference to alternative C in your memo, creating a citizenship
3 voting-age population table using administrative records,
4 right?

5 A. It is a reference to alternative C, but I believe he
6 intended to also discuss with them whether they would like us
7 to do it enhancing the American Community Survey or with some
8 other survey basis.

9 Q. And in his email to Mr. Gary, Acting Director Jarmin
10 referred to this as the "best way" to provide block-level CVAP
11 data to DOJ, correct?

12 A. That's correct.

13 Q. And Acting Director Jarmin, in his email to the Department
14 of Justice, referred to this option of using administrative
15 records as producing "higher quality data produced at lowest
16 cost," right?

17 A. That's correct.

18 Q. The last sentence of Acting Director Jarmin's email to Mr.
19 Gary at the Department of Justice says, "I suggest we schedule
20 a meeting of census and DOJ technical experts to discuss the
21 details of this proposal."

22 You're aware that a meeting was tentatively scheduled
23 between Mr. Gary and Acting Director Jarmin for mid-January,
24 right, Dr. Abowd?

25 A. I'm aware from the administrative record, yes.

IbdWnys5

Abowd - Direct

1 Q. And you're aware that that meeting never took place,
2 correct?

3 A. That meeting never took place, that's correct.

4 Q. And in fact, Dr. Abowd, the Department of Justice refused
5 to take the meeting referenced here in this email for the
6 purpose of discussing the Census Bureau's proposal to produce
7 higher quality CVAP data at lower cost than adding a
8 citizenship question to the census, correct?

9 A. I don't know personally that the Department of Justice
10 refused. I've read in the administrative record the same
11 things that you have; it never happened.

12 Q. And the reason it never happened is because DOJ leadership
13 didn't want that meeting to take place, right, Dr. Abowd?

14 MR. EHRLICH: Objection.

15 THE COURT: Sustained.

16 Q. Your understanding is that DOJ leadership didn't want that
17 meeting to take place, right, Dr. Abowd?

18 A. That is my understanding, yes.

19 Q. Dr. Abowd, I'd like to show you some deposition testimony
20 that has been designated as evidence in this case and ask you
21 about your knowledge of it.

22 MR. HO: With the Court's permission, your Honor, we'd
23 like to play a very short clip of acting -- Assistant Attorney
24 General John Gore's deposition designations, which have been
25 filed with the Court, which have been lodged with the Court and

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Abowd - Direct

1 filed publicly.

2 THE COURT: Any objection?

3 MR. EHRLICH: We don't see any need to do that, your
4 Honor. He can ask Dr. Abowd his opinion and Dr. Abowd can give
5 his opinion. I'm not sure why we need to watch a video clip,
6 which your Honor said you would watch on your own time.

7 THE COURT: And I've already watched on my own time,
8 but that being said, I'll let Mr. Ho engage in his examination
9 the way he would like if there's no basis to object.

10 You may proceed.

11 MR. HO: Thank you, your Honor. The clip is very
12 short. It's from page 274 of Mr. Gore's deposition. The lines
13 have been designated lines 5 through 9, and we'll try to play
14 it now.

15 (Video played)

16 BY MR. HO:

17 Q. Dr. Abowd, at the time the bureau was informed that the
18 Department of Justice did not want to meet to discuss the
19 Census Bureau's proposal for higher quality CVAP data at the
20 lower cost, were you aware that the attorney general personally
21 made that decision?

22 A. I was not.

23 Q. When did you become aware of that?

24 A. When the administrative record revealed it.

25 Q. Have you ever heard of another circumstance in which the

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Abowd - Direct

1 attorney general personally directed staff at the Department of
2 Justice not to meet with the Census Bureau to discuss a
3 proposal for higher quality data that the Department of Justice
4 requested?

5 A. I have not, no.

6 Q. Are you aware of any other circumstance in which a cabinet
7 secretary personally directed agency staff not to meet with the
8 Census Bureau?

9 A. I'm not aware of any circumstances, no.

10 Q. Dr. Abowd, in your experience, is it unusual for the Census
11 Bureau to receive a data request from an agency and then for
12 that agency to refuse to meet with the Census Bureau to discuss
13 the technical aspects of that data request?

14 A. Yes, it is.

15 Q. Now, sometime, Dr. Abowd, after your meeting with Secretary
16 Ross on February 12, you were asked to consider a fourth
17 alternative, which we've been referring to as option D or
18 alternative D. Is that correct?

19 A. That's correct.

20 Q. Just so we're clear, alternative D combines both
21 alternatives B and C; that is, you both add a citizenship
22 question to the census and you look at administrative records
23 on citizenship under alternative D, correct?

24 A. That's correct.

25 Q. And your understanding was that after that February 12

IbdWnys5

Abowd - Direct

1 meeting, Secretary Ross and Undersecretary Kelley wanted you to
2 work on alternative D, correct?

3 A. To evaluate it, yes, that's correct.

4 Q. And Acting Director Jarmin told you that, right?

5 A. Yes, he did.

6 MR. HO: I want to look at Plaintiffs' Exhibit 25.
7 This is admitted into the trial record as a part of the
8 administrative record.

9 Q. Dr. Abowd, this is a memo under your name assessing
10 alternative D, correct?

11 A. That's correct.

12 I want to note the watermark isn't on this page again, but
13 it is the administrative record.

14 Q. I think it has something to do with the screen. I
15 apologize for that.

16 But this is the version, 1.0, of the draft memo that you
17 prepared at the request of Acting Director Jarmin on the
18 subject of alternative D, right, Dr. Abowd?

19 A. That's correct.

20 Q. And it was directed through Acting Director Jarmin to the
21 undersecretary and to the secretary of commerce, correct?

22 A. That's correct.

23 Q. And the views expressed in this memo are those of the
24 senior executive staff at the Census Bureau, correct?

25 A. That's correct.

IbdWnys5

Abowd - Direct

1 Q. And you're not aware of any subsequent versions of this
2 memo, correct?

3 A. I am not.

4 MR. HO: Let's turn to page 5 of this memo, which is
5 administrative record page 1312.

6 Q. The final paragraph sets forth the conclusion of the Census
7 Bureau about alternative D in comparison to alternative C,
8 correct?

9 A. Yes, it does.

10 Q. And you concluded that alternative D would result in poorer
11 quality citizenship data than alternative C; it would still
12 have all the negative cost and quality implications of
13 alternative B outlined in the draft January 19, 2018, memo to
14 the Department of Commerce, correct?

15 A. That's correct.

16 Q. And so, the Census Bureau did not recommend alternative D,
17 correct?

18 A. That was also correct.

19 Q. And the Census Bureau still does not recommend alternative
20 D, correct?

21 A. That's correct.

22 Q. But Secretary Ross selected alternative D anyway, correct?

23 A. The secretary instructed us to do alternative D, that's
24 correct.

25 MR. HO: Now, I want to ask you about overall census

IbdWnys5

Abowd - Direct

1 data quality under C and D. And let's look at page 4 of this
2 memo, the last full paragraph. I want to highlight the third
3 sentence, beginning with "however," about five lines down.

4 Q. Now, your March memo here notes that because alternative D
5 involves adding a citizenship question to the census, the
6 Census Bureau expects to see the same reduction in
7 self-response rates that you would see under alternative B,
8 correct?

9 A. That's correct.

10 MR. HO: I want to ask you about the next sentence,
11 starting with "not only."

12 Q. Your memo notes that the reduction in response rates, under
13 alternative D, would lead to more enumerations through the NRFU
14 process and more incorrect enumerations than you'd have under
15 alternative C, correct?

16 A. Yes.

17 MR. HO: And then let's highlight the next sentence,
18 starting with "in the 2010 decennial census."

19 Q. The memo notes that the increased number of enumerations
20 through the NRFU process under alternative D will produce lower
21 quality personal data on the census responses as compared to
22 alternative C, correct?

23 A. That's correct.

24 Q. So if your goal is to have an accurate census, then
25 alternative C is superior to alternative D, correct?

IbdWnys5

Abowd - Direct

1 A. That's correct.

2 Q. Now, under alternative D, due to the lower quality personal
3 data on census responses from increased number of households
4 going through NRFU, there will also be a reduction in the
5 number of individuals whom the Census Bureau can link to
6 administrative records, correct?

7 A. Yes. I thought that's what we were talking about, but yes,
8 that's correct.

9 Q. OK. Well, if we look at this, here, if we look at the last
10 sentence here, for the 2010 census, you're able to link 93
11 percent of self-responses to administrative records, correct?

12 A. Yes.

13 Q. But for proxy responses obtained through the NRFU process,
14 you're only able to link 33.8 percent of such individuals
15 through administrative records, correct?

16 A. That's correct.

17 Q. So just to be clear, under alternative D, there are going
18 to be fewer people that you can link to administrative records
19 than if you had -- if the secretary had instead chosen
20 alternative C, correct?

21 A. That's correct.

22 I said yes. I must be getting -- I'm sorry. Yes, that's
23 correct.

24 Q. OK.

25 MR. HO: Now, let's turn back to Secretary Ross's

IbdWnys5

Abowd - Direct

1 decision memo, Plaintiffs' Exhibit 26, and I want to look at
2 page 5 of the memo, the first paragraph on page 5.

3 Q. The secretary's discussing alternative D in this paragraph,
4 correct?

5 A. Yes, he is.

6 MR. HO: And I want to ask you about the third
7 sentence in this paragraph, starting with "this may eliminate."
8 I want to ask you about what Secretary Ross is referring to
9 here.

10 Q. One limitation of alternative C, using administrative
11 records, Dr. Abowd, is that not every person who is enumerated
12 in the census can be linked to administrative records, correct?

13 A. That's correct.

14 Q. So if you rely on administrative records -- excuse me,
15 under alternative C, to produce block-level CVAP data for DOJ,
16 there's a portion of the population for whom you're going to
17 have to impute, or model, their citizenship status, correct?

18 A. I prefer model, but yes, that's correct.

19 Q. The secretary's decision memo suggests that under
20 alternative D, that might eliminate the need for such modeling
21 of citizenship status for people who cannot be matched to
22 administrative records, right?

23 A. That's what he says, yes.

24 Q. Dr. Abowd, you analyzed the question of whether alternative
25 D could potentially address this gap in the administrative

IbdWnys5

Abowd - Direct

1 records, right?

2 A. Yes, we did.

3 MR. HO: All right. Let's bring your memo back up,
4 from March, Plaintiffs' Exhibit 25. Let's look at page 4.

5 Q. And under the header "can survey data address the gaps in
6 alternative C," this is the section where you address this
7 issue that Secretary Ross is talking about in his memo that we
8 talked about a moment ago, whether or not alternative D can
9 effectively address that gap in the administrative records,
10 right?

11 A. There may have been other paragraphs, but it's certainly
12 discussed in this one as well.

13 Q. Now, under alternative D, if you get a survey response on
14 citizenship status for someone who can't be matched to the
15 administrative records, you're going to use that survey
16 response, right?

17 A. We're going to include that survey response in the record
18 of the 2020 census, yes.

19 Q. Right. I mean, you wouldn't, if you -- for this group of
20 people who can't be matched to administrative data but you get
21 a survey response, you wouldn't model their citizenship status;
22 you would take the survey response as to citizenship for that
23 person, right?

24 A. As I think I've explained in several depositions, we've
25 charged a high-level expert panel that I'm the chair of inside

IbdWnys5

Abowd - Direct

1 the Census Bureau to develop a scientific answer to the
2 question you just asked. In the presence of a dual set of
3 records on citizenship status, it isn't obvious what the best
4 way to translate that into an estimate of citizen voting-age
5 population is.

6 Q. I apologize, Dr. Abowd. My question was probably
7 confusingly worded. I wasn't talking about people for 94 whom
8 there are dual records. I mean people who can't be linked to
9 the administrative record but for whom you do have a survey
10 response as to their citizenship status. You're going to use
11 the citizenship response for that person rather than
12 modeling -- you're going to use the survey response for that
13 person rather than modeling their citizenship status, correct?

14 A. I suspect that the internal expert panel will draw that
15 conclusion, but I want to say, once again, it is unusual to
16 dual source this, and it's not necessarily the best scientific
17 answer that you always use the survey if you don't have an
18 administrative record or that you always use the administrative
19 record when you don't have a survey. The modeled answer can be
20 defended on objective ground, but we haven't developed it yet.

21 Q. There's currently no objective grounds on which if all you
22 have about a person's citizenship status is their survey
23 response for you to reject the survey response, correct,

24 Dr. Abowd?

25 A. That's correct.

IbdWnys5

Abowd - Direct

1 Q. Now, as we established earlier, though, Dr. Abowd, the
2 Census Bureau believes that noncitizens give an answer to the
3 citizenship question on the ACS that's probably wrong more than
4 30 percent of the time, right?

5 A. That disagrees with the administrative record more than 30
6 percent of the time, yes.

7 Q. And you noted in this March memo that a problem with
8 relying on the citizenship question to fill gaps in the
9 administrative record is that people who are not citizens have
10 a strong incentive to provide an incorrect answer to a
11 citizenship question if they answer at all, right?

12 A. That's correct.

13 Q. And the memo notes that even a large fraction of legal
14 permanent residents provide incorrect answer, survey responses
15 to the citizenship question on the ACS, correct?

16 A. That's correct.

17 Q. And so, a key difference between alternatives C and D is
18 for this population of people for whom you can't link to
19 administrative records, under alternative C, you model their
20 citizenship status and, under alternative D, if you get it, you
21 try to use the survey self-response, right?

22 A. I think that's a fair characterization, yes.

23 Q. But given the errors in survey responses to citizenship
24 questions that we discussed earlier, this memo, Dr. Abowd,
25 concludes that survey-collected citizenship data may not be

IbdWnys5

Abowd - Direct

1 reliable for many of the people falling in the gaps in the
2 administrative record, correct?

3 A. Correct.

4 MR. HO: And let's look at page 4 of your memo.

5 Q. The second-to-last sentence in the last paragraph, starting
6 with "this suggests," that's where you made that conclusion in
7 this memo, right, Dr. Abowd?

8 A. That's correct.

9 MR. HO: Let's turn to page 5 of the memo and look at
10 the first sentence, full sentence, starting with "thus, not
11 only are citizenship data."

12 Q. Your March memo to Secretary Ross, Dr. Abowd, states that
13 citizenship survey data gathered under alternative D, it
14 describes such data as being of "suspect quality," correct?

15 A. Correct.

16 Q. But the memo --

17 MR. HO: Let's flip back to page 4 of the memo, and
18 the second paragraph, the first sentence.

19 Q. The memo describes the administrative data on citizenship
20 as "high quality," correct?

21 A. Correct.

22 Q. Dr. Abowd, there's no reason to think, for the group of
23 people that you can't match to administrative records, that on
24 average the survey responses under alternative D would be more
25 accurate than the modeling that you would conduct under

IbdWnys5

Abowd - Direct

1 alternative C, right?

