United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 116th CONGRESS, FIRST SESSION

Vol. 165 WASHINGTON, WEDNESDAY, JULY 17, 2019 *No. 120—Book III*

House of Representatives

RECOMMENDING THAT THE HOUSE FIND WILLIAM P. BARR AND WILBUR L. ROSS JR., IN CONTEMPT OF CONGRESS—Continued

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Printed on recycled paper.

SUPPLEMENTAL VIEWS

Memorandum for Business Meeting Was Properly Issued

On June 11, 2019, Ranking Member Jordan sent Chairman Cummings a letter contending that the Committee's memorandum for the business meeting on June 12, 2019, was not sent to Committee Members in compliance with Committee rules.[215]

The following day, prior to the Committee's business meeting, Chairman Cummings sent a letter responding to Ranking Member Jordan's concerns and explaining his interpretation of the Committee's rules.[216]

During the business meeting, Rep. Mark Meadows raised a point of order regarding this issue, and Chairman Cummings ruled that the Committee had complied with its rules. Rep. Meadows appealed the ruling of the Chairman, and his appeal failed by a vote of 15 to 20.[217]

As Chairman Cummings explained in his letter and at the Committee's business meeting, in the previous Congress, Committee Rules provided that the Chairman of the Committee circulate a memorandum to Committee Members at least 72 hours before a Committee meeting. In the 115th Congress, Committee Rule 2(f) stated:

Every member of the Committee, unless prevented by unusual circumstances, shall be provided with a memorandum at least 72 hours before each meeting or hearing explaining: (1) the purpose of the meeting or hearing; and (2) the names, titles, background and reasons for appearance of any witnesses.

Earlier this year, the Committee voted unanimously to adopt rules for the 116th Congress. Those rules included a change to Rule 2(f). Instead of requiring 72 hours' notice, the rules required three days' notice:

Every member of the Committee, unless prevented by unusual circumstances, shall be provided with a memorandum at least three calendar days (excluding Saturdays, Sundays, and legal holidays, unless the House is in session on such days) before each meeting or hearing explaining: (1) the purpose of the meeting or hearing; and (2) the names, titles, background and reasons for appearance of any witnesses.

---

[215] Letter from Ranking Member Jim Jordan, Committee on Oversight and Reform, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (June 11, 2019) (online at https://republicans-oversight.house.gov/wp-content/uploads/2019/06/2019-06-11-JDJ-to-EEC-re-Business-Meeting-Agenda.pdf).

[216] Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Ranking Member Jim Jordan, Committee on Oversight and Reform (June 12, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-06-12.EEC%20to%20JJ%20re%20Business%20Meeting.pdf).

[217] Committee on Oversight and Reform, *Business Meeting* (June 12, 2019) (online at https://oversight.house.gov/legislation/markups/a-resolution-recommending-that-the-house-of-representatives-find-the-attorney).

The purpose of this change was to conform the Committee's rules to the rules of the House of Representatives. The timing set forth in the Committee's rules is drawn from House rule XI, clause 2(g)(3)(A), which states:

> The chair of a committee shall announce the date, place, and subject matter of ... a committee meeting, which may not commence earlier than the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which members have notice thereof.

House rule XI, clause 2(g)(3)(A) has been interpreted by the House Parliamentarian as including the day on which the notice is sent and the day on which the business meeting is scheduled to occur. Committee staff confirmed this interpretation on June 11, 2019.

Chairman Cummings interpreted Committee Rule 2(f) in the same manner as House Rule XI, clause 2(g)(3)(A) to include the day on which the memorandum is sent and the day on which the business meeting is scheduled to occur. In his letter to Ranking Member Jordan, he explained that it would "be illogical to interpret our rules as allowing the notice of a business meeting to be sent after the memorandum." He also explained that this interpretation is further supported by Committee Rule 2(e), which provides: "The Chair of the Committee or a subcommittee shall announce the date, place, and subject matter of a meeting or hearing pursuant to House Rule XI, clause 2(g)(3)(A)." Finally, Chairman Cummings offered that if the Ranking Member believed any uncertainty remained, he "would entertain a request to amend our Committee rules to resolve this confusion."[218] The Ranking Member did not request an amendment to the Committee rules.

During the business meeting, Chairman Cummings also identified a second, independent reason that the Committee did not contravene Committee Rules. Committee Rule 2(f) provides that the requirement to provide a memorandum ahead of a Committee meeting does not apply in "unusual circumstances." As the Chairman explained, the fact that the Ranking Member first raised a "novel technical issue" with Committee rules "that has never been raised over the past six months certainly would qualify under that provision."[219] As the Chairman also noted, this provision has been exercised by Chairmen in previous Congresses, and Committee Republicans did not object to its use while they were in power. For example, in 2016, Chairman Jason Chaffetz gave less than 48 hours' notice for the testimony of then-Federal Bureau of Investigation Director James Comey regarding his decision to recommend against the prosecution of Hillary Clinton. Finally, the Chairman reiterated the offer in his letter to entertain

---

[218] Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Ranking Member Jim Jordan, Committee on Oversight and Reform (June 12, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-06-12.EEC%20to%20JJ%20re%20Business%20Meeting.pdf).

[219] Committee on Oversight and Reform, Business Meeting (June 12, 2019) (online at https://oversight.house.gov/legislation/markups/a-resolution-recommending-that-the-house-of-representatives-find-the-attorney).

any requests from Ranking Member Jordan to amend the Committee rules to resolve any lingering confusion.[220] The Ranking Member declined to offer any clarifying amendment.

In this case, there is no question that Members of the Committee had ample notice that the Committee planned to hold a meeting to vote on contempt resolutions for Attorney General Barr and Secretary Ross.[221] No Committee Members took issue with the adequacy of the notice they received for the business meeting, and no Committee Members claimed that they were unaware of the business meeting.

---

[220] Committee on Oversight and Government Reform Democrats, *Chaffetz Demands Emergency Hearing with FBI Director Less Than 48 Hours After Recommendation in Clinton Case* (July 6, 2016) (online at https://oversight.house.gov/news/press-releases/chaffetz-demands-emergency-hearing-with-fbi-director-less-than-48-hours-after).

[221] *See, e.g.,* Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Attorney General William P. Barr, Department of Justice (June 3, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-06-03.EEC%20to%20Barr-DOJ%20re%20Census.pdf); Committee on Oversight and Reform, *Barr and Ross Must Produce Census Documents by Tomorrow to Avoid Contempt* (June 5, 2019) (online at https://oversight.house.gov/news/press-releases/barr-and-ross-must-produce-census-documents-by-tomorrow-to-avoid-contempt); Committee on Oversight and Reform, *Statement on Refusal of Barr and Ross to Produce Subpoenaed Census Documents to Avoid Contempt Vote* (June 7, 2019) (online at https://oversight.house.gov/news/press-releases/cummings-issues-statement-on-refusal-of-barr-and-ross-to-produce-subpoenaed); Committee on Oversight and Reform, Notice of Business Meeting (June 10, 2019).

[redacted]

[redacted]

HGO066101

INTERVIEW OF JOHN M. GORE, ESQUIRE

Thursday, March 7, 2019

House of Representatives

Committee on Oversight and Government Reform

Washington, D.C.

The Interview in the above matter was held in Room 6400, O'Neill House Office Building, commencing at 9:29 a.m.

Staff Present: S. Tori Anderson, Oversight Counsel; Russell M. Anello, Chief Oversight Counsel; Susanne Sachsman Grooms, Majority Staff; [redacted] Stephen Castor, Republican Staff; Caroline Nabity, Republican Staff; Ellen Johnson, Republican Staff.

On Behalf of the Witness: Josh Gardner, Special Counsel, Department of Justice; Kira Antell, Acting Deputy Assistant Attorney General, Department of Justice, Legislative Affairs; Brett Shumate, Deputy Assistant Attorney General, Department of Justice.

EXHIBIT INDEX

E X H I B I T S

(Attached to the transcript)

GOVERNMENT		PAGE
Exhibit 1	Email chain; top email dated 9-18-17 from Wendy Teramoto to John Gore; 0002636 - 2639	48
Exhibit 2	Letter dated December 12, 2017, from Arthur E. Gary to Dr. Ron Jarmin; four pages	65
Exhibit 3	Email dated 12-22-17 from Ron S. Jarmin to Karen Kelley	146

Ms. Anderson. This is a transcribed interview of John Gore, conducted by the House Committee on Oversight and Reform. This interview was requested by Chairman Elijah Cummings as part of the Committee's oversight of the 2020 census, including the decision to add a citizenship question.

Can you please state your full name and spell your last name for the record, Mr. Gore.

Mr. Gore. John Matthew Gore, G-O-R-E.

Ms. Anderson. My name is Tori Anderson. I work as a majority counsel for the Committee on Oversight and Reform. I first want to thank you for coming in today for this interview. We appreciate you being willing to speak with us voluntarily.

At this time I'll ask the additional staff in the room to introduce themselves for the record before I begin, and then we can go through the rules.

Mr. Anello. Russell Anello, majority staff.

Ms. Sachsman Grooms. I'm Susanne Sachsman Grooms from the majority.

[redacted]

Mr. Castor. Steve Castor with the Republican staff.

Ms. Nabity. Caroline Nabity with the Republican staff.

Ms. Johnson. Ellen Johnson, Republican staff.

Mr. Shumate. Brett Shumate, DOJ.

Ms. Antell. Kira Antell, DOJ.

Mr. Gardner. Josh Gardner, DOJ.

Ms. Anderson. So, before we begin, I would like to go over some ground rules for this interview. First we can go over the structure of the transcribed interview.

The witness interview will proceed as follows: The majority and minority staffs will alternate asking you questions, one hour per side per round.

The majority staff will begin and proceed for an hour, and the minority staff will then have an hour to ask questions. And, also, just let me know if I'm going too fast.

Thereafter the majority staff may ask additional questions and so on.

We will alternate back and forth in this manner until there are more no questions from either side and the interview will be over.

During the interview, we will do our best to limit the number of people who are directing questions at you during that given hour. That said, from time to time, following-up or clarifying questions may be useful. If that's the case, we will hear from additional people around

the table.

Presence of counsel. Do you have personal counsel with you today?

Mr. Gore. No. I -- department counsel is here today.

Ms. Anderson. I understand that you do not have a personal attorney with you today but, instead, have agency counsel with you. Would agency counsel please identify himself.

Mr. Gardner. Josh Gardner.

Ms. Anderson. Do you understand that agency counsel represents agency and not you personally?

Mr. Gore. Yes, I do.

Ms. Anderson. And are you choosing to have agency counsel with you in the room today?

Mr. Gore. Yes, I am.

Ms. Anderson. We'll now discuss court reporter transcription. This is a -- there is a court reporter taking down everything I say and everything you say to make a written record of the interview. For the record to be clear, please wait until I finish each question before you begin to answer, and I will wait until you finish each response before asking you the next question.

The court reporter cannot record nonverbal answers such as shaking of your head so it's important that

you answer each question with audible, verbal answers.

Do you understand?

Mr. Gore. Yes.

Ms. Anderson. Clarifying questions. We want to answer a question -- we want you to answer our questions in the most complete and truthful manner possible so we are going to take our time.

If you have any questions or do not understand any of the questions, please let us know. We'll be happy to clarify or repeat the question for you.

Do you understand?

Mr. Gore. Yes.

Ms. Anderson. If you -- if I ask you about conversations or events in the past and you are unable to recall the exact words or details, you should testify to the substance of those conversations or events to the best of your recollection. If you recall only a part of the conversation or event, you should give us your best recollection of those events or parts of the conversations that you recall.

Do you understand?

Mr. Gore. Yes.

Ms. Anderson. If you need to take a break, please let us know. We are happy to accommodate you. Ordinarily we take a five-minute break at the end of each

hour of questioning, but if you need a break before that, just let us know.

However, to the extent there is a pending question, I would just ask that you finish answering the question before we take a break.

Do you understand?

Mr. Gore. Yes.

Ms. Anderson. Although you are here voluntarily and we will not swear you in, you are required by law to answer questions from Congress truthfully. This also applies to questions posed by congressional staff in the interview.

Do you understand?

Mr. Gore. Yes.

Ms. Anderson. If at any time you knowingly make false statements, you could be subject to criminal prosecution.

Do you understand?

Mr. Gore. Yes.

Ms. Anderson. Is there any reason that you are unable today to provide truthful answers in this interview?

Mr. Gore. No.

Ms. Anderson. Please note if you wish to assert a privilege over any statement today, that assertion must comply with committee rules. Committee Rule 16(c)(1)

states that "For the chair to consider assertions of privilege over testimony or statements, witnesses or entities must clearly state the specific privilege being asserted and the reason for that assertion on or before the scheduled date of testimony or appearance."

In addition, Committee Rule 16(c)(3) states, "The only assertions of executive privilege that the chair of the Committee will consider are those made in writing by an executive branch official authorized to assert that privilege."

Do you understand?

Mr. Gore. Yes.

Ms. Antell. I want to mention at this point, I understand what you've requested. And at this point, at this point in the accommodation process, Mr. Gore is going to be able to answer questions that are related to the Department's request to the Census Bureau to add a citizenship question to the census that can be answered without compromising the ongoing litigation or other executive branch confidentiality interests.

Ms. Sachsman Grooms. Is that some kind of a privilege?

Ms. Antell. We are not asserting privilege. We feel that this is an accommodation process, and we're happy to answer those questions, as I said several times in

email. So I think we'll go through, we'll see the questions that you might have that remain, and we're happy to take that back.

Ms. Sachsman Grooms. So he'll come back in?

Ms. Antell. If that's necessary, or we can do this by writing. We'll sort of see where the process takes us. At this point at this interview, that's what he'll be prepared to answer.

Ms. Sachsman Grooms. Mr. Gore, are you committed to come back to answer those questions?

Ms. Antell. He's not committing to anything. We're committing to fully engage in the accommodation process as we always have.

Ms. Sachsman Grooms. Sure. My question is to Mr. Gore, though.

Mr. Gore, are you committed to come in -- back in to answer those questions for us?

Mr. Gore. I'm not making any commitment today. This is an accommodation process between the Committee and the Department of Justice, and I anticipate that that process will play out in the ordinary course, and whether further information is sought from me or from the Department will be handled through the Office of Legislative Affairs.

Ms. Anderson. Do you have any questions before

we begin?

Mr. Gore. I do not.

Ms. Anderson. I want to note that we're beginning our hour at 9:36.

EXAMINATION

BY MS. ANDERSON.

Q So, Mr. Gore, when did you first have a discussion about the addition of a citizenship question to the 2020 census?

A It was in late August or early September of 2017.

Q When did you first become aware that anyone at the Department of Commerce was interested in a citizenship question?

A Through that discussion late August, early September 2017.

Q Who was that discussion with?

A I received a phone call from two individuals at the Department of Justice, so Attorney General Sessions and Mary Blanche Hankey.

Q They were both on the same phone call?

A Yes.

Q Were you aware of the contents of that conversation prior to their phone call?

A I'm a little confused. Which conversation?

Q Did they just call you, or were you aware that they were calling about a specific purpose when you got that phone call in late August 2017?

A Oh, I see. I had no advance knowledge of what that conversation was about.

Q Okay. At any point did you become aware of the reason why Secretary Ross was interested in adding a citizenship question to the 2020 census?

A Yes.

Q When did you become aware of that?

A Around that same time frame.

Q So around August 2017?

A Late August 2017 or early September.

Q And, so, in that late August, early September 2017 period, that's when you first became aware that the Department of Justice was interested in helping the Department of Commerce with the citizenship question issue?

Mr. Gardner. I instruct the witness not to answer to the extent that it implicates the confidentiality and litigation interests reflected in the Department's letter to the Committee. To the extent you can answer that question without divulging those confidential and litigation interests, you can do so.

Q I'll rephrase. When did you become aware of the

Department of Justice's interest in the Department of Commerce's efforts to add a citizenship question to the 2020 census? Simply when.

Mr. Gardner. Same objection and the same instruction. If you can answer that without divulging anything.

A Consistent with that instruction, I can't answer it.

Ms. Sachsman Grooms. He can't tell us when he became aware?

Mr. Gardner. I think the problem is the predicate.

Ms. Sachsman Grooms. I don't understand.

Mr. Gardner. The predicate of your question assumes something that may or may not be the case. If you want to try to rephrase it, you can do it that way. I am trying to accommodate and I do want to have Mr. Gore testify, so maybe if you can rephrase the question again.

Mr. Anello. If I might, I believe you just stated that you did become aware that Secretary Ross wanted to add a citizenship question, correct?

Mr. Gore. Yes.

Mr. Anello. When did you become aware?

Mr. Gore. I believe I already testified that that was in late August or early September of 2017.

Mr. Anello. How did you become aware?

Mr. Gore. Through the conversation that I had with the Attorney General and Mary Blanche Hankey.

Q Had you had any other conversations prior to that conversation in late August, early September 2017 about an addition of a citizenship question?

A No.

Q At any point did you become aware of why the Department of Justice wanted to support the Department of Commerce in an addition of a citizenship question?

A Yes.

Q When did you become aware of that?

A I think that is maybe not as simple of a question as you're making it sound.

Q Sure.

A I became aware there was -- I became aware of the Department of Commerce's interest in the question in August -- late August, early September 2017, and that there was interest in the Department of Justice in potentially supporting that effort.

Q Okay. And so you became involved in this process at that same time; is that correct?

A That is correct.

Q And so you would put that in that late August, early September time frame still, correct?

A Correct.

Q You said you received a phone call from Attorney General Jeff Sessions and Mary Blanche Hankey, and they were both on that phone call; is that correct?

A That's correct.

Q Was there anyone else present during that phone call besides those two people?

A No, at least not to my knowledge.

Q Sure.

Did you take any contemporaneous notes during that phone call?

A No, I did not.

Q Did anyone at that point tell you not to create documentation about your involvement in that conversation?

Mr. Gardner. I instruct the witness not to answer for the same grounds previously stated.

Ms. Anderson. So, to be clear, the witness is instructed not to answer the question of whether someone told him not to create documentation based on their conversation?

Mr. Gardner. If you're asking about the internal conversations within the Department of Justice, yes. If you want to rephrase the question, we can try it that way.

Q Did Attorney General Jeff Sessions tell you not

to take notes about your conversation in late August and/or early September 2017?

Mr. Gardner. You can answer that question.

A No.

Q Did Mary Blanche Hankey tell you not to take notes during that conversation?

A No.

Q Did anyone else tell you not to create notes about that -- about that conversation?

A No.

Q So you said they initiated that phone call. Did they tell you why they wanted to talk to you at that point?

A I believe that they told me why they wanted to talk to me while we were on the phone call. There was no -- no one told me in advance what to expect from the phone call.

Q Sure.

What did you discuss?

Mr. Gardner. Objection. I instruct the witness not to answer.

Ms. Anderson. What is the basis for that objection?

Mr. Gardner. The same basis I previously stated.

Ms. Anderson. Would you state it again for the

record, please.

Mr. Gardner. Sure. As reflected in our correspondence to the Committee, the Department's confidentiality and litigation interests.

Q Did you do anything in response to that particular conversation that you had with Attorney General Jeff Sessions and Mary Blanche Hankey?

A I don't recall doing anything specifically in response to that conversation.

Q Did you take any action based on that conversation?

A I don't know that it was based on that conversation, but I did take action after that conversation.

Q Did you have any other conversations with Attorney General Jeff Sessions about the citizenship question?

A Yes.

Q How many?

A I believe it arose maybe three or four times.

Q Do you remember when those conversations occurred?

A Generally they occurred between September and December of 2017.

Q You said September and December?

A And December.

Q Do you have any -- do you have any recollection on your next conversation after that initial conversation in August -- late August, early September?

A With Attorney General Sessions --

Q Correct.

A -- or with somebody else?

I'm trying to remember exactly. It probably would have been late September of 2017.

Q Did that conversation occur in person or over the phone?

A In person.

Q Who initiated that conversation?

A That conversation took place as part of a monthly briefing I had with the Attorney General. So every month I had a standing meeting with him to discuss matters related to the Civil Rights Division and its work, and as part of that monthly conversation or briefing, which was a standing meeting, we discussed this issue.

Q Was there anyone else present during this monthly meeting?

A Yes.

Q Who else?

A Rachael Tucker and Ben Aguinaga.

Q If you could spell the last names for the

record, that would be great.

A Sure. Let me also spell Rachael's first name. It's R-A-C-H-A-E-L. Tucker is T-U-C-K-E-R.

Ben is B-E-N. I'm going to do my best with Aguinaga. I think, if I recall, it's A-G-U-I-N-A-G-A.

Q Thank you.

What did you discuss at that meeting?

Mr. Gardner. I instruct the witness not to answer.

Ms. Anderson. On that basis?

Mr. Gardner. Same basis I previously stated.

Q Did you do anything in response to that discussion you had with Attorney General Jeff Sessions?

A I don't recall doing anything specifically in response to that conversation.

Q Did you take any actions as a result of that conversation?

A I don't recall taking any actions as a result of that conversation.

Q Did you conduct any other conversations as a result of that conversation?

A I do not recall doing that.

Q Did you have any other conversations with Mary Blanche Hankey about the addition of a citizenship question?

A I don't recall.

Q Did you have any conversations around that time with anyone else about an addition of a citizenship question?

A Yes.

Q With who?

A Within the Department of Justice I discussed the issue, as I mentioned, with Attorney General Sessions, Mary Blanche Hankey, Rachael Tucker, Ben Aguinaga, Danielle Cutrona, C-U-T-R-O-N-A, Gene Hamilton, all of who -- they were employed by the Office of Attorney General. I eventually spoke with Bob Troester, T-R-O-E-S-T-E-R, who at the time -- is a career lawyer at the Department of Justice but at the time was serving in the Office of the Deputy Attorney General.

I spoke with Rachel Brand, who was then the Associate Attorney General. I spoke with Jesse Panuccio, J-E-S-S-E, P-A-N-U-C-C-I-O, who was Rachel's principal deputy. I spoke with Patrick Hovakimian, H-O-V-A-K-I-M-I-A-N, who at the time was also in the Office of Associate Attorney General.

I eventually spoke later, not in the September time frame, but later, with Bethany Pickett, P-I-C-K-E-T-T, who was in the Civil Rights Division; Chris Herren, H-E-R-R-E-N, in the Civil Rights Division; Arthur Gary,

G-A-R-Y, of the Justice Management Division.

I can recall speaking 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.

I think that's everybody, but if you read back the list, I can tell you if I inadvertently left anybody off.

Q I have Mary Blanche Hankey, Rachael Tucker, Ben Aguinaga -- my apologies if I butchered that -- Danielle Cutrona, Gene Hamilton, Bob Troester, Rachel Brand, Jesse Panuccio, Patrick --

A Hovakimian.

Q Hovakimian. Bethany Pickett, Chris Herren, Arthur Gary, Peter Davidson, James Uthmeier, Wendy Teramoto, and Mark Neuman.

A Right. Is Arthur Gary on the list?

Q Yes.

A Attorney General Sessions, obviously, and then John Zadrozny, J-O-H-N, Z-A-D-R-O-Z-N-Y, who at the time worked for the Domestic Policy Council at the White House. I think that's everybody.

Q So outside of the people you mentioned inside of the Justice Department at the time, how many conversations did you have with third parties about the addition of a citizenship question?

A Can you clarify what you mean by "third parties"?

Q People outside of the Department.

A Anybody outside of the Department.

Q Correct.

A Sure. I had, with Peter Davidson, probably about a dozen phone calls. And with James Uthmeier -- I had one phone call with James Uthmeier where it was just the two of us, and I think James participated in one or two phone calls that involved Peter Davidson and me as well. And I spoke one time with Wendy Teramoto, and I spoke one time with Mark Neuman, and one time with John Zadrozny.

Q Do you recall when your conversation was with Mark Neuman?

A I think it was in early October of 2017. Late September, early October. I'm pretty sure it was early October.

Q Were these conversations that occurred with people who were not in the Justice Department initiated by you or initiated by those parties? And we can -- we can return to some -- to the Department of Commerce later, but

specifically with regard to Mark Neuman, was that conversation initiated by you or by Mark Neuman?

A Not by me.

Q Was it by Mark Neuman or by somebody else?

A So Mark Neuman did call me, but I -- it was Peter Davidson who mentioned Mark Neuman to me, and then Mr. Neuman called me.

Q And you discussed the citizenship question with Mark Neuman?

A Yes, I did.

Q What was the nature of those discussions?

Mr. Gardner. I instruct the witness not to answer.

Ms. Anderson. On what basis?

Mr. Gardner. Same grounds.

Q Did you do anything -- is Mark Neuman employed -- a government employee?

A I don't know whether he's a government employee. I understood Mr. Neuman to have been at least formerly an employee at the Department of Commerce or the Census Bureau, I'm not sure which. And I understood he was an advisor to the Department of Commerce on issues related to the 2020 census or at least the issue of whether to reinstate a citizenship question on the 2020 census questionnaire.

Mr. Anello. Can I just clarify a question for counsel. Are you instructing the witness not to answer about a conversation with somebody who is not a federal employee?

Mr. Gardner. He was an advisor to the Commerce Department.

Mr. Anello. But he was not employed by the Commerce Department, correct?

Mr. Gardner. What do you mean, was he being paid by the Commerce Department? Mr. Gore can answer that question. I will represent to you that Mr. Neuman was an advisor to the Commerce Department. And on that basis I instruct him not to answer about the substance of his conversations.

Ms. Sachsman Grooms. Do you know more information about Mr. Neuman's employment or advising to the Commerce Department?

Mr. Gardner. I'm not here to testify.

Ms. Sachsman Grooms. You have just testified to us so you have represented to us --

Mr. Gardner. No, I just repeated back what Mr. Gore just said.

Ms. Sachsman Grooms. -- that he was an advisor in some capacity that you think makes him somehow protected by this ongoing litigation aspect, which is not a

privilege.

Mr. Gardner. Is there a question? I'm sorry.

Ms. Sachsman Grooms. Yes. My question is, what on earth would be the basis for not answering a question about a conversation with somebody who is not employed, even by the federal government?

Mr. Gardner. The confidentiality and litigation interests I previously stated.

Ms. Sachsman Grooms. Is there something about the conversation with Mr. Neuman that would impact the ongoing litigation?

Ms. Antell. At this point I understand that you have an interest in this. I'm happy for Mr. Gore to continue answering questions. I don't know that it's helpful for this back-and-forth to continue regarding what Mr. Gardner knows about this.

Ms. Sachsman Grooms. He did decide to make a representation on the record.

Mr. Gardner. I just repeated what Mr. Gore said.

Mr. Gore. I believe I'm the one who testified that I understood that Mr. Neuman was advising the Department of Commerce on this issue.

Q Did you do anything in response to your conversation with Mark Neuman?

A I reviewed -- yes, I did.

Q What did you do?

Mr. Gardner. You can answer that question to the extent you can do so without divulging confidential or litigation-based interests the Department has.

A I reviewed some documents and information regarding the census.

Q I'm sorry, I just missed the first part.

A I reviewed some documents and information regarding the census.

Q Were those documents and information provided to you or pointed you to?

A Yes.

Q Which one? Sorry.

Mr. Gardner. I instruct the witness not to answer. I'm sorry, I misunderstood your question. Can you rephrase your question. I apologize.

Ms. Anderson. Sure.

Q Did he provide the documentation to you or did he point you to the documentation?

A He provided it.

Q Was that information public information or internal private information?

A Public information.

Q What was it?

A He provided some information regarding the census, historical documents about the census. He handed me a pamphlet that was -- had a chart in it that documented which questions had been on the census in various years.

Q Was that all he provided you?

A No, he also provided me a draft letter.

Q A draft letter of what?

A It was a draft letter that would request reinstatement of the citizenship question on the census questionnaire.

Q Did he tell you where he got that draft letter?

Mr. Gardner. I instruct you --

A No.

Q Did any language in that letter appear in the letter that the Department of Justice sent to the Department of Commerce on December 12th, 2017?

Mr. Gardner. I instruct the witness not to answer.

Ms. Anderson. On what basis?

Mr. Gardner. The same basis.

Mr. Anello. Can I ask you a question. Was the draft letter that he handed you, was it addressed from the Department of Justice to the Department of Commerce?

Mr. Gardner. Same instruction.

Mr. Anello. So just to be clear, you've told

us that he gave you a draft letter, but you're being instructed not to tell us to whom the draft letter was addressed. Is that the instruction?

Mr. Gardner. You're asking about the contents of the letter. I'm instructing him not to answer those questions, correct.

Q Besides the pamphlet and the draft letter, was there anything else that he provided you?

A No.

BY MR. ANELLO.

Q The draft letter that he provided you, had you requested that he provide you with that draft letter?

Mr. Gardner. You can answer.

A No.

Q Had somebody else asked him to provide that draft letter to you?

A I don't know.

Q Why did he give it to you?

Mr. Gardner. I instruct the witness not to answer.

Q Do you know why he gave it to you?

A I don't, actually.

Q Did you agree with the contents of the letter?

Mr. Gardner. I instruct the witness not to answer.

Q Did the letter -- the draft letter that he gave you propose that a citizenship question should be added in order to assist with VRA enforcement?

Mr. Gardner. I instruct the witness not to answer.

BY MS. ANDERSON.

Q Did the letter contain any rationale for an addition of a citizenship question?

Mr. Gardner. I instruct the witness not to answer.

BY MR. ANELLO.

Q When you -- I apologize for skipping around a little bit with the questions here. I appreciate your indulgence.

Mr. Gardner. Sure.

Q When you drafted the letter that eventually was sent to the Department of Commerce on December 12th, were the words in that letter all your own? I can rephrase if that's not clear.

Mr. Gardner. If you can try to rephrase that.

Q You created the first draft of the letter that eventually was sent to Secretary Wilbur Ross requesting a citizenship question, correct?

A That's correct.

Q When you made your first draft, were the words in that first draft your own?

Mr. Gardner. To the extent you can answer that question without divulging the Department's confidentiality and litigation interests, you may do so.

A I actually don't know how to answer that question because I believe there were -- I believe that there were words that came from cases, so I'm not sure how to answer that question.

Q Aside from quotations from case law, were there any words that were not your own?

Mr. Gardner. Same objection. Same instruction. If you can answer that question without divulging those interests, you may do so.

A Not that I recall.

Q Were any -- when you wrote your letter, did any information that you received from anybody outside the Department of Justice play a role in what you wrote in that first draft?

Mr. Gardner. I instruct the witness not to answer.

Q Did any information that you received from somebody who is not a federal employee play a role in the letter that you drafted?

Mr. Gardner. I instruct the witness not to answer.

BY MS. ANDERSON.

Q Okay. I want to go back to kind of that initial point where you became involved in the citizenship question issue, okay?

And you said you had spoken with several other people, both inside and outside of the Department. One of those people inside of the Department -- do you know who James McHenry is?

A I do know James McHenry.

Q Where is he?

A I don't know that I ever discussed the issue with him. I believe he's mentioned in -- I certainly know who he is, but he's mentioned in some documents, and I don't recall whether I had a conversation with him about this issue.

BY MR. ANELLO.

Q You described a conversation in late August or early September with the Attorney General and with Mary Blanche Hankey, correct?

A That's correct.

Q And you stated that -- I believe, that during

that conversation you learned that Secretary Ross wanted to add a citizenship question to the census, correct?

A I don't know if that was my testimony.

Q Did you learn during that conversation from the Attorney General that Secretary Ross was interested in adding a citizenship question to the census?

A Now you've changed the question and, so, yes.

Q And I believe you also stated a few minutes earlier that around that same time you learned that there was some interest at the Department of Justice in cooperating with that request.

A I'm not sure if cooperating is the right word, but, yes, I had learned that there was interest in the Department of Justice in examining whether something could be done to support that.

Q Did Attorney General Sessions tell you in that conversation in late August or early September that he personally had an interest in helping the Department of Commerce add the citizenship question to the census?

Mr. Gardner. I instruct the witness not to answer.

Q Did the Attorney General tell you that the Department had an interest in assisting the Department of Commerce in adding a citizenship question to the census?

Mr. Gardner. I instruct the witness not to

answer.

Mr. Anello. If I might, I believe the witness has just stated that he learned that the Department of Justice at this time period had an interest in potentially helping the Department of Commerce add the citizenship question. So the only question I'm asking now is did the Attorney General tell you that.

Mr. Gardner. I understand your question.

Mr. Anello. So you're telling me that that -- the fact of the knowledge is not something you would object to, but who gave him that knowledge is objectionable to you?

Mr. Gardner. You're asking about a conversation between Mr. Gore and the Attorney General. I instruct the witness --

Mr. Anello. Mr. Gore has told us that the Attorney General told him that the Department of Commerce wanted to add a citizenship question. So I'm asking any --

Mr. Gardner. I understand. I completely understand. If you can rephrase --

Mr. Anello. I fail to understand -- I fail to understand why this question is objectionable.

Mr. Gardner. If you can try to rephrase the question, I'm happy to let Mr. Gore testify to the extent he can, consistent with our litigation and confidentiality

interests.

Q You stated a moment ago that you learned around this time that the Department of Justice had an interest in assisting the Department of Commerce with adding a citizenship question to the census, correct?

A I believe that's what I said, yes.

Q Did you learn that during a phone call with the Attorney General and Mary Blanche Hankey?

Mr. Gardner. I instruct the witness not to answer.

Ms. Sachsman Grooms. He's already answered, though.

Mr. Gardner. Then why are you asking again? I don't think he did answer that question.

Q I'll rephrase.

You learned that information either in late August or early September, correct?

A That is correct.

Q Did you learn that information from somebody at the Department of Commerce?

A What information?

Q Information that you just said you learned, the information that the Department of Justice was interested in assisting the Department of Commerce in adding a citizenship question. Did you learn that information from

somebody at the Department of Commerce?

A No.

Q Did you learn that information from somebody at the Department of Justice?

A Yes.

Q Who at the Department of Justice told you that?

Mr. Gardner. I'm going to instruct the witness not to answer.

Ms. Sachsman Grooms. Who at the Department of Justice did you learn that information from?

Mr. Gardner. Same instruction.

Ms. Sachsman Grooms. So the parameters aren't around the conversation itself? They're not around the words within the conversation. They're around his knowledge set also?

Mr. Gardner. I couldn't be more clear. I'm sorry. I'm not trying to be difficult with you. You're asking questions that directly implicate the Department's confidentiality and litigation interests. I instruct him not to answer. Mr. Gore is here to answer questions, and we're trying not to be obstreperous. So if you can come up with a different way to ask these questions, we're happy to facilitate that.

Q So you've testified -- you told us that you did

not learn that from somebody at the Department of Commerce, and you did learn it from somebody at the Department of Justice.

Did you learn it from somebody in the Civil Rights Division?

Mr. Gardner. Go ahead.

A No.

Q Did you learn it from somebody in the Deputy Attorney General's Office?

A Excuse me.

Mr. Gardner. I think at this point I'm going to instruct the witness not to answer.

Q Did you learn it from somebody at the Attorney General's Office?

Mr. Gardner. Same instruction.

Q I have one more question about that first conversation that you said you had with the Attorney General and Mary Blanche Hankey. You said you took action -- some actions after that conversation. What were the actions you took after that conversation?

A I conducted some legal research and some general research regarding the census.

Q What research did you conduct?

Mr. Gardner. I instruct the witness not to answer.

Q Did you conduct research about the citizenship question?

Mr. Gardner. So at that level of detail, you can answer that question.

A Yes.

Q Were you directed by somebody to do so?

Mr. Gardner. I'm going to instruct not to answer.

Q Was it your own decision to conduct that research?

Mr. Gardner. Same instruction.

Q Aside from conducting research, did you take any other action?

A Not in specific response to that conversation that I can recall. I did, as I mentioned, have conversations with many people about the issue, and as I've already stated, eventually I wrote the first draft of a letter on behalf of the Department of Justice.

Q What was the next action you took after -- after that conversation?

A I'm sorry, which conversation?

Q The conversation with the Attorney General. What was the next action you took related to the citizenship question after that?

A As I've just testified, I conducted some legal

research and some general research regarding the census.

Q And then after that, what was the next step?

A Again, I'm not clear on all of the sequencing as it played out, but I did have conversations with many of the people on the list who I just named regarding this issue.

BY MS. ANDERSON.

Q Did you provide that legal research to anyone else inside the Department of Justice?

A I discussed that legal research with other individuals within the Department of Justice.

Q Who?

A I discussed it eventually with the Attorney General, Rachael Tucker, Gene Hamilton, Danielle Cutrona, Rachel Brand, Jesse Panuccio, Patrick Hovakimian, Bob Troester.

Q It's fair to say everyone you listed before?

A Pretty much everybody. There may have been one or two people I didn't, but ...

Q Did you discuss your legal research with anyone outside of the Department of Justice?

A Yes, I did.

Q Is it anyone else who's not mentioned in that list that you described earlier?

A No.

Q Was it everyone who's on that list that you said earlier?

A More or less everyone. I don't know if I discussed legal research with Mark Neuman, but I certainly discussed it, I think, with everyone else on that list.

Q Including those three people you mentioned from the Department of Commerce?

A Not Ms. Teramoto. And I can't remember whether I discussed it with Mr. Zadrozny. I think not, but I can't remember.

Q What was your initial conclusion after you conducted your legal research?

Mr. Gardner. I instruct the witness not to answer.

Q At some point you became aware that the Department of Commerce and the Department of Justice had had conversations prior to your involvement in the citizenship question; is that correct?

A Yes, at some point I did become aware of that.

Q Who informed you of those conversations?

A I can't remember how I became aware of those, whether someone informed me or whether it was because there's a memo in the record in one of the litigation cases that was shown in my deposition written by Earl Comstock.

It's a memo to the file or something like that. I can't remember if it's because I saw that document or because somebody told me, but at some point I became aware that conversations had occurred prior to my involvement in the issue.

Q Who from the Department of Justice was involved in those conversations that you are aware of?

A Again, I'd have to go back in my memory to the memo that Mr. Comstock wrote, which I don't have right in front of me, but I believe he mentions having spoken to Mary Blanche Hankey and to James McHenry, and also that he spoke to Gene Hamilton, who at that time was at the Department of Homeland Security. Later he joined the Department of Justice.

Q Did you ever become aware of the contents of those conversations that occurred between Mary Blanche Hankey, Gene Hamilton, or anyone else at the Department of Justice and the Department of Commerce?

A Only -- only what's reflected in Mr. Comstock's memo, which I believe is dated September 8th, 2017.

Q Okay. So to be clear, you did not become aware of those conversations after having spoken with anyone at the Department of Justice about them?

A I don't think so. Not that I recall.

Q And you also became aware of conversations that

occurred between Secretary Ross and Attorney General Jeff Sessions; is that correct?

A Yes, I became aware of the conversations.

Q And those conversations were about the addition of a citizenship question; is that correct?

A Again, I wasn't a party to those conversations, but that's my understanding.

Q Sure.

Were you aware of more than one conversation that occurred between Attorney General Jeff Sessions and Secretary Ross about an addition of a citizenship question?

A I believe so, yes.

Q How many conversations?

A I think I'm aware of maybe two or three conversations.

Q When did those conversations occur that you are aware of?

A Again, I wasn't a party to those conversations. It's my understanding that there was at least one conversation before I received a phone call from the Attorney General and Mary Blanche Hankey, and there may have been one or two other conversations thereafter.

Q So just to get the timeline, one before that late August, early September phone call that you received from Mary Blanche and Attorney General Jeff Sessions; is

that correct?

A That's my understanding.

Q Sure.

A I don't know. Again, I wasn't a party to any of those conversations. I don't know.

Q Sure.

And then a few that happened after that point, did those conversations, to your knowledge, happen before the December 12th, 2017, letter?

A Yes.

Q So in that September to December time frame.

A Correct.

Q Were you aware of anyone else being present during those conversations with Attorney General Jeff Sessions and Secretary Ross?

A No, I am not. I have no awareness one way or the other. I should specify. Since I wasn't a party to the conversations, I don't know.

Q Did you become aware at any point about the contents of those conversations between Secretary Ross and Attorney General Jeff Sessions?

A Yes, at least some of the content.

Q Did you become aware of the content of the conversation that happened before you became involved in the citizenship question?

A Yes.

Q When did you become aware of that?

A On that phone call, meaning the late August, early September phone call.

Q And then did you become aware of the contents of the conversation that happened between September, that phone call, and the December 12th letter?

A Yes, at least some of the contents.

Q Who made you aware of the contents of those conversations?

A It was the Attorney General.

Q What did you discuss during those conversations?

Mr. Gardner. I instruct the witness not to answer.

Q Let me just be very clear.

The conversation that happened prior to -- when they called you in September -- late Septem- -- I'm just going to say early September from now on if that's okay.

A That's fine.

Q Prior to the conversation that happened in early September 2017, after the Attorney General informed you of the conversation and the contents of that with Secretary Ross, what did he tell you about the contents of those conversations?

Mr. Gardner. I instruct the witness not to

answer.

Q And as per the conversations that happened between Attorney General Jeff Sessions and Secretary Ross between early September and December 12th, 2017, what were the contents of those discussions between Secretary Ross and Attorney General Jeff Sessions?

Mr. Gardner. Same instruction.

BY MR. ANELLO.

Q Did -- I want to ask you a few more questions about what you learned about the conversations between Secretary Ross and the Attorney General. Did you ever learn that Secretary Ross and the Attorney General -- let me start here.

You learned that they discussed the citizenship question, correct?

A That's correct.

Q The Attorney General told you that.

A That's correct.

Q Did he tell you that they discussed how adding a citizenship question could impact census participation by immigrants and noncitizens?

Mr. Gardner. I instruct the witness not to answer.

Q Did the Attorney General tell you that he

discussed with the Secretary of Commerce how adding a citizenship question could impact congressional apportionment?

Mr. Gardner. I instruct the witness not to answer.

Q Did he tell you that he -- "he" being the Attorney General -- discussed with the Secretary of Commerce that adding citizenship could impact the outcome of any election?

Mr. Gardner. I instruct the witness not to answer.

Q Did the Attorney General tell you that he and Secretary Ross discussed concealing the process by which the citizenship would be added to the census?

Mr. Gardner. I instruct the witness not to answer.

Mr. Anello. Just to be clear, is the Department of Justice asserting some confidentiality over concealment from the public of the nature of the decision?

Mr. Gardner. I'm just plainly stating that your question implicates the Department of Justice's confidentiality and litigation interests.

Mr. Anello. My question is whether the Department of Justice was concealing information.

Mr. Gardner. No, your question was about a

specific conversation that the Attorney General and the Secretary of Commerce had that was then disclosed to Mr. Gore.

Mr. Anello. Let me rephrase that question then.

Q Did the Department of Justice seek to conceal -- did anyone at the Department of Justice seek to conceal any part of the process by which the citizenship question was added to the census?

A Absolutely not. I don't think there's any basis for that implication.

Q Well, that's something we can talk about off the record, but ...

Did you ever -- were there ever any conversations about concealing discussions between the Department of Commerce and the Department of Justice on this topic?

Mr. Gardner. Between whom? I'm sorry, I'm not clear what your question is. Can you repeat it.

Q Were you ever involved in any discussions about efforts to conceal communications between the Department of Justice and the Department of Commerce regarding the citizenship question?

Mr. Gardner. You can answer.

A No.

BY MS. ANDERSON.

Q One of the people you said that you spoke with from the Department of Commerce around this time, in that early September time frame, was Wendy Teramoto; is that correct?

A Yes. I believe I spoke to her on September 16th of 2017.

Q And Peter Davidson asked you to reach out to Wendy Teramoto?

A That's correct.

Q When did he ask you to do that?

A It would have been maybe a few days before that.

Q Why did he ask you to reach out to Wendy?

A There was some confusion at the Department of Commerce as to what my job was, and Ms. Teramoto had been tasked with scheduling a call between the Secretary of Commerce and the Attorney General and thought that I could be of assistance in that endeavor.

Q So you said that you spoke with her on September 16th. Is that correct?

A That's correct.

Q And that conversation was about -- or at least about in part the citizenship question; is that correct?

A I understood it to be about scheduling a call

for the Secretary and the Attorney General to discuss that topic.

Q Did you discuss that topic with Wendy Teramoto?

A Not really, no.

Q Yes or no? Did you discuss it or did you not discuss it?

A I would -- no. I mean, we really discussed the scheduling issue, and she asked if I could help schedule a call on that topic, and I said that's not my job and I'll put you in contact with somebody who can potentially help you manage schedules.

Q And you said before, was that the only conversation you had with Wendy Teramoto?

A Yes. It's the only one I can recall.

Q So after -- after you received -- or you spoke with Wendy Teramoto, you connected her with Danielle Cutrona, correct?

A That's correct.

Q And Danielle works at the Department of Justice; is that correct?

A Yes.

Q You connected them on September 16th as well; is that correct?

A That's correct, yes.

Q At that point when you introduced Danielle to

Wendy, you said that Danielle is the person to connect about the issue we discussed today --

A That's correct.

Q Presumably September 16th, correct?

A Yes.

Q -- scheduling to connect Secretary Ross with the Attorney General Jeff Sessions to discuss the citizenship question.

A That's correct.

(Exhibit 1 was marked for identification and attached to the transcript.)

Q So I've handed you a copy of a document that I've marked now as Exhibit 1. Do you have a copy of that? I can hand you the one that I've actually marked. We can trade.

Mr. Gardner. Why don't you trade.

Ms. Anderson. We can trade. I think that's a little bit --

Q I handed you a document that's marked as Exhibit 1.

A Okay.

Q I would like you to turn to the second page of that document, the bottom of which -- it's numbered. It's numbered 0002637. Are you on that page?

A I am.

Q And this email, the email I'm going -- there are several emails on the page so I'm just going to point you towards a particular email.

Oh, I'm sorry.

If you just want to review that document for just one second.

A Sure. (Document review.)

Ms. Anderson. Just give me one second.

Mr. Gardner. Take your time.

Q So the top of that -- I'm actually going to refer you to the first page, 2636. The top of that is an email that's dated September 18th, 2017. And it's an email from Wendy Teramoto to John Gore. That would be you; is that correct?

A It appears to be.

Q Sure.

That email says, "Hi. AG and Sec spoke. Please let me know when you have a minute."

Presumably that's referring to Attorney General Jeff Sessions and Secretary Ross; is that correct?

A I think that's correct.

Q Did you speak to Wendy Teramoto on that day?

A I don't recall speaking to her after this email.

Q And then I want -- I want to go to the second page -- again, sorry, 2637. There's an email there, the

second email on the page from September 17th, 2017, at 12:10 p.m. from Danielle Cutrona to Wendy Teramoto.

In that Danielle writes, "From what John said, it sounds like we can do whatever you all need us to do."

Did you say that to Danielle Cutrona?

Mr. Gardner. I instruct the witness not to answer.

Q What did you mean by that?

Mr. Anello. I'm sorry, are you -- this email is -- this is an email that I believe you actually produced in litigation, correct?

Mr. Gardner. That's correct.

Mr. Anello. So are you saying the witness is not permitted to talk about this document?

Mr. Gardner. I didn't say that.

Mr. Anello. I think he's been asked simply whether the statement in the document is accurate.

Mr. Gardner. He's been asked whether Ms. Cutrona's reference to a statement that John might have told him is accurate. That's what I've objected to. These aren't John's words.

Ms. Sachsman Grooms. So is this a different objection?

Mr. Gardner. No, it's the exact same instruction.

Try to rephrase it. See if we can do it that way.

Q She then says, "The delay was due to miscommunication." Did you tell Danielle Cutrona that the delay was due to miscommunication?

Mr. Gardner. I instruct the witness not to answer.

Q She then says, "The AG is eager to assist." Did you tell Danielle Cutrona that the AG was eager to assist?

Mr. Gardner. Same instruction.

Q Did you have a discussion with Danielle Cutrona prior to connecting her with Wendy Teramoto?

A Yes, I did.

Q When was that conversation?

A It was on the phone on September 16th, 2017.

Q Did you communicate to Danielle Cutrona why you were connecting her with Wendy Teramoto?

Mr. Gardner. You can answer that with a yes or no.

A Yes, I did.

Q What did you tell her the reason was for you to connect her to Wendy Teramoto?

Mr. Gardner. I instruct the witness not to answer.

Q Did you tell her that you wanted to connect her

to schedule a phone call between the Attorney General and Secretary Ross?

Mr. Gardner. You can answer that.

A Yes.

Q Did you tell her anything else on that phone call?

Mr. Gardner. You can answer that with a yes or no.

A Yes.

Q Did you tell her anything else on that phone call regarding the addition of a citizenship question?

Mr. Gardner. You can answer that with a yes or no.

A Yes.

Q Did you tell her at any point during that conversation about why the Department of Justice was interested in adding a citizenship question to the census?

Mr. Gardner. You can answer that question yes or no.

A Yes, to the extent I understand your question.

Q Did you tell her on that phone call anything about the Attorney General's interest in a citizenship question?

Mr. Gardner. I'm sorry, can you rephrase that? That question was a little confusing.

Ms. Anderson. Sure.

Q Did you communicate to Danielle Cutrona on that phone call anything about what the Attorney General's interest was in a citizenship question?

Mr. Gardner. I instruct the witness not to answer.

Q Did you communicate with Danielle Cutrona on that phone call anything that you had learned from your discussion or conversation with Wendy Teramoto?

A Anything I learned from Ms. Teramoto?

Q Yes.

A Yes.

Q Were the contents of what you told Danielle Cutrona that you had learned from Wendy Teramoto anything besides scheduling?

A No.

BY MR. ANELLO.

Q You've read this email from Danielle Cutrona, correct?

A Yes, I have.

Q Is it accurate?

Mr. Gardner. I instruct --

Q Are the representations she made accurate?

Mr. Gardner. I instruct the witness not to

answer.

Q When you spoke to Danielle Cutrona, did you tell Ms. Cutrona what the Attorney General had communicated to you?

Mr. Gardner. I instruct the witness not to answer.

Mr. Anello. I'm only asking for a yes or no.

Mr. Gardner. You're asking about the content of the conversation.

BY MS. ANDERSON.

Q Okay. So after you received an email from Wendy Teramoto saying AG and Secretary Ross spoke, you learned that they had, in fact, spoken around that time frame; is that correct?

A That is correct.

Q Did you become aware of the contents of the conversation that happened -- I'm going to put it as September 17th, is that okay, for the purposes of this?

A On or about.

Q On or about September 17th --

A Sure.

Q -- did you become aware of the contents of that particular conversation between Secretary Ross and Attorney General Jeff Sessions?

A Am I aware of the contents? Yes, I believe so, at least some of the contents.

Q Who made you aware of that?

A I think I heard from Danielle Cutrona about it.

Q Was she on the phone call?

A Maybe -- I don't know. I wasn't a party to that call. And I can't recall whether I specifically heard from the Attorney General about that conversation or not.

Q What did you learn the Attorney General and Secretary Ross spoke about on that phone call?

Mr. Gardner. I instruct the witness not to answer.

Q Did Attorney General Jeff Sessions ask you to do anything after his phone call with Secretary Ross?

Mr. Gardner. You can answer that with a yes or no.

A No.

Q Did anyone else ask you to do anything after Secretary Ross and Attorney General Jeff Sessions spoke on or about September 17th, 2017?

A No.

Q Did the Department of Justice's position change regarding the addition of a citizenship question after Attorney General Jeff Sessions and Secretary Ross spoke on or about September 17th, 2017?

Mr. Gardner. I'm going to instruct the witness not to answer.

Q Were you aware of any conversations between Attorney General Jeff Sessions and Kris Kobach regarding a citizenship question?

A No.

Q Were you aware of any conversations between Attorney General Jeff Sessions and Steve Bannon about the addition of a citizenship question?

A No.

Q Were you aware of any conversations with anyone else at the Department of Justice and Kris Kobach about an addition of a citizenship question?

A No.

Q Were you aware of any conversations between anyone at the Department of Justice and Steve Bannon about an addition of a citizenship question?

A No.

Q Were you aware of any conversations between Attorney General Jeff Sessions and the White House about an addition of a citizenship question?

A So, can I just ask for clarification? You keep asking me, was I aware, were you aware. Are you talking about a specific time frame or at any point in time?

Mr. Anello. Is the question you're trying to

clarify --

Mr. Gardner. At what point did he know.

Mr. Anello. -- once you became aware of the conversation?

Mr. Gore. Well, that assumes there's a predicate, but you're asking a past-tense question, "Were you aware?" Are you referring to on September 17th or 18th or ever?

Q No, I'm referring to ever, yes.

A I'm not aware of any conversations between the Department of Justice and Attorney General Sessions and any of the other individuals you've named.

Q Okay. So I think we paused --

A At any point in time.

Q Sure.

I think we paused on whether Attorney General Jeff Sessions had spoken with anyone at the White House regarding this issue. Is your answer -- it remains no on that as well?

A I have no awareness that he ever spoke with anyone at the White House regarding this issue.

Q Do you have any awareness of anyone speaking -- from the Department of Justice speaking with anyone at the White House besides the conversation you identified with John Zadrozny in October of 2017?

A No, but I will clarify that, as I recall that conversation with Mr. Zadrozny, it was a conference call in which Rachael Tucker and Gene Hamilton also participated, but I don't recall anyone else participating on that call.

Q And no other --

A So it wasn't just -- I'm just trying to clarify. It wasn't just Mr. Zadrozny and me. Rachael and Gene were also on the call, as I recall.

Q And that was your only conversation, that you're aware, people from the Department of Justice and people from the White House.

A That is correct.

Q Okay. You said one of the other people -- let me just -- you said one of the other people from the Department of Commerce that you had a discussion with was Peter Davidson, or discussions with.

A That is correct.

Q And Peter Davidson initiated those conversations with you; is that correct?

A Yes, he did.

Q How did he get in contact with you?

A Called me.

Q Did he tell you why he called?

A Yes.

Q Why did he call?

A He called to discuss the Department possibly requesting reinstatement of a citizenship question on the 2020 census questionnaire.

Q Did he tell you how he came to come in contact with you in particular at the Department of Justice?

A I believe he did.

Q How?

Mr. Gardner. I instruct the witness not to answer.

Q Did Peter Davidson tell you that someone had told him to contact you?

Mr. Gardner. Same instruction.

Q Had you spoken with anyone else at the Department of Commerce prior to Peter Davidson contacting you?

A No.

Q So he was your first point of contact from the Department of Commerce; is that correct?

A That is correct.

BY MR. ANELLO.

Q So that conversation with Mr. Davidson, you said he told you the reason he was calling was to inquire about the Department of Justice requesting a citizenship question being added on the census. That's what you just said,

correct?

A I don't think I said to inquire. He called me to discuss that issue.

Q To discuss the Department of Justice making that request.

A Potentially, yes.

Q And why did he tell you he was calling to discuss that?

Mr. Gardner. Same instruction.

Q Did he express a particular view on whether the Department of Justice should make that request?

Mr. Gardner. Same instruction.

BY MS. ANDERSON.

Q Did he provide a reason why or did he ask you why you might be interested in making that request?

Mr. Gardner. Same instruction.

Q Did you -- what did you do after -- did you do anything in particular after you had your conversation with Peter Davidson?

A No.

Q Did you follow up with anyone else following your conversation with Peter Davidson besides Wendy Teramoto?

A No. Just to clarify, I had many conversations

with Mr. Davidson, and I'm answering with respect to all of them. I don't recall doing anything in particular in response to his phone calls.

Q How many conversations would you say you had with Peter Davidson between -- between when he first contacted you --

A At any time?

Q Yes.

A I think I said earlier it was about a dozen.

Q Were they all by phone?

A Yes, they were.

Q Did you take any notes during those phone calls?

A No, I did not.

Q Was anyone else ever on those phone calls besides you and Peter Davidson except for that one or two phone calls you mentioned with James Uthmeier?

A No.

Q Did Peter Davidson provide any documentation to you throughout this time period?

A No, he did not.

Q Did you provide any documentation to Peter Davidson besides perhaps the legal research that you mentioned earlier?

A No, and I didn't provide him any legal research, but we discussed it. I provided him no documents.

Q You called Peter Davidson on November 28th, 2017; is that correct?

A If you say so. I don't recall exactly when I -- that I called him on that date, but I think there's a document in the record indicating that I did call him on that date.

Q And that would be consistent with your recollection that you had a dozen phone calls in this time period.

A Yes, that I had phone calls with him over that time period. He initiated the first one. I can't remember if I ever initiated phone calls or if I just simply called him back every time. But we talked over the phone.

Q And during those dozen or so conversations, you discussed the citizenship question; is that correct?

A That's correct.

Q Did you discuss where DOJ was in their production of a possible request to the Department of Commerce?

Mr. Gardner. I instruct the witness not to answer.

Q You testified -- you stated earlier that he contacted you to see whether the Department of Justice would consider making a request to the Department of Commerce; is that correct?

A I think what I said is that he contacted me to discuss the possibility of the Department requesting reinstatement of the citizenship question on the census questionnaire.

Q Did you discuss that topic at every single one of your later conversations or at some point did you discuss other things?

A We certainly discussed that at every one of our conversations. I can't remember -- I believe I had a conversation with him at one point where he was quite literally on a ski slope, and so I asked him how the ski conditions were on that particular day. But other than that -- we may have exchanged pleasantries, but every conversation we had was about that topic.

Mr. Anello. Did he -- did Mr. Davidson tell you in any of those calls that he was calling on the instructions of Secretary Ross?

Mr. Gardner. I instruct the witness not to answer.

Mr. Anello. Did he provide any information to you about Secretary Ross' views on the citizenship question?

Mr. Gardner. Same instruction.

Q Did you discuss with the Attorney General the fact that you had been in contact with Peter Davidson?

Mr. Gardner. I instruct the witness not to answer the question.

Q Did you discuss with the Attorney General anything that you had discussed with Peter Davidson?

Mr. Gardner. Same instruction.

Q Did you do anything in response to David -- your discussions with Peter Davidson?

A I don't recall doing anything specifically in response to those discussions.

Q Did Peter Davidson direct you to look at any documents or any particular legal research during your conversations?

Mr. Gardner. Same instruction.

Ms. Sachsman Grooms. Why so many conversations with Peter Davidson?

Mr. Gardner. Objection. To the extent you can answer that question without divulging confidential or litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

Mr. Gore. I don't know.

