



November 17, 2023

VIA E-MAIL

Laura Iheanachor
CREW
1331 F Street NW
Suite 900
Washington, DC 20004
liheanachor@citizensforethics.org

RE: FOIA Request No. DOC-OIG-2024-000006, Referral from CRM-301664563 (*CREW v. DOJ*, No. 22-cv-00254 (D.D.C.))

Dear Ms. Iheanachor:

This letter is regarding your Freedom of Information Act (FOIA) request, CRM-301664563, received by the U.S. Department of Justice (DOJ) on July 23, 2021, and referred in part to the Department of Commerce, Office of Inspector General (OIG) on October 26, 2023, for direct response by our office. The tracking number for the portion of your request that was referred to the OIG is DOC-OIG-2024-000006. Please refer to this number in all correspondence with our office regarding your request. Your request sought the following from DOJ:

1. “All records relating to the U.S. Department of Commerce Office of Inspector General (“Commerce OIG”) referral to DOJ’s Public Integrity 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.”

The October 26, 2023, referral from DOJ contained 41 pages of records that originated with Commerce OIG for review and processing under FOIA and direct response to you.

In processing the 41 pages for direct response, we considered the foreseeable harm standard when reviewing the records and applying FOIA exemptions. After consultation with DOJ’s Criminal Division, it was determined that the pages may be released to you as follows:

- Fourteen (14) pages may be released to you in full;
- Three (3) pages must be withheld in part under FOIA exemption (b)(5), 5 U.S.C. § 552(b)(5), which protects inter-agency and intra-agency records that would not be available by law to a party other than an agency in litigation with the agency, including documents that are subject to the deliberative process privilege;

- Eight (8) pages must be withheld in part under FOIA exemption (b)(6), 5 U.S.C. § 552(b)(6), which protects information in personnel, medical, or similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA exemption (b)(7)(C), 5 U.S.C. § 552(b)(7)(C), which protects law enforcement information, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- Sixteen (16) pages must be withheld in part under FOIA exemptions (b)(5), (b)(6), and (b)(7)(C).

For your awareness, it appears that the PowerPoint settings automatically re-dated the presentation to the date the file opened. Consequently, the 2022 date of the PowerPoint may not be the date of the actual presentation, but rather when DOJ processed this document for FOIA.

Although I am aware that your request is the subject of ongoing litigation (*CREW v. DOJ*, No. 22-cv-00254 (D.D.C.)) and that appeals are often not acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal of this determination. If you wish to file an administrative appeal, it must be received within ninety (90) calendar days of the date of this response letter.

The appeal should include a copy of the original request and this letter. In addition, the appeal should include a statement of the reasons why you believe that the determination was in error. The appeal letter, the envelope, and the e-mail subject line should be clearly marked "Freedom of Information Act Appeal." The e-mail and Office of Counsel mailbox are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box or the Office of Counsel mailbox after normal business hours will be deemed received on the next normal business day. If the 90th calendar day falls on a Saturday, Sunday, or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. An appeal received after the 90-day limit will not be considered.

If you have any questions or concerns or would like to discuss any aspect of your request, you may contact the analyst who processed your request, Laura Main, by telephone at (202) 794-8066 or by email at foia@oig.doc.gov.

In addition, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
E-mail at ogis@nara.gov
Telephone at (202) 741-5770; toll free at 1 (877) 684-6448; facsimile at (202) 741-5769

Sincerely,
**JENNIFER
PIEL**
Jennifer Piel
FOIA Officer

Digitally signed by
JENNIFER PIEL
Date: 2023.11.17
13:34:59 -06'00'

Enclosures



UNITED STATES DEPARTMENT OF COMMERCE
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

INVESTIGATIVE RECORD FORM

CASE TITLE:

Alleged Misconduct with 2020 Decennial (OS)

FILE/CASE NUMBER:

19-0728-I

Timeline

Between August 6 and November 21, 2019 Special Agent (SA) (b) (6), (b) (7)(C) The United States Department of Commerce (DOC), Office of Inspector General (OIG), 1401 Constitution Avenue NW, Washington D.C. 20230, developed a timeline of events based on documents from DOC employee official email accounts, Public Access to Court Electronic Records (PACER), and the internet, pertaining to this complaint.

TIMELINE:

(b) (5), (b) (6), (b) (7)(C)

(Attachment 1)

EMAIL: On March 10, 2017, Mr. Earl COMSTOCK, DOC, Director of Policy, emailed Secretary ROSS and Cced Mr. Eric BRANSTAD, DOC, Senior White House Advisor, with the subject line: "Your Question on the Census". Mr. COMSTOCK forwarded a link to a 2010 Wall Street Journal article written by Carl Bialik titled "The Pitfalls of Counting Illegal Immigrants". Mr. COMSTOCK further highlighted a sentence in the article: "No major government survey, including the decennial census now under way, asks Americans about their citizenship status." (Attachment 2)

EMAIL: On April 5, 2017, Ms. Brooke ALEXANDER, Executive Assistant to Secretary ROSS, emailed Mrs. Hilary GEARY, Secretary ROSS' spouse, stating that Mr. Steve BANNON, (former) White House Chief Strategist, wanted to speak with Secretary ROSS about the Census. (Attachment 3)

EMAIL: On April 20, 2017, Ms. ALEXANDER sent an email to Mr. COMSTOCK and Cced Ms. Wendy TERAMOTO, (former) DOC Chief of Staff, that the Census Director had an "April 29 meeting of the National Advisory Committee on Racial, Ethnic and Other Populations. We must get our issue resolved before this!" Ms. ALEXANDER listed in the subject line of the

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11/21/2019

Date Prepared:

11/27/2019

Reporting Investigator:

(b) (6), (b) (7)(C)

Title:

Special Agent



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(b) (5), (b) (6), (b) (7)(C)

(See Attachment 9)

(b) (5), (b) (6), (b) (7)(C)

(See Attachment 10)