2 A. That's correct.

3 Q. And in fact, Dr. Abowd, for this group of people falling in
4 the gaps of the administrative records, your view is that the
5 modeled responses to citizenship status under alternative C
6 would be more likely to be accurate than the survey
7 self-responses to a citizenship question under alternative D,
8 correct?

9 A. That's correct.

10 Q. So, Dr. Abowd, for this group of people who can't be
11 matched to administrative records, the Census Bureau's view is
12 that the modeled responses to citizenship status under
13 alternative C would be more likely to be accurate than the
14 survey self-responses to a citizenship question under
15 alternative D, correct?

16 A. That's correct.

17 Q. And as we established earlier, Dr. Abowd, the number of
18 individuals you can't match at all to administrative records,
19 that's going to be higher under alternative D than under
20 alternative C, right?

21 A. Also correct.

22 Q. So for people who can't be linked to administrative
23 records, if you're attempting to determine their citizenship
24 status, Dr. Abowd, you would prefer modeling it to a survey
25 self-response, right?

IbdWnys5

Abowd - Direct

1 A. A little too compound. Could you ask it --

2 Q. Sure.

3 A. -- straightforwardly.

4 Thank you.

5 Q. If you want to get accurate citizenship information about
6 people who fall in the gaps of the administrative records, Dr.
7 Abowd, your recommendation would be to model their citizenship
8 status rather than to try to collect it through a survey
9 self-response, correct?

10 A. That's correct.

11 Q. And Dr. Abowd, if the Department of Justice's goal is to
12 get accurate block-level CVAP data, then for this group of
13 people who fall in the gaps of the administrative records, the
14 best course of action is to use -- is to impute their
15 citizenship status rather than use a survey question, correct?

16 A. Most accurate data would come from modeling their
17 citizenship status, that's correct.

18 MR. HO: OK. Now let's turn back to Secretary Ross's
19 decision memo, page 5. I want to look at the first paragraph
20 and the last two sentences that start with "finally."

21 Q. I'd like you to read that to yourself and then, when you're
22 ready, let me know.

23 A. I'm ready.

24 Q. In these two sentences in this paragraph, Dr. Abowd, is it
25 your understanding that Secretary Ross is suggesting that

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Abowd - Direct

1 including a citizenship question on the 2020 census will enable
2 the Census Bureau to model citizenship status more accurately
3 by determining the accurate ratio of citizen to noncitizen
4 responses?

5 A. So, once again, the secretary did not discuss this with me
6 so I don't know exactly what nuances he meant. He appears to
7 believe that we would get more accurate CVAP data if we had
8 access to both the survey responses and the administrative
9 data, yes.

10 Q. And the assertions in this, these two sentences of this
11 paragraph, Dr. Abowd, the commerce department never discussed
12 this with the chief scientist at the Census Bureau, right?

13 A. It was not discussed with me, that's right.

14 Q. Dr. Abowd, the two sentences here, they make technical
15 presumptions that the Census Bureau does not currently endorse,
16 correct?

17 A. Once again, I'm not privy to the technical assumptions.
18 They appear to say that the secretary believes it would be more
19 accurate if we had access to both the survey responses and the
20 administrative data.

21 Q. That assertion, as you understand it, Dr. Abowd, makes
22 technical presumptions that the Census Bureau would not
23 currently endorse, correct?

24 A. That's correct.

25 Q. And as of March 26, 2018, when Secretary Ross issued this

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Abowd - Direct

1 memo, the Census Bureau had not completed any analysis as to
2 whether or not the inclusion of a citizenship question would
3 better -- would enable the Census Bureau to more accurately
4 model citizenship status for people falling in the gaps of the
5 administrative records, correct?

6 A. We hadn't done any of that modeling at that time, that's
7 correct.

8 MR. HO: I want to ask you about another memo of yours
9 that's in the administrative record, Plaintiffs' Exhibit 24.
10 This is in the administrative record and has been admitted into
11 the trial record.

12 Q. You recognize this memo, right, Dr. Abowd?

13 A. Yes, I do.

14 Q. It's a memo that quantifies, under one set of assumptions,
15 some of the data quality differences between alternatives C and
16 D, right?

17 A. Yes.

18 MR. HO: Let's turn to page 3 of the memo and figure
19 1.

20 Q. Now, this is a breakdown of the Census Bureau's analysis of
21 data quality under alternative C, right?

22 A. Yes, it is.

23 Q. So at the time of this analysis, the bureau posited that
24 under alternative C, you could link 295 million out of the 330
25 million people whom you expect to enumerate during the 2020

IbdWnys5

Abowd - Direct

1 census to administrative records containing citizenship, right?

2 A. Yes.

3 Q. That's about 89.4 percent of the population; sound right?

4 A. That does sound right, yes.

5 Q. According to this analysis, there's about 35 million people
6 whom you'd expect not to be able to link to administrative
7 records, right?

8 A. That's correct.

9 Q. That's about 10.6 percent of the population that would fall
10 into that gap of the administrative records that we've been
11 discussing, right?

12 A. That's correct.

13 Q. So under alternative C you would model citizenship status
14 for this about 10 percent of the population, right?

15 A. That's correct.

16 MR. HO: Let's turn to the next page, page 4 of the
17 memo, figure 2.

18 Q. Now, this is a breakdown of data quality under alternative
19 D, correct?

20 A. Yes, it is.

21 Q. Little more complicated than alternative C, right?

22 A. It has more boxes, yes.

23 MR. HO: All right. Let's walk through this.

24 Q. On the right side of this chart, the bureau posited that
25 there would be 35.4 million people for whom you would not get a

IbdWnys5

Abowd - Direct

1 response to the citizenship question on the 2020 census, right?

2 A. Yes.

3 Q. And if we look at the far left-hand side of the chart, the
4 bureau posits that there are 263 million people who you would
5 get a response to the citizenship question and whom you could
6 link to administrative records, and the administrative record
7 and the citizenship response would be the same, right?

8 A. You're on the far left, right?

9 Q. Yes.

10 A. 263 million?

11 Q. Yes.

12 A. Yes, that's right.

13 Q. So if we add these two groups together, 263 million, where
14 the question response and the administrative records are the
15 same, and 35.4 million people for whom you don't get an answer
16 to the citizenship question at all, that group together,
17 collectively, putting a citizenship question on the census
18 doesn't give us any better information than if we had no
19 citizenship question on the census, right?

20 A. Yes, that's right.

21 Q. OK. So if we add them together, that's 298.4 million
22 people for whom the citizenship question doesn't give us better
23 information about their citizenship status?

24 A. That's correct.

25 Q. That's 90.4 percent of the population, right?

IbdWnys5

Abowd - Direct

1 A. You've been doing well on the ratios, so I assume you did
2 that one right too. Thank you.

3 Q. OK. Now let's talk about the rest of the population. You
4 have, in the middle branch of this chart, 22.2 million people,
5 under alternative D, who you'd expect to give a response to the
6 citizenship question and who couldn't be linked to an
7 administrative record on citizenship, right?

8 A. That's correct.

9 Q. And you also have, on the far right-hand side here, 13.8
10 million people who have no response to a citizenship question
11 and no administrative record on citizenship, right?

12 A. That's correct.

13 Q. So you add those two numbers together, that's 36 million
14 people, under alternative D, who can't be linked to
15 administrative records on citizenship, right?

16 A. Yes.

17 Q. Now, that's more people who can't be linked to
18 administrative records than you had under alternative C, right?

19 A. That is correct.

20 Q. That's because of the reduction in data quality because of
21 more NRFU under alternative D, right?

22 A. That's correct.

23 Q. And that's one of the manifestations in which alternative D
24 produces worse data than alternative C, right?

25 A. Yes, that's right.

IbdWnys5

Abowd - Direct

1 Q. OK. Let's look again at the chart and the sort of middle
2 subbranch of the left branch of the chart, the 9.5 million.

3 Under alternative D, the Census Bureau posited you'd have
4 9-1/2 million people for whom the survey self-response on
5 citizenship and the administrative record disagree, right?

6 A. That's right.

7 Q. And you don't have any plan for what you would do with
8 those people right now, right?

9 A. That we'd have to study, yes.

10 Q. And the traditional Census Bureau practice is that if you
11 have a survey response that conflicts with an administrative
12 record, you generally rely on the survey response, right?

13 A. So, I hope that I didn't say so unambiguously in any of the
14 depositions that there was a general practice here. I thought
15 I said that this was a pretty unusual situation and that's why
16 we are going to study it further. We don't generally put
17 ourselves in the situation where we have a disagreement and --
18 we try to address the disagreements in the design of the data
19 product.

20 Q. Dr. Abowd, I want to bring you back to your October 5
21 deposition, your third deposition in this case.

22 A. OK.

23 Q. And specifically page 416, line 15:

24 "Q. Now, the traditional Census Bureau practice, in general,
25 is that if you have a survey response that conflicted with an

IbdWnys5

Abowd - Direct

1 administrative record, you generally rely on the survey
2 response, correct?

3 "A. Correct."

4 Was that my question for you and your answer that day?

5 A. Yes, it was.

6 MR. HO: OK. Can we come back to the chart from the
7 memo, figure 2.

8 Q. Dr. Abowd, for that group of people, the 9-1/2 million
9 people for whom the survey response and the administrative
10 record conflict, if you use what you described in your 30(b)(6)
11 deposition as the traditional Census Bureau practice of relying
12 on the survey response instead of the administrative record,
13 you agree that that would probably be more accurate -- more
14 inaccurate, excuse me, than relying on the administrative
15 record, correct?

16 A. Yes, I do.

17 (Continued on next page)

IBDsNYS6

Abowd - Direct

1 BY MR. HO:

2 Q. But if you relied on the administrative record instead of
3 a survey response, there would have been no reason to ask a
4 survey question in the first place, right?

5 A. That's correct.

6 Q. Now, to be clear, this problem doesn't exist under the
7 alternative C, right?

8 A. Also correct.

9 Q. Lets come back to this chart.

10 Now I asked you a while ago about the 22.2 million people
11 who fall in that gap, can't be linked to administrative
12 records, but from whom you anticipate getting a response to the
13 citizenship question.

14 That's an accurate characterization of the 22.2, right?

15 A. Not linked?

16 Yes, that's correct.

17 Q. That is about 6.7 percent of the population that can't be
18 linked to administrative records, but under alternative D, you
19 have a survey response, right?

20 A. That's correct.

21 Q. Now, under alternative C, you would expect to be able to
22 link some of these people to administrative records, right,
23 Dr. Abowd?

24 A. Yes, that's correct.

25 Q. But leave that aside.

IBDsNYS6

Abowd - Direct

1 For this group of 22.2 million people under alternative D,
2 if you follow traditional Census Bureau practices, you would
3 use the survey response rather than modeling their citizenship
4 status, right?

5 A. That's correct.

6 Q. And in your opinion, that would be less accurate than if
7 you just went with modeling their citizenship status, right?

8 A. That's correct.

9 Q. Dr. Abowd, if someone argued that alternative D was
10 justified because alternative C requires modeling citizenship
11 status for people who can't be linked to administrative
12 records, you would disagree with that conclusion, right?

13 A. I would like you to ask it again. If you could just read
14 it back, if you want. I want to make sure I heard the
15 qualifying statements exactly.

16 Q. Dr. Abowd, if someone argued to you that alternative C
17 is -- excuse me -- I'll try that again.

18 Dr. Abowd, if someone argued to you that alternative D is
19 justified because under alternative C, you would have to model
20 the citizenship status for this pool of people who can't be
21 linked to administrative records, you would disagree with that
22 conclusion, right?

23 A. Yes, I would.

24 Q. And the Census Bureau would disagree with that argument,
25 right?

IBDsNYS6

Abowd - Direct

1 A. Yes.

2 Q. Now, this chart, Dr. Abowd, there is a version of this --
3 excuse me -- there are multiple versions of this in the Brown
4 memo, right?

5 A. That's correct.

6 Q. I just want to identify them so that the court is aware of
7 where they are.

8 If we can turn back to Plaintiffs' Exhibit 162, and
9 page 50 of the paper.

10 Starting on page 50 through pages 53, you go through four
11 possible scenarios for data quality under alternative D, is
12 that right?

13 And can we scroll through those, please.

14 A. Yes, that's correct.

15 Q. These scenarios all are constructed under different
16 assumptions, right, Dr. Abowd?

17 A. Yes, that's correct.

18 Q. And after conducting all of these scenarios, the conclusion
19 of the Census Bureau remains that alternative D produces worse
20 data quality than alternative C, correct?

21 A. That's correct.

22 THE COURT: Did you explain what AD REC means?

23 Did I miss that?

24 THE WITNESS: I did not, your Honor. It is a
25 shorthand for administrative record, ad. rec.

IBDsNYS6

Abowd - Direct

1 THE COURT: Thank you.

2 BY MR. HO:

3 Q. Lets go back to the Ross memo, Plaintiffs' Exhibit 26. I
4 want to look at page five.

5 I think that's the Brown memo. The Ross memo, Plaintiffs'
6 Exhibit 26.

7 The first three sentences of the first paragraph. I want
8 to compare this, if we can, to your March memo, Plaintiffs'
9 Exhibit 25, page five of your memo, the second to last
10 paragraph.

11 So Secretary Ross orders option D, but your conclusion
12 before he made that decision was that including a citizenship
13 question on the 2020 census does not solve the problem of
14 incomplete person linkages when producing citizenship
15 statistics after 2020, correct?

16 A. I confess that I've gotten the providence of boxes
17 confused.

18 Q. Sure.

19 The one on the bottom, that has your conclusion that
20 including a citizenship question in the 2020 census does not
21 solve the problem of incomplete citizenship linkages when
22 producing citizenship statistics?

23 A. From the March 1 memo?

24 Q. Yes.

25 A. OK. Yes.

IBDsNYS6

Abowd - Direct

1 Q. That's correct, Dr. Abowd?

2 A. Yes, that's correct.

3 Q. When Secretary Ross in his decision memo wrote that
4 alternative D may eliminate the need for the Census Bureau to
5 have to model citizenship status for millions of people, you
6 had already concluded, in fact, that alternative D did not
7 solve that problem, right?

8 A. That's correct.

9 Q. And you also concluded in this memo that alternative C is
10 cheaper than alternative D, right?

11 A. That's correct.

12 Q. And you also concluded that using administrative records
13 alone would be more accurate than attempting to combine
14 administrative records and survey responses under alternative
15 D, right?

16 A. That's correct.

17 Q. And you communicated all of that to Secretary Ross through
18 your memo before his decision memo was issued, correct?