Q Did he always call you?

A Yes.

Ms. Sachsman Grooms. Was he checking on the status? Was that what was going on?

Mr. Gardner. Same instruction.

Mr. Anello. Did the calls stop once the DOJ sent its letter?

Mr. Gore. I can't recall when the last time was when I spoke to Mr. Davidson.

Ms. Anderson. I think we've reached our hour. If we could go off the record for five minutes.

(A brief recess was taken.)

Mr. Castor. Back on the record. It's 10:47. I'm Steve Castor with the Republican staff.

I'm going to mark as Exhibit 2 the December 12th letter.

(Exhibit 2 was marked for identification and attached to the transcript.)

EXAMINATION

BY MR. CASTOR.

Q At the time you were the acting Assistant Attorney General for the Civil Rights Division when this letter was prepared?

A Yes, I was.

Q Could you help us understand why that letter went out under the Justice Management Division letterhead and why Mr. Gary signed it?

A Sure, I would be happy to. Mr. Gary serves as general counsel of the Justice Management Division, and one

of his responsibilities on behalf of the Department of Justice is to make formal request to the Census Bureau whenever the Department is seeking addition of questions to the census questionnaire or the American Community Survey.

So Mr. Gary had signed these letters -- letters such as this one in the past on behalf of requests that had been made by the Department, including by the Civil Rights Division. There had been a request related to the American Community Survey, I believe, sent in about 2016, and Mr. Gary is the point person -- think of him as the point person between the Department of Justice and the Census Bureau for formal requests like this one. So it is consistent with standard practice and process in the Department of Justice for Mr. Gary to be the signatory for this letter.

Q And you obviously drafted the letter?

A As I testified before, I wrote the first draft of the letter, and I think the record reflects that several other people made comments or suggested edits to the letter, including Mr. Gary. And this is the final product, represents the Department's letter.

Q You testified earlier that you first started looking at this question the end of August, beginning of September, and this letter is dated December 12th. Is it fair to say that the Department was considering the issue

at the heart of the matter here for that time period?

A Yes.

Q September, October, November, it's about three and a half months; is that fair?

A Sounds about right.

Q Is it fair to consider that as a thoughtful effort by the Justice Department before this letter was sent?

A Yes.

Q And by "thoughtful," I think if the letter was sent, you know, on September 1st or September 2nd, you might be -- you might not be able to call that a thoughtful process, but this is the product of three months of careful consideration; is that fair?

A Yes, that's fair.

Q Could you walk us through -- there's a Supreme Court oral argument on April 23rd; is that correct?

A That sounds right, yes.

Q And the Supreme Court is looking at the New York case, but there are several other pieces of litigation surrounding this question right now. Is that correct?

A That's my understanding, yes.

Q Are you aware of the various cases?

A I have limited knowledge and awareness of the cases. Those cases are being handled by the Civil Division

of the Department of Justice on behalf of the Department of Commerce, which is the defendant in those cases. The Civil Rights Division is not involved in those cases. We're not counsel of record. We're not managing the day-to-day on those cases, so what I know is what I've seen reported in the press, and I've read portions of the New York decision.

There's a case in New York, a case in California, and a case in Maryland, and I think there might be one more case. And I understand the Supreme Court has granted certiorari before judgment in the New York case.

The Department filed its opening brief on the merits in that case yesterday, and I do believe the oral argument before the Supreme Court is on April 23rd.

Q It hasn't been considered at the appellate level; it went from District Court straight to the Supreme Court; is that right?

A That's correct.

Q That's relatively unusual, right?

A In my experience, it is.

Q And would you say it's fair to conclude that this is a unique issue, relatively important question for the Supreme Court to reach down and take it right out of the District Court level?

A Like I said, it's very unusual. I have a fair amount of experience litigating before the Supreme Court.

I'm not aware of any case where this has happened before. It certainly never happened in any of my cases. I can't characterize what the court's thinking on that might be, but I can certainly say it's an unusual procedural posture for a case to arrive in the Supreme Court.

Q I know you're not litigating the case, but what are the questions presented as you understand them? You got into this a little bit with your May testimony before the Committee.

A I don't know much about the issues presented except that the appeal on behalf of the United States and the Department of Commerce is an appeal from Judge Furman's findings of fact and conclusions of law. And, as I have a very limited understanding of what Judge Furman decided in that 277-page opinion, but I think he found a violation of the Administrative Procedure Act, I would imagine that that's being appealed from, as well as any other claims he may have upheld in that opinion.

Q Bear with me with this question. We're not as expert in the history of the citizenship question by the Census Bureau, but as I understand it, the question has been asked of -- by the census probably since the beginning of time. Is that fair?

A I don't know exactly when it was started. What I can tell you is that there is a citizenship question on

the census questionnaire that went to every household through the 1950 census, as I recall. It was later moved to what's called the long form of the census, which was a longer form with more questions, as the name implies, that went to about one out of every six households from 1960 to 2000.

That was the data -- that long-form questionnaire included a question about citizenship. And that was -- data derived from that long-form questionnaire is what the Department of Justice and other plaintiffs relied upon when bringing Section 2 vote dilution cases where citizenship rights are at issue or can be at issue.

There's no dispute that the Department of Justice and other plaintiffs bringing Section 2 vote dilution cases need citizenship data and need that data at the block level. The question here is where that data comes from.

So between 1960 and 2000, it came from the long form of the census questionnaire. After the 2000 census, in about 2004 and 2005, the Census Bureau decided no longer to use the long-form questionnaire and started using what's called the American Community Survey. The American Community Survey is sent, I believe, to about one out of every 38 households every year across the country.

It's a very long survey. I think it takes 45

minutes to an hour to complete. It asks all kinds of questions about demographics and socioeconomics. I think one of the questions is whether you have a dishwasher in the house or something like that, but it does ask a citizenship question.

And that -- the results of the American Community Survey are aggregated into one -- now one- and five-year rolling averages. There used to be a one-year, three-year, and five-year. They got rid of the three-year. Now they're one-year and five-year averages.

That's the data that was used in the 2010 redistricting cycle with respect to citizenship, came from the American Community Survey. And it was used both by map drawers and by litigants litigating cases under Section 2 or under the one person, one vote mandate of the Constitution or racial gerrymandering cases or other cases that might have arisen under state law.

Q You walked through in the first hour the sort of a roster of folks that you spoke with about this issue.

A Correct.

Q Would you be able to go through and help us understand where these people fit into the big picture.

A I can certainly tell you --

Q To the extent you know.

A -- some job descriptions about each of these

people.

Q Yeah.

A Obviously, Attorney General Sessions was the Attorney General. Thank you.

Mr. Gardner. He's here all day.
Mr. Gore. I take tips too.

A The Office of Attorney -- within the Office of the Attorney General, the Attorney General has a chief of staff and has what are called counsel or senior counsel to the Attorney General. It's his personal staff that advises him. And so, Rachael Tucker, Danielle Cutrona, and Gene Hamilton were all counsel to the Attorney General. I believe at the time Mary Blanche Hankey -- I had a conversation with Mary Blanche Hankey. That was her title as well. She moved on to a different role in the Department. She may have been the White House liaison at the time as well. I can't recall.

Underneath -- within the organizational structure of the Department of Justice, the next office below the Office of Attorney General is the Office of the Deputy Attorney General. The current Deputy Attorney General is Mr. Rosenstein. At the time, I spoke with Bob Troester, as I mentioned before, T-R-O-E-S-T-E-R. Mr. Troester is a long-time career lawyer at the Department of Justice. He was an Assistant United States Attorney in

Oklahoma. I think he's on his second or third tour of duty now as the acting U.S. Attorney in Oklahoma. He at the time was on detail to the Office of Deputy Attorney General, serving as what's called an Associate Deputy Attorney General, and was our point of contact in that office for civil rights-related issues.

I mentioned Rachel Brand was the Associate Attorney General. That made her the third highest ranking official in the Department after Mr. Sessions and Deputy Attorney General Rosenstein. Her principal deputy was Jesse Panuccio. And Patrick Hovakimian -- I can't remember if he was the deputy or -- I think he was a deputy in her office, but he was our point of contact in that office. He had the civil rights portfolio.

Q And then the Justice Management Division, does that report up through the Associate Attorney General?

A I don't know.

Q Or is it up through the DAG?

A It's one of -- either one or both. I'm not sure. I don't know where it fits in the org chart.

Q And the Civil Rights Division reports up through the DAG?

A We report through the Associate Attorney General, then to the Deputy Attorney General and then to the Attorney General.

Q Okay.

How about Bethany Pickett? Have we talked about her yet?

A Yes, Bethany Pickett was counsel in the Civil Rights Division's Office of Assistant Attorney General, which was the office where I worked, and that's about it.

Q How long were you the Acting Assistant Attorney General for the Civil Rights Division?

A I was Acting Assistant Attorney General for just over 15 months while the Senate very thoroughly deliberated the nomination of Eric Dreiband.

Q And currently you are the principal deputy?

A That's correct.

Q How many deputies are there in the Civil Rights Division?

A There's a principal deputy and then four deputies.

Q How is the work split up? What are the various responsibilities of the four deputies?

A So each of the deputies has a portfolio. So the Civil Rights Division is divided into sections that perform the law enforcement mission of the division, and each deputy has oversight over some number of those sections depending on what their portfolio is. And things flow up from the sections to the deputy level and then ultimately

to the principal deputy and the Assistant Attorney General where appropriate.

Q Did you have any assistance in preparing the December 12th letter? Did you have any staffers helping you?

A As I mentioned before, I think the record reflects that I received comments on and edits to the letter from a variety of people.

Q But you primarily drafted it, or did you assign it out to a more junior attorney?

A I did the drafting.

Q Prior to coming to the Justice Department, did you litigate any Section 2 Voting Rights Act claims?

A Yes, I did.

Q Could you maybe just explain a little bit about your experience in that space.

A Certainly. So I handled a number of voting rights cases while I was in private practice. I had a case, a racial gerrymandering case with Virginia. I had some Section 2 and equal population, one person, one vote cases in South Carolina and New York as well.

Q So you have some experience in this topic area?

A Yes, I do.

Q Did you personally believe that the Justice Department needed additional information from the census as

reflected in this letter?

Mr. Gardner. I'm going to instruct the witness not to answer.

Q Did you believe in the content of the letter that you were preparing or was it simply an assignment?

Mr. Gardner. Same instruction.

Q If the Justice Department received more accurate citizenship data, would that be of assistance in performing the mission of enforcing the Voting Rights Act?

A I believe the Department's letter speaks for itself and states what the Department's position is on that question. The Department is always looking at the academic literature, looking for the best sources of data to carry out its law enforcement mission. That's certainly what we do in the Civil Rights Division. We want to have the best, most complete, most comprehensive, and most accurate set of data on all the questions that we deal with, including a citizenship question where it's implicated by Voting Rights Act cases.

So, our goal is to collect as much data as we possibly can to identify potential violations of the Voting Rights Act and bringing enforcement actions where appropriate.

Q And the most accurate data; is that correct?

A Sure.

Q Mr. Zadrozny, of the Domestic Policy Council, how did he enter into the mix here?

A As I believe I've testified previously, both today and in my deposition, I was -- I received an invite to be on a conference call in which Mr. Zadrozny also participated, along with Rachael Tucker and Gene Hamilton.

Q And when was that?

A I believe it was in October of 2017.

Q Do you remember the -- how long that call lasted?

A Half an hour, maybe.

Q Were there any requests from Mr. Zadrozny?

Mr. Gardner. Objection.

Q Were there any marching orders?

Mr. Gardner. To the extent you can answer that question without divulging confidential or litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

Mr. Gore. Can I give a yes or no to that?

Mr. Gardner. You may.

A No.

Q Was the information exchanged bilateral or was the Justice Department giving information to the Domestic Policy Council? Was the Domestic Policy Council giving information to you? Could you help us understand sort of

the contours of that call.

Mr. Gardner. Same instruction. To the extent you can answer that question without divulging the confidential and litigation interests of the Department, you may do so.

A What I can say is all four participants who I named who participated in that call spoke during the call.

Q I guess my question was, was the purpose of the call, to the extent you know, because the Domestic Policy Council wanted to hear from you, wanted an update, or was the purpose of the call something else?

Mr. Gardner. Same instruction.

A I don't think I can answer that question consistent with that instruction.

Q Did you ever speak with a little known official named Steve Bannon?

A I have never spoken to Mr. Bannon in my life.

Q Ever speak with any other official with -- associated with the White House?

Mr. Gardner. About the census question?
Mr. Castor. Yes.

A Specifically about the census question, no, just Mr. Zadrozny.

Q Okay. And is that the sum total of your communications with the White House staff about the census?

A About the census, yes.

Q The individuals at the census -- I'm sorry -- at the Commerce Department that you spoke with, obviously we identified Mr. Davidson as the general counsel. And then you named two other people at the Commerce Department, Ms. Teramoto and Mr. Uthmeier?

A Uthmeier.

Q How do they fit into this? Do you know what their jobs were?

A Ms. Teramoto at the time was Secretary Ross' chief of staff, and Mr. Uthmeier was at least at that time employed in the Office of General Counsel of the Commerce Department. I don't know whether he's still in that office or somewhere else, but I understand that he's still with the Commerce Department.

Q Did you ever get a readout from the telephone call between -- or any of the communications between the Secretary and the Attorney General?

Mr. Gardner. You can answer that with a yes or no.

A Yes.

Q Do you know how many communications there were, how many phone calls there were between the Secretary and the Attorney General?

A I think I stated earlier today that I'm aware of

one phone call before I received the late August, early September -- early college football season call from the Attorney General and Mary Blanche Hankey. I believe I'm aware of maybe two further conversations between the Attorney General and Secretary Ross related to this particular issue.

Q Did you get readouts from all of them or ...

A Yes, I did. That's how I know about them.

Q Is it still the position of the Justice Department that the census should include a citizenship question?

A To my knowledge, that remains the position of the Justice Department and the Department of Commerce in the litigation.

Q Did you receive any feedback from other government agencies other than Department of Commerce about the inclusion of that question?

A I'm sorry, at what point in time?

Q After the December 12th letter.

A After the December 12th letter?

Q Yes.

A I don't believe so.

Q Did you ever have any communications with the Department of Homeland Security about the inclusion of this question?

A At what point in time?

Q After the December 12th letter.

A No, I didn't.

Q Or any other -- any other components, such as ICE?

A No.

Q Have you ever been involved with any discussions about use of this data in enforcement actions for immigration?

Mr. Gardner. Are you talking about discussions with Homeland Security?

Q Or other Justice Department officials. I mean, he's just -- he's just testified that after the 12th --

MR. GARDNER. I was just clarifying what your question was.

To be fair, could you just ask the question one more time so we're all clear what you're asking.

Q After the December 12th letter, did you have any communications about use of this data for immigration enforcement matters?

A No, I did not, except I believe I was asked about that when I testified in front of the full committee, and I testified to the best of my knowledge as to how this data could or could not be used, but I'm not an expert on that.

Q So, to your knowledge, is there anybody at the Justice Department that wanted this information for purposes of pursuing immigration enforcement matters?

Mr. Gardner. You can answer that question to the extent you can do so without divulging confidential or litigation interests of the Department. Otherwise, I instruct you not to answer.

A Not to my knowledge.

Q So there's no plan that you're aware of to take this data, use it to prosecute immigration matters?

Mr. Gardner. Same instruction with the same caveat.

A Not to my knowledge.

Q What data does the Civil Rights Division receive from the Census Bureau on a regular basis?

A The Civil Rights Division receives a lot of data from the Census Bureau, but one -- we are a principal consumer of the Census Bureau's data and product, and it falls into a variety of different categories. Virtually all of the data that we use in the Civil Rights Division is publicly available. It's aggregate data. We don't get any individual census responses or any individual questionnaire responses or any data by any individual person. What we get is aggregate data at various levels of census geography, the smallest of which is the census block level.

We get data about citizenship through the American Community Survey. We get socioeconomic data through the American Community Survey. We get racial data, which comes from the short-form census. We also get Hispanic origin or Latino origin data from both the census questionnaire, and then we get certain data related to that from the ACS, including language data.

Every five years the Census Bureau makes determinations about coverage under Section 203 of the Voting Rights Act, which is the language minority provision of that act. And those determinations identify jurisdictions that have to provide voting-related materials, ballots, signs, translators, poll workers in the covered language. That's all done by the American Community Survey every five years.

So, there's a whole host of data that we receive. I'm aware of at least one occasion in which we requested Section 203 data in some kind of table format that the Census Bureau otherwise wouldn't have produced publicly, but other than that, I understand that everything else we've received has been publicly available data, aggregate data.

Q Completely anonymous.

A Completely anonymous.

Q Do you know if the Census Bureau provides data

to any other government agency that's in any other form?

A I imagine the Census Bureau provides data to many government agencies, but I don't have any knowledge of that.

Q But is it all anonymous?

A I would believe so. I don't know particularly. I'm not an expert on that. I don't work at the Census Bureau. Title 13 of the U.S. Code places criminal penalties on unauthorized disclosure of individual census responses or survey responses to the Census Bureau. I don't know how all of that works, but I do know that there are other programs within the government where census data would be at least relevant, if not important to those government programs, so I imagine the Census Bureau shares the data with those agencies.

Q It would be against the law for somebody at the Census Bureau of the Commerce Department to take specific information about a specific person and use that to go find them and prosecute them; is that fair to say?

A I think what -- I think what's -- my understanding -- I haven't studied Title 13 and I'm not an expert in that. My understanding is that individuals at the Census Bureau who handle the individual questionnaires have to sign a nondisclosure agreement and that an unauthorized disclosure of one of those questionnaires or

its contents would be a criminal violation of federal law.

Q So, as we understand it, DOJ exclusively uses the sampling data to determine voting right -- Voting Rights Act violations?

A That's the use -- I'm sorry, which census data?

Q The sampling data.

A That is a use for which we use it in the Civil Rights Division. I don't know if there are other uses.

Q Okay. Maybe it would help to just walk us through the -- what data sampling is for the record and how the Civil Rights Division uses it.

A Data sampling in particular?

Q Yes.

A Or the data we receive from the Census Bureau?

Q The data you receive from the Census Bureau.

A Sure. So as I mentioned, take the American Community Survey, for example. That's a sample of data since it goes to one in every 38 households. It's not given to everybody, so it's not a hard count. And the -- through the ACS, the Census Bureau can generate estimates about -- can extrapolate estimates from the survey responses to a larger population.

And the Census Bureau currently reports the ACS citizenship data estimates at the level of what's called a census block group. A census block group is a collection

of census blocks, usually on -- it's an average of about 39. But it could be fewer or it could be a lot more, depending on how the census has drawn its block groups in a particular geographic area.

And so we take that data and conduct further estimates to extrapolate it down to the census block level. We need census block-level data to identify potential Voting Rights Act violations for investigation and appropriate enforcement actions.

Q Can you explain how both the asking and answering of the citizenship question will help the Department enforce the Voting Rights Act?

A As I said, as I think the letter speaks for itself, the Department's trying to get the most accurate, complete, and comprehensive data on citizenship that it possibly can, just like it tries to get the most accurate, complete, and comprehensive data it can on race or on Hispanic origin or on the language minority issues that are raised by Section 203 of the Voting Rights Act.

We haven't asked for the ACS to go away. Quite to the contrary, the letter requests that the ACS continue both for use in Section 203 cases but also for use in Section 2 cases. It's a data-driven world, and we think if we have more data and the best possible data, we can identify cases and investigations that the Department can

conduct under Section 2 of the Voting Rights Act.

Q Before the September -- late August, early September communication with the Attorney General, was adding the citizenship question something that the Civil Rights Division had planned for or advocated for?

Mr. Gardner. I'm going to instruct the witness not to answer.

Q Can you help us understand how the lack of data prior to, I guess, the current situation impacts the prosecution of Voting Rights Act cases?

A So, as I've explained, we've been making do with the ACS data --

Q Right.

A -- and extrapolating the ACS block group level estimates down to the block level to identify potential investigations and enforcement actions.

Q Right.

A There's, I think, an acknowledgment that the ACS data is an estimate. The Census Bureau puts confidence intervals and margins of error around it. And we don't bring cases unless we can win them. So we've been able to file cases and litigate them under -- using the ACS data.

We would like to get an additional source of data because there may be districts or cases out there where that data provides a clearer picture of what's going

on at the block level and within a particular district or redistricting plan, and we might be able to identify additional cases for investigation and potential prosecution.

Q We may not have time to go through all of this, as we only have about 30 minutes left, but I guess we could start. Could you walk us through the Section 2 cases filed by the Justice Department in 2010 to the extent you can list them all?

A The Justice Department did not file any Section 2 cases in 2010.

Q Do you know if the Justice Department filed any in 2009?

A Yes, the Justice Department filed one case in, I believe it was May 2009. It was a vote dilution case involving a locality in Florida that ultimately was resolved by consent decree.

Q Okay. That's one case in 2009?

A Correct.

Q You said there were zero cases in 2010?

A That's correct.

Q How about in 2011?

A Zero cases.

Q 2012?

A Zero.

Q 2013?

A There were three Section 2 cases filed by the Department in 2013. Only one of those cases was a redistricting case. That's the case, United States versus the State of Texas. It was challenges to redistricting plans drawn by the Texas legislature in 2011 for the State House and for Congress.

Now, ironically at the time the Justice Department filed that lawsuit in 2013, the Texas legislature had already adopted new plans to supersede those 2011 plans. So the case was in a very unusual posture.

The Department filed two other Section 2 cases in 2013. One was a challenge to Texas' voter ID requirement. Another case -- the style was the United States versus the State of Texas. And then there was a case that the Department filed against the State of North Carolina related to voter ID requirement and several other voting-related laws that the North Carolina legislature had enacted.

Q You need data to file these cases, right?

A Yes, you need data to file all of those cases, and you, in particular, need block-level citizenship data to file the redistricting cases and vote dilution cases.

Q How many lawyers are there that work on these

cases?

A I don't -- I don't know exactly. We have a voting section that handles these cases as well as any other voting-related cases under Section 203 of the Voting Rights Act. We also enforce the Uniformed and Overseas Citizens Absentee Voting Act, which protects military voters and other overseas voters. And we enforce the National Voter Registration Act, Help America Vote Act, and the federal laws pertaining to the right to vote.

Q How many lawyers work on Section 2 cases?

A At any given time, I don't know. Any lawyer within the voting section could be staffed on any case arising under any of the statutes that we enforce.

Q Could you list all the cases in 2014?

A There were no -- the Department filed zero Section 2 cases in 2014.

Q Could you list all the cases in 2015?

A The Department filed zero Section 2 cases in 2015.

Q Could you list all the cases in 2016 that were filed?

A The Department filed zero Section 2 cases in 2016.

Q So, any cases filed in 2017?

A Yes, there was a case filed in January 2017,

United States against Eastpointe, Michigan. That is a vote dilution claim brought against Eastpointe's at-large method of electing the city council.

Q How about so far in -- or in 2018?

A The Department filed zero Section 2 cases in 2018.

Q Any this year so far?

A None so far this year.

Q So it's four cases during the previous administration and one case during the current administration?

A The 2017 case was actually filed about ten days before this administration took office. It was filed on, I think, January 10th or something like that. We've continued to litigate that case on behalf of the United States. It's still in District Court. We have, I believe, cross motions for summary judgment pending with the District Court.

Q Does the Justice Department collect any of its own data to enforce the Voting Rights Act or does it rely exclusively on the Commerce Department?

A I'm not aware of the Justice Department collecting any citizenship or demographic data.

Q You get that all from the Census Bureau?

A That data, yes.

Q Has the Civil Rights Division ever requested the raw data from the Census Bureau that could be used to identify ACS respondents?

A I'm not aware of any such request.

Q Has that request ever come up during litigation where it was challenged?

A I'm not sure I understand the question, but to the extent I understand the question, I'm not aware of that ever happening.

Q I think you answered this before, but the responses to the -- any of the information collected from individual respondents on the census can never be used by the Justice Department or any other law enforcement agency in any judicial proceeding. Is that fair?

A I don't know the answer to that question because I haven't studied the issue. It's a legal question about the contours of Title 13. It's my understanding that Title 13 imposes criminal penalties on the unauthorized disclosure of census questionnaire responses or other data collected by the Census Bureau.

I don't know as I sit here today exactly what the contours of that are. I am not aware of the Department of Justice bringing any kind of enforcement action against anyone based on a response to the census questionnaire. I think I may have read an article suggesting there was some

kind of action in the 1970s against somebody who said or did something on a census questionnaire, but I don't know anything about it.

Q What are the penalties if somebody does not fill out the census form?

A Again, I've not studied that question. That's a legal question. I don't know what the answer is to that. I think there may be some penalty somewhere in the federal code about that. I don't know what it is. I will say it's my understanding that the Census Bureau counts all of the information from the census questionnaire that it can, even from an incomplete questionnaire.

So, let's say, I don't know how many questions are on the questionnaire as I sit here today, but let's say there are ten. If somebody answers only eight questions, the Census Bureau will tally the information received in response to those eight questions. It doesn't reject the questionnaire in total. So if somebody for whatever reason doesn't answer a question or answers it in a way that's unintelligible, the Census Bureau still collects from that questionnaire whatever data it can make out.

Q You're required by law to fill out the census form?

A That's my understanding, but as I said, I haven't studied it.

Q But in reality nobody ever gets prosecuted for not filling out their census form, right?

A My understanding is that any such prosecution is extraordinarily rare to vanishing.

Q Are you aware of any ever?

A As I said, I think I read an article suggesting there was -- something happened in the 1970s on this, but I don't know the details of that, and I can't independently verify that that case even exists.

Q Are you aware of any plan to change that? Is the Justice Department talking about possibly prosecuting people going forward for not responding to the census?

Mr. Gardner. I'll instruct the witness not to answer.

Mr. Castor. On what basis?

Mr. Gardner. You're asking about the Department of Justice's deliberations about prosecution plans, correct?

Mr. Castor. Okay.

Mr. Gardner. Is that your question?

Mr. Castor. Right.

Mr. Gardner. Based on confidentiality and litigation interests, I instruct the witness not to answer.

Q I think we had a hearing during 2018, and Justice Department officials said there are, in fact, no plans to prosecute people for failing to respond to the

census. Are you aware of any information to the contrary?

Mr. Gardner. Just to be clear, that's a different question. You asked whether there any discussions in the Department. Now is your question are there current plans? I'll let him answer that question.

A I'm sorry, can you restate your question just so I understand it.

Q Are you aware of any effort to prosecute people for failing to answer the census? As I mentioned, there's been testimony before our Committee that, in fact, there is not a plan to prosecute people for failing to answer the census, and that's testimony from Commerce Department officials.

A I'm not aware of any plan to prosecute.

Q So you're not aware of any reason that that testimony from the Commerce Department is contradicted?

A No, I'm not.

Q How many times have you been asked to testify about this topic? You had your deposition. You had your May 2018 appearance before the Committee. Are there other instances where you've been on the record?

A Today. Those are the only three instances.

Q Okay. So you gave a deposition in the New York case?

A I believe it was -- I think it may have been

designated in other cases as well.

Q And that deposition is the only one that you've given as part of the numerous pieces of litigation?

A Yes. I gave one deposition, and it went the full seven hours allowed by the federal rules.

Q Are you aware of former Kansas Secretary of State Kris Kobach?

A I am aware of Mr. Kobach, yes.

Q Have you ever had any communications with him?

A Not on this issue. I met Mr. Kobach once at a meeting of the National Association of Secretaries of State. He came over to meet during a lunch and introduced himself. I believe that's the only time I ever spoke to him.

Q Do you remember when that was?

A It was in early 2017.

Q Have you ever had any discussions with Stephen Miller at the White House?

A No, I have not.

Q There's a fellow by the name of Thomas Brunell?

A No, I have not, not on this issue.

Q But on different issues?

A Yes. I believe when I was in private practice, I had conversations with Mr. Brunell connected to a voting rights case, but it had nothing to do with the census or

with the Department's request to reinstate a citizenship question on the census questionnaire. Maybe it's Dr. Brunell, too, I'm not sure, but I think he's a doctor.

Q Does the Justice Department have any role in the Commerce Department's submissions to Congress? You know, the Commerce Department submits a census question to Congress at two points in time before it's finalized. Does the Justice Department have a role in that?

A I have no idea.

Q But you probably would know if the -- I mean, if the Justice Department was involved with the process, you know, you would likely know that, right?

A I don't know. I don't know one way or the other.

Q For the 2020 census, Secretary Ross submitted the topics to Congress on March 28, 2017. This is required by Title 13. And then the final questions were submitted in -- a year later. And the question is whether you had any role in that submission, or anyone else in your Department.

A Not to my knowledge. I know I didn't. Not to my knowledge on behalf of the Department of Justice.

Q Who does the Commerce Department consult about the propriety of the various questions that go on the census? Is that handled inside the Commerce Department or

do they seek legal advice from the Justice Department?

A I don't know.

Q Do you know whether the Office of Legal Counsel has any role in helping the Commerce Department with these questions?

A I don't know.

Q In any of your discussions with Mr. Davidson, did that come up? Did he seek your legal counsel on the propriety of this question?

Mr. Gardner. I instruct the witness not to answer to the extent it would -- to the extent it would divulge confidential or litigation-protected information. Otherwise, you may answer the question.

A Yes.

Q What more can you tell us about that?

Mr. Gardner. Same instruction.

Q Anything?

A No.

Q Mr. Gowdy at the May hearing asked the question whether if the Secretary wanted to add what's your favorite movie onto the census, would he be permitted to do so.

Do you know the answer to that question?

A I don't.

Q If you wanted to add a question, what's your favorite movie, what would be the process to get that on

the form? Do you know what type of internal deliberations the Commerce Department officials go through, or the Census Bureau officials?

A I've never worked at the Department of Commerce or Census Bureau. I don't know what process they would follow. I also understand that the legal standard governing addition of questions to the citizenship -- to the census questionnaire is pending in litigation. I don't know what the statute says about that in particular or -- I understand the Secretary is authorized to make that determination, but I don't know under what circumstances, so I really don't know. I'm the wrong guy to ask that question.

Q Okay. Fair enough.

Do you have any independent knowledge of communications Secretary Ross may have had with White House officials about this topic?

A I have no knowledge of any such communications.

Q So you don't know whether somebody at the White House instructed the Secretary to pursue this?

A I have no knowledge on that one way or the other.

MR. CASTOR. I think that's it for now. We can come back if we have additional questions later. Thanks.

Ms. Sachsman Grooms. Let's go off the record.

(A brief recess was taken.)

MS. ANDERSON. Back on the record.

So, for the record, again, my name is Tori Anderson, and the time is now 11:51.

FURTHER EXAMINATION

BY MS. ANDERSON.

Q So, I want to talk a little bit about the third person that you discussed things with at the Department of Commerce. That's James Uthmeier. Is that how you pronounce it?

A Close enough.

Q We'll just stick with that.

You said you also first spoke with him around September of 2017; is that correct?

A That is correct.

Q Did he reach out to you or did you reach out to him?

A He reached out to me.

Q Via phone, via email?

A Phone.

Q Is that the first time you had spoken to him?

A Ever?

Q No, as -- about the citizenship question.

A Yes.

Q Did he tell you why he was reaching out to you?

A Yes. He told me he was reaching out to me to discuss the possibility of the Department of Justice requesting reinstatement of the citizenship question on the census questionnaire.

Q And just so I understand kind of the ordering by which you had contact with the Department of Commerce, you talked to Peter Davidson first and then James Uthmeier and then Wendy, or was it a different order?

A I can't remember whether I spoke with Wendy -- I think I may have spoken with Wendy before I spoke to James. I think there's an email in the record somewhere that says that James called me around September 22nd or something like that.

Q Okay. Did he indicate that anyone had asked him or told him to contact you?

Mr. Gardner. You can answer that yes or no.

A I think so, yes.

Q Who was that?

Mr. Gardner. I instruct the witness not to answer.

Q Was that person inside the Department of Justice?

Mr. Gardner. Same instruction.

Q Was that person inside the Department of Commerce?

Mr. Gardner. Same instruction.

Q You guys discussed the citizenship question, is that correct, on or about that September 22nd date?

A Yes.

Q What did you discuss?

Mr. Gardner. I instruct the witness not to answer.

Q Did he ask you or tell you to do anything in light of that discussion?

Mr. Gardner. Same instruction.

Q Did you do anything based on your conversation with James Uthmeier?

Mr. Gardner. You can answer that to the extent you can do so without divulging confidential or litigation interests of the Department.

A No.

Q You mentioned that you had several conversations with Mr. Uthmeier; is that correct?

A No, I said I had one conversation with him, and then he was a participant in one or two of the phone calls I had with Mr. Davidson.

Q Those conversations with Mr. Davidson and Mr. Uthmeier, were those in the after early September time frame? Is that correct?

A That is correct.

Q In the conversation that you had, when he called you that first time, did you -- did he tell you he was going to provide you any documentation about the citizenship question?

Mr. Gardner. You can answer that with a yes or no.

A Yes.

Q Did he tell you what that was?

A Yes.

Q What was it?

A That was a memorandum.

Q Was there anything else that he was going to send you besides the memorandum?

A I don't know whether he mentioned anything else. I don't recall that.

He did, in fact, send me a handwritten cover note along with the memorandum.

Q What was the memorandum about?

Mr. Gardner. To the extent you can answer that question without divulging any confidential or litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

A The memorandum was about reinstatement of a -- potential reinstatement of a citizenship question on the census questionnaire.

Q Did that memorandum come before or after you did your legal research about the reinstatement of the citizenship question?

A It came during the time I was doing that research.

Q So you had already started doing that research?

A Yes, I had.

Q Did he tell you that the memo you were going to receive was about the reinstatement of the citizenship question on that phone call?

A Yes, he did.

Q Did he tell you anything else about the contents of that memorandum?

Mr. Gardner. I instruct you not to answer.

Ms. Anderson. Sorry, just to be clear, I'm asking him did the conversation just include I will send you a memo, or did it include I will send you a memo and some other?

Mr. Gardner. I see. Okay. To the extent that's the question, you may answer that.

A So as I understand your question, you're asking if he told me he was going to send me anything in addition to the memo?

Q No. My question was --

Mr. Gardner. That was my understanding what

you asked. Try it again.

Q When you were on the phone with him, did he simply tell you I'm going to send you a memorandum about the reinstatement of the citizenship question or did you discuss anything else about the memorandum? Not what did you discuss, did you discuss anything else?

Mr. Gardner. Let's try this one step at a time. You can answer that with a yes or no.

A Yes, we did discuss -- the phone call lasted about 15 or 20 minutes, and I knew Mr. Uthmeier previously. We had been employed at the same law firm. So a bunch of discussion -- I hadn't spoken to him since around January of 2017 when we had come into the government, and so much of the conversation was just a social call to catch back up.

Q Okay. But just to be really clear, he did not just tell you I'm going to send you a memo. You discussed other -- did you discuss other things about the memo?

Mr. Gardner. Once again, you can answer that with a yes or no.

A Yes.

Q When did you receive the memo?

A I don't recall exactly when I received the memo. It was hand delivered to my office with a handwritten cover note, and I don't recall how long it took -- how much time

elapsed between that phone call and when I received the memo.

Q In that phone call when you were talking -- when he informs you he's going to send you a memo, what did you specifically discuss?

Mr. Gardner. I'll instruct the witness not to answer.

Q You said that he -- it came -- it was delivered to you. How was it delivered, that you're aware of?

A All I know is that my assistant brought it to me and said it had been hand delivered. I don't know who delivered it or whether Mr. Uthmeier did it himself or whether somebody else did it. Is that your question?

BY MR. ANELLO.

Q Can I ask a follow-up on that?

A Sure.

Q I don't mean to sound facetious, but you obviously have access to email, correct?

A I do.

Q And Mr. Uthmeier, obviously, has access to email.

A I imagine he does, yes.

Q So, is it fair to say that he could have emailed the memorandum to you if he had wanted to?

A I don't know. You would have to ask him that. I don't know what format he had the memorandum in and whether that would have been possible.

Q Do you know why it was hand delivered to you?

A I don't.

Q Do you know whether he was instructed to hand deliver it to you, Mr. Uthmeier?

A I don't.

Q How often do you receive memorandum -- paper memos from other agencies rather than receiving memorandums in electronic form?

A I don't know.

Q Would you say this was unusual?

A No, not necessarily. I sometimes receive memos in paper rather than through email certainly within the Department, too.

Q My question is from other agencies. Is a memorandum coming from the Department of Commerce -- let's say have you received other hand -- other hand-delivered memoranda from the Department of Commerce?

A Not that I recall.

Q Have you received other hand-delivered memoranda from other agencies, outside?

A I don't believe I received memoranda from any other agencies. This would be the only memorandum I

received from another department or agency, and it was delivered by hand. So I guess, to follow your line of questioning, that makes it usual.

Q I guess that's a definitional question we could quibble with a little bit.

A You were trying to compare it to some other practice, and this is the only other practice I've ever experienced --

Q It sounds like you're saying it's the only time you've ever received a memo from another agency and the only time you've ever received one -- a handwritten memo hand delivered to you, so I would describe it as unusual.

A No, that was not my testimony. What I said was, it's the only time I've received a memorandum from another department, and I have on several occasions received hand-delivered memoranda within the Department of Justice.

BY MS. ANDERSON.

Q When you were on the phone and he informed you that he was going to send you a memo, did you discuss the form of delivery?

A Yes.

Q Did you discuss why he wanted to send it to you?

Mr. Gardner. I'll instruct the witness -- you can answer that with a yes or no.

A Why he wanted to send it to me at all?

Q Sorry. When you discussed the form of delivery, did he tell you at that point in time that it was going to be hand delivered?

A Yes, he did.

Q Did he tell you why it was going to be hand delivered?

Mr. Gardner. You can answer that yes or no.

A Yes, he did.

Ms. Sachsman Grooms. I thought you just said you didn't know why he hand delivered it to you. Do you know why he hand delivered it to you?

Mr. Gore. I know -- I know why he told me he wanted to hand deliver it to me. I don't know why he did it.

Q What did he tell you?

Mr. Gardner. I instruct the witness not to answer.

Q So you received the memo and you received a handwritten note accompanying it; is that correct?

A Yes, I did.

Q Was that the extent of the documentation that you received from Mr. Uthmeier?

A Yes, it was.

Q Was that the extent of the documentation you received from the Department of Commerce?

A That's the extent of the documentation I received from Mr. Uthmeier. As I've testified previously, I got sent documentation from Mr. Neuman, but I did not receive documentation from Mr. Davidson or anyone else at the Department of Commerce.

Q Okay. And, so, the handwritten note and the memo were together; is that correct?

A That is correct.

Q Had Mr. Uthmeier on the phone indicated to you that he was going to be giving you the memo alongside any other notations, any other notes or anything else?

A Not that I recall.

Q Did you discuss -- did you ask -- how do I phrase this.

Did you follow up on any discussion -- on the statement that Mr. Uthmeier made to you about why he wanted to hand deliver the memo? Did you ask any additional questions of him?

A No, I didn't.

Q After you received the handwritten note and the memo, did you talk to Mr. Uthmeier again about those contents -- about the memo or the note?

A Yes, on one of the conversations I had with him and Mr. Davidson, one of the telephone conversations.

Q Is that the only time you discussed with him the

memo and the note?

A Yes. Again, it may have been one or two conversations, but I can recall one in particular.

Q Did you read the memo?

A Yes, I did.

Q Did you read the note?

A Yes, I did.

Q Okay. What did the note say?

Mr. Gardner. I instruct the witness not to answer.

Q Did the note talk about the contents of the memo?

Mr. Gardner. Same instruction.

Q Did the note talk about the citizenship question?

Mr. Gardner. Same instruction.

Q Did the note talk about any other rationales related to the addition of a citizenship question?

Mr. Gardner. Same instruction.

Q Did the note contain any directives or possible decisions or actions you might have to take from there?

Mr. Gardner. Same instruction.

Q Did the note indicate to you that you should include any material in your own personal legal research?

Mr. Gardner. Same instruction.

Mr. Anello. Can I just ask a question. Are you -- one of those questions was whether the note related to the citizenship question. You're saying the witness is not allowed to tell us whether the note related to the citizenship question?

Mr. Gardner. That's a fair clarification. You're right. I think he can answer that high-level question. So please re-ask that. Thank you.

Ms. Anderson. Sure.

Q Did the note relate to the addition of a citizenship question?

A Yes.

Q What did the memo say?

Mr. Gardner. Same instruction.

Q Did the memo talk about the addition of a citizenship question?

A Yes, as I've already stated.

Q Okay. Did it include any legal research?

Mr. Gardner. I instruct the witness not to answer.

Q Did it include anything besides legal research?

Mr. Gardner. Same instruction.

Q Did you show or share the memo with anyone else, or the note? We'll start with the memo. Did you show or share the memo with anyone else?

A So, with respect to the memo, I did not show or share it to anyone with the exception of Kathleen Toomey in the Civil Rights Division, who managed the document collection in the litigation. So once the litigation was filed and document requests were propounded, to which the memo might potentially be responsive, I turned it over to Ms. Toomey for review and potential production or assertion of privilege in the litigation.

Q So that would have been around March?

A I don't recall. It was certainly after the letter was sent on December 12th.

Q Did you show or share the note with anyone else?

A I did the same thing with the note that I did with the memo. I didn't show or share it to -- show it to or share it with anyone until I gave it to Ms. Toomey as potentially responsive to document requests in the litigation.

Q Besides Peter Davidson and James Uthmeier, did you discuss the contents of the memo with anyone else?

A No.

Q Besides Peter Davidson and James Uthmeier, did you discuss the contents of the note with anyone else?

A No, with the exception on both fronts of handing it to Ms. Toomey and telling her what it was.

Q Okay.

Mr. Anello. Why didn't you share the note or the memo with anyone else?

Mr. Gardner. I instruct the witness not to answer.

Mr. Anello. Did it -- I'm not asking the right question then.

Did the memorandum or the note play a role in the Department of Justice's decision to request a citizenship question?

Mr. Gardner. I instruct the witness not to answer.

Mr. Anello. It's just a yes-or-no question I'm asking him.

Mr. Gardner. I understand. I instructed the witness not to answer.

Mr. Anello. Did you consider the memo in drafting the -- sorry. Did you consider the memo and the note from Mr. Uthmeier in drafting the memo that you eventually sent back to the Department of Commerce?

Mr. Gardner. I instruct the witness not to answer.

Q Did any of the language in the note or the memo appear in the draft letter that you made?

Mr. Gardner. Same instruction.

Ms. Sachsman Grooms. I'm sorry, just to

clarify. Did you consider the note or the memo when you drafted the initial draft of this December 12th, 2017, letter?

Mr. Gardner. Same instruction.

BY MR. ANELLO.

Q Did the -- did either the note or the memo discuss the issue of congressional apportionment?

Mr. Gardner. I instruct the witness not to answer.

Q Did your conversations with Mr. Uthmeier involve the discussion of congressional apportionment?

Mr. Gardner. Same instruction.

Q Did the note or the memo discuss whether the addition of a citizenship question would reduce participation in the census by certain groups?

Mr. Gardner. Same instruction. I'm sorry. Same instruction.

Q Did the note or the memo discuss or contain a rationale for the addition of the citizenship question?

Mr. Gardner. I instruct the witness not to answer.

Q Did the note or the memo contain a rationale that was different from the one that the Department of Justice ultimately put in writing?

Mr. Gardner. Same instruction.

Q Did you -- did you describe the note or the memo in your testimony to Congress?

A I don't recall whether it came up in that testimony or not.

Q Was the Attorney General aware or made aware of the note or the memo?

Mr. Gardner. To the extent you can answer that question without divulging confidential and litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

A I don't recall specifically, but I don't think so.

Q Is the existence of the note or the memo inconsistent with his testimony to Congress regarding the process that was followed for the addition of a citizenship question?

Mr. Gardner. I'm sorry. Can you re-ask that question.

Mr. Anello. Sure.
Mr. Gardner. I am not sure I understood it.

Q Secretary Ross has testified about the decision to add a citizenship question to the census, correct? Were you aware of that?

A I'm aware of that generally, yes.

Q And he testified that that request came from the

Department of Justice.

A I'm not familiar with Secretary Ross' testimony or the particulars of it, nor am I Secretary Ross so I can't speak to that testimony.

Q You're not familiar with his testimony?

A I'm aware of the fact that he did testify. I haven't watched or reviewed that testimony, nor would watching it or reviewing it put me in a position really to comment on it since it's his testimony and not mine.

Q Let's just go to your knowledge then. Are you aware of any public testimony about this issue that would be contradicted by the existence of this memo or what is written in this memo? That's the memo from Mr. Uthmeier.

Mr. Gardner. I'm not sure I fully understand your question. But to the extent you understand it and to the extent you can answer without disclosing confidential and litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

A I didn't follow your question. Would you mind restating it.

Mr. Gardner. I'm sorry.

Q Sure. I understand you may not have watched every word of it, of every piece of testimony in this matter, but to the extent that you're aware of any public testimony regarding the addition of a citizenship question,

are you aware of -- does the -- is there any testimony that is contradicted by the existence of this memo?

Mr. Gardner. So I think I understand the problem. Could you lay a foundation as to what testimony he's aware of? Because I think that will make for a much better question and answer.

Mr. Anello. Sure.

Q You're aware of the testimony that you gave, correct?

A I am aware of that testimony, yes.

Q Is there anything in your testimony inconsistent with what was written in the memo?

A I'm still not sure I totally follow the question. Let me -- let me put it this way. I'm not aware of anything in my testimony that's inconsistent with the existence or contents of the memo. You've asked me about the existence. You've asked me about the contents.

Q I appreciate you answering both.

A I'm trying to answer your question.

Mr. Gardner. We're trying to work with you. We're still trying to understand your question.

A Maybe I can just say it this way. I'm not aware of anyone else's testimony that would be -- in any particular respect or any general respect that would be contradicted by the existence or contents of a memo, but I

will say I have I haven't studied anybody else's testimony. I'm generally aware that testimony was given, but I'm not really in a position to answer that question, I guess is what I'm trying to tell you, other than with respect to my own testimony.

BY MS. ANDERSON.

Q Would you say that -- can you answer the same question with regards to the note that accompanied the memo.

A Yes. Same answer with regard to the note.

Mr. Anello. Did the memorandum from Mr. Uthmeier include a draft of a letter from the Department of Justice back to the Department of Commerce requesting the citizenship question?

Mr. Gardner. You can answer.
Mr. Gore. No, it did not.

Q Did it include any other draft language that the Department of Justice might send to the Department of Commerce?

Mr. Gardner. Sorry, are you asking did the memo itself provide draft language; is that your question?
Ms. Anderson. Yes.

Mr. Gardner. I instruct the witness not to answer.

Q So you became involved in this decision around that early September date, just going back to that.

A I wasn't aware of a decision at that point. I became aware --

Q Sorry, in these conversations about --

A I became aware of a conversation or a consideration of this issue.

Q Yes. I'm just going to go back to that time frame.

A Fine.

Q Who told you what your role was going to be going forward from when you became aware that these discussions were happening?

A Attorney General Sessions.

Q Did Attorney General Sessions ask -- tell you or ask you not to inquire as to why there was interest in this question?

Mr. Gardner. I'll instruct the witness not to answer.

Q Did anyone else ask you or tell you not to inquire as to why there was interest in this question?

Mr. Gardner. Same instruction.

Q What role were you told you were going to have in this consideration process?

Mr. Gardner. I instruct the witness not to answer.

Q I want to kind of go back to the people that you

discussed the citizenship question with after you became involved.

A Okay.

Q So I'm just going to go through that list again, and I apologize. I sometimes can't read my own handwriting so I might butcher some names, so if you could clarify that, that would be great.

So you said that you spoke with Mary Blanche Hankey. That was sort of when you got introduced to this. Did you discuss immigration with her with regards to the citizenship question?

Mr. Gardner. I instruct the witness not to answer.

Q You said you also talked to Rachael -- and I'm -- I did not quite grab her last name.

A Tucker.

Q Tucker. Did you discuss immigration with her as it related to a citizenship question?

Mr. Gardner. Same instruction.

Q How about with Danielle Cutrona?

Mr. Gardner. Same instruction.

Q How about with Gene Hamilton?

Mr. Gardner. Same instruction.

Q Bob Troester?

Mr. Gardner. Same instruction.

Q Rachel Brand?
Mr. Gardner. Same instruction.

Q Jesse Panuccio?
Mr. Gardner. Same instruction.

Q Patrick -- how do you say it?

A Hovakimian.

Q Hovakimian.
Mr. Gardner. Same instruction.

Q Bethany Pickett?

Mr. Gardner. Same instruction.

Q Chris Herren?

Mr. Gardner. Same instruction.

Q Arthur Gary?

Mr. Gardner. Same instruction.

Q Peter Davidson?

Mr. Gardner. Same instruction.

Q James Uthmeier?

Mr. Gardner. Same instruction.

Q Wendy Teramoto?

Mr. Gardner. Same instruction.

Q Mark Neuman?

Mr. Gardner. Same instruction.

Q John Zadrozny?

Mr. Gardner. Same instruction.

BY MR. ANELLO.

Q There are a couple of these conversations I

don't think we've talked about yet so I wanted to ask you about one or two.

A Sure.

Q You mentioned Gene Hamilton.

A Yes.

Q When did you speak with him about this issue?

A I spoke with Gene in September or October of 2017.

Q Was he at the Department of Justice?

A He was at the Department of Justice at that time, yes.

Q Whereabout?

A He was in the Office of Attorney General.

Q What was his role?

A I believe he was counsel in the Office of Attorney General.

Q What issues did he cover?

A I don't know in particular. I had interactions with him, conversations with him about a couple of different civil rights issues. And I understand he worked on immigration issues and maybe other issues. There were issues within -- when Attorney General Sessions was the Attorney General, there were people in the Office of Attorney General who worked across a variety of areas, and both Gene and Danielle would sometimes touch on civil

rights issues. Our main point of contact was Rachael Tucker, but the office was fairly horizontal in terms of the roles.

Q So why did you speak with him about this issue? You said -- I believe you said it was early -- did you say it was September, October?

A Yes, probably October. It might have been September.

Mr. Gardner. To the extent you can answer that question without divulging confidential or litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

A Consistent with that instruction, I can't answer.

Q What did you talk about with him?

Mr. Gardner. Same instruction.

Q Did somebody ask you to speak with him?

Mr. Gardner. Same instruction.

Q You can't say yes or no whether somebody asked you to speak with Mr. Hamilton?

Mr. Gardner. I think he can answer yes or no.

A I don't recall.

Q Did you take any steps as a result of your conversation with Mr. Hamilton related to the citizenship question?

A Not that I can recall.

Q Were other people involved in the discussion you had?

A I think I talked to Gene, I'm trying to remember, once, maybe twice. I think from one of those conversations that I can remember, Danielle and Rachael were also present.

Q When did you talk to Ms. Brand?

A I spoke regularly with Rachel Brand about civil rights issues. As I mentioned before, the Civil Rights Division reports up to the Office of Associate Attorney General, to the Office of Deputy Attorney General, and to the Office of Attorney General.

I had regular meetings with Ms. Brand at least every two weeks on civil rights issues generally and to update her on what was going on in the Division.

I can recall talking to her about this issue maybe four or five times, sometimes in connection with those meetings. And maybe once or twice we had a separate meeting or conversation about this issue, and that would have started in that September -- in September and gone into October 2017.

Q What did you talk about with Ms. Brand regarding the citizenship question?

Mr. Gardner. I instruct the witness not to

answer.

BY MS. ANDERSON.

Q Did you talk to or hear from any other agencies like DHS or ICE about the citizenship question before September 12, 2017?

A Yes, I -- the question earlier reminded me, I did have a phone call with somebody -- I was on a phone call with somebody from DHS about the issue.

Q Do you remember who?

A I don't.

Q About when was that conversation?

A It was in October of 2017, I think.

Q Was anyone else on the phone call?

A Gene Hamilton was on. I think Rachael Tucker may have been on. I can't remember whether -- I always want to call him by his nickname, Patrick Hovakimian was on -- I think he may have been on. And I don't recall who else.

Q Do you recall who set up that meeting?

A I think it was Gene, but I don't recall. It wasn't a meeting. It was a phone call.

Q Oh, who arranged the phone call, then?

A Yes.

Q About how long was that conversation?

A Oh, gosh. Maybe it was 15 minutes or less.

Q What did you discuss?

Mr. Gardner. I instruct the witness not to answer.

Q Did the person -- were there multiple people from DHS on the call or just one?

A I think there was more than one, but I don't recall either way.

Q Did they participate in the conversation?

A Yes, they were parties to the conversation.

Q Sure. They spoke during the phone call?

A I believe so, yes.

Q Did they tell you to do anything?

Mr. Gardner. To the extent you can answer that question without divulging confidential or litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

A No.

Q Did they instruct you to do anything?

Mr. Gardner. Same instruction.

Q And that call, I think you said earlier, concerned the citizenship question; is that correct?

A That is correct.

Q Did you talk about immigration on that call?

Mr. Gardner. I instruct the witness not to

answer.

Mr. Anello. I think -- just to make sure I'm understanding, just whether that call involved immigration is something that the witness can't answer?

Mr. Gardner. Right. I gave my instruction, yes.

Q Did you ever make an effort to limit staff involvement in the request to add a citizenship question?

Mr. Gardner. To the extent you can answer that question without divulging confidential or litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

A To the extent I understand your question, no.

Q Did you ever make an effort to limit who you consulted with on your staff regarding your drafting of the December 12th letter?

Mr. Gardner. Same objections. Same instruction.

A To the extent I understand your question, no.

Q So I want to talk a little bit --

Mr. Anello. Sorry, can we go back to the DHS call again?

Ms. Anderson. Sure.

BY MR. ANELLO.

Q I just want to make sure I'm understanding the

context of this DHS call. Generally, DHS is not involved in enforcing the Voting Rights Act, correct?

A That's correct.

Q They do enforce immigration laws, correct?

A That's my understanding, yes, as does the Department of Justice.

Q So was there an -- did DHS express an interest in the citizenship question?

Mr. Gardner. I instruct the witness not to answer.

Q Why were they on the call?

Mr. Gardner. Same instruction.

Q Did DHS ask the Department of Justice to make a request for a citizenship question?

Mr. Gardner. I instruct the witness not to answer.

Mr. Anello. To be clear, we've already heard statements today that the Department of Commerce made that request. Did the Department of Homeland Security make that request? I don't know why he can't answer that.

Mr. Gardner. I understand. I'm instructing the witness not to answer.

Mr. Anello. What is the basis for that?

Mr. Gardner. The instruction is confidentiality and litigation interests of the Department.

Mr. Anello. What is the difference between the Department of Commerce and the Department of Homeland Security?

Mr. Gardner. I gave you my objection, my instruction not to answer.

Q Did the Department of Homeland Security indicate that they thought adding the citizenship question would help with immigration enforcement efforts?

Mr. Gardner. I instruct the witness not to answer.

Q Did the Department of Homeland Security indicate that adding the citizenship question would have some other impact on immigration policy that they thought was beneficial?

Mr. Gardner. Same instruction.

Q Do you normally consult with the Department of Homeland Security on civil rights issues relating to voting?

Mr. Gardner. You can answer that question to the extent you can do so without divulging the confidentiality -- the confidential and litigation interests of the Department.

A I have consulted with the Department of Homeland Security on civil rights issues, yes.

Q On voting rights issues?

A Not on -- not that I can specifically recall, but certainly on civil rights issues.

Q But not on voting. I think your memo -- sorry, the letter you wrote to the Department of Commerce was about voting.

A Now that I have -- I have actually consulted with the Department of Homeland Security on voting issues.

Q About what issues?

Mr. Gardner. To the extent you can answer that question without divulging confidential or litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

A I think consistent with that instruction, I can't answer.

Q Were those other conversations also related to the citizenship question then?

Mr. Gardner. Same instruction.

Q I'm losing the train here. We've talked about one call, correct, that you had with the Department of Homeland Security about the citizenship question? That testimony is on the record, correct? That -- you agree with that statement, that this one call we talked about was about the citizenship question?

A Yes.

Q Okay. Were there other calls that you had with the Department of Homeland Security about the citizenship question?

A I do not recall any other calls or conversations with the Department of Homeland Security about the citizenship question.

To answer your other question, I have consulted with the Department of Homeland Security about civil rights issues, including voting-related issues.

Q Which voting-related issues have you consulted about?

Mr. Gardner. Same instruction.

Mr. Anello. I guess I don't understand. Is there -- I'm not understanding because the testimony didn't relate to the citizenship question.

Mr. Gardner. You're asking him for the content of his discussions with another agency about voting rights enforcement, correct? Is that what you're asking?

Mr. Anello. Correct.

Mr. Gardner. I instruct the witness not to answer.

Mr. Anello. Are you in litigation about these other topics? Did they relate to topics in which you're in ongoing litigation?

Mr. Gardner. Again, it's a confidentiality and

litigation-related interest, just so we're clear, Russ. Again, the instruction remains.

Q I think you said you didn't recall the name of the person that you spoke to; is that correct?

A We're talking about the one conversation --

Q The Department of Homeland Security about the citizenship question.

A I don't recall the name of that person.

Q Do you recall which office within the Department they were in?

A I don't.

Q Were they in an operating division like ICE, for example, or were they in DHS headquarters?

A I don't recall.

BY MS. ANDERSON.

Q Did Gene Hamilton tell you why he set up that phone call?

Mr. Gardner. The phone call with Homeland Security now?

Ms. Anderson. Correct.

Mr. Gardner. You can answer that with a yes or no.

A Yes, he did.

Q Why did he set up that phone call?

Mr. Gardner. I instruct the witness not to answer.

Q I want to talk a little bit about the phone call -- I guess conference call you had with John Zadrozny in October 2017. And I think you said who participated -- who else was there, but could you just repeat it really quickly.

A I remember Rachael Tucker and Gene Hamilton also being on that call. Whether others were on the call as well, I don't recall.

Q And who set up that phone call, conference call?

A I don't recall.

Q Did Mr. Zadrozny indicate why he was involved in that conference call?

Mr. Gardner. You can answer that with a yes or no.

A I don't recall whether he did or not.

