

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON,



Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,  
950 Pennsylvania Avenue NW  
Washington, DC 20530,

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

1. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, against Defendant U.S. Department of Justice (“DOJ”) seeking records relating to the U.S. Department of Commerce Office of Inspector General (“Commerce OIG”) referral to the Public Integrity Section of DOJ’s Criminal Division regarding its findings that former Secretary of Commerce Wilbur Ross misrepresented the full rationale for the reinstatement of the citizenship question in the 2020 Decennial Census in his testimony before Congress. Additionally, CREW seeks all records relating to DOJ’s decision not to prosecute Secretary Ross following the referral from the Commerce OIG.

2. CREW seeks declaratory relief that Defendant is in violation of FOIA, and injunctive relief requiring Defendant to immediately process and release the requested records.

### **Jurisdiction and Venue**

3. This Court has subject-matter jurisdiction and personal jurisdiction under 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202.

4. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

### **Parties**

5. Plaintiff CREW is a non-profit, non-partisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of those efforts, CREW uses government records it obtains under FOIA.

6. Defendant DOJ is an agency within the meaning of 5 U.S.C. § 552(f)(1). Defendant has possession, custody, and control of the requested records.

### **Legal Framework**

7. FOIA, 5 U.S.C. § 552, requires federal agencies to release requested records to the public unless one or more specific statutory exemptions apply.

8. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination of which the requested records it will release, which it will withhold and why, and the requester's right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

9. An agency’s failure to make this determination within 20 business days is subject to judicial review without exhausting administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i)

10. In “unusual circumstances,” an agency may extend the time to respond to a request by no more than 10 working days provided that the agency gives the requester written notice setting forth the unusual circumstances and the date on which the agency expects to make a determination. 5 U.S.C. § 552(a)(6)(B)(i)-(iii). FOIA defines “unusual circumstances” as including the need to search for and collect responsive records from offices other than the office processing the request; the need to search for, collect, and examine a “voluminous amount of separate and distinct records;” and the need to consult with another agency. 5 U.S.C. § 552(a)(6)(B)(iii)(I)-(III).

### **Factual Background**

11. On March 20 and March 22, 2018, former Secretary of Commerce Wilbur Ross testified before the House Committee on Appropriations and the House Committee on Ways and Means, respectively, concerning his decision to include a citizenship question on the 2020 Decennial Census.<sup>1</sup>

12. Following Secretary Ross’ congressional testimony, Commerce OIG opened an investigation and ultimately concluded that Secretary Ross’ testimony, in which he stated that the inclusion of the citizenship question was solely due to a request by DOJ, “misrepresented the full rationale” for proposing the addition of the question.<sup>2</sup>

13. In support of its conclusion, Commerce OIG cited “significant communications related to the citizenship question among the then-Secretary, his staff, and other government

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<sup>1</sup> Eric Katz, DOJ Will Not Prosecute Trump Officials After IG Referred Findings of False Testimony on Census, *Government Executive*, July 16, 2021, <https://perma.cc/E9ES-A3ZU>. <sup>2</sup> *Id.*

<sup>2</sup> *Id.*

officials between March 2017 and September 2017, which was well before the DOJ request memorandum.”<sup>3</sup>

14. In a July 15, 2021 letter to Congress, Commerce Department Inspector Peggy Gustafson revealed that Commerce OIG referred its investigative findings concerning Secretary Ross’ congressional testimony to the Public Integrity Section of DOJ’s Criminal Division, but the section declined to prosecute Secretary Ross.<sup>4</sup>

15. On July 19, 2021, *Reuters* reported that DOJ’s decision to decline prosecution of Secretary Ross was made in January 2020 shortly before the end of Donald Trump’s tenure as president.<sup>5</sup>

16. The American public deserves transparency about why DOJ under the Trump Administration declined to prosecute Secretary Ross despite Commerce OIG’s investigation and referral which found that he provided false and misleading testimony before Congress on two occasions.

17. To this end, CREW submitted a FOIA request to DOJ on July 23, 2021, seeking:

1. All records relating to the U.S. Department of Commerce Office of Inspector General (“Commerce OIG”) referral to the DOJ’s Public Secretary Section concerning its findings that former Secretary of Commerce Wilbur Ross “misrepresented the full rationale for the reinstatement of the citizenship question” in the 2020 Decennial Census during his March 20, 2018 testimony before the House Committee on Appropriations and again in his March 22, 2018 testimony before the House Committee on Ways and Means.
2. All records relating to DOJ’s decision to decline prosecution of Wilbur Ross following the Commerce OIG’s referral, including but not limited to records reflecting the final decision not to prosecute Mr. Ross and the rationale for that decision.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; see also U.S. Department of Commerce Office of Inspector General, Letter to Leader Schumer and Chairwoman Maloney, July 15, 2021, <https://www.oig.doc.gov/OIGPublications/Inspector-General-Letter-to-Majority-Leader-Charles-Schumer-and-Chairwoman-Carolyn-Maloney-re-OIG-Case-No-19-0728.pdf>.

<sup>5</sup> David Shepardson, [Trump official misled Congress about census citizenship question – probe](https://www.reuters.com/world/us/us-declined-prosecute-trump-commerce-chief-after-watchdog-findings-2021-07-19/), *Reuters*, July 19, 2021, <https://www.reuters.com/world/us/us-declined-prosecute-trump-commerce-chief-after-watchdog-findings-2021-07-19/>.

18. CREW's request sought a fee waiver.

19. On September 1, 2021, DOJ acknowledged receipt of CREW's request, assigned it tracking number CRM-301664563, and invoked an extension of its response deadline due to "unusual circumstances."

20. To date, CREW has received no further communications from DOJ regarding its July 23, 2021 FOIA request.

### **CREW'S CLAIM FOR RELIEF**

#### **DOJ's Wrongful Withholding of Records Responsive to CREW's July 23, 2021 FOIA Request**

21. CREW repeats and re-alleges the preceding paragraphs.

22. In its July 23, 2021 FOIA request, CREW properly asked for records within the possession, custody, and control of DOJ.

23. DOJ has failed to conduct an adequate search in response to CREW's request.

24. DOJ is wrongfully withholding records responsive to CREW's request.

25. By failing to timely release all requested records in full to CREW, DOJ is in violation of FOIA.

26. CREW has constructively exhausted its administrative remedies.

27. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the requested records.

#### **Requested Relief**

WHEREFORE, CREW respectfully requests that this Court:

1. Order Defendant to immediately and fully process CREW's FOIA request and disclose all non-exempt records to CREW;

2. Declare that CREW is entitled to immediate processing and disclosure of the requested records;
3. Provide for expeditious proceedings in this action;
4. Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
5. Award CREW its costs and reasonable attorneys' fees in this action; and
6. Grant such other relief as the Court may deem just and proper.

Date: February 1, 2022

Respectfully Submitted,

/s/ Nikhel S. Sus

Nikhel S. Sus

(D.C. Bar No. 1017937)

Laura Iheanachor

(Pending D.C. Bar Admission)

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