19 A. That's correct.

20 Q. I want to bring up Plaintiffs' Exhibit 359. This has been
21 admitted into the trial record.

22 Dr. Abowd, you're familiar with this, right?

23 A. Yes. It's statistical policy directive number two.

24 Q. From the Office of Management and Budget, correct?

25 A. Yes.

IBDsNYS6

Abowd - Direct

1 Q. The Census Bureau is bound by OMB standards and guidelines,
2 correct?

3 A. The office of the chief statistician is charged with
4 supervising the activities of the statistical agencies of the
5 United States Government, yes.

6 Q. I want to turn to page 16 of the document, of the PDF which
7 is page 11 of the document for the record.

8 Standard 2.3 reads: Agencies must design and administer
9 their data collection instruments and methods in a manner that
10 achieves the best balance between maximizing data quality and
11 controlling measurement error while minimizing respondent
12 burden and cost.

13 I read that correctly, right?

14 A. Yes, you did.

15 Q. And the Census Bureau is bound by standard 2.3, correct?

16 A. The Census Bureau is required by the Office of Management
17 and Budget to justify its actions in light of standard 2.3.

18 Q. Dr. Abowd, within the meaning of standard 2.3, the
19 Secretary's chosen option, alternative D, results in lower data
20 quality than the Census Bureau's recommendation of
21 alternative C, correct?

22 A. That's correct.

23 Q. Dr. Abowd, within the meaning of standard 2.3, the
24 Secretary's chosen option of alternative D also has a higher
25 respondent burden than the Census Bureau's recommendation of

IBDsNYS6

Abowd - Direct

1 alternative C, correct?

2 A. That's correct.

3 Q. Dr. Abowd, within the meaning of standard 2.3, the
4 Secretary's chosen option of alternative D has a higher cost
5 than the Census Bureau's recommendation alternative C, correct?

6 A. That's correct.

7 Q. Guideline 2.3.1 reads: Design the data collection
8 instrument in a manner that minimizes respondent burden, while
9 maximizing data quality.

10 Did I read that right?

11 A. Yes, you did.

12 Q. Dr. Abowd, choosing alternative D over alternative C does
13 not comport with guideline 2.3.1, correct?

14 A. So the Census Bureau's obligation is not to determine how
15 OMB will interpret guideline 2.3.1 in terms of our actions.

16 I think I already said alternative D delivers higher
17 quality data at lower cost.

18 Q. And alternative C --

19 A. I'm sorry. I misspoke.

20 Q. Alternative C delivers high quality data at lower cost?

21 A. That's what I meant to say. Sorry.

22 Q. It does so with lower respondent burden, correct?

23 A. Yes, it does.

24 Q. All of that and choosing alternative C would be consistent
25 with guideline 2.3.1, correct?

IBDsNYS6

Abowd - Direct

1 A. Yes, it would.

2 Q. In the meetings that you had with Commerce Department
3 officials, you heard Commerce Department officials opine that
4 alternative D would be better than alternative C, right?

5 A. So in none of the meetings -- first of all, I only met with
6 the Secretary once on this subject. I believe with the Under
7 Secretary only once.

8 And I believe in those meetings, some staff members
9 may have opined there are reasons why they thought that certain
10 alternatives would be better. But, frankly, I don't remember
11 any such conversations. I remember being asked a lot of
12 questions and being asked questions that suggested that one or
13 another of the persons in the room thought one way of doing it
14 might be better than the other.

15 I'm sure I said this in my fact deposition. There was
16 a very open discussion with both the Under Secretary and the
17 Secretary in the only time I was in a meeting with them on this
18 subject. Subsequently, Dr. Lamas had additional discussions
19 with them, I think primarily Dr. Jarmin, and I won't
20 characterize those because I wasn't in those meetings.

21 Q. Dr. Abowd, you remember a meeting where a member of
22 Secretary Ross' staff, Earl Comstock, expressed the opinion
23 that alternative D would be superior to alternative C because
24 it would enable you to fill the gaps in the administrative
25 record?

IBDsNYS6

Abowd - Direct

1 A. So, frankly, I don't remember being in a meeting when
2 alternative D was already on the table. He was in the meeting
3 on February 12, but I don't believe we were discussing
4 alternative D at that time, except in the sense of comparing
5 B to C. I don't recall being in a meeting with him.

6 Q. Dr. Abowd, I'm going to bring up for you a section of your
7 deposition transcript on October 5, 2018, page 422, lines 3
8 through 11.

9 Go ahead and read that and see if it refreshes your
10 recollection.

11 A. OK. Out loud?

12 (Pause)

13 Q. Does that refresh your recollection, Dr. Abowd?

14 MR. EHRLICH: Your Honor, I would say, again, he is
15 testifying there as a 30(b)(6) witness for the Census Bureau.

16 THE COURT: I think the law is clear you can show a
17 witness absolutely anything to refresh his recollection, so
18 that is what is being done here.

19 The objection's overruled.

20 A. May I ask to see the question that preceded this?

21 Q. You could. Sure.

22 THE COURT: For the record, I recall a lecture for the
23 bar saying that you could refresh recollection with a bowl of
24 fettuccine alfredo. By that standard, this is certainly
25 proper.

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Abowd - Direct

1 Go ahead.

2 BY MR. HO:

3 Q. The previous question is on page 421, line 17. Feel free
4 to read that to yourself.

5 Just let me know when you're ready.

6 (Pause)

7 A. I would like to qualify that --

8 Q. I haven't put a question to you yet, Dr. Abowd.

9 A. OK. Go ahead.

10 Q. Could I?

11 A. Yes. Go ahead.

12 Q. Reading that, does that refresh your recollection about
13 whether or not you've ever heard Earl Comstock express the view
14 that alternative D is superior to alternative C because it
15 fills in the gaps in the administrative record?

16 A. So I understood my duty when I was testifying as the
17 agency's 30(b)(6) witness --

18 THE COURT: Hold on, Doctor. The answer to that
19 question is either yes or no. It either refreshes your
20 recollection --

21 THE WITNESS: Yes, it does refresh my recollection.

22 THE COURT: Now I'm sure Mr. Ho will ask you another
23 question.

24 BY MR. HO:

25 Q. You don't agree with Mr. Comstock's opinion, right,

IBDsNYS6

Abowd - Direct

1 Dr. Abowd?

2 A. That's correct.

3 Q. And the Census Bureau does not agree with Mr. Comstock's
4 opinion, right, Dr. Abowd?

5 A. That is correct.

6 Q. The Census Bureau communicated its disagreement with that
7 opinion to Mr. Comstock, right?

8 A. Yes, that is correct.

9 Q. And if Mr. Comstock testified in a deposition, Dr. Abowd,
10 that the Census Bureau never communicated its disagreement with
11 that opinion, Mr. Comstock would be wrong, right, Dr. Abowd?

12 A. I believe that's the case, yes.

13 Q. Secretary Ross didn't choose alternative C, he chose
14 alternative D anyway, right, Dr. Abowd?

15 A. That's correct.

16 Q. Now, I just want to back up and ask you a few questions
17 about how this process unfolded.

18 Dr. Abowd, you would agree that normally, the process of
19 testing content on the census, is a decade-long process
20 involving multiple tests and various randomized control tests,
21 correct?

22 A. Yes.

23 Q. Lets bring up Plaintiffs' Exhibit 271. This has been
24 admitted into the trial record. This is 2020 census program
25 memorandum series 2016.05, dated April 29, 2016, from Lisa

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Abowd - Direct

1 Blumerman.

2 A. Blumerman.

3 Q. Blumerman. Thank you, Dr. Abowd.

4 The subject of this memo is: Plan development and
5 submission of subjects planned for the 2020 census program and
6 questions planned for the 2020 census program.

7 Right, Dr. Abowd?

8 A. Yes.

9 Q. I'm going to refer to this document as the Blumerman memo.

10 OK?

11 A. Yes.

12 Q. Now, as of the date that she signed this memo, Lisa
13 Blumerman was an associate director for the 2020 census,
14 correct?

15 A. That's correct.

16 Q. Lets turn to page three. I want to look at the section
17 under the header Federal Agency Input.

18 The first paragraph, the last sentence reads: Federal
19 agencies with known uses of the 2020 census or ACS content, and
20 sector agencies, will receive a letter with instructions for
21 how federal data users may provide updates to the documentation
22 of data uses. Responses should be received before July 1,
23 2016. Census Bureau staff may follow up with federal users
24 directly if more clarification is required.

25 Dr. Abowd, do these sentence conform to your understanding

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Abowd - Direct

1 of how the content review was conducted and presented to
2 members of the 2020 census executive steering committee?

3 A. Yes.

4 Q. The Department of Justice's request to add a citizenship
5 question was not received by July 1, 2016, correct?

6 A. That's correct.

7 Q. To the best of your knowledge, the Department of Justice
8 did not previously write to the Census Bureau about adding a
9 citizenship question prior to December 2017, right?

10 A. That's correct.

11 Q. And prior to December 2017, in fact, the Census Bureau had
12 never heard from the Department of Justice that existing CVAP
13 data produced by the Census Bureau was not ideal for purposes
14 of DOJ's VRA enforcement work, correct?

15 A. I'll answer your question, but I want to just see if you
16 misspoke.

17 Did you mean prior to July 1, 2016? You said '17.

18 Q. I said December 2017. I think I meant December 2017.

19 Before the request, the Gary letter came into the Census
20 Bureau, the Department of Justice had never communicated to the
21 Census Bureau that ACS CVAP data was not ideal for DOJ's VRA
22 enforcement purposes, right, Dr. Abowd?

23 A. That's correct.

24 Q. Lets go back to the Blumerman memo, and I want to look at
25 page four of the memo.

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Abowd - Direct

1 There is a header that reads Content Determination, and the
2 second paragraph, last sentence reads: Final proposed
3 questions are based on the results of extensive cognitive
4 testing, field testing, other ongoing research, and input from
5 advisory committees.

6 That is your understanding of what the process for the 2020
7 census was presented to the Census Bureau's 2020 executive
8 steering committee, right?

9 A. The memo simultaneously describes ACS and 2020 census, but
10 I believe that sentence was intended to apply to both, yes.

11 Q. Now, your understanding is that the 2010 full census
12 questionnaire was subjective to cognitive testing, right,
13 Dr. Abowd?

14 A. Yes.

15 Q. There has been no cognitive testing, however, of the full
16 2020 census questionnaire, including a citizenship question,
17 correct?

18 A. That's correct.

19 Q. Now, lets talk about the second component here, the next
20 component after cognitive testing, field testing.

21 To the best of your knowledge, Dr. Abowd, the full 2010
22 decennial census questionnaire was field tested, correct?

23 A. That's correct.

24 Q. The full 2020 census questionnaire, including a citizenship
25 question, has not been field tested, correct?

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Abowd - Direct

1 A. That's correct.

2 Q. Now, there were, I believe, some recent trials that have
3 been described as the end-to-end test this year, Dr. Abowd?

4 A. So the 2018 end-to-end census test was conducted this year,
5 yes.

6 Q. And that is sort of like the last dress rehearsal for the
7 2020 census, right?

8 A. It's the last large scale test of the 2020 census, correct.

9 Q. The end-to-end test did not include a citizenship question,
10 correct?

11 A. That is correct.

12 Q. And as of the date of your last deposition in this case,
13 October 12, 2018, there were still no plans for field testing
14 of the full 2020 census questionnaire, including a citizenship
15 question, correct?

16 A. I don't know that you asked me the question in that form at
17 my October 12 deposition.

18 Q. I wasn't there, so I certainly couldn't have, but let me
19 put a different question to you, Dr. Abowd.

20 At the time that Secretary Ross made his decision to
21 include a citizenship question on the census, there were no
22 plans for field testing of the census questionnaire, including
23 a citizenship question, correct?

24 A. That's correct.

25 Q. Now, Dr. Abowd, after the 1990 census, the Census Bureau

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Abowd - Direct

1 investigated the possibility of adding a question concerning
2 respondents' Social Security numbers on the census short form,
3 correct?

4 A. Yes.

5 Q. And the Census Bureau conducted an RCT comparing a version
6 of the short form with and without a question asking for a
7 Social Security number, correct?

8 A. That's correct.

9 Q. And the RCT assessed the impact on self-response rates of a
10 Social Security number question, correct?

11 A. That's correct.

12 Q. And in the RCT, the self-response rate fell off in the
13 group that had the Social Security number question by 3.4
14 percent, correct?

15 A. That's correct.

16 Q. And the conclusion that was drawn from that RCT was that
17 asking for a Social Security number would be sensitive, right?

18 A. Yes.

19 Q. And today, the Census Bureau does not request for Social
20 Security numbers on the census questionnaire, right?

21 A. We never have.

22 Q. And one of the reasons for that is a concern about the
23 effect of that question on self-response rates, correct?

24 A. I believe that's correct, yes.

25 Q. And it is your opinion, Dr. Abowd, that for some sub

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Abowd - Direct

1 populations, asking about citizenship might be just as
2 sensitive as asking a question about Social Security numbers,
3 right?

4 A. Yes.

5 Q. In fact, it is your opinion that for some sub populations,
6 asking a question about citizenship would be more sensitive
7 than asking a question about Social Security numbers, correct?

8 A. I think I said could, but yes.

9 Q. The RCT to assess the effect of a Social Security number on
10 self-response rates to the census was conducted before any
11 decision was made about whether to include a Social Security
12 number question on the census, right?

13 A. Yes.

14 Q. And no similar RCT has taken place here along those lines
15 before a decision was made to include a citizenship question,
16 correct?

17 A. Yes.

18 Q. Lets bring up Plaintiffs' Exhibit 268.

19 THE COURT: Actually, lets take our break here instead
20 of doing that. It is 3:22. We'll start again at 3:32.

21 Because we're still in the direct examination,
22 Dr. Abowd, you should not communicate about the substance of
23 your testimony with defense counsel.

24 I'll see you in ten minutes. Thanks.

25 (Recess)

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Abowd - Direct

1 THE COURT: All right. Dr. Abowd, you're still under
2 oath.

3 Mr. Ho, you may continue.

4 MR. HO: Thank you, your Honor.

5 BY MR. HO:

6 Q. Dr. Abowd, I want to ask you about Plaintiffs' Exhibit 268,
7 which has been admitted into evidence.

8 Dr. Abowd, this is a proposed content test on a citizenship
9 question dated May 3, 2018, correct?

10 A. Yes.

11 Q. This is a proposal for an RCT for a citizenship question on
12 the census, correct?

13 A. It is an RCT for the content of alternative versions of the
14 citizenship question on the -- using the ACS, yes.

15 Q. This RCT proposal was created by Census Bureau staff,
16 correct?

17 A. Yes.

18 Q. And it was made in May of 2018?

19 A. That's correct.

20 Q. And the proposal was to initiate an RCT in either November
21 of 2018 or February of 2019, correct?

22 A. That's correct.

23 Q. The RCT, as proposed here, would have taken six weeks to
24 collect the data, correct?

25 A. Yes.

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Abowd - Direct

1 Q. Either if it had been in November of 2018 or February of
2 2019, either way the RCT could have been completed before
3 census forms are due to be printed, correct?