EMAIL: On July 14, 2017, Mr. Kris KOBACH, Secretary of State Kansas, emailed Secretary ROSS, stating he was following up on a telephone discussion he and Secretary ROSS had reference how the Census does not ask respondents of their citizenship. Mr. KOBACH also provided an example of a citizenship question be added to the 2020 Census. (Attachment 11)

EMAIL: On July 21, 2017, Mr. KOBACH forwarded to Ms. TERAMOTO the email he sent Secretary Ross the day prior and further stated “He and I had spoken briefly on the phone about this issue, at the direction of Steve Bannon, a few months earlier.” (Attachment 12)

CALENDAR ENTRY: On July 25, 2017, Secretary ROSS’ Calendar Entry reflected a telephone call with Kris Kobach from 11:00 – 11:30am. (Attachment 13)

EMAIL CHAIN: Between August 8 – 10, 2017, Secretary ROSS and Mr. COMSTOCK had an email conversation pertaining to the DOJ and their analysis of the citizenship question. On August 8, 2017, Secretary ROSS emailed Mr. COMSTOCK and stated “Who selected the scientists? Your list left the origin of many of them unknown. Was this some sort of public private operation. Were you on the call this morning about Census? They seem dig in about not sling the citizenship question and that raises the question of where is the DoJ in their analysis ? If they still have not come to a conclusion please let me know your contact person and I will call the AG. Wilbur Ross”

On August 9, 2017, Mr. COMSTOCK replied, “Mr. Secretary – we are preparing a memo and full briefing for you on the citizenship question. The memo will be ready by Friday, and we can do the briefing whenever you are back in the office. Since this issue will go to the Supreme Court we need to be diligent in preparing the administrative record.”

On August 10, 2017, Secretary ROSS replied, “I would like to be briefed on Friday by phone. I probably will need an hour or so to study the memo first.we should be very careful,about everything,whether or not it is likely to end up in the SC. WLR”. (Attachment 14)

EMAIL CHAIN: On August 11, 2017, Mr. James UTHMEIER, (former) Senior Advisor to DOC General Counsel and Secretary ROSS, and (b) (6), (b) (7)(C) Office of the Chief Counsel for Economic Affairs, finalized a memorandum covering the “historical use of citizenship on census inquiries”. Mr. UTHMEIER forwarded the memorandum to Mr. COMSTOCK, who then forwarded the memorandum to Secretary ROSS and Cced Ms. TERAMOTO. (See Attachments 15a – 15f)

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EMAIL CHAIN: On August 14, 2017, Mr. UTHMEIER, forwarded the August 11 memo to Mr. Peter DAVIDSON, DOC, General Counsel, asking for a review. During the email exchange, Mr. UTHMEIER stated, “(b) (5), (b) (6), (b) (7)(C) [REDACTED].” (See Attachment 16)

MEMORNDUM: On September 8, 2017, Mr. COMSTOCK drafted a Memorandum Titled “Census Discussions with DoJ” (See Attachment 17), wherein Mr. COMSTOCK stated:

“In early May Eric Branstad put me in touch with Mary Blanche Hankey as the White House liaison in the Department of Justice. Mary Blanche worked for AG Sessions in his Senate office, and came with him to the Department of Justice. We met in person to discuss the citizenship question. She said she would locate someone at the Department who could address the issue. A few days later she directed me to James McHenry in the Department of Justice.

I spoke several times with James McHenry by phone, and after considering the matter further James said that Justice staff did not want to raise the question given the difficulties Justice was encountering in the press at the time (the whole Comey matter). James directed me to Gene Hamilton at the Department of Homeland Security.

Gene and I had several phone calls to discuss the matter, and then Gene relayed that after discussion DHS really felt that it was best handled by the Department of Justice. At that point the conversation ceased and I asked James Uthmeier, who had by then joined the Department of Commerce Office of General Counsel, to look into the legal issues and how Commerce could add the question to the Census itself.”

EMAIL: On September 8, 2017, Mr. UTHMEIER sent an email to Mr. COMSTOCK and Cced Ms. TERAMOTO, to update Mr. COMSTOCK his and Mr. DAVIDSON’s efforts in researching the citizenship question. Mr. UTHMEIER stated that they (b) (5), (b) (6), (b) (7)(C) [REDACTED] (See Attachment 18)

EMAIL: On September 13, 2017, Mr. John GORE, Acting Assistant Attorney General, Civil Rights Division, DOJ, emailed Ms. TERAMOTO wishing to speak to her regarding a “DOJ-DOC issue”. (See Attachment 19)

EMAIL CHAIN: Between September 16 – 17, 2017, Ms. TERAMOTO exchanged emails with Ms. Danielle CUTRONA, Office of the Attorney General, DOJ, in attempts to connect the Attorney General and Secretary ROSS. On September 17, 2017, Ms. TERAMOTO stated, “They connected”. (See Attachment 20)

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LETTER: On December 12, 2017, Mr. Arthur GARY, General Counsel, Justice Management Division, DOJ, sent Dr. Ron JARMIN, Director, Census, an official letter requesting the citizenship question be added to the 2020 Census. (See Attachment 21)

CONGRESSIONAL TESTIMONY: On March 20, 2018, during testimony before the House Committee on Appropriations, Secretary ROSS answered Congressman José E. SERRANO’S question, “Should political parties and campaign politics ever factor in to what is asked of every household in the country on the census?” by stating, “No political party has asked us to do anything on the census. We have had a request, as everyone is aware, from the Department of Justice to add a citizenship question to the 2020 census...We are responding solely to the Department of Justice’s request.” (See <https://youtu.be/NDWiAiSWgNU?t=2088>) (See Attachment 22)