Q Do you know why?

A I don't think I specifically know why, no.

Q Did you discuss with anyone else why he was on the conference call?

Mr. Gardner. You can answer that with a yes or no.

A Yes, I guess I did.

Q Who was that?

A Rachael.

Q What did you discuss?

Mr. Gardner. I instruct the witness not to answer.

Q What did you discuss on that phone call?

Mr. Gardner. Same instruction.

Q Did you take any action after that phone call?

A After the phone call, yes.

Q Related to the phone call?

A No.

Q Did anyone else take any action after that phone call related to that phone call?

A I don't know.

Q You said that was your only conversation with Mr. Zadrozny, is that correct, about the citizenship question?

A About the citizenship question, yes.

Q You also said earlier, just to clarify, you didn't speak with anyone else at the White House about the citizenship question; is that correct?

A That is correct.

BY MR. ANELLO.

Q Mr. Gore, you spoke to Attorney General Sessions regarding apportionment, correct?

A Yes, I believe, as I testified in my deposition,

I've -- I did discuss that topic with him.

Q And when did you discuss that topic with him?

A It was sometime in the fall of 2017, around the time when the State of Alabama filed a lawsuit about apportionment issues against the Department of Commerce.

Q Was that the same discussion that we talked about earlier that happened in early September when you also discussed the issue of the citizenship question with the Attorney General?

A No, it was not.

Q Did the issue of the citizenship question come up in your discussion with him about apportionment?

Mr. Gardner. I instruct the witness not to answer.

Q Was the lawsuit that was filed that you mentioned related to the census?

Mr. Gardner. You can answer.

A I don't recall the specifics of that lawsuit. I think it was. I think they -- I think the case is still in litigation so I'm going off of my memory. Again, I'm not counsel of record so I can't speak for the Department or bind anybody with respect to that. I believe I've read part of the complaint or seen part of the complaint, but I believe that Alabama has brought a claim against the Department of Commerce or the Census Bureau. I do believe

it's somehow census related, about apportionment and whether certain individuals should be counted or how they should be allocated for purposes of apportionment.

It's -- I'm puzzled by the lawsuit, to be honest with you, because there's a federal statute that directly deals with this and says how apportionment is to be conducted, and it's consistent with the 14th Amendment. So I don't know enough about the lawsuit to know whether it makes sense to be suing the Department of Commerce over this or not, but that's just my memory off the top of my head. As I said, I don't know much about it other than that.

Q And so, what was the nature of your discussion about apportionment with the Attorney General?

Mr. Gardner. I'm going to instruct the witness not to answer.

Mr. Anello. On what basis?

Mr. Gardner. On the same basis, confidentiality and litigation interests.

Q You said this took place in the fall of 2017. Can you give us more precision? Was it before or after the conversation when you learned that the Department of Commerce wanted the Department of Justice to request a citizenship question? Before or after that conversation?

A After.

Q Was it before or after you began drafting a letter back to the Department of Commerce making that request?

A I don't recall specifically.

Q Who else was involved in the conversation where you discussed apportionment?

A I think Rachael Tucker was in the room, but I don't recall.

Q Who initiated the call or the meeting? Was it a meeting or a call?

A No, it was -- it was an in-person meeting, and I don't recall who initiated it.

Q Were you given any instructions in the meeting?

Mr. Gardner. You can answer that with a yes or no.

A No, I was not.

Q Did you do anything as a result of that meeting?

A No, I did not.

Q Did you discuss with the Attorney General whether adding a citizenship question to the census would impact apportionment?

Mr. Gardner. I instruct the witness not to answer.

Q Who else did you talk to at the Department of

Justice about apportionment issues?

A Let me think. I don't -- I don't recall exactly who all I spoke to about it.

Q Did you talk to other people other than the Attorney General and Ms. Tucker?

A I imagine I did.

Q Do you know whether the Attorney General had other discussions about apportionment other than the one that you described?

A I don't.

Q Do you know whether he talked to Secretary Ross about apportionment?

A I don't.

Q Did you talk about apportionment yourself with anybody at the Department of Commerce?

A I believe I discussed it with Peter Davidson and James Uthmeier.

Q When did those conversations take place?

A Again, in the September or October 2017 time frame.

Q So do you remember the first time you talked with Mr. Davidson, let's start with him, about apportionment?

A I don't.

Q Do you remember the first time you talked to Mr.

Uthmeier about apportionment?

A I don't.

Q About how many times would you say you talked to Mr. Davidson about apportionment?

A Once.

Q And was that in a conversation when you also discussed the citizenship question?

Mr. Gardner. I instruct the witness not to answer.

Q You did talk to him about apportionment in the fall of 2017, right?

A Yes.

Q You did -- you also talked to him about the citizenship question in the fall of 2017.

A Yes.

Q Were those in the same conversation?

Mr. Gardner. I instruct the witness not to answer.

Q So you said you talked to Mr. Uthmeier about apportionment, correct?

A Yes.

Q You also talked to him about the citizenship question.

A Yes.

Q Both of those conversations took place in the

fall of 2017 or -- I'm sorry, let me rephrase that.

You talked to him about both of those issues in the fall of 2017, correct?

A Correct.

Q Were they in the same conversation?

Mr. Gardner. Same instruction.

Q Did his memorandum to you, hand delivered to your office, talk about apportionment?

Mr. Gardner. Same instruction.

Q Did his handwritten note to you -- again, with Mr. Uthmeier, did his handwritten note to you talk about apportionment?

Mr. Gardner. Same instruction.

Q When you spoke to Mr. Davidson, what was the substance of your discussion regarding apportionment?

Mr. Gardner. Same instruction.

Ms. Sachsman Grooms. What's the instruction again?

Mr. Gardner. Not to answer.

Ms. Sachsman Grooms. No, I got that part. But what's the basis?

Mr. Gardner. The same basis as we've been talking about all day, confidentiality and litigation interests.

Mr. Anello. But that presupposes, I guess,

that there's -- strike that. We'll keep going.

Q What was the substance of your conversation with Mr. Uthmeier regarding apportionment?

Mr. Gardner. I instruct the witness not to answer.

Q Was your conversation -- did you talk to Mr. Davidson and Mr. Uthmeier in a single conversation together about apportionment or were these separate conversations?

A I hope so. I'm thinking. Are you asking me whether --

Q I'll just rephrase.

A I think I had one conversation with Peter and James together. Is that your question?

Q So it's a single conversation with the Department of Commerce and two lawyers from the Department of Commerce on the call.

A Two lawyers on the call.

Q Was anybody else on the call?

A No.

BY MS. ANDERSON.

Q On the phone call with Peter Davidson and James Uthmeier together, did you talk about apportionment on that phone call?

A I talked about apportionment on a phone call with James and Peter together. Is that what you're asking?

Q Yes.

A Okay.

BY MR. ANELLO.

Q Did you talk about apportionment with anybody at the Department of Homeland Security?

A Not that I can recall.

Q Did you talk about apportionment with anybody at the White House?

A Not that I can recall.

Q Did you talk about apportionment with Mark Neuman?

A Not that I can recall.

Q Let's focus in on this period of time from, let's say, the fall of 2017. Did you have any other discussions with anybody else that we haven't talked about yet regarding apportionment?

A As I mentioned, I may have talked about it with one or two other people in the Department of Justice. I'm trying to remember who those might have been. I think I may have spoken to one of the U.S. Attorneys in Alabama about it since. Once the lawsuit was filed, I believe he called me about it. I would have talked to Ben Aguinaga about it, as he was just generally interested in voting

issues, but I can't recall whether I spoke to anybody else.

Q Those conversations you just mentioned, did they also relate to the decision or the request, I should say, to add a citizenship question to the census?

Mr. Gardner. I instruct the witness not to answer.

BY MS. ANDERSON.

Q Did you have any other conversations with Attorney General Jeff Sessions about apportionment besides the one that you previously mentioned?

A I can only -- I can recall it only coming up once.

Q When was that?

A In the fall of 2017.

Q After or before the conversation that you mentioned previously?

Mr. Gardner. I think you guys are talking past each other. I think he's referring to the conversation you already talked about.

A I had the one conversation we talked about. I don't recall another one.

Mr. Gardner. I'm just trying to be helpful.
Ms. Anderson. That's fair.

A I'm not sure I'm following all of this.

Q You just talked to him once in the fall of 2017.

Did you have any other conversations with Attorney General Jeff Sessions about apportionment?

A Not that I recall.

Q So I want to talk for a second about what happened soon after the letter was sent from the Department of Justice on December 12th, 2017.

A Okay.

Q So that's the day that Arthur Gary sent a letter to the Department of Commerce, correct?

A That's correct.

Q And then Arthur Gary received a communication from the Department of Commerce, specifically Ron Jarmin, acknowledging the receipt of that letter. Is that correct?

A As I recall, yes, that's correct.

Q And that email also included a request to have technical people at the Department of Commerce meet with technical people at the Department of Justice; is that correct?

A I don't know whether -- I don't have that communication right in front of me. I believe I've seen it before. I can't recall whether there was a reference to technical people or -- sure. It was a reference to some kind of meeting, but I don't -- I can't testify as to whether it was technical people or somebody else.

Q But you acknowledge he reached out to set up a

meeting. Would that be fair?

A He reached out to offer a meeting, yes, would be the way I would say that.

Q Okay. And Arthur Gary communicated to you that the Department of Commerce offered a meeting with the Department of Justice; is that correct?

A Yes, he did.

Q And that was -- do you remember when that was?

A I believe he sent me an email shortly after he received that one because he wished my family and me happy holidays, so I think he sent it to me shortly before Christmas.

Ms. Anderson. I'm going to mark this email, from December 22nd, 2017, as Exhibit 3.

(Exhibit 3 was marked for identification and attached to the transcript.)

Q I'm going to hand you what's marked as Exhibit 3. Would you mind just taking a second to read that.

A (Document review.)

Q And in particular the email that appears on the lower part of the page.

A All right.

Q Is it fair to say that this is the email -- the second part -- the second email that appears on the lower half of the page that's entitled "Request to reinstate

citizenship question on the 2020 census questionnaire" directed at Arthur from Ron Jarmin, is it fair to say that's the email that Arthur Gary provided to you at sort of the holiday time in 2017?

A Yes, this looks like -- it appears -- of course the "to" line on the email address is redacted, but it appears to be that email.

Q That email says in the part that -- the Census Bureau staff has -- I'm going to quote. "They have now briefed me, and their finding suggests that the best way to provide PL94 block-level data with citizenship voting population by race and ethnicity will be through utilizing a linked file of administrative and survey data the Census Bureau already possesses."

Did I read that correctly?

A You did.

Q Then it says, "This would result in higher quality data produced at lower cost."

Did I read that correctly?

A You did.

Q So fair to say that you received this forwarded communication through Arthur Gary around that sort of holiday time in 2017, and you said earlier that it was the Department of Justice's goal to get the highest quality data; is that correct?

A That is correct.

Q And to be able to receive that from the Census Bureau; is that correct?

A That is correct.

Q And this offer to have a meeting between the Department of Justice and the Department of Commerce, that did not happen; is that correct?

A The offer didn't happen, or the meeting did not happen?

Q Sorry. That the meeting did not happen.

A Oh, the meeting did not happen.

Q I guess my statement is that it did happen, the offer, but not --

A The offer happened.

Q The meeting did not happen between --

A That's correct.

Q Why did that meeting not occur?

Mr. Gardner. To the extent you can answer that question without divulging confidential or litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

A Consistent with that instruction, I can't answer.

Q Did you decide on your own to not have that meeting, or was there another decision made to not have the

meeting?

Mr. Gardner. Same instruction with the same caveat.

A I guess consistent with that instruction, I can't answer.

Mr. Anello. Haven't you previously testified that the Attorney General told you to cancel the meeting?

Mr. Gore. I was never told to cancel a meeting because no meeting was ever scheduled.

Mr. Anello. Have you previously testified that the Attorney General told you not to accept the offer of a meeting?

Mr. Gore. I believe what I previously testified to in my deposition is that the Attorney General decided not to have the meeting.

Q How was that communicated to you?

A I don't recall.

Q How was that communicated to Arthur Gary?

A I told Arthur, Art.

Q Art, okay.

How did you know that the Attorney General did not -- did not want to have the meeting with the Department of Commerce -- or the Census Bureau, to be specific?

A As I said, I don't recall how that was communicated to me.

BY MR. ANELLO.

Q Can I ask you a question?

Did you want to have the meeting?

Mr. Gardner. I instruct the witness not to answer.

Mr. Anello. On what basis?

Mr. Gardner. Confidentiality and litigation interests of the Department of Justice.

Q I mean, I want to maybe back up a second. I want to make sure I'm understanding the context. The context here is that this letter you sent says, "As demonstrated below, the decennial census questionnaire is the most appropriate vehicle for collecting that data" -- which is the citizenship data -- "and reinstating a question on citizenship will best enable the Department to protect all American voting rights under Section 2."

That was a quote from your letter of December 12th. I'm sorry, I was quoting from the end of the first paragraph of your letter on December 12th.

A Okay.

Q Is that right?

A I wasn't reading along, but if you tell me that that's -- that you read it out loud, then it's good enough for me.

Q If I made a mistake, I will correct the record.

I was just reading from the letter.

A Terrific.

Q Then the email that was handed to you just now from Ron Jarmin -- who was, I believe, the head of the Census Bureau, correct -- the acting head of the Census Bureau?

A That's my understanding of who he was at the time. I don't know what role he plays now.

Q His email says, "The best way to provide PL94 block-level data with citizenship -- citizen voting population by race and ethnicity would be by utilizing a linked file of administrative and survey data the Census Bureau already possesses. This would result in higher quality data produced at a lower cost."

A That's not what this email says. You've left off -- now, let me be clear on this. You've truncated the sentence in a way that takes out a very important phrase. He says that his staff -- somebody at the Census Bureau made findings that suggest that conclusion, not that that's the conclusion of the Census Bureau. In fact, that turns out to be false. There are gaps in the administrative records. Administrative records can't actually provide this data. And that was the determination that Secretary Ross made in his memo of decision, which is why he decided, and I understand from publicly available information, to

reinstate the question and use some kind of administrative records data to get at block-level citizenship data. You didn't say their findings suggest that. You started with "the best way to provide." That's inaccurate.

Q Fair enough. I was not attempting to miss something that was in the document. That's right. That's exactly what the document says. The question that I'm asking -- I didn't get to my question. That was just trying to lay a foundation for you.

The question I'm trying to understand is, the letter you sent was a request to Dr. Ron Jarmin. This email is a response from Dr. Ron Jarmin expressing, as you said, the views of his staff as expressed in a briefing to him. Is that fair?

A I think it speaks for itself. It says that he's had this briefing and that somebody suggested some findings that suggest a particular outcome.

Q Can you explain to me why -- strike that.

Wouldn't it have been important in a circumstance like this, given a response like this from Dr. Jarmin, to meet and talk about the issue?

Mr. Gardner. To the extent you can answer that question without divulging confidential or litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

A Can you ask the question again? I didn't follow it.

Q Yes. Given the letter that you sent, the response that you got back, wouldn't it be important to meet with the Census Bureau and talk through these issues?

Mr. Gardner. Same instruction.

A I think consistent with that instruction, the only answer I can give is, not necessarily.

Q So you don't think it would be important -- you don't think it was important to meet with them to discuss this email and the views expressed in this email?

A What I can tell you is no meeting took place, and, in fact, the conclusion suggested by these findings is inaccurate.

Ms. Sachsman Grooms. Did you -- you just stated the conclusions suggested by the findings described in this email are inaccurate. Did you know that those were inaccurate at the time you received the email?

Mr. Gardner. To the extent you can answer that question without divulging confidential or litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

Mr. Gore. Consistent with that instruction, I can't answer.

Q Did you tell the Attorney General -- did you

tell the Attorney General that the Census Bureau had sent this email?

Mr. Gardner. I instruct you not to answer.

Q Did you conduct additional research after you got this email?

A I don't recall.

Q Shouldn't you have conducted additional research?

Mr. Gardner. Sorry, can you rephrase that question?

Q Wouldn't it have been reasonable and responsible, given this -- after having received this email, to conduct additional research on the topic?

Mr. Gardner. You can answer that question if you can.

A Again, not necessarily.

Q After you received this email, did you have further discussions with anybody at the Department of Commerce about the issues described here?

A I don't recall.

Q Did you have further discussions with anybody at the Department of Justice about these issues?

A Which issues in particular are we talking about?

Q The issues described -- the issues in the quotation I just read from Dr. Jarmin.

A I believe I did.

Q Who did you speak to?

A Rachael Tucker, and I think I spoke with the Attorney General as well.

Q Why did you have those conversations?

Mr. Gardner. To the extent you can answer that question without divulging confidential or litigation interests of the Department, you may do so. Otherwise, I instruct you not to answer.

A Consistent with that instruction, I can't answer.

BY MS. ANDERSON.

Q Did you talk with anybody in the Voting Rights Section about the contents of this email?

Mr. Gardner. Same instruction.

A Yes.

Q Who did you talk to?

A Chris Herren.

Q When did you talk to him?

A I don't recall specifically when I talked to him.

Q What did you talk about?

Mr. Gardner. I instruct the witness not to answer.

Q Did you talk about scheduling this meeting or scheduling a potential meeting?

Mr. Gardner. Sorry, can you ask that one more time? I just got a little lost in the meaning of what.

Q Did you talk with Chris Herren about scheduling a possible meeting with the Department of Commerce?

Mr. Gardner. I think at that level you can answer that question.

A Yes. Let me clarify. I talked to him about the offer to hold a meeting.

Q Sure.

Did you talk with him about the suggestions that are in the email from Ron Jarmin?

Mr. Gardner. You can answer that with yes or no.

A Yes, I did.

Q What did Mr. Herren say about the suggestions that are outlined in this email?

Mr. Gardner. I instruct the witness not to answer.

Q What did he say about the offer for a meeting?

Mr. Gardner. I instruct the witness not to answer.

Q Did he want to have a meeting with the Department of Commerce?

Mr. Gardner. I instruct the witness not to answer.

I don't mean to interrupt you, but we've been going about an hour again. Is it almost a good time for lunch?

Ms. Anderson. Yes.

Mr. Gardner. If you have a question or two, I don't want to stop you. It's lunchtime.

Ms. Anderson. We can go off the record.

(A lunch recess was taken.)

Ms. Anderson. Back on the record.

For the record, my name is Tori Anderson, and the time, just to be aware, is 1:53.

BY MS. ANDERSON.

Q So I just want to go back through -- at the very beginning we went through a list of a bunch of people that you discussed. So I'm just going to go back through and kind of -- and go through that list with you, obviously skipping over the ones that we already talked about.

You said that one of the people that you discussed the citizenship question with was Rachael Tucker; is that correct?

A That's correct.

Q How many times did you talk with her about the citizenship question?

A I don't recall specifically, and at the time she

was our point of contact in the Office of Attorney General, and I imagine I spoke with her maybe five to ten times about the issue either as part of regular conversations about the Civil Rights Division work generally or specifically with respect to this issue, and she would have participated in conversations between me and the Attorney General regarding the issue. She would have sat in on those conversations.

Q And did you speak with her substantively about the citizenship question issue?

A Yes.

Q What did you discuss with her?

Mr. Gardner. I instruct the witness not to answer.

Q How many times did you have a substantive discussion with her about the citizenship question?

A I don't recall specifically.

Q The next one I have is Ben. Is that correct? What was his last name game?

A Aguinaga.

Q I'm not going to get that right.

How many times did you discuss with him the citizenship question?

A I don't recall specifically. He was my chief of staff at the time, so he attended meetings with me, and we

generally discussed the issues in the Division.

Q Did you have substantive conversations with him about the addition of a citizenship question?

A Yes, I did.

Q What were the contents of those discussions?

Mr. Gardner. I instruct the witness not to answer.

Q Do you remember speaking with him after you first became aware of interest in the citizenship question in early September 2017?

A I certainly did speak with him after that time. I don't know when I first spoke to him about the issue.

Q You said Bob Troester was in the Office of the Attorney General; is that correct?

A Troester.

Q Troester.

A Office of the Deputy Attorney General.

Q How many times did you talk to Bob Troester, about?

A So Bob was a point of contact in the Office of Deputy Attorney General on civil rights issues, so I talked to him regularly about issues in the Civil Rights Division -- I can't remember specifically how many times -- either through more general conversations or broader conversations or specific conversations I talked to him

about this particular issue.

Q Did you have substantive conversations with him?

A Yes, I did.

Q What did you talk about?

Mr. Gardner. I instruct the witness not to answer.

Q Did you talk to him first, would you say, more closely to when you first became aware that this -- the DOJ might be considering the Department of Commerce's request or later in time?

Mr. Gardner. Could you ask that question one more time?

Q Did you first talk to him around that early September date or did you talk to him more towards December?

A I don't recall.

Q How many times did you talk to Rachel Brand about the addition of a citizenship question?

A I don't recall specifically. I think I said earlier it was four or five or three or four. I can't remember what I said earlier today, but that sounds about right.

Q You had substantive conversations with her; is that correct?

A Yes, I did.

Q What were the contents of those conversations?

Mr. Gardner. I instruct the witness not to answer.

Q Did you first speak with her in that early September range or did you first speak with her later, if you can recall?

A I can't recall specifically, but I think I first spoke with Rachel in mid to late September about the issue.

Ms. Sachsman Grooms. I'm sorry, did you say mid to late September?

Mr. Gore. Yes.

Ms. Sachsman Grooms. Why do you think that?

Mr. Gore. I'm sorry?

Ms. Sachsman Grooms. I thought that the beginning time frame that we were starting at was late September, early October.

Mr. Gore. No, it was late August, early September.

Ms. Sachsman Grooms. Sorry, okay.

Q When you had discussions with Rachel Brand, were they with -- was anybody else present or were they with her?

A Other people were present. I can recall Jesse Panuccio being present and Patrick Hovakimian being present for at least some of those conversations.

Q How many times did you talk to Jesse Panuccio?

A I don't recall exactly. Probably -- I think I talked to Jesse a couple of times in addition to the times I spoke with Rachel. So I talked to him two or three more times about the issue than I did with Rachel.

Q Just with him or with other people present as well?

A Either just with him or with him and Pat Hovakimian.

Q Were those subsequent conversations?

A Yes.

Q What did you discuss?

Mr. Gardner. I instruct the witness not to answer.

Q You said at some point later you talked to Bethany Pickett; is that correct?

A That is correct.

Q And Chris Herren; is that correct?

A That's correct.

Q When did you first have conversations with them?

A With Bethany, I think I first had conversations with her in October of 2017. I don't recall specifically when I first had conversations with Chris Herren. My standard practice within the Civil Rights Division, that if someone from the Office of Assistant Attorney General wants

to solicit the views of career attorneys or a career section within the Division, to speak directly to and only to the section chief, so it would have been extraordinary for me to talk directly to any other career staff regarding this. So that's our standard practice. That's been standard practice in the division going back a very long time, it's my understanding. So I would have raised it with Chris, and Chris then could have solicited the views of other career attorneys if he thought it was appropriate to do so.

Q I think -- I think what I would like to do is kind of just get a more global understanding of sort of the timeline of events and sort of when you were talking and who was talking to who, if that makes sense.

A Sure.

Q So I'm going to walk through it to my understanding and probably do some follow-up questions.

So you first became aware of this issue in early September through talking with Mary Blanche Hankey and Attorney General Jeff Sessions. That's still correct?

A That is correct.

Q What did you do next about this issue?

A So, as I mentioned before, I conducted some legal research and some general research regarding the census.

Q Who did you talk to after talking with Mary Blanche Hankey and Attorney General Jeff Sessions, and in what time frame was that?

A Eventually I spoke to everyone on the list, obviously.

Q Sure.

A I think if you're -- I don't recall exactly the timeline of everything. I received my first call from Peter Davidson pretty shortly after that initial conversation I had, and within the September time frame I would have spoken to Rachel, Jesse, Pat -- Rachel Brand, Jesse, Pat, Rachael Tucker, Danielle, obviously. I spoke with Wendy Teramoto again on September 16th, James Uthmeier I think towards the end of September.

I don't recall when I first talked to Gene or Bob Troester or Chris Herren. I probably would have spoken to Ben Aguinaga pretty soon after since he was the chief of staff. I know I talked to Bethany in October.

Q Besides the draft letter that you wrote prior to the, I guess the more formal letter on December 12th, did you produce any other documents related to the addition of the citizenship question?

A Can you clarify what you mean by "produce"?

Q Did you write -- put together any documents?

A I'm trying to think about how to answer that

question. I don't recall. I think at one point I participated in or reviewed some talking points regarding the issue for the hearing that the Attorney General was going to testify at here on the Hill, but I don't recall. I think Ben may have written the first draft of those. I don't recall. And I don't recall producing -- writing anything else related to that other than emails.

Q About what time would -- to your recollection were the talking points written?

A I believe it was in October of 2017, but I'm not sure. Might have been later. It probably was later now that I think about it. So I don't know. I shouldn't put a date on it when I don't remember.

Q Okay.

So then that's sort of the September time frame. What happened next?

A Let's see, so September time frame. And then in October I continued to do some research, legal research and research generally about the census. Began drafting -- at some point began drafting the first draft of the letter, continued to talk to those individuals I mentioned before. And at some point along the way, I don't know if it was September or October, I talked to Chris Herren and Art Gary and the other individuals on the list, Mark Neuman, and, as I mentioned, continued to have conversations with other

people in the Department regarding this issue.

Q Did you discuss, with anyone outside of the Department of Justice while you were drafting the letter, your drafting process?

Mr. Gardner. Sorry, I'm not sure I understand the question.

Q Did you discuss drafting what ultimately became the December 12th letter with anyone else outside of the Department of Justice?

Mr. Gardner. I'm sorry, is your question did he discuss the fact that he was drafting the letter?

Ms. Anderson. Yes, that's my first question.

Mr. Gardner. You can answer that.

A Yes.

Q Who did you discuss it with?

A I discussed it with Peter Davidson. I may have discussed it with James Uthmeier, although I don't recall specifically.

Q Did they give you any comments, feedback, advice about the drafting of that letter?

Mr. Gardner. You can answer that with a yes or no.

A Yes.

Q Just to be clear, does that yes pertain to both Peter Davidson and James Uthmeier or one or the other?

A Both.

Q How many times would you say you discussed, received comments, talked about the drafting of that letter with Peter Davidson?

A The fact that -- as I understand, you were asking about the fact that I was drafting the letter --

Q Sure.

A -- or that process was going on?

Q Yes.

A I think I would have discussed that with him every time I talked to him or almost every time I talked to him.

Q Did you discuss the contents of what you were drafting with Peter Davidson?

A Yes, I did.

Q Every single time as well?

A Maybe not -- probably not every time, but more than once.

Q Did he give you any advice, feedback, or comments about the contents of your drafting letter?

Mr. Gardner. You can answer that yes or no.

A Yes.

Q Would you say he gave those comments or feedback or -- every single time you spoke with him?

A No.

Q Do you remember when that time was where you received a comment or anything from Peter Davidson on the more substantive parts of the drafting?

A Not specifically.

Q Did you incorporate any of those feedback or comments into your draft letter?

Mr. Gardner. I instruct the witness not to answer.

Q Did you discuss the -- you said you discussed the fact that you were drafting the letter with James Uthmeier as well; is that correct?

A Correct.

Q Did you discuss the contents of what was in your draft letter with James Uthmeier?

A Yes, I did.

Q How many times?

A Once, maybe twice.

Q Did you receive any comments or feedback or thoughts about the contents of your draft letter from James Uthmeier?

Mr. Gardner. You can answer that with a yes or no.

A Yes.

Q What were the substance of those comments?

Mr. Gardner. I instruct the witness not to

answer.

Q Did any of those comments or thoughts or questions go into the draft letter that you wrote?

Mr. Gardner. Same instruction.

Q So you were drafting as part of that October time frame, and then what happened next?

A At some point, I believe around November 1st, I solicited comments on the draft from a variety of people in the Department of Justice.

Q Who were those people?

A Chris Herren. As I explained before, it was standard practice in the Civil Rights Division. I wanted to get input from the career staff who has a lot of experience in Voting Rights Act cases and Voting Rights Act issues, and the conduit to do that is to contact the section chief, in this case the chief of the Voting Section, Chris Herren, and that's what I did with Chris. Comments -- I also received comments from Bethany Pickett, Ben Aguinaga, Bob Troester, Rachael Tucker.

Q If you could just slow down for just a second. Thank you.

Okay. Go ahead.

A Art Gary.

Q Could you just, sorry, quickly remind me of those people's positions? I can name them back to you if

that's helpful.

A Chris Herren is the chief of the Voting Section.

Q Yes.

A Bethany Pickett was counsel in the Civil Rights Division. Ben Aguinaga was chief of staff in the Civil Rights Division. Bob Troester was an Associate Deputy Attorney General in the Office of the Deputy Attorney General. Rachael Tucker was a counsel in the Office of the Attorney General, and Art Gary is the general counsel of the Justice Management Division.

Ms. Sachsman Grooms. Did all of those people give you feedback?

Mr. Gore. Yes, those are all the people I received comments or feedback or edits to the letter from.

Ms. Sachsman Grooms. Were there additional people who you sent the letter to that you did not get feedback from?

Mr. Gore. Not that I recall.

Q Was there anyone else additional that you had contact with outside the Department of Justice about the draft letter or that November 1st, I guess, more done draft letter?

Mr. Gardner. I'm sorry, I don't understand the question.

A I didn't understand. Try again.

Q Besides James Uthmeier and Peter Davidson, did you consult with anyone else about the substance of your draft letter outside of the Department of Justice?

A Oh, I see. No.

Ms. Sachsman Grooms. What about Mr. Neuman?

Mr. Gore. No.

Q Okay. So then after you, I guess, solicited comments from that list of people, what did you do next?

A I received comments from each of those people at various points in time and incorporated some of those comments into the draft.

Q Whose comments did you incorporate?

Mr. Gardner. To the extent you can answer that question without divulging confidential or litigation information, you may do so. Otherwise, I instruct you not to answer.

A I'm not sure I can answer the question consistent with that instruction.

Q Were there comments that you received that you did not incorporate into the letter?

Mr. Gardner. You can answer that with a yes or no.

A Yes.

Q Whose comments were those?

Mr. Gardner. I instruct you not to answer.

Q What did you do next?

A I don't recall specifically what I did next. During that period of time, I was continuing to have conversations with people in the Department and with Mr. Davidson about the letter. And after incorporating all of the edits and discussing the letter, at one point -- at some point I had a conversation with Art Gary about the letter.

Q When you were having discussions with Peter Davidson, did you send to him or review with him your more updated draft letter, the one that incorporated comments from November 1st?

A No.

Q Did you review or send to James Uthmeier your more updated letter that incorporated comments from November 1st?

A No.

Q Did you send Peter Davidson your original draft of the letter?

A No.

Q Did you send James Uthmeier the original draft of the letter?

A No.

Let me just clarify. There was a draft around

November 1st, and then there were many drafts after that that incorporated rounds of comments.

Ms. Sachsman Grooms. Just to make sure I'm clear on this, you had conversations about the contents of the draft of your letter with Mr. Uthmeier and Mr. Davidson, but you never sent them an actual copy of it. Is that accurate?

Mr. Gore. That is correct.

Q What happened next?

A At some point -- I'm trying to remember. So that gets us through November, and into December I was still receiving comments on the letter and at some point incorporated those comments and had further communications and conversations with Art Gary and with Rachael Tucker and Bob Troester regarding finalizing that letter and whether a final decision was made to send the letter.

Q Did you ever show -- let's start with your original draft before this sort of rounds of drafts.

Did you ever show that draft to the Attorney General?

A No.

Q Did you ever show any subsequent draft to the Attorney General?

A I can't recall specifically sharing a draft with

the Attorney General. I don't know whether anyone else did. It's certainly possible.

Q And then can you just talk about that final, I guess, end of November to December 12th time period?

A Sure. As I recall, I was still receiving comments on the letter during that time period. And at some point, I believe it was on the morning of December 12th, I understood that the final decision had been made to send the letter, and the letter was sent -- the decision became final and the letter was sent that day.

Q Okay. Who did you understand was making the, as you said, final decision?

A I believe it came from Department leadership.

Q Who did that include? Who do you mean by "Department leadership"?

A The Attorney General.

Q Is that the normal process of approval for sending out a letter, or can you talk through what the normal process is?

Mr. Gardner. Just to be clear, do you mean any letter of the Department? I think we need to be clear about this.

Ms. Anderson. Sure.

Q So what was the process that was used to have this letter be approved to send out?

Mr. Gardner. If you can answer that question.

A Yes. May I describe what process we actually did in fact use?

Q Sure.

A There are within the Department certain issues that --

Q Sorry. I want to cabin it so you don't have to talk about everything all the way back.

A Okay.

Q But that final phase, once you were done incorporating the comments, what was -- from that point to December 12th.

A As I said, I mean, I think I had further conversations with Bob Troester and Rachael Tucker regarding the letter, and it was conveyed to me that we should send the letter on December 12th, and it was sent on December 12th.

Q Who conveyed that to you?

A I think I heard from both Bob and Rachael, but I think I heard from Rachael last.

Ms. Sachsman Grooms. Do you know what packaging form, what set of documents would have gone to the Attorney General for the decision-making on this point?

Mr. Gore. I have no idea.

Ms. Sachsman Grooms. So did you get any

package back? You didn't formulate some package together with a final letter in a recommendation memo and then send that up the chain? Did you do that?

Mr. Gore. No, I did not.

Ms. Sachsman Grooms. You didn't get some piece of paper back saying that he had approved it?

Mr. Gore. No, I did not.

Q From January 20th, 2017, to March 2018, so that ...

A Okay.

Q Did you have any communications or were you aware of any communications involving executive branch officials or others about whether adding a citizenship question would help with redistricting?

Mr. Gardner. You can answer that with a yes or no. You might want to break that up into multiple questions because it's awful broad.

Ms. Anderson. Do we have the same time frame or would you like me to --

Mr. Gardner. Yes, keep the time frame. Just like you can ask him first is he aware of any conversation.

Ms. Anderson. Sure.

Q Did you have any conversations involving executive branch officials about whether adding a citizenship question would help with redistricting?

Mr. Gardner. You can answer that question with a yes or no.

A Yes.

Q Who?

Mr. Gardner. I will instruct you not to answer.

Q So between the same time frame -- we're just going to keep that for now, but if you would like me to repeat it, I'm happy to do that -- did you become aware of any conversations involving executive branch officials involving whether the citizenship question would help with redistricting?

Mr. Gardner. Same instruction. You can answer yes or no.

A Yes.

Q Who?

Mr. Gardner. I'll instruct you not to answer.

Q We'll stick with the executive branch officials about whether redistricting -- whether the citizenship question would help with redistricting. Do you know when you were aware of those conversations occurring?

A I was aware of the conversations I participated in when they occurred.

Q We can start there. When did those occur?

A Those occurred -- I can recall conversations

between September and December of 2017.

Mr. Gardner. I thought you were asking between January and March.

Ms. Anderson. January 2017.

Mr. Gardner. I'm sorry.

Ms. Anderson. And March 2018.

Mr. Gardner. I'm sorry. That's why I was confused. Okay. I'm sorry.

Q Now, going back to were you aware about conversations involving executive branch officials about whether a citizenship question would help with redistricting, were you aware of when those conversations occurred?

A I participated in those conversations and I was aware of them when they occurred.

Q Okay. Were you involved with any conversations with other people about whether adding a citizenship question would help -- would help with redistricting?

A Other than who?

Q Other than executive branch officials.

A I think I have given you the list of everyone I spoke to.

Q Between the same -- I'll just -- between January 2017 and March 26, 2018, did you have any communications or conversations about whether adding a citizenship question

would influence the outcome of an election?

Mr. Gardner. I'm sorry, can you say that one more time? I apologize.

Q Between January 20th, 2017, and March 26th, 2018, did you have any communications or conversations about whether adding a citizenship question would influence the outcome of an election?

Mr. Gardner. I see. You can answer that question with a yes or no.

A Not that I recall.

Q Were you aware in that same time frame of conversations or communications between any executive branch officials about whether adding a citizenship question would influence the outcome of an election?

Mr. Gardner. You can answer that question with a yes or no.

A Not that I recall.

Ms. Anderson. I don't think we have any more questions at this time.

Mr. Gardner. Thank you.

Ms. Sachsman Grooms. We can go off the record.

(Interview concluded at 2:21 p.m.)

ERRATA SHEET

INSTRUCTIONS: After reading the interview transcript, please note any change, addition, or deletion on this sheet. DO NOT make any marks or notations on the actual transcript. Use additional paper if needed.

Investigation Name	Census Investigation
Witness Name	John Gore
Date of Interview	March 7, 2019

PAGE	LINE	CORRECTION	APPROVED*
1	17	Change "Senior Counsel" to "Acting Deputy Assistant Attorney General"	Y
19	443	Insert "except for Ben"	N
56	1362	Change "Chris Kovach" to "Kris Kobach"	Y
56	1370	Change "Chris Kovach" to "Kris Kobach"	Y
72	1779	Add "General" to "Deputy Attorney General"	Y
73	1794	Add period to end sentence after "Jesse Panuccio"	Y
96	2366	Change "Chris Kovach" to "Kris Kobach"	Y
96	2367	Change "Chris Kovach" to "Kris Kobach"	Y
96	2369	Change "Mr. Kovach" to "Mr. Kobach"	Y
136	3365	Insert "and again 2018" (see attached letter from DOJ)	N
143	3559	Add "U.S." in front of "attorneys"	Y
148	3673	Delete quotation marks	Y
153	3795	Add comma after "is"	Y

* For COR Majority Staff use only.

ERRATA SHEET

PAGE	LINE	CORRECTION	APPROVED
164	4074	Delete "Rachel, Jesse, Pat"	N

* For COR Majority Staff use only.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 21 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Cummings and Ranking Member Jordan:

This responds to the Department of Justice's (Department) review of a transcript from the March 7, 2019 interview of John Gore, Principal Deputy Assistant Attorney General of the Civil Rights Division. The Department provided proposed errata as noted in the draft transcript on March 19, 2019 and is providing one substantive revision below.

- p. 135-138; 144: Mr. Gore was asked whether he had discussed apportionment with Attorney General Sessions, how many conversations on the topic had occurred, and when those conversations occurred. Mr. Gore indicated that he discussed the topic one time with Attorney General Sessions in the fall of 2017, "around the time when the state of Alabama filed a lawsuit about apportionment issues against the Department of Commerce." p.136. On review of the transcript, Mr. Gore realized that case was filed in 2018 (*see,* Complaint, *Alabama v. United States Dep't of Commerce*, 18-cv-772 (N.D. Al. May 21, 2018) and on reflection, he now believes that there were two conversations on this topic – one in the fall of 2017 and one in the spring of 2018. The Department is not prepared at this time to discuss the content of those conversations. As the Department has repeatedly explained to the Committee, not only does the Department have an essential need to maintain the confidentiality of its internal deliberations, but it also has the more specific concern that the Department's litigation position regarding privileges, which was not challenged in litigation, could be compromised if those very same confidential deliberations were made public through a concurrent oversight process.

The Honorable Elijah E. Cummings
The Honorable Jim Jordan
Page Two

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Kira Antell
Acting Deputy Assistant Attorney General

COMMITTEE ON OVERSIGHT AND REFORM,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: GENE PATRICK HAMILTON

Thursday, May 30, 2019

Washington, D.C.

The interview in the above matter was held in Room 6400, O'Neill House Office Building, commencing at 10:04 a.m.

Appearances:

For the COMMITTEE ON OVERSIGHT AND REFORM:

TORI ANDERSON, COUNSEL

RUSSELL ANELLO, CHIEF OVERSIGHT COUNSEL

SUSANNE SACHSMAN GROOMS, DEPUTY STAFF DIRECTOR AND CHIEF COUNSEL

STEVE CASTOR, MINORITY GENERAL COUNSEL

ELLEN JOHNSON, MINORITY SENIOR PROFESSIONAL STAFF MEMBER

CAROLINE NABITY, MINORITY COUNSEL

For the DEPARTMENT OF JUSTICE:

MEGAN L. GREER, SENIOR COUNSEL

KIRA ANTELL, SENIOR COUNSEL

JOSHUA E. GARDNER, SPECIAL COUNSEL

Ms. Anderson. I'm just going to read the preamble first and then we'll get started.

This is a transcribed interview of Gene Hamilton, conducted by the House Committee on Oversight and Reform. This interview was requested by Chairman Elijah Cummings as part of the committee's oversight investigation into the addition of the citizenship question to the 2020 Census.

Mr. Hamilton, can you please state your full name and spell your last name for the record.

Mr. Hamilton. Gene Patrick Hamilton, H-a-m-i-l-t-o-n.

Ms. Anderson. Thank you. Mr. Hamilton, my name is Tori Anderson. I work for the majority staff on the Committee on Oversight and Reform. First, I want to thank you for coming in today for this voluntary transcribed interview. We appreciate you being willing to speak with us and for the department's cooperation.

At this time, I'll ask everybody else to introduce themselves for the record, and then we'll go over some ground rules.

Mr. Anello. Russell Anello, majority staff.

Ms. Sachsman Grooms. I'm Susanne Sachsman Grooms, from the majority.

Mr. Castor. Steve Castor, with the Republican staff.

Ms. Johnson. Ellen Johnson, Republican staff.

Ms. Nabity. Caroline Nabity, Republican staff.

[redacted] [redacted]

Ms. Greer. Megan Greer, Department of Justice.

Ms. Antell. Kira Antell, Department of Justice.

Mr. Gardner. Josh Gardner, Department of Justice.

Ms. Anderson. The witness interview will proceed as follows. The majority and

minority staffs will alternate asking you, Mr. Hamilton, questions 1 hour per side per round. The majority staff will begin and proceed for an hour, and the minority staff will then have an hour to ask questions. Thereafter, the majority staff may ask additional questions and so on and so forth. We'll alternate back and forth in this manner until there are no more questions from either side, and then the interview will be concluded.

During the interview, we will do our best to limit the number of people who are directing questions at you during any given hour. With that said, from time to time, followup or clarifying questions may be useful. And if that's the case, you might hear from additional people around the table.

Under the committee rules, you're allowed to have an attorney present to advise you. Do you have an attorney present to represent you in a personal capacity today?

Mr. Hamilton. No.

Ms. Anderson. Would counsel please identify yourselves again?

Mr. Gardner. Josh Gardner, with the Department of Justice.

Ms. Anderson. Okay. I understand that you do not have a personal attorney with you today, but instead, have agency counsel with you. You've identified yourself.

Do you understand that agency counsel represents the agency and not you personally?

Mr. Hamilton. Yes.

Ms. Anderson. And you are choosing to have agency counsel in the room with you today?

Mr. Hamilton. Yes.

Ms. Anderson. There's a stenographer taking down everything I say and everything you say to make a written record for the interview. For the record to be clear, please wait until I finish each question before you begin to answer, and I will wait

until you finish your response before asking you the next question.

The stenographer cannot record nonverbal answers, such as shaking your head, so it's important that you answer each question audibly and verbally. Do you understand?

Mr. Hamilton. Sure.

Ms. Anderson. We want you to answer our questions in the most complete and truthful manner possible, so we are going to be taking our time. If you have any questions or do not understand my questions, please let us know; we will be happy to clarify or rephrase the question as needed. Do you understand?

Mr. Hamilton. I do.

Ms. Anderson. If I ask you about conversations or events in the past and you are unable to recall the exact words or details, you should testify to the substance of those conversations or events to the best of your recollection. If you recall only a part of the conversation or event, you should give us your best recollection of those events or parts of the conversation that you do recall. Do you understand?

Mr. Hamilton. Yes.

Ms. Anderson. If you need a break, please let us know. We are happy to accommodate you. Ordinarily, we take a 5-minute break at the end of each hour of questioning, but if you need to take a break before that, just let us know. However, to the extent there is a pending question, I would just ask that you finish answering the question before you take a break. Do you understand?

Mr. Hamilton. I do.

Ms. Anderson. Although you are here voluntarily and we will not swear you in, you are required by law to answer questions from Congress truthfully. This also applies to questions posed by congressional staff in an interview. Do you understand?

Mr. Hamilton. Yes, I do.

Ms. Anderson. If at any time you knowingly make false statements, you may be subject to criminal prosecution. Do you understand?

Mr. Hamilton. I do.

Ms. Anderson. Is there any reason today you are unable to provide truthful answers in the interview?

Mr. Hamilton. No.

Ms. Anderson. Please know if you wish to assert a privilege over any statement, you must do so pursuant to committee rules. Committee rule 16(c)(1) states that, quote, for the chair to consider assertions of privilege over testimony or statements, witnesses or entities must clearly state the specific privilege being asserted and the reason for the assertion on or before the schedule date of testimony or appearance.

In addition, subsection 3 states, quote, the only assertions of executive privilege that the chair of the committee will consider are those made in writing by an executive branch official authorized to assert the privilege.

Do you understand?

Mr. Hamilton. I understand.

Ms. Anderson. Do you have any questions?

Mr. Hamilton. No.

Ms. Antell. Before you begin questions, I just wanted to clarify, while we are here voluntarily and, you know, we're glad we were able to work out the scheduling issues, we remain disappointed that we were unable to come to a resolution regarding access to the transcript, having a final copy of the transcript after the interview.

We understand that it is committee policy not to provide that final transcript, but we think it's really important for recordkeeping purposes and fundamental fairness that we would have that transcript in the future. Again, we're here, we're ready to answer

questions. But in the future, if you guys decide to request a transcribed interview, we will have to revisit this.

Mr. Anello. If I may just briefly respond to that point. I think we reached a resolution, which is that the committee made an accommodation regarding the transcript. There was a request that we do so, and we did. I think we came to an agreement on that. I think you're correct in stating that the committee's practice under both Democrats and Republicans has not been to provide copies of final transcripts to agencies or to witnesses. However, we do make copies of the transcripts available at our offices. And you will have access to our transcript, which you'll be able to review and provide comments on, if you have any comments or concerns about mistakes or accuracy.

We've also made an offer for you to come back and look at the final transcript after it's been finalized, if you have a desire to do so, which was an additional accomodation. And then we also had an accommodation regarding notice that we discussed.

So obviously, if there is another interview, we can discuss that, but I do believe we reached a resolution and we've made several accommodations.

Ms. Antell. So we reached a resolution in that we're here and we are participating in the interview under the circumstances that you described. But note that we don't necessarily -- this is something we may have to return to.

Mr. Castor. Just for the record, the committee's been doing transcribed interviews of witnesses at a pretty high clip, going back to 2007. And some of those years there have been hundreds of TIs. Like in the IRS targeting investigation, I believe we interviewed almost 80 witnesses. And so our practices are not -- we have a pretty well worn path with our practices.

So I just want to say from the Republican side of things that the decision, you know, not to give the witness or the department a copy of the transcript isn't something new, and it really is the way things have been done. There have been exceptions, but very, very few. And some of those exceptions have related to when there has been IG investigations and they haven't been able to get ahold of the witness because the witness has left the department. And so, you know, maybe this litigation maybe is one of those exceptions, but that's something that certainly can be revisited in the future.

I just wanted to add that for the record, just for context purposes. But this isn't like a new Mr. Cummings rule.

Ms. Anderson. Anyone else want to add anything?

Okay. I will note for the record that it's now 10:12 a.m.

EXAMINATION

BY MS. ANDERSON:

Q Mr. Hamilton, can you please tell us when you first started working for the Department of Homeland Security?

A When I first started working for the Department of Homeland Security?

Q Yes.

A August of 2010.

Q Okay. And how about the most recent stint?

A January 20 of 2017.

Q And starting on January 20, 2017, what position or positions did you hold at the Department of Homeland Security?

A I was the senior counselor to the Secretary?

Q Who did you report to in that role?

A The Secretary.

Q Did you have any other roles during your time at DHS, starting in January 2017?

A No.

Mr. Anello. Can I just ask, were you at DHS in 2010 all the way through 2017 as well?

Mr. Hamilton. No.

Mr. Anello. So can you just give us a brief history of what you were doing?

Mr. Hamilton. Yeah. So I was a DHS employee from -- I don't remember if it was August or September. It was right around there, 2010 -- until spring of 2012. I left general counsel's office, went to ICE. I was with ICE from spring of 2012 to February of 2015. 2015 to January 20 of 2017, I was general counsel to Senator Sessions in the Senate Judiciary Committee.

Mr. Anello. Okay.

BY MS. ANDERSON:

Q So in your role as senior counsel, what issues did you work on?

A A number. Immigration, border security, Coast Guard, national security issues. There was a whole host of things.

Q And when did you leave DHS?

A The last -- toward the end of October of 2017.

Q Why did you leave DHS?

A I went to the Department of Justice.

Q What role did you take on at the Department of Justice?

A Counselor to the Attorney General.

Q Who did you report to in that role?

A Primarily the Attorney General. Although, in both situations at DHS and

Justice, there's some reporting involved to the chief of staff, of course, as well, in both places.

Q What issues did you start working on at the Department of Justice once you moved in October 2017?

A Largely the same issues.

Q So that --

A Immigration, border security, some national security issues.

Q Did you staff the Attorney General on those issues?

A I did. And I do.

Mr. Anello. If I might just go back to DHS for a moment. Can you just provide a little bit more detail about your role, let's say, starting with immigration, what your role was regarding immigration issues at DHS?

Mr. Hamilton. What do you mean by what my role was?

Mr. Anello. What did you do regarding immigration?

Mr. Gardner. Are you asking about specific assignments he worked on, Russ?

BY MR. ANELLO:

Q No. I am asking generally if there were particular subject matters you worked on, if you had a particular role. Why don't we start with particular subject matters that you worked on at DHS that related to immigration.

A I don't think I could identify particular subject matters. Just anything that affected immigration, my job was to advise the Secretary and to --

Q Were you -- I'm sorry.

A -- provide him with options, policy options, and to ensure that his decisions were executed on.

Q So were you the Secretary's senior-most adviser on immigration issues

during your time at DHS?

A Yes.

Q And did anybody report to you?

A I had some administrative folks who worked for me directly, but in terms of a chain of command reporting structure, no.

Q And at DOJ, can you describe a little bit more your role in immigration? Were there particular issues related to immigration that you have worked on at DOJ?

A Very much the same, although it involves advising the Attorney General about litigation, reviewing briefs, doing things like that.

Q Are you the Attorney General's senior-most immigration adviser?

A Yes.

Q And was that the case under Attorney General Sessions as well?

A Yes.

Q And under Mr. Whitaker as well?

A Yes.

Q And is there a team that reports to you or do you have anybody that reports to you other than administrative staff at DOJ?

A On the organizational chart, I do not have any direct reports.

Q And you mentioned a few other issues that you said you worked on border security, national security. Are you also the most -- senior-most adviser to the Attorney General on those issues?

A The national security docket is largely handled by someone else, but I -- there's overlap, so we -- we work as a team.

BY MS. ANDERSON:

Q Has your position changed at all since you started in the Department of

Justice?

A No.

Q When did you first become aware that there were discussions about possibly adding a citizenship question to the 2020 Census?

A I guess probably -- it was probably spring, April of 2017, that time period.

Q How did you become aware?

A My recollection is that I was contacted by John Zadrozny on the Domestic Policy Council that I would be receiving a phone call from someone from the Department of Commerce related to the Census.

Q Okay. Had you worked on Census issues prior to that?

A No.

Q Had you been in contact with John Zadrozny prior to that?

A Almost every day, multiple times a day likely. I mean, it would depend. Some days not, but we were in frequent contact because Domestic Policy Council at the White House, as I am sure you appreciate to know, has a role in the immigration world, and so there was frequent contact on that subject matter. And I've known John for a number of years. And so oftentimes, when John reaches out to me or when he reached out to me when he was in that capacity, it was on the basis of, hey, I know someone at DHS, I know Gene.

Q Okay. When he reached out to you, was that on the phone or email, in person?

A I think it was on the phone to the -- I think.

Q Can you go through a little bit about what John Zadrozny's role was, what your role working with him was like? Can you walk through that a little bit for us?

Mr. Gardner. While he was at Homeland Security?

Ms. Anderson. Yes. In that spring, April 2017 timeline.

Mr. Hamilton. Kind of hard to describe. It's having a normal working relationship in that these issues come up, there's discussions. The White House wants to know what's happening, certain issues. Sometimes we have a role to advise the White House. And so just attending meetings. I mean, there's a whole range of conduct.

BY MR. ANELLO:

Q Was Mr. Zadrozny your primary point of contact at the White House on immigration issues?

A No.

Q Who was your primary point of contact?

A Stephen Miller.

Q And did Mr. Zadrozny work on immigration issues?

A Yes.

Q And so what was his -- how did his role compare to Stephen Miller's role during the time that you worked with both?

A Well, John was a special assistant to the President, I believe, on the Domestic Policy Council, so he was more junior. Stephen's an assistant to the President.

Q And did you work with Mr. Miller at this time on immigration issues also?

A Yes.

Q And what was your working relationship with Mr. Miller like in terms of the types of conversations that you would have?

A I mean, the same general thing. It's hard to describe the meetings. I mean, we work with a lot of people at the White House on immigration generally. It's hard to nail it down to, not just John and Stephen; it is a whole host of people at the

White House. But Stephen is the White House's senior person on immigration.

And so to answer your question earlier, that's the senior-most person I worked with on immigration.

BY MS. ANDERSON:

Q So when he called you and said you might receive a call from DOC, did he tell you who you'd receive a phone call from?

A I think he said Earl Comstock, I think.

Q And did he tell you what that phone call would be about?

A I don't recall.

Q Did he tell you -- do you recall any of the other details about what he told you on that initial phone call?

A No.

BY MR. ANELLO:

Q Did he mention the Census?

A I believe I've already said that, that he mentioned I would be getting a call about the Census.

Q Did he mention the citizenship, the issue of the citizenship question?

A I don't recall.

Q Because I think that you -- I think you initially said the first time you became aware of the idea of adding the citizenship question was the call from Mr. Zadrozny, right?

Mr. Gardner. I don't think that characterizes his testimony accurately, but --

Mr. Anello. Well, he brought up the call, I think, in response to a question about the citizenship question, that's why I mentioned it.

Mr. Hamilton. I mean, I don't want to parse words here, but she asked a

question when did I first become aware of the issue. So looking back now, that's when it arose. I don't have any specific recollection if on that phone call I was told this is about the citizenship issue, but that was obviously my first engagement with the Department of Commerce.

BY MS. ANDERSON:

Q How long after that initial phone call did you receive contact from Earl Comstock or a person named Earl from the Department of Commerce?

A I don't remember exactly. It was pretty soon afterwards.

Q Was that via phone or email or in person?

A I think it was on the phone.

Q So could you describe what role you played regarding the citizenship question while you were at the Department of Homeland Security?

A Could you get a little more specific?

Q Did you have a role with dealing with this issue of the citizenship question while you were at the Department of Homeland Security?

Ms. Antell. Can I just ask you to make that question either more specific about it? I think that's a really -- that's a super general question.

I'm not sure if you're having trouble answering that.

Mr. Hamilton. Yeah. I guess, I mean -- what was my role? I mean, it would help me to better answer your question if we went back to the phone call and relayed some factual information that there was further discussions or something. I mean, this is -- we're taking a giant leap from here to here in your questioning. So if you can break it down, I will be able to give you better answers.

BY MS. ANDERSON:

Q Okay. When you received the phone call, was there anyone else on the

phone call besides Earl?

A Not to my knowledge.

Q Okay. How long did you talk for?

A Just a few minutes.

Q Did he tell you why he was calling?

A He did.

Q Why was he calling?

A He wanted to know if the Department of Homeland Security could use or had a need for the information for citizenship information on the Census that would facilitate a departmental mission.

Q Did he tell you why he was reaching out to see whether you had a need?

A No. Not that I can recall.

Q Is it usual for a different department to call you and ask whether you need information that you haven't requested?

A Sure.

Q In what other context have you received a similar phone call?

A I can't recall specific instances, but it's common practice for people at various departments to call each other to ask about various issues, to ask if something would be helpful or not helpful, or if there's something that they're working on they want to get our input. It's pretty standard practice.

Q And just to be clear, you hadn't asked for that particular dataset or reached out to the Department of Commerce before then?

A No.

BY MR. ANELLO:

Q So you said he asked you whether you could use that data, he meant

citizenship data?

A Yeah.

Q Did he give you any context? What type of citizenship data, where the data was coming from?

A No.

Q He just asked could you use citizenship data?

A Yes.

Q Did he say citizenship data on the 2020 Decennial Census?

A On the Census, Decennial Census. Yes, the one Census, same thing. Yes.

Q Did you have any -- before that phone call, did you have any background in whether the Census asked questions related to citizenship?

A I was generally familiar with the issue, not specific -- I am not an expert on it. But generally, I was vaguely familiar with the public dialogue on the issue.

Q Had you spoken to anybody else about that issue prior to that conversation?

Mr. Gardner. You mean while at Homeland Security or ever?

BY MR. ANELLO:

Q Well, let's start with that, Homeland Security, and then we can go before then.

A At DHS? None.

Q How about prior to your 2017 stint?

A I don't recall having specific discussions about citizenship before. I know that when I was on the transition team, Kris Kobach had reached out to me at some point and mentioned some legislative proposals to something about citizenship. I remembered I didn't do anything with it. Got a lot of ideas from a lot of people, a lot of things that folks wanted to do or have the new administration do. I didn't really do

anything with it.

Q When did Mr. Kobach reach out to you?

A It was probably early November of 2016.

Q Early November, so after the election?

A Yeah.

Q Did he reach out to you before or after the election?

A I don't remember. Sometime around the election.

Q And can you describe what he told you, to the best of your memory?

A It was just he mentioned that he had a number of legislative things that he wanted to propose. One of them I think involved citizenship questions or citizenship on the Census. I don't really know. I didn't have any details on it.

Q Did he tell you what steps he'd taken, aside from calling you, to try to get a citizenship question on the Census?

A I don't think so.

Q Did he tell you that he had talked to anybody else on the transition team?

A No.

Q Did he tell you that he talked to the President-elect about it?

A No.

Q Did you take any further actions after you talked to him?

A No.

BY MS. ANDERSON:

Q Did you work on census issues as part of the transition team?