4 A. Yes.

5 Q. And the cost of this proposal ranges depending upon the
6 options you chose between \$2 million for one option to
7 \$4.1 million for another option, correct?

8 A. Yes.

9 Q. The Census Bureau has that money, right, Dr. Abowd?

10 A. Yes.

11 Q. This proposal was rejected by a group of decision-makers,
12 including Under Secretary Karen Dunn Kelley, correct?

13 A. As I testified in my 30(b)(6), the decision not to conduct
14 this RCT was made by -- excuse me -- Dr. Enrique Lamas'
15 consultation with the Under Secretary, yes.

16 Q. I would like to bring up Plaintiffs' Exhibit 271, the
17 Blumerman memo.

18 THE COURT: Who was the second person, Dr. Jarmin?

19 THE WITNESS: Deputy, Acting Deputy Director Enrique
20 Lamas. Dr. Lamas.

21 THE COURT: Thank you.

22 BY MR. HO:

23 Q. Back to page four of the Blumerman memo.

24 The page entitled Content Determination, and that last
25 sentence in the second paragraph.

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Abowd - Direct

1 We talked about cognitive testing, field testing, and RCT,
2 which I put in the category of ongoing research. Those are all
3 different things, right, Dr. Abowd; like doing an RCT and
4 conducting that, that doesn't take the place of cognitive
5 testing and field testing, right?

6 A. In some cases, they are intertwined, but they are
7 considered distinct activities, yes.

8 Q. Lets talk about -- I'm sorry. One other question.

9 If you do an RCT and the results come out suggesting that a
10 question could reduce response rates, do you just plow ahead
11 and do that, or would you conduct more analysis before using a
12 question that you had tested?

13 A. When we conduct an RCT, we expect it to produce actionable
14 data, and exactly what actions would be taken as a consequence
15 of those data depends on the structure of the RCT and the point
16 in the survey development cycle that it is conducted.

17 Q. Just to be clear, doing an RCT, it is not like a box that
18 you check, and regardless of what the results are, you just
19 say, Great, we've conducted an RCT, we can go ahead now?

20 You have to actually look at the results of the RCT
21 and incorporate that into your process, correct?

22 A. That is the justification for running an RCT, yes.

23 Q. OK. Lets talk about the next item here, input from
24 advisory committees.

25 Input was not solicited from the Census Bureau's advisory

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Abowd - Direct

1 committees before Secretary Ross made his decision to add a
2 citizenship question to the 2020 census, correct?

3 A. That's correct.

4 Q. If you had been given more advance notice, then the Census
5 Bureau could have consulted with, for example, CSAC, the Census
6 Scientific Advisory Committee, before a decision was made,
7 right?

8 A. Yes.

9 Q. And if you had been given more advance notice, you would
10 have convened a working group with the advisory committees to
11 study the citizenship question, right?

12 A. Probably.

13 Q. And you would have discussed that question actively with
14 the working groups, right?

15 A. Yes.

16 Q. But no such act of discussions with the advisory committees
17 happened before Secretary Ross made his decision, correct?

18 A. That's correct.

19 Q. Now, backing up to talk again a little bit more about the
20 process before Secretary Ross made his decision, Dr. Abowd,
21 after you communicated the Census Bureau's initial views in
22 your February 12 memo with Secretary Ross, the Commerce
23 Department sent a list of 35 followup questions to the Census
24 Bureau, correct?

25 A. Yes.

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Abowd - Direct

1 Q. And some of those questions concerned testing, right?

2 A. Yes, they do.

3 Q. OK. Lets bring up Plaintiffs' Exhibit 140.

4 These are draft responses to those 35 questions from
5 the Commerce Department, right?

6 A. Draft responses from the Census Bureau to the Commerce
7 Department, yes.

8 Q. Thank you for that correction.

9 Just for the record, this document has been admitted into
10 the trial record, and it is part of the supplemental
11 administrative record in this case.

12 Dr. Abowd, it is your belief that Acting Director Jarmin
13 intended for you to take responsibility for making sure that
14 the answers to these questions were accurate, correct?

15 A. For the vast majority of them, yes. He asked me to track
16 that the person assigned to deliver an answer had done so, to
17 vet that answer, to communicate that answer to Burton Reist,
18 the chief of the decennial communications office, and then
19 Burton Reist was charged with delivering those answers to the
20 Commerce Department on a flow basis. They did go back and
21 forth before we determined that we adequately answered each of
22 the questions.

23 Q. It is your understanding that Acting Director Jarmin
24 intended you to be ultimately responsible for making sure that
25 the answers to these questions were accurate, correct?

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Abowd - Direct

1 A. Yes.

2 Q. Lets turn to page six in these draft responses, which is
3 administrative record page 10900.

4 I want to ask you about question 31. Question 31 asks:
5 What was the process that was used in the past to get questions
6 added to the decennial census, or do we have something similar
7 where a precedent was established.

8 Did I read that right?

9 A. Yes.

10 Q. The draft response reads: The Census Bureau follows a
11 well-established process when adding or changing content on the
12 census or ACS to ensure the data fulfill legal and regulatory
13 requirements established by congress. Adding a question or
14 making a change to the decennial census or the ACS involves
15 extensive testing, review, and evaluation. This process
16 ensures the change is necessary and will produce quality,
17 useful information for the nation.

18 Did I read that right?

19 A. Yes, you did.

20 Q. OK. The text here in this draft response, this was sent
21 from the Census Bureau to the Commerce Department, correct?

22 A. As I said before, several versions were sent, but I believe
23 this is one of them, yes.

24 Q. This is one of the versions of the draft response to
25 question 31 that the Census Bureau sent to the Commerce

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Abowd - Direct

1 Department?

2 A. Yes.

3 Q. And this states that, in this draft response, that adding
4 a question to the decennial census or ACS involves extensive
5 testing, review, and evaluation, correct?

6 A. Yes.

7 Q. And as of March 1, 2018, that was your understanding, that
8 adding a new question to the decennial census involves
9 extensive testing, review, and evaluation, correct?

10 A. Correct.

11 Q. I want to show you a different version of this document.

12 I'm sorry. Before we move on, could we bring that back up
13 just for a second. On the next page, I just want to look at
14 the bullets here.

15 I'm sorry. Can we get the text just above the bullets too.

16 This is part of the draft response to question 31, right,
17 Dr. Abowd?

18 A. Yes.

19 Q. It reads: The Census Bureau and the Office of Management
20 and Budget (OMB) have laid out a formal process for making
21 content changes.

22 Then there is a series of six bullets after that, right?

23 A. Correct.

24 Q. And is it an accurate summary to say that this formal
25 process, as described in these draft responses, includes

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Abowd - Direct

1 federal agencies evaluating their data needs, a proposal that
2 demonstrates a clear statutory regulatory need for the data,
3 final proposed questions resulting from extensive cognitive and
4 field testing, several opportunities for public comment, a
5 decision made in consultation with OMB, and then finally, if
6 approved, the Census Bureau implementing the change, is that
7 right?

8 A. Yes.

9 Q. OK. Now, I want to show you Plaintiffs' Exhibit 23.

10 Dr. Abowd, this has been admitted into evidence, and it is
11 in the initial administrative record in this case as the final
12 version of responses to the 35 questions.

13 Does that comport with your recollection?

14 A. May I see all the pages of the document, please?

15 Q. Sure. Maybe we could scroll through.

16 Does that look right to you, Dr. Abowd?

17 A. Yes.

18 Q. Just to be clear, this version of the document was produced
19 in the initial administrative record in this case, but the
20 draft responses that we were talking about earlier, those were
21 not in the initial administrative record in this case, is that
22 your recollection?

23 A. It's my recollection that this is the version that was in
24 the first 1300 or so pages of administrative record that were
25 these, yes.

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Abowd - Direct

1 Q. Lets look at page 11 and the response to question 31 that
2 is in the final version of these responses in the
3 administrative record.

4 Question 31 about the process used in the past for adding
5 questions to the decennial census, the final version of this
6 response reads: Because no new questions have been added to
7 the decennial census (for nearly 20 years), the Census Bureau
8 did not feel bound by past precedent when considering the
9 Department of Justice's request. Rather, the Census Bureau is
10 working with all relevant stakeholders to ensure that legal and
11 regulatory requirements are filled and that questions will
12 produce quality, useful information for the nation. As you are
13 aware, that process is ongoing at your direction.

14 Did I read that correctly?

15 A. Yes, you did.

16 Q. OK. So the final version of these responses, as found in
17 the initial administrative record in this case, makes no
18 reference to a well-established process for adding content to
19 the census, right?

20 A. That's correct.

21 Q. Instead, the final version in the administrative record
22 says that the Census Bureau did not feel bound by past
23 precedent, right?

24 A. That's what it says.

25 Q. And this final version here in the initial administrative

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Abowd - Direct

1 record in this case, it makes no reference to extensive
2 testing, review, and evaluation, correct?

3 A. That's correct.

4 Q. It also makes no reference to ensuring that a change to the
5 census is necessary, right?

6 A. It makes reference to consulting with stakeholders, but it
7 doesn't explicitly say the things that the original answer
8 said.

9 Q. It doesn't use the word necessary to ensure that a change
10 is necessary to the 2020 census, right, Dr. Abowd?

11 A. That's correct.

12 Q. Dr. Abowd, you didn't write this final version of the
13 response to question 31 that appear in the administrative
14 record, right?

15 A. That's correct.

16 Q. You're not sure who wrote it, right?

17 A. That's also correct.

18 Q. You don't know if someone at the census -- I mean, you're
19 not aware of someone at the Census Bureau having written this,
20 Dr. Abowd?

21 A. I had the control copy, and it is not in the last version
22 of the control copy in the folders that were searched for the
23 production of the administrative record.

24 Q. So this version, Dr. Abowd, that says that the Census
25 Bureau did not feel bound by past precedent, that phrase is not

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Abowd - Direct

1 in the last version of this document in the possession of the
2 Census Bureau, correct?

3 A. As far as I know, correct.

4 Q. This final version, Dr. Abowd, which makes representations
5 about what the Census Bureau felt bound by, was not written by
6 someone at the Census Bureau, right, Dr. Abowd?

7 A. Not to the best -- not to the best of my knowledge.

8 Q. Are you aware, Dr. Abowd, that this was written by someone
9 at the Commerce Department?

10 A. I don't know who wrote this.

11 THE COURT: Do you know if any of the other questions
12 changed between the final copy that you had on your computer
13 and this copy?

14 THE WITNESS: I do not believe any other answers are
15 changed.

16 BY MR. HO:

17 Q. Dr. Abowd, just to close the loop on something you
18 mentioned earlier. You made a reference to a control copy.

19 What did you mean by that?

20 A. I meant that because I was keeping track of who had been
21 assigned to answer the questions, and then when I got an answer
22 back from that person getting that answer vetted, and then
23 copying it into the control copy -- master copy, I think, is a
24 synonym -- that I understood to be the final versions of each
25 of those answers.

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Abowd - Direct

1 Q. So you maintain possession of the master version of
2 responses to these questions, right?

3 A. We had some custody issues. Burton Reist also had a
4 version that he exchanged without passing through the control
5 copy, but we did synchronize them.

6 Q. OK. And as far as you know, the final version of the
7 answer to question 31, a question that was posed by the
8 Commerce Department to the Census Bureau and which makes
9 representations about what the Census Bureau felt bound by,
10 was not written by someone at the Census Bureau, correct?

11 MR. EHRLICH: Objection.

12 THE COURT: Sustained.

13 Can you tell me what you did with the control copy as
14 you've described it?

15 In other words, where did it go between the time that
16 you considered it to be final and the creation of this
17 document; do you know?

18 THE WITNESS: So, I do, your Honor. I know that
19 Deputy Director, Acting Deputy Director Lamas asked Burton
20 Reist, who is the chief of the decennial communications office,
21 to communicate the answers back to Commerce on a flow basis.

22 So I was keeping a master copy, but Burton was sending
23 answers by e-mail as we made them and as they were vetted up to
24 Commerce. Several incomplete copies of the document were
25 exchanged back and forth, and eventually inside the Census

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Abowd - Direct

1 Bureau, around March -- 1, there is a date on the control copy,
2 I think it is March 1 -- we agreed that these were the final
3 answers.

4 That is the copy that I have sitting in my -- well,
5 there was an area of secured disk that we were using to store
6 the documents related to the citizenship question that is still
7 there.

8 THE COURT: What, if anything, did you do with it
9 after March 1, when, as far as you were concerned, it was the
10 final version?

11 THE WITNESS: I believe I was copied on an e-mail
12 where it was communicated back, then I just moved on.

13 THE COURT: Communicated back meaning sent?

14 THE WITNESS: Sent to Commerce.

15 THE COURT: By Commerce, you mean who at Commerce
16 would have received it?

17 THE WITNESS: So these e-mail threads tended to grow
18 organically. Burton Reist would initiate them, and then there
19 would be a back-and-forth exchange, and then someone like
20 Dr. Lamas would ask to put a consolidated set together and send
21 them up and say these are -- he would have called it the latest
22 version. There was a lot of back and forth because they asked
23 for a lot of clarifications as we were developing the answers.
24 And, in fact, the final version has a spreadsheet addendum that
25 I haven't been shown, but I think is the next thing in the

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Abowd - Direct

1 administrative record.

2 So around March 1, after we had all agreed that these
3 were the answers, and as we understood it, Commerce had agreed
4 that we had answered their questions, I marked the March 1 copy
5 that was sent, whatever date it was sent, I believe it was
6 March 1, I marked that copy in the secured folder the final
7 one.

8 THE COURT: All right. But do you, sitting here
9 today, do you know who that copy was sent to at Commerce?

10 THE WITNESS: I believe it is in the administrative
11 record, the e-mail that conveyed it, but I don't remember. I
12 believe at least the Under Secretary would have been on the
13 list.

14 THE COURT: The Under Secretary being Kelley?

15 THE WITNESS: Dunn Kelley.

16 THE COURT: Thank you.

17 BY MR. HO:

18 Q. The text written in this final version of the response to
19 question 31 posed by the Commerce Department to the Census
20 Bureau, Dr. Abowd, this is not the text in the final version
21 that the Census Bureau transmitted to the Commerce Department,
22 correct?