CONGRESSIONAL TESTIMONY: On March 22, 2018, during testimony before the House Committee on Ways and Means, Secretary ROSS answered Congresswoman Judy CHU’S question, “Does the Department of Commerce plans to including the citizenship question in the 2020 census?” by stating, “Department of Justice as, as you know, initiated the request for inclusion of the citizenship question...Because it is from the Department of Justice, we are taking it very seriously and we will issue a fulsome documentation of whatever conclusion we finally come to.” (See <https://www.c-span.org/video/?c4736903/user-clip-commerce-secretary-wilbur-ross-testifies-march-22-house-ways-means-committee-hearing>) (See Attachment 23 & Attachment 24, Page 51)

OFFICIAL MEMO: On March 26, 2018, Secretary ROSS signed the “Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire” Memo that stated: “Following receipt of the DOJ request, I set out to take a hard look at the request and ensure that I considered all facts and data relevant to the question so that I could make an informed decision on how to respond. To that end, the Department of Commerce (“Department”) immediately initiated a comprehensive review process led by the Census Bureau...At my direction, the Census Bureau and the Department's Office of the Secretary began a thorough assessment that included legal, program, and policy considerations.” (See Attachment 25)

NEWS ARTICLE: On March 27, 2018, The Kansas City Star published an article by Bryan LOWERY, wherein Mr. LOWERY wrote, “Kansas Secretary of State Kris Kobach encouraged President Donald Trump to add a question about citizenship status to the U.S. Census during the early weeks of Trump’s presidency. More than a year later, Trump’s administration has moved to enact that exact policy for the 2020 census. “I won’t go into exact detail, but I raised the issue with the president shortly after he was inaugurated,” Kobach said Tuesday.” (See Attachment 26)

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CONGRESSIONAL TESTIMONY: On May 8, 2018, during testimony before the House Oversight and Government Reform Committee, Mr. COMSTOCK answered Congresswoman Eleanor HOLMES NORTON’S question, “Why did this question, which was dropped for 70 years, suddenly appear on the decennial census? What was the point?” by stating, “We received a request from the Justice Department for this and their rationale was that the level of information that they needed to enforce the Voting Rights Act was not available...This was requested by the Department of Justice for their statutory duty to enforce the Voting Rights Act...The reason for this question was the Justice Department asked this to get more accurate information at the census block level.” (See <https://www.c-span.org/video/?445223-1/federal-officials-update-congress-2020-census-preparations>) (See Attachment 27)

CONGRESSIONAL TESTIMONY: On May 10, 2018, during testimony before the Senate Appropriations Subcommittee on Commerce, Justice, Science & related Agencies, Secretary ROSS answered Senator Brian SCHATZ’S question, “How can you reassure me that the addition of the citizenship question on the 2020 census was not a political matter” by stating, “We spent a lot of time talking with Justice about the request. We truly believe they think they need it and they are a qualified party to make that request under the procedures.” During the same hearing, Secretary ROSS he answered Senator Patrick LEAHY’S question, “Why the sudden interest in the question when the (Justice) department didn’t seem to have a problem with voting rights?” by stating, “Well the Justice department is the one who made the request of us.” (<https://www.c-span.org/video/?445193-1/commerce-secretary-ross-testifies-fiscal-year-2019-budget-request>) (See Attachment 28)

SUPPLEMENTAL MEMO: On June 21, 2018, Secretary ROSS signed a Supplemental Memo to his original March 26, 2018 Memo regarding his decision to add the citizenship question to the 2020 Census. Secretary ROSS stated, “Soon after my appointment as Secretary of Commerce, I began considering various fundamental issues regarding the upcoming 2020 Census, including funding and content. Part of these considerations included whether to reinstate a citizenship question, which other senior Administration officials had previously raised. My staff and I thought reinstating a citizenship question could be warranted, and we had various discussions with other governmental officials about reinstating a citizenship question to the Census. As part of that deliberative process, my staff and I consulted with Federal governmental components and inquired whether the Department of Justice (DOJ) would support, and if so would request, inclusion of a citizenship question as consistent with and useful for enforcement of the Voting Rights Act.” (See Attachment 29)

THE HOFELLER FILES: On August 26, 2018, Dr. Thomas HOFELLER, a renowned redistricting expert and longtime Republican Political Strategist died in Raleigh North Carolina. In October 2018, his daughter, Stephanie HOFELLER, discovered numerous USB drives, Flash Drives and other media storage devices in Dr. HOFELLER’S home office. Dr. HOFELLER’S widow also told Ms. S. HOFELLER, that Mr. Dalton Lamar OLDHAM, a.k.a. “Dale”, Dr. HOFELLER’S business partner and fellow Geographical Strategist, took Dr.

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HOFELLER’S laptop and desktop computer. Ms. S. HOFELLER reached out to Common Cause, a non-profit political watchdog group based out of Washington, DC, to assist Dr. HOFELLER’S widow find an attorney. Through Common Cause, Ms. S. HOFELLER learned that the data on Dr. HOFELLER’S storage media might prove valuable in a lawsuit relating to redistricting in North Carolina. In February 2019, in response to a subpoena, Ms. S. HOFELLER sent the storage media to the law firm of Arnold & Porter, representing the plaintiffs in North Carolina General Court of Justice, Superior Court Division (18 CVS 014001) (See Attachment 30). Arnold and Porter forwarded the storage media to Stroz Friedberg, a digital forensic and technical investigations firm in Washington, DC. During the examination of Dr. HOFELLER’S storage media, (b) (6), (b) (7)(C), Digital Forensic Analyst, discovered 21 documents relating to Redistricting and the Census. Included in these documents was a 2015 study Dr. HOFELLER conducted for The Washington Free Beacon, an American conservative political journalism website, and several emails between Ms. Christa JONES, a Senior Census Policy Officer, Mr. NEUMAN, and Dr. HOFELLER between 2010 and 2015. (See Attachments 31a – 31h)

DEPOSITION: On October 8, 2018, Mr. NEUMAN testified in Federal Civil Court (Case 1:18-cv-02921-JMF) that he has known Dr. Thomas HOFELLER, (a Republican redistricting expert), for “25 years” and that Mr. NEUMAN had spoken to Mr. HOFELLER several times during the transition. Mr. NEUMAN further answered (b) (6), (b) (7)(C), Esquire (b) (6), (b) (7)(C), Esquire Covington & Burling, LLP, question, “Did the issue of how states might use citizenship data from the decennial census in deciding how to draw legislative districts come up in your conversations with Mr. Hoffler?” by stating, “I don't believe so. Again, you know, when you -- these are conversations long ago, but it -- it -- I don't think so. Because it -- again, it's not the kind of thing that he would talk about.”