A No.

Q Did he indicate to you why he was reaching out to you specifically?

A He was -- Kris worked on the transition. He was part of our team, and so it

was not uncommon for Kris to say he was working on some thing or he had some idea or something.

Q What team was that?

A The immigration team.

BY MR. ANELLO:

Q And that was the team -- you were both on the immigration team?

A Correct.

Q Did he send you an email or any documentation relating to the citizenship question?

A I mean, I know he sent me an email saying he had this idea, but I don't think there's anything more than just an email with the idea.

Q An email describing the idea of adding the citizenship question to the Census?

A An email about a legislative proposal that he had related to the Census, but I don't -- I don't recall ever receiving an actual proposal or doing anything with it.

Q Did he explain to you or put in his email the question of -- explanation of why he would want to add a citizenship question?

A No.

Q Did you have a sense, either from talking to him or from talking to other people, about why? It seems like, to me, it's sort of a random thing to ask an immigration staffer on the transition team, right? I guess, did you have a sense of why he came to you?

A No. Look, again, Kris was part of our team. This was a time when people were talking about a lot of things. It was mentioned in the context of a number of legislative packages that he thought that we should advance in the new administration.

So he's more than welcome to share his thoughts and ideas. There's a lot of people who gave us -- much like staffers in Congress, I know you appreciate, you have a lot of folks who want your time -- propose a lot of ideas and you don't always do things with all of them.

Ms. Anderson. Was he part of any other team during the transition?

Mr. Hamilton. I don't think so.

Ms. Anderson. Okay. And then when he emailed you or reached out to you, did he discuss any like draft language for that legislative proposal or draft questions or anything like that?

Mr. Hamilton. I don't remember anything.

Mr. Anello. Did he talk to you during the transition in that conversation or separately about issues relating to congressional apportionment?

Mr. Hamilton. No.

Mr. Anello. Did you have other discussions during the transition about the Census citizenship question?

Mr. Gardner. With Mr. Kobach?

Mr. Anello. No, generally.

BY MR. ANELLO:

Q So there was the one conversation with Mr. Kobach, but did you have any other conversations with him or anybody else?

A Not that I can recall.

Q Prior to the transition, had you had discussions -- was there something that had come up in discussion, the issue of adding a citizenship question?

A Again, I don't recall any specific conversations. I just -- I'm vaguely familiar with it being part of the public discourse for a number of years, but it's not something I've

been --

Q So is it fair to say that that conversation with Mr. Kobach is the only conversation that you recall on this topic until Mr. Zadrozny called you?

A It's the only specific one I can recall. And I don't know that it was a conversation so much as an unsolicited email.

Q Even if you can't remember a specific email, do you have a more vague recollection that you might have talked to other folks during that period?

A No, no.

BY MS. ANDERSON:

Q So you received the phone call from Earl at the Department of Commerce, and he called you and you talked for a few minutes. Is that right? And he doesn't exactly say why the Department of Homeland Security might want this information, just asked whether you might want it?

A Yeah. I mean, it was a vague kind of general discussion about they were thinking about adding it to the Census and wanted to know if we had a need for it, if we could use the information for some reason.

Q Was there any ask or any next steps that were taken at the end of the phone call, or he just asked you whether you want it and hung up the phone?

A I told him, like, I would need to check with folks in the department and get back to him, is my recollection.

Q Who were those -- did you check with any people?

A I know I followed up, I don't know exactly who with, but my standard practice would have been to check with most of the components that were under kind of my portfolio, and with other folks, as well as headquarter's offices. Usually, the component or office head and their chief of staff was kind of my standard practice, just to

make sure that everyone's equities would be represented and everyone had a chance to opine.

So I can't tell you precisely who I contacted, but that was generally who I'd go to when I had questions about incoming things.

Q Which components would that be?

A Generally, we'd be talking about the Office of Policy, general counsel's office, ICE, USCIS, CBP, occasionally others, depending on the issue.

Mr. Anello. For an issue like this, who -- of those groups or others, who do you think you would have asked?

Mr. Hamilton. Probably that group. I mean, I don't know if I went to Coast Guard also, I am not sure. But they were also in my portfolio, but I don't remember if I did or if I didn't.

Ms. Anderson. Do you recall hearing back from any of them whether they could or could not use the particular information, or considered using or not using?

Mr. Hamilton. I don't recall any like specific feedback from any individual person or component, but my recollection is that there was -- no one had anything. And so I got back to Earl, I don't know what time period, maybe it was a couple days, maybe it was a week. I don't remember. -- basically let him know we didn't really have anything for him. We didn't really have a use for the information.

Ms. Anderson. Was that via email, phone, in person?

Mr. Hamilton. I don't remember.

BY MR. ANELLO:

Q Did you speak with the Secretary about this issue?

A I don't remember.

Q The Secretary of Homeland Security?

A I'm sorry, I just don't remember if I -- if I talked to him about it or not.

Q Is this the type of issue that you would have raised with the Secretary?

A Maybe. Again, sorry, it's been a busy 2 years, so --

Q Do you know if you ever had a conversations at DHS with the Secretary about the citizenship question?

A I don't recall any discussions with Kelly or Duke.

BY MS. ANDERSON:

Q Do you recall, besides sort of talking to components that were underneath your portfolio, do you recall talking with anyone else in that April timeframe at DHS about this issue?

A I don't think so.

Q Did you talk to anyone outside of DHS at that time about this issue?

A I don't -- I don't think -- other than Commerce and John Zadrozny at DPC, I don't -- I don't recall.

Q Did you reach back out to John Zadrozny after you'd spoken to Earl Comstock?

A I don't remember if I did or if I didn't.

Q And when you said people at Commerce, was that just Earl or were there other people that you had spoken with?

A Earl's the only one I remember, but maybe there was a couple -- I don't know.

Ms. Greer. Just to clarify, when you say did you reach back out to John Zadrozny after you spoke to Earl Comstock, you're talking specifically about the Census question?

Ms. Anderson. Yes.

Ms. Greer. Okay.

BY MS. ANDERSON:

Q Or did he reach -- did you guys talk at all after that?

A I mean, I talked to John all the time.

Q About the citizenship.

A About other things, but I don't recall any specific issues on a citizenship question.

Q Do you recall speaking about it with anyone else from the White House at that time?

A No.

Mr. Anello. What about later, did you speak to Mr. Zadrozny or anybody else at the White House about this issue later?

Mr. Hamilton. I don't think so. I mean, it might have come up when I was at DOJ, like in terms of a status check on something, but I don't recall, I guess, the specifics of the conversation.

BY MS. ANDERSON:

Q So going back to you informing Mr. Comstock that you didn't necessarily have a use for that data, was that the last time you spoke about this issue while you were at the Department of Homeland Security or did it come up at all after that?

Mr. Gardner. So just to be clear, are you asking about the last time he spoke with Mr. Comstock or --

Ms. Anderson. No, generally.

Mr. Gardner. Okay. Do you understand the question?

Can you just repeat it one more time?

Ms. Anderson. Sure.

BY MS. ANDERSON:

Q Between sort of that April, early April date and when you left the Department of Homeland Security, did this issue come up again? Did you speak with anyone else about this issue during that timeframe?

A No, not that I can recall.

Q And no one else from the Department of Commerce or the Department of Justice reached out to you about this issue when you were at the Department of Homeland Security?

A I don't recall.

Q And you said that you moved to the Department of Justice sometime in October of 2017?

A Yeah. I think it was the last week of October, I think.

Q Did you hear about this issue again in your role after you moved to the Department of Justice?

A I can recall it being an issue that was being looked at by the Department at the time.

Q How did you become aware that it was being looked at by the Department at the time?

A I couldn't tell you specifically like when I first became aware or how I first became aware. I just know generally it was something that was being evaluated. Do you know -- have a sense of what else is happening in the Department or what else is under consideration generally speaking. But the way that the OAG, the Office of the Attorney General, is broken down, it was not my issue. It fell under the Civil Rights Division, and that was not my -- generally not my group.

The Civil Rights Division does some immigration work, so their Immigration and Employee Rights Division in terms of work authorization and things like that, making sure

that people aren't discriminated against. So I know about that kind of work that they're doing. But other than that, Civil Rights Division is not at all in my portfolio and that was someone else at DOJ.

Q Just to go back quickly to when you first talked to Earl Comstock, did he mention where he had gotten -- if he had gotten your contact information from anyone else or if he talked to any other departments before talking to you?

A I don't recall specifically, but it seemed vaguely -- I think he mentioned that he had talked to Justice.

Q You don't remember if he provided any other details about what that entailed?

A No.

Q Did you refer or indicate to Earl Comstock that he should talk to anyone else after you sort of concluded that you didn't have use for that information at the time?

A I think I might have told him -- I'm sorry, it's been a couple of years, so some of this stuff is coming back together and it's hard to remember certain things. I seem to -- I seem to -- I seem to recall that he had told me that he had talked to Justice. I think that's right. He told me that he had talked to Justice at some point. And so I think I just told him to go back to Justice. We didn't have anything for him.

Q Okay. You didn't refer to anyone else inside of the Department of Homeland Security or any other agency?

A I don't think so.

BY MR. ANELLO:

Q Can I go back to one thing you just asked? You said that the Census citizenship question was not an issue that was in your portfolio because it fell under the Civil Rights Division when you were at DOJ.

A Uh-huh.

Q So whose portfolio was it in?

A Racheal Tucker.

Q Racheal Tucker. And her portfolio covered all the Civil Rights Division?

A Yes, that's correct. Racheal had a number of things under her portfolio. Racheal's great, a really talented person. She's also a little protective of her turf. So she's a good friend, but I tried to tread carefully on making sure I wouldn't intrude on her work product in things that were under her oversight for the Attorney General.

Q Got it. So this is sort of a general question and I am not looking for a long answer, but did the Attorney General divide up all the issue areas among a small number of senior staff? Is that how it worked?

A Yes.

Q Can you give me a rough breakdown, instead of who those staff were, what the breakdown was? It was you, Racheal Tucker -- if this is too much to answer, of course, I understand.

Mr. Gardner. Russ, just to be clear, is there a particular time period?

Mr. Anello. Let's start with the time period we're talking about, which was, I guess, October 2017 when you started.

Mr. Hamilton. So in October, I mean, OAG I think was Matt Whitaker was the chief of staff, Gary Barnett was there, Danielle Cutrona, Racheal Tucker, me, Brian Morrissey. I think that might have been it. And so we all covered different offices and issue areas generally. Of course, as I touched on with my own work, occasionally there's overlap, and so you try to work together and make sure everything's -- everyone is playing nicely. We have a great team, a collaborative effort, but generally wouldn't get involved with something in someone else's portfolio.

BY MR. ANELLO:

Q I understand. So for the issues of immigration, that would be you?

A Yes.

Q Anybody else kind of keep all their immigration --

A Not really. I mean, people would be vaguely involved with, you know, things if there's overlap, but --

Q And on issues of voting or voting rights, would that have been Racheal?

A Yes.

Mr. Anello. Okay.

BY MS. ANDERSON:

Q So you became sort of vaguely aware that DOJ was working on this after you arrived in October of 2017. What do you mean by working on it?

A I mean, it was under consideration. I don't really know a better way to put it. It was something that was being evaluated.

Q By whom?

A I think by the Civil Rights Division and by the Attorney General.

Q Do you recall sort of the decision point or progress point that the Department was at when you first got there?

Mr. Gardner. I am not sure I understand the question.

Ms. Anderson. Sure. You're saying it's being considered, right? That's kind of, I presume, a broad range of what is considered in sort of the process of that. Do you remember when you first became aware of what part of the process they were in considering? Was it being considered for a few months? Was it right out the gate? Had anyone, you know -- can you describe what that point of the process they were in at that time?

Mr. Hamilton. Again, I want to make sure I give you the best answers here. It's been a while, but vaguely, I just seem to recall that it had been something they had been looking at for some time. It had been some months or something, I think. And I recall the AG had a discussion with Wilbur Ross at some point months before I got there. So I think that folks were looking at the issue as to whether, you know, there is the Department could use the information from the citizenship question on the Census.

Ms. Anderson. Did you learn anything else about -- or did you ever learn about the contents of the conversation between the Attorney General and Secretary Ross?

Mr. Hamilton. I don't recall any of the contents. And I can -- I remember a meeting I was at with John Gore, Racheal, and the boss. And I seem to recall they mentioned the discussion, the past discussion with Wilbur Ross, but I don't recall if they said anything specifically about the contents.

BY MR. ANELLO:

Q And do you remember when that -- based on -- if you remember, based on that conversation when the discussion had taken place with Mr. -- with Secretary Ross?

A No. It was sometime before I got there. I just don't recall.

Q At that meeting with Mr. Gore and the Attorney General and Ms. Tucker, was there a decision made to take some action?

A I don't recall. I don't think so.

Q Do you remember why the meeting took place and what was being discussed at the meeting, aside from the fact of this previous discussion?

A No. I mean, look, it's -- it might be like working for your member, your committee leadership. You're in the boss's office all the time to talk about all kinds of things all the time, on a frequent basis. So I couldn't tell you what the genesis was. I imagine it was something they're looking at, but I couldn't tell you.

BY MS. ANDERSON:

Q Besides your general awareness that this was an issue under consideration, did you talk to or discuss this issue with anyone at the Department of Justice?

A I mean, I guess I probably talked in -- I mean, if I was at a meeting where it came up, I must have talked with Racheal. I imagine it probably came up. I seem to recall having a couple of conversations with Racheal about it.

Q What were those conversations about?

A Just where things were with it, in general. How it was important to the AG to make a decision, I think, on, you know, what they were going to do to get back to the other -- to Secretary Ross on the issue, to be responsive. I think the AG felt like he owed an answer to him one way or the other about whether the Department could use the information.

Q Did you ever hear sort of prior to the, I guess a letter that went on December 12, that the Attorney General made a particular decision?

A No.

BY MR. ANELLO:

Q Did Racheal Tucker ever express a view on this issue to you?

A What do you mean by a view?

Q So you said that the Attorney General was -- felt it was important to make a decision and get back to the Department of Commerce, correct?

A Yes.

Q So did Racheal ever express a view on what that decision should be?

A I don't recall a specific discussion of her sharing her personal views of what the decision should or shouldn't be.

Ms. Anderson. Did you hear about anyone else's personal perspective on

whether the Department should request the question?

Mr. Gardner. I mean, just a yes or no and then follow up.

Mr. Hamilton. Could you say it again?

Ms. Anderson. Do you ever recall hearing about anyone else's personal perspective on whether the Department should ask the question?

Mr. Hamilton. I don't -- no, not a personal.

Ms. Anderson. What about a professional perspective?

Mr. Hamilton. I know that besides Racheal, I seem to recall Danielle also thought it was important to get back to Secretary Ross, for the boss.

Mr. Anello. Is that Danielle Cutrona?

Mr. Hamilton. Correct.

Ms. Anderson. Did she express a particular response she wanted or anticipated would be the response to Secretary Ross?

Mr. Gardner. You can answer that with a yes or no.

Mr. Hamilton. Not that I can recall.

BY MS. ANDERSON:

Q Did you ever see any materials generated by the Department of Justice or -- let's start there, by the Department of Justice about the citizenship question?

A I think so.

Q Okay. What do you think you saw?

A I think I saw the letter.

Q Okay. Was that the final letter or a draft of the letter?

A I think I saw a draft.

Q About what time did you see a draft?

A Either November or December.

Q Who gave you that?

A Racheal.

Q Why?

A I don't know.

Q Did she ask you to offer feedback or comments?

A I think she might have.

Q Did you do that?

A I think I got back to her. I don't think I gave her any feedback or comments or anything.

Q Was the draft that you saw different than the final draft that the Department sent to the Census Bureau?

A I couldn't tell you.

Q Do you remember seeing anyone else's comments or suggestions about the draft?

A Other than Racheal, no.

BY MR. ANELLO:

Q So you told us before this issue was not in your area or your portfolio, correct?

A Yeah.

Q And your primary portfolio was immigration?

A Correct.

Q Did you discuss with Racheal or others at the Department whether the citizenship question related in some way to your portfolio?

A I don't recall any specific discussions.

Q What about when you discussed that draft letter?

A I don't --

Mr. Gardner. Can you re-ask that same question again? I --

Mr. Anello. Sure. So you did, I believe, recall discussions with Racheal regarding a draft letter, because you said she asked you to take a look at it.

Mr. Hamilton. Yeah.

Mr. Anello. During those discussions, did the issue of immigration come up?

Mr. Hamilton. I don't think so.

Ms. Anderson. Do you recall seeing any materials from anyone outside of the Department of Justice about this issue?

Mr. Hamilton. Any materials from anyone on -- I mean, other than what's like in the news?

Ms. Anderson. Sure.

Mr. Hamilton. I mean, no.

Mr. Gardner. Wait. Hold on one second. Are you asking if he's seen things like newspaper articles?

Ms. Anderson. No.

Mr. Gardner. Or are you asking if people outside DOJ provided things to DOJ about the citizenship question?

Ms. Anderson. Correct.

Mr. Gardner. I think you guys probably passed each other. So do me a favor, re-ask the question again, because I think there was a lack of clarity on both sides.

Ms. Anderson. Sure.

BY MS. ANDERSON:

Q Do you remember seeing any materials that were received from people outside of the Department of Justice --

A No.

Q -- about the citizenship question?

A No.

Q Do you remember if anyone discussed receiving materials or having seen materials from outside of the Department of Justice?

A No.

Mr. Anello. Are you aware of anybody at the Department of Justice having conversations with people outside the Department of Justice about this issue?

Mr. Hamilton. I mean, other than the Department of Commerce?

Mr. Anello. Let's say other than the Department of Commerce.

Mr. Hamilton. Not that I can recall.

BY MS. ANDERSON:

Q Besides the draft letter that Racheal showed you the first time, did you see any other drafts of anything regarding the citizenship question?

A No, I don't think so.

Q You didn't see any follow-up drafts to that letter, nothing like that?

A I don't think I received any follow-up drafts.

Q I don't know if I already asked this, but I'll ask it again just in case. Did you speak with anyone outside of the Department of Justice about this issue while you were at the Department of Justice?

A During what time period?

Q Presumably after you got there in October through, let's say, the new year.

A I don't think during that time period that I had any discussions with anyone. Although, I don't remember, there's some litigation that followed. I don't remember when that started, but I would have been vaguely aware of the ongoing litigation --

Q As far as you know, did the Department of Homeland Security or any of its components change its position on whether it could use this citizenship data during this time?

Mr. Gardner. Just to be clear, by during this time, you mean after Mr. Hamilton went to the Department of Justice did DHS change its position?

Ms. Anderson. No. Let's start with you indicated to Mr. Comstock we don't need this at this time. From that point until now, are you aware of the Department of Homeland Security changing its position or any of its components about whether it could use this particular information?

Ms. Antell. I'm not really sure how Mr. Hamilton can be responsible for the Department of Homeland Security's position after the time he left.

Ms. Anderson. I'm just asking whether he became aware of the position changing, not whether he was responsible for the position changing.

Mr. Hamilton. I have no knowledge of anything changing.

Mr. Anello. Just to follow up on that one point, though, do you work closely with people at the Department of Homeland Security?

Mr. Hamilton. Yeah.

[Hamilton Exhibit No. 1

Was marked for identification.]

BY MS. ANDERSON:

Q I'm going to hand you what's marked as exhibit No. 1, and I'll just give you a chance to read it.

A Okay.

Q So I've handed you what's marked as exhibit No. 1. It's an email that's time stamped September 16, 2017, sent from Earl Comstock to Wendy Teramoto.

Is Earl Comstock the Earl that we've been discussing?

A Yeah.

Q Okay. And do you have that email in front of you right now?

A Yes.

Q Okay. So the email appears to be a memo from Earl Comstock sent to Secretary Ross on September 8, 2017, and it reads -- and then let me know if I've gotten anything wrong -- quote: In early May, Eric Branstad put me in touch with Mary Blanche Hankey as the White House liaison and 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 would address -- 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 discussions with DHS -- after discussions, 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.

Did I get that right?

A Seems about right.

Q Approximately.

Okay. Do you know James McHenry or had you worked with him while you were at DHS or DOJ?

A Yes.

Q Okay. In what capacity did you work with him?

A James is currently the director of the Executive Office for Immigration Review, the Department of Justice. So I work with him now pretty regularly. I know I had worked with James previously when I was at DHS and he was at DOJ at the start of the administration. And James and I also worked together at ICE.

Q Did James McHenry reach out to you or speak to you at all about referring Earl Comstock to speak to you about this issue?

A I don't -- I don't recall. He never mentioned it.

Q Do you know why he would have directed Earl Comstock to speak with you?

A No.

Q Did Earl Comstock indicate at all that he had spoken to James McHenry when he contacted you?

A He might have. I just -- I don't remember.

Q Did he indicate why James McHenry thought of you after he had spoken with the Department of Justice?

A No.

Q Did you ever have any conversations, to your recollection, with James McHenry about citizenship question being added to the 2020 Census?

A I don't remember any.

Q Were you aware that Mr. McHenry 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"?

A I don't remember that because I don't know that I was ever told that. And this email seems to indicate that this was a discussion between James and Earl, so I don't know why I would know that.

Q Are you aware, though, of any circumstances surrounding that or any more details regarding what he would be referring to?

A No.

Q And just to be clear, had you ever spoken to Earl Comstock before he called you?

A I don't think so.

BY MR. ANELLO:

Q I know we talked a little bit about the conversation already, but I just want to clarify something. When he called you and he mentioned the citizenship question --

A Who's he?

Q Earl Comstock.

A Okay.

Q -- and he mentioned the citizenship question, did he explain why he was asking for your thoughts on whether DHS would be interested in having that data?

A Again, I think we covered this, but I don't recall him saying why he wanted the information.

Q Did he say that the Department of Commerce had an interest in adding a citizenship question?

A I don't recall him saying that they had an interest or they didn't have an interest. I couldn't tell you.

Q Did he mention Secretary Ross', Secretary Wilbur Ross' views on the topic?

A No, I don't recall.

Q Did he tell you anything about Secretary Ross? For example, did he say that Secretary Ross had asked him to place this call?

A I don't recall.

Q And did you ask him for any context about this?

A I don't remember.

BY MS. ANDERSON:

Q Did he provide any reason why DHS might want this information?

A Did he give me any reason why he thought he just might want to --

Q Sure.

A Not that I can recall.

Q Did you give him any indication how DHS might use this before you sort of went to check in with the different components?

A Not that I can recall.

Mr. Anello. So just to make sure I'm getting it, it sounds like he came sort of a request that was out of the blue and random. Is that fair, from your understanding?

Mr. Hamilton. I think that's fairly -- that's a fair assessment. I mean, it was kind of unexpected, other than the fact that John Zadrozny had let me know that Earl would be reaching out to me. It was a little bit out of the blue.

Mr. Anello. And you went ahead and then polled sort of the components and offices within your department on this issue without having any background on it?

Mr. Gardner. That mischaracterizes Mr. Hamilton's testimony. Previously, he said he didn't recall what he did, but he stated his general practice previously.

Mr. Anello. Okay. But I think you said you thought that's what you would have done in the circumstance. I guess I'm asking what -- what you told us that in the circumstance, you got no context for the request, but you still think you would have gone

and polled everybody at the components, the senior folks at the components that you work closely with.

[11:03 a.m.]

Mr. Hamilton. Sure. I don't -- I'm telling you today I don't kind of recall any specific information he told me about it, but I seem to recall asking people questions about it at the Department. I don't -- couldn't tell you specifically who I asked, but --

Mr. Anello. Did the fact that John Zadrozny had called you from the Domestic Policy Council beforehand influence your decision about how to handle this request?

Mr. Hamilton. I don't know that it did, but, I mean, it showed me he was aware of it, the White House was aware of it. But I couldn't -- I don't recall any specific reasoning.

BY MS. ANDERSON:

Q Does John Zadrozny or someone from the White House reach out to you every time before someone from a different agency reaches out?

A No.

Q About how -- you know, if you were to put a percentage on it or kind of tag how often that happens, how often does it happen that he calls you and says someone from somewhere else might call you?

A I couldn't put a number on it, but it happens when -- oftentimes, it's -- the White House does a good job of introducing people from different departments when they don't know each other. And so given that half the battle in the government is actually knowing the human being on the other end of the phone call to talk to, when people don't know the other human being to talk to, sometimes they'll make connections. So it happens occasionally, but I couldn't give you an estimate.

Q Would you say it's fewer or more than 10 times?

A I couldn't -- I couldn't give you an estimate.

Q But it wasn't the only time that he did that, or was this the only time that he

did that?

A I seem to recall John reaching out on multiple occasions to introduce me to different people over the last couple of years, and continues to today. John works at the State Department now, and if there's someone at the State Department that we need to talk to or something, he'll make an introduction. I mean, it's -- it's just kind of the way people interact.

Q From your recollection sort of when he was at the White House talking to you and coordinating with you was mainly the people he was introducing you to other people in the immigration space?

A I mean, a lot of the time, but it could have been other issues too. Again, I think with John especially, since I've known John since 2015, it's really a matter of, hey, I know someone who works at that department, not necessarily related to specific issues but, you know, that you can at least help put a, you know -- you can at least tell him where to go or vice versa if there's a question.

Q You said that sometimes when you hear from, I guess, John or someone else from the White House, that that indicates to you that the White House might be aware. Did you have anymore specific indication that the White House was aware of this issue or a particular person at the White House was aware of this issue or interested in this issue?

A No, not that I can remember.

BY MR. ANELLO:

Q Did you ever talk to Stephen Miller about the citizenship question?

A I don't remember ever talking to Stephen about the citizenship question.

Q I do want to ask one more question about the conversation with Mr. Comstock. Did you talk about the Voting Rights Act with Mr. Comstock?

A I don't -- I don't recall talking about the Voting Rights Act.

Q Did he mention it when he asked if DHS would have an interest or a use for citizenship data?

A I don't remember.

Q I mean --

A Again, vaguely I think he said something about having to talk to the Department of Justice, but I don't recall any specifics.

Q DHS does not enforce the Voting Rights Act, right?

A As far as I'm aware.

Q Does -- are you aware that DHS has any particular expertise in the Voting Rights Act?

A I don't think so.

Q And I think you told us you don't have a particular expertise in the Voting Rights Act?

A No.

Q Is it fair to say that if the Voting Rights Act was the subject of the call, you would not have been the right person to talk to about it?

A I think that's -- I would not have been the right person to talk to about it.

Ms. Anderson. Did you ever ask why there was this interest in, I guess, adding the question or considering adding the question?

Mr. Gardner. Ask Earl Comstock or anyone?

BY MS. ANDERSON:

Q Well, we'll start with Earl Comstock.

A I don't remember.

Q Okay. How about -- so you said you didn't hear about it again until you got to the Department of Justice?

A That's my recollection.

Q Sure. Did you recall asking or hearing -- well, let's start with asking. Do you recall asking anyone at the Department of Justice why Secretary Ross, the Department of Commerce was interested in considering or wanting to add the citizenship question?

A I don't think so.

Q Okay. How about, do you remember asking or inquiring why the Attorney General or anyone at the Department of Justice might be interested in adding or supporting the Department of Commerce in adding the citizenship question?

A I don't recall anything.

Q So when Racheal Tucker handed you this document, did you have any -- do you recall having a conversation around it? Did she drop it off in your mailbox?

Mr. Gardner. Just so we have a clear transcript. By document you mean the draft of the December letter?

Ms. Anderson. Correct. Yes. Thank you.

Do you remember having any conversation around why she was -- not why but any conversation about the contents of the letter or any other context, or did she just kind of hand you something?

Mr. Hamilton. Well, to go back, I can recall at least one meeting that I was in in the AG's office where it came up. And I think I said this earlier also, I may have had a couple discussions afterwards about the general subject with Racheal, maybe Danielle, maybe not. I don't recall specifically.

So vaguely, I was kind of aware of what was going on, and so it wasn't completely out of the blue when Racheal sent the draft letter to me. But I don't recall -- I don't recall much about the time around there or the --

Mr. Anello. I just have one question. You mentioned a meeting just now. Is this the meeting we already discussed where you learned about Secretary Ross talking to the Attorney General --

Mr. Hamilton. Yes.

Mr. Anello. -- or was it a different meeting?

Mr. Hamilton. Yes.

BY MS. ANDERSON:

Q When you said she sent the letter to you, was that via email?

A I think so.

Q Okay. And did you also respond to that via email or in person?

A Probably on email.

Q Okay. Did Earl Comstock indicate to you at all why the Department of Commerce was reaching out to agencies to see whether they needed the information?

A I don't recall.

Q When you indicated to him the Department of Homeland Security does not currently need that information, do you recall more specifically what you told him?

A No.

Q Were there any other reasons for the Department of Homeland Security declining to request the question besides sort of what you think may have been your survey of the components?

Mr. Gardner. I'm not sure I understand that question.

Ms. Anderson. Sure. So you indicated to Mr. Comstock that, you know, DHS did not have a need at that time for the question. Were there any other factors that influenced that decision from the Department of Homeland Security to not request or not support the request for the addition of the question?

Mr. Hamilton. I'm still not sure I understand your question.

Ms. Anderson. Okay. So --

Mr. Anello. Maybe -- can I maybe just back up. Do you remember the reason that you told him DHS did not need this information?

Mr. Hamilton. Well, I think we already talked about this, and I think what I conveyed back was that we didn't have a use for it, generally. I think that's what we talked about. I don't have the transcript in front of me, but I'm fairly certain we talked about that about 10 minutes ago.

Ms. Anderson. Was there any other reason -- besides not having a general need, was there any other reason involved?

A I presume no.

Ms. Antell. We've been going just about 1 hour. Is this a good time for a break?

Ms. Anderson. Sure.

Ms. Antell. Great.

[Recess.]

Ms. Anderson. We're going back on the record at 11:24. I believe the Republican staff has decided to not take their hour at this moment, so we will continue from here.

BY MS. ANDERSON:

Q I want to point your attention back to Exhibit 1, which I handed you before our break. Mr. Comstock indicated that he had spoken with you on the phone several times. Do you recall only one conversation or do you recall his several times recollection of that?

A I don't recall several times. It was -- define several, right. And, I mean, I

know he reached out to me and I got back to him, so that's two times. But I don't think there's anything beyond that.

Q Okay. So you don't recall any other details regarding any conversations that you had with Mr. Comstock besides his initial phone call and then your, I guess, return communication or phone call?

A No. I don't recall anything else.

Q When he called you, I think you indicated that it was just the two of you on the phone. Is that correct?

A I think so.

Q Okay. When you returned his phone call or reached back out to him again, did you have anyone else on the phone with you at that point?

A I don't think I did. I don't remember exactly, but I seem to think it was just the two of us.

Q Okay. And you spoke with -- or did you ever have conversations with John Gore at the Department of Justice about the citizenship question?

A Well, during what time period?

Q Let's go with from when you started at the Department of Homeland Security to, I guess, January 20, 2017, through the rest of 2017.

A I don't recall specific conversations with John. I just -- I know that there was at least one meeting that if we were in there and that was a topic, we arguably would have discussed it then. But it's -- I don't recall a specific additional question -- discussions with John.

Q Do you recall speaking with him in the fall of 2017, I guess, outside of that one meeting about this issue?

A No, I don't think so.

Q Okay.

A I don't recall.

Q And I think you indicated earlier that you don't recall specific discussion points around the citizenship question; it's just it may have been discussed at that meeting. Is that accurate?

A I think so.

Q Okay. Were you ever asked to do anything or were you ever responsible for doing anything regarding the citizenship question at the Department of Justice?

A I don't recall having any -- been asked to do anything or --

Q Were you aware of specific actions being taken by other Department of Justice officials regarding the citizenship question besides, I guess, the drafting of the letter? Were you -- let me -- I'll rephrase.

Mr. Gardner. Yes.

BY MS. ANDERSON:

Q Were you aware of any other conversations that Department of Justice officials were having with anyone outside of the agency regarding the citizenship question?

A No.

Q Okay. Were you ever aware, just to be more specific, of conversations that were occurring between the Department of Justice and the Department of Commerce about the citizenship question?

A Not -- not more than just generally knowing -- no, there was ongoing discussions of some kind.

Q Okay. So you never participated in any phone calls or anything regarding that?

A I don't remember any phone calls.

Q Did you arrange a phone call between John Gore and the Department of Homeland Security in the fall of 2017?

A I don't remember.

Q After you joined the Department of Justice, did you often arrange communications between not yourself and other members of the Department of Justice and officials from the Department of Homeland Security?

A I mean, on an as-needed basis, I would -- I'm happy to make connections between people who need to talk to each other.

Mr. Anello. Can I ask that just -- do you recall, at any point after you came to DOJ, speaking to anybody at the Department of Homeland Security about the issue of the citizenship question?

Mr. Hamilton. I don't remember having any additional conversations.

Ms. Anderson. You mentioned that you had a conference call or a phone call with John Zadrozny after you joined the Department of Justice about this issue? Or am I misremembering?

Mr. Gardner. I think that misrepresents the testimony.

Ms. Anderson. Okay. Did you have any conversations with John Zadrozny or anyone else at the White House regarding the citizenship question after you joined the Department of Justice? I'm happy to cap in the timeframe a little bit more if that's helpful. Why don't we do -- I guess you joined in October 2017, and when Secretary Ross issued his decision memo in March of 2018.

Mr. Gardner. And the question is what? I'm sorry.

Ms. Anderson. Did you -- do you recall any conversations that you had or participated in with John Zadrozny or anyone at the White House about the addition of

the citizenship question in that timeframe?

Mr. Hamilton. I don't think so. I mean, again, it's been a very, very busy time in the administration. There's been a lot happening. I know that the issue has come up, but it might have just been -- come up with counsel's office in terms of litigation. But I don't -- I couldn't tell you when the litigation started. I don't know when Ross made his decision. I don't know.

Mr. Anello. Well, let me just ask you this. Are you aware of a conference call that involved John Gore, Racheal Tucker, John Zadrozny in roughly October 2017 about the citizenship question?

Mr. Hamilton. No.

BY MS. ANDERSON:

Q Was John Zadrozny Racheal Tucker's point of contact in the White House as well or primarily yours?

A I don't know that we -- I don't know that I understand your question. I mean, he -- he works at the White House and we work at the Department of Justice, and you talk to whoever you need to talk to.

Q Okay. I'll rephrase. Did John Zadrozny stay your primary point of contact at the White House when you moved from the Department of Homeland Security to Department of Justice?

A Well, he -- I mean, he was a person I dealt with. He was not a primary contact. He was -- I do not have a primary contact at the White House. I have many contacts at the White House.

Q Okay. Are you aware of Racheal Tucker communicating with John Zadrozny about general issues or specific issues?

A She could have. I just -- I don't know. I mean, I -- Racheal, like me,

knows -- has known John for a while, so I couldn't tell you how often they talk or don't talk.

Mr. Anello. What is John Zadrozny's portfolio at the Domestic Policy Council, to your knowledge?

Mr. Gardner. You mean what was it?

Mr. Anello. Yes. What was it at the time?

Mr. Hamilton. I know he dealt with some immigration stuff, but he dealt with a lot of other things too. I don't know what they were because I didn't really interact with him on things outside of the immigration space, except if it was to connect me, you know, as I said earlier, unless it was like, hey, Gene, I'm looking for such and such, can you point me in the right direction.

Ms. Anderson. I'm going to hand you what's marked as Exhibit 2.

[Hamilton Exhibit No. 2

Was marked for identification.]

Mr. Anello. The first Bates stamp number should be 125753.

Mr. Gardner. Four pages?

Mr. Anello. Yes.

Mr. Gardner. Is yours five pages?

Mr. Hamilton. 753 through 756?

Mr. Anello. Yes.

Mr. Hamilton. Those are the pages I have.

Okay.

BY MS. ANDERSON:

Q Okay. So I've handed you what's marked as Exhibit 2. I'm going to direct you to the fourth page of the document. It's DOJ number 00125756. Are you looking

at that page?

A Yes.

Q Okay. The email is from John Zadrozny. Is that -- that's the John Zadrozny we've been speaking about?

A Yes.

Q Okay. And the email reads on February 16, 2018: Brian, James, and Gene, I want to connect with the three of you about having that conversation we discussed at some point this week.

And then goes on to --

Mr. Gardner. Some point next week.

Ms. Anderson. Sorry. What did I say?

Mr. Gardner. This week.

Ms. Anderson. Oh, sometime next week. Thank you.

BY MS. ANDERSON:

Q And then it goes on to, I guess, discuss where it will be hosted and the timing.

A Okay.

Q And that email is sent to you. Is that correct?

A Looks like it was, yes.

Q And the other people on the email appear to be James Uthmeier at the Department of Commerce and Brian Lenihan.

A Okay.

Q Does that appear correct?

A Those are the names.

Q Sure. Do you recall what this particular meeting was supposed to be

concerning?

A No.

Q Okay. Did you have any cause to or had you ever had any other discussions with James Uthmeier about other topics or about topics in general?

A No. I don't recall having any discussions with James Uthmeier or Brian Lenihan. I couldn't pick them out of a lineup.

Mr. Anello. Do you know them? Do you know who they are?

Mr. Hamilton. I don't. It doesn't -- sounds like they work for the Department of Commerce and it seems to vaguely seem familiar. I --

BY MS. ANDERSON:

Q Were you aware that James Uthmeier worked, I would say, fairly extensively on the citizenship question issue from the Department of Commerce side?

A No.

Q And you said you had never had a conversation with James Uthmeier. Is that correct?

Mr. Gardner. I think he said he didn't recall.

Ms. Anderson. Sure.

Mr. Hamilton. I don't recall ever having a conversation with him or with Brian.

Mr. Anello. Do you work on any issues that involve Domestic Policy Council and the Department of Commerce?

Mr. Hamilton. I don't know. Maybe.

Mr. Anello. Well, do you remember any issues you've worked on?

Mr. Hamilton. No. I don't think so. I mean, I -- Department of Commerce and DPC have been on phone calls with other components of the White House that I've been on various things, but I don't generally -- no, I don't think so.

Ms. Anderson. Have you ever had discussions with Peter Davidson from the Department of Commerce?

Mr. Hamilton. I don't think -- I don't think so. I don't recall.

Ms. Anderson. On the first page of that document, Exhibit 2, there's an email from you that says, quote, Thanks, John. I have an unavoidable conflict at 4:30, and I'm slammed -- and a slammed afternoon otherwise. -- And I just can't read today. Sorry about that. -- Can I call?

And John Zadrozny writes back, quote, I'll fill you in on what happens. I'm trying to avoid phones on this one.

Do you know what he means by --

Mr. Gardner. For this one.

Ms. Anderson. For this one. Thank you. It's just one of those.

BY MS. ANDERSON:

Q Do you recall what he meant by "I am trying to avoid phones for this one"?

A No, I couldn't tell you.

Q Would there be any reason why he'd want to avoid phones on a particular topic?

A I don't know why he would want to avoid a phone call.

Q Would that sort of hit on your radar as something unusual or odd?

A I mean, it seems odd to me looking at it now. But I have no knowledge of this or recollection of his reasons why he'd want to avoid a phone.

Q Were there other topics where he indicated he wanted to avoid phone calls about them?

A Not that I can remember.

Ms. Sachsman Grooms. Were there any topics that you talked to John Zadrozny

about that were extremely sensitive?

Mr. Gardner. You can say yes or no, if you understand.

Mr. Hamilton. I don't think I understand what you mean by extremely sensitive.

Ms. Sachsman Grooms. Were there any topics that you talked to John Zadrozny about that you or he felt were so sensitive that they needed to not be discussed over the phone?

Mr. Gardner. You can answer that with a yes or no.

Mr. Hamilton. I don't think so. I don't recall anything. If there was ever a sensitive discussion, we would -- presumably involving classified information, we would use secure modes of communication to have those conversations.

BY MS. SACHSMAN GROOMS:

Q Sure. How about sensitive topics that are not classified?

A No, I don't think so.

Q Did you ever have a conversation with Mr. Zadrozny about not writing down any particular information in an email?

A I don't think so.

Q Did you have any conversations with anyone else at the White House about not documenting or writing down any particular information in an email form?

Mr. Gardner. You're talking about ever or with respect to the citizenship question?

Ms. Sachsman Grooms. Ever.

Mr. Gardner. You can answer that yes or no.

Mr. Hamilton. I don't think so.

Ms. Sachsman Grooms. Have you ever discussed with anyone at the Department of Justice not writing down any particular information in a document or an email?

Mr. Gardner. You can answer that with a yes or no.

Mr. Hamilton. Not that I can recall.

[Hamilton Exhibit No. 3

Was marked for identification.]

Ms. Anderson. I'm going to hand you what's marked as Exhibit 3.

Mr. Hamilton. Okay.

Ms. Anderson. It's from the same email chain, so --

BY MR. ANELLO:

Q So if you look at this email, the bottom of the first page, it's the same email from John Zadrozny --

A Okay.

Q -- to James Uthmeier and you. It looks like they blacked out the third name. It says it's addressed to Brian, James, and Gene. And then your response to -- on February 16 at 1:34 p.m. is, Remind me when I see you what this meeting is about. And John writes, Will do.

A Okay.

Q Do you know why you asked him to remind you when you see him what the meeting is about?

A No. It could have -- no, I don't remember.

Q Okay. Why didn't you just ask him to tell you over email what the meeting was about?

A Well, generally, on -- during this time period, I think there were standing meetings at the White House on Friday afternoons that we would both attend. So -- and I think they happened around 2:00 or 3:00, so I don't know. But he responds at 6:00 saying, Will do. So I -- honestly, I don't have any idea.

Q Okay. So I just want to make sure we're understanding the context here. His email said, I wanted to connect with the three of you about having that conversation we discussed at some point next week.

So from this email, it appears that you had previously talked to him about having a future conversation, correct? Is that how you read this?

A That's what his sentence says. I don't recall having any discussion with John Zadrozny that would have involved James and Brian.

Q I -- we have reason to believe that this conversation related to the citizenship question, based on the production from your department. Do you have any recollection that this conversation may have related to the citizenship question?

A No.

Q To provide you some context, this was February 16 of 2018. Secretary Ross issued his decision memo March -- 26?

Ms. Anderson. 28th.

BY MR. ANELLO:

Q -- 28th, 2018, so a little bit over a month later. Do you recall ever having a meeting or a call or discussion at the White House that related to Secretary Ross' decision memo?

A No.

Q Did you ever discuss that decision memo with anyone at the White House?

A No.

Q Did you ever discuss it with anybody at the Department of Commerce?

A No, I don't think so. I don't think I've ever talked about it with anybody, other than at DOJ and then the ensuing litigation.

Q Did you have any discussions in February 2018 about Secretary Ross'

decision or impending decision regarding the citizenship question?

Mr. Gardner. Discussions with anyone?

Mr. Anello. Correct.

Mr. Hamilton. I don't remember any discussions during that time period about this issue.

[Hamilton Exhibit No. 4

Was marked for identification.]

BY MR. ANELLO:

Q I want to show you another email. So this is DOJ 00125641. This is another version of the same email chain. And in this one, if you look at the first page, the second email down you write to John Zadrozny, on February 21, 4:37 p.m., Can we just turn this into a call?

A Okay.

Q And Mr. Zadrozny responds, We need to do this as a meeting because of the sensitivity of the content. Can you do Monday? I would rather hold off until James is physically back in the United States.

A Okay.

Q Does that jog your memory as to --

A No.

Q Do you recall any other circumstances when Mr. Zadrozny told you he didn't want to talk about an issue over the phone because of the sensitivity of the content?

A I can't recall any specifics.

Q Is this unusual?

A For some people, yes. John can be a little quirky about things, but he can be very sensitive about talking about things or approaching different issues, but I don't

recall any specifics.

Q So you don't recall any other time that he told you there was an issue he didn't want to talk about over the phone?

A I just said I can't recall a specific time.

BY MS. SACHSMAN GROOMS:

Q To be clear, do you recall this time?

A No. I just said that.

Q So --

A I don't recall this. I don't recall anything about this. You all can ask me about it all day and we can waste the next 4 hours sitting here, but I'm telling you, I don't remember.

Q Okay. On Exhibit 3, after he said to you, I want to discuss -- "I wanted to connect with the three of you about having that conversation we discussed at some point next week," you say, "Remind me when I see you what this meeting is about."

A Okay.

Q Do you know why you didn't just ask him what the meeting was about?

A We just talked about this. I just answered that question with your colleague. Like, I don't have any idea what this is about. Clearly, I had no idea what this meeting was about at the time. I don't have any idea why I would say remind me or, you know, why don't I just hit reply with a question mark. I have no idea.

BY MR. ANELLO:

Q Who is David Wetmore?

A Dave Wetmore is -- who is he now? Who was he then? What time period?

Q That sounds existential. How about who was he at the time?

A Who was he at the time? Dave Wetmore was a tremendous individual who worked at the Domestic Policy Council. He was on a detail. He is today -- I'll go ahead and just answer your next question. He is today a tremendous person who works at the Department of Justice for the deputy attorney general.

Q On February -- in February of 2018, did he already work -- had -- did he work at the Department of Justice or at the Domestic Policy Council?

A I don't remember. He turned -- not turned. He changed back to DOJ around that timeframe. I don't know -- I don't recall when.

[Hamilton Exhibit No. 5

Was marked for identification.]

BY MR. ANELLO:

Q All right. I'm going to show you another email. So this is DOJ00125693. This is another version of the same email chain, and I wanted to direct your attention to the bottom of page three.

A When you say page three --

Q Sorry, the third page.

A -- you mean Bates stamped 695?

Q Yes.

A Okay.

Q So this is an email from February 26, 2:41 p.m. John Zadrozny, he wrote: Gene, and I'm adding Dave, if either or both of you two can be available at 4:00 p.m., we can call one of your numbers so you are in on the conversation. I just don't want to set up a conference line.

A Okay.

Q David Wetmore wrote back, I will be available. And you said, I shall -- I

should be around for a little while.

Why -- do you know why Mr. Zadrozny would not have wanted to set up a conference line?

A No.

Q Were there concerns about the security of conference lines used by the Department of Justice or the White House?

A I have no idea.

Q So this is not a concern you've heard before from him or others at the White House?

A No. I mean, I know that conference lines can be -- I'm generally familiar with principles of operational security, that if someone has a phone number and a conference line access code, you can call in. But I -- other than that, I don't know why he wouldn't want a conference line.

Q Okay.

A It doesn't make sense.

Q There's then some further scheduling emails. And then if you go to the first page, which is 00125693 --

A Okay.

Q -- there's an email from David at the bottom, David Wetmore to you. "Are you on the call?" You respond, "No one called me." He responds, "Odd."

A Okay.

Q Do you have any memory of this email?

A No.

Q Do you have any memory of ever talking to David Wetmore about the Census citizenship question?

A No.

Q Do you know if he played any role in that question?

A No.

BY MS. ANDERSON:

Q What was his portfolio at the White House -- or when he was at the White House and then when he was at DOJ?

A He worked at the Domestic Policy Council. I don't know precisely what all he did on -- in his portfolio. He did a lot of immigration stuff, but I know -- I think -- I seem to recall he did other things too.

Q Okay. So did you work with him in that capacity when you were at DHS?

A Yes, I think so.

Q Okay. And then at DOJ?

A Yeah.

Q And then what was his portfolio when he -- this email seems to indicate that he was at the Department of Justice in February?

A Yes, it does seem to indicate that. So that's good, so he did turn into a DOJ employee again. That's good.

Q What did he work on at DOJ?

A I think he primarily does immigration.

Q Does he work on voting rights at all?

A Not that I can recall. Not that I know of. I'm not aware of John -- or Dave.

BY MR. ANELLO:

Q Who is Theo Wold?

A Theo works -- I think he still works at -- I mean, I think at -- Theo works at the Domestic Policy Council now, I think. Pretty sure.

Q Do you know what his portfolio is there?

A No.

Q Okay.

A He works on a lot of different things, but I don't know specifically.

Ms. Anderson. Do you know where he worked before?

Mr. Hamilton. He came from the Hill. I think he came from Senator Lee's office, I seem to recall.

BY MR. ANELLO:

Q Senator Mike Lee?

A Yeah.

Q I apologize. I literally just asked this. Did you ever talk to Mr. Wold about the citizenship question?

A I don't think so.

Q Who is James Sherk, S-h-e-r-k?

A I think James works at the Domestic Policy Council.

Q Do you know if he ever talked -- do you know what his portfolio is?

A I think James primarily works on regulatory matters.

Q And have you ever talked to James about the Census citizenship question?

A Not that I can recall.

Ms. Sachsman Grooms. Have you ever talked to James about any other topic?

Mr. Hamilton. I think we had a general discussion about regulatory effort at some point in the past, but I don't remember what it was about.

BY MS. ANDERSON:

Q To your knowledge, did the President or anyone else at the White House direct or encourage Secretary Ross to add a citizenship question to the Census?

A I have no idea.

Q To your knowledge, did anyone at the White House or the President direct or encourage the Attorney General to support the addition of a citizenship question?

A Couldn't tell you.

Q Are you aware of any communications between the President and Secretary Ross about the addition of a citizenship question?

A No.

Q Are you aware of any communications between the President and the Attorney General about the addition of a citizenship question?

A No.

Q What about anyone at the White House and the Attorney General?

A No.

BY MR. ANELLO:

Q Aside from the communications we just talked about, are you aware of any communications with anybody at the White House that related to the Census citizenship question?

A Between whom?

Q Between the White House and any agency. Are you aware of any conversations involving the White House? I think we've talked about a handful of conversations with John Zadrozny. Aside from those, are you aware of any conversations?

A No, I don't think so.

Q What about Steve Bannon when he was at the White House?

A No.

[Hamilton Exhibit No. 6

Was marked for identification.]

BY MS. ANDERSON:

Q I'm handing you what's marked as Exhibit 6.

A Okay.

Q I'm handing you a document which is now marked as Exhibit 6. It's DOJ00036385. Is that the document that you have?

A Yes.

Q Okay. On the -- I'm going to direct your attention to the second page, which is an email from April 2nd, 2018, and it is a -- for immediate release, a statement by Attorney General Sessions on today's new lawsuit against the State of California, and it was sent to Stephen Miller.

A Okay.

Q And then right above that there's a email from Stephen Miller to you and several other folks, I think, about less than -- no, a little over 10 minutes later.

A Okay.

Q Stephen Miller writes, quote: Does DOJ have a press release on the actual new lawsuit itself? What is the suit?

Have you ever had any conversations with Stephen Miller about Census or citizenship question?

A I think I answered that earlier.

Q Just --

A I don't remember having any conversation with Stephen.

Q Did you ever become aware of him having conversations with anyone else about Census or a citizenship question?

A I couldn't tell you.

BY MR. ANELLO:

Q Do you recall this email?

A I mean, no, other than I'm on it and it's a press release on something completely different.

Q Do you recall the lawsuit that is under discussion?

A Of course.

Q Did the lawsuit relate in any way to the citizenship question?

A No.

Q Do you know whether the -- this press release raised any questions for Mr. Miller or others that related to the citizenship question?

A No, but I'm reading the Attorney General's quote on 387, and there's a line in there that says: And we are forced spend our resources to defend against lawsuits that are patently meritless, like one now filed by California claiming that adding back a question on citizenship to the Census is unconstitutional after decades of its inclusion.

So that line is there.

Q Do you remember any discussion about why the citizenship question was described in that release?

A Well, no, but, again, I don't know the point of this. The paragraph says: We are forced to spend our resources to bring these lawsuits against States like California that believe they're above the law and are passing facially unconstitutional laws specifically intended to interfere with the Federal Government's ability to carry out its legitimate law enforcement duties. And we are forced to spend our resources, blah, blah, blah.

So it seems to be a resource issue. But I don't -- I couldn't tell you.

Q Okay. But you don't remember any conversations about the citizenship

question relating to the lawsuit --

A No.

Q -- to this lawsuit or to this press release?

A No.

Ms. Anderson. Did you ever have any conversations with someone named Mark Neuman about the citizenship question?

Mr. Hamilton. What was the name?

Ms. Anderson. Mark Neuman.

MR. Hamilton. No.

BY MR. ANELLO:

Q Do you know who that is, N-e-u-m-a-n, Mark Neuman?

A No.

Q He's a member of the President's transition team?

A Mark Neuman? No.

Q He also apparently served as some kind of outside adviser to the Department of Commerce on the issue of the citizenship question?

A I have no idea who he is.

Q Do you remember ever hearing that there were -- that there was more outside advisers providing advice or guidance to the Department of Commerce or to the Department of Justice --

A No.

Q -- relating to the citizenship question?

A Huh-uh, no.

Q Did John Gore ever told you -- ever tell you that he had interactions with folks outside the government relating to the citizenship question?

A No. Not that I can recall.

BY MS. ANDERSON:

Q Did you ever hear of -- did you ever speak to or hear of anyone speaking to Thomas Hofeller?

A No.

Q Also a member of the transition team.

A Okay.

Q Doesn't ring a bell?

A No.

Q Okay.

Mr. Anello. That's H-o-f-e-l-l-e-r.

Mr. Hamilton. He could spell it H-o-e-f-f-l-e-r, and I have no ideas who he is.

Mr. Anello. Yes. But the person doing our transcript has to spell it correctly.

BY MR. ANELLO:

Q Are you aware of -- strike that.

Are you aware -- so you mentioned that you had a discussion with Mr. Kobach during the transition about the citizenship question, correct, or you got an email from him?

A I got an unsolicited email from him.

Q Did you have any further conversations with him after the transition about this topic?

A No.

Q Okay. Did you ever hear that adding a citizenship question to the 2020 Census could be advantageous for congressional apportionment purposes?

A I have heard the public discourse in the media and allegations in the lawsuits

about the issue generally, but before that, not really.

Q So -- let's say before any lawsuits were filed, so let's say before March of -- before the March 2018 decision memo came out from Secretary Ross, had you ever heard any discussions or participated in any discussions about whether adding a citizenship question to the Census could impact congressional apportionment?

A Not that I can recall.

Q Or whether adding a citizenship question to the Census -- again, did you participate or hear of conversations about how adding a citizenship question to the Census could advantage Republicans or disadvantage Democrats?

A Not that I can recall.

Q How about whether adding a citizenship question to the Census could provide more representation for non-Hispanic Whites and would provide -- and with less representation for Hispanics?

A Not that I can recall.

Q Did you ever become aware of a memorandum that was related to the Census citizenship question that was written in 2015?

Mr. Gardner. So that's really vague.

BY MR. ANELLO:

Q Okay. Did you ever become aware of a memorandum by Thomas Hofeller that was written in 2015 and related to the Census citizenship question?

A No. I testified I have no idea who Thomas H-o-f-f-l-e-r --

Q One F.

A One F, sorry. I have no idea who he is. I am not aware of any memo. I'm not aware of anything about the guy.

Q Okay. Are you aware of a memorandum written on the topic of the

Census -- of adding a citizenship question to the Census and how that might impact redistricting efforts?

A No.

Q When you reviewed a copy of the draft letter from the Department of Justice to the Census Bureau --

A Okay.

Q -- in 2017 --

A Okay.

Q -- were you told that any information contained in that letter came from any source outside of the Department of Justice?

Mr. Gardner. You can say yes or no.

Mr. Hamilton. No.

BY MR. ANELLO:

Q Were you told anything about sort of where the information in that draft letter came from?

A No. I have no idea. I would assume Department of Justice.

Q Do you assume that for a particular reason?

A We typically write our own letters.

Q Would it be unusual for the Department of Justice to write a letter based on text or research that was done by somebody outside the Department of Justice?

A I have no idea.

Q You said you usually write your own letters.

A In my experience, we write our own letters. I have no idea if other people do different -- anything different. I couldn't tell you.

Q Okay. So it had been your experience DOJ writes its own letters?

A Yeah.

Q So in your experience, it would be unusual for DOJ to issue a letter that it had not written?

Ms. Antell. Well, I think he said in his experience, but I don't think you can expand that to the rest of the Department of Justice.

Mr. Anello. I didn't expand it. I'm saying in his own experience.

Ms. Antell. I just -- I don't --

Mr. Hamilton. All I can tell you is that the only letters that I'm aware of are letters, you know, that, like, I've helped write for the Attorney General on different issues and things, and those came from us. I don't know what everyone else does. I couldn't tell you.

Mr. Anello. Understand. But the letters that you've worked on, as you just said, those came from us, meaning those came from within the Department of Justice?

Mr. Hamilton. Yeah.

Mr. Anello. When Mr. Kobach reached out to you during the transition, did he tell you or indicate that he was in touch with anybody else in the transition team on this issue of the citizenship question? Do you remember?

Mr. Hamilton. I don't -- I don't remember him saying anything about who he was -- or if he was talking to anybody else.

Ms. Anderson. Are you aware of any conversations that happened within the administration about whether adding a citizenship question would impact immigration policy or immigration enforcement?

Mr. Hamilton. No.

Ms. Anderson. Were you aware of any documents that came from the Department of Commerce to the Department of Justice about the citizenship question

issue?

Mr. Hamilton. No.

Ms. Anderson. Okay.

BY MR. ANELLO:

Q So you said you were not aware of any discussions about the citizenship question impacting immigration policy. Is that correct?

A I don't recall having any discussions about that.

Q Okay. How about impacting immigration enforcement?

A I don't recall having any discussions about that.

Q When you were at the Department of Justice, you were -- you said you were the senior-most immigration adviser -- or sorry, you are at the Department of Justice. You are the senior-most immigration adviser at the Department?

A For the Attorney General, yeah.

Q Okay. Was that the case in December of 2017?

A Yeah.

Q So I want to ask you about a memo -- sorry. Do you mind getting Exhibit 4?

This is a memo that we understand is a draft memo, as we understand, was written on -- I believe it was December 16, 2017, so 4 days after the letter on the citizenship question was sent to the Census Bureau.

A Okay.

Q Are you familiar with this memo?

Mr. Gardner. I noticed there were no page labels on this. Where did this come from?

Mr. Anello. This is a public document.

Mr. Gardner. Okay.

Mr. Anello. Yeah.

Mr. Hamilton. A public document from -- that relates -- okay.

BY MR. ANELLO:

Q So are you familiar with this memo?

A I think I've seen it before.

Q When did you see it?

A I don't remember exactly.