23 A. That's correct.

24 Q. Lets go back to Plaintiffs' Exhibit 26, Secretary Ross'
25 decision memo.

IBDsNYS6

Abowd - Direct

1 I want to look, again, at that second paragraph on the
2 first page, following receipt of the DOJ request. That
3 sentence.

4 Dr. Abowd, the analyses that we've been discussing that you
5 conducted of a possible effect of a citizenship question on the
6 census, you did all that on pretty short notice, right?

7 A. Relatively quickly, yes.

8 Q. I mean, you learned about it around December 15, 2017, and
9 you turned around a memo to the Commerce Secretary January 19,
10 right?

11 A. That's correct.

12 Q. A lot of analysis in a short period of time, right?

13 A. I have to say, that isn't particularly unusual, but it is
14 correct.

15 Q. It was over the holidays too, right?

16 A. That is also true.

17 Q. And you performed that work to the best of your ability,
18 right?

19 A. Yes.

20 Q. Do you think it was an impressive amount of work that the
21 swat team under your direction produced in that period of time,
22 Dr. Abowd?

23 A. My understanding is they didn't get a lot of sleep.

24 Q. I mean, you're submitting it for peer review for
25 publication, right?

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Abowd - Direct

1 A. So I'm not an author of the technical paper. It has not
2 yet been submitted for peer review, but we do expect to do
3 that. That is the reason it was released as a technical paper,
4 yes.

5 Q. The entire time you were conducting that analysis over the
6 holidays, you were operating under the impression that the
7 Secretary set out to take a hard look at this issue following
8 the Department of Justice's request, correct?

9 A. Yes.

10 Q. And you were under the impression that all that hard work
11 that you were doing might have some bearing on the Secretary's
12 ultimate decision, correct?

13 A. Yes.

14 Q. I want to bring up Plaintiffs' Exhibit 2. This is the
15 supplemental memorandum by Secretary of Commerce Ross in the
16 administrative record that's been admitted. I want to
17 highlight the first three sentences.

18 I want to talk about -- well, lets just talk about the
19 second sentence.

20 Soon after my appointment as Secretary of Commerce, I
21 began considering various fundamental issues regarding the
22 upcoming 2020 census, including funding and content.

23 The next sentence reads: Part of these considerations
24 included whether to reinstate a citizenship question, which
25 other senior administration officials had previously raised.

IBDsNYS6

Abowd - Direct

1 Dr. Abowd, now, you know that Secretary Ross, as stated in
2 his supplemental memo in the administrative record, began
3 considering this issue of a citizenship question soon after his
4 appointment as Commerce Secretary in early 2017, correct?

5 A. Yes.

6 Q. OK. But during that period, when you and the swat team
7 were working hard on your analysis between the middle of
8 December of 2017 and January of 2018, you were not aware that
9 Secretary Ross had begun considering a citizenship question in
10 early 2017, right?

11 A. That's correct.

12 Q. And at the meeting that you had with Secretary Ross on
13 February 12, when you presented your findings from all of that
14 analysis that you conducted, no one mentioned to you that
15 Secretary Ross had already begun considering this question in
16 early 2017, correct?

17 A. That's correct, but we did have a very open discussion.

18 Q. That open discussion didn't include the fact that Secretary
19 Ross had already begun considering this issue in early 2017,
20 right, Dr. Abowd?

21 A. That's correct.

22 Q. And as of the date of Secretary Ross' decision memo, you
23 were not aware that Steve Bannon and Secretary Ross had had
24 conversations about whether or not Secretary Ross would speak
25 to Kansas Secretary of State Kobach about Mr. Kobach's ideas

IBDsNYS6

Abowd - Direct

1 for a citizenship question on the census, correct?

2 A. That's correct.

3 Q. As of the date of Secretary Ross' decision memo, you were
4 not aware that Secretary Ross had a telephone conversation with
5 Mr. Kobach about Mr. Kobach's ideas for a citizenship question
6 on the census, right?

7 A. That's correct.

8 Q. And as of the date of Secretary Ross' decision memo, you
9 were not aware that in May of 2017, seven months before the
10 Department of Justice's request to the Census Bureau, Secretary
11 Ross wrote an e-mail to Earl Comstock stating that he was,
12 quote, mystified why nothing have been done in response to my
13 months' old request that we include a citizenship question,
14 correct?

15 A. I was not aware of that, correct.

16 Q. And as of the date of Secretary Ross' decision memo, you
17 were not aware that in response to that e-mail, Earl Comstock
18 wrote to Secretary Ross that, quote, on the citizenship
19 question, we will get that in place and, quote, and that it
20 would be necessary to, quote, work with justice to get them to
21 request that citizenship be added back to a census question,
22 correct?

23 A. I was not aware of that, correct.

24 Q. Dr. Abowd, I want to show you again some deposition
25 testimony that has been designated as evidence in this case.

IBDsNYS6

Abowd - Direct

1 For the record, your Honor, it is page 67, line five,
2 of Acting Attorney General John Gore's deposition through line
3 five of page 68.

4 I want to ask you some questions.

5 MR. EHRLICH: Your Honor, same objection as last time.

6 THE COURT: Same ruling.

7 (Videotape played)

8 BY MR. HO:

9 Q. Dr. Abowd, when you conducted all this work up through the
10 date of Secretary Ross' decision memo, you were not aware that
11 the Department of Commerce had initiated conversations with the
12 Justice Department about the citizenship question rather than
13 the other way around, correct?

14 A. That's correct.

15 Q. During your meeting with Secretary Ross on February 12, no
16 one told you that, right?

17 A. That's correct.

18 Q. You didn't learn that it was Department of Commerce
19 officials who had requested that a citizenship question be
20 added to the census, rather than the other way around, until
21 after this litigation was initiated, right, Dr. Abowd?

22 A. That's correct.

23 Q. And that was when the administrative record in this
24 litigation was lodged in June of this year, right, Dr. Abowd?

25 A. That's correct.

IBDsNYS6

Abowd - Direct

1 Q. Dr. Abowd, you were surprised, weren't you, when you
2 learned that it was Commerce officials who had requested that
3 the Department of Justice request a citizenship question on the
4 census, correct?

5 A. Yes.

6 Q. And among the senior executives at the Census Bureau,
7 everyone you know was also surprised to learn that the
8 Department of Commerce had initiated conversations with the
9 Department of Justice to convince the Department of Justice to
10 request that the citizenship question be added to the 2020
11 census, correct?

12 MR. EHRLICH: Objection, mischaracterizes the
13 evidence.

14 THE COURT: Overruled.

15 A. Could you restate the question, please?

16 Q. Sure.

17 Among the senior executives at the Census Bureau,
18 Dr. Abowd, everyone you know was also surprised to learn that
19 it was the Department of Commerce that reached out to the
20 Department of Justice to ask the Department of Justice to
21 request a citizenship question, correct?

22 A. Everyone I know at the Census Bureau, including all the
23 senior executives, were surprised by the portion of the
24 administrative record that predates December 12, 2017.

25 Q. Dr. Abowd, as recently as August of this year, Commerce

IBDsNYS6

Abowd - Direct

1 Department officials still hadn't spoken with you about the
2 fact that it was the Department of Commerce that had requested
3 the Department of Justice request that a citizenship question
4 be added to the 2020 census, correct?

5 A. That's correct.

6 Q. So to be clear, Dr. Abowd, that entire period of time from
7 December, the middle of December, when you began analyzing the
8 effect of the citizenship question, up through until June, when
9 the administrative record in this case was lodged, your
10 impression was that all that work that you were doing mattered,
11 that it might affect the secretary's decision-making, right?

12 MR. EHRLICH: Objection.

13 THE COURT: Overruled.

14 A. From the beginning of the time we spent working on our
15 technical response until today, I am discharging my obligations
16 as the chief scientist at the Census Bureau.

17 Q. Dr. Abowd, my question, though, was that entire period of
18 time from when you began conducting your analysis in the middle
19 of December of 2017 up until when you saw the administrative
20 record lodged in this case, you were under the impression that
21 all of that work that you had done analyzing the effect of a
22 citizenship question, that it mattered as far as the
23 Secretary's decision-making process, right?

24 A. I was under the impression that it mattered in the conduct
25 of the 2020 census, yes.

IBDsNYS6

Abowd - Direct

1 Q. And no one ever told you during that entire period of time
2 that Commerce Department officials had initiated this entire
3 process, correct?

4 A. No one told me that, but I am still under the impression it
5 matters for the 2020 census.

6 (Continued on next page)

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IbdWnys7

Abowd - Direct

1 BY MR. HO:

2 Q. Dr. Abowd, the 2020 census questionnaire will be finalized
3 by June of 2019, correct?

4 A. That's when the final artwork is due at the printers, yes.

5 Q. With existing resources the Census Bureau can lock down the
6 content of the census questionnaire by June 30, 2019, correct?

7 A. That's correct.

8 Q. Under the current budget, if there are changes to the paper
9 questionnaire after June of 2019, that would impair the Census
10 Bureau's ability to timely administer the 2020 census, correct?

11 A. That is correct.

12 Q. With exceptional resources, the final date for locking down
13 the content of the census questionnaire is October 31, 2019,
14 correct?

15 A. That is correct.

16 Q. Changes after October 31, 2019, would require major
17 redesigns and might require congressional authorization, in
18 your understanding, right, Dr. Abowd?

19 A. That is correct.

20 MR. HO: I want to return again to the Ross decision
21 memo, Dr. Abowd, Plaintiffs' Exhibit 26. I want to look at the
22 final page, page 8, the top paragraph, here.

23 Q. The secretary concluded that a citizenship question on the
24 decennial census was necessary to provide a complete and
25 accurate response to the DOJ request, correct?

IbdWnys7

Abowd - Direct

1 A. Yes.

2 Q. I want to ask you about that and I want to -- before
3 getting too deep into that determination, I want to ask you
4 about the kinds of data that DOJ currently has available. The
5 Census Bureau produces various data files for redistricting
6 purposes, right, Dr. Abowd?

7 A. Yes.

8 Q. And one of those redistricting data products from the
9 Census Bureau is called the PL 94-171 data file, correct?

10 A. Yes.

11 Q. The PL 94-171 data file has information in it concerning
12 total population at various levels of census geography,
13 correct?

14 A. Yes, it does.

15 Q. And it has voting-age population at various levels of
16 census geography, correct?

17 A. Yes.

18 Q. And it has voting-age population broken down by race and
19 ethnicity at the census block level in it, correct?

20 A. Yes.

21 Q. But it does not have citizen voting-age population in it
22 broken down by race and ethnicity at the individual block
23 level, correct?

24 A. That's correct.

25 Q. The data in the PL 94-171 data file, that's based on

IbdWnys7

Abowd - Direct

1 responses to the decennial enumeration, correct?

2 A. Yes.

3 Q. And the Department of Justice uses that data file, right?

4 A. That's my understanding, yes.

5 Q. Also available to the public?

6 A. Yes, it is.

7 Q. The PL 94-171 data file, that's never had citizen
8 voting-age population by race and ethnicity down to the block
9 level, correct?

10 A. The PL 94-171 data have never included citizenship, that's
11 correct.

12 Q. Never included citizenship data in it at any level of
13 geography, correct?

14 A. To the best of my knowledge, yes.

15 Q. So, for citizen voting-age population, the Department of
16 Justice, when it's doing its redistricting-related work, uses a
17 separate tabulation of data from the Census Bureau, correct?

18 A. That's correct.

19 Q. And that's what we could call the CVAP tabulation?

20 A. Yes, sir.

21 Q. That's publicly available not just for the Department of
22 Justice, right?

23 A. All such tabulations are publicly available, yes.

24 Q. Now, before the ACS -- I'm sorry.

25 And the CVAP tabulation, that's based on responses to the

IbdWnys7

Abowd - Direct

1 American Community Survey, correct?

2 A. That's correct.

3 Q. Now, before the American Community Survey, the Census
4 Bureau produced CVAP data based on responses to the census long
5 form, right?

6 A. Yes.

7 Q. Census long form was not distributed to the entire
8 population, correct?

9 A. That's correct.

10 Q. So data derived from the long form, those were statistical
11 estimates based on a sample survey, right?

12 A. Yes.

13 Q. That's also true of the ACS; that citizenship data derived
14 from the ACS is also a statistical estimate based on a
15 statistical sample, correct?

16 A. Yes.

17 Q. So both the long-form CVAP data used in the past and the
18 ACS CVAP data used at present, both statistical estimates based
19 on survey samples, correct?

20 A. Yes.

21 Q. And they both had margins of error, correct?

22 A. Sampling error, yes.

23 Q. Now, the total population data in the PL 94-171 data file,
24 that's not sample-based, right?

25 A. That's correct.

IbdWnys7

Abowd - Direct

1 Q. But that data still does have some margins of error
2 associated with it, right?

3 A. It has a nonsampling error, is what we call it, yes.

4 Q. The citizenship question, the proposal to add a citizenship
5 question to the 2020 census is sometimes referred to as
6 "reinstating a citizenship question." Have you heard that
7 phrase, Dr. Abowd?

8 A. I believe that's the phrase the secretary used, yes.

9 Q. OK. And just to be clear, the 2000 census form sent to
10 every household in America, that didn't have a citizenship
11 question on it, right?

12 A. That's correct.

13 Q. And the citizenship data that DOJ currently uses based on
14 statistical -- based on survey sample, that's not different
15 from long-form citizenship data that the Department of Justice
16 used to rely on in the sense that both are statistical samples
17 with margins of error, right?

18 A. Both are samples with sampling error. Their designs are
19 very different, so I don't -- I'm not saying yes to them being
20 identical. They're both sample-based. The design of the
21 American Community Survey is very different from the design of
22 the old long-form sample.

23 Q. But it's not the case that one's a hard count and the other
24 is not; they were both statistical samples with margins of
25 error, right?

IbdWnys7

Abowd - Direct

1 A. That's correct.

2 Q. That's never changed, as far as you know; the Department of
3 Justice, when it's needed CVAP data, it's always needed -- it's
4 always relied on statistical samples with margins of error,
5 right?

6 A. To the best of my knowledge, yes.

7 Q. Now, the ACS data are produced in both one-year and
8 five-year bases, correct?

9 A. Tabulations of at least, yes, one-year and five-year
10 summaries. Yes.

11 Q. One-year ACS estimates are produced from data collected in
12 a single calendar year, right?

13 A. Yes.

14 Q. And five-year ACS estimates are produced based on data
15 collected over a consecutive five-year period, correct?

16 A. That's correct.

17 Q. You'd agree that five-year ACS estimates have larger sample
18 sizes than one-year ACS estimates, right?

19 A. For the same geographic area, yes.

20 Q. And five-year ACS estimates in comparison to one-year ACS
21 estimates for the same geographic area would have smaller
22 margins of error, correct?