Mr. NEUMAN also testified that he was “familiar” with the draft DOJ Letter; however, he did not author it. (See Attachment 32a Page 3, 20, 41, and Attachment 32b)

DEPOSITION: On March 7, 2019, Mr. John GORE, principal deputy assistant attorney general for the DOJ's Civil Rights Division, gave testimony to the House of Representatives Committee on Oversight and Government Reform. When asked if he had any conversations with anyone about an addition of a citizenship question, Mr. GORE stated that he spoke to “three individuals at the Department of Commerce, Peter Davidson, who I understood to be the general counsel with the Department of Commerce; James Uthmeier, U-T-H-M-E-I-E-R; Wendy Teramoto, T-E-R-A-M-O-T-O. And around October of 2017, I had a conversation with a man named Mark Neuman. I believe he spells his last name N-E-U-M-A-N.”

Mr. GORE received a “hand delivered” memorandum about the citizenship question from Mr. UTHMEIER.

Mr. GORE further stated that Mr. DAVIDSON advised him that Mr. NEUMAN would contact him about the citizenship question. Mr. GORE spoke to Mr. NEUMAN and “reviewed some documents and information regarding the census” that Mr. NEUMAN provided, including “a draft letter that would request reinstatement of the citizenship question on the census questionnaire.” (See Attachment 33)

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CONGRESSIONAL TESTIMONY: On March 14, 2019, during testimony before the House of Representatives Committee on Oversight and Government Reform, Secretary ROSS answered Congressman and Chair of the Committee, Elijah CUMMINGS’ question, “In early April ‘17, you got a call from Steve BANNON about the citizenship question. That was also months before the Department of Justice sent its letter, is that correct?” by stating, “Yes Sir.” Congressman CUMMINGS continued by asking, “Is it your testimony that your call with Mr. BANNON had nothing to do with efforts to pursue the citizenship question?” Secretary ROSS answered, “Steve BANNON called with a simple request asking if I would take a call from Kris KOBACH, and I agreed to that request as a courtesy since he was a White House staffer and shortly thereafter, possibly the next day, I did have a conversation with Kris KOBACH.” (<https://www.c-span.org/video/?457414-1/commerce-secretary-ross-2020-census>) (See Attachment 34)

DEPOSITION: On May 30, 2019, Mr. Gene HAMILTON, Senior Counselor to the Secretary of the Department of Homeland Security, gave testimony to the House of Representatives Committee on Oversight and Government Reform, wherein he testified that Mr. KOBACH, who also served on the transition, contacted him in “early November of 2016” to discuss legislative proposals regarding the citizenship question. Mr. HAMILTON stated he received a call from a White House official, John ZADRONY on the Domestic Policy Council, who told him that he “would be receiving a phone call from someone from the Department of Commerce related to the Census...Mr. COMSTOCK called and asked “if the Department of Homeland Security could use or had a need for the information for citizenship information of the Census that would facilitate a departmental mission.” Mr. HAMILTON testified that he checked with experts within the Department, but that nobody identified a need for this information. He reported to Mr. COMSTOCK that the Department “didn’t really have a use for” the information. (See Attachment 35)

DEPOSITION: On June 3, 2019, Mr. KOBACH testified before the House of Representatives Committee on Oversight and Government Reform that he met with President TRUMP, Mr. BANNON and Mr. Reince Priebus President’s Chief of Staff, to discuss the addition of a citizenship question to the 2020 Census. Mr. KOBACH recalled two meetings in “late January-early February of 2017”: one with Mr. BANNON and the second with President TRUMP, who may have been accompanied by Mr. BANNON and Mr. PRIEBUS. (See Attachment 36)

HEARING: On June 12, 2019, The House of Representatives voted to hold Secretary ROSS and Attorney General William BARR in Contempt of Congress for failing to produce documents in response to Congressional Subpoenas. (<https://www.c-span.org/video/?461640-1/oversight-committee-votes-hold-ag-barr-commerce-secretary-ross-contempt>) (See Attachment 37)

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CONGRESSIONAL MEMORANDUM: On November 12, 2019, Congresswoman Carolyn B. MALONEY, in her position as Acting Chairwoman of the House of Representatives Committee on Oversight and Government Reform, sent a Memorandum Titled “Update on Investigation of Census Citizenship Question Since House Held Attorney General Barr and Commerce Secretary Ross in Contempt of Congress” to members of the Committee on Oversight and Reform. The memorandum outlined documents since received from Mr. NEUMAN. (See Attachment 38)

EMAIL: On August 30, 2017, Mr. NEUMAN emailed Dr. HOFELLER asking if the language in the following excerpt was correct (See Attachment 39):

“We understand that the Bureau personnel may believe that ACS data on citizenship was sufficient for redistricting purposes. We wanted the Bureau, to be aware that two recent Court cases have underscored that ACS data is not viable and/or sufficient for purposes of redistricting. Two important citations from these cases are as follows: Bartlet v Simpson; lullac v perry “Relevant numbers must account for citizenship in order to determine the groups opportunity to elect candidates in order to determine the groups opportunity to elect candidates...pg 4 lulac v.”

AGENT’S NOTE: The same language in the Draft DOJ Letter (Attachment 32b) appears in this text message.