Q You don't remember exactly? In what context did you see it then?

A I think DHS may have sent a memo to us to look at. I think this might have been it. But what does this have to do with the citizenship question?

Q So who at -- sorry. Who at DHS sent this to you?

A What does this have to do with the citizenship question?

Ms. Antell. Before we go any further -- yes.

Mr. Hamilton. There's nothing on any of these pages that has anything to do with citizenship. So --

Mr. Anello. I appreciate if you would answer the question. I think that this is pertinent --

Mr. Hamilton. I would appreciate it if you don't waste my time.

Ms. Antell. So I certainly understand that you have interest in this, and it sounds like Mr. Hamilton may have seen this at some point. Is there something in this that's directly related to the citizenship question?

Mr. Anello. I don't know. That's why we're asking these questions, among other reasons.

Ms. Antell. Okay. Is there anything in the language of this that relates to the citizenship question?

Mr. Anello. The language of the memo?

Ms. Antell. Yes.

Mr. Anello. The language of the memo talks about a number of different immigration issues --

Ms. Antell. Okay. So --

Mr. Anello. -- and it appears to be discussing those issues in December 16, 2017, 4 days after the citizenship question memo was issued, a memo that the witness has apparently reviewed. I don't know if there's a connection between these two things, and that's one of the reasons that we want to ask about them.

Mr. Gardner. I think --

Mr. Anello. And I don't see any reason -- this document has been public I think for 6 months, and the witness has said that he's reviewed the document.

Mr. Gardner. I -- I --

Mr. Anello. And I --

Mr. Gardner. I'm sorry.

Mr. Anello. I don't understand any reason that we couldn't ask these questions.

Mr. Gardner. I think the simplest way to do it is to ask him if there's any connection between this and the citizenship question.

Mr. Anello. That's a question we can ask.

Ms. Sachsman Grooms. I mean, he's still in the very beginning of laying a foundation of what the document even is.

Mr. Gardner. Sure.

Ms. Sachsman Grooms. So I think --

Mr. Gardner. The fact is we made Mr. Hamilton available to ask your questions about the citizenship question, and that's what he's here to do. To the extent that there

is no tether to that -- that issue, we don't think it would be appropriate for him to answer questions about that, certainly not today.

Mr. Anello. If he has knowledge of this document, I don't see why we can't ask him about it.

Mr. Gardner. Not if it's not within the scope of the topics for which he --

Mr. Anello. It is within the scope.

Mr. Gardner. You just said you haven't even --

Mr. Anello. You cut me off, first of all. Second of all, our request letter did not say we were going to limit every single question to the citizenship question. That is absolutely the focus of this interview. That's why we are here. We think this may be related to it, but it's an issue that is important and we have questions about it either way.

So I intend to ask about the document. I'm very interested in understanding whether it's related to the citizenship question, and I intend to lay a foundation to find that out. But we have a number of questions about this document that I think we have a right to ask.

Ms. Antell. So I think we are certainly prepared to answer any questions that you may have. Certainly, the first question is in -- is to Mr. Hamilton's knowledge is this related to the citizenship question, and maybe we will move from there.

[12:13 p.m.]

Mr. Anello. Okay. So we'll repeat the question. Who at the Department of Homeland Security sent you this document?

Ms. Antell. So, again, that's not the question.

Mr. Anello. I'm laying a foundation.

Ms. Sachsman Grooms. We're laying a foundation for what the document is.

Ms. Antell. So where's the --

Ms. Sachsman Grooms. You don't get to conduct the way we conduct our investigation.

Ms. Antell. I certainly understand that, and I --

Ms. Sachsman Grooms. And you don't get to say what questions we ask or don't ask as we are laying a foundation of what a document is so that we can then ask some additional followup questions. So if you could just let us do it, I'm sure we'll get to a point where we can have the conversation about whether it's related. Okay?

Go ahead.

BY MR. ANELLO:

Q Who at the Department of Homeland Security sent this memo to the Department of Justice?

A I don't recall.

Q Do you know who at the Department of Homeland Security drafted the memo?

A I don't. I don't know.

Q Okay. On December 16, 2017, who at Department of Homeland Security was in charge of drafting policy options to respond to the border surge of illegal immigrants?

A Could've been a number of folks. I have no idea.

Q Who would be the most likely folks, based on your experience at the time?

A I don't know.

Q You have no idea?

A Well, DHS has multiple immigration components. They have an Office of Policy, they have an Office of General Counsel, they have a secretary's office. They have all kinds of places where this could've been -- that could've written something. I don't know who did it.

Q Was there someone -- again, we're talking December 16, 2017. Was there somebody in charge of this particular issue at the Department of Homeland Security that you interacted with at the time?

A There were and there are lots of people at DHS who worked in immigration policy that I interacted with.

Q So this memorandum is policy options to respond to border surge of illegal immigration. As of December 2017, who was your primary point of contact at the Department of Homeland Security --

Ms. Antell. I'm sorry. We're just not prepared to answer questions about this today. If this is a topic that you'd like to talk about in the future, we're certainly prepared to have that discussion.

Mr. Anello. I haven't even laid the foundation for how he got the document.

Ms. Antell. And I understand that. But I've never seen this before. We weren't --

Mr. Anello. This document was published, I believe, in maybe January, February. It's been out there. The witness has said he has seen it before.

If you guys need a minute to read it, I'm happy to give you a minute to read the

document.

Ms. Antell. I'm sorry. I think --

Mr. Hamilton. So how about I tell you this? And maybe this will help focus your questioning. I am not aware of anything in this document -- nothing in this document triggers anything at all related to the citizenship question. I'm not aware of any immigration nexus to immigration enforcement, surge of illegal immigration, anything. No discussions ever dealing with the citizenship issue.

Mr. Anello. Okay.

Mr. Hamilton. So, I mean, like, the connection is not there. I have never discussed the issues at the same time. It's never been something I've even heard about.

Mr. Anello. Okay. Can you tell me who at the Department of Homeland Security was your primary point of contact on the issues discussed in this memo?

Ms. Antell. So, again, we're not going to answer questions about this. Mr. Hamilton has just explained that he is aware of no nexus between this --

Mr. Anello. That doesn't get to the issues, necessarily, that I need to understand. Laying the foundation for this might reveal a connection that he does not remember or is not aware of, and it's important that we have the ability to lay that foundation.

If you guys want to talk after we lay the full foundation and we understand what he knows about this document, where it came from, when he saw it, what he did with it, I'm happy to then have that conversation afterwards. But you're cutting me off repeatedly before we can ask even a basic question about the document. So it's going to make this process a lot harder, not easier.

Ms. Antell. I doubt --

Mr. Anello. So I'd ask again that we be allowed to ask these very basic questions of the witness. I'm not aware of any privilege being cited. This is a public document

that the witness has seen before that he apparently played a role in reviewing 4 days after the December 12, 2017, memo on the citizenship question.

So I don't think this is a rabbit hole. I think it's important that we at least lay the foundation. I don't think this is going to take too long. I understand you may have time issues. We can always come back after -- I know you have a call at 12:15. We can always come back and ask these questions afterwards. But I think we need to have the ability to at the very least lay the foundation, and then we can go from there.

Mr. Hamilton. What's the date on the document, by the way?

Ms. Antell. Well, can we --

Mr. Anello. There was an NBC News story that identified it, as we have written -- I think we have copies of the story if you want to see it. So I couldn't --

Ms. Antell. That's fine. You can ask him.

Ms. Sachsman Grooms. So, again, that's what we're doing, is laying the foundation.

Could you tell us when you saw this document?

Ms. Antell. So we're at 12:15, and we did agree that we need to go and take a call. I do understand your interest in this, and we can certainly resume --

BY MR. ANELLO:

Q I'd like to come back and continue these questions. But before we take a break, I'd like to ask one question, which is, if you look at the comments on the side here, there's a number of comments that say HG(1), HG(2), HG(3), HG(4).

A Okay.

Q Can you just take a minute and look at the comments, let's just say, on the first page?

A Sure.

Q We won't make you read the whole document, given that I know you have to take a break.

A Okay.

Q Did you write those comments?

A I don't know. I might've. But I don't specifically recall.

Q "HG," is that Hamilton comma Gene?

A It might've been my -- I don't know. I mean, typically, when we get things from other departments to review, I collect comments and consolidate feedback from across the departments.

Q Is that what you did in this instance?

A I don't know. I don't remember.

But, again, this citizenship question on the Census has nothing to do with illegal immigration.

Q I understand that. You've made your view on that clear. But I'm trying to just get an answer to the question that I asked.

A And I think I just answered your question.

Q Well, my question is whether these were your comments.

A And I just told you I don't know if they were all my comments. I don't know if some of them are mine or if any portion of them are mine. I couldn't tell.

Q They're all the same user. So I guess -- I don't want to put words in your mouth. Are you saying that either you might have drafted them or you might have compiled them? Is that what you're saying?

A It's possible.

Ms. Sachsman Grooms. When you input things into Word and do track changes and do put comments, does it come up as "HG"?

Ms. Antell. So, again, you had one more question. We're now far beyond that. And we do have this additional engagement we need to run to. So can we take our 1-hour break now?

Ms. Sachsman Grooms. Yeah, we just have one outstanding question --

Ms. Antell. No.

Mr. Anello. We just haven't gotten an answer to this question.

Ms. Greer. Well, you have. You just don't like the question -- the answer to the question.

Mr. Anello. No, I don't think we have. I think he --

Ms. Antell. You can certainly come back --

Ms. Sachsman Grooms. We are just trying to understand if he's "HG" when he does inputting on any document.

Ms. Antell. So we're now a few minutes late over the time that we agreed.

Ms. Sachsman Grooms. So we could debate it, or he could just answer the question.

Ms. Antell. Or we could just stop, as I've requested.

Mr. Castor. They're coming back in an hour. So just do your call or get a sandwich and --

Ms. Sachsman Grooms. I'm curious if he's "HG" when he does inputting.

Mr. Anello. Could we just do the "yes" or "no"? Could we just do the "yes" or "no" on that? And then we can go to break. I think that might resolve this.

Mr. Hamilton. I'm not sure. I have no idea.

Mr. Anello. You don't know whether you come up as "HG"?

Mr. Hamilton. I don't know.

Mr. Anello. Okay.

82

[Recess.]

[1:21 p.m.]

Ms. Anderson. All right. We're back on the record at 1:21 p.m.

BY MR. ANELLO:

Q So we wanted to ask a couple questions relating to some of the conversations and documents that you've had. We just want to make sure we have a good sense of some of your email practices to make sure we understand where these conversations would've taken place.

So you mentioned that you believe you received an email, unsolicited, from Mr. Kobach during the transition. Do you know to what email account that would've come?

A Is it my transition?

Q Transition? Transition.gov or something like that?

A Dot-gov.

Q Did you use that email address exclusively for transition-related --

A Yes.

Q -- communications?

A Yes.

Q Okay. Did you use your personal email during the transition?

A No.

Q Okay. Did you use text messages or other forms of messaging services during the transition to talk about transition issues?

A No, I don't think so, other than, "Hey, where are you? Do you want to go to lunch?"

Q "Do you have a K-Cup?"

A "How about a K-Cup?"

Q How about with Mr. Kobach in particular? Do you remember using any

other form of communication with him?

A No.

Q Okay.

Fast-forward to DHS, 2017. Did you use any form of communication other than your official DHS email account to have communications about any work-related issues?

A And my phone to talk?

Q Sorry. I mean for written communications.

A For written communications? No.

Q Okay.

How about, thinking specifically about this citizenship question, when you were at DHS, do have you any memory of having any communications, any written communications, using your personal email?

A No.

Q Using text messaging or other messaging services?

A No.

Q Okay.

Do you know whether you communicated in writing at all with Mr. Comstock?

A If I did, it would be on a work email. But I don't seem to recall.

Q Okay.

So fast-forwarding to DOJ --

A Okay.

Q -- in your current role there, do you use personal email ever to communicate with people inside or outside the Department about work-related issues?

A No.

Q Have you ever done that, used personal email to communicate regarding the

Census citizenship question?

A No.

Q How about with anybody at the White House?

A No.

Q With John Zadrozny in particular, have you ever communicated with him using personal email?

A No.

Q Or using text messaging or messaging services?

A Not that I can recall.

Q How about Stephen Miller?

A No.

Ms. Sachsman Grooms. Have you ever received a communication from anybody at the White House where they were using their personal email?

Mr. Hamilton. I don't think so.

Mr. Anello. Aside from the White House, are you aware of anybody else in the administration that communicated regarding the citizenship question on a personal email account or using text messages or anything?

Mr. Hamilton. I honestly couldn't tell you. I have no idea.

[Hamilton Exhibit No. 8

Was marked for identification.]

Mr. Anello. So this is exhibit -- what are we up to?

Ms. Anderson. Eight.

Mr. Anello. Exhibit 8, DOJ00036371.

BY MR. ANELLO:

Q So this is an email from July 23, 2018. And it starts with an email from

Errical Bryant, OAG, who's the director of scheduling. And it says, "Sec. Ross would like to talk to the AG regarding the Citizenship questions. Any issues with setting up later today?" And that was sent to Matt Whitaker and to Danielle Cutrona.

Was that the time Mr. Whitaker was the chief of staff?

A Yep.

Q And Errical then forwarded this to you and wrote, "Would this be your issue."

A Uh-huh.

Q And you wrote, "Me and Rachael."

A Okay.

Q And then there's some followup.

So what did you mean when you said "me and Rachael"?

A I don't recall exactly, but I think that -- so this is July of 2018. At this point, I think we had been involved in litigation, and it had been alleged that this was an immigration issue. So, based on those allegations, I became more aware. Had to keep the boss, you know, advised if it affected immigration at all.

Q So, functionally, what did you do regarding this issue during that period?

A Nothing really, other than keeping abreast of the litigation.

Q Did you have conversations with officials at other departments regarding the citizenship question during this period, after March 2018, let's say?

A I don't think so.

Q Do you know whether this conversation between Secretary Ross and the Attorney General went forward?

A I don't. I don't remember.

Q Aside from that earlier conversation in 2017 that we discussed earlier, are

you aware of any conversations between the Attorney General -- Attorney General Sessions, I should say -- and Secretary Ross on the citizenship question?

A No. I mean, not specifically. No.

Q Did you sit in on any, for example?

A I don't recall sitting in any discussions.

Q I'd like to get your understanding. So the citizenship question, I think you're -- are you familiar with what the question asks?

A I presume it asks if you're a citizen or not.

Q Right. Do you know whether the Department of Homeland Security is permitted to use data gathered from the citizenship question on the Census to enforce the immigration laws?

A I don't know specifically if they would or wouldn't be.

Q Do you have any awareness of the rules governing whether Census data can be used for immigration enforcement?

A Not really. I vaguely think that there are some restrictions that are applied to the information generally that's provided on the Census form, but I don't know.

Q Has that issue ever come up? Did it ever come up when you were at DHS? Did anybody ever ask you, even if it was beyond the issue of citizenship, whether Census data could be used for immigration enforcement purposes?

A Not that I can recall.

Q Did it ever come up -- has it come up at the Department of Justice?

Mr. Gardner. About whether DHS can use the information?

Mr. Anello. Yeah, let's say, whether the Federal Government can use the information for immigration enforcement purposes.

Mr. Hamilton. Not that I can recall.

Mr. Anello. Based on your -- you are an expert on immigration law. Based on your expertise, do you have a view on that?

Mr. Gardner. Lack of foundation.

Mr. Anello. Well, he's told us he's the senior-most immigration advisor to the Attorney General and previously was the senior-most immigration advisor to the Secretary of Homeland Security. So I think he qualifies.

Mr. Gardner. That doesn't establish anything about how Census information is used. So lack of foundation.

BY MR. ANELLO:

Q Well, that's the question.

The question is, do you have a view on whether Census data may be used for immigration enforcement purposes?

A Do I have a view as to whether it may be used?

Q Correct. Legally. Whether it would be legal to use.

A I don't know enough about it to know if legally -- I couldn't answer that question for today. I'd have to do some research.

Q Do you know if anybody in the current administration has done an analysis, a legal analysis, of that issue?

A Not that I can think of. That would be, to be frank with you, a waste of resources.

Q Why would that be a waste of resources?

A DHS already knows generally the location of millions of unlawfully present aliens in the United States. I don't know why they would want to use the information from the Census form to find out more for enforcement purposes. That doesn't seem to make sense.

Q Are there other purposes related to immigration that it would be useful to have that data, from your perspective?

A I mean, I could give you a hypothetical, but --

Q Sure.

A I mean, it could be helpful to use with USCIS to know where they need to allocate resources in terms of their field offices located across the country. They have a large noncitizen population. It's possible that they might have a need for USCIS's services.

Q Are you aware of any proposals to use citizenship data for that purpose?

A No.

Q Are you aware of any proposals -- and I mean proposals that may have been discussed within the administration -- to use citizenship data from the Census for any purpose related to immigration?

A No.

Q Putting aside the specifics, the specifics of the December 12 DOJ letter, are you aware of any proposals within the administration to use the Census citizenship data for any other purpose?

A I haven't heard of any.

Mr. Anello. I'd like to go back to the document and see if we can continue to authenticate it, the one that I was -- was that exhibit 7?

Ms. Antell. So, with respect to exhibit 7, I do understand that you have a number of questions about this document. I think you have come back after the break and asked questions that are directly tied to the Census, and we'd like to proceed and answer any questions you might have that are tied to the Census. And, you know, Mr. Hamilton has, I think, been quite open to answering those questions. So is it possible to

wait until the end, if have you any other questions, to discuss this topic, this document?

Mr. Anello. I don't think we have other issues.

Ms. Antell. So this document -- which everyone in the room acknowledges there's nothing, on its face, that has anything to do with the citizenship question, correct?

Okay. So the point is we're here to talk about the citizenship question. Mr. Hamilton has answered apparently all of your questions related to the citizenship question and the Commerce Department's decision to reinstate it. He has also said that, to his knowledge, there's no relationship between the citizenship question and this document. So I don't think we have anything else to answer about this.

This does relate directly to another investigation that your committee is undertaking. You have an open inquiry on this, and it seems to me that that would be the appropriate arena in which to ask questions about this document.

Mr. Anello. Okay. So I hear your point. We were interrupted when we were simply trying to authenticate this document. And I think what we have established is that the witness was involved in reviewing, if not editing -- I think there was a question about whether he edited -- but Mr. Hamilton was involved in reviewing a draft letter on the citizenship question while he was at DOJ, while he was the senior immigration advisor to the Attorney General. That letter went out 4 days before this memo came out.

Ms. Antell. So you've said --

Mr. Anello. I'm sorry. Let me just finish. Can I just finish?

Ms. Antell. Yes, please.

Mr. Anello. Mr. Hamilton does not recall conversations related to immigration and the citizenship question, but I don't believe we got a blanket "no" that they didn't happen. I think what he said is he doesn't recall.

We know there are a number of conversations around this time with immigration

staffers, including Mr. Zadrozny at the White House, that DOJ suggested related to immigration, because we got the document that was part of -- excuse me -- that related to the citizenship question, because they were part of a document production related to that. But Mr. Hamilton doesn't recall the conversation.

So there are a lot of unanswered questions that Mr. Hamilton doesn't seem to have a recollection of. So I don't think we know exactly the extent of the conversations that he may have had, just based on the recollection that he may not have at this point. And that's fine.

But we have a document that he appears to have been involved in drafting right around the same time, and I think it's fair to just ask him basic authentication questions to understand where the document came from and who was involved in drafting it and what his role is.

And then if we've established after that that there are no further questions that are relevant to this topic, then we're happy to have a further discussion about it. But we haven't really even gotten through the authentication because we've been interrupted a few times.

So I would just ask if we could go ahead and continue that, and then if you guys feel like you don't want to let Mr. Hamilton or Mr. Hamilton doesn't want to answer any more questions about it and he wants to potentially come back again or talk about it at a different time, we're happy to have that discussion.

But I do think -- I guess I don't really see why we can't just continue to go through that verification that we had before and try to understand what this document is and where it came from.

Ms. Antell. So my first question is, there's no date on this. There's no email transmitting this. You've represented that it came in December.

Mr. Anello. So I don't know that to be the case, but we could ask the witness that. And we also have an article, an NBC News story, that states it comes from December 16, I think, 2017. But NBC News could be incorrect, and Mr. Hamilton may have different views on it, which he's obviously welcome to share with us.

If you'd like to see the article, we can introduce it as an exhibit. This is 9.

[Hamilton Exhibit No. 9

Was marked for identification.]

Mr. Anello. There may be information here about, you know, where they got the date. I don't know.

BY MR. ANELLO:

Q So I'll direct your attention to -- oh, I guess it depends on the copy. This one is the bottom of page 2, but I think on your copy it's the top of page 3.

It says: "In the draft memo, called 'Policy Options to Respond to Border Surge of Illegal Immigration' and dated Dec. 16, 2017, officials from the Departments of Justice and Homeland Security lay out a blueprint of options, some of which were later implemented and others that have not yet been put into effect."

Ms. Antell. So can I just note that the, I guess, exhibit 8, the "Policy Options to Respond to Border Surge of Illegal Immigration," has no date on it.

Mr. Anello. Noted.

Ms. Antell. So how do we know that it's the same?

Mr. Anello. That's the question that we posed.

Mr. Gardner. I'm not really quite understanding how he would know what NBC is referring to in this news article.

Ms. Sachsman Grooms. We're not asking him about --

Mr. Anello. We're not asking him about that. We're asking --

Mr. Gardner. If he knows the date of this document? I mean, if you want to ask that limited question, go for it.

Mr. Anello. Okay.

So do you -- could we start again? Because it's been a little bit interrupted. We didn't actually want to jump right to the date. Would it be okay if we start with the authentication again and just try to get this --

Mr. Gardner. Well, then why not just ask about the date first?

Mr. Anello. We're asking the questions. I'm not sure why we have to ask the question about the date first.

Mr. Gardner. Well, because I think we're having difficulty understanding the relevance of this to the questions about --

Mr. Anello. We have reason to believe -- what you're looking at, we have reason to believe it was on -- if this memo came out just 4 days after the December 12 memo. I think it's clear that we have reason to believe that. We don't know if it's true, and that's why we're posing the question. But that's one of questions we have.

Other questions would involve who wrote it, what role Mr. Hamilton played in it. Because to the extent, for example, that the same folks involved in this were involved in the citizenship question, that would be relevant information for us.

And so I think these are all fair questions. I take your point that we don't know for sure when the document was written; we only have what was published by NBC News. But I'm not sure why we can't just go in a straightforward way and ask our questions.

Ms. Antell. Well, Mr. Hamilton has said he didn't know who wrote that.

BY MR. ANELLO:

Q Mr. Hamilton, do you know who the author of this document is?

A No.

Q Do you know what agency this document came from?

A Department of Homeland Security.

Q Okay. And have you seen this document before?

A I can recall seeing this document before.

Q When did you see this document before?

A I don't know. Late 2017.

Q Late 2017?

A Early 2018. Somewhere in there.

Q Would you say it was before or after you left DHS and joined the Department of Justice?

A After.

Q After you left. So you were at the Department of Justice at the time.

A Correct.

Q In your current role.

A Correct.

Q Okay. And do you recall who provided you a copy of this document or how you received the document?

A No.

Q Okay.

You said you don't know who at DHS wrote the document but you know that the document came from DHS. Is that correct?

A Yes.

Q How do you know that it came from DHS?

A Because I remember it came from DHS.

Q And the subject line -- the topic -- the title of the document -- there we go -- is "Policy Options to Respond to Border Surge of Illegal Immigration." Is that an issue that you were working on at the time at the Attorney General's Office?

Ms. Antell. So, again, I just -- I understand that you believe there is a nexus. I'm not --

Mr. Anello. No. I haven't gotten to the question yet.

Ms. Antell. But that is the question.

Mr. Anello. No, that's not the question.

Ms. Antell. And I --

Mr. Anello. The question is going to be --

Ms. Antell. If you'd like to ask this question in the context of the committee's other investigation, that is certainly a conversation we can have. I don't see how this relates.

Mr. Anello. Okay. The question that I was going ask was whether this is an issue he worked on, whether he worked at DHS on this issue at the time. Then I'd like to find out who the people at DHS were that he worked on this issue with. That's the question I have. I think that's a relevant question. I've already explained why it'd be relevant.

So could the witness please -- Mr. Hamilton, can you please tell us who at DHS was the point of contact for you on the issues discussed in this memo?

Ms. Antell. Mr. Hamilton has told you that -- from my recollection, from what we've talked about today, Mr. Hamilton has said that he didn't talk to anyone at DHS with respect to the citizenship question after coming over to the Department of Justice.

Mr. Anello. He told us he didn't recall that. We have reason to believe he may have. But he told us he didn't recall that.

You may have reason to believe that he did as well.

Ms. Sachsman Grooms. Yes. Mr. Gore came in and told us about a conversation.

Ms. Antell. It's not Mr. Gore's recollection. This is Mr. Hamilton's recollection.

Mr. Anello. That's correct, and we're trying to refresh it. Either Mr. Gore was entirely incorrect or perhaps Mr. Hamilton doesn't remember. And so part of this is understanding who his contacts were at DHS at the time on immigration issues. It's relevant.

Ms. Greer. You said you wanted to lay a foundation for the document.

Mr. Anello. Yes.

Ms. Greer. -- two different issues that are irrelevant to the foundation of this document.

Mr. Anello. I asked for the foundation of the document. I believe I was interrupted and not allowed to finish the question.

The question I had was -- Mr. Hamilton explained to us that he didn't know who drafted this document.

But I think you also told us that you did have contact with people at DHS at the time on immigration issues. I presume you had contact on issues involving the surge of illegal immigration and perhaps even policy options to respond to that. Is that correct?

Mr. Hamilton. I've had lots of discussions with DHS about immigration issues.

Mr. Anello. So, in late 2017, which I think is the time -- or early 2018 -- I think that was the time period you said you think you saw this document -- who were your primary points of contact on the issues described in the document, specific to the document, at DHS?

Ms. Antell. The document -- again, I'm sorry to interrupt, but the document

which is 100 percent related to a different topic based on its face.

Mr. Anello. You know what? I feel like we're getting different feedback from the other folks on the other side of the table. What I'm attempting to do is simply understand where this document came from and what Mr. Hamilton's role in the document is. That's really all I'm asking. I haven't asked a single question about the substance of the document.

Mr. Gardner. But he's answered both those questions. He said he doesn't know who the author was. He said he did see the document, and he doesn't recall whether these are his comments.

Mr. Anello. Why is this the hill to die on, who his contacts were at DHS on the issue of immigration? I don't understand why that is information he can't answer.

Ms. Greer. Because you're asking specifically about a different subject other than the topic that we're here to discuss today.

Mr. Anello. Immigration?

Ms. Greer. That's the issue. Yes. We're here --

Ms. Sachsman Grooms. That's your interpretation, that the citizenship question and immigration are totally unrelated. That is not the view of the committee. The committee is investigating whether the citizenship topic and the immigration topic are related.

We understand that, from Mr. Gore, not from this witness -- because this witness does not recall -- this witness set up conversations with Mr. Gore and individuals from DHS. And so if we want to know who his contacts at DHS were on different topics, I think that's directly relevant to the questions that we're asking.

And these are our -- we don't really have to explain the purposes for our investigation or why we ask any particular question. That's not the purpose of this.

We are conducting an investigation. We have questions. These are our questions. We'd like to move forward with them. I don't think they're going to take that much longer. And we can kind of finish them, which I think would be my suggestion.

I'm not sure what the -- I mean, I can't imagine that the people he spoke with at the Department of Homeland Security on this topic is, like, a secret. So we would like to inquire further.

Ms. Greer. To be clear, based on that description, anything that Mr. Hamilton worked on that touched immigration within the administration is certainly not our understanding of what the topic of today's interview is about.

So just because it's immigration and the committee is alleging that immigration is tied to the Census question does not open the door to the relevance of any immigration-related questions.

Ms. Sachsman Grooms. I mean, we have not asked any immigration-related questions. We've asked a pretty specific set of questions.

So if we could move forward on this topic. We haven't really gone into, like, what conversations he had with Jeff Sessions on any immigration-related topic. That would be, obviously, a very interesting conversation to have, and I'm happy to have a conversation about having that conversation. But that's not where we're at. We're just at a pretty basic level of understanding who his contacts were at the Department of Homeland Security on this topic.

Ms. Antell. On a completely separate topic than the topic we're here to discuss.

Mr. Anello. Again --

Ms. Antell. You're asking about a memo, and you'd like to know who he talked about on -- who his contacts were with respect this topic. This is a topic that you have an open investigation on, and we understand there's, frankly, a subpoena to the

Department of Justice on this very topic. And if that is something you'd like to take up at a later date or you want to talk about, then we certainly understand that there's an avenue for that.

Mr. Anello. We would like a reply to the subpoena, but that's not what we were here to talk today. Today we're here to talk to Mr. Hamilton about his role in the citizenship question. And we are very interested in the extent to which -- I mean, look, we started this interview by learning that Mr. Hamilton was the senior-most immigration advisor at DHS. And, in that capacity, he had conversations about the citizenship question.

He then became the senior-most immigration advisor to the Attorney General and, in that capacity, had multiple conversations within the Department and possibly with the White House and possibly with DHS, although there wasn't a recollection of that, on this topic.

Four days after the most significant event at DOJ happened regarding the citizenship question, this issue comes down. And we'd like to know whether there's a potential relationship here, and we just haven't been able to ask the questions to get that.

I understand Mr. Hamilton's perspective is that there is not a relationship, but we'd like to authenticate that by understanding the provenance of the document, and then we'll decide if we have more questions. These are legitimate questions we have.

And I guess the question is, when the Department is telling us, you know, they're saying you're not willing to answer the question, I don't really understand what the objection is. If there's an objection, tell us, and we can respond to it. But I'm not sure I understand what the objection is.

You're saying it's a different topic. I understand that's your view. Our view is

there's a potential relationship here. We'd like to ask the questions. If you guys are objecting, maybe just tell us what the objection is. "It's a different topic" is not really an objection.

Ms. Greer. Well, it is. And we're here voluntarily to discuss topic A, and you're asking about topic B. And I understand you're trying to probe a connection between topic A and topic B, but, to some extent, we have to rest with the witness's recollection that there is no -- that's his answer. And additional questions might waste a lot of time and committee energy, but that doesn't change what the witness's answer is.

Mr. Anello. It doesn't change the witness's answer to the question that was asked, but we haven't gotten an answer to the questions we haven't asked yet or we've not been able to get an answer to.

So I'm not sure what else to say here. If you guys are instructing the witness not to answer the questions, if that's the instruction -- I haven't heard the instruction. If not, I'd like to proceed with the questions.

Ms. Antell. Yeah. I think we'd like to just take a break to discuss this.

Mr. Anello. Five minutes?

Ms. Antell. Yeah, that's fine.

[Discussion off the record.]

Ms. Anderson. Back on the record.

Mr. Gardner. Let's take it question by question. We'll see where we go.

Mr. Anello. Okay.

BY MR. ANELLO:

Q I think you had told us before the break that you did not know who at DHS authored this document, the draft memorandum, but you did recall that it came from DHS, correct?

A Yes.

Q Okay. And the title of the memorandum is "Policy Options to Respond to Border Surge of Illegal Immigration."

Do you recall during roughly the period when you remember seeing this memorandum, which I think you said was late '17 to early '18, do you remember who at DHS were your points of contact on policy issues involving illegal immigration?

A I worked with a lot of people, and I continue today -- for example, just about everybody in the Secretary's office, to the General Counsel's office, to people in Policy, senior leadership at CBP, senior leadership at USCIS. So there's, I don't know, 30, 40 people that I worked with.

Q So this document appears to be a pretty comprehensive set of policy options. And it discusses DHS, it discusses ICE, it discusses CBP, DOJ. Given the comprehensive nature of this, do you have a sense of who -- which office, let's say, would have drafted it?

A No.

Q No idea?

A No.

Q Okay. Was there somebody at DHS that you had conversations with addressing the range of policy options, as opposed to specific options that might have been applicable to particular offices at DHS?

Mr. Gardner. I'm sorry. I didn't understand that question.

BY MR. ANELLO:

Q Right. So Mr. Hamilton said that he talked to many, many people in many, many offices at DHS. And I'm trying to narrow down the folks at DHS that you might have had conversations with on the subject matters described in this memorandum.

And the point I was making is that this memorandum describes a range of policy options at a fairly high level. So I'm asking whether that jogs your memory as to who you might have discussed these issues with.

A No. It's the same as what I just said. I coordinated -- it could've been with any number of folks.

Q Can you please look at comment number one?

A Okay.

Q Did you read it?

A Yep.

Q Okay. Did you write that comment?

A I don't remember.

Q Do you recall whether you shared those sentiments at the time that are expressed in that comment?

Mr. Gardner. Do you mean that he held them?

Mr. Anello. Correct.

Mr. Gardner. Okay.

Mr. Hamilton. Prosecuting people who smuggle aliens into the United States, that's a Federal crime. So, sure, that seems fine.

Mr. Anello. So do you agree with the comment?

Mr. Hamilton. I agree that it's a good idea to prosecute people who violate the laws of the United States.

Mr. Anello. Okay. But the comment says other things as well. Do you agree with everything in the comment?

Mr. Gardner. Objection. Over-broad.

Mr. Anello. Okay. We can go sentence by sentence.

Mr. Gardner. At this point, I want to be flexible and cooperative with you all, and, you know, we have in good faith let Mr. Hamilton answer some questions about this document. But, at this juncture, we're not prepared to have Mr. Hamilton go through each of these comments and express his views about these.

Mr. Anello. Yeah. I guess I still view this as laying a foundation. We're really trying to understand whether these comments are his.

Mr. Gardner. No, and I -- he testified that he doesn't recall if they were his. He expressly said that multiple times.

Mr. Anello. But to the extent he agrees with everything written in them, that'd be pretty helpful information for us to know.

Mr. Gardner. I understand that you think it would be helpful, but, again, there's no tether between that and the topics upon which Mr. Hamilton's here today.

Look, I'm not agency counsel for the litigation reflected in exhibit No. 7, and we're just not prepared today to have him talk substantively about this exhibit. I know you want to --

Mr. Anello. No. Again, I'm not -- my intention's not actually to talk about it. My intention is to understand whether, in reading these comments, it jogs Mr. Hamilton's recollection that he may have actually drafted these.

Mr. Gardner. If you ask him that question, I'll let him answer that. But that's not the question you've asked.

Mr. Anello. Well, I'll ask that question.

Have you read all of comment one?

Mr. Hamilton. Yes.

Mr. Anello. Okay. Does it jog your memory as to whether you wrote that comment?

Mr. Hamilton. No.

Mr. Anello. Why don't you take a look at comment two.

Ms. Antell. Is it your plan to go through all 16 of the comments?

Mr. Anello. Not necessarily, no.

Mr. Hamilton. Okay. Do you have a question?

BY MR. ANELLO:

Q Yes. Does this jog your memory as to whether you drafted this comment --

A No.

Q -- after you read it? So you don't recall if you drafted this?

A No.

Q All right.

Let's skip ahead to, I guess, the third page of the document, comment number 10. Can you read that?

Actually, why don't I -- I'll just read that one out loud. This is in reference to item number six, it looks like, on the previous page, "Eliminate Abuses in the SIJ Program."

"This is all good to do -- and is something that should have been done all along. But it doesn't address the heart of SIJ visa abuse. I recall that we had discussed a number of options when I was still there -- including having the Secretary withhold her statutory consent in any case in which the minor was living with one parent or legal guardian." And then it goes on.

Does that comment jog your memory that you might have drafted this?

A It seems vaguely familiar, this comment.

Q In what way does it seem vaguely familiar?

A I mean, I know it's an issue that we've discussed in the past.

Q Okay.

I would also note, you know, the comment says that "I recall we had discussed a number of options when I was still there -- including having the Secretary withhold her statutory consent."

Now, you had previously been at the Department of Homeland Security, correct?

A Right. And so that line is what makes me -- I think I remember discussing this issue.

Q Okay. Do you remember you who discussed it with?

A Would've been the same range of folks.

Q Sorry, just to clarify, did you say you recall discussing it around the time of this memo at DOJ? Or you recall discussing it previously when you were at DHS?

A Previously.

Q Okay.

Let's take a look at comment 13. "I would suggest family detention capacity should be the priority, but perhaps somewhat modified from what we have now in terms of facilities that can handle family units on a short-term basis -- and that can eventually be converted to single adult facilities."

Do you know if you wrote that comment?

A No.

Q If you look at the next page, page 5, comment 15 on "Mandatory Detention of Arriving Aliens Who Claim Credible Fear," the comment says: "I know folks don't want to prejudge things, but 'could' isn't the word I would choose here."

That's referring to a comment that says DHS could rescind the memo thereafter, after a reference to a SCOTUS decision, pending SCOTUS decision.

A Okay.

Q Do you recall if you wrote that comment?

A No.

Q Do you recall if that was an issue that you discussed at the time?

A What issue? Rescinding the memo?

Q So, the issue of mandatory detention of arriving aliens who claim credible fear or any of the items discussed in the paragraph or the comment.

A Sure. Those are issues that have been discussed numerous times.

Q Let me just show you one more, number 16, this next comment. It's comment 16, and it's item 16.

It says, "This, too, is a legally binding requirement from an EO. But it won't have any effect on UACs, and likely a more limited effect on family units (but it could be helpful). We need to expand ER, but maybe after separating family units, prosecuting parents, and doing the other things first."

Is that your comment?

A I don't know.

Q You don't know. Okay.

Have you had a chance to look at this whole memo today or just the ones that I've taken you through?

A I think we've gone through almost everything here.

Q Well, why don't I give you a minute to look at the ones we haven't talked about, and you can let us know if that jogs -- let us know when you're finished. If you want to just focus on the comments, that's fine.

Ms. Greer. Is the question -- are you trying to jog the witness's memory as to whether he wrote specific portions or whether this document had any connection to the citizenship questions, the nexus?

Mr. Anello. Those are both good questions.

Ms. Greer. Okay. Well, I'm just trying to understand what he's --

Mr. Anello. There's not been a question asked yet.

Ms. Greer. Okay.

Mr. Hamilton. Do you have a question?

Mr. Anello. Yes. So, if you've read all the comments, do you now -- does it jog your memory as to whether you are the person who drafted those comments?

Mr. Hamilton. No.

Mr. Anello. Do you think somebody else -- do you think you drafted them? Do you think somebody else drafted them?

Mr. Hamilton. I might've been involved with some of them. I just -- I don't -- I don't recall.

Mr. Anello. Okay. Do you recall discussions about any of these topics in late 2017?

Ms. Antell. And are we talking about the memo or just generally the topics?

Mr. Anello. The topics described in the memo.

Mr. Gardner. And with whom? Just so I understand your question.

Mr. Anello. With others at the Department of Justice or the Department of Homeland Security.

Mr. Gardner. If you know, you can answer that.

Mr. Hamilton. Yes.

BY MR. ANELLO:

Q Did any of those discussions involve discussions about citizenship data?

A No.

Q Okay. Who did you discuss the issues with?

A Again, I have generally discussed a number of immigration issues with a

number of folks at DHS and DOJ.

Q So you said you recall discussions, but do you recall who those discussions were with specifically?

A No. I mean, I couldn't begin to try to recall every single discussion about -- the range of issues that are listed in this memo are pretty broad. So I couldn't begin to tell you who I talked with about the specific topics in this context.

Q You don't remember any, or you can't? I guess the question is, do you remember any such conversations during that time period and with whom?

A I do remember general discussions, but I can't remember any specific discussions.

Q I feel like there's a lack -- go ahead.

Mr. Gardner. I think the problem is, as you note, this memo covers a number of different topics, and so it's a very broad question the way it's phrased.

BY MR. ANELLO:

Q Do you remember any conversations during this time period -- and I think you said in late '17 or early '18 is when you remembered seeing this document. Do you remember conversations that encompassed either all or many of the topics that were covered in this, as opposed to, you know, one-off conversations or one that may have either covered each of these topics or covered many of the topics during that period?

A I don't recall -- again, I don't recall specific discussions, but suffice it to say that all these issues are immigration-related issues, and there are numerous discussions all the time about the range of issues related to any number of these topics. I just don't have any specifics to give you.

Q Okay. And just to be really clear -- I think you've answered this already, but I want to make sure. You don't remember any specific discussions about this

memorandum?

A No.

BY MS. ANDERSON:

Q When you were discussing these issues, would you primarily do that on the phone, like, by calling someone at DHS, or would you do it via email?

A It depends.

Q What would you say your default would be?

A I mean, there is no default. Sometimes you talk on the phone, sometimes you meet in person, sometimes we send an email. It just really depends.

Q Okay. But fair to say that some conversations happened via email and some happened on the phone?

A Probably all of the above. In-person meetings, phone calls, emails. I mean, this is a range of immigration-related topics, and, I mean, we have a general practice of talking about immigration-related topics.

Mr. Anello. Do you remember any conversations with anyone at the White House, again, from the same time period we're talking about, the period that you remembered seeing this memo, about the range of policy options to address the surge in illegal immigration?

Ms. Antell. So now we have really moved pretty far beyond the citizenship question. He has answered the question about with whom he spoke. And I understand your interest in this, I understand why you want to go down this, but I just don't think, at this point, we are prepared to have that kind of a conversation today.

Mr. Anello. Well, I guess I asked -- I appreciate that point. I asked the witness to respond, unless there's an instruction not to respond, about conversations he had with the White House on this.

Mr. Gardner. So you're asking if conversations occurred?

Mr. Anello. I asked if he had any conversations in late 2017 or early 2018, the time period when he remembers seeing this memo, that addressed the range of policy options to respond to the border surge of illegal immigration.

Mr. Gardner. You can answer that with a "yes" or "no."

Mr. Hamilton. Yes.

Mr. Anello. Okay. And who did you speak with?

Mr. Gardner. Let's go off for a second.

[Discussion off the record.]

Mr. Gardner. I appreciate your patience.

Look, I appreciate your view that you had foundational questions to ask about exhibit 7. Mr. Hamilton has answered all the foundational questions about who drafted this, who drafted the comments, the context behind this. We are getting further from that now, in terms of conversations with the White House about the substance of this. That's not why Mr. Hamilton voluntarily appeared today, and he's not prepared to answer those kind of questions.

So if you have questions about the citizenship question, about his role in that process, he's here today to answer those questions. He's been available all day to answer those questions. He has answered those questions. But if we're going to proceed down this path, being this far afield, then we're done today.

Mr. Anello. So, just to be clear, our goal is not to delve into the specific -- any of these -- you know, there's, like, 20 issues here. Our goal is not to delve into any specific issue. Our goal is to really -- we're trying to understand the document, where it fit in, and what was going on at the time.

And so the question was with whom Mr. Hamilton spoke at the White House

regarding the range of policy options described in this memo. That's what we're trying to understand.

Mr. Gardner. That's divorced from the memo. And, again --

Mr. Anello. It's not necessarily divorced from the memo.

Mr. Gardner. Well, the way your last question was phrased, it absolutely was divorced from the memo. You said, look, you know, who did you discuss, you know, these policy options with at the White House, whether they're in the memo or outside of the memo.

But more fundamental than that, I appreciate your view on these things, but we are now past the point where we are productively using Mr. Hamilton's time to discuss the topic on which he's here today voluntarily, which is the citizenship question.

If you have any additional questions about the citizenship question, let me be clear: Mr. Hamilton is here, and he's prepared to answer the questions to the best of his ability. If we're going down the path of talking about policy options related to border surge of illegal immigrants, that's not why Mr. Hamilton's here today and we're done.

Mr. Anello. We have just a handful of other questions on this topic, including the one I just asked, which we would like to ask. So if you're instructing the witness not to answer, then we'll go from there. But if you're not making the instruction, we would like to ask the question.

Mr. Gardner. I understand your preference, Russ, but he's not available today to talk about the contents of this document that has, on its face, nothing to do with the citizenship question and, as Mr. Hamilton clearly testified, has nothing to do with the citizenship question. I understand your view, but --

Mr. Anello. So the question -- just so we have it on the record, the question we

asked was: With whom at the White House did Mr. Hamilton speak about the range of policy options relating to the surge of illegal immigration around the time that this memo was received? And I think the answer we're getting back is, he's not permitted to answer that question.

Mr. Gardner. He's not available today to answer these questions that are clearly outside the scope of the reasons why Mr. Hamilton voluntarily appeared today, which is to discuss DOJ's involvement in the citizenship question.

Mr. Anello. The only other question that I wanted to ask then -- so I have that answer on the record. The only question was whether Mr. Hamilton is aware of the purpose of this memo or what this memo was used for at the time.

I think you said you remembered receiving it. You remembered reviewing it, I believe. You said you might have been involved with the comments. Do you know what the purpose of the memo was or what it was used for?

Mr. Gardner. You can answer that with a "yes" or "no."

Mr. Hamilton. Ask it again.

Mr. Anello. Do you recall what the purpose of this memo was?

Mr. Gardner. You can answer that with a "yes" or "no."

Mr. Hamilton. Yes.

Mr. Anello. Okay. What was the purpose of the memo?

Mr. Gardner. Again, we're far afield from the purpose by which Mr. Hamilton voluntarily appeared today.

Mr. Anello. Do you recall what the memo was used for?

Mr. Gardner. You can answer that with a "yes" or "no."

Mr. Hamilton. No.

Mr. Anello. You don't recall what it was used for.

Mr. Hamilton. It's not my memo. I don't know.

Mr. Anello. But it's a memo you saw at the time, correct?

Mr. Hamilton. Yes.

Mr. Anello. So you saw it at the time, but you don't know what it was used for?

Mr. Hamilton. No.

Mr. Anello. Do you know why you were asked to review it?

Mr. Gardner. You can answer with a "yes" or "no."

Mr. Hamilton. No, I don't know.

Mr. Anello. Okay. I mean, you or whoever wrote the comments marked "HG" appear to have spent a lot of time reviewing this and provided very detailed comments. Do you have any idea why?

Mr. Gardner. Objection. Lack of foundation.

Ms. Antell. So I think we're done answering questions about this memo. If you have more questions about the citizenship question or if the Republicans have questions that you'd like to ask, we're happy to answer those questions, but we're done discussing this memo today. We're just not prepared to answer questions about it today.

Mr. Anello. I'm not going to ask a question if I'm not permitted to ask a question.

Does anybody else have questions that you'd like to ask that we're permitted to ask?

Mr. Castor. Just, if I may, you mentioned that there's other litigation going on concerning -- name some issues mentioned in the memo. And so if the Department's going bring in witnesses to talk about this topic voluntarily, you have to go through an analysis about what you can talk about, what you can't talk about, issues related thereto. Is that right?

Mr. Gardner. That's exactly correct.

Mr. Castor. Okay. I'm just concerned from a -- if you look at this transcript, it's going to seem like all of a sudden this memo's taking on an outsized -- the role of this memo's significance is sort of -- we're getting carried away with talking about the memo. And so if the Department needs to go back and, you know, think through these things, that might be the best way to proceed.

Ms. Sachsman Grooms. So you think they should come back another time?

Mr. Castor. What's that?

Ms. Sachsman Grooms. Have them come back another --

Mr. Castor. Come back with further, you know -- well, just what their position is on this. I mean, I don't know that Josh knows here today, you know, what the issues are involved with some of the other pieces of litigation.

[2:23 p.m.]

Mr. Gardner. I mean, you're exactly right. And I want to be very clear with this. I mean, we really did make Mr. Hamilton available today for discussing the citizenship question, and I think the record reflects that he answered every question that was in his ability to do that.

I recognize there's a difference of opinion about whether exhibit 7 falls within the scope of that or not, but, in our judgment, it clearly doesn't. And I'm just not prepared today to have Mr. Hamilton testify about a document that I think, in my judgment, is clearly out of scope.

Mr. Anello. I mean, we understand your position. This is a voluntary interview. And if you're not going to permit the witness to answer this question, then that's a position the Department has taken.

We disagree. We feel that the fact that he was involved in both of these issues at almost the exact same time and the fact that there are real significant questions out there as to the purpose behind the citizenship question and whether it related to immigration, I think it is absolutely fair to understand what else was going on on that front at the time.

And I believe the questions we asked were really pretty foundational as to who was involved in having discussions, who was involved in the document. We did not get into any, you know, detailed policy questions.

Mr. Gardner. Sure. And to be clear --

Mr. Anello. I understand your position, but that's why we're asking the question.

Mr. Gardner. And to be sure, our position is that we did allow Mr. Hamilton to answer what we considered foundational questions about exhibit 7, giving you the provenance of it, and based on the answers to those set of questions.

So, unless there are any further questions about the citizenship question, I think we're done.

Mr. Castor. Just so the record reflects, I mean, I think the witness did give us a lot of probative information about this memo. He looked at it. He provided some, you know, genuine testimony about what he remembers. And the record doesn't always reflect the body language of the witness, but he -- it looked like he was giving it a genuine effort to recall what's in the memo. And his testimony here today seems reflective of a genuine effort to answer these questions.

To the extent the Department has concerns about some other questions, that shouldn't be reflected negatively on the witness.

Mr. Anello. Do you have any questions on your side, Stephen?

Mr. Castor. No.

Mr. Anello. Susanne, anything else?

Ms. Sachsman Grooms. Nothing.

Mr. Anello. Anybody else have anything they want to say before we go off the record?

[Whereupon, at 2:30 p.m., the interview was concluded.]

ERRATA SHEET

INSTRUCTIONS: After reading the interview transcript, please note any change, addition, or deletion on this sheet. DO NOT make any marks or notations on the actual transcript. Use additional paper if needed.

Investigation Name	Census Investigation
Witness Name	Gene Hamilton
Date of Interview	May 30, 2019

PAGE	LINE	CORRECTION	APPROVED*
18	20	Change "many" to "census"	Y
27	2, 3, 4, 13,19,	Change "Rachel" to "Racheal"	Y
28	6	Change "Rachel" to "Racheal"	Y
29	9	Change "Rachel" to "Racheal"	Y
30	4, 5,15, 20	Change "Rachel" to "Racheal"	Y
31	7	Change "Rachel" to "Racheal"	Y
32	1, 14, 20	Change "Rachel" to "Racheal"	Y
33	2	Change "Rachel" to "Racheal"	Y
33	19	Change "passed" to "talked past"	Y
34	11	Change "Rachel" to "Racheal"	Y
44	11, 21, 24	Change "Rachel" to "Racheal"	Y
50	7, 10, 21, 23	Change "Rachel" to "Racheal"	Y
89	5	Add "US" before "CIS"	Y

* For COR Majority Staff use only.

ERRATA SHEET

PAGE	LINE	CORRECTION	APPROVED*
90	11	Change "opening free" to "open inquiry"	Y
111	4	Change "questioned" to "question"	Y
113	12	Insert "question" between "citizenship" and "or"	Y

* For COR Majority Staff use only.

COMMITTEE ON OVERSIGHT AND REFORM,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: KRIS KOBACH [VIA TELEPHONE]

Monday, June 3, 2019

Washington, D.C.

The telephone interview in the above matter was held in 6200 O'Neill House Office Building, commencing at 10:04 a.m.

Appearances:

For the COMMITTEE ON OVERSIGHT AND REFORM:

TORI ANDERSON, COUNSEL

RUSSELL ANELLO, CHIEF OVERSIGHT COUNSEL

SUSANNE SACHSMAN GROOMS, DEPUTY STAFF DIRECTOR AND CHIEF COUNSEL

[redacted]

STEVE CASTOR, MINORITY GENERAL COUNSEL

ELLEN JOHNSON, MINORITY SENIOR PROFESSIONAL STAFF MEMBER

CAROLINE NABITY, MINORITY COUNSEL

TYLER SANDERSON, MINORITY COUNSEL

For KRIS KOBACH:

J. CHRISTIAN ADAMS, ESQ. [VIA TELEPHONE]

KAYLAN PHILLIPS, ESQ. [VIA TELEPHONE]

Public Interest Legal Foundation

Ms. Anderson. So, I'm just going to read a short preamble and then ask a few questions, and then we'll get started with the interview. First of all, thank you guys for being --

Mr. Adams. Can we take a roll first?

Ms. Anderson. Sure, yes, absolutely. My name is Tori Anderson. I work for the House Oversight Committee on the majority staff.

Mr. Anello. Hi, everybody. I'm Russ Anello. I'm also on the majority staff of the committee.

[redacted]

Ms. Johnson. Ellen Johnson, Republican, committee staff.

Ms. Nabity. Caroline Nabity, Republican staff.

Mr. Castor. Steve Castor, Republicans.

Ms. Sachsman Grooms. Susanne Grooms, Democratic staff. And then we've got some stenographers.

Mr. Adams. Christian Adams for Mr. Kobach. With me is Kaylan Phillips, also for Mr. Kobach, and Mr. Kobach is on the line.

Ms. Anderson. Thank you. I'm just going to proceed with this is a transcribed interview of Kris Kobach conducted by the House Committee on Oversight and Reform. This interview was requested by Chairman Elijah Cummings as part of the committee's oversight investigation into the addition of a citizenship question to the 2020 Census.

Mr. Kobach, if you could please state and spell your name for the record.

Mr. Kobach. Yes. Kris Kobach, K-r-i-s K-o-b-a-c-h.

Ms. Anderson. Mr. Kobach, again, my name is Tori Anderson. I work for majority counsel for the Committee on Oversight and Reform. I want to thank you again

for appearing by phone for the interview today. We appreciate you being willing and making the time to speak with us voluntarily.

I believe everyone else has introduced themselves, but just for the record, if we could go around again and put our names on.

Mr. Anello. Russell Anello, majority staff.

[redacted]

Ms. Johnson. Ellen Johnson, Republicans.

Ms. Nabity. Caroline Nabity, Republicans.

Mr. Castor. Steve Castor, Republican staff.

Ms. Sachsman Grooms. Susanne Sachsman Grooms, majority.

Ms. Anderson. I'm just going to go through some ground rules really quickly for the transcribed interview. If you can't hear me or need me to repeat anything, just let me know.

The way this interview will proceed is as follows: The majority and minority staffs will alternate asking you questions, Mr. Kobach, 1 hour per side per round. The majority staff will begin and proceed for an hour, and the minority staff will then have an hour to ask questions. Thereafter, the majority staff may ask additional questions and so on. We'll alternate back and forth in this manner until there are no more questions from either side and the interview will be over.

During the interview, we will do our best to limit the number of people who are directing questions at you during any given hour. That said, from time to time, following up or clarifying questions may be useful, and if that's the case, you might hear from additional people around the table.

Under the committee's rules, you are allowed to have an attorney present to advise you. Do you have an attorney representing you in a personal capacity today?

Mr. Kobach. Yes.

Ms. Anderson. Mr. Adams, will you identify yourself for the record, please.

Mr. Adams. Christian Adams.

Ms. Anderson. Thank you. There is a stenographer taking down everything I say and everything you say to make a written record of the interview. For the record, to be clear, please wait until I finish each question before you begin your answer, and I will wait until you finish your response before asking you the next question. This may seem obvious on the phone, but the stenographer cannot record nonverbal answers, such as shaking your head, so it's important that you answer each question audibly and verbally.

Do you understand?

Mr. Kobach. Yes.

Ms. Anderson. We want you to answer our questions in the most complete and truthful manner possible, so we are going to take our time. If you have any questions or do not understand any of the questions, please let us know. We'll be happy to clarify or rephrase our questions.

Do you understand?

Mr. Kobach. Yes.

Ms. Anderson. If I ask you about conversations or events in the past and you are unable to recall the exact words or details, you should testify to the substance of those conversations or events to the best of your recollection. If you recall only a part of the conversation or event, you should give us your best recollection of those events or parts of conversations that you do recall.

Do you understand?

Mr. Adams. Right. This is Christian Adams. I want to just inject here a second that he's not going to be speculating about best recollections. He's going to give you the

recollection he has if he recalls something. So, with a caveat there.

The other thing I wanted to mention is we didn't have any discussions about ground rules. So, I just want to make sure the transcription is clear that this 1 hour back and forth was not something that the parties had any discussion about. I foresee no problem with it right now, but if that circumstance or conclusion changes, I'll be sure to let you know.

Ms. Anderson. Okay. Do you understand that if -- okay. If you need to take a break, please let us know. We are happy to accommodate you. Ordinarily, we take a 5-minute break at the end of each hour of questioning, but if you need a break before then, just let us know. However, to the extent that there is a pending question, I would just ask that you finish answering the question before we take a break.

Do you understand?

Mr. Kobach. Yes.

Ms. Anderson. Although you are here voluntarily, Mr. Kobach, and we will not swear you in, you are required by law to answer questions from Congress truthfully. This also applies to questions posed by congressional staff in an interview.

Do you understand?

Mr. Kobach. Yes.

Ms. Anderson. If at any time you knowingly make false statements, you may be subject to criminal prosecution.

Do you understand?

Mr. Kobach. Yes.

Ms. Anderson. Is there any reason today that you are unable to provide truthful answers in the interview?

Mr. Kobach. No.

Ms. Anderson. Please note that if you wish to assert a privilege over any statement, that the assertion must be compliant with the committee rules. Committee rule 16, subsection (C), subsection (1), states, quote: For the chair to consider assertions of privilege over testimony or statements, witnesses or entities must clearly state the specific privilege being asserted and the reason for the assertion on or before the scheduled date of testimony or appearance, end quote.

In addition, committee rule 16(C)(3) states, quote: The only assertions of executive privilege that a chair of the committee will consider are those made in writing by an executive branch official authorized to assert the privilege, end quote.

Do you understand?

Mr. Kobach. Yes.

Ms. Anderson. Do you have any other questions before we begin?

Mr. Kobach. No.

Ms. Anderson. One other thing. I think someone stepped in the room since we started. Could you just identify yourself for the record?

Mr. Sanderson. I'm Tyler Sanderson. I'm a counsel for the minority staff.

Mr. Adams. That was not audible on the telephone. If somebody might relay that.

Mr. Anello. The name was Tyler Sanderson.

Ms. Anderson. He's a counsel for the minority.

Mr. Adams. Thank you.

Ms. Anderson. I will note for the record that it is now 10:10, and we will begin.

EXAMINATION

BY MS. ANDERSON:

Q Mr. Kobach, could you please tell us what your role was on President

Trump's campaign?