23 A. Yes.

24 Q. And that would mean they're more precise than one-year ACS
25 estimates, right?

IbdWnys7

Abowd - Direct

1 A. As long as timeliness is not a salient feature, yes.

2 Q. The tabulation of CVAP data produced from the ACS is based
3 on five-year ACS estimates, not one-year ACS estimates,
4 correct?

5 A. Correct.

6 Q. And the reason for that is that one-year ACS estimates are
7 deemed sufficiently reliable only for areas that have a
8 population of more than 65,000 people, correct?

9 A. There are a few additional criteria, but that's basically
10 correct.

11 Q. By contrast, five-year ACS estimates are published by the
12 Census Bureau as being reliable for smaller -- geographic areas
13 with smaller populations, correct?

14 A. That's correct.

15 Q. As of today, it still hasn't been decided whether the PL
16 94-171 file with total population data will also include the
17 block-level CVAP data that the Census Bureau expects to
18 assemble after the 2020 census, correct?

19 A. That's correct.

20 Q. So even if a citizenship question is included on the census
21 questionnaire, as of now, we don't know whether or not there's
22 going to be a single data set that has both total population
23 and block-level CVAP data broken down by race or ethnicity,
24 correct?

25 A. We don't know there will be a single data set, but we did

IbdWnys7

Abowd - Direct

1 commit to delivering block-level CVAP data in a timely fashion
2 consistent with the delivery date for the PL 94.

3 Q. The Census Bureau hasn't made a decision yet about how it
4 will process responses to the citizenship question alongside
5 the administrative citizenship data that you have, correct?

6 A. That's correct.

7 Q. Dr. Abowd, even if a citizenship question remains on the
8 2020 census questionnaire, the Census Bureau hasn't determined
9 whether the block-level CVAP data that it produces will, in
10 fact, be based primarily on responses to the citizenship
11 question, correct?

12 A. That is correct.

13 Q. Dr. Abowd, let's assume now that the citizenship question
14 stays on the 2020 census questionnaire and let's talk about
15 how, to the extent you know right now, that would play out in
16 practice in terms of producing a block-by-block-level-CVAP
17 data. Responses to the census questionnaire are prohibited
18 from disclosure under Title 13, correct?

19 A. Publications identifying a business or individual or
20 household specifically and providing identifiable data on that
21 entity are prohibited.

22 Q. And that prohibition on disclosure also applies, as far as
23 you know, on prohibiting the disclosure of that information to
24 the Department of Justice, correct?

25 A. That's correct.

IbdWnys7

Abowd - Direct

1 Q. Now, census blocks vary significantly in terms of the size
2 of their populations, correct?

3 A. Yes, they do.

4 Q. Some census blocks have fewer than ten people on them,
5 right?

6 A. Yes.

7 Q. Some census blocks have one person on them, right?

8 A. That's correct.

9 MR. HO: I want to bring up Plaintiffs' Exhibit 513,
10 which we're using purely for demonstrative purposes. This is a
11 map of the Fort Myers area, census blocks in Fort Myers, and if
12 we could blow up kind of the middle of the map around where it
13 says Lee. This was built using data from the Census Bureau's
14 publicly available website of the total population on various
15 census blocks.

16 Q. Dr. Abowd, if we look at some of these squares right around
17 Lee, I mean, all of the census blocks right around where Lee is
18 written have fewer than ten people on them, right?

19 A. Yes.

20 Q. And several of them have only one person on them, right?

21 A. Yes.

22 Q. So, Dr. Abowd, you'd agree with me that with respect to a
23 census block that has only one person on it, when the Census
24 Bureau produces block-by-block citizenship data, the Census
25 Bureau was legally prohibited from producing data that would

IbdWnys7

Abowd - Direct

1 accurately reflect what that one person said in response to a
2 citizenship question on the census, correct?

3 A. We interpret that provision of Title 13 as prohibiting us
4 from releasing data at the block level that would make it
5 possible to identify the person who supplied those data.

6 Q. So when you produce block-by-block CVAP data, for a block
7 with one person, you're not going to produce data that reveals
8 that person's response to the citizenship question, right?

9 A. We'll apply disclosure avoidance before tabulating that
10 block, yes.

11 Q. So if a person exists in a block with one person on it,
12 right where it says Lee, to the right, diagonally above it,
13 that person says "I'm not a citizen" in response to the
14 citizenship question, and you publish a total number of
15 noncitizens for that block, can you publish one?

16 A. If they said they're not a citizen?

17 Q. Yes. Can you publish one for there's one noncitizen on
18 this block?

19 A. So what we would do is we would add random noise to the
20 tabulation, reconstruct the microdata and then publish the
21 counts from the random noise. The random noise introduces
22 substantial uncertainty about the single person and less and
23 less uncertainty as the number of persons involved increases.

24 Q. And the reason why you do that, Dr. Abowd, is because if
25 you didn't do it, publishing the CVAP data at the block level

IbdWnys7

Abowd - Direct

1 would create what you might call re-identification risks for
2 that person, right?

3 A. Yes.

4 Q. And just so we're all clear, re-identification is when
5 there's data that's anonymous but a third party can look at it
6 and then manage to discover the individual to which that data
7 belongs, right?

8 A. That's correct.

9 Q. And you apply data disclosure-avoidance techniques to
10 prevent that from happening, right?

11 A. That's correct.

12 Q. And you don't just do that for census blocks that have a
13 single person on them; you do that for every census block,
14 right?

15 A. That's right.

16 Q. So, Dr. Abowd, there won't be a single census block in
17 which the citizenship numbers, as reported by the census after
18 the 2020 census questionnaire, reflect the actual responses
19 reported by the people who live there in their responses to the
20 citizenship question on the 2020 census, correct?

21 A. Except randomly, correct.

22 THE COURT: Can I just ask a few questions about how
23 this works.

24 First of all, by way of background, how is it
25 determined what a census block is? Why do some have zero

IbdWnys7

Abowd - Direct

1 people, some have one, some have hundreds?

2 THE WITNESS: So, your Honor, census blocks are used
3 for two basic purposes. One purpose is to organize the work
4 flow in collecting census, we generally call enumeration
5 blocks. And the other is for producing summaries later on. We
6 generally call them tabulation blocks. They're not exactly the
7 same, but they're very similar.

8 A tabulation block is the lowest level of geography,
9 smallest level of geography that we publish any data on, and we
10 publish it so that users of those data can assemble arbitrary
11 geographic areas, like school districts or voting districts,
12 with enough granularity so that they can meet the purpose of
13 making a school district or a voting district. And so the
14 granularity in the block definitions is determined over the
15 course of the decade by negotiation in many cases with
16 bipartisan redistricting offices to determine that the,
17 basically the pixel that you're going to build geographic units
18 from is sufficiently small that you can get the geographic
19 areas you're trying to draw accurate enough but not so small
20 that we're simply releasing one -- the contents of each address
21 in the MAF.

22 THE COURT: All right. Thank you. That's helpful.

23 And then could you just flesh out what the process
24 involves of introducing random noise, what that means in
25 practice. I don't know if it's helpful to use some of these

IbdWnys7

Abowd - Direct

1 census blocks by way of example, but how would you mask, in
2 this Lee census block that has only one person in producing
3 that data to the Justice Department or whomever, how would you
4 mask that person's citizenship?

5 THE WITNESS: So, one of the things we're doing with
6 the 2020 census is we are moving from what is called
7 traditional statistical disclosure limitation to modern
8 disclosure limitation processes that were invented by
9 cryptographers, and the particular process that we're using is
10 called differential privacy. That's a system where you -- you
11 set up a mathematical guarantee about how much any user of the
12 data can learn about an individual who contributes to those
13 data, and that mathematical guarantee looks like, if I do the
14 tabulation with your data in or out of the overall database,
15 the statistics that I produce are only allowed to be different
16 by an amount epsilon. So basically, your -- the statistics
17 with or without your data are indistinguishable from the
18 statistics, the statistics with your data are indistinguishable
19 from the statistics without your data by an amount that
20 controls the randomness that we add.

21 We have developed a lot of public materials on this,
22 but we're not as practiced in talking about it as the
23 historical methods that we use, as you might have noticed from
24 the awkwardness of that answer, for which I apologize. So it
25 basically says you make the tabulation from the real data, you

IbdWnys7

Abowd - Direct

1 add an amount of noise to each, in this case block, in the real
2 data that's been calibrated so that I can make that promise to
3 you that your data didn't affect this overall tabulation by any
4 more than epsilon, and then you take the noisy data and
5 re-create the microdata from the tabulated.

6 THE COURT: All right. Let me see if I can translate
7 this into more plain English. Would there be any way, for
8 example, to take the census block just above the E that has a
9 one in it -- right, that's one person in that census block?

10 THE WITNESS: Yes.

11 THE COURT: I presume there would be no way to
12 disclose the data for that particular person without, at the
13 census block level in an accurate way that wouldn't reveal
14 things that you're prohibited from revealing under Title 13, is
15 that correct?

16 THE WITNESS: That's our interpretation of the law,
17 yes, sir.

18 THE COURT: OK. So by introducing noise, I take it
19 you need to go out to a broader geographic range, and in
20 essence, you're sort of swapping people between the blocks?
21 How does it work?

22 THE WITNESS: We're not -- excuse me, your Honor. I
23 didn't mean to interrupt.

24 We're not swapping. We're basically replacing the
25 real microdata with microdata that tabulate up accurately as

IbdWnys7

Abowd - Direct

1 the more -- as there are more and more people in the area that
2 you're looking at, but in the block that had one person on it,
3 basically every characteristic of that person has been infused
4 with noise, so changed, if you like.

5 THE COURT: So swapped.

6 THE WITNESS: Well, swap implies that it came from
7 someplace else. That's why --

8 THE COURT: But in other words, presumably any change
9 up on one dimension or characteristic would have to be matched
10 somewhere else by a change down.

11 THE WITNESS: The population totals are controlled to
12 the national level, that's right. And so are the tabulations
13 of the detailed variables, but even the national table has been
14 protected except for the population total.

15 THE COURT: In other words, if someone, I don't know
16 what this red box is, but if someone within this Lee area, the
17 local jurisdiction wanted to get accurate citizen voting-age
18 population for within that area, is that something that could
19 be done consistent with the disclosure restrictions in Title
20 13?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: And how would that be done?

23 THE WITNESS: Well, we actually had to work pretty
24 hard to do it. We had to design the algorithm so that it could
25 publish at the block level so you could build the arbitrary

IbdWnys7

Abowd - Direct

1 geographic areas that you needed, and the statistics kept
2 getting more and more accurate as the number of people in that
3 geographic area increased. So there are --

4 Perhaps Mr. Ho knows the total of the number of people
5 in that red box, but looks like there's about 50 or 60. The
6 data will be quite accurate for such advocacy. That's enough
7 people so that the fact that we added noise to the individual
8 data doesn't affect the tabulations very much.

9 THE COURT: How many people would you need for it to
10 remain accurate but still allow you to mask in the way that
11 you're required to do?

12 THE WITNESS: So, your Honor, that's not a question
13 that can be answered in a vacuum. The way we are doing it is
14 when you add the noise this way, you can produce a drawing that
15 shows how the accuracy of various tabulations is affected by
16 the amount of noise that you've infused, and it gives you the
17 feasible levels. If you're going to protect the
18 confidentiality, then you have to choose a point on this graph.

19 What we have to do is we have to decide, based on the
20 use cases for the data, how to allocate that accuracy so that
21 it meets the client use cases. So we're evaluating the way we
22 will do this at the block level so that it would be useful for
23 redistricting and for Section 2 scrutiny under the Voting
24 Rights Act, and we have been given test cases from the
25 Department of Justice in order to facilitate this evaluation so

IbdWnys7

Abowd - Direct

1 that we can show them that it's still fit for use.

2 We did not ever previously do this. Previously we
3 just added the noise and told the users that we weren't going
4 to tell them anything about it.

5 THE COURT: And maybe this is an unintelligible
6 question, but is there a census block size that is adequate
7 enough that you would not need to introduce noise in order for
8 the relevant data to be masked?

9 THE WITNESS: No. You have to introduce noise, your
10 Honor, to every block, to every tabulation, but you control the
11 amount of noise that you introduce so as to guarantee accuracy
12 along the dimensions that the use case requires.

13 THE COURT: All right.

14 Mr. Ho.

15 MR. HO: I may have some questions that might clarify
16 some of this, your Honor.

17 Q. Dr. Abowd, with respect to what the Census Bureau's done in
18 the past, the publicly available technical documents state that
19 in the past the Census Bureau has applied household-level
20 swapping and synthetic data noise infusion, correct?

21 A. That's correct.

22 Q. Let's talk about those two different things, and let's
23 start with household-level swapping.

24 Household-level swapping would be where you take certain
25 variables on one household's record and you match them up to

IbdWnys7

Abowd - Direct

1 the variables on another household's record, located in a
2 different geographic area, and then you swap those values
3 except the address so that it looks like essentially one
4 household lives at one location and the other household lives
5 in another location, right?

6 A. Yes, that's essentially correct.

7 Q. And when you do that, when you've done that in the past,
8 you would swap the households across census blocks, correct?

9 A. Yes, sir.

10 Q. And you do that because there would be no point in swapping
11 households within a census block, right?

12 A. That's right.

13 Q. Now, let's talk about synthetic data noise infusion.
14 That's a different technique, right?

15 A. That is correct.

16 Q. And that's what you were talking about with Judge Furman
17 earlier, right?

18 A. I was talking about a particular form of that, yes.

19 Q. Right, because there are multiple forms of synthetic data
20 noise infusion, correct?

21 A. They're multiple forms of noise infusion. They don't all
22 involve synthetic data.

23 Q. Thank you.

24 Now, one way of doing noise infusion is to develop a model
25 for when you have a particular item or variable on a

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Abowd - Direct

1 household's record that's sensitive and then replacing that
2 variable as reported by the household with synthetic,
3 essentially made-up data based on the model, is that right?

4 A. With a draw from the model's predictive distribution,
5 that's correct.

6 Q. And the idea is that at a high level of geography, like a
7 county, the overall aggregate numbers are going to remain
8 essentially the same, right, Dr. Abowd?

9 A. So, some disclosure-avoidance methods have that property
10 and some don't. Without getting into the deep weeds of ones
11 that you're talking about, the particular synthetic data
12 property that you just described won't have that feature unless
13 it is engineered into the synthesizer.

14 Q. For the use case that you have here -- right -- when you're
15 talking about higher levels of geographic units, like counties,
16 when you infuse the synthetic data, the idea is that the
17 aggregate numbers are going to be basically the same? Right?