EMAIL: On August 30, 2017, Dr. HOFELLER responded to Mr. NEUMAN by saying “Mark: Dale just read it, and says it is fine as written. Tom”. (See Attachment 40)

Agent’s Note: During Ms. S. Hofeller’s testimony, she mentioned that “Dale” was Dr. Hofeller’s business partner, Mr. Dalton Lamar Oldham.

TEXT MESSAGE: On October 6, 2017, Mr. NEUMAN sent Mr. GORE a text message with Mr. NEUMAN’S draft letter which contained language approved by Dr. HOFELLER a week earlier. (See Attachment 41)

Agent’s Note: Attachment 32b is a full page printed version of this text message.

EMAIL Chain: On October 8, 2017, between 2:56pm and 6:54pm, Secretary ROSS and Mr. DAVIDSON exchanged emails with the subject line: “Re: Letter from DOJ”, wherein Secretary ROSS requested a “status”. Mr. DAVIDSON replied that he was speaking with Mr. NEUMAN who was relaying notes from a meeting the previous week. (See Attachment 42)

TEXT MESSAGE: On October 8, 2017, approximately 7:09pm, Mr. DAVIDSON texted Mr. NEUMAN stating, “Thx...He appreciated the update and your help”. (See Attachment 43)

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Attachments (43)

Due to their size, Attachments 22, 23, 27, 28, 34, and 37 were imprinted onto an Optical Disk, which is contained within DOC OIG Case File 19-0728, Serial 1B, Exhibit 10.

1. (b) (5), (b) (6), (b) (7)(C)
2. Email from Mr. COMSTOCK to Secretary ROSS, dated March 10, 2017.
3. Email from Ms. ALEXANDER to Mrs. ROSS, dated April 5, 2017.
4. Email from Ms. ALEXANDER to Mr. COMSTOCK, dated April 20, 2017.
5. Email Chain between Mr. COMSTOCK, Secretary ROSS, and Ms. HERBST, dated May 2, 2017.
6. Email from Mr. COMSTOCK to Mr. BRANSTAD, dated May 3, 2017.
7. (b) (5)
8. (b) (5)
9. (b) (5), (b) (6), (b) (7)(C)
10. (b) (5), (b) (6), (b) (7)(C)
11. Email from Mr. KOBACH to Secretary ROSS, dated July 14, 2017.
12. Email from Mr. KOBACH to Ms. TERAMOTO, dated July 21, 2017.
13. Calendar Entry for Secretary ROSS, dated July 25, 2017.
14. Email Chain between Secretary ROSS and Mr. COMSTOCK, dated August 8, 2017.
- 15a – 15f. Email Chain and Memorandum between Mr. COMSTOCK, Secretary ROSS, and Mr. UTHMEIER, dated August 11, 2017.
16. Email from Mr. UTHMEIER to Mr. DAVIDSON, dated August 14, 2017.
17. Memorandum from Mr. COMSTOCK to Secretary ROSS, dated September 8, 2017.
18. Email from Mr. UTHMEIER to Mr. COMSTOCK, dated September 8, 2017.

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19. Email from Mr. GORE to Ms. TERAMOTO, dated September 13, 2017.
20. Email Chain between Ms. TERAMOTO and Ms. CUTRONA, dated September 13, 2017.
21. DOJ Letter to Dr. JARMIN, dated December 12, 2017.
22. Video of Secretary ROSS' testimony before the House Committee on Appropriations, dated March 20, 2018.
23. Video of Secretary ROSS' testimony before the House Committee on Ways and Means, dated On March 22, 2018.
24. Transcript of Attachment 23, dated March 22, 2018.
25. Memorandum from Secretary ROSS to Ms. DUNN to add Citizenship Question to 2020 Census, dated March 26, 2018.
26. News Article from Kansas City Star, dated March27, 2018.
27. Video of Dr. JARMIN'S and Mr. COMSTOCK'S testimony before the House Oversight and Government Reform Committee, dated May 8, 2018.
28. Video of Secretary ROSS' testimony before the Senate Appropriations Subcommittee on Commerce, Justice, Science & related Agencies, dated May 10, 2018.
29. Supplemental Memorandum from Secretary ROSS, dated June 21, 2018.
30. Stephanie HOFELLER Transcript, dated May 17, 2019.
- 31a. (b) (6), (b) (7)(C) Affidavit, dated June 14, 2019.
- 31b. 2015 HOFELLER-Study, no date associated.
- 31c. Washington Free Beacon Invoice, dated August 31, 2015.
- 31d. Email from Christa JONES to Dr. HOFELLER "RE Did you see Hannity Email", dated February 6, 2010.
- 31e. Email from Dr. HOFELLER which he Cced Christa JONES "Redistricting Article", January 7, 2010.

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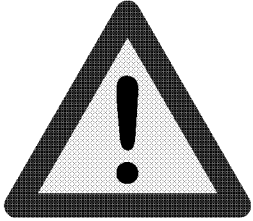
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- 31f.** Email from Christa JONES to Mark NEUMAN and Dr. HOFELLER “Fw 2010 Census - Myths and Misconceptions”, dated March 19, 2010.
- 31g.** Email from Christa JONES to Dr. HOFELLER “Fwd FR Notice Email”, dated January 7, 2015.
- 31h.** Email from Christa JONES to Dr. HOFELLER, “Reservation at Ramparts Tavern Email”, dated April 24, 2015.
- 32a.** Transcript of Mr. NEUMAN’s testimony in Federal Civil Court (Case 1:18-cv-02921-JMF), dated October 8, 2018.
- 32b.** Draft version of DOJ Letter.
- 33.** Transcript of Mr. GORE’S testimony before the House of Representatives Committee on Oversight and Government Reform, dated March 7, 2019.
- 34.** Video of Secretary ROSS’ testimony before the House of Representatives Committee on Oversight and Government Reform, dated On March 14, 2019.
- 35.** Transcript of Mr. HAMILTON’S testimony before the House of Representatives Committee on Oversight and Government Reform, dated May 30, 2019.
- 36.** Transcript of Mr. KOBACH’S testimony before the House of Representatives Committee on Oversight and Government Reform, dated June 3, 2019.
- 37.** Video of The House of Representatives voting to hold Secretary ROSS and Attorney General William BARR in Contempt of Congress, dated June 12, 2019.
- 38.** Congressional Memorandum: Congresswoman MALONEY, sent a Memorandum Titled “Update on Investigation of Census Citizenship Question Since House Held Attorney General Barr and Commerce Secretary Ross in Contempt of Congress”, dated November 12, 2019.
- 39.** Email from Mr. NEUMAN to Dr. HOFELLER, dated August 30, 2017.
- 40.** Email from Dr. HOFELLER to Mr. NEUMAN, dated August 30, 2017.
- 41.** Text message from Mr. NEUMAN to Mr. GORE, dated October 8, 2017.
- 42.** Email Chain between Secretary ROSS and Mr. DAVIDSON, dated October 8, 2017.
- 43.** Text between Mr. NEUMAN and Mr. DAVIDSON, dated October 8, 2017.