A I served as an informal adviser to the President throughout the campaign, starting roughly at the end of February 2016, and continued through the campaign, advising the President principally on issues of immigration, voting, and related matters.

Q And what was your role on the transition team? Was it the same, the informal adviser?

A No, it was more formal. I was a member of the transition team. I believe it was referred to as the policy branch of the immigration issue team. And, of course, I continued to informally advise the President, not in my capacity as a member of the transition team, continuing to provide policy advice during the transition period.

Q When did you first discuss adding a citizenship question to the Census?

Mr. Adams. Objection. Look, I don't want to do objections like we're in a deposition, but could you be more clear about that question? Because he's obviously been discussing this for quite some time.

You didn't ask -- I mean, are you asking a question about him writing about it? In what context?

Ms. Anderson. I think just when it first came up for you, Mr. Kobach. When did you first discuss the idea of adding a citizenship question to the Census?

Mr. Kobach. I'm assuming you are saying with the President, or are you saying --

Ms. Anderson. No, with anyone.

Mr. Adams. Well, that's not the question that was asked. So that's why I asked for some clarity about what the question is.

Ms. Anderson. Okay. Would you like me to repeat it?

Mr. Adams. Well, if you want to just repeat the same question.

Ms. Anderson. Mr. Kobach, when did you first speak or discuss the idea of

adding a citizenship question to the Census with anyone at any time?

Mr. Adams. Well, again, I'm going to instruct the witness not to answer the question unless there's clarity about who because his answer may violate various privileges. But if you have a particular person or if you're asking generally, I'd at least ask you to clarify that.

Ms. Anderson. So, when did the idea first come up?

Mr. Kobach. I've been very familiar with the Census practices and the issue of the absence of a citizenship question for years. So, if you're asking me when did I first discuss this topic with anyone, I cannot recall. It would have been a very long time ago.

Mr. Anello. Mr. Kobach, do you recall why you first became interested in it or whether there was an event that led you to first become interested?

Mr. Adams. I didn't realize we were going to have more than one person asking questions.

Mr. Anello. This is Russ Anello, also on the majority staff.

Mr. Adams. Look, this gets into the ground rule issue. We're happy to have one person ask questions. We didn't agree to a firing line.

Mr. Anello. We don't intend to have a firing line. There are just a couple of us here on the majority staff. Just the two of us, I believe, will be asking questions.

Mr. Adams. Maybe we need to have a discussion offline about how we're going to do this. I had assumed that this was going to be the sort of thing, like a deposition, where one represented interest is asking questions, not five or six people from the same represented interest.

BY MS. ANDERSON:

Q Okay. Mr. Kobach, what first brought up the idea of the citizenship question?

A Can you repeat that? What was the question?

Q Sure. So, what -- was there an event or a particular interest point that first brought up the idea of adding a citizenship question to the Census?

A No, there was no event or specific occurrence. And, of course, it's not adding; it's restoring the citizenship question to the Census after it's been dropped.

Q Was there a particular reason why you became interested?

A I can't recall other than to say, you know, generally much of my career for the last 20 years or so has been involved in issues of citizenship, immigration, elections, and related topics. So, this is -- and, of course, I was a professor of constitutional law for 15 years at the University of Missouri, Kansas City. And so, these issues frequently come up in cases involving voting rights and elections.

Q When did you first come to the conclusion that, I suppose in your records, restoring the citizenship question to the Census should be something that should be done?

Mr. Adams. Okay. Look, he asked -- you asked, and he answered that. He said about 20 years ago. But I'll let this go, but we'll all be happier if we don't repeat questions.

Ms. Anderson. I was just trying to clarify in the sense that we first discussed when he first became aware, and I think he identified that as a long time ago. And the question here was when did he first come to the conclusion that the question, in his words, should be reinstated.

Mr. Kobach. I don't recall the exact time. I would imagine it would be sometime between 10 and 20 years ago.

Mr. Adams. And I would instruct the witness not to speculate about things.

Ms. Anderson. During the campaign, President Trump's -- now President

Trump's campaign, did you ever discuss adding a citizenship question or restoring a citizenship question to the Census with anyone?

Mr. Kobach. With anyone, including the President?

Ms. Anderson. Yes.

Mr. Adams. Well, to clarify, the question was about the campaign.

Ms. Anderson. Yes.

Mr. Kobach. I'm sure I discussed it with someone. I don't know whether I -- well, I don't recall discussing it with the President during the campaign, but I certainly discussed the issue with people during the campaign.

BY MS. ANDERSON:

Q Who did you discuss the issue with during the campaign?

A I can't recall.

Q Were there any members of the campaign in particular or no recollection?

A Could you repeat that? You blacked out a second there.

Q Sure. Were there any particular members of the campaign that you spoke with about this issue?

Mr. Adams. Okay. You asked that, and he answered. He said he couldn't recall.

Ms. Anderson. Okay.

BY MS. ANDERSON:

Q During the transition, did you ever discuss the issue with anyone?

A It's possible, but I can't recall. The transition team -- if you're talking about discussions with other members of the transition team, I'm answering that question, and I'm saying I can't recall. We covered the waterfront of issues, and it's possible that this one was discussed. I just -- there were literally dozens of issues discussed.

Q During the campaign or the transition, did you ever contact Gene Hamilton about the possibility of adding a citizenship question to the 2020 Census?

A Gene Hamilton was a member of the transition team immigration subgroup, and if -- and he was on most of those phone calls and in most of those meetings. So, if the issue was brought up, he probably was aware of it, but beyond that, I don't know.

Q Do you recall ever specifically speaking with him about the issue?

A I don't have any specific recollection of speaking about it with Gene, but, again, my memory of all the communications during the transition period is pretty foggy at this point. That was more than 2 and a half years ago and there were so many issues being discussed, it's hard to remember specifically.

Q During the campaign or transition, did you ever discuss adding a citizenship question to the 2020 Census with a transition official named Mark Neuman, and I'm happy to spell that if that's helpful.

A I don't recall anybody named Mark Neuman. It's possible I met him and forgot him, but that name does not ring a bell at this time.

Q During the campaign or transition, did you ever discuss adding a citizenship question to the 2020 Census with Thomas Hofeller?

A I don't recall that name either, and I don't believe I've ever spoken to him.

Q It may also be pronounced Hofeller.

Mr. Adams. You're mispronouncing that name, by the way.

Ms. Anderson. Sure. How do you pronounce it? Mr. Adams, how do you pronounce it?

Mr. Adams. Yeah, it's Hofeller, if that's who I think you mean. So maybe you want to ask the question with a different pronunciation, just so the witness' recollection might be properly triggered if there is one.

Ms. Anderson. Sure.

BY MS. ANDERSON:

Q Mr. Kobach, during the campaign or transition, did you ever discuss adding a citizenship question to the 2020 Census with Thomas Hofeller?

A I don't recall ever meeting or talking with anyone by that name. I just read an article yesterday about -- I think it was that -- but -- and my recollection upon reading the article was that I've never heard of this guy.

Q During the campaign or transition, did you ever discuss adding a citizenship question to the 2020 Census with Steve Bannon?

A I spoke during the transition with Steve Bannon about a variety of issues. I don't recall whether or not we specifically talked about the citizenship question.

Q During the campaign or transition, did you ever discuss the issue with Stephen Miller?

A The same answer. Stephen Miller and I spoke about a variety of issues during both the campaign and the transition, and I don't recall whether or not we talked about the citizenship question.

Q During the campaign or transition, did you discuss the issue with candidate Trump and then-President-elect Trump?

A I don't recall specifically whether I spoke -- well, I can say, during the campaign, I don't believe we talked about it during the campaign. During the transition, I'm not certain.

Q Do you recall discussing the issue with anyone else on the campaign or transition teams?

A If you're speaking just during the campaign or transition period, I can't -- well, let me answer your question specifically. You say anyone else. I think it's

pretty likely that I spoke about it with people who were not on the campaign team and transition team. And, of course, I did say that I'm not sure about whether I spoke about it with transition team members. But if you're saying, did I speak about it with anyone at all, including any member of the private sector who's not involved, I would say it's probably -- I almost certainly did speak about it with other people.

Q Who did you discuss it with?

A I can't recall all the people that I discussed it with. I can think of a couple people that I routinely talk about these kind of issues with. One person is -- he's a person that I've had serve as an expert witness in some of the cases I've litigated. His name is Steven Camarota with the Center for Immigration Studies.

Q Sorry, I didn't quite catch the first name.

A Steven.

Mr. Adams. Steven Camarota.

Ms. Anderson. Okay.

BY MS. ANDERSON:

Q And who else?

A I've also -- I've also spoken about the issue with several attorneys that I litigate -- with whom I litigate. I think I have probably discussed it with Garrett Roe, R-o-e, who serves at the Kansas Secretary of State's Office.

There are probably others that I'm not recalling at the moment, but I'm sure I've spoken about it certainly with those two and probably with others. I just can't recall.

Q Do you recall when those conversations occurred?

A No. But, again, as I mentioned earlier, this -- the absence of a citizenship question after 2000 was dropped from the long form has been an issue that's been out there for quite a while and an issue that I have been aware of for quite a while.

Q During the campaign or transition, did you ever send or receive emails, text messages, or other written communications about the citizenship question?

A Could you repeat? You said during the campaign?

Q Or transition.

A I don't recall specifically sending an email, no.

Q Do you remember generally if you sent any communications about the issue during those times?

Mr. Adams. Okay, let me pause here a second. I let a couple of these slide. Is this an inquiry about his activity as a private citizen? I mean, if that's what the committee is interested in, this is a whole different can of worms if you're going to be investigating somebody's exercise of First Amendment associational and speech rights.

I didn't understand that that's what this interview was about was, what does a citizen do to exercise their constitutional rights? I let a couple of those slide, but I just want to caution this process that that's not what we're here for. And we'll be out of here in 5 minutes if that line of questioning continues about what a private citizen does on their own time.

Ms. Anderson. I think I've been fairly clear about restricting it to his time when he was part of the campaign and transition. I think he said --

Mr. Adams. Right, but the last question the transcript will clearly show was not.

Mr. Anello. This is Russ again. I think the question was whether Mr. Kobach sent or received written communications, either on the campaign or on the transition team, relating to the Census citizenship question.

I think his first answer was that he didn't have a specific recollection of such communication. And so then the second question was whether he has a general recollection of such a communication.

Mr. Adams. Well, the transcript will speak for itself. I thought we were going to have one person representing each party. If you'd like us to have a firing line, I can bring in Ms. Phillips from time to time to also raise her views on this.

So, look, we will answer questions about what you asked about in your written request, and that doesn't have anything to do with his role as a private citizen. And I've let this go, but you're getting perilously close to interrogating him about his exercise of First Amendment rights. Now, maybe that doesn't trouble you like it does us, but, nonetheless, it is something that would terminate this interview prematurely. So, I would just caution us to stay on focus on what you ask about for this interview.

Ms. Anderson. I'm going to repeat the question just so we're very clear about what the question is. Is that okay?

Mr. Adams. Go ahead.

BY MS. ANDERSON:

Q Okay. While -- during the campaign or transition, did you ever generally receive or send messages about the citizenship question?

A I do not recall doing so, but that's not to say I didn't. I don't recall. I used the term "specifically recall" earlier, but specifically or generally, no, I don't recall sending a message.

Q While you were on the transition team, what format would you send communications from? Was it primarily email or messages?

A The transition team had a number of conference calls -- or the transition team subgroup on immigration had a number of conference calls. And, principally, we would exchange ideas on conference calls, then sometimes there would be email communication.

Q Okay. Did you use a transition email address?

A I did not.

Q Did you use personal email as part of your role on the transition team?

A Yes, I used a personal email address.

Q Which email address did you use?

A [redacted]

Q After his inauguration, when did you first speak to President Trump about the citizenship question issue?

Mr. Adams. Well, and here we have arrived at the moment where the White House has informed us that he is not to answer questions related to discussions between the President, his advisers, the executive branch, and Mr. Kobach. So that the witness is being instructed not to answer that question.

Mr. Anello. This is Russ Anello again. Not a firing line, just another counsel.

Mr. Adams. I mean, look --

Mr. Anello. Sorry, can I just -- let me just respond.

Mr. Adams. We're not going to have a firing line here. There's one questioner.

Mr. Anello. This is a response to you, Mr. Adams. This is not a question.

Mr. Adams. We're not going to get into an argument. The witness is instructed not to answer that question.

Mr. Anello. I'd just like to -- this is not a question to Mr. Kobach. This is a response to you, Mr. Adams.

The White House's instruction which, as you know, we disagree with strongly, was that Mr. Kobach was not to discuss the substance of any conversations he had with the President or other senior White House advisers.

There is no instruction in here about discussing whether those conversations occurred, when they occurred, what happened before or after those conversations.

And there's really not an argument that the White House could make that any of those conversations -- that those other items I mentioned could be covered by any privilege.

Now, we disagree strongly with the White House's assertion that there could be a privilege of the communications themselves and the substance of those, but Ms. Anderson's question did not go to the substance of those conversations at all. It went to whether the conversations occurred and when they occurred, and those are different, and they are not covered by any letter or instruction from the White House.

Mr. Adams. Okay. I understand what you're saying, and we can perhaps revisit the question. We're not going to have a free for all about this today, a wheeling discussion with two, maybe three or four shortly, majority staff about this.

So, if you want to re-ask the question, go ahead and re-ask.

Ms. Anderson. Okay. After his inauguration, when did you first speak to President Trump about the addition of a citizenship question?

Mr. Adams. Okay. Look, that question presupposes a substance. And with all due respect to chair number two, when you ask a question about substance of a conversation and he gives you a time, you're confirming that the substance of the conversation occurred.

Ms. Anderson. Mr. Adams --

Mr. Adams. I understand your argument, chair number two, but you're still invading the privilege.

Ms. Anderson. Mr. Adams, did you receive the attachments I sent you this morning?

Mr. Adams. No.

Ms. Anderson. Okay. Well, there's an article that was published in The Kansas City Star on March 27, 2018, and in there, there is an interview that Mr. Kobach had given

and spoke about this issue. And I'm happy to read it to you. I'm happy to let you have a minute if you want to go look at those attachments because we did provide those this morning.

Mr. Adams. Well, what I would suggest we do regarding anything you've sent to me that we haven't seen is we schedule a time to go through them if you want to. We're not going to answer questions about something that was dumped on us. I still haven't seen it.

Ms. Anderson. Let me just -- I'll just --

Mr. Adams. I mean, I don't know how we can possibly do that. If you want to go ahead and ask, but he's obviously not going to speculate about things.

Ms. Anderson. Okay. Well, in that interview, Mr. Kobach is quoted as saying that he discussed this issue with the President shortly after he was inaugurated. So, I think we're simply asking about things that Mr. Kobach has already very publicly discussed, in fact, was quoted as discussing in a newspaper.

And so, I would just ask again, Mr. Kobach, to the best of your recollection, when do you remember discussing this issue with the President?

Mr. Adams. I'm instructing the witness not to answer. If you want to ask him questions about The Kansas City Star, even ask if the newspaper got it right, I don't even -- I mean, look, we haven't seen these documents. The time to provide these would have been last week, not this morning.

Ms. Anderson. Okay. I can definitely ask your question.

Mr. Kobach, would that be correct that you first discussed this issue with the President shortly after he was inaugurated, as quoted in The Kansas City Star?

Mr. Adams. Look, let's just -- let's not waste everybody's time here. He is not going to answer questions that invade a privilege that the White House has instructed us

and informed you that they are asserting here. And to ask a question about when he spoke about a substantive issue presupposes he spoke about a substantive issue.

Now, you can ask that question 10 times till Tuesday, but he's not going to answer questions that violate those instructions to us.

Ms. Anderson. And I just want to, for the record, just clearly sort of state the question that you had raised, Mr. Adams. The quote, just again for the record, says that Mr. Kobach said, quote: He may have been aware of it -- referring to the President -- and, quote, he absolutely was interested in this.

And my question now is, is that an accurate statement?

Mr. Adams. Are you asking if the newspaper quoted him correctly or is the substance of the quote accurate?

Ms. Anderson. Did the newspaper quote him correctly?

Mr. Adams. The witness can answer that.

Mr. Kobach. Yes, the newspaper quoted me correctly.

Ms. Anderson. Was there anyone else present when this issue first arose?

Mr. Kobach. Please explain what you mean when you say, "when the issue first arose."

Ms. Anderson. Sure. When the issue -- when the President expressed his interest in the citizenship question, was there anyone else present? I'm not asking about the substance of that conversation, just whether another person --

Mr. Adams. But you're asking -- that's a subterfuge to ask the question did the President express interest. And he's not going to answer a question that has a presupposition that gets to the privilege. That's exactly what you're doing when you ask a question like that.

Ms. Anderson. Okay. I'll do a different question, Mr. Adams.

BY MS. ANDERSON:

Q Mr. Kobach, the article also quoted you as saying, quote, "I won't get into exact detail, but I raised the issue with the President shortly after he was inaugurated." Is that an accurate quote?

A That is an accurate quote, yes.

Q It also quoted you as saying, quote: I wanted to make sure the President was well aware, end quote.

Is that an accurate statement?

A I think it probably is. I don't recall specifically saying that, but it sounds accurate.

Q Were these statements accurate when you told the newspaper, when you met with the newspaper journalist?

Mr. Adams. Objection. I'm sorry; he's not going to answer that because that is asking about the substance of his conversations.

Mr. Anello. I think it was just asking if the quote he gave to the newspaper was accurate.

Mr. Adams. Who is that?

Mr. Anello. Again, this is Russ Anello. We've spoken before.

Mr. Adams. Russ, look, I mean --

Mr. Anello. Mr. Adams, just to be clear, the rules do permit us to have more than one questioner. We did read that in the preamble and it's something we do routinely with interviews. We've done it --

Mr. Adams. Well, I'm sorry; we didn't have a discussion about that prior to us agreeing to do this. So maybe -- I mean, we'll go with this for a while, but realize you're testing our time and patience.

But he's not going to answer questions where the privilege has been asserted. I just got a note here that the White House sent a letter to Chairman Cummings, I guess it was this morning, that once again reasserts this privilege that Mr. Kobach's communications with the President and senior White House advisers are falling squarely within the scope of executive privilege. And he just can't answer these questions about that. I mean, he's not the one asserting this privilege. So, you know, it's not -- it's not him that -- that is deciding this. It's somebody else.

Ms. Anderson. I think you mentioned previously, Mr. Kobach, that you had perhaps had a conversation or conversations with Steve Bannon about this issue. Is that accurate?

Mr. Adams. Well, again, he said -- his testimony was it was prior to the inauguration he did.

Ms. Anderson. I'm sorry. Mr. Adams, I was clarifying what the witness said with the witness. So just like if he could say whether that was an accurate representation.

Mr. Adams. Well, it depends on -- I mean, if you're asking the same question again, he's not going to answer it twice. If you're asking a new question about a different time period, please specify.

Ms. Anderson. I apologize if my foundation was not something that was -- okay.

Did you have any conversations after the transition with Steve Bannon about this issue?

Mr. Adams. After the transition is an area that Mr. Kobach is not going to testify about for the reasons we have stated. And I have a running instruction to the witness not to testify about questions that invade the privilege that the White House has asserted. And that instruction would apply to that question.

BY MS. ANDERSON:

Q Mr. Kobach, are you aware of members of the transition team or members of the White House taking any action about the citizenship question around the inauguration period?

A Could you repeat that question, please?

Q Sure. Are you aware of any members of the transition team or any members of the White House taking action around the citizenship question during the -- around the inauguration?

A Yes.

Q What actions were those?

A Setting up communication and meetings.

Q Meetings with who?

A As we just discussed, as I mentioned in the article in the Kansas City Star, I did meet with the President and this issue was a subject during a meeting with the President. And I also -- I also met with Steve Bannon, senior adviser to the President, as well.

Q Were there any actions that were taken after those meetings?

Mr. Adams. It wasn't clear what you said. We couldn't hear that.

BY MS. ANDERSON:

Q Were there any actions that you were aware of that took place after those meetings?

A There may have been actions taken by others that I'm not aware of, but all I'm aware of is subsequent communications. So, I had a phone call after those meetings. The only other person that I can recall in those communications was Reince Priebus, Chief of Staff to the President. And I don't know what actions they took other

than setting --

Q Sorry. Yeah, I wanted to be a little bit clear in my question. Were you aware of any actions that were taken after your meeting with the President?

A If by "actions" you mean including, you know, setting up a phone call or talking to other people?

Q Yes.

A I know that -- I know that, yeah, further communication was set up, but I don't know what other actions they took without my knowledge.

Q And who were those further communications with?

Mr. Adams. Okay. What -- further communications regarding what issue?

Ms. Anderson. The citizenship question.

Mr. Adams. Okay. Well, you're getting into the privilege again then.

Ms. Anderson. So, I wasn't asking about the substance of those conversations. I was just asking -- he said that further communications occurred. I was just asking who those further communications were with.

Mr. Adams. Right, but that presupposes the substance, and he's not going to testify whether or not the substance occurred.

Ms. Anderson. I believe that he already has. He said he met with the President about the issue and then met with Steve Bannon about the issue. And then, subsequent to those meetings, there were communications, including perhaps a phone call and then some further communications.

And so, the question was, after he answered those previous questions, who were those phone calls with, or those --

Mr. Adams. I don't think that was what his testimony was. I think his testimony was that a working group existed about immigration issues, not about the

Census question, because he would not have testified about privileged communications.

Mr. Kobach. Actually, Christian, I wasn't talking about during the working group, just to clarify my question. I was talking about after inauguration regarding those communications.

BY MS. ANDERSON:

Q So do you remember more specifically when those meetings occurred that you previously discussed?

A If you're talking about post inauguration, it would have been late January-early February of 2017.

Q Did you meet with the President and Steve Bannon on the same day, or were those separate days?

A I believe it was the same day, but I'm not certain.

Q Was it -- do you think it was two meetings or three meetings, or do you have any more specific recollection?

A I think it was two meetings, one with Steve Bannon and then -- and perhaps -- and then, again, the timing is unclear to me, but one with Steve Bannon and then a subsequent meeting -- I think it was subsequent -- with the President. Mr. Bannon may have been in the room, and Mr. Priebus may have also been in the room.

Q Were there meetings about this issue after that set of meetings?

Mr. Adams. Okay. He's not going to answer a question about this issue, meaning Census question discussion. That's privileged information.

Ms. Anderson. Do you recall -- I think the question, just to be very clear, is whether there were other meetings later, not the substance of those meetings, but whether there were other meetings after that first set of meetings.

Mr. Adams. Well, he may have had other meetings, but he's not going to reveal whether or not they involved the Census question. That's privileged. The White House has asserted a complete privilege over those issues.

Mr. Anello. I understand. This is Russ Anello again. Just to be clear, I think he told us that that meeting -- he had two meetings about the citizenship question: one with Mr. Bannon, one with the President and possibly Mr. Bannon and with Reince Priebus.

So, the question is just whether there were others that took place after that. That's the question.

Mr. Adams. Right. But, look, this is privileged. Asking the question "did you have a meeting to discuss with the President the addition of the Census question" invades the privilege. He's not going to discuss meetings with the White House about the Census question.

Ms. Anderson. So, Mr. Kobach --

Mr. Adams. He asserted a privilege.

BY MS. ANDERSON:

Q Mr. Kobach, did you have any other meetings with the President?

A Yes.

Q What were those meetings about?

A A whole variety of topics, and I continue to meet with the President on a variety of topics.

Q Do you have any -- can you be a little bit more specific, please?

A Without getting into the substance of our discussions, I routinely meet with the President on issues of immigration law, border security, citizenship issues, election issues. Sometimes we talk about constitutional issues, so -- and other issues.

But, again, my principal expertise in advising the President has been in

immigration-related and election-related issues.

Q And have you ever had any other meetings with Steve Bannon while he was still at the White House?

A Yes.

Q And what were those meetings about?

Mr. Adams. Okay, hold on there. There is a letter that Chairman Cummings received this morning that says: Contrary to claims in your letter, we have a well-established legal basis for instructing Mr. Kobach not to answer questions about his communications with the President or senior White House advisers. The White House is instructing Mr. Kobach not to answer questions about these discussions.

And you all have that letter, or at least your chairman does. Mr. Kobach should not answer any questions -- any questions -- during his interview about his communications with the President or senior White House advisers, and that would include whether or not they occurred or when they occurred.

BY MS. ANDERSON:

Q Mr. Kobach, did the meeting you previously describe lead to any other meetings?

A Which meeting are you referring to when you say the meeting I previously described?

Q Sure. The day of meetings that you had with the President and Steve Bannon, did that set of meetings -- and perhaps Mr. Priebus -- did those set of meetings lead to any other meetings?

A I don't recall them specifically leading to other meetings, no.

Q Did you ever have any meetings or discussions with anyone at the Department of Commerce about the citizenship question?

Mr. Adams. We're going to object. The letter from the White House today says the witness should not be answering that question.

Ms. Anderson. Sorry. I think it was about the Department of Commerce, and that has a whole host of people that aren't senior administrative or White House --

Mr. Anello. Yes. To be clear, the White House's instruction related to the White House and her question was about the Department of Commerce, so there's no overlap with the White House instruction at all.

Mr. Adams. The witness can answer, but senior advisers is going to include the Secretary.

Mr. Anello. The letter is about senior White House advisers. I mean, that's just quoting from the letter.

Mr. Adams. Go ahead and ask the question. I'm not going to argue with you. If you ask a privileged question, he's not going to answer.

Ms. Anderson. We just wanted to be really clear about kind of what we're discussing. The letter itself, I believe the one that you previously quoted to us fairly extensively, said that he's not allowed to discuss -- answer questions about his communications -- this is a quote -- "with the President or senior White House advisers."

BY MS. ANDERSON:

Q And so the question is, did you have any discussions or conversations with anyone about the citizenship question at the Department of Commerce?

A Yes.

Q Who at the Department of Commerce?

A Secretary Ross.

Q When do you first remember speaking with Secretary Ross about the citizenship question?

A I don't recall the exact date, but I would say it was in the first half of 2017.

Q Did you have a conversation with him before he was the Secretary, or was it after he was the Secretary?

A After he was the Secretary.

Q Did you speak with anyone else at the Department of Commerce about the addition of a citizenship question?

A I think I may have spoken with one of Secretary Ross' schedulers in arranging a phone call, and I do recall speaking with someone else at the Department of Commerce about -- I think they notified me that there was a notice and comment period if I should wish to make any formal comment on the issue. Those are the only other conversations I can recall.

Q Do you remember who the scheduler was?

A I don't specifically remember, no.

Q Do you remember who the person is who notified you about the notice and comment period?

A No. I remember it was a male. I think the scheduler was female, but I don't have a specific recollection.

Q Did those, I guess, conversations or communications, were those on the phone, on email, on text message, do you recall?

A I don't recall regarding the gentleman who alerted me that there was a, you know, opportunity for notice and comment, whether that was email or phone. I think with respect to the -- I think it was a lady who arranged or somehow facilitated the phone call between me and the Secretary, I would guess that it was probably both email --

Mr. Adams. I'm going to instruct the witness not to guess.

Mr. Kobach. Okay. I think there was an email. I would -- beyond that, I'm not

sure.

BY MS. ANDERSON:

Q Okay. Did you -- with the scheduler, did you discuss -- do you remember any specific discussions or communications with that person?

A No, I do not.

Q How about with the person that reached out to you about the notice and comment period?

A I don't recall the details. To my recollection, I think he was just generally letting me know that the Department was opening up a notice and comment period and that if I wished to participate in it, I could.

Q For the latter one, the notice and comment, was that something you received through your official role as secretary of state of Kansas or was that in a personal capacity?

A How would you define that, that distinction, I mean?

Q Sure. Did it come --

Mr. Adams. I mean, you are asking him to speculate about something he wouldn't know the answer to.

Ms. Anderson. Sure. Sorry, and I'll clarify.

BY MS. ANDERSON:

Q Did it come to your official email, your official Kansas government email, or did it come to your personal email?

A I think I said I wasn't sure whether my communication with him was email or phone.

Q Okay.

A So I don't even -- so since I can't recall whether it was an email or phone, I

certainly wouldn't be able to recall whether it was an official email or a personal email.

Q Okay. Do you recall having any discussions with anyone at the Department of Justice about the citizenship question?

A I don't specifically recall. However, that doesn't mean the answer is no. I did have -- I have discussed a variety of issues with people at the Department of Justice. I just don't have a specific recollection --

Q Sorry, the last bit of your answer cut out a little bit.

A I said I don't -- I had a variety of discussions with officials at the Department of Justice post inauguration. I can't recall all the topics that came up in those discussions.

Q Who did you have discussions with at the Department of Justice?

A I had discussions with at least one -- I think he was an Acting Assistant AG, Mr. Gore. And there was another Assistant AG, and I can't remember his name. I've also -- I also had a discussion with the Attorney General himself, Mr. Sessions. There were other people in the room when I had that discussion with Mr. Sessions, but I don't recall their names.

Q Do you -- I'll just start with the first one, Mr. Gore. Do you remember when that discussion or discussions occurred?

A I would say in the -- probably in the February or March of 2017 period.

Q How about the other Acting Assistant Attorney General?

A That would be --

Mr. Adams. Well, what's the question here? How about the other Acting Assistant Attorney General? That's -- if I was in a deposition, I'd say object to form.

Ms. Anderson. Okay.

BY MS. ANDERSON:

Q Mr. Kobach, when -- if you recall, when did the conversations that you had with the other Acting Assistant Attorney General, I believe you do not remember that person's name, when did those discussions occur?

A I believe it was in the February-March of 2017 period.

Q And do you recall when your conversation with Attorney General Jeff Sessions occurred?

A It would be roughly in that same time period.

Q Were those conversations following up on your conversations that you had with Mr. Bannon or President Trump?

Mr. Adams. Okay, I'm going to object there. First of all, the question, the form of the question is vague. "Following up on" could mean at least 50 things I can think of, some of which are going to invade the privilege.

So, if you want to refine that question to something that is unlikely to invade the privilege, he can answer it, but that one I'm going to instruct him not to answer, because its vagueness lends itself to violating the privilege.

Ms. Anderson. Mr. Kobach, were the discussions or conversations you had with Department of Justice officials related to the conversations that you had with White House officials?

Mr. Adams. Objection again to -- well, the question is vague. Related to. I mean, if you want to ask a more refined question, he can answer, but that's not the kind of question that can be answered.

Ms. Anderson. Mr. Kobach, did you have discussions or conversations with Department of Justice officials as a result of the discussions that you had with the White House?

Mr. Adams. And that would require him to speculate. He doesn't know why

they --

Mr. Kobach. I didn't perceive them as being related. In other words, I didn't receive a -- you know, a request for a meeting saying, "following up on such and such discussion in the White House," or anything like that.

BY MS. ANDERSON:

Q Mr. Kobach, those discussions that you had with DOJ officials, did you initiate those conversations or discussions?

A The one with Attorney General Sessions I initiated. The ones -- and, again, I can't remember if it was just one Assistant Attorney General or two, but I can recall specifically one, which I think it was Mr. Gore. I believe that one was more of a chance meeting where we were both at the same place, and we talked about a variety of issues.

Q The meeting that you initiated with the Attorney General, was that as a result of your meetings with the White House?

Mr. Adams. Again, you are invading the privilege through an unclear question. If you want to specifically ask, "Did the White House ask Mr. Sessions to talk to you," that's a different kind of question because it has clarity and specificity. As a result of, it calls for speculation and it's vague.

Ms. Anderson. Mr. Kobach, did the White House instruct you to meet with anyone at the Department of Justice?

Mr. Adams. That invades the privilege.

BY MS. ANDERSON:

Q And your conversation with Attorney General Sessions, was that about the Census?

A As I mentioned earlier, it was a variety of topics, and I can't recall whether the Census topic came up.

Q Mr. Kobach, did you ever discuss -- or did you ever have discussions or conversations with anybody at the Department of Homeland Security?

A Are you saying in general, ever?

Q About the citizenship question.

A I can't recall any such discussions at the time.

Q Did you ever have any discussions or conversations about the citizenship question with anyone else at any other agency?

Mr. Adams. Okay. You're getting into, once again, his capacity as a private citizen about his exercise of associational and speech rights under the First Amendment. We'll let this one go, but just a cautionary note about a previously raised concern.

Ms. Anderson. Mr. Kobach, would you like me to repeat the question?

Mr. Adams. He can answer the question.

Ms. Anderson. I was just asking whether he would like me --

Mr. Adams. The question is out there.

Ms. Anderson. Okay.

Mr. Kobach. Go ahead and repeat it, please.

BY MS. ANDERSON:

Q Okay. Mr. Kobach, did you have any discussions or conversations about the citizenship question with any other agencies?

A I don't recall doing so. Again, this was 2 and a half years ago, this time period we're talking about, so it is possible I'm forgetting something, but I don't recall any, no.

Q Mr. Kobach, you said that you discussed the citizenship question with Secretary Ross. Do you remember when you -- I believe that you -- yeah, you said you first discussed it the first half of 2017. What did you discuss with Secretary Ross?

A Well, other than the general subject matter -- I don't believe I agreed to answer the specifics, but the subject matter generally was, of course, the citizenship question.

Mr. Anello. I'm sorry. This is Russ Anello again. Just to be really clear, there is no instruction that I'm aware of from the White House or from anybody else that would restrict your ability to answer questions that relate --

Mr. Adams. -- want to get clarity --

Mr. Anello. I'm sorry, Mr. Adams, could I just finish? Mr. Adams, can I just finish real quick? I'm not aware of any instruction from the White House or from anybody else that would restrict Mr. Kobach's ability to answer questions about communications --

Mr. Adams. Did you read the letter from this morning?

Mr. Anello. Yes. And it relates to the President, conversations with the President and senior White House advisers. That distinction is very important from a legal perspective, which is I'm sure why the White House put it in there.

Mr. Adams. That's fine and dandy, but here's what I would suggest we do on this, is we need to get some more clarity about whether the Secretary of Commerce falls into that category. So why don't we carve out an availability once we can get some clarity about that?

Mr. Anello. So, let me just make a couple points there, Mr. Adams, first. This is the first I've ever heard that that communication could be covered by any kind of privilege.

Mr. Adams. Well, that's great. I don't really care if it's the first you ever heard. What I'm suggesting is we find a time to answer your questions once we can get some clarity on that. I'm saying that we'll be available on that, and would you give us the

courtesy of getting some instruction about that?

This is not our direction that's in play here. And it may be that you are not aware of anything, but we need to be comfortable about what our instructions are.

Mr. Anello. So, I think this is something we could certainly talk about after lunch, but our goal would be to complete it during this interview.

Mr. Adams. Well, we're going to be over before lunch. So, we can talk about it after lunch if you want, but I'm just saying let's make ourselves available at another time involving Secretary Ross. We just need some clarity about what the instruction is.

Mr. Anello. So, if you want to call -- if you'd like to take a break during lunch to call, and then we can continue the interview afterwards, I think that would be fine with us. But our goal is to be able to complete our questions today, and obviously, minority staff may have questions as well.

Mr. Adams. Well, that's your goal. Our goal is to respect the privilege and complete.

Mr. Anello. Yes. Yeah, I think we'd be able to do both. I'm sure you can handle this with a quick phone call because it's pretty clear from the text.

Mr. Kobach. This is Kris Kobach. A way we might proceed is we could proceed as if we believe the privilege does assert -- does include Secretary Ross, and then if we learn from the White House that it doesn't, then we can continue.

Mr. Adams. Right. And that's the option is we just do that and inform you that if we find that our assertion is misplaced, we can all reconvene. How's that sound?

Mr. Anello. So, I think these are very important questions, and I think you guys -- I'm pretty sure we all knew these were questions that were going to come up. They were discussed by Secretary Ross.

Mr. Adams. Well, you might be sure about that, but I'm not. We can have all

sorts of trim here. What about the suggestion that we do it that way?

Mr. Anello. Sorry, what is the suggestion?

Mr. Adams. Well, Mr. Kobach said that we proceed as if Secretary Ross' discussions are covered by the privilege assertion. If we're mistaken in that, we can make ourselves available to you once we get clarity.

Mr. Anello. That -- go ahead.

Ms. Sachsman Grooms. We proceed as if we just skip those questions for now, take a break. We check and then --

Mr. Adams. Sorry, we couldn't hear you.

Ms. Anderson. I believe we'll proceed now, and then when we take a break, we'll give you an opportunity to check with that, and then we'll return, and we can proceed from there.

Mr. Adams. Okay.

BY MS. ANDERSON:

Q Mr. Kobach, who initiated the conversation between you and Secretary Ross?

A I can't recall who set it up.

Q Did you talk on the phone or in person?

A On the phone.

Q Was anyone else present on the phone call?

A To my recollection, no one was present with me on my end of the phone call. I do not know who was present on Secretary Ross' end of the phone call.

Q How many other times did you discuss the citizenship question with Secretary Ross?

Mr. Adams. He's not going to answer that question until we sort this out. Next

question.

Mr. Anello. This is Russ. One thing I'd say -- so we're going to be switching shortly and taking a break in about 2 or 3 minutes. The one thing I would say is in addition --

Mr. Adams. We couldn't hear you. I'm sorry.

Mr. Anello. So, we're going to be taking a break, because our hour is almost up. We're going to be taking a break pretty shortly. The one thing I'd say is, in addition to resolving the issue that you'd like to resolve regarding the scope of your instruction, it would also be great if, when we reconvene, you're able -- you have the documents that we sent you because we would like to ask about those documents. There's a very small number of them.

Mr. Adams. Okay, I couldn't hear that, something about -- you must be further away from the phone.

Mr. Anello. What I said was when we reconvene, in addition to having a response regarding the scope of the instruction, it would be very helpful if you can pull up the emails or the small number of documents we sent you so that Mr. Kobach is able to answer questions about those.

Mr. Adams. Okay. What small number of documents you sent us, was this last week?

Mr. Anello. These were documents that we sent you in advance of the interview. Just so you know, our normal practice is to provide documents during an interview, but as a courtesy -- because Mr. Kobach did not want to travel here, we, as a courtesy, allowed you guys to do this on the phone, we emailed them to you in advance. And so there's not a need to study the documents in advance.

Mr. Adams. I have some time to take a look at those this afternoon, and we can

get back to you on that.

Mr. Anello. I just want to let you know before the break that we do have questions about them, so just wanted to give you one more heads-up about that. We can talk about that after the break.

Mr. Adams. Well, I just want to let you know we're not going to answer them because we haven't had time to look at them. So, you can waste everybody's time and ask them, but I would suggest we carve out another time to get to those because it's not going to be in the next couple of hours.

If you sent them to us last Friday, it would be a different discussion, but I don't have any idea what they are, and I need to discuss them with the client. And that's not going to happen during the break.

Mr. Castor. I don't know what I want to do with this. I mean, this is just --

Ms. Sachsman Grooms. Can we ask him to take a break and call the White House?

Mr. Castor. This is just extremely frustrating, so --

Mr. Adams. I'm sorry; we can't hear that on the phone.

Mr. Castor. Okay, so you can't hear it. You're not here. Is the hour up?

Mr. Anello. We've got about a minute left, so I think we're happy to --

Ms. Sachsman Grooms. So, the hour is up. The option at this point is that we could take a break and allow the witness' counsel to make a phone call to the White House to clarify the instruction and then reconvene in about 15 to 20 minutes after that's done, and then you guys can have your hour if you'd like it if you have questions to ask. Do you have questions?

Mr. Castor. We'll have to talk.

Ms. Sachsman Grooms. And if you don't have questions, then we will reconvene

with our hour.

Mr. Castor. Yes. So, we'll all take a break, maybe get some friendly pills.

Ms. Sachsman Grooms. Do you want to identify who you are?

Mr. Kobach. This is Kris Kobach. What time are we reconvening?

Ms. Sachsman Grooms. So, what we would like to do is give your attorney some time to call the White House. Assuming that he can reach someone there, let's reconvene in 20 minutes. So that would be at 11:30. And hopefully, we'll be able to pick back up with the clarification from the White House.

Mr. Kobach. Okay.

Mr. Adams. All right.

[Recess.]

[11:31 a.m.]

Ms. Anderson. You can now proceed.

Mr. Adams. All right. We had an opportunity to discuss with White House counsel what exactly they're asserting privilege over, and I would suggest you pick up your -- your questions. We're back on the record.

BY MS. ANDERSON:

Q Okay. For the record, I believe the Republican side has decided not to take their hour at this time. It is 11:32 a.m.

Mr. Kobach, I want to talk about the first time that you discussed the citizenship question with Secretary Ross. I believe you said it was in the first half of 2017. What did you discuss with Secretary Ross?

A Well, I thought it was -- hold on I had the phone on mute, sorry about that. Can you hear me?

Q Yes.

A I recall discussing the subject of adding the citizenship question to the Census. I don't recall the specific things that were said in the discussion, however.

Q Okay. Did you initiate that discussion, or did Secretary Ross?

A I can't recall whether his office reached out to me or I reached out to his office.

Q Why did you think the citizenship question should be added to the Census?

A Are you asking me generally, or are you asking me -- as I said, I don't recall what I said to Secretary Ross. I can tell you generally my -- my thoughts on the topic.

Q Okay. I'll rephrase.

Did you tell Secretary Ross you thought the question should be added to the Census, the 2020 Census?

A Yeah.

Q And do you recall whether he responded to that, whether he agreed with that?

A I don't recall his response.

Q Were you aware of any actions Secretary Ross took after that initial conversation regarding the citizenship question?

A When you say action Secretary Ross took, are you referring to actions taken by the entire Department of Commerce, or are you talking about him specifically doing something like -- something that he specifically did?

Q Why don't we start with him?

A I don't recall him taking specific action. I'm aware generally of the agency putting the issue up for notice and comment.

Q How many other times did you talk to Secretary Ross about the citizenship question?

A I know that I -- I emailed him once. I can't recall if we spoke a second time on the phone. I -- I have no recollection of speaking to him a second time on the phone, but it's possible, but I -- I know I certainly sent him an email.

Q So just to return to that first conversation briefly, was that call arranged by Steve Bannon?

A I don't recall who arranged it.

Q Do you recall the purpose of that particular phone call?

A I believe the purpose was to discuss the restoration of the citizenship question to the Census.

Q Did you discuss with Secretary Ross the steps that could or should be taken to have the citizenship question appear on the 2020 Census?

A Can you clarify what you mean by steps that could be taken?

Q Did you discuss with him any next steps that the Department or he or you should take or could take to have the question appear on the 2020 Census?

A I don't recall discussing any, you know, specific steps that an agency might take in restoring the question.

Q Did you discuss with or explain to Secretary Ross why you thought it should be added to the Census?

A I did say to Secretary Ross that it should be added. I can't -- as I said before, I can't recall specifically what I said to Secretary Ross.

Q So why did you think the question should be added?

A And again, is this question just in general terms, why -- why generally do I believe it should be added?

Q Yeah. Yes.

A I think there are multiple reasons why it should be added. I mean, one -- one reason is that the principle of one person, one vote is at stake if a State or a political jurisdiction does not know how many citizens it has.

I've laid this out in an article that I wrote, I -- I assume you probably have it, at Breitbart.com in I think January of 2018. But basically the idea is that if you have two representative districts, and let's say one district has 700,000 citizens and no illegal aliens and maybe -- well, let's just -- to make it simple, all citizens and no illegal aliens, and one district has 350,000 citizens and 350,000 illegal aliens. Then the citizens in that second district have twice as much voting power as the citizens in the first district.

So, it affects the -- it impairs the principle of one person, one vote that the Supreme Court laid out in 1964 in Westbury v. Sanders when you have unequal district size or unequal numbers of citizens in each district. That was one concern.

There are multiple other concerns that different agencies would have if they don't know the number of citizens. Obviously, the Department of Homeland Security has a concern, has multiple concerns about where -- how many aliens, both legal and illegal, are in the United States, where they're living.

The Department of Labor has concerns about the labor supply and the proportion of the labor supply that might fit into the various categories of U.S. citizens, alien lawfully present, alien unlawfully present.

The Department of Justice has concerns about the Voting Right Act -- Voting Rights Act. Specifically, one of -- one of the concerns is to ensure that all population groups with particular emphasis on -- on racial minorities are given the opportunity to register to vote, and you can't calculate a percentage of people registered to vote unless you know the denominator, and the denominator is the number of citizens. If you only know the number of persons in a district or you don't know which number of those-- which of those persons are U.S. citizens and which are not U.S. citizens, then you don't have the denominator.

You can't say that -- you can't say that a given percentage of eligible voters are registered because you haven't calculated -- since noncitizens aren't eligible voters, you have to know the percentage of citizens, and that's a fundamental concern of the Voting Rights Act.

Those are -- those are some of the, you know, the biggest questions, biggest issues that are affected by a country not knowing the number of citizens that it has, so those are generally my concerns on the issues.

Q With regards to the one person, one vote issue that you brought up, how would adding or including a citizenship question in the 2020 Census affect that concern?

Mr. Adams. Okay. He answered that question when he explained the

distribution of citizen voting power.

Ms. Anderson. So, I think the question is not what the concern is, Mr. Adams. The question is gathering this information, how would that affect or address that concern for Mr. Kobach's opinion or from his perspective. So, I think they're slightly different than the question that we answered previously, and I'm happy to ask it again if that helps you understand what my question is.

Mr. Adams. Right. I mean, we'll let this go, but once again, you're getting into his private capacity thoughts. And I didn't realize the committee had designs on interrogating a private citizen about their private-held thoughts about what is the best policy for government, but we'll let this one go, but realize you're on a short leash.

BY MS. ANDERSON:

Q Mr. Kobach, would you like me to repeat the question?

A No. I remember the question.

Q Okay. Thank you.

A Well, that information would assist whoever the -- the person or committee or commission, depending on the State, you know, drawing voting district lines. So if you have -- in the State of Kansas where I was secretary of state, if you have, you know, one representative district in one part of the state where -- to go back to the example I gave earlier, where half of the individuals in that represented district as currently drawn are unlawfully present in the country, then there would be a strong argument that the citizens in that district are actually twice as powerful in their votes. It's like one person, two votes. And so that would assist the State if they wanted to conform with the one person, one vote principle as articulated in Westbury v. Sanders.

Mr. Anello. This is Mr. Anello. I just wanted to make sure I understood it because -- I'm sure Tori got it, but it's a little complicated for me.

Mr. Kobach, it sounds like, if I'm getting this right, the goal of gathering the data with respect to apportionment would be that once you had this data, this citizenship data, a decision-making body could use it to draw district lines that would exclude certain noncitizens or maybe exclude all noncitizens for the purpose of apportionment. Is that right?

Mr. Adams. Okay. Wait a minute. First of all, he didn't testify to that.

Mr. Anello. That's why I'm asking for clarification.

Mr. Adams. He didn't use the word apportionment. He talked about redistricting, for one.

And secondly, this is now the third question that's delving into his own private views as a citizen, and that's not what the purpose of this interview was about.

Mr. Anello. Yeah. I'm just asking for a clarification of what he just said.

Mr. Adams. No. You asked -- you asked him about something he didn't testify about. Apportionment isn't what he testified about. You should go look up what that means, but that -- that is not what he testified about, and you are trying to put words in his mouth, and that's not what he testified about.

Mr. Anello. Okay. Well, maybe we can ask Mr. Kobach if that is what he meant, and if he -- if it's not, then he can certainly --

Mr. Adams. Look. I said earlier that we're not going to have a firing line with a series of people about his own private views, and then you -- it wouldn't be so bad if you didn't put words in his mouth. He never said anything about apportionment.

Mr. Anello. Okay. I'm not -- to be clear, I'm not trying to put words in his mouth. I just phrased it as a question because I want to understand if that's what he meant or not.

Mr. Adams. But that's what you did. It doesn't matter what you tried to, that's

what you did.

Mr. Anello. But if it is, he can certainly say that.

Mr. Adams. He never said anything about apportionment.

Ms. Anderson. I think we're just trying to clarify, and if Mr. Kobach does not agree with the phrasing that we used, we're happy to hear how he would phrase what Mr. Anello asked.

BY MS. ANDERSON:

Q Mr. Kobach, if you don't mind responding, does that adequately capture what your view was, or is there something you would like to clarify?

A My concern is that we should respect the principle of one person, one vote. And in determining voting districts, we should try as much as possible to ensure that there are an equal number of citizens voting in each district because if you don't do that -- and this is, of course, what the Supreme Court has told us for more than 50 years. If you don't do that, then some citizens have effectively more votes than others, and I think all of us as Americans want to ensure that our votes are equal.

Q And so -- sorry. Just to clarify to make sure that we are all on the same page, that would -- the mechanism for doing that would be removing noncitizens from those calculations. Is that --

Mr. Adams. Okay. Look. This is -- we're not going to get into a debate here about what a private citizen thinks is the best government policy. You asked for time to learn about what he said to people like Secretary Ross, but we're not going to have a running soliloquy between two people who disagree over the issue --

Ms. Anderson. Well, I think, Mr. Adams, you took --

Mr. Adams. -- about what his views are.

Ms. Anderson. Mr. Adams, you took issue with the way it was phrased. I was

rephrasing it in order to, you know, not work against the issue that you --

Mr. Adams. No. I took issue with your second chair calling it apportionment when -- it wasn't how it was phrased. It was misrepresenting what the testimony was.

Ms. Anderson. Okay. And Mr. Adams, I --

Mr. Adams. Apportionment and redistricting are two radically different things, and he never testified about apportionment. But he put words in his mouth when he said apportionment because he never testified about apportionment.

Ms. Anderson. And Mr. Adams, I appreciate --

Mr. Adams. That is not the same thing as drawing districts.

Ms. Anderson. I appreciate your concern, but I, as you put it, the first chair asked him a different question that did not use that word, and so I was asking him to answer that question. And so, I understand and am appreciating --

Mr. Adams. We're not going to have him answering questions about private citizen's views about -- about redistricting.

Ms. Anderson. Mr. Adams, I would just like to finish -- I would like to finish my point.

Mr. Adams. It's not going to happen.

Ms. Anderson. Mr. Adams, I just want to finish my point if you would allow.

Mr. Adams. Right.

Ms. Anderson. I was asking a separate question, and that question is whether Mr. Kobach agreed with what I said, and I would just like if he would be allowed to answer that question because understanding and appreciating your previous concerns --

Mr. Adams. Right. Well, he's not going to answer questions about his private views.

Ms. Anderson. Okay.

Mr. Kobach, did you --

Mr. Adams. This has gone on now -- this was supposed to be about a governmental policy, not about a private citizen's private views.

BY MS. ANDERSON:

Q Mr. Kobach, did you share your concerns or the reasons why you thought a citizenship question should appear on the 2020 Census with Secretary Ross?

A As I said earlier, I did share some reasoning, but I can't recall now what specific things I said to Secretary Ross.

Q Okay. At the time you had that conversation with Secretary Ross, the reasons that you shared with us, the three reasons why you thought the question should appear, were those views that you held at that time?

A Yes, but I would clarify that the second reason is actually multiple reasons. It's all the many reasons the government needs to know, you know, the number of citizens it has, and that includes labor calculations. That includes settling of immigrants into a society. That includes all kinds of things, so that second reason is really a plethora of reasons rolled into one.

Q And Mr. Kobach, sort of getting to that mechanism for the one person, one vote, and sharing in those discussions you had with Secretary Ross, would the mechanism of that be removing or excluding noncitizens from calculations of apportionment or redistricting?

Mr. Adams. Before he answers that question, what is the time? Does your -- whatever mechanism you have for transcription have the time that we're at?

Ms. Anderson. It's 11:48 a.m.

Mr. Adams. Okay. It seems to me you've run an hour and a half now.

Ms. Sachsman Grooms. Okay. So, the way our system works is that the

majority goes for an hour, and then the minority has the opportunity to go for an hour. In this instance, the minority waived that opportunity for now and reserved the right to go later, and so the majority is taking its second hour. So, we are now in the majority's second hour.

Mr. Adams. We need to wrap this up.

Mr. Anello. I'm sorry. Why do you need to wrap it up?

Mr. Adams. I said we need to wrap this up.

Mr. Anello. Yeah. I was just asking why do you need to wrap it up?

Mr. Adams. Because I said so.

Mr. Anello. Okay.

Ms. Sachsman Grooms. Okay. Well, so the committee continues to have questions for Mr. Kobach. Obviously, this is a voluntary interview, so if you choose to not answer questions or to get off the phone, that's certainly something that you can do, but we have not completed our questions at this time.

Mr. Adams. Okay. How much longer do you anticipate this taking?

Ms. Sachsman Grooms. It would take a lot less time if there were fewer interruptions, and we were permitted to ask the questions.

Mr. Adams. Well, it would take a lot less time if you would answer the question I asked and not criticize me for representing the client. But how long do you anticipate this taking?

Mr. Anello. Honestly, I think it depends on whether -- how quickly we can go through these. Some of these questions I think could be answered relatively rapidly, but at the pace we're going, it seems to be much more extended than I had anticipated.

We have a few documents that we'd like to go through and a few other issues we'd like to talk through. I think it could be another hour, maybe, maybe slightly more

on our end.

Mr. Adams. Well, that's not possible. We can't go another hour, so we'd have to -- we'd have to hold this over, and I told you earlier, we don't have documents. We don't have those documents.

Mr. Anello. You do have the documents. We sent them to you.

Mr. Adams. Yeah, I understand that, but we haven't had time to look at them and discuss them with counsel. I don't suspect that you're suggesting that we don't -- we should not exercise that right to have a discussion with our client about documents you sent us an hour or two ago.

Ms. Sachsman Grooms. So, we are moving forward with the interview. We would like to move forward with the interview. I'm not sure that-- I don't believe that you indicated that there were time constraints on the interview today before we scheduled it, but if you would permit us to continue moving forward, we will do that right now.

Mr. Adams. Okay. I don't believe that we did indicate there were time constraints, but you said it was going to take an hour of questioning, and we're now almost at two.

Ms. Anderson. Just to be very clear, when we first began this this morning, we said that the procedures were the majority counsel takes one hour, and then we switch, and the minority counsel takes an hour, and we go back so on and so forth until there are no more questions. I'm happy to read that directly to you again, but that is what I said this morning, and those are our procedures.

Mr. Adams. Okay. But you are now on your second hour.

Ms. Anderson. Correct, because the minority counsel did not want to take their hour at this time, and so we proceeded with our second hour.

Mr. Adams. All right. We'll go up to noon, and then we'll take a break.

Mr. Anello. That's 8 minutes from now. You'd like a break then?

Mr. Adams. Well, it would be easier to take a break --

Mr. Kobach. From my perspective, if we can -- I don't want to just keep going on and on and on all afternoon, so you know, let's go 15 minutes or whatever and then see how many more questions you have because I'd rather not take a lunch break and then come back if we don't have to.

Mr. Anello. Yeah. I think from our perspective, we're happy to keep going. It's just been a little bit -- it's been a bit tough sledding because we haven't been able to get through any of these questions, and so we have to go back and repeat them.

So, we're happy to try to be efficient with your time. Our goal is not to waste it at all. Our goal is just to get our questions answered and move on.

BY MS. ANDERSON:

Q Mr. Kobach, did you speak with anyone else about these concerns or the reasons why you thought the question should appear on the 2020 Census, anyone else in the administration?

A I can't recall speaking about it with anyone else in the administration other than the people we've already discussed.

Q So we provided your attorney with a copy of a document, and I'm going to talk through it if you do want to take a second to try to pull that up. However, if not, I will just -- I'll go through it on the phone.

Mr. Adams. Well, I mean, we've asked you -- we have asked specifically for the opportunity to look at these documents, and you said take a second. Well, that illustrates the problem. We're not going to take a second and then answer questions about something.

Ms. Anderson. Okay. Mr. Adams, I'm happy just to go through.

Mr. Adams. You sent us --

Ms. Anderson. I'm happy just to go through and describe the document and see that triggers Mr. Kobach's recollection, and then we can go from there. Does that sound all right?

Mr. Adams. That sounds fine.

Ms. Anderson. Okay.

Mr. Kobach, I'm marking as exhibit 1 an email.

[Kobach Exhibit No. 1

Was marked for identification.]

BY MS. ANDERSON:

Q The top email is from Monday, July 24th, 2017. And the first email -- it's an email chain. The first email in the email chain is from Friday, July 14th, 2017. It's an email to you from Secretary -- to you -- to Secretary -- from you, excuse me, to Secretary Ross at his DOC email address.

And the email reads: Secretary Ross, Kansas Secretary of State Kris Kobach here. I'm following up on our phone discussion from a few months ago. As you may recall, we talked about the fact that the U.S. Census does not currently ask respondents their citizenship. This lack of information impairs the Federal Government's ability to do a number of things accurately. It also leads to the problem that aliens who do not actually, quote, "reside," end quote, in the United States are still counted for Congressional apportionment purposes. It is essential that one simple question be added to the upcoming 2020 Census. That question already appears on the American Community Survey that is conducted by the Census Bureau, question number 8.

A slight variation of that question needs to be added to the Census. It would

read as follows: Is this person a citizenship -- a citizen of the United States, question, and then the answer says yes, born in the United States, yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas, yes, born abroad of U.S. citizen parent or parents, yes, U.S. citizen by naturalization, parent, (year of naturalization.) No, not a U.S. citizen. This person is a lawful permanent resident, in parentheses, (green card holder,) end parenthesis. No, not a U.S. citizen, this person, citizen of another country who is not a green card holder, parentheticals, (for example, holds a temporary visa or falls in another category of non-citizens.)

The email then reads, quote, please let me know if there is any assistance that I can provide to accomplish the addition of this question. You may reach me at this email address or at my cell phone at -- the cell phone is redacted. Yours, Kris Kobach.

Mr. Kobach, do you recall sending this email?

A Yes.

Q Okay. Where did you get Secretary Ross' contact information?

A I don't recall who gave it to me. I -- I just don't recall.

Q Okay. And why did you decide to contact him?

A The Secretary of Commerce is the official in charge of the agency that includes the Census Bureau.

Q So the email said that you had spoken a few months prior. What prompted you to reach out to Secretary Ross again?

A I think I was just following up because I hadn't heard anything after our phone conversation.

Q Had anyone else from the administration asked you to follow up with Secretary Ross?