18 A. The idea is not with respect to the geographic area but
19 with respect to the population within the geographic area.

20 Q. Thank you.

21 A. The denser the population the more accurate the statistics.

22 Q. OK. So, the larger the population size of the geographic
23 area the more accurate the data will remain even after
24 synthetic data noise infusion, correct?

25 A. After the disclosure-avoidance procedure we're implementing

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Abowd - Direct

1 for the 2020 census, that's correct.

2 Q. But at the smaller levels of geographic specificity, like
3 the individual census block, the more noise there's going to
4 be -- I mean, in terms of the population --

5 MR. HO: Let me start that question again.

6 Q. Areas with smaller population sizes -- like census blocks
7 typically have smaller population sizes than counties --
8 there's going to be more noise at that level of geographic
9 specificity once you employ noise infusion, correct?

10 A. That's correct.

11 Q. So, leaving all the noise infusion and the CVAP data using
12 responses to the citizenship question, today, when we use ACS
13 CVAP data, generally speaking, we have more accuracy at
14 geographic levels of specificity that have larger populations
15 and more uncertainty at lower levels, correct?

16 A. That's correct.

17 Q. And that's also going to be true with CVAP data produced
18 based on responses to the decennial census question due to
19 noise infusion at higher levels of geography with more people,
20 more accuracy but greater uncertainty at smaller levels of
21 geography with smaller populations, correct?

22 A. It's the smaller populations that make the sentence
23 correct, and yes, it is, with that qualification.

24 Q. Now, the Census Bureau has not yet set the parameters for
25 disclosure avoidance for the CVAP table that will be created

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1 after the 2020 census, correct?

2 A. That's correct.

3 Q. If you do data disclosure avoidance properly, then the
4 block-level CVAP data that you produce after the 2020 census
5 including a citizenship question, the block-level data is going
6 to be a series of estimates for each block rather than an exact
7 tabulation of census responses, correct?

8 A. I have difficulty answering that question because
9 "estimates" has a specific legal meaning that's not quite the
10 same as the generally understood statistical meaning. The data
11 produced for each block and for the entire country and for
12 every geographic area in between will be based on the entire
13 enumeration, so in that sense not an estimate.

14 In the sense that they have been infused with noise to
15 protect confidentiality and therefore have margins of error
16 that resemble the margins of error that you would get in
17 statistical processes that become more accurate as the number
18 of cases increases, then it is correct. So they are not
19 estimates in the sense that the law understands sample-based
20 estimates. They're based on the entire population.

21 Q. Well, let's not talk about the law for a moment. I just
22 want to -- and let's not worry about sample-based estimates, or
23 whatever.

24 Just in your words, Dr. Abowd, you would describe the
25 block-level CVAP data that's produced even after a citizenship

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Abowd - Direct

1 question is on the census as an estimate rather than a precise
2 tabulation, correct?

3 A. Yes.

4 Q. So the block-level CVAP tabulation produced by the Census
5 Bureau will not reflect the actual values of the number of
6 citizens of voting age in each of those census blocks after the
7 2020 census, correct?

8 A. It will not be exactly equal to that number. It will be
9 approximately equal to that number, with the approximation
10 improving as the population increases.

11 Q. And after the 2020 decennial census even if there is a
12 citizenship question, when the Census Bureau produces
13 block-level CVAP data, there will be error margins associated
14 with that data, correct?

15 A. Yes.

16 Q. And after the 2020 decennial census, when the Census Bureau
17 produces block-level CVAP data, even if there is a citizenship
18 question on the census, as of right now, the Census Bureau
19 doesn't know whether the margins of error associated with that
20 block-level CVAP data will be larger or smaller than the CVAP
21 data that DOJ currently uses, correct?

22 A. We don't know, but we are able to control the margin of
23 error in different ways, and so we intend to produce those
24 tables in a manner that is fit for use by the Department of
25 Justice.

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Abowd - Direct

1 Q. But you don't know right now whether or not the margins of
2 error associated with block-level CVAP data produced after the
3 2020 census, assuming that there's a citizenship question on
4 it, that those block-level estimates will have margins of error
5 that are any smaller than the block-level CVAP data that DOJ
6 currently relies on, correct?

7 A. I'd like to answer your question, Mr. Ho, but the DOJ
8 doesn't currently work with any block-level CVAP data, so --

9 Q. Well, the DOJ does translate ACS CVAP data at one level of
10 geographic specificity and combines it with decennial census
11 data to produce block-level CVAP estimates, correct?

12 A. That's not my understanding of how it's done. My
13 understanding of how it's done is that they combine block-level
14 CVAP data with block-level other data, PL 94 data, and they
15 estimate the citizen population in the voting districts that
16 they're trying to supply -- to do scrutiny of. Sometimes that
17 involves having to model down to the block level, but it
18 doesn't always.

19 Q. OK. Dr. Abowd, this is a very simple question. The CVAP
20 data that the Census Bureau's going to produce after the 2020
21 census, assuming that the 2020 census includes a citizenship
22 question, we don't know today whether or not that data will
23 have margins of error that are any more precise than the CVAP
24 data on which the Department of Justice currently relies,
25 correct?

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Abowd - Direct

1 A. Because the parameters have not been set, the answer to
2 that question has to be yes.

3 Q. Dr. Abowd, there were never any conversations between the
4 Department of Justice and the Census Bureau about this issue
5 prior to Secretary Ross's issuance of his decision memo
6 ordering the inclusion of the citizenship question on the
7 census, correct?

8 A. That's correct.

9 Q. DOJ refused to meet with you to discuss, right?

10 A. So, I don't know that DOJ would have refused to meet with
11 us to discuss disclosure avoidance on the PL 94 and CVAP table.
12 All I know is that they didn't meet with us to discuss the
13 specific request about adding a citizenship question to the
14 2020 census.

15 Q. During that whole process, between when you began your
16 analysis with the SWAT team and when Secretary Ross issued his
17 decision memo, there were never any conversations between
18 commerce and the Census Bureau about how disclosure avoidance
19 might affect the precision of the CVAP data that the Census
20 Bureau could produce after the 2020 census, correct?

21 A. Not entirely. I had already briefed Undersecretary Kelley
22 on the consequences of modernizing the disclosure-avoidance
23 system at the Census Bureau. I briefed her, I believe, in
24 November of 2017.

25 Q. That was before you began working on the citizenship

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Abowd - Direct

1 question, right, Dr. Abowd?

2 A. That's correct.

3 Q. OK. My question was meant to be a little more precise, and
4 I apologize if I didn't word it correctly. But my question is
5 from the time that you started analyzing the citizenship
6 question request from the Department of Justice to when
7 Secretary Ross issued his decision memo, there were no
8 conversations between the Census Bureau and commerce department
9 officials about whether disclosure avoidance might affect the
10 precision of the block-by-block CVAP data that the Census
11 Bureau could produce based on responses to the citizenship
12 question on the census, correct?

13 A. Not quite. We did, both in discussing it with the
14 secretary and in discussing it with the undersecretary, remind
15 them both that we would be using disclosure-avoidance
16 procedures at the block level.

17 Q. And in spite of that reminder, the secretary forged ahead
18 and ordered a citizenship question anyway, right, Dr. Abowd?

19 A. The secretary was aware of our intention to use disclosure
20 avoidance --

21 Q. There are no documents in the administrative record that
22 you're aware of, Dr. Abowd, that reflect the way in which
23 disclosure avoidance might affect the precision of
24 block-by-block CVAP data that the Department of Justice was
25 requesting from the Census Bureau through a citizenship

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Abowd - Direct

1 question on the census, correct?

2 A. That's correct.

3 MR. HO: Let's go back to Secretary Ross's memo,
4 Plaintiffs' Exhibit 26. I want to go to page 8.

5 Q. Secretary Ross says that he has determined that
6 reinstatement of a citizenship question on the 2020 decennial
7 census is necessary to provide complete and accurate data in
8 response to the DOJ request. Do you see that?

9 A. Yes, I do.

10 Q. Dr. Abowd, you don't agree that a citizenship question on
11 the 2020 census is necessary to provide a complete and
12 accurate, to provide complete and accurate data in response to
13 the DOJ request, correct?

14 A. That's correct.

15 Q. And Dr. Abowd, the position of the Census Bureau is that a
16 citizenship question on the 2020 decennial census is not
17 necessary to provide complete and accurate data in response to
18 the DOJ request, correct?

19 A. That's correct.

20 MR. HO: Dr. Abowd, I don't have any other questions
21 for you right now, but your Honor, the plaintiffs, because we
22 still have a few exhibit issues to sort out, although my
23 questioning of Dr. Abowd is complete, we would not like to
24 close the record just yet.

25 THE COURT: All right. I also assume you want to

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Abowd - Cross

1 reserve the possibility of redirect.

2 MR. HO: Correct, your Honor.

3 THE COURT: All right. So you're not resting yet.

4 MR. HO: Yes.

5 THE COURT: Understood.

6 All right. Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. EHRLICH:

9 Q. Good evening, Dr. Abowd.

10 A. Good evening.

11 Q. I'd like to start by discussing your qualifications here.

12 MR. EHRLICH: If we could put up DX-30, just for
13 reference purposes.

14 Q. Can you describe your educational background?

15 A. I guess I don't have to wait for my CV to give you that.

16 I was -- bachelor's degree in economics from the university
17 of Notre Dame and a Ph.D. in economics and econometrics from
18 the University of Chicago.

19 Q. With whom did you study at the University of Chicago?

20 A. Professor Arnold Zellner.

21 Q. Can you describe your professional experience outside the
22 Census Bureau after you graduated with your Ph.D.?

23 A. So, my first faculty appointment was at Princeton
24 University as an assistant professor in 1976. I moved to the
25 University of Chicago's Graduate School of Business in 1978. I

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Abowd - Cross

1 moved from the University of Chicago Graduate School of
2 Business to Cornell University in 1987. I visited MIT and
3 Princeton in between. I was appointed as associate professor
4 with tenure at Cornell University in 1987. Cornell University
5 is still my employer of record, and I am currently the Edmund
6 Ezra Day professor of economics, statistics and information
7 science at Cornell.

8 Q. And in what academic areas did you, were you appointed as
9 at these institutions?

10 A. So, at Cornell, I'm a professor of economics in the
11 economics department, which is a universitywide department.
12 My, what we call Cornell principal appointment is in the school
13 of industrial and labor relations, the ILR school. I am also
14 appointed as a full voting member of the department of
15 statistical sciences and as a member of the department of
16 information science. So I do research in economics, in
17 econometrics, in statistics and information science. Much of
18 my research is directly related to the measurement issues that
19 the Census Bureau collects data in support of.

20 Q. Could you describe what econometrics is?

21 A. Econometrics -- or econometrics, even I'm not sure which is
22 the preferred pronunciation -- is the specialty within
23 economics that is statistical methods largely as they are
24 adapted to problems in economic measurement but that includes
25 both household and business statistics at both a theoretical

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Abowd - Cross

1 and publication level. It is essentially statistics, and in
2 many universities, including Cornell, econometricians are
3 jointly appointed in economics and statistics departments.

4 Q. Have you taught classes regarding economics, econometrics
5 and statistics?

6 A. Yes, I have.

7 Q. Can you describe those courses?

8 A. Throughout my career I have taught various economics
9 courses, although I spent 15 years at Cornell teaching
10 introductory microeconomics, which is a considered sufficient
11 load that my other teaching was scaled back significantly. In
12 that period, I largely taught Ph.D.-level seminars in labor
13 economics and a large-scale Ph.D. course in information science
14 called understanding social and economic data.

15 That course was developed in 2005 as a part of one of the
16 large national science foundation grants that I was the
17 principal investigator of. It was designed to teach Ph.D.
18 students in the social sciences, economics, demography,
19 sociology, practicing researchers in those areas and faculty
20 members in those areas how to understand the data assets of the
21 statistical system in the United States and in some other
22 countries, basically from, from conception all the way to
23 dissemination. It was taught as a distance-learning course.
24 It usually had a dozen sites. Those sites were other
25 universities. Duke was one of those universities. Michigan

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Abowd - Cross

1 was one of those sites. The Census Bureau was always one of
2 those sites. Sometimes one of those sites was a statistical
3 agency in another country, Canada, Germany.

4 The course material was delivered in recorded lecture
5 format, and each version of that course was curated under the
6 terms of the grant that it was developed under so that it could
7 be used after we finished. It was taught approximately every
8 other year. Several hundred students from around the country
9 and other parts of the world have taken it. One of the
10 textbooks for that course was Bob Groves *et al.* "Survey
11 Methodology." We covered many of the subjects that are covered
12 in survey methodology, but we also covered the chapters in
13 Rubin and Rubin and Little on missing data and imputation
14 methods. We covered frame development and frame management
15 specifically as they apply to the MAF and to the Business
16 Register of the Census Bureau, to the quarterly census of
17 employment and wages at the BLS, which is another frame.

18 We covered both historical ways of using that data, how
19 they are used as frames for other surveys, so how they relate
20 to the American Community Survey in the case of household data;
21 how they relate to the various business surveys that the Census
22 Bureau conducts in the case of the Business Register; how they
23 relate to the quarterly statistics that BLS produces in the
24 case of the QCEW; the different measuring issues that you
25 encounter when you use those data in their raw, microdata

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Abowd - Cross

1 format, because it's necessary to understand how the frames
2 were constructed, how samples were constructed from those
3 frames, how the various items and units get into your final
4 analysis file.

5 Those were all the subject areas. In addition to frame
6 management we covered the sample --

7 THE COURT: Let's let Mr. Ehrlich do a little work
8 here.

9 THE WITNESS: OK. He asked.

10 MR. EHRLICH: Thank you for that description,
11 Dr. Abowd.

12 THE COURT: You can offer him as an expert at this
13 point.

14 MR. EHRLICH: I'm happy to shave off some time, your
15 Honor.

16 Q. Do you belong to any professional associations regarding
17 economics, econometrics and statistics?

18 A. I'm a member of the American Economic Association, and I
19 serve on their committee on economic statistics. I'm a member
20 and fellow of the American Statistical Association. I'm a
21 member and fellow of the Econometrics Society. I'm an elected
22 member of the International Statistical Institute, which is the
23 international body primarily of official statisticians. I'm a
24 member of the American Association of Wine Economists, the
25 American Association of Public Opinion Research and the

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Abowd - Cross

1 International Association for Official Statistics.

2 Q. Have you published papers in economics, econometrics and
3 statistics?

4 A. Yes, I have.

5 Q. Can you ballpark about how many?

6 A. About a hundred.

7 Q. How does your work in economics, econometrics and
8 statistics relate to the activities of the Census Bureau?

9 A. The vast majority of the work that I've done use the kinds
10 of data that the Census Bureau collects regularly and for the
11 last 20 years, almost exclusively, data actually collected by
12 the Census Bureau in ways that they weren't necessarily
13 designed to be used. So one of the biggest projects I've done
14 in the last 20 years was demonstrate how to reuse the burden
15 from administrative records that are collected in association
16 with unemployment insurance systems in the U.S. to produce
17 detailed labor market statistics at very detailed geographical
18 levels, and those are now routinely released by the Census
19 Bureau.