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DOC OIG Case 19-0728



Basis for Investigation #1



In depositions and congressional interviews, Commerce Department Officials failed to disclose substantive public policy role of a political operative, Dr. Thomas Hofeller, in adding the citizenship question to the 2020 Census.

Basis for Investigation #2



In concealing the contribution of Dr. Hofeller, Justice and Commerce Department officials purposely obscured the impermissible racial and partisan motivations for adding a citizenship question- to be "advantageous to Republicans and Non-Hispanic Whites" and to "clearly be a disadvantage to the Democrats"- in both the Justice Department's December 2017 letter requesting the citizenship question and the Commerce Department's March 2018 memorandum adding the question.

Background



On December 12, 2017, Mr. Arthur Gary, General Counsel, Justice Management Division, DOJ, sent Dr. Ron Jarmin, Director, Census, an official letter requesting the Census Bureau add a citizenship question to the 2020 Census.

In March 2018, Secretary Ross signed a memorandum to Karen D. Kelly, Deputy Secretary of Commerce, notifying her of his decision to add the citizenship question to the 2020 census based on DOJ's request.

Between March and May 2018, both Secretary Ross and Mr. Earl Comstock, DOC Director of Policy, testified before congress and senate hearings that DOC's decision to add the citizenship question was based on DOJ's request.

In June 2018, Secretary Ross signed a "Supplemental Memo" wherein he stated he began researching the addition of a citizenship question soon after being appointed Secretary, despite previously testifying at least three times that his decision was based on DOJ's request.

Allegation #1



Secretary Wilbur Ross (b) (5), (b) (6), (b) (7)(C) ■ [REDACTED] when, on March 20, 2018, during testimony before the House Committee on Appropriations, he answered Congressman José E. Serrano’s question, “Should political parties and campaign politics ever factor in to what is asked of every household in the country on the census?” by stating, “**No political party has asked us to do anything on the census.** We have had a request, as everyone is aware, from the Department of Justice to add a citizenship question to the 2020 census... We are responding solely to the Department of Justice’s request.” (Attachment 22, 35 mins) (<https://youtu.be/NDWiAiSWgNU?t=2088>)

Evidence



EMAIL: On April 5, 2017, Ms. Brooke ALEXANDER, Executive Assistant to Secretary ROSS, emailed Mrs. Hilary GEARY, Secretary ROSS' spouse, stating that **Mr. Steve BANNON**, (former) **White House Chief Strategist**, wanted to speak with Secretary ROSS about the Census. (Attachment 3)

EMAIL: On July 14, 2017, Mr. Kris KOBACH, Secretary of State Kansas, emailed Secretary ROSS, stating he was following up on a telephone discussion he and Secretary ROSS had reference how the Census does not ask respondents of their citizenship. Mr. KOBACH also provided an example of a citizenship question be added to the 2020 Census. (Attachment 11)

EMAIL: On July 21, 2017, Mr. KOBACH forwarded to Ms. TERAMOTO the email he sent Secretary Ross the day prior and further stated "He and I had spoken briefly on the phone about this issue, at the direction of Steve Bannon, a few months earlier." (Attachment 12)

CALENDAR ENTRY: On July 25, 2017, Secretary ROSS' Calendar Entry reflected a telephone call with Kris Kobach from 11:00 – 11:30am. (Attachment 13)



NEWS ARTICLE: On March 27, 2018, The Kansas City Star published an article by Bryan LOWERY, wherein Mr. LOWERY wrote, “Kansas Secretary of State **Kris Kobach** encouraged President Donald Trump to add a question about citizenship status to the U.S. Census during the early weeks of Trump’s presidency. More than a year later, Trump’s administration has moved to enact that exact policy for the 2020 census. “**I won’t go into exact detail, but I raised the issue with the president shortly after he was inaugurated,**” Kobach said Tuesday.” (See Attachment 26)

DEPOSITION: On June 3, 2019, Mr. KOBACH testified before the House of Representatives Committee on Oversight and Government Reform that he met with **President TRUMP, Mr. BANNON and Mr. Reince PRIEBUS, President’s Chief of Staff, to discuss the addition of a citizenship question to the 2020 Census.** Mr. KOBACH recalled two meetings in “late January-early February of 2017”: one with Mr. BANNON and the second with President TRUMP, who may have been accompanied by Mr. BANNON and Mr. PRIEBUS. (See Attachment 36)

Allegation #2



Secretary Wilbur Ross (b) (5), (b) (6), (b) (7)(C) ■ ■ when, on March 22, 2018, during testimony before the House Committee on Ways and Means, he answered Congresswoman Judy Chu’s question, “Does the Department of Commerce plans to including the citizenship question in the 2020 census?” by stating, “Department of Justice as, as you know, initiated the request for inclusion of the citizenship question...Because it is from the Department of Justice, we are taking it very seriously and we will issue a fulsome documentation of whatever conclusion we finally come to.”