A I don't recall anyone asking me to follow up with Secretary Ross.

Q In that email, you said or you wrote, quote, as you may recall, we talked about the fact that the U.S. Census does not currently ask respondents their citizenship. This lack of information impairs the Federal Government's ability to do a number of things accurately. It also leads to the problem that aliens who do not actually reside in the United States are still counted for congressional apportionment purposes.

What did you mean by the lack of information leading to the, quote, problem that aliens who do not actually reside in the United States are still counted for congressional apportionment purposes?

Mr. Adams. Okay. Let me interject something here. We have stated numerous times that answers to these questions should occur after the witness and his attorneys have an opportunity to look at these.

You have indicated a desire to have complete answers. I would submit that you're probably going to get a lot of I do not recall answers unless we have an opportunity to review these documents, but if you want to proceed and ask questions that he hasn't had the time to look at -- about documents he hasn't had time to look at, you go right ahead.

BY MS. ANDERSON:

Q Okay. Thank you.

Mr. Kobach, would you like us to repeat the question?

A Yeah. Go ahead.

Q Okay. In that July 14th email you wrote, quote, as you may recall, we talked about the fact that the U.S. Census does not currently ask respondents their citizenship. This lack of information impairs the Federal Government's ability to do a number of things accurately. It also leads to the problem that aliens who do not actually reside in the United States are still counted for congressional apportionment purposes.

What did you mean when you wrote that the lack of information leads to, quote, the problem that aliens who do not actually reside in the United States are still counted for congressional apportionment purposes?

A So there are multiple categories of aliens. A lawful permanent resident or green card holder does reside in the United States, but I think anyone who studies this issue, both legally and as a matter of policy, would agree that an illegal alien or an alien unlawfully present in the United States does not reside in the United States in the eyes of the law. And so I was simply pointing out that you would have -- it could result in the potential problem of one person, one vote being violated.

And this goes back to the point I made earlier. If you had a district where 350,000 citizens and 350,000 illegal aliens were present, and you had a district somewhere else in the country where there was 700,000 citizens, people in that first district would have twice -- citizens in that first district will have twice the voting power of citizens in the other district. Again it's all about the desire to have equal voting power for citizens across the country.

Q How would the citizenship question, I guess, tackle that problem and address the issue that aliens who do not actually, as you said, reside in the United States are still counted for congressional apportionment purposes? How would it address the question for congressional apportionment purposes?

Mr. Adams. Okay. He answered this question.

Mr. Anello. Mr. Adams, this is Russ Anello. I don't believe he answered that specific question. I believe he explained why he -- I'm sorry. If you could just let me finish, Mr. Adams. Mr. Adams, if you could just let me finish, I think we'd have a more productive conversation. Thank you.

You indicated you thought that he didn't answer the question, that he already

answered it. He did not answer this.

Mr. Adams. Look. I have now -- this is the fifth time I've asserted a concern that a congressional committee is interrogating a private citizen and --

Mr. Anello. This is about an email he wrote to the Secretary of Commerce advising him to add a question to the Census --

Mr. Adams. Right.

Mr. Anello. -- which affects millions of people. So this is an issue of public policy and public concern, and it's an issue that we believe a reason to ask him about. So I appreciate that he is a private citizen.

Mr. Adams. You're interfering with his right to petition the government. I see.

Mr. Anello. We're not at all interfering with any right. We're simply asking to understand what he did.

Mr. Adams. Well, that's not what you're asking. You're asking about his private views.

Ms. Anderson. No, Mr. Adams. We're asking about an email that he has stated he sent to the Secretary of Commerce Mr. Adams, if I could finish.

Mr. Adams. But you're asking him about his private views.

Ms. Anderson. Mr. Adams, if I could finish -- we're asking what he meant when he sent an email to the Secretary of Commerce in the Secretary of Commerce's role as the Secretary of Commerce.

Mr. Adams. Right. But that's not what your question was.

Ms. Anderson. Mr. Adams, I'm not finished. I'm not finished. I'm asking what he meant when he said that they are still counted, people who he considers not actually residing in the United States. They're still counted for congressional apportionment purposes, and I'm asking how he thought the citizenship question would affect

congressional apportionment purposes. He did not answer it.

Mr. Adams. You can ask the question, what he said to Secretary Ross about that, but you are getting into some very tricky territory when you're asking about his personal views.

Ms. Anderson. Mr. Adams, are you instructing him not to answer my question?

Mr. Adams. Not yet, but it's getting close.

Ms. Anderson. Okay.

Mr. Kobach, would you like me to repeat my question --

Mr. Adams. If you want to ask what he said to Secretary Ross, that's one thing.

BY MS. ANDERSON:

Q I would like Mr. Kobach to answer the question that I previously asked.

Mr. Kobach, can you please answer that question?

A Yes. My view is that at a minimum, we just need to know the information. In other words, we just need to know the number of citizens in the country and in specific parts of the country. We need to know the number of illegal aliens in the country and in specific parts of the country.

And ideally, we would know the number of legal permanent resident aliens and also the number of aliens here on temporary visas, although we -- the Department of Homeland Security has some knowledge of that, but it is not entirely accurate knowledge of that regarding the number of people here on temporary visas because we don't have exit control. So if you come in on a work visa, we don't know whether you're still here or not.

So it's just -- my concern is that we have the information, and then what each government entity does with that information is up to them, but right now, we as a country are in a position of willful ignorance.

So, you know, Congress would ultimately decide whether this would affect apportionment. A State would ultimately decide whether they want to ensure that citizens have one person, one vote and that some citizens aren't given more voting power than others. I would hope every State would want to do that, to ensure that citizens have equal voting power.

And, you know, you could look at departments. The Department of Transportation, for example, might say well, you know, we have X number of people living in this region. To the Department of Transportation, it probably doesn't matter whether a person is a citizen, a lawfully present alien, or an unlawfully present alien. They're all going to be using the highways, so from our perspective, the information doesn't matter. So my point is you need the information for government to be effective and for citizens to have equal voting power in our constitutional republic.

Q So my question, to be narrow and specific and so that we're all on the same page, is what is the mechanism you envisioned using the data for to affect congressional apportionment purposes as quoted in the email that you wrote to Secretary Ross?

A I don't envision a specific mechanism. I just want the United States Government to know this information so that Congress can decide what to do about it and also so States can decide, you know. With regard to States, I think the mechanism is quite clear, that whatever the entity is that draws up represented districts within the State, they should and, indeed, I believe they would have a constitutional obligation to insure there are equal numbers of citizens in each district. Otherwise, one person, one vote is offended and violated.

Q And the way to do that is to exclude non-citizens from that calculation?

Mr. Adams. Look. We're done. We're done. He's answered your questions three different times, okay. He's not going to answer that.

Ms. Anderson. And Mr. Kobach, just to be clear, the question was and the way to do that would be to exclude noncitizens from the calculations?

Mr. Adams. We're done. He's not going to answer that. He's already answered that question two different times, and you're interrogating him about his private views. He didn't propose anything to Secretary Ross was his testimony in that regard. He's not answering that.

BY MR. ANELLO:

Q Okay. I understand the witness -- this is Russ Anello. I understand the witness has been instructed not to answer that question.

In your email to Secretary Ross, again, you said that it, meaning the lack of a citizenship question, leads to the problem that aliens who do not actually, quote, reside in the United States are still counted for congressional apportionment purposes.

And so I'm trying to understand. Did you believe that adding the citizenship question would impact or could impact, let's say, congressional apportionment in a manner that would increase the political power of one political party?

A No, I did not believe or -- well, I mean, obviously any change in any apportionment potentially affects the balance of power, but no, that was not the --

Q Well, this is something -- go ahead.

A Go ahead.

Q This is something you talked about publicly, right, that doing what you suggest here, changing congressional apportionment, would reduce, for example, the number of seats that California has in Congress, right? That's something you've talked about publicly?

Mr. Adams. Does it say that in the letter, the email?

Mr. Anello. No.

That's something you said -- Mr. Kobach, that's something you've said publicly before, right?

Mr. Adams. Well, that's not what he said in the email.

Mr. Anello. Right. And I'm trying to provide additional context so I can understand --

Mr. Adams. Okay.

Mr. Anello. -- what he's getting at in his email. That's all.

Mr. Adams. We just need a break now, guys. If you want to reconvene at -- we're 8 minutes past our scheduled break.

Ms. Anderson. Just to be very clear, you asked for a break. We did not schedule a break because we were in our second hour which I believe still goes for another 20 minutes or so. If you're requesting a break, we would just ask that again, Mr. Anello be allowed to finish his question.

Mr. Anello. I think Mr. Kobach actually asked us to continue, if I'm remembering correctly, but I could be mistaken.

Mr. Kobach. Well, how many -- how many more minutes of questioning or how many more questions do you have? I would like to be concluded with all of this by 1:00 your time at the very latest.

Mr. Anello. We're obviously trying to go through these as quickly as we can. We do have a number of other questions, but we're getting bogged down because we've not been able to ask these, so I think I estimated last time --

Mr. Adams. Right.

Mr. Anello. Okay. Again, he can't answer the question.

Mr. Adams. Can we take a 5-minute break and hop back on?

Ms. Sachsman Grooms. I'm sorry. We didn't understand you.

Mr. Adams. Could we take a quick 5-minute break and hop back on?

Ms. Sachsman Grooms. Sure.

Mr. Adams. Okay. Thank you.

[Recess.]

BY MS. ANDERSON:

Q We can go back on the record. Thank you.

Mr. Kobach, you also wrote in that email, quote, it is essential that one simple question be added to the upcoming 2020 Census. You proposed language that you said was a, quote, light -- slight variation, end quote, on the language that already appears on the American Community Survey.

Who came up with the language for the question that you sent to Secretary Ross?

A I did.

Q Did you discuss that variation with anyone else?

A I'm not certain.

Q In the email, you also offered your assistance and said, quote, you would offer your assistance to, quote, accomplish the addition of this question, and you provided your cell phone number.

Did Secretary Ross respond to your email?

A Let me just amend my answer to the previous question. I believe I discussed it with Steven Camarota just to get some background on the phrasing, how the question had been in the past. I don't -- I didn't -- but my suggested phrasing of the question to Secretary Ross was my own.

Q Okay. Thank you for that clarification.

Did you want me to repeat my last question?

A Yes, please.

Q Okay. In the email, you offered your assistance, quote, to accomplish the addition of this question and provided your cell phone number.

Did Secretary Ross respond to that email?

A I don't recall Secretary Ross specifically saying I need your help and here's how or anything like that.

Q I'm sorry. Just to clarify my question, my question was did he respond to that email?

A Are you asking -- are you asking did he send me an email in response?

Q Yes.

A I do not believe he did.

Q Did he ever --

A I don't recall.

Q Okay. Did he ever call you on the numbers that you provided or otherwise?

A This is where my memory is unclear. I can't -- I do recall the one conversation that I had with Secretary Ross or recall having a conversation prior to that email. I can't recall whether I had a substantive conversation with him.

Q Okay. Was the email address you used to communicate that [redacted] address you gave us previously?

A Yes.

Q Okay. Did you use any other email address or any text messages or messaging app to communicate about the citizenship question?

A I may have used my secretary of state email when opining -- when making an official comment because, of course, the secretary of state of a State, in Kansas, anyway, is the chief election official.

So as I mentioned previously, in order to ensure one person, one vote within a State, that is, of course, a principal concern of the chief election official, and this information would be helpful, so it's possible that I used my secretary of state email --

Q Okay.

A -- for that official communication to the Department of Commerce, but I'm not certain.

Q Okay. Did you ever provide any other written materials to Secretary Ross or anyone else in the administration about the citizenship question?

A I did provide the official comment, for the notice and comment, and I assume you -- if you don't already have it, you could probably get it from the Department of Commerce.

Q Yes.

A I do recall providing that, that written material that I wrote.

Q Was there anything besides this email and that comment?

A I don't recall writing anything else, no.

Q In that email -- in an email that you sent to Wendy Teramoto who was Secretary Ross' chief of staff, on July 21st, 2017, you wrote, quote, Wendy, nice to meet you on the phone this afternoon. Below is the email that I sent to Secretary Ross. He and I spoke -- had spoken briefly on the phone about this issue at the direction of Steve Bannon a few months earlier. Let me know what time would work for you on Monday if you would like to schedule a short call. The issue is pretty straightforward, and the text of the question to be added is in the email below.

Do you recall writing that email?

A I don't recall writing the email, but I do -- but that does sound like what I would have written to her if I was trying to see if they wanted to schedule a follow up call.

Q And that email included the sample question or the slight variation that you had previously sent to Secretary Ross. Did Steve Bannon direct you to speak to Secretary Ross during that time?

Mr. Adams. You're in the privilege. Sorry. He's not going to answer that question.

Ms. Anderson. Mr. Kobach, is the email that I read to you, are the statements in that email correct?

Mr. Adams. Sorry. Once again, that's a subterfuge for the same -- the previous question. He's not going to answer that question.

Ms. Anderson. Mr. Kobach, Ms. Teramoto wrote back to you, quote, we can speak today at 2:30. Please let me know if that works, and then you wrote back, quote, that works for me. What number should I call, or would you like to call me? To which she replied, quote, Kris, can you do a call with the Secretary and Izzy tomorrow at 11 a.m. Thanks, Wendy, end quote, to which you responded, quote, yes, end quote.

Does that refresh your recollection of recalling a conversation you may or may not have had with the Secretary at that time?

Mr. Adams. Just so the record is clear on this, Mr. Kobach doesn't have this document in front of him because we have not had an opportunity to discuss with our client these documents were sent to us just before this interview took place. So with that -- with that note, he can answer.

Mr. Kobach. Assuming that what you are reading from that email chain is accurate, that sounds like me and Ms. Teramoto trying to schedule a time to talk with the Secretary, but what I don't recall is ever having such a conversation with the Secretary.

I do recall the earlier one that we previously discussed, but I don't recall actually having that second one. I have no recollection.

Ms. Anderson. Does the email that you wrote which said, quote, nice meeting you on the phone this afternoon directed at Wendy Teramoto, quote, below is the email that I sent to Secretary Ross. He and I had spoken briefly on the phone about the issue at the direction of Steve Bannon a few months earlier, end quote.

Does that refresh your recollection regarding how the meeting was set up or attempted to be set up?

Mr. Adams. Okay. Again, when you talk in terms of recollection refreshed, it normally refers to a document the witness is looking at. Just so it's clear, he is not looking at this email. He does not have this email. You are simply reading from a document to him.

Mr. Anello. And since we're making the record clear, this is Russ Anello again. For the record, we did provide this email to you, Mr. Adams. It has been mentioned several times --

Mr. Adams. You provided your --

Mr. Anello. I think it's hard for the stenographer.

Mr. Adams. Can I finish, please?

Mr. Anello. No. No. You cut me off, actually, and it's very difficult for the stenographer to keep the record if you cut me off. So how about I just get my sentence out, and then you'll have your chance to respond?

The point I was making is that we did send this email to you, Mr. Adams, with the intention that you would share with your client. You and/or your client have obviously made a decision not to look at it, and so we've been trying to accommodate that by reading it out loud on the phone. The reason this is necessary because we've also accommodated you in not coming here today.

Mr. Adams. We didn't choose not to look at it. Unlike perhaps your situation,

we have other matters, and you sent it to us with an unreasonable short duration for me to have the opportunity to look at it, much less share it and discuss it with my client. And so if you had sent it to us even a day in advance, even an evening in advance, it would have been more productive to having your questions answered.

Ms. Sachsman Grooms. Okay. Mr. Kobach, would you like us to email you this document right now?

Mr. Adams. You aren't suggesting having a direct communication with a represented party, I assume.

Ms. Sachsman Grooms. I am not. We would include you on that email. I'm merely asking whether you would like us to facilitate the providing of this document to your client so that he can look at it while we're asking him questions.

Mr. Adams. Right. And that's still a direct communication with a represented party by including him. Doesn't matter if you just happen to include us.

Mr. Kobach and I will have that discussion at another time. All I'm saying is had you sent this to us prior to one hour or thereabouts before this interview, this would be a different interview.

BY MS. ANDERSON:

Q Mr. Kobach, the email on July 21st sent from you to Wendy Teramoto says, quote, nice meeting you on the phone this afternoon. Below is the email that I sent to Secretary Ross. He and I had spoken briefly on the phone about this issue at the direction of Steve Bannon a few months earlier.

Does that refresh your recollection regarding how the meeting with Secretary Ross was set up or attempted to be set up?

A It does not refresh my recollection. In other words, I don't suddenly recall having a communication, but you know, if I -- whatever I wrote in the email was

presumably -- was truthful. I wouldn't write anything that was untrue.

Q Okay. And Wendy Teramoto wrote to you, quote, Kris, can you do a call with the Secretary and Izzy tomorrow at 11 a.m.? Thanks, Wendy, end quote, on July 24th, 2017.

Was Izzy referring to Israel Hernandez at the Department of Commerce?

A I don't know who that was referring to.

Q Okay. Do you recall any other conversations you had with Secretary Ross at any other time about the citizenship question besides the initial conversation you had in the first half of 2017?

A The only one I recall is the one from the first half of 2017. Obviously that chain of email refers to attempts to schedule a subsequent call, but I just don't remember if a subsequent call occurred or not. I don't have a recollection of it.

Q Okay. Did Secretary Ross ever express an opinion about the sample question that you included in your July 14th email with a slight variation or any comments on any of the options in the question?

And I'm happy to read the variation that you provided again, if that's helpful.

A That's okay. I remember it.

Q Okay.

A No, I don't recall -- the answer to your question is I do not recall what Secretary Ross said in response.

Q Did he reject the question?

A Well, I don't recall what he said. I could say this. If he had said flatly no, I don't, whatever, you know, I think that's a bad idea, I probably would have remembered that. So I think his -- I don't remember his specific response, but I'm pretty sure it wasn't, you know, absolutely no.

Q Okay. Did you ever speak with Earl Comstock at the Department of Commerce?

A What was the first name?

Q Earl, and his last name is Comstock.

A I don't recall ever speaking to that person. The name doesn't sound familiar.

Q Did you ever speak with Peter Davidson, the general counsel at the Department of Commerce?

A I don't specifically recall, but as I mentioned earlier, there was one -- there was one individual, a male, who informed me about the notice and comment period, that if I wanted to send an official letter, I could, and I don't remember that person's name.

Q Okay. Did you ever speak with James Uthmeier at the Department of Commerce, the Deputy General Counsel?

A I don't remember that name. It is certainly possible that one of those people was the one I spoke to on the phone, but I don't remember those names specifically.

Q Okay. After your July call with Secretary Ross, did you have any further contact or discussions with anyone in the administration about the citizenship question?

Mr. Adams. Well, I'll instruct the witness to answer to the extent he can without violating any of the privileges that have been asserted in this.

Mr. Kobach. I believe the subsequent phone call with someone, a male in the Secretary of -- or in the Department of Commerce about the opening of a comment period and the -- about my, you know, being able to formally submit a comment, I believe that occurred after that chain of email that you were just discussing. I don't recall exactly when, so -- and then, of course, I did write the formal -- you know, the formal

comment, and I believe that would have been subsequent to those emails in July of 2017.

Certainly those few communications occurred.

[12:30 p.m.]

Ms. Anderson. Do you remember any other communication?

Mr. Kobach. No.

[Kobach Exhibit No. 2

Was marked for identification.]

Ms. Anderson. I'm going to mark as exhibit 2 a letter that was written by you in your capacity as secretary of state on February 12th, 2018. It's addressed to Secretary Ross at the Department of Commerce. The letter, I will read it in part, and then ask you if you remember writing this letter.

The letter says, quote:

"I am writing in support of the Department of Justice's request that, quote, 'a question regarding citizenship,' end quote, be added to the decennial Census of 2020. As you know, secretaries of state are the chief election officials of their respective states. There are a number of election-related reasons why it is essential that a citizenship question be added to the Census.

"Adding that question would be extremely helpful in ensuring that state and local jurisdictions are in compliance with the Voting Rights Act and are not discriminating through race-based vote dilution. In order to assess whether such vote dilution exists, it is necessary that a precise count of the number of citizens of voting age occur.

"Adding a citizenship question will also be extremely helpful to secretaries of state across the country in the administration of elections. We need to know the exact number of citizens in our states in order to administrate elections fairly and to collect accurate data within our states regarding the percentage of voting-age citizens who are registered to vote.

"A version of the citizenship question already appears on the American

Community Survey that is conducted by the Census Bureau (question #8). A slight variation of that question needs to be added to the Census. It is important that the question be phrased as follows:

"Is this person a citizen of the United States?

"Yes, born in the United States.

"Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas.

"Yes, born abroad of U.S. citizen parent or parents.

"Yes, U.S. citizen by naturalization -- Print year of naturalization____.

"No, not a U.S. citizen -- this person is a lawful permanent resident (green card holder.)

"No, not a U.S. citizen -- this person citizen of another country who is not a green card holder (for example holds a temporary visa or falls into another category of non-citizens).

"This slight variation of ACS question #8 is absolutely essential if the new Census question is to be maximally useful to Federal, State, and local governments. The variation occurs in the final two categories, which serve to separate noncitizens into lawful permanent residents versus all other category of noncitizens. It is important to know the number of lawful permanent residents because these individuals are part of the population of continuous residents in a state, and are not temporarily present or illegally present. State governments (and the federal government) must have a reliable count of the number of citizens plus lawful permanent residents in order to fairly distribute public services and benefits.

"An equally important reason to know the number of lawful permanent residents is because these individuals are the ones who are on the cusp of becoming U.S. citizens. If a jurisdiction is experiencing lower-than-average naturalizations of lawful permanent

residents, that might indicate that discrimination against such noncitizens is occurring with the effect that they are discouraged from naturalizing. In addition, secretaries of state and county election officials need to know the number of lawful permanent residents in their jurisdictions in order to effectively plan for growth in the voting electorate (by purchasing election equipment, adding polling places, et cetera).

"For all of these reasons, I strongly support the Department of Justice request; and I specifically support the addition of the question as phrased above.

"Yours sincerely, Kris W. Kobach, Kansas Secretary of State."

Mr. Kobach, do you recall writing this letter?

Mr. Adams. And before the witness answers, just so the record is clear again, that the witness does not have this letter in front of him. And we're not disputing the long recitation of the letter, but the witness doesn't have this letter in front of him, just for the record.

BY MS. ANDERSON:

Q Okay.

Mr. Kobach, I think you said this, I just want to make it clear for the record, do you remember writing this letter?

A Yes, I do remember writing that letter and that sounds accurate. I don't have it in front of me, but that sounds like the letter I wrote, yes.

Q Okay. Thank you.

A And that was the subsequent communication I was referring to as far as the official comment.

Q Thank you for clarifying.

You proposed a question -- and that matched the question that you proposed in an email to Secretary Ross in July of 2017. Is that correct?

A Yes, I believe it's the same.

Q And that letter that you wrote, I guess the notice and comment letter, had some language that is similar to your email. In your July email -- July 2017 email -- you wrote, quote: "It is essential that one simple question be added to the upcoming 2020 Census. That question already appears on the American Community Survey that is conducted by the Census Bureau, question eight. A slight variation of that question needs to be added to the Census. It should read as follows."

And then in your February 12th, 2018, letter, or comment letter, you wrote, quote: "A version of the citizenship question already appears on the American Community Survey that is conducted by the Census Bureau, question #8. A slight variation of the question needs to be added to the Census. It is important that the question be phrased as follows."

Did you use your July 2017 email as a model for your February 2018 letter to Secretary Ross?

A I can't recall whether I, you know, cut and pasted it or used it as a model or not. I would imagine that I -- I would imagine that I probably looked at the question as I previously suggested it and made sure that I was consistent in my phrasing the second time.

Q There's --

Mr. Adams. But I'd instruct the witness -- excuse me -- I'd instruct the witness not to speculate and the witness' answer appeared to be speculation.

Mr. Kobach. Yeah. I don't know for sure how I created the official letter of January, what I had in front of me at the time.

Ms. Anderson. Okay. There's one issue in your July 2017 email that did not get mentioned in your February 2018 letter. Your email stated that the lack of citizenship

question, quote, "leads to the problem that aliens who do not actually reside in the United States are still counted for congressional apportionment purposes," and you did not discuss that in your letter. Is that correct?

Mr. Adams. Again, the witness doesn't have the letter in front of him. He can answer to the best of his recollection.

Mr. Kobach. To my recollection, as you just recited my January letter, I don't think I mentioned that issue.

As I mentioned earlier, there are so many issues that are affected by the ignorance of a country as to the number of its citizens, and so really you're talking about a whole host of reasons that could be mentioned. But, no, it doesn't sound like I mentioned that in the official letter.

BY MS. ANDERSON:

Q And, Mr. Kobach, you specifically cited the congressional apportionment purposes in your July 2017 email. Why did you not include it in your February 2018 letter?

A As I just said, there are a host of reasons, and they all are equally important. Although, I personally think -- I shouldn't say they're all equally important.

In my view, one person, one vote is the most important principle, but beyond that, there are many, many other reasons why. So I'm not certain why I chose one set of reasons in one email and another set of reasons -- well, some of them overlapped, obviously -- in a subsequent letter.

Q If it's one of the most important reasons, is it unusual that it was not included in your February 2018 email -- or letter?

A No. I think I said it to the chief election official and I spoke of the need to ensure that people are -- that they are registered. And I was speaking -- the main

reason would be the duties of the chief election official, and the chief election official is -- one of his or her responsibilities is to make sure that voter registration occurs and occurs easily, and to plan for upcoming elections with the -- with an adequate number of voting machines and polling places.

And so since I was writing on my official letterhead, I was probably selecting issues that the secretary of state as secretary of state would be most concerned about.

So the front and center ability is the administration of elections. So that is what -- that is -- again, I don't -- I told you, I don't have a specific recollection of what I had in front of me when I was putting together that official letter. But as secretary of state, the chief concerns are the administration of elections, and so I focused on those issues.

Q Had you been told by anyone that mentioning apportionment in the letter would be unhelpful?

A No, I'd never been told that by anyone.

Q Were you ever told by anyone that your letter should focus on the Voting Rights Act as a reason for adding the question?

A No, I was never told by anyone what my letter should look like. The letter was entirely my own creation without anyone telling me what to put in it.

Q Did you ever discuss the letter with anyone before sending it?

A No, I did not.

Q Did you ever speak with -- I think you mentioned that you spoke with Attorney General Sessions about the citizenship question, is that correct, on at least one occasion?

A No, I did not say I spoke to him about the citizenship question. I just said that I had a meeting with him in the first half of 2017 and that issue may have come up.

I am not sure whether it came up or not.

Q Okay. Do you have any recollection about whether you ever spoke with Attorney General Sessions about the citizenship question?

Mr. Adams. He just answered you.

Mr. Kobach. My previous --

BY MS. ANDERSON:

Q I'm sorry. My understanding of his answer is that he didn't recall if it came up in that meeting. I was just asking whether he -- if he remembered it ever coming up with the Attorney General. And I apologize if I don't remember the answer, but if you could just answer that, that would be great.

A If -- I believe that that meeting was the -- I'm not sure. I think that was the only meeting I had with Attorney General Sessions when he was serving as Attorney General. And I, like I say, I just -- I don't recall specifically whether that was one of the multiple topics we discussed.

Q Did you ever discuss the issue with him when he wasn't Attorney General?

A I don't recall.

Q I believe that you mentioned speaking with John Gore at the Department of Justice about the citizenship question.

Mr. Adams. He testified about that. The record -- the transcript will answer the question.

BY MS. ANDERSON:

Q Do you recall specifically what you discussed with John Gore or the Assistant Attorney General that you talked to at the Department of Justice?

A I don't recall the specifics of the discussion, no.

Q Did you ever discuss any specific documents or direct anyone to look at

particular documents at either the Department of Justice or the Department of Commerce?

A Not with respect to the citizenship question, no.

Q Okay. Did you ever become aware of conversations that occurred between the Attorney General -- at that point Attorney General Sessions -- and Secretary Ross about the citizenship question?

A No, I was not aware of any such discussions between Secretary Ross and Attorney General Sessions. And that doesn't mean that -- I'm not suggesting that they didn't occur, I'm just saying I don't know about them.

Q Understood. Did you ever talk to Gene Hamilton at the Department of Homeland Security or the Department of Justice? Yeah. Sorry. That was the end of the question.

A You want to (inaudible) Gene Hamilton?

Q Yes, about the addition of -- go ahead.

A Well, I've spoken with Gene Hamilton many times. I don't recall specifically whether I spoke with Gene Hamilton about the citizenship question on the Census.

Q Okay. Did you ever speak with a Rachel Tucker at the Department of Justice about the addition of a citizenship question?

A The name sounds vaguely familiar. It's possible that she was sitting in on my discussion with the Attorney General.

I don't recall the names of all the people who were -- he had, I would say, maybe three or four people on his staff sitting in on that discussion and I can't remember their names, so it's possible that she's one of them. But I don't recall specifically speaking with her, no.

Q Okay.

Mr. Adams. What's our time?

Ms. Anderson. It's 12:41.

Mr. Adams. Right. How much time were we going to go?

Mr. Anello. I think our hour -- I think we have another 10 minutes roughly in our hour. We may be able to finish in that time, but we may have a few more, and then the Republican staff will have an opportunity to ask questions, so --

Ms. Johnson. We started at 11:32.

Mr. Anello. Oh, we did? So we're over an hour?

Ms. Sachsman Grooms. We also took a break.

Mr. Anello. We have a few more -- we have a few more questions to complete. We then would probably want to regroup for a couple minutes and see if we anything more. But we're closer to the end than the beginning, so if you guys want to try to power through for another few minutes, we could then take a pause and see who has more questions after that.

Ms. Anderson. Mr. Kobach, were you aware of a 2015 study that Mr. Hofeller wrote about the citizenship question?

Mr. Kobach. No, I've never read any such study or heard of any such study. As I said, there was an article about that gentleman, I think I saw it yesterday, that alluded to a study, but I'd never heard of it until I read that article.

Ms. Anderson. Okay. The study says, quote:

A shift from a redistricting population base determined using total population to adult population is radical departure from the Federal, quote, 'One-Person One-Vote Rule' presently used in the United States. Without a question on citizenship being included on the 2020 Decennial Census questionnaire, the use of citizen voting-age population is functionally unworkable.

The Obama administration and congressional Democrats would probably be extremely hostile to the addition of a citizenship question to the 2020 Decennial Census questionnaire. The chances of a U.S. Supreme Court's mandate to add a citizenship question to the 2020 Decennial Census are not high.

A switch to the use of citizen voting-age population as the redistricting population base for redistricting would be advantageous to Republicans and non-Hispanic whites. The proposal to use CVAP can be expected to provoke a high degree of resistance from Democrats and the majority/minority groups in the Nation.

Do you agree with that?

Mr. Adams. Wait. Hold on now. Before he answers that, are you reading from a document or a newspaper article? Because the witness doesn't have it in front of him.

Ms. Anderson. Sure. The document --

Mr. Adams. So --

Ms. Anderson. Would you like me to answer?

Mr. Adams. Please.

Ms. Anderson. The document was one that was provided this morning to you, Mr. Adams. It also appears referenced in the news article that Mr. Kobach already stated that he has read, I think he stated it a couple times now, and it's publicly available.

Mr. Adams. And it's your assertion that that entire thing you read was a news article?

Ms. Anderson. It's -- it's --

Mr. Anello. This is Russ Anello. It's been quoted heavily, but what we just did was we read the entire conclusion section, and I'm sure Tori could read it again, but we read the entire conclusion section from the document that we provided to you this

morning. It's pages 8 to 9 of the document.

Mr. Adams. And you didn't answer my question. Is what you read, was that in the news article? Because you created the inference that Mr. Kobach should be familiar with this when you revived the fact that he said he saw a news article. And so my question is, and it hasn't been answered, is what you just read into the record quoted in the news article?

Mr. Anello. Yes, it is quoted in the news article.

Mr. Adams. The entire thing you read is part of the new article?

Mr. Anello. It may not have every bullet that was read, but, yes, it was quoted heavily.

Mr. Adams. Oh, heavily? So it's not entirely quoted?

Mr. Anello. The somewhat long quote is from the New York Times story.

Why don't we read it again? It sounds like it would be helpful, Tori, to just read it one more time and that way there won't be any confusion as to what it says.

Mr. Adams. Well, look, if you want to read the whole thing over and over you're going to run out your own time. So I think it's a lot better when it comes to documents if we have a chance to have them in front of us when you ask these questions, and I've said that maybe five times throughout this interview and offered to be available for that at a future date. But you have consistently rejected that possibility and prefers to read long excerpts into the record and then ask the witness questions about things he doesn't have in front of him. But go ahead and do that.

Ms. Anderson. So --

Mr. Anello. Mr. Kobach, do you need us to read that a second time?

Mr. Kobach. Yeah, please do.

Ms. Anderson. So it says: A shift from a redistricting population-based

determination using total population to adult population is radical departure from the Federal 'One-Person One-Vote Rule' presently used in the United States. Without a question on citizenship being included in the 2020 Decennial Census questionnaire, the use of citizen voting-age population is functionally unworkable.

The Obama administration and congressional Democrats would probably be extremely hostile to the addition of a citizenship question to the 2020 Decennial Census questionnaire.

The chances of a U.S. Supreme Court mandate to add a citizenship question to the 2020 Decennial Census are not high. A switch to the use of citizen voting-age population as the redistricting population base for redistricting would be advantageous to Republicans and non-Hispanic whites.

A proposal to use CVAP can be expected to provoke a high degree of resistance from Democrats and the majority/minority groups in the Nation.

Mr. Kobach, do you agree with that?

Mr. Adams. Okay. I want to raise another point. If this is essentially -- if this were a deposition that would be a compound question because there's at least 10 different concepts in there that you're asking whether he agrees with.

We will stipulate -- we will stipulate that the addition of a citizenship question is going to engender a high degree of Democratic opposition or else we wouldn't be sitting here right now. There's a lot of other things --

Ms. Anderson. Okay. I'll go through point by point --

Mr. Adams. Can I please finish.

Ms. Anderson. Sure.

Mr. Adams. But if you want to ask him specific questions unrelated to the matter that we stipulated to, then that might be a better way of doing it. But you can't

just ask a blanket statement: Do you agree with a statement that contains 9 or 10 different discrete principles?

Ms. Anderson. Okay.

Mr. Kobach, I'll read the first point: A shift from a redistricting population base determined using total population to adult population is radical departure from the Federal 'One-Person One-Vote Rule' presently used in the United States?

Do you agree with that statement?

Mr. Kobach. To reiterate, I've never heard of this guy until yesterday and I've never read anything he's ever written. That sentence sounds a little bit convoluted to me. I'm not even sure what he means by that sentence. So I would not --

Mr. Adams. Right.

Mr. Kobach. I don't know what he means.

Mr. Adams. And, look, if you want to use your remaining 2 or 3 minutes to ask a private citizen if they agree with the views of another private citizen that's fine, but that's going to be the end of the line when it comes to interrogating him about his private views.

BY MR. ANELLO:

Q If you'd look at -- so the second -- this is Russ Anello -- the second point was: Without a question on citizenship being included on the 2020 Decennial Census questionnaire, the use of citizen voting-age population is functionally unworkable.

Mr. Kobach, do you know what citizen voting-age population means?

A I don't know exactly what he's referring to. I mean, I think what -- so I'm trying to read into what he -- what that written statement's saying. If he's saying that you won't know the exact number of people who are citizens of voting age, then I would agree with that statement. But if he's saying something else, then I don't know whether

I agree or not.

Q Okay. So would you agree -- let me phrase it as I understand it. You can tell me if you agree with this or not. And if you don't, that's totally okay. I'm not putting words in your mouth.

Would you agree that if one were to desire to change congressional apportionment from apportionment based on the total population of a State, let's say, or a district, and to change that to an apportionment that is based only on the use of citizen -- only on the citizen voting-age population within that State or district, would you agree that adding a citizenship question to the 2020 Decennial Census is important?

Mr. Kobach. What was your last word? Adding a citizenship question is what?

Mr. Anello. Would you agree that adding a citizenship question to the 2020 Census would be important for accomplishing the goal of moving from apportionment based on total population to apportionment based on citizen voting-age population? Do you agree with that statement?

Mr. Adams. What does this have to do with the addition of the Census question? You arranged this interview about what Mr. Kobach's role was in that, not what his beliefs are.

Mr. Anello. But, Mr. Adams, Mr. Kobach wrote about this issue. Okay.

Mr. Adams. (Inaudible) you're comfortable asking questions about his personal beliefs and whether he agrees with Tom Hofeller.

Mr. Anello. Okay. Are you instructing Mr. Kobach not to answer my question?

Mr. Adams. Did I? Did you hear me say that?

Mr. Anello. No, but you appeared to log an objection, which I -- and so the question to you is, are you instructing him not to answer? If not, I'd like him to answer. We've heard your objection.

Mr. Kobach, would you answer the question, please?

Mr. Kobach. Could you repeat the question?

BY MR. ANELLO:

Q Sure. So the question is this. And I might rephrase it a little differently, but you can just go with the new version.

If someone -- it doesn't have to be Tom Hofeller -- if somebody was trying to change the way that congressional seats or States -- legislative seats are apportioned in the following way, that they're no longer apportioned based on total population and are instead apportioned based on citizen voting-age population, if that was one's goal, would you agree that adding a 2020 -- adding a citizenship question on the 2020 Census would help to achieve that goal?

A Let me answer first by saying that would not -- I do not share Mr. Hofeller's goal. I think the way that the Constitution speaks of persons residing -- living in a district -- so I think -- this is just me throwing out my legal interpretation of the Constitution -- you probably would include citizens and lawful permanent residents.

Q I see.

A But that was my reading of the United States Constitution.

So I don't share what appears to be Hofeller's goal. Again, I've never heard of this guy and I'm just listening to you read something of what he says.

Do you need to know the number of citizens for Congress to decide which -- how to -- how apportionment should be done if it chooses to modify anything? Yeah, you would -- you need -- the government needs information. A country should know how many citizens it has.

Q Got it. Now, I heard -- it sounds like you just took issue with his use of citizen voting-age population and you noted that you think that legal permanent

residents would also be counted as residents for purposes of -- under the Constitution Enumeration Clause. Is that right?

A That's my reading of the clause. But, you know, again, then you look at what -- how a State -- once a State uses this information to apportion its own representative districts. We need to know how many citizens there are in each county in Kansas, for example, or even more specific, a Census box of population, so that we can draw our districts so that one person has one vote and we don't have unequal voting strength in Kansas.

So just having knowledge is essential to having a fair electoral system so that some people don't have higher voting strength than others.

Q Mr. Kobach, if I'm understanding, it sounds like there's a step between those things, right? There's a step of the 2020 Census question that you wanted to have added and then there's the redistricting in a way that there's the same number of citizens and legal permanent residents, let's say.

Am I right that the steps that would have to take place between those is that you have to exclude people who are not legal residents from congressional apportionment, right? Because if -- then you couldn't accomplish what you're trying to accomplish there, correct?

Mr. Adams. Okay, you've for the second time, you've confused congressional apportionment with redistricting.

Mr. Anello. No, I didn't confuse them. I'm saying that the apportionment is a necessary step to achieve the redistricting. I'm asking whether this change in apportionment would be a necessary step to achieve the redistricting and the fairness that Mr. Kobach is saying --

Mr. Adams. But if they're not even related, redistricting and apportionment are

not related.

Mr. Anello. Well, then can the witness tell me that? Let the witness tell me that if that's the case. This is a question for the witness.

Mr. Adams. Well, look, you're wasting our time in having a philosophical discussion --

Mr. Anello. I think you're filibustering. I've asked this question a number of times and every time I ask it you keep jumping in and refusing to let the witness answer. So my conclusion from that is you don't want him to answer the question.

Mr. Adams. Because this doesn't have anything to do with what we agreed to appear about.

Mr. Anello. Are you instructing Mr. Kobach not to answer this question?

Mr. Adams. You're getting real close to that.

Mr. Anello. I take that as a no.

Mr. Kobach, can you please answer the question?

Mr. Adams. But if you ask questions related to what you asked us to appear about that would be a different question.

Mr. Anello. It's very directly related, it's a very central issue, and that's why I'm trying to get an answer.

Mr. Adams. In your mind it is, but it's not related -- it's not related to any policy.

Mr. Anello. Okay. Mr. Kobach, would you please answer the question? And if you need me to restate it, I'm happy to do that.

Mr. Kobach. Yeah, please restate it.

Mr. Anello. Okay. The question is this. You stated in your -- you stated in your email to Mr. -- to Secretary Ross that the lack of a citizenship question leads to the problem that aliens who do not actually reside in the United States are still counted for

congressional apportionment purposes.

And you told us on the phone today that one of the reasons you wanted to add a citizenship question is so that we know how many citizens we have and that ultimately we can achieve One-Person One-Vote, where you have an equal number of voters in each district.

Is that all right?

Mr. Adams. It's not what his testimony was.

Mr. Anello. Okay. I'll let the witness -- Mr. Kobach, is that correct?

Mr. Adams. Well, I object to the mischaracterization of his testimony, and I'm entitled to raise that objection when you mischaracterize his testimony.

Mr. Anello. Mr. Kobach, if I mischaracterized that, please tell me. The question was whether I was accurate or not. So can you tell us whether that was accurate or not?

Mr. Kobach. The part that I remember is, is it accurate that having this information is necessary to uphold the principle of One-Person One-Vote? The answer is yes.

But bear in mind that asking -- just asking the question and having the information from asking the question is just the first step. And so it's incumbent upon States and Congress to act to preserve the principle of One-Person One-Vote, and I've described how a State can act when it draws its districts internally.

Mr. Anello. But in order to draw the districts the way suggested, where you would have an equal number of voters, would there have to be a step before that in which the apportionment method is changed?

Mr. Adams. No, you're mischaracterizing it again.

Mr. Anello. Again, I would love to hear the witness answer this question,

because I keep asking it, I've asked it 20 different ways, and you jump in every single time.

Mr. Adams. (Inaudible) but you can't mischaracterize his testimony.

Mr. Anello. Okay. But I'd like Mr. Kobach to explain if there's a mischaracterization. He has not said that. You've said that.

Mr. Adams. (Inaudible) difference between apportionment and redistricting.

Mr. Anello. Mr. Kobach, could you answer my question, please?

Mr. Kobach. The answer is no, technically, you wouldn't have to change apportionment. For example, Congress could leave apportionment exactly the way it is, but we still could have incredible benefits at the State level from knowing this information, even if it doesn't change the apportionment of congressional seats.

At least in Kansas, we have our four congressional seats, and we can now ensure that if we have this information we could now ensure that citizens have equal voting strengths and that there are an equal number of citizens in the four congressional districts and that there are an equal number of citizens in the 125 State representative districts and so on.

So one does not -- one does not necessarily imply the other. In other words, you know, it's ultimately up to Congress what they do with apportionment. But at the very least, we should allow States to ensure One-Person One-Vote when they draw up voting districts.

Mr. Anello. Your email to Secretary Ross, if I'm right, I don't believe it uses the phrase One-Person One-Vote, but it does say that adding the citizenship question would address the problem of aliens who do not actually reside in the United States still being counted for congressional apportionment purposes. Is that right?

Mr. Adams. Look, this is getting argumentative. What you're doing is nitpicking with his testimony and then throwing the word "right" with a question mark at

the end.

Mr. Anello. I'm reading his email.

Mr. Adams. I mean, this is so far beyond the pale of usefulness for anyone listening. You just want to argue with him about his beliefs and we're way off the topic.

Mr. Anello. Okay. Mr. Kobach?

Mr. Kobach. You have correctly stated my -- what the text of that email to Secretary Ross is.

I'll tell you, one other thing that I disagree with with the Hofeller letter, so we can just save time in going through, I mean, he makes multiple assertions. I don't agree with his assertion about what the Supreme Court may or may not do.

I don't agree with his assumption that when you count -- when you count accurately the number of citizens, that that necessarily helps one party or another party. We don't know. For example, people have suggested that Texas has a large number of noncitizens. As a country, we don't know which States have a lot of noncitizens, so one could argue -- we're just -- as a country we're in the dark right now as to which States have what percentage of citizens and what percentage of noncitizens.

So I don't know which party it would help or hurt whether you're talking -- in political power, whether it's Congress or anything else.

Mr. Adams. All right. We're wrapping up now.

Mr. Anello. Did you ever have a discussion with anyone in the Trump administration -- I'm sorry?

Mr. Adams. Do you want to take your last break in case there's anything left?

Mr. Anello. Have you ever -- I wanted to just ask this one question I was in the middle of.

Mr. Kobach, did you ever speak with anybody --

Mr. Adams. Whoa, whoa, whoa, whoa, whoa, whoa. Hold on.

Mr. Anello. Yeah?

Mr. Adams. It's 1 o'clock. You've gone about 10 minutes longer than you said you would and about an hour longer than you said you would before that. So my question is, do you want to take that final break to assess if you have anything else?

Mr. Anello. I think that would be fine. I would like to just ask this one question and then I'd be happy to do that. Would be that be okay with you?

Mr. Adams. Go ahead.

Mr. Anello. The question I had was, Mr. Kobach, whether you ever had any discussions with anybody in the Trump administration regarding whether the citizenship question, adding a citizenship question to the Census, would impact the political power of Democrats or Republicans?

Mr. Adams. Okay. The extent that the answer does not require the invasion of the privilege, the witness can answer.

Mr. Kobach. So I think you need to divide the question up, Department of Commerce, where I guess the White House is not asserting its privilege, and then White House, where the White House is asserting its privilege, because basically it's a compound question unless you divide it --

Mr. Anello. It's just a simple yes or no that I'd like on that and then I'm happy to ask further followups after that. This is just a general question about whether you've had any conversations with anybody in the administration?

Mr. Adams. We're done after this.

Mr. Kobach. What I'm saying is by definition, if you're encompassing White House, then I am, by answering your question yes or no, describing the substance of communications with the White House.

Mr. Anello. So I'm sorry. Are you saying you did have a conversation with the White House on this topic and you can't talk about it?

Mr. Kobach. I'm asking you to -- and I'll defer to my counsel -- but I'm asking you to divide your question because I can't -- the White House has said I can talk about the substance of my communications with the Department of Commerce but not with the White House.

Mr. Adams. Right. If you want to rephrase your question to nonprivileged areas, he will answer you.

Mr. Anello. Okay. Excluding the President and the President's senior White House advisers, have you ever had a discussion with anybody in the Trump administration about whether adding a Census citizenship question would impact the political power of Democrats or Republicans or any other political parties?

Mr. Kobach. I do not think I have had such a discussion. I don't recall having such a discussion.

Mr. Anello. And excluding your conversation with --

Mr. Adams. Sorry. That's the last one.

Mr. Anello. Okay. I don't think that's helpful, to cut me off with a scream, but if you'd like to do that we can come back.

Ms. Sachsman Grooms. Okay. So you wanted to take a break. How long of a break would you like?

Mr. Adams. Well, I think we're done entirely. If you have -- if the minority staff has questions, we'd be available to them.

Ms. Sachsman Grooms. Well, that's not the way this works. This works when we say that we're done with our questions.

Would you like to take a break right now? And if so, how long of a break?

Mr. Adams. Okay. Well, you have exceeded your -- we have accommodated you beyond what you indicated would be involved in time.

Mr. Anello. Not true. We did not give you a 1 o'clock timeframe.

Mr. Adams. And we are therefore done unless you want to change the rules and keep going longer than you said you would.

Ms. Sachsman Grooms. So I think you have mischaracterized that. But regardless, would you like to take a break right now? And if so, how long of a break would you like to take?

Mr. Adams. Well, it was your idea to take a break whenever you indicated you wanted to get together to see if we were done or not --

Ms. Sachsman Grooms. We have not indicated --

Mr. Adams. -- and if the minority had questions.

Ms. Sachsman Grooms. We have not indicated --

Mr. Adams. And it was your idea. And I said now is when you can do it.

Ms. Sachsman Grooms. We have not indicated that we are done with our questions such that we were ready to take that break to have a conversation about what the next steps are.

Mr. Adams. Right. We've been going for 3 hours, and when I asked a half hour ago how much longer this would go, the answer was 10 minutes. We let it go 30. So now's the time for us to see if the minority has questions.

Ms. Sachsman Grooms. So that's not an accurate characterization of the conversation. The question on the table right now is whether you would like to take a break right now or if you would like us to continue.

Mr. Adams. I'd like to hear if the minority has questions.

Ms. Nabity. This is Caroline Nabity with the Republican staff. We have no

questions at this time.

Mr. Adams. Well, then it sounds like we're done for the day.

Ms. Anderson. No.

Ms. Sachsman Grooms. No, that is not what has occurred. The majority staff continues to have questions on the table. We would like to continue to ask those questions. If you choose not to answer those questions --

Mr. Adams. But you indicated numerous times --

Ms. Sachsman Grooms. Can I speak?

Mr. Adams. -- and the transcript will show this, that this will go X amount of time, and you've exceeded that significantly.

Ms. Sachsman Grooms. May I speak?

Mr. Adams. And now if you're telling me that you have the expectation that we would acquiesce to contradicting the amount of time you thought it would be, then that's not accurate. We did not have that expectation.

Ms. Sachsman Grooms. May I speak?

So the majority staff continues to have questions on the table. We will ask those questions now or, if you choose to stop the interview, you may stop the interview and end questioning. You always have that option. Would you like to continue with the interview?

Mr. Adams. How many questions?

Ms. Sachsman Grooms. I cannot tell you that. We will continue with the interview or you can get off the phone and stop doing the interview. Those are your choices. If you'd like to take a break, we also are happy to give you a break.

Mr. Adams. Let's agree on a fixed amount of time and we'll continue.

Ms. Sachsman Grooms. Sure.

Mr. Kobach. I've got a maximum 30 minutes available, left to go. I really didn't expect this to go more than 3 hours. But if you can wrap it up in 20 minutes; otherwise, maybe we'll have to reschedule and continue later.

Mr. Adams. No. Well, look --

Ms. Sachsman Grooms. We can certainly attempt to --

Mr. Adams. What's the amount of time that you expect?

Ms. Anderson. Why don't we continue now and see if we can complete the questions in the 20 minutes?

Mr. Kobach, were you ever made aware --

Mr. Adams. No, no, no, no, no, no. We want a fixed amount of time and then we'll go forward.

Ms. Sachsman Grooms. Sorry. We can't agree to a fixed amount of time. What we can agree to is trying --

Mr. Adams. Okay. Well, then, you're obviously not interested in wrapping this up, because all I'm asking for is telling us how much longer.

Ms. Sachsman Grooms. So we are attempting to use the time allotted as quickly as possible.

Mr. Adams. Right.

Ms. Sachsman Grooms. If you will let Ms. Anderson ask the questions, we will try to do that. We are certainly trying to go as quickly as possible, and if you will let us do that, we will certainly make that attempt. But we cannot reassure you that we will be 100 percent done in 20 minutes. And so if Mr. Kobach has to get off at that point, we might need to reschedule at that point.

Mr. Adams. When you said the time allotted an hour ago, that time allotted kept changing. So --

Ms. Sachsman Grooms. If you would like to continue to discuss this, I'm sure we can eat up more of that 20 minutes. Would you like us to ask the questions?

BY MS. ANDERSON:

Q Mr. Kobach, were you ever made aware of any written materials that the Department of Commerce created about the citizenship question?

A I don't recall ever being told about any written materials, no.

Q Were you ever made aware of the contents of a memo -- or were you ever made aware of a memo that was written by James Uthmeier at the Department of Commerce in August of 2017 about the citizenship question?

A I don't have any knowledge of any such memo, no.

Q Were you ever made aware of a memo that was hand delivered from Department of Commerce to the Department of Justice about the citizenship question?

A I don't recall ever hearing about such a memo.

BY MR. ANELLO:

Q Have you ever had any conversations regarding the citizenship question with anybody at the Republican National Committee?

A No.

Q Have you had any conversations with any individual who was on the transition team since the administration began?

A Have I ever --

Q I'll make that more clear, Mr. Kobach. Sorry. That was a little bit unclear.

Since January 20th, 2017, have you had any conversations about the citizenship question with former members of President Trump's transition team?

A I don't recall one way or the other.

Q Have you ever had any discussions with anybody in the Trump

administration discussing whether the Voting Rights Act rationale in the Department of Justice's December 2017 letter was indeed the sole reason why Secretary Ross decided to add the citizenship question?

A I have not had any discussions with anyone about why Secretary Ross made the ultimate determination to add a citizenship question -- which, by the way, is not the question that I recommended to him. It's similar, but it's not the same.

Q Did you ever have any conversations with anybody in the administration regarding the drafting of the December 12th, 2017, letter from the Department of Justice to the Census Bureau requesting a citizenship question?

A Well, as I mentioned, you have the email that I sent to Secretary Ross which suggests the version of the question that I thought would be best, which ultimately the Department of Commerce chose not to use.

It is possible that I reiterated what I thought the preferred phrasing of the question would be to someone on his staff, you know, maybe when they were asking about -- when they were inviting me or telling me about the opportunity to write an official comment letter. I just can't recall.

Q Sorry, Mr. Kobach, my question was a little bit different. It was about the letter that the Department of Justice wrote to the Department of Commerce, specifically to the Census Bureau, requesting a citizenship question. That letter had a Voting Rights Act at the core of it. That was the issue described in the letter.

My question was whether you ever had any conversation regarding the drafting of that letter, not about your wording of your citizenship question.

A Oh, I see. I see. I misunderstood your earlier questions.

No, I did not have any conversation with anyone about the Department of Justice's letter to the Department of Commerce.

Q When you spoke to Secretary Ross, or when you communicated with Secretary Ross, did he express a view regarding what I think you described as a problem of aliens who do not actually reside in the United States still being counted for congressional apportionment purposes?

A As I stated earlier, I don't recall Secretary Ross's statements in our phone call. I just can't remember exactly what he said.

Q Do you have -- understanding that -- but do you have a memory of whether Secretary Ross expressed an interest to you when you communicated with him about adding the -- regarding adding the citizenship question?

A In vague terms, as is obvious from the fact that he added it subsequently, I think he generally was appreciative that I made a phone call to him, or had made one to him. I think he was genuinely appreciative for my input, but beyond that I can't remember.

Q Sorry. You said he was appreciative of your input, but did he communicate to you in some way that he was interested in adding a citizenship question to the 2020 Census when you communicated with him?

A As I said before, I don't recall his -- what he said in that conversation. I just don't recall the specifics. It was 2 years ago.

Q Okay. Do you know, aside from what's been public, do you know who made the decision ultimately within the Trump administration, who made the decision to add the citizenship question?

Mr. Adams. That is a vague question: Ultimately who made? What do you mean by that? The Secretary of Commerce makes a decision. Do you mean something different than that?

BY MR. ANELLO:

Q Okay. Sure. I'll clarify.

Do you know whether Secretary Ross was instructed by anybody to add -- to make the decision that he made regarding the citizenship question?

A No, I have no knowledge of what other members of the administration ultimately said to Secretary Ross when the decision was made by the Department of Commerce.

Q Do you know whether the White House was involved in that decisionmaking process?

A I do not know.

Q Putting aside your meetings with folks at the White House, do you know who at the White House was involved in the citizenship question issue?

A The only ones I'm aware of are the ones I've already mentioned who were present in various meetings. So beyond those, no, I don't know.

Mr. Anello. I don't believe we have any further questions.

Minority staff?

Ms. Nabity. No further questions.

Mr. Anello. Mr. Kobach, anything else that you'd like to tell us while we're on the record?

Mr. Adams. No, we have nothing further.

Mr. Kobach. Nope.

Ms. Anderson. Okay. We can now go off the record.

[Discussion off the record.]

Mr. Anello. Mr. Kobach, thank you for your time today. We appreciate it.

[Whereupon, at 1:30 p.m., the interview was concluded.]

ERRATA SHEET

INSTRUCTIONS: After reading the interview transcript, please note any change, addition, or deletion on this sheet. DO NOT make any marks or notations on the actual transcript. Use additional paper if needed.

Investigation Name	Census Investigation
Witness Name	Kris Kobach
Date of Interview	June 3, 2019

PAGE	LINE	CORRECTION	APPROVED*
17	4-5	Redact personal email	Y
54	5	Change "paren" to "parent"	Y
56	11	Change "maid" to "made"	Y
61	17	Change speaker from Mr. Adams to Mr. Kobach	Y
98	11	Change "he" to "had"	Y

* For COR Majority Staff use only.

PUBLIC INTEREST
LEGAL FOUNDATION

(*via email*: [redacted])
Ms. Tori Anderson
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, DC 20515

June 7, 2019

Re: June 3, 2019 Interview of Mr. Kobach

Dear Ms. Anderson,

A transcript of Mr. Kobach's interview from June 3, 2019 was made available to me yesterday at Representative Carson's office. Below are the errors I observed:

1. Page 17, line 4-5: Personal email address needs to be redacted
2. Page 56, line 11: "maid" should be "made"
3. Page 61, line 17: I recall the speaker as Mr. Kobach, not Mr. Adams
4. Page 98, line 11: there is an apparent typo – "or had made one to him"

Sincerely,

Kaylan Phillips
Public Interest Legal Foundation

cc: Mr. Russell Anello ([redacted])

32 E. Washington Street, Suite 1675, Indianapolis, Indiana 46204
Telephone: 317-203-5599 Fax: 888-815-5641 www.PublicInterestLegal.org

COMMITTEE ON OVERSIGHT AND REFORM,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: JAMES UTHMEIER

Tuesday, June 11, 2019

Washington, D.C.

The interview in the above matter was held in Room 6200, O'Neill House Office Building, commencing at 9:35 a.m.

Appearances:

For the COMMITTEE ON OVERSIGHT AND REFORM:

TORI ANDERSON, COUNSEL

RUSSELL ANELLO, CHIEF OVERSIGHT COUNSEL

SUSANNE SACHSMAN GROOMS, DEPUTY STAFF DIRECTOR AND CHIEF COUNSEL

KATHLEEN TELEKY, PROFESSIONAL STAFF MEMBER

CAROLINE NABITY, MINORITY COUNSEL

STEVE CASTOR, MINORITY GENERAL COUNSEL

TYLER SANDERSON, MINORITY COUNSEL

ELLEN JOHNSON, MINORITY SENIOR PROFESSIONAL STAFF MEMBER

For DEPARTMENT OF COMMERCE:

DAVID DEWHIRST, ESQ. [VIA TELEPHONE]

CORDELL HULL, ESQ. [VIA TELEPHONE]

Ms. Anderson. This is transcribed interview of James Uthmeier conducted by the House Committee on Oversight and Reform. This interview was requested by Chairman Elijah Cummings as part of the committee's Oversight investigation into the addition of the citizenship question to the 2020 Census.