20 Q. That sounds complicated.

21 Can you describe your experience working at the Census
22 Bureau?

23 A. Sure. In 1998 the Census Bureau approached me to be the
24 distinguished senior research fellow and to join another senior
25 research fellow and the chief economist to start what became

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Abowd - Cross

1 known as the longitudinal employer household dynamics program,
2 which is the program that produces the data product that I was
3 just briefly describing. I've had a halftime appointment at
4 the Census Bureau, cooperating with Cornell University, since
5 1998.

6 Q. And what is your current title at the U.S. Census Bureau?

7 A. I'm currently the chief scientist and associate director
8 for research and methodology.

9 Q. And how long have you served in that position?

10 A. Since June of 2016.

11 Q. And how were you selected for chief scientist and associate
12 director of research methodology?

13 A. That position was formulated by director Robert Groves when
14 he was director of the Census Bureau. He reconstituted the
15 research and methodology directorate, and he asked at the time
16 chief of the center for economic studies, Ron Jarmin, to be the
17 assistant director and help to recruit a leading academic
18 researcher to be the chief scientist and associate director for
19 research and methodology. First person to serve in that
20 position in that capacity was Professor Rod Little at Michigan.
21 The second person was Professor Tom Lewis at Johns Hopkins, and
22 I was the third.

23 Q. And who hired you to become chief scientist and associate
24 director of research and methodology?

25 A. John Thompson, when he was the director.

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Abowd - Cross

1 Q. And what is your understanding of the reasons you were
2 hired to take that position?

3 A. My understanding is that they wanted me to actively
4 participate in the diffusion of the ongoing research about
5 modernizing census methods, not just the decennial census but
6 Census Bureau methods. I had been one of the PIs in the
7 NSF-Census-Research-Network prior to accepting the position,
8 and I had two other large National Science Foundation grants
9 that worked in collaboration with the Census Bureau, so they
10 were aware of my interest in the methodological and applied
11 problems that the Census Bureau has in many of its programs.

12 THE COURT: What do you mean by PI?

13 THE WITNESS: The principal investigator.

14 BY MR. EHRLICH:

15 Q. And what are your responsibilities as chief scientist and
16 associate director for research and methodology?

17 A. So, the research and methodology directorate consists of
18 centers. Those centers have specialists in different aspects
19 of census activities. The center for survey measurement has
20 come up in this proceeding; that's now called the center for
21 behavioral science methods.

22 We had a reorganization on the 1st of October, so the
23 centers have different names now that are in many of the other
24 discussions of them. There's a center that has primarily
25 mathematical statisticians in it; a center that has social

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Abowd - Cross

1 scientists, economics -- economists, demographers and
2 sociologists; a center that has behavioral scientists; and a
3 center, former center for survey measurement. There's now a
4 center for enterprise dissemination, which has within it the
5 old center for disclosure-avoidance research and the major
6 dissemination engine for the 2020 census which is called
7 Cens-Sci. There are about 370 researchers in these areas
8 combined.

9 Q. What aspects of the decennial census do you have experience
10 in?

11 A. So, I have direct experience with the, what we call the
12 governance roles of associate directors at the Census Bureau.
13 I sit on the 2020 executive steering committee, which is the
14 highest governance committee at the Census Bureau.

15 It sees final versions of all reports that are made to the
16 public. It approves final versions of all decision memos. The
17 memo that we were discussing during my direct testimony was
18 signed by Lisa Blumerman. It would have been approved by that
19 2020 ESC, but that was before I was sitting on it. I sit on
20 the data stewardship executive policy committee, which is the
21 committee that determines the way that we will implement our
22 interpretation of our Title 13 data stewardship obligations,
23 including confidentiality and cyber-security issues. I sit on
24 the operating committee, which is the highest level
25 decision-making committee. It's an agency of the federal

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Abowd - Cross

1 government, so of course, there's chain-of-command
2 decision-making, but the operating committee sees all of the
3 documents before and makes a recommendation to the director
4 before that person makes a final determination and/or a
5 subsequent recommendation to the secretary.

6 Q. And what exposure have you had to Census Bureau procedures
7 and policies?

8 A. So, since I began, I've also sat on the decennial research
9 objectives and methodology committee. That does the continuing
10 peer review of every methodological paper and process that is
11 used at the decennial census, whether it originates in the
12 decennial census program or not. On the order of several
13 hundred technical documents that have gone through that
14 committee, including all of the technical documents related to
15 the design and evaluation of the 2020 census, and I've had
16 staff members also sitting on that committee. I read their
17 reviews. I read the documents myself.

18 That's one of the reasons I'm able to stay current on the
19 methodological processes that are used in the decennial census.
20 There's a similar arrangement for the economic census, and I
21 see those documents as well.

22 MR. EHRLICH: Your Honor, at this time I would offer
23 Dr. Abowd as an expert in economics, econometrics, statistics
24 census operations and census procedures.

25 THE COURT: Any objection?

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1 MR. HO: No objection, your Honor.

2 THE COURT: All right. He is so received.

3 I think on the theory that that might be a good
4 stopping place, it's 4:58 now, I would propose stopping for the
5 day.

6 Any estimate of our schedule tomorrow, how long your
7 cross is likely to be?

8 MR. EHRLICH: I would estimate probably about three to
9 four hours, your Honor.

10 THE COURT: All right.

11 Mr. Ho, any estimate on redirect? I know it's hard to
12 know in advance.

13 MR. HO: A little hard to know in advance, your Honor,
14 but my guess is between 90 minutes to two hours.

15 THE COURT: All right. It sounds like we may finish
16 tomorrow, but I would urge you overnight if you can pare things
17 down to ensure that we do that would be welcome from my
18 standpoint.

19 Anything that we should discuss?

20 MR. FREEDMAN: Your Honor, you had raised on Friday
21 timing on findings of fact. You had raised the possibility of
22 having them due the Wednesday before Thanksgiving, and
23 plaintiffs' position is that's fine and actually that makes
24 sense. We would ask the Court to consider timing of when
25 replies or responses would be due. As per the Court's order,

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1 you provided for replies five days after that.

2 THE COURT: Understood. I don't know if Dr. Abowd is
3 liking where he's sitting, but I would propose that we let him
4 step down if he'd like.

5 THE WITNESS: Yes.

6 THE COURT: Thank you, Dr. Abowd.

7 (Witness not present)

8 THE COURT: Let's talk about this.

9 I think would like the proposed findings and
10 conclusions next Wednesday. That would be most helpful to me
11 and would make a lot of sense on a variety of levels. What I
12 would propose is then reconvening, maybe, the following Tuesday
13 for oral argument/closing arguments. I would have the benefit
14 of those documents at that point and tabling any responses
15 until after that proceeding, at which point I think I would be
16 in a good position to tell you that I'd like focused sort of
17 response briefing on particular issues rather than just
18 responding to anything and everything in a scattershot fashion.

19 That would be my proposal, so I would abrogate the
20 schedule that I set before, give you until next Wednesday for
21 the initial round and then we would essentially table things
22 until after the argument on, let's say, Tuesday, the 27th, or
23 whatever that is.

24 Does that make sense to everybody?

25 MR. FREEDMAN: That's fine with plaintiffs, your

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1 Honor.

2 MS. BAILEY: Defendants understand. Thank you. Yes,
3 your Honor.

4 THE COURT: All right. That's different than saying
5 it's OK, but I'll take that as an OK.

6 MS. BAILEY: We would prefer additional time, but we
7 understand that that is your Honor's preference.

8 THE COURT: All right. As you know, I'm of the view
9 that it's important to move this along, so I'm quite confident
10 that you can do it then.

11 I also would anticipate at the close of the evidence
12 having at least a brief colloquy with respect to a few issues
13 just to make sure we're on the same page as to some of those
14 issues and also to flag certain things that I want to make sure
15 that you address in your initial round of briefing. I'm not
16 suggesting that we'll have a full-blown oral argument or
17 colloquy at the end, but I just wanted to let you know that so
18 you're not taken by surprise.

19 Anything else that we should discuss today?

20 MR. HO: Just one brief question, your Honor, about
21 the demonstratives that we noted at the outset of trial this
22 morning and our objection to any testimony based on that
23 demonstrative, 25. And I would also note that there are a
24 couple of others, 21 and 22, which also appear to reflect
25 computations and calculations by Dr. Abowd on imputation that

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1 have never been provided to plaintiffs.

2 THE COURT: Can you respond to the 26(a)(2)(C) point,
3 which is to say that to the extent that he's not a retained
4 expert, the level of detail in the disclosure is
5 correspondingly less. I would think that given that it's sort
6 of within the general scope of the subject matter that you were
7 aware that he would be testifying about.

8 Why isn't it permissible for that reason?

9 MR. HO: Well, it's not within the general subject
10 matter, your Honor. The expert report states that he has an
11 opinion that there hasn't been any credible, quantitative
12 evidence that the reduction in response rates will translate
13 into an undercount, and that opinion, as explained in his
14 expert report, is based on his reading of the plaintiffs'
15 experts and his understanding of the efficacy of NRFU.

16 It isn't based in any way on any calculations about
17 what happens under various scenarios with respect to imputation
18 and how that might offset a reduction in response rates.
19 There's nothing about that in his report. And in his
20 deposition, his expert deposition, he didn't offer any
21 testimony on that. In fact, when we put the question to him
22 about whether or not the Census Bureau had conducted any
23 analysis of the effect of a citizenship question on a potential
24 undercount, and we can call it up tomorrow morning if your
25 Honor wants, or we can send the portion of the deposition

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1 transcript that makes this clear, he said no such estimates or
2 calculations had yet been made.

3 We took his deposition on the last day of discovery,
4 your Honor. That was our only opportunity to question him
5 about what estimates, if any, he had of the effect of a
6 citizenship question on the undercount, and it appears that the
7 defendants are now going to trot this out on us and ambush us
8 with some calculations in that regard.

9 THE COURT: Mr. Ehrlich.

10 MR. EHRLICH: Your Honor, again, this is not
11 calculations of anything projected to happen. Similar to Dr.
12 Handley's demonstratives that were not included in her
13 26(a)(2)(B) report, this is simply an illustration of certain
14 concepts discussed both in his expert report and in his
15 deposition, again based on Plaintiffs' Exhibit 267, which they
16 questioned him extensively about. He's simply explaining how
17 the components of the coverage measurement system work
18 together.

19 I think it would be helpful to your Honor to hear his
20 explanation of these examples, again, just illustrative
21 examples from the 2010 census. These are not projections
22 forward. He's not predicting anything, contrary to what my
23 colleagues are saying.

24 MR. HO: If I may, your Honor, two points.

25 This is quite different from what Dr. Handley did

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1 using census maps that are publicly available and just sort of
2 explaining how her calculations work using those maps as
3 demonstratives. This demonstrative has a reference to Abowd's
4 calculations as being a source for the numbers at the bottom of
5 the slide here. And these calculations appear nowhere in his
6 reports. They haven't been provided to plaintiffs. We asked
7 the defendants about them, and they just ignored our responses.

8 The second point, your Honor, if I may, on the
9 26(a)(2)(C) point, when Dr. Abowd's initial report came in, we
10 objected on the basis of the fact that the report did not in it
11 contain sources for a number of Dr. Abowd's assertions in terms
12 of what he relied on in reaching his conclusions, and we
13 indicated we were going to brief that.

14 The defendants at that point agreed to provide us with
15 the facts and documents and data on which Dr. Abowd relied in
16 his report, so if we had had any notice that he was going to be
17 testifying about stuff where the facts and data on which he was
18 relying had not been disclosed, we would have moved on that,
19 your Honor.

20 THE COURT: Mr. Ehrlich.

21 And then I'll have the final word.

22 MR. EHRLICH: Sure. I don't know if your Honor wants
23 to hear any more, but just briefly, this is all based on a
24 publicly available document that the plaintiffs have questioned
25 Dr. Abowd on on multiple occasions. Plaintiffs' experts could

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1 have done these same calculations, if they wanted to, to
2 illustrate the examples of coverage measurement from the 2010
3 census. Simply illustrative examples, Dr. Abowd isn't required
4 to turn anything over under 26(a)(2)(C), as we briefed this
5 issue for your Honor. We wanted to head off one of these
6 discovery disputes and wanted to be transparent, and that's why
7 we provided these materials. But again, this is just for
8 illustrative materials from the 2010 census to help your Honor
9 understand the concepts here.

10 THE COURT: All right. I think you provided it
11 because there was agreement to disclose any demonstratives more
12 than 24 hours in advance of when you planned to use it, but be
13 that as it may, I'm a little bit at a disadvantage because,
14 candidly, I don't necessarily know what this is and how it will
15 be used.

16 Here's what I would propose. No. 1, I need slides 21
17 and 22. If plaintiffs are objecting to those as well -- I
18 think defendants emailed only 25 to me earlier -- if you can
19 email them to me, I'll consider them this evening. If either
20 side wants me to look at anything else -- Mr. Ho referenced
21 some deposition testimony that would underscore plaintiffs'
22 view that this is sort of sandbagging or problematic -- you can
23 submit that tonight. If you want to submit a letter on this,
24 I'm also happy to consider it. I think, in all likelihood, I
25 will probably reserve judgment until I hear Dr. Abowd's

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1 testimony with respect to these slides to figure out what
2 exactly they mean, what use they're making of them, whether and
3 to what extent it was fair ground given what was known, and so
4 forth. But to the extent that you want to provide me with
5 whatever data you think I would need to make that
6 determination, I would encourage you to do that this evening.
7 All right?

8 MR. HO: Thank you, your Honor.

9 MR. EHRLICH: Thank you, your Honor.

10 THE COURT: All right. And defendants are filing
11 their response on the administrative record motion by 7 p.m.
12 tonight. You have until 7 p.m. tomorrow to file your response
13 on the motion to admit certain exhibits.

14 Any other housekeeping matters? Or anything else, for
15 that matter?

16 MR. HO: Nothing from plaintiffs, your Honor.

17 MR. EHRLICH: Nothing from defendants, your Honor.

18 THE COURT: All right. In that case, we are adjourned
19 until tomorrow morning. I wish everybody a very pleasant
20 night.

21 Thank you.

22 (Adjourned to November 14, 2018, at 9:00 a.m.)
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