(Attachment 23, 1hr 26mins & Attachment 24, page 51) (<https://www.c-span.org/video/?c4736903/user-clip-commerce-secretary-wilbur-ross-testifies-march-22-house-ways-means-committee-hearing>) The link starts the video right as Congresswoman Chu begins her question.



EMAIL: On **March 10, 2017**, Mr. Earl COMSTOCK, DOC, Director of Policy, emailed Secretary ROSS and Cced Mr. Eric BRANSTAD, DOC, Senior White House Advisor, with the subject line: “Your Question on the Census”. Mr. COMSTOCK forwarded a link to a 2010 Wall Street Journal article written by Carl Bialik titled “The Pitfalls of Counting Illegal Immigrants”. Mr. COMSTOCK further highlighted a sentence in the article: “No major government survey, including the decennial census now under way, **asks Americans about their citizenship status.**” (Attachment 2)

EMAIL Chain: On **May 2, 2017**, Secretary ROSS emailed Ms. HERBST and Mr. COMSTOCK and asked “I am mystified why nothing have been done in **response to my months old request that we include the citizenship question. Why not?**” Mr. COMSTOCK replied, “I agree Mr. Secretary. On the citizenship question we will get that in place. The broad topics were what were sent to Congress earlier this year as required. It is next March -- in 2018 -- when the final 2020 decennial Census questions are submitted to Congress. **We need to work with Justice to get them to request that citizenship be added back as a census question, and we have the court cases to illustrate that DoJ has a legitimate need for the question to be included. I will arrange a meeting with DoJ staff this week to discuss.**” (See Attachment 5)



EMAIL: On May 3, 2017, Mr. COMSTOCK emailed Mr. BRANSTAD “Thanks” in response to Mr. BRANSTAD’s forwarding an email conversation between Ms. Mary HANKEY at DOJ, (b) (6), (b) (7)(C) and Mr. BRANSTAD requesting a counterpart to reach out to at DOJ – “Regarding Census and Legislative issue?” (Attachment 6)

EMAIL CHAIN: Between August 8 – 10, 2017, Secretary ROSS and Mr. COMSTOCK had an email conversation pertaining to the DOJ and their analysis of the citizenship question. On August 8, 2017, Secretary ROSS emailed Mr. COMSTOCK and stated “(b) (5) [REDACTED] [REDACTED] [REDACTED] Were you on the call this morning about Census? They seem dig in about not sling the citizenship question and that raises the question of where is the DoJ in their analysis ? If they still have not come to a conclusion please let me know your contact person and I will call the AG.Wilbur Ross” (See Attachment 14)



EMAIL CHAIN: On **August 9, 2017**, Mr. COMSTOCK replied, “Mr. Secretary – we are preparing a memo and full briefing for you on the citizenship question. The memo will be ready by Friday, and we can do the briefing whenever you are back in the office. Since this issue will go to the Supreme Court we need to be diligent in preparing the administrative record.”

On **August 10, 2017**, Secretary ROSS replied, “I would like to be briefed on Friday by phone. I probably will need an hour or so to study the memo first. we should be very careful, about everything, whether or not it is likely to end up in the SC. WLR”. (Attachment 14)



MEMORANDUM: On September 8, 2017, Mr. COMSTOCK drafted a Memorandum Titled "Census Discussions with DoJ" (See Attachment 17), wherein Mr. COMSTOCK stated:

"In early May Eric Branstad put me in touch with Mary Blanche Hankey as the White House liaison in the Department of Justice. Mary Blanche worked for AG Sessions in his Senate office, and came with him to the Department of Justice. We met in person to discuss the citizenship question. She said she would locate someone at the Department who could address the issue. A few days later she directed me to James McHenry in the Department of Justice.

I spoke several times with James McHenry by phone, and after considering the matter further James said that Justice staff did not want to raise the question given the difficulties Justice was encountering in the press at the time (the whole Comey matter). James directed me to Gene Hamilton at the Department of Homeland Security.

Gene and I had several phone calls to discuss the matter, and then Gene relayed that after discussion DHS really felt that it was best handled by the Department of Justice.

At that point the conversation ceased and I asked James Uthmeier, who had by then joined the Department of Commerce Office of General Counsel, to look into the legal issues and how Commerce could add the question to the Census itself."



EMAIL: On **September 13, 2017**, Mr. John GORE, Acting Assistant Attorney General, Civil Rights Division, DOJ, emailed Ms. TERAMOTO wishing to speak to her regarding a "DOJ-DOC issue". (See Attachment 19)

EMAIL CHAIN: Between **September 16 – 17, 2017**, Ms. TERAMOTO exchanged emails with Ms. Danielle CUTRONA, Office of the Attorney General, DOJ, in attempts to connect the Attorney General and Secretary ROSS. On September 17, 2017, Ms. TERAMOTO stated, "They connected". (See Attachment 20)

Allegation #3



Secretary Wilbur Ross (b) (5), (b) (6), (b) (7)(C) ■■■■■ on March 26, 2018, he signed the “Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire” Memo that stated: “Following receipt of the DOJ request, I set out to take a hard look at the request and ensure that I considered all facts and data relevant to the question so that I could make an informed decision on how to respond. To that end, the Department of Commerce (“Department”) immediately initiated a comprehensive review process led by the Census Bureau... At my direction, the Census Bureau and the Department's Office of the Secretary began a thorough assessment that included legal, program, and policy considerations.” (Attachment 25)



EMAIL CHAIN: On August 11, 2017, Mr. James UTHMEIER, (former) Senior Advisor to DOC General Counsel and Secretary ROSS, and (b) (6), (b) (7)(C) Office of the Chief Counsel for Economic Affairs, finalized a memorandum covering the “historical use of citizenship on census inquiries”. Mr. UTHMEIER forwarded the memorandum to Mr. COMSTOCK, who then forwarded the memorandum to Secretary ROSS and Cced Ms. TERAMOTO. (See Attachments 15a – 15f)

EMAIL CHAIN: On August 14, 2017, Mr. UTHMEIER, forwarded the August 11 memo to Mr. Peter DAVIDSON, DOC, General Counsel, asking for a review. During the email exchange, Mr. UTHMEIER stated, (b) (5) (See Attachment 16)

Allegation #5



Secretary Wilbur Ross (b) (5), (b) (6), (b) (7)(C) ■ ■ when, on May 10, 2018, during testimony before the Senate Appropriations Subcommittee on Commerce, Justice, Science & related Agencies, he answered Senator Brian Schatz’s question, “How can you reassure me that the addition of the citizenship question on the 2020 census was not a political matter” by stating, “We spent a lot of time talking with Justice about the request. We truly believe they think they need it and they are a qualified party to make that request under the procedures.” (Attachment 28, 48 mins) (<https://www.c-span.org/video/?445193-1/commerce-secretary-ross-testifies-fiscal-year-2019-budget-request>)

Keep the video up and move the time to 1hr 18 mins. The next slide references senator Leahy’s question in the same testimony...

Allegation #6



Secretary Wilbur Ross (b) (5), (b) (6), (b) (7)(C) ■ [REDACTED], on May 10, 2018, during testimony before the Senate Appropriations Subcommittee on Commerce, Justice, Science & related Agencies, he answered Senator Patrick Leahy’s question, “Why the sudden interest in the question when the (Justice) department didn’t seem to have a problem with voting rights?” by stating, “Well the Justice department is the one who made the request of us.” (Attachment 28, 1hr 18 mins) (<https://www.c-span.org/video/?445193-1/commerce-secretary-ross-testifies-fiscal-year-2019-budget-request>)

Connections



(b) (5)

[Redacted text block]

(b) (5), (b) (6), (b) (7)(C)

[Redacted text block]

(b) (5)

[Redacted text block]

(b) (5)

[Redacted text block]

Connections



(b) (5), (b) (6), (b) (7)(C)

Connections



(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

(b) (5) [Redacted text block]

Connections



(b) (5), (b) (6), (b) (7)(C)

[Redacted text block consisting of approximately 14 horizontal black bars of varying lengths]

(See Attachment 9)



EMAIL: On August 30, 2017, Mr. NEUMAN emailed Dr. HOFELLER asking if the language in the following excerpt was correct (See Attachment 39):

“We understand that the Bureau personnel may believe that ACS data on citizenship was sufficient for redistricting purposes. We wanted the Bureau, to be aware that two recent Court cases have underscored that ACS data is not viable and/or sufficient for purposes of redistricting. Two important citations from these cases are as follows: Bartlet v Simpson; lullac v perry "Relevant numbers must account for citizenship in order to determine the groups opportunity to elect candidates in order to determine the groups opportunity to elect candidates...pg 4 lulac v.”

EMAIL: On August 30, 2017, Dr. HOFELLER responded to Mr. NEUMAN by saying “Mark: Dale just read it, and says it is fine as written. Tom”. (See Attachment 40)

* “Dale” was Dr. Hofeller’s business partner, Mr. Dalton Lamar Oldham.



TEXT MESSAGE: On October 6, 2017, Mr. NEUMAN sent Mr. GORE a text message with Mr. NEUMAN'S draft letter which contained language approved by Dr. HOFELLER a week earlier. (See Attachment 41)

* Attachment 32b is a full page printed version of this text message.

EMAIL Chain: On October 8, 2017, between 2:56pm and 6:54pm, Secretary ROSS and Mr. DAVIDSON exchanged emails with the subject line: "Re: Letter from DOJ", wherein Secretary ROSS requested a "status". Mr. DAVIDSON replied that he was speaking with Mr. NEUMAN who was relaying notes from a meeting the previous week. (See Attachment 42)

TEXT MESSAGE: On October 8, 2017, approximately 7:09pm, Mr. DAVIDSON texted Mr. NEUMAN stating, "Thx...He appreciated the update and your help". (See Attachment 43)



DEPOSITION: On October 8, 2018, Mr. NEUMAN testified in Federal Civil Court (Case 1:18-cv-02921-JMF) that he has known Dr. Thomas HOFELLER, (a Republican redistricting expert), for “25 years” and that Mr. NEUMAN had spoken to Mr. HOFELLER several times during the transition. Mr. NEUMAN further answered (b) (6), (b) (7)(C)

Covington & Burling, LLP, question, “Did the issue of how states might use citizenship data from the decennial census in deciding how to draw legislative districts come up in your conversations with Mr. Hoffler?” by stating, “I don't believe so. Again, you know, when you -- these are conversations long ago, but it -- it -- I don't think so. Because it -- again, it's not the kind of thing that he would talk about.”

Mr. NEUMAN also testified that he was “familiar” with the draft DOJ Letter; however, he did not author it. (See Attachment 32a Page 3, 20, 41, and Attachment 32b)



DEPOSITION: On March 7, 2019, Mr. John GORE, principal deputy assistant attorney general for the DOJ's Civil Rights Division, gave testimony to the House of Representatives Committee on Oversight and Government Reform. When asked if he had any conversations with anyone about an addition of a citizenship question, Mr. GORE stated that he spoke to “three individuals at the Department of Commerce, Peter Davidson, who I understood to be the general counsel with the Department of Commerce; James Uthmeier, U-T-H-M-E-I-E-R; Wendy Teramoto, T-E-R-A-M-O-T-O. And around October of 2017, I had a conversation with a man named Mark Neuman. I believe he spells his last name N-E-U-M-A-N.”

Mr. GORE received a “hand delivered” memorandum about the citizenship question from Mr. UTHMEIER.

(b) (5)

Mr. GORE spoke to Mr. NEUMAN and “reviewed some documents and information regarding the census” that Mr. NEUMAN provided, including “a draft letter that would request reinstatement of the citizenship question on the census questionnaire.” (See Attachment 33)

Conclusions for Allegations 4, 5, 6



(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)



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