Mr. Uthmeier, can you please state your full name and spell your last name for the record?

Mr. Uthmeier. Yes. My name is James William Uthmeier and the last name is spelled U, T as in Tom, H, M as in Mary, E, as in Edward, I, E as in Edward, R.

Ms. Anderson. My name is Tori Anderson, I work as majority counsel for the Committee on Oversight and Reform. I want to thank you for being present on the phone today. We appreciate your willingness to speak with us voluntarily.

Right now I am going to go around the room and ask everyone to introduce themselves, so you can at least for now hear our voices and try to identify us. And then we will go over some ground rules before we get started today.

Mr. Anello. Russ Anello, majority staff.

[redacted]

Ms. Teleky. Katie Teleky, majority

Ms. Sachsman Grooms. Susanne Sachsman Grooms, majority,

Ms. Johnson. Ellen Johnson, Republican staff.

Mr. Castor. Steve Castor with the Republican staff.

Ms. Nabity. Caroline Nabity, Republican staff.

Mr. Sanderson. Tyler Sanderson, Republican staff.

[redacted]

Ms. Anderson. And we have some stenographers here as well.

The way this interview will proceed is as follows: The majority and minority

staffs will alternate asking you questions 1 hour per side per round. The majority staff will begin and proceed for an hour, and the minority staff will then have an hour to ask questions.

Thereafter, the majority staff may ask additional questions and so on. We will alternate back and forth in this manner until there are no more questions from either side and the interview will be over.

During the interview, we will do our best to limit the number of people who are directing questions at you during any given hour. With that said, from time to time, follow-up or clarifying questions may be useful. And if that is the case, you might hear an additional person around the table.

Under the committee rules, you are allowed to have an attorney present to advise you. Do you have an attorney representing you in a personal capacity with you today?

Mr. Uthmeier. I do not.

Ms. Anderson. I understand you do not have a personal attorney with you today, but instead have agency counsel with you. Would agency counsel please identify themselves for the record?

Mr. Dewhirst. David Dewhirst, D-e-w-h-i-r-s-t, deputy general counsel for litigation at the Department of Commerce.

Mr. Hull. Cordell Hull, H-u-l-l, also deputy general counsel, Department of Commerce.

Ms. Anderson. Mr. Uthmeier, do you understand that agency represents the agency and not you personally?

Mr. Uthmeier. I do.

Ms. Anderson. Are you choosing to have agency counsel with you today?

Mr. Uthmeier. Yes, I am.

Ms. Anderson. There is a stenographer taking down everything I say and everything you say for the written record for the interview. For the record to be clear, please wait until I finish each question before you begin your answer, and I will endeavor to wait until you finish your response before asking you the next question. The stenographer cannot record nonverbal answers, such as shaking your head so it is important that you answer each question with an audible verbal answer. Do you understand?

Mr. Uthmeier. I do.

Ms. Anderson. We want you to answer our questions in the most complete and truthful manner possible so we are going to take our time. If you have any questions or do not understand any of our questions, please let us know and we will be happy to clarify or rephrase our questions. Do you understand?

Mr. Uthmeier. Yes.

Ms. Anderson. If I ask you a question about conversations or events in the past and you are unable to recall the exact words or details, you should testify to the substance of those conversations or events to the best of your recollection.

If you recall only a part of the conversation or event, you should give us your best recollection to those events, or parts of conversations that you do recall. Do you understand?

Mr. Uthmeier. Yes.

Ms. Anderson. If you need to take a break, please let us know and we will accommodate you. Ordinarily, we take a 5-minute break at the end of each hour of questioning. But if you need a break before then, just let us know. However, to the extent there is a pending question, I would ask that you finish answering the question before you take a break. Do you understand?

Mr. Uthmeier. Yes.

Ms. Anderson. Although you are here voluntarily and we are not swearing you in, you are required by law to answer questions by Congress truthfully. This also applies to questions posed by congressional staff in an interview. Do you understand?

Mr. Uthmeier. Yes.

Ms. Anderson. If, at any time, you knowingly make false statements, you would be subject to criminal prosecution. Do you understand?

Mr. Uthmeier. Yes.

Ms. Anderson. Is there any reason you would be unable to provide truthful answers in today's interview?

Mr. Uthmeier. No.

Ms. Anderson. Please note that if you wish to assert a privilege over any statement today, that assertion must comply with the committee rules. Committee rule 6(c)(1) states, quote, "For the chair to consider assertions of privilege over testimony or statements, witnesses or entities must clearly state the specific privilege being asserted and the reason for the assertion on or before the scheduled date of testimony or appearance," end quote.

In addition, committee rule 16(c)(3) states, quote, "The only assertion of executive privilege that the chair of the committee will consider are those made in writing by an executive branch official authorized to assert the privilege," end quote. Do you understand?

Mr. Uthmeier. I do not have the rules in front of me, but I will take your word for it. Yes.

Ms. Anderson. Do you have any questions before we begin?

Mr. Uthmeier. No.

Ms. Anderson. I will note for the record that we will start our hour at 9:41 a.m.

EXAMINATION

BY MS. ANDERSON:

Q Mr. Uthmeier, did you serve informally on President Trump's 2016 presidential campaign?

A I worked at a law firm and provided legal counsel to the campaign, the campaign was a client.

Q And so what was your role in that position?

A I was in the business and tort litigation practice group at the law firm, primarily. So most of my responsibilities involved several litigation matters. I also --

Ms. Anderson. Have we lost him?

Mr. Dewhirst. Can you hear us?

Mr. Anello. Now we can, but we cut out.

Ms. Anderson. Is everyone on the line?

Mr. Dewhirst. We are still here. We can hear you just fine.

Mr. Anello. I think the last thing we heard you say was you worked on several litigation matters, and then you cut out.

Mr. Dewhirst. Just start, you did business in tort litigation?

Mr. Uthmeier. I am.

I worked on several litigation matters primarily. However, I spent, I would say, a quarter of my time providing legal counsel to our political law practice group and other than that quarter, I would say a third or less of my time, I provided counsel to the campaign on a range of various activities.

BY MS. ANDERSON:

Q Did you ever discuss, during that campaign, anything regarding adding a

citizenship question to the Census?

A No.

Q Did you serve formally or informally on President Trump's transition team?

A Yes.

Q What was your role on the transition team?

A While still working at Jones Day after the election, I provided some volunteer services to the transition team. To the best of my recollection, I was vetting candidates for certain government positions in the new administration. In addition, I believe I also conducted some research and fact-finding to understand current ongoings in executive branch agencies. So when new officials began working in 2017, I could help to brief them on, you know, the work that was ongoing in the executive branch.

Q How did you become involved on the transition team?

A At Jones Day, having served as counsel to the campaign in various capacities, I was working with attorneys that were also providing services to the campaign. And I do not remember who specifically would have asked me, or invited me to continue helping the campaign in a voluntary capacity, but I was working with several other attorneys at the firm that were helping the transition.

Q How long did you serve on the transition team?

A I would have served on the transition team off and on in both an informal and formal capacity up until I left the law firm the week before inauguration, and then there was 2- to 3-week period, while HR was preparing my onboarding material to begin working at the Department of Commerce. So I don't know exactly what the timeframe looks like, but I would have began shortly after the election and I supposed officially concluded with the beginning of the new administration.

Q Did you ever have any discussions with anyone during the transition period

about adding a citizenship question to the Census?

A No.

Q Did you communicate with now-Secretary Ross during the transition?

A I -- I believe I did, once or twice, but I did not have significant contact with him with directly at that time, no?

Q Did you discuss the citizenship question with him during that time.

A No.

Q Did you ever have any discussions with Mark Neuman during the transition period?

A I did not.

Q Did you ever have any talks or discussions with Kris Kobach about adding a citizenship question during the transition or any other time?

A No.

Q Did you ever have any talks or discussions with Gene Hamilton during the transition or any other time about adding a citizenship question to the Census?

A I do not believe so, no. The name now rings a bell, and I certainly would have heard his name come up in conversation, but I do not believe we had direct communication.

Q Do you recall indirect communication?

A I remember hearing his name.

Q Do you remember in what context?

A The context that I am thinking of I would have heard his name in discussions about scheduling a meeting between the Secretary and the Attorney General.

Q In what timeframe was that? Do you recall?

A I believe it would have been in the fall of 2017. But I do not remember the

specific timeframe, no.

Q Do you recall learning anything else about that scheduling or the reason for the, I guess, the meeting or the conversation that was being scheduled?

Mr. Hull. This is Cordell Hull. I mean, to the extent you are asking about the content, I think we are going to ask -- direct him not to answer.

Ms. Anderson. I believe the first question was, does he remember anything about the content.

Mr. Uthmeier. I remember that it has to do with the Census. But specifically other than that, I don't remember.

Ms. Anderson. Was it about the citizenship question?

Mr. Hull. To the extent that that calls for discussion about the content of the meeting, we are going to instruct the witness not to answer.

Mr. Anello. Are you instructing -- this is Russ Anello. Are you instructing the witness not to answer whether the meeting with about the citizenship question?

Mr. Hull. You are asking him in his context as attorney for the Department whether he was privy to a discussion that I can only imagine would come to him in his role as a lawyer. And so, to get out what --

Mr. Anello. He didn't say that.

Mr. Hull. -- about it would necessarily entail conversations he had at the Department.

Mr. Anello. Okay. Just to back up, we didn't ask for -- the question didn't call -- I am sorry?

Mr. Dewhirst. Counsel, you were breaking up, go ahead.

Mr. Anello. The question was whether the subject of the meeting with the citizenship question. So that doesn't call for any kind of legal analysis. It doesn't call

for anything that I could possibly imagine would be objectionable. But I just want to make sure we are understanding what the question is. Is this meeting between the Attorney General and the Secretary, was it about the citizenship question, just a yes or no.

Mr. Dewhirst. To the extent the witness can answer without discussing any conversations, if there's a way you could answer it, Mr. Uthmeier?

Mr. Uthmeier. I do not know what the meeting was about, and I was not in the meeting.

BY MS. ANDERSON:

Q Mr. Uthmeier, what was your involvement with the scheduling of that meeting?

A I did not have a primary role in scheduling, but the senior official with the Commerce Department, at that time, worked in a very unique workstation format. It was basically a bullpen setup, so I would have been present for other conversations about this, and it would have been in that capacity that I would have heard discussion of the schedule.

Q What did you hear in those discussions?

Mr. Hull. I am going to instruct the witness not to answer about internal executive branch deliberations.

Mr. Anello. Mr. Uthmeier, who did you hear discussing setting up scheduling this meeting?

Mr. Uthmeier. I do not recall.

Mr. Anello. Was somebody else in the bullpen with you?

Mr. Uthmeier. It would have been somebody else in the secretary suite, but I do not remember who.

Mr. Anello. Okay. And did you hear from somebody else in the Secretary's suite that the meeting related the to the citizenship question?

Mr. Uthmeier. I do not recall hearing specifics of the meeting, but I do know that it involves the Census.

Mr. Anello. But you do not know if it involved a citizenship question? I just want to make sure I understand that.

Mr. Uthmeier. I do not remember what specifically it involved, other than the Census.

BY MS. ANDERSON:

Q Mr. Uthmeier, do you know who Thomas Hofeller is? Or Hoffler?

A I am familiar with the name. But I do not know this individual, no.

Q Did you ever speak or communicate with him during the transition, or any other time?

A I did not.

Q Have you ever read anything or seen anything written by him?

A No. To my knowledge, no, I have never seen anything written by him.

Q Have you ever discussed him with anyone?

A I discussed him with counsel in preparation for this interview. However, I had no other discussions. I was present for the deposition of Mark Newman, where I also would have heard the name mentioned.

Q Are you familiar with his 2015 study or report?

A I am not.

Q During the transition team, did the transition team create a written report or plan for the Commerce Department?

A There were written materials that involved the Commerce Department, and

I believe there was a plan, but I do not recall the contents of the plan.

Q Do you recall if the plan, or any of the written materials discussed the citizenship question?

A I do not remember specifically, no.

Q Do you recall remember whether generally it discussed that issue?

A I do not remember, no.

Q You mentioned earlier that you also had a formal role on the transition team. What was that role?

A I served on the landing team. That was the group of individuals that were assigned to agencies to begin doing some research and understanding the ins and outs of the agency, and what that agency's specific roles were, statutory function and so forth.

From there, I was then assigned to the Commerce beach head team, and that was the team was sent in as the initial batch of political appointees after the beginning of the new administration. It is kind of a gray area as to when the transition responsibilities began and ended. I guess even as a new political appointee, I would have been part of the transition of the new administration assuming its leadership role.

Q In either your formal or informal role, did you work on issues related to the Census?

A I did, yes.

Could you repeat that question one more time?

Q Sure. In either your formal or informal role on the transition team, did you work on Census issues?

A Yes. I would have worked on Census issues.

Q In what capacity?

A I would have been researching what the Census is, how it works. I was

quickly made aware that the 2020 Census was going to be coming up soon, and this was one of the Department's most significant undertakings, requiring many personnel, significant resources, and budget, and numerous related issues. So it would have been a big topic facing the new political appointee.

Q Who did you discuss this issue with during the transition team?

A Are you referring to my work prior to beginning at the Department of Commerce or after beginning?

Q Prior.

A To the best of my recollection, I remember speaking with Eric Branstad. There may have been another individual, but I cannot remember specifically.

Q Did you have discussions with Mark Newman at the time?

A I did not speak with Mark Newman, to my recollection, during my transition period. The first time I would have communicated with him, either in person or over the phone, would have been after I was already a Department of Commerce employee.

Q Did you create any written materials about your research into the Census?

A No.

Q During that time, did you -- what email address did you use?

A During which time?

Q The transition when you were working informally and formally on the transition team?

A I would have used my Jones Day law firm email for some matters. At some point, I would have likely used my Gmail address as well.

Q Did you have a transition team email address?

A I did not.

Q So, I believe you mentioned earlier that you first joined the Department of

Commerce a few weeks after the inauguration. Is that accurate?

A Yes. It would have been mid February.

Q What was your role when you joined the Department of Commerce?

A I joined as a special adviser to the Secretary as part of the beach head team. There I was supposed to conduct fact-finding missions throughout the Department to learn all of the Department's inner workings. And then immediately upon beginning at the Department, I was assigned to serve in the Office of General Counsel as the sole political appointee there, coordinating the Office of General Counsel's efforts to support the Secretary.

Q What were your responsibilities in that role as special adviser?

A I served as a -- I served as counsel to the Secretary. I was his point person in that office overseeing, you know, the Department's legal work, as well as all of the specific Bureau counsel. So it was to provide legal advice.

Q Was what was your role at that time regarding the Census?

A It would have been to oversee legal issues surrounding the Census.

Mr. Anello. Sorry, this is Russ. I want it to make sure I understand the timeframe. You said you joined in February as a special adviser to the Secretary. But then, you said you were immediately moved to the general counsel's office. Is that right?

Mr. Uthmeier. On my first day of work, I was sent to the Office of General Counsel, and I was asked to focus on the legal services provided by the office.

Mr. Anello. Okay. And how long did you have -- were you in that role?

Mr. Uthmeier. I worked in the Office of General Counsel until the general counsel was finally confirmed by the Senate, I believe, in mid to late August 2017. I then continued working in that office under his direction for several months, I believe,

probably 5, 6 months. Following that time, I was relocated to provide legal services in the Secretary's immediate office.

BY MS. ANDERSON:

Q During the time you first joined the Department of Commerce, what was your role regarding the citizenship question?

A The citizenship question first came up as I was conducting my fact-finding, briefings and obtaining information from the career staff at the Bureau. I believe I also would have heard about it in conversations with counsel in the Office of General Counsel. I did not have a specific role that dealt with the citizenship question. It was just one of many issues that would have been presented to me. It was certainly not an issue that was being discussed a lot. The Census had several important projects and issues that were being worked on. And the citizenship was just something that was on the radar of the staff.

Q And who was it -- could you explain a little more, who was it on the radar for, who are you referring to?

A I met with many people immediately after beginning at the Department. I would have met with Census career officials, acting leadership of the Bureau, as well as career officials that were heading up the Department's Office of General Counsel. I do not recall specifically who would have been the one that brought up the Census citizenship question, but it was presented to me as something that they were aware of. It was on the radar as something that could become an issue for the Bureau.

Q And who were those people?

A Who were what people?

Q You said it may have come up with some of the Census career staff and some the general counsel staff. Who were those people specifically?

A I do not recall who specifically would have mentioned the citizenship question. I recall meeting with multiple people in the agency, but I do not recall who would have brought this up for the first time.

Q Who were the people you met with at the agency?

A At the Census Bureau, the director of operations, I believe his name was Allen -- I cannot remember his last name, Lisa Blumerman. Again, I am probably mispronouncing her last name. At some point, I would have met with Ron Jarmin, Enrique Lamas, I do not remember exactly what timing.

Within the Office of General Counsel, the individual performing the duties of general counsel when I arrived was Michelle McClellan, I would have spoken with her. I would have spoken with Barry Robinson, who was the lead counsel on Census matters. I would have spoken with the head contract lawyers that the Census was going through, many different contract issues. I would have spoken to the Office of General Counsel, budget, specialists who were also deeply involved in ongoing Census issues. I probably would have spoken to the employment counsel. I -- John is his name. He would oversee employment issues. John Gunther. I would have spoken to litigation counsel about the Census, because I was aware that every Census leads some sort of litigation. I would have spoken to dozens of people being the sole political appointee attorney at such a large agency.

Q Why was this issue on the radar?

A I don't know.

Q Had you heard that there was any particular interest in the question?

A I do not remember specifically why, why it was on the radar. But it was made clear to me that the career staff knew that it was something that might need to be researched.

Mr. Anello. This is Russ. Just to be clear, why did they know it was something that needed to be researched? Did they express to you why they thought it would have to be researched?

Mr. Dewhirst. To the extent it calls for conversations he had with folks in the Department and his attorney, I am going to instruct him not answer. If there is a way that you can answer it in a way that doesn't invoke privilege, go ahead.

Mr. Uthmeier. I don't know why they thought it might need to be researched.

BY MS. ANDERSON:

Q And you said that you worked in that capacity until around August, or midsummer. Is that correct?

A I served as a legal adviser to the Secretary throughout my entire at the Department. I was housed in the Office of General Counsel up until, perhaps, the middle of 2018. I do not remember the specific date. But I certainly worked under the general counsel after he arrived for at least a few months.

Q Did your responsibilities change with that sort of, I guess, reorganization in your role?

A I -- yes, they did. I assumed more responsibility. During my time at the Department of Commerce I served as the regulatory reform officer where I oversaw all of the Department's regulatory issues. That role expanded as I moved into the Secretary's suite, and became more of a priority for the Department. The Secretary also wanted to work hard to advance the commercial space industry, and I was put in charge of that project, and was working to help him create a new space team that would draw experts from all of the various Bureaus at the Department that touch on space from Patent and Trademark to the Bureau of Industry and Security, to NTIA spectrum issues. There's an Office of Space Commerce within NOAA, N-O-A-A, is the abbreviation. They deal with

space weather, satellite issues, GPS.

So, I began diving into that realm in a big way, and I believe the reason I was asked to transition into that is the President had directed the Department -- the Vice President, specifically, who heads up National Space Council, he directed the Department to take on a leadership role in space commerce, and specifically, to identify ways to streamline the regulatory process that somebody would have to go through to conduct commercial activities in space.

Q When did you next hear about the citizenship question?

A I am not sure what you mean by that question. When did I next hear about it in relation to what?

Q So you mentioned earlier that this was an issue that was on the radar. What happened next with regards to the citizenship question? Did you hear about it? When did you next hear about it again? Did it change on the radar?

A I would have -- I began, you know, conducting my due diligence on this topic, in addition to the many other topics that we were working on at Census, and immediately would have been conducting research into the types of questions that were asked on the Census on all of the various surveys, the processes for determining what questions are going to be asked; the preparations that are required for making decisions on how preparations are asked. How data is used, or at least what the proper uses of data are from various departments within the executive branch. So I would have continuously worked on the citizenship question issue to just be prepared for whatever might come, and then, I would have had discussions with other officials at the Department going on into 2017 on the topic.

Q Who did you have discussions with?

A Well, in my position, I had discussions with the Secretary; I had discussions

with policy staff; I had discussions with legislative affairs personnel, since there is a congressional Hill element, and there are statutory requirements involving the Census, and when the Department needs to provide information to Congress relating to the Census. I would have spoken with attorneys to gather more information about all of the questions on the Census, or at least many of the questions, including the citizenship question and how it was currently being used, and how it had been historically used.

I would have also spoken with budget personnel, but -- part of my role at the Department was ensuring that people are getting briefed up on my research and everything that I was doing.

BY MR. ANELLO:

Q This is Russ Anello again. It sounds like you did a lot of work. I think you have described some pretty detailed research that you did. You described a list of maybe 6, 7, 8 categories of people that you talked to. Is it fair to say that you didn't do this amount of research for every single issue that came in front of you as the only political appointee doing legal work in the entire Department, right?

A I'm sorry, I don't I don't think I understand the question.

Q Is it --

A I did not do this level of research on all the projects I was working on?

Q Right.

A I did a lot of legal research and advice on many topics. The Census issues were just one that we were working on. The Department had a leading role in trade. Regulatory reform, probably took up the largest amount of my time. Space commerce issues, I would say, took up a large amount of time. I was also involved in congressional requests for documents, and have an oversight role to play.

Q I understand. Mr. Uthmeier, I don't want to cut you off. But I am asking

specifically about this issue, not about space commerce, not about regulatory reform. I am just asking about this issue. And my point is only that it sounded I can like you were spending a lot of time on it. And my question for you is why you are spending -- why did you do this much due diligence on this issue, and why did you talk to so many people about it?

A I exercised significant due diligence on all topics. That's just the way I am.

Q But why did you exercise that on this topic?

Mr. Dewhirst. Sorry. Could you repeat that? You broke up.

BY MR. ANELLO:

Q The question is, why, Mr. Uthmeier, did you conduct such an intense level of due diligence on this particular topic. You said that it was on the radar screen, but you haven't explained anything more than that, so it doesn't make sense to me. I am trying to understand why did you conduct such an intensive due diligence on adding a citizenship question on the topic of a citizenship question?

Mr. Dewhirst. Counsel, I think counsel he is trying to answer in a way that doesn't implicate any privilege while, at the same time, giving the committee position information to show that this was a part of the bigger picture of what he was doing at the end of the day. But I will let the witness answer. He's trying to be helpful on this, and I just want that context out there.

Mr. Uthmeier. What I am saying is, you know, I dedicated time to this like I would have any other issue that was put on my plate. I like to be well-informed and I like to be able to offer thought-out advice.

BY MR. ANELLO:

Q So are you saying that you just, on your own accord, you talked to some career folks, and then on your own accord, you put in all of this due diligence without

being instructed to do so by anyone. Is that your testimony?

A No. I think one thing being misconstrued here is the timeframe. In the beginning the citizenship question came up as one item that the Census was aware of. And there all the work that I just laid out that I conducted, I am talking about throughout the duration of my time at the Department. I didn't realize you are focusing on the first month or 2. This became a more significant research topic for me as 2017 progressed, and I realized it may be reinstating the question, may be something that the Secretary ultimately decided to do.

Q So when did you become aware that reinstating the question was something the Secretary might ultimately decide to do?

A The Secretary asked me to look into the issue. I would say at some point in the spring of 2017, likely March or April.

BY MS. ANDERSON:

Q How did he let you know that?

A And to be clear, are you asking written or orally, is that still the question?

Q For now, yes, let's start there.

A To the best of my recollection, it would have come up in one of our in-person briefings, likely while we were talking about multiple topics, where he was trying to get more information to help him make decisions. I know that I was also asked by Earl Comstock, the policy director, to begin looking into the issue as well.

Q What did the Secretary ask you to look into?

Mr. Dewhirst. I am going to direct the witness not to answer, that implicates executive branch confidentiality and litigation concerns.

Mr. Anello. Are you asserting a privilege?

Mr. Dewhirst. I am sorry, if you didn't hear me.

Mr. Anello. I did hear you. But I am asking if you are asserting a privilege?

Mr. Dewhirst. The question implicates executive branch and confidentiality and litigation concerns.

Mr. Anello. Right. But are you asserting a privilege?

Mr. Dewhirst. I'm sorry, Russ. Are you having some trouble hearing me?

Mr. Anello. No, I appreciate your concern about my ability to hear you. That's not the issue.

You said something about executive branch confidentiality interests, but as far as I am I aware, that's not a privilege. And I am asking whether you are asserting a particular privilege. Are you asserting that this is privileged information that he can with not ask the witness about?

Mr. Dewhirst. To the extent you are asking about the substance of the communications between a client and an attorney, I am going to instruct the witness not to answer because that implicates executive branch confidentiality and litigation concerns.

Mr. Anello. Sorry. Again, I am not sure I am following. Are you saying that you are asserting attorney-client privilege, or are you saying you are asserting some other privilege, or you are not asserting privilege? I understand you believe it is confidential, but confidentiality is not a privilege. I don't --

Mr. Dewhirst. -- voluntary interview, we are going to assert executive branch confidentiality and litigation interests. We will endeavor to let the witness answer as much as he can without implicating those interests. Now, as we go through this and understand the committee's questions, we will do our best to try to get the committee information we can, either through the accommodation process or through alternative nonprivilege means, but for the scope of today's interview, we are going to instruct the

witness to answer -- we are going to instruct the witness not to answer based on executive branch confidentiality of litigation.

Mr. Anello. To be clear, I think you are saying you are not asserting a privilege, you are simply saying that there are confidentiality interests, and on that basis, you are instructing the witness not to answer, correct?

Mr. Dewhirst. We are saying the question implicates privileges covered by executive branch confidentiality interests. And on that basis, we are instructing the witness not to answer.

Mr. Anello. But which privilege?

Mr. Dewhirst. We will continue to work with the committee to get it the information it needs, but today, in the scope of this voluntary interview, we are going to let the witness discuss nonprivileged information, and we can try to work with the committee through the accommodation process to get the committee the information it needs.

Mr. Anello. I understand. But you're saying you are going to let the witness answer nonprivilege information, which would imply you think this is privileged, but then you haven't asserted what privilege it is. So I understand you keep saying confidentiality interest. That's not a privilege.

Mr. Dewhirst. I have asserted what I am going to assert and we will let the witness answer or we can let the witness answer, or we can hash it out later, and try to get the committee if there are privileges, the Department can wait. We can consider that, but for purposes of today's interview, we are trying let the witness answer as much information as he can. You are asking questions of a former senior lawyer at the Department about predecisional matters. As you know, that implicates a number of confidentiality concerns, including, but not limited to, the deliberative process privilege,

the attorney-client privilege, the attorney work product privilege, and we are simply saying, we are not going to let him answer those today. Once we have the questions, we may be in a better position to establish ways to get you information, or perhaps, permit the witness to give that information in another way.

Ms. Sachsman Grooms. Okay, in this context -- this is Susanne -- you permitted the witness to tell us that the Secretary instructed him to look into the issue of citizenship of putting the citizenship question on to the Census. And then when asked more detail about what that instruction was, you have prohibited from giving any more detail. So it's unclear as to why the fact of the instruction is something that you are willing to share, but any more detail about what specifically the instruction was would be covered by some additional concern.

Mr. Hull. I am not sure that that was a comment.

Ms. Sachsman Grooms. I mean, can he give us a little more detail about what he was instructed to research on behalf of the Secretary? So the Secretary instructed him to do something. He's already told us that. Can you please --

Mr. Uthmeier. Correct.

Ms. Sachsman Grooms. -- provide us more detail about what you were instructed to do?

Mr. Hull. And what I am saying, counsel, is to the extent the Secretary or anybody in the Department of Commerce directed the witness in his capacity as a lawyer for the Department of Commerce, the Department is going to assert executive branch confidentiality and litigation interests to instruct the witness not to answer that question today.

Once we have gone through this process and seen the questions the committee has asked, we may be able to provide that information in a different way. And we plan

to do that. But sitting here today, if you are asking him to talk about conversations he had with Department personnel about a predecisional matter, the Department is not prepared to permit the witness to answer that question today.

Mr. Anello. Are you saying that you will provide us the information about what the Secretary said in a different format?

Mr. Dewhirst. I'm saying once we have the scope of the committee's questions we are willing to consider a position and see what we can gave the give the committee through the accommodation process.

BY MS. ANDERSON:

Q What did Earl Comstock tell you to do regarding the citizenship question in the spring of 2017?

Mr. Dewhirst. Again, I am going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q Did Secretary Ross express a particular view about whether he thought the question should be added in the spring of 2017?

Mr. Dewhirst. Same instruction to the witness.

BY MS. ANDERSON:

Q Did Earl Comstock express of you about whether he thought the question should be added in the spring of 2017?

Mr. Dewhirst. Same instruction to the witness.

BY MS. ANDERSON:

Q Did Secretary Ross state or tell you why he was interested in a citizenship question?

Mr. Dewhirst. Same instruction.

BY MS. ANDERSON:

Q Did Earl Comstock say or tell you why he thought he was interested, or why the Secretary was interested in the citizenship question?

Mr. Dewhirst. Could you ask that question again, please?

BY MS. ANDERSON:

Q Sure. Did Earl Comstock tell you or indicate to you why he might be interested in adding a citizenship question, or discussing a citizenship question.

Mr. Dewhirst. I am going to instruct the witness not to answer?

Mr. Anello. Yes or no, basis?

Mr. Dewhirst. You have a couple of questions wrapped in there.

Ms. Sachsman Grooms. Break them out.

Ms. Anderson. Sure.

Mr. Dewhirst. Go ahead. Sorry to interrupt.

BY MS. ANDERSON:

Q Did Earl Comstock tell you why the Secretary was interested in a citizenship question? That's a yes or no.

Mr. Dewhirst. I am going to instruct the witness not to answer.

Mr. Anello. I am sorry, if I could pause there. Are you asserting a confidentiality interest over the yes-or-no question about whether this witness was told why the Secretary was interested?

Mr. Dewhirst. Well, you sort of built the deliberative material right into the question, haven't you? So yes, I am instructing the witness not to answer.

BY MS. ANDERSON:

Q Did Earl Comstock indicate to you or tell you why he was interested in learning more about the citizenship question?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. Did Secretary Ross tell you that he was interested in adding a citizenship question because the White House instructed him that this was a priority?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. Did the Secretary tell you that he was interested in adding a citizenship question because Steve Bannon had told him that this was a priority?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. Did Secretary Ross tell you that he was interested in adding a citizenship question in order to influence congressional apportionment or redistricting?

Mr. Dewhirst. Could you repeat that, please?

Mr. Anello. Did Secretary Ross tell you that had he was interested in adding the citizenship question in order to influence congressional apportionment --

Mr. Dewhirst. Before you get to the end, start over again. I am missing a word or two in the middle of that.

Mr. Anello. Did Secretary Ross tell you that he was interested in adding a citizenship question in order to influence congressional apportionment or redistricting?

Mr. Dewhirst. Same instruction to the witness.

BY MS. ANDERSON:

Q Were you ever told explicitly or implicitly not to ask why the Secretary was interested in the citizenship question?

Mr. Dewhirst. Same instruction to the witness.

BY MS. ANDERSON:

Q In the spring of 2017 what was the rationale offered at a basis for considering adding a citizenship question?

Mr. Dewhirst. Yeah, I am going to instruct the witness not to answer.

BY MS. ANDERSON:

Q Were you ever involved in any discussions about the congressional notification process for topics that would appear on the 2020 Census?

Mr. Dewhirst. Same instruction -- actually, ask the question one more time, Tori?

BY MS. ANDERSON:

Q Sure. Were you ever involved in discussions about the congressional notification process for topics that would appear on the 2020 Census?

A Yes, I was.

Q Who was present during those discussions?

A The Census career officials would have been present for some of these discussions. Counsel that worked on Census issues would have been present, various policy officials would have been present. The deputy chief of staff at the time is Israel Hernandez, was spearheading much of the Census preparations. He would have likely been present for some of these conversations as well.

Q Did you ever discuss the issue with Secretary Ross?

Mr. Dewhirst. I am going to instruct the witness not to answer because that implicates executive branch confidentiality and litigation concerns?

BY MS. ANDERSON:

Q Did you ever discuss the congressional notification process for topics with Earl Comstock?

Mr. Dewhirst. Same instruction.

Mr. Anello. So I'm sorry, I just want to make sure I am understanding this. So it was okay to say whether he had a conversation about the citizenship question, and the issue of congressional notification, just the topic itself is something that he cannot

confirm or deny he had a conversation about?

Mr. Dewhirst. The witness testified that he had conversations about the congressional notification issue.

Mr. Anello. I am asking about whether he had conversations.

Mr. Dewhirst. -- between the Department's director of policy, and its senior attorney at the time.

Mr. Anello. Correct. I mean even if you did think this was privileged, this would be information in a privileged slot. So I am not sure I understand the basis for your objection.

Mr. Dewhirst. Maybe you can restate the question then.

BY MS. ANDERSON:

Q Did you ever discuss the issue of congressional notification for topics that would appear on the 2020 Census with Secretary Ross?

Mr. Dewhirst. And just to be clear -- sorry, this is David, when you say topics --

Ms. Anderson. Subjects that would appear.

Mr. Dewhirst. You are referring to something specific?

Mr. Anello. It is a statute, it is a law.

Ms. Anderson. Yes.

Mr. Dewhirst. Okay. And one more time with the question.

BY MS. ANDERSON:

Q Did you ever discuss with Secretary Ross the congressional notification process for topics that would appear on the 2020 Census?

A Yes, I did.

Q Did you discuss topics that would appear on the 2020 Census in the connection with the citizenship question?

A Can you be more specific?

Q Did you discuss with Secretary Ross a congressional notification process for topics that would appear on the 2020 Census in relation to, or with regards to the citizenship question?

A I do not recall.

Q Did you ever have discussions with Secretary Ross about the process for adding questions or having questions appear on the 2020 Census?

Mr. Dewhirst. I am going to instruct the witness not to the answer that question in that it implicates executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q Did you ever discuss with Secretary Ross having missed any deadlines to notify Congress about topics that would appear on the 2020 Census?

Mr. Dewhirst. Same instruction to the witness.

BY MS. ANDERSON:

Q Did you ever have any discussions about approaching other agencies to request the addition of a citizenship question to the 2020 Census?

Mr. Dewhirst. Same instruction to the witness.

BY MS. ANDERSON:

Q You indicated the Secretary had instructed you to look into the issue. Did you ever learn why the -- whether the Secretary wanted to add a question -- citizenship question to the 2020 Census?

Mr. Dewhirst. Same instruction to the witness.

Just to be clear for the record, the instruction is I am instructing the witness not to because it implicates executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q And just to be clear, the question is whether he learned if Secretary Ross wanted to add a question, not what he learned about that, but whether he learned the answer to that kind of thing?

Mr. Dewhirst. Same instruction to the witness.

BY MS. ANDERSON:

Q So realizing that you received the email this morning, I would like to direct your attention to the email that, I believe the first part of it is exhibit 1, it is a calendar invitation from June 28, 2017.

Mr. Dewhirst. This is exhibit 1, Tori?

[Uthmeier Exhibit No. 1

Was marked for identification.]

BY MS. ANDERSON:

Q And I am going to mark it as exhibit 1. Mr. Uthmeier, do you have that in front of you, or have you had a chance to review that?

A I am looking at it right now, yes.

Q It is a calendar invite from, was set on June 2017 for a meeting on June 28, 2017, and the meeting title is "hold: Meet with James re: Census and citizenship." It is with Earl Comstock and it was sent to you. Do you recall this meeting?

A I recall meeting with Earl on multiple occasions, on many topics. This specific meeting, I do not recall.

Q When did you first speak with Earl Comstock about the addition of a citizenship question to the 2020 Census?

A At some point in the spring or summer of 2017. I do not remember specifically when.

Q Who initiated the conversations between you and Earl Comstock?

A I do not recall.

Q Did you and Earl Comstock discuss the purpose of why he wanted to discuss with you the citizenship question?

Voice. Someone has left the conference.

Ms. Anderson. Off the record.

[Discussion off the record.]

BY MS. ANDERSON:

Q Did you and Earl Comstock discuss why you were meeting or speaking about the citizenship question in the spring of 2017?

Mr. Dewhirst. I am going to instruct the witness not to answer because that implicates the executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q Was anyone else ever present for your discussions or conversations with Earl Comstock about the addition of a citizenship question?

A Are you talking about this specific meeting or any meeting?

Q Do you now recall this specific meeting?

A I only recall what I see on the exhibit in front of me that it appears to have been scheduled for June 28.

Q Do you recall anyone else being present for discussions you do remember in the spring of 2017 about the citizenship question with Earl Comstock?

A I -- people would have -- other people would have been present for meetings with Earl on the Census citizenship topic, yes.

Q Who were those people?

A Well, it depends on the time period, Peter Davidson the general counsel, would have been present for meetings, Carrie Ann Kelly, after she arrived at the

Department would have been present, Peter Langdon worked for Earl at the policy office. He would have been present. Let's see who else. Sahra Park-Su, he was an individual that worked for Earl in his policy office. She would have been present. Wendy Teramoto was the chief of staff at the time. I believe she would have been present for, you know, at least a meeting or two.

At some point, someone from legislative affairs probably would have been involved in a meeting, certainly would have. I cannot remember which individual for which meeting, but they would have been around -- all internal DOC people.

Q Did you do anything as a result of Earl Comstock directing you to research the citizenship question in the spring of 2017?

Mr. Dewhirst. I am going to in the witness to the to answer. What was the full question? I may have cut you off.

BY MS. ANDERSON:

Q I said, Mr. Uthmeier, did you do anything as a result of the direction of Earl Comstock to look into the citizenship question in the spring of 2017.

Mr. Dewhirst. I'm going to instruct the witness not to answer.

BY MS. ANDERSON:

Q Did Earl Comstock every provide to you or discuss with you rationales for adding a citizenship question to the 2020 Census?

Mr. Hull. Same instruction.

[10:36 a.m.]

Ms. Anderson. We're going to speak with you a little bit about what was emailed as exhibit No. 5. I'm marking it as exhibit 2 for the record. Please let me know --

Mr. Dewhirst. Really? Do we have to do that? We've got these things in email. Is there any way we can just call it exhibit 5? Is that possible? It's just going to get confusing on our end.

Ms. Anderson. Sure. Okay.

Mr. Anello. We'll mark it as 5.

Mr. Dewhirst. That'll take you a little bit out of order, but if that's okay, that would be really helpful. Thank you.

Ms. Anderson. That's fine.

[Uthmeier Exhibit No. 5

Was marked for identification.]

BY MS. ANDERSON:

Q It's an email, just so we all know we're talking about the same thing and you can review the same thing, from Earl Comstock to Wendy Teramoto on September 16, 2017. And it includes an email and then a memo that's marked as dated September 8, 2017.

Have you had a chance to read it?

A Yes.

Q Okay. The memo that appears at the bottom of the email, Mr. Comstock writes that he made phone calls or had meetings with the Department of Justice and the Department of Homeland Security regarding the addition of a citizenship question.

Were you aware of those calls or meetings?

A I was not.

Q Okay. Were you involved in any way in those calls or meetings?

A I was not.

Q He writes at the end, the last paragraph, quote: 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 would add the question to the Census itself.

Do you recall having that conversation with Earl Comstock?

A I remember speaking with Earl Comstock about legal issues and how Commerce could add the question to the Census itself, yes.

Q What legal issues did he ask you to look into?

Mr. Dewhirst. I'm going to direct the witness not to answer, because it implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. Sorry. Could you just identify yourself for the record for the stenographer?

Mr. Dewhirst. Sorry. David Dewhirst.

Ms. Anderson. What did you do in response to his request for you to, quote, look into the legal issues and how Commerce could add the question to the Census itself?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Did you look into the legal issues and, quote, how Commerce could add the question to the Census itself?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Did you conclude whether the Department of Commerce could, quote, add the question to the Census itself?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Did you conclude whether it would be likely or unlikely that the Commerce Department would be able to add the question itself?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. This is Russ Anello. I just want to make sure I'm understanding even what this email means. It says that Mr. Comstock asked you to look into the legal issues and how Commerce could add the question to the Census itself.

What does it mean to add the question to the Census itself?

Mr. Dewhirst. I'm going to instruct the witness not to answer that.

Mr. Anello. Your department produced this document to us. I don't understand. You produced this document to us. I'm simply asking what the document means.

Mr. Dewhirst. Russ, I think we're talking over each other a little bit.

Mr. Anello. Okay.

Mr. Dewhirst. Let me finish. I'm instructing the witness not to answer because it implicates the executive branch confidentiality and litigation concerns.

Mr. Anello. Okay. Is this document confidential, in your view?

Mr. Dewhirst. We're talking over each other again. Sorry. I was just going to say, proceed. Sorry. Go ahead.

Mr. Anello. Okay. This is for the attorneys. I'm trying to understand. This document was produced without redaction, correct? So I'm just asking for interpretation of what the document means. I'm not asking for anything beyond an understanding of the document that has already been produced. So I don't understand how that implicates confidentiality concerns.

Mr. Dewhirst. -- lawyer to provide an interpretation of a conversation and work that he may have done in relation to a client? I mean --

Mr. Anello. No. Well, this was a determination your department made.

Mr. Dewhirst. Yeah, I'm giving instruction to the witness.

Mr. Anello. Okay.

To be really clear, the Department of Commerce provided an email that says that Mr. Uthmeier was asked to look into how Commerce could add the question to the Census itself. I'm simply asking, what does it mean to look into how Commerce could add the question to the Census itself? I don't see how that implicates any privilege. I'm asking for an understanding of the document you produced.

If you're not going to let the witness testify about this small number of documents that have been produced, I'm not sure I understand what's going on.

Mr. Dewhirst. Well, do you want to ask the question again --

Mr. Anello. Sure.

Mr. Dewhirst. -- or do you want to just move on? What do you want to do?

Mr. Anello. I'm happy to ask the question again.

What did you understand Mr. Comstock to mean when he says that he asked you to look into how Commerce could add the question to the Census itself?

Mr. Dewhirst. But, again, you're asking him about a document he didn't write.

Mr. Anello. He said he remembered it.

Mr. Dewhirst. You're asking him to interpret -- let me finish. You're asking him about a document he didn't write and saying, "What did it mean? Tell me about a conversation you had with a senior official at Department of Commerce in your role as a lawyer."

Mr. Anello. Okay.

Mr. Uthmeier, is it correct, is it accurate, that Mr. Comstock asked you to look into the legal issues and how Commerce could add the question to the Census itself? Is that

accurate?

Mr. Uthmeier. Yes.

Mr. Anello. Okay. What did he mean by "how Commerce could add the question to the Census itself"? How did you understand that question? What did you understand that question to mean?

Mr. Dewhirst. I'm going to instruct the witness not to answer that. That question implicates executive branch confidentiality and litigation concerns.

Ms. Sachsman Grooms. Are you going to instruct the witness -- this is Susanne Grooms. Are you going to instruct the witness not to answer any questions about any of the work that he did surrounding the addition of the citizenship question to the Census?

Mr. Dewhirst. Well, it's hard to answer a question like that, Susanne, without actually hearing the questions posed. So --

Ms. Sachsman Grooms. Sure.

Mr. Dewhirst. -- I don't think we're prepared to make any representation about your specific question right now. I mean, I think we'll just have to take these as the questions come along. But that's why we're here voluntarily.

Ms. Anderson. Did Earl Comstock direct you or ask you to do anything regarding the citizenship question?

Mr. Dewhirst. Sorry. Who is speaking now?

Ms. Anderson. Sorry. It's Tori. Back to me.

Mr. Dewhirst. Tori. Sorry. Go ahead.

Ms. Anderson. Did Earl Comstock direct you or ask you to do anything else regarding the addition of the citizenship question?

Mr. Dewhirst. I'm going to instruct the witness not to answer because it implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. Did Earl Comstock direct you or ask you to speak with anyone else regarding the addition of a citizenship question?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. Mr. Uthmeier, did you take any action with regard to the addition of the citizenship question that you're willing to share with us today?

Mr. Uthmeier. Could you be more specific? I've been sharing quite a bit of information today.

Mr. Anello. Well, not about the questions we're asking you, unfortunately.

Did you take any action at the Department of Commerce while the issue of the citizenship question was under consideration that you can describe to us today?

Mr. Uthmeier. I'm sorry. I'm going to need you to be more specific. I don't know what you're asking me.

Mr. Anello. Okay. We'll keep going.

Mr. Castor. I think the hour is up, right?

Mr. Anello. Is it?

Ms. Anderson. Yeah.

Mr. Anello. Okay.

So we normally take about a 5-minute break.

Ms. Anderson. Our hour has been up. We usually do take a 5-minute break. Would you like to take a 5-minute break?

Mr. Dewhirst. Yes, 5 minutes would be great.

Ms. Anderson. Okay. So we'll return at -- sorry?

Mr. Dewhirst. Sorry, Tori. I was just going to ask what the normal protocol is. Do we just leave the line open?

Ms. Anderson. You can. You can also dial back in.

Mr. Dewhirst. Okay. Why don't we do that. We'll dial back in -- it's 10:45. We'll dial back in at 11:00.

Ms. Anderson. 10:50 for a 5-minute break.

Mr. Dewhirst. Oh, sorry. 10:50, yeah, that's correct. Sorry.

Ms. Anderson. Okay. All right. Thank you.

Mr. Dewhirst. Thank you.

[Recess.]

Mr. Castor. This is Steve Castor with the Republican staff. Can you guys hear us okay?

Mr. Dewhirst. We can hear you, Steve. Cordell is working on downloading the attachments.

Mr. Castor. Okay.

Mr. Dewhirst. Can you just give us just a second on that?

Mr. Castor. Sure.

Mr. Dewhirst. Thank you very much.

Mr. Castor. You've indicated a couple times you're having trouble hearing or the line's not clear. So if that's the case, definitely we'll stop talking and try to start over.

Mr. Dewhirst. Sounds great. Are you hearing us clearly?

Mr. Castor. We're hearing you great. And so, in fact, because the line on our end is so clear, if you're having trouble hearing us, at least on our end, it sounds confusing, but evidently you guys aren't hearing us as clearly.

Mr. Dewhirst. Yeah. We get some clicks and pops occasionally, and then we dropped off that one time. So that seems to be the issue. But most --

Mr. Uthmeier. And we're on a land line, which is odd.

Mr. Dewhirst. But most of the time, we can hear you just fine.

Mr. Castor. Okay. So feel free to ask us to repeat a question. We'll do our best here, given the circumstances aren't ideal.

If, during the course of the day, after you've heard the -- and this is more for the lawyers, for David and Cordell. You know, after you've heard sort of the balance of the questions, you know, if there is an opportunity, especially during the 90-minute break, to revisit any of your instructions not to answer, you know, we would certainly appreciate that, you know, understanding that you make these assertions or objections when the question's asked, and then sort of at the end of the day, after you've heard a body of questions, you might be able to revisit it, and that's sort of how the accommodation process works.

And so maybe the 90-minute break will -- you know, maybe that will loosen up some things. Maybe it won't. But we just wanted to invite you to do that.

Ellen Johnson from our staff, she's going to ask the questions when we're ready to go.

Mr. Dewhirst. Okay.

Mr. Castor. And we're all here back in the room.

Mr. Dewhirst. Great. We're ready on our end.

Mr. Castor. And just so you know, the court reporters, they do an incredible job for us. And so they come in and out on 1-hour increments, roughly. And so it is helpful for them if, Cordell, David, James, if you identify yourself when you start talking. I know that sounds clunky or cumbersome, but to the extent you can just chime in with your name, that's really helpful for our court reporters. And thank you.

Mr. Dewhirst. Definitely. We'll try to do that.

The Court Reporter. And who was that?

Ms. Johnson. That was David.

The Court Reporter. That was David?

Mr. Castor. That was David, yeah.

Mr. Dewhirst. Just so you were wondering, David Dewhirst is being amazingly cooperative.

Mr. Castor. Okay.

The Court Reporter. Got it.

Mr. Castor. And just -- David's been doing most of the talking, and Cordell is sort of the second lawyer there in the room, and James is the witness.

So is everybody ready to go, or are you still trying to download something? Our first couple questions won't implicate the documents, so maybe it's okay to get going.

Mr. Dewhirst. That's fine. We got them.

Mr. Castor. Okay, great. Okay. I'll turn it over to Ellen. Thank you.

Mr. Dewhirst. Thank you.

Ms. Johnson. Thank you, Mr. Uthmeier. This is Ellen Johnson. It's nice to meet you on the phone.

EXAMINATION

BY MS. JOHNSON:

Q Can you tell me, how long were you employed at the Department of Commerce?

A I was there a little over 2 years. I began in February of 2017. I believe it was February 11th. And I continued working there until late March.

Q Is that 2019?

A 2019, yes.

Q Okay.

And in your previous statements, you said you were in the Office of General

Counsel and later in the Secretary's Office directly. Was your title the same the whole time?

A My title was changed a few times. It was kind of a fluid process that I always would lose track where the paperwork was. But I certainly went from a special advisor to counsel to senior counsel. I believe at one point I was senior advisor and counsel. I was counsel and, at the Secretary's request, special advisor for space.

I also received a promotion at some point in 2019 to become a deputy chief of staff for strategic initiatives, but I'm not sure where that paperwork ended up in the process. I left shortly after to move home to Florida.

Q Okay.

Did you know anyone, either political or career, at the Department of Commerce before you joined on February 11, 2017?

A I had been in contact with some individuals who were, I believe, part of the transition team that subsequently became employees at Commerce. But I did not have, you know, personal relationships with anyone at that time, no.

Q Okay.

And did you work with Secretary Ross before he was confirmed by the Senate at all -- after he was nominated but before he was confirmed?

A I definitely had an interaction or possibly two with him. I know he was working to help the transition as well. So we saw each other, but we were not working together, you know, in any significant depth.

Q So is it fair to say that your working relationship really with Secretary Ross began after his confirmation on February 28, 2017?

A Yes.

Q So, after you joined the Department, previously you said you worked on a

number of issues at the Department of Commerce. Can you tell me again what other issues you worked on not related to the 2020 Census?

A Sure. Regulatory reform was one of my primary responsibilities. I ensured the Department satisfied the requirements of various Executive orders. I also reviewed agency proposed rulemakings and final rules for, you know, legal analysis.

I was the Department's lead on infrastructure issues, infrastructure permitting reform. I oversaw responses to congressional investigations, document productions. I helped with National Oceanic and Atmospheric Administration satellite licenses.

I traveled on multiple occasions with the Commercial Law Development Program, an office at the Department that works to help foreign officials and countries to develop new laws to better facilitate business activity. As a result, I traveled to Morocco, I traveled to Georgia -- the country Georgia, and, you know, was involved in various conferences and educational training seminars in that capacity.

I also was involved in the, you know, day-to-day workings of the Office of General Counsel that, you know, basically is advising, you know, almost a large business in a way, dealing with employment law issues, contract issues, procurement issues, various litigation issues, trade-related issues. Trade was a very big topic for us at the beginning of the new administration and took up quite a bit of time. As a result of that, I traveled to China with the Secretary on an occasion.

I traveled with the Secretary on many domestic trips to promote economic development, minority business growth, regulatory reform.

It was a very busy couple years. I lost a lot of sleep.

Q Okay.

And after you joined the Department, can you tell me, notwithstanding the citizenship question, did you work on any other issues related to the 2020 Census?

A Yes. I worked on several issues related to the Census. The citizenship question was certainly not one of the priorities or, you know, early big-picture projects that was put in front of me.

I worked on analyzing the budget. We had some very serious concerns that perhaps, you know, the Census was not being managed effectively.

I worked on some contract issues involving contractors and subsidiaries that would be executing Census activity, looking at some of the tests that were going to be coming up, reviewing some agency request-for-information questions.

Immediately, on day one at the Department, as I'm working my way around to various offices to get briefed and understand the lay of the land, it was made very clear to me that 2017, the Census is already in the 11th hour at that point. It's one of the largest undertakings that the Department has. It only comes around 10 years. It involves many personnel resources and millions and millions of dollars to get it done. And the Secretary, having been an enumerator when he was a student and a younger guy, you know, he took it very serious and wanted to ensure that we conducted as complete and as accurate of a Census as possible.

So I was dealing with many other issues in addition to possible new questions or reinstatement of questions like citizenship.

Q Okay.

And when you first started with the Department and you were being briefed on the budget, contract issues, the question topics, what was your impression about the state of the 2020 Census when you joined the Department in February of 2017?

A As I said, looking at it, I believed that the Census had some oversight and management issues and perhaps was well above budget in the way it was being run, which we, as senior officials, worked very hard to address.

Q So I want to ask you about the budget issues. We heard testimony from Secretary Ross in October of 2017 that he presented an updated lifecycle cost estimate to us that requested an additional, I think, $3.5 billion for the Census.

Could you tell me, where was the budget when you started? And how did you get to a place where the Census was now going to -- the updated lifecycle cost was going to be $3-plus-billion more?

A You know, I don't remember the specifics from, you know, back in 2017 on the budget. All I know is that, ultimately, we determined, I believe, that the budget needed to be increased by about 25 percent to adequately reach hard-to-reach populations.

We were very focused on the race-based undercount. We were trying to make sure that we could incorporate new technology, that we could incorporate new languages on surveys.

Again, we just did not believe the Census was in the best position it should have been.

Ms. Johnson. Hello? Are you still there?

Off the record.

[Discussion off the record.]

Ms. Johnson. We'll go back on the record.

BY MS. JOHNSON:

Q So, Mr. Uthmeier, did you want to finish what you were saying, or were you done with the question?

A I believe the last thing you were asking me about is, you know, my opinion of the budget. You know, without going into the perceptions or beliefs of others at the Department, I can tell you I was concerned that it was being mismanaged and that it was

being operated over budget and that it did not adequately account for, you know, contingencies, new technologies, and a significantly growing and more diverse population.

Q Okay.

Would it be fair to say that the previous administration had mismanaged the Census, leading up to the 2020 Census?

A Yes.

Q When you consider the state of the 2020 Census in 2017, do you think Secretary Ross was more concerned about fixing the problems facing the 2020 Census or adding a citizenship question to the Census?

Mr. Hull. I'm going to instruct him not to answer what his belief of what Secretary Ross's belief was.

Mr. Castor. That was Cordell?

Mr. Hull. Yes, sir. I'm sorry. It's Cordell.

BY MS. JOHNSON:

Q When you first starting working on Census issues, were you aware that Secretary Ross had monthly meetings with top Census Bureau leadership to discuss the status of the 2020 Census?

A Yes.

Q Did you participate in any of these meetings?

A Yes.

Q Do you know the topics of conversation at these meetings?

A Yes.

Q Were they focused on budget issues?

Mr. Hull. You can answer without revealing anything privileged.

This is Cordell. Sorry.

Mr. Uthmeier. Yes. Many, if not most, dealt with budget issues.

BY MS. JOHNSON:

Q Did you discuss the IT system issues at this meeting?

A Yes.

Q Did you discuss any other management-related topics not related to the citizenship question at these meetings?

A Yes, absolutely, I would have.

Q What were some of the other non-citizenship-related topics you discussed?

Mr. Hull. This is Cordell Hull.

I want to be clear. He's in a room in his capacity as a lawyer with folks internal to Department of Commerce. I think anything he's going to answer on that topic is necessarily going to reveal his mental processes as a lawyer.

Ms. Johnson. Okay.

Mr. Hull. So I would instruct him not to answer that question.

Ms. Johnson. So, other than IT systems and budget, you said you discussed contract issues as well?

Mr. Uthmeier. Yes.

Ms. Johnson. What were the major contracts at the time that the Census Bureau was working on?

Mr. Hull. I'm going to instruct the witness not to answer based on executive branch confidentiality and litigation interests.

Ms. Johnson. Okay.

Regarding the decennial Census program, where do you believe the citizenship question ranked in order of importance? For example, do you believe the citizenship

question was more important --

Mr. Dewhirst. Excuse me. Excuse me, Ellen. You cut out for a couple seconds there at the beginning. I'm sorry. Can you start over?

Mr. Castor. Is this David Dewhirst?

Mr. Dewhirst. This was David. I'm sorry, yeah. I'm sorry. This is David.

Ms. Johnson. Okay.

Regarding 2020 Census program, where do you believe the citizenship question ranked in order of importance? For example, was the citizenship question more or less important than cost overruns in the 2020 program or the IT system development?

Mr. Hull. This is Cordell. Ellen, the line broke up again about a third of the way through there. I'm sorry. Could you repeat the question?

Ms. Johnson. Sure.

Where do you believe the citizenship question ranked in order of importance based on all of the other issues of the 2020 Census? Was it more or less important than cost overruns or IT system development?

Mr. Uthmeier. This is James. Are you asking my personal ranking of issues, or are you talking about others at the Department generally?

Ms. Johnson. I'm asking your belief.

Mr. Uthmeier. I mean, my recollection is that citizenship --

Mr. Dewhirst. I just want to be clear, before James proceeds -- this is David Dewhirst -- that we do have an instruction that I think still applies. But I think, you know, in an effort towards accommodation, we're willing to, you know, allow James to move forward with answering this.

Sorry to interrupt, James. Go ahead.

Mr. Uthmeier. Based on my recollection, the citizenship question topic was not

one of the, you know, priority items on the Census that was leading to meetings and discussions. It was one of several topics that were being discussed. And in early 2017, you know, into the summer, it certainly was not discussed as much as other items.

BY MS. JOHNSON:

Q Okay. Thank you.

In a given week for you at the Department of Commerce, how much time did you spend working on matters not related to either the citizenship question or the 2020 Census?

A That breakdown, you know, would have fluctuated throughout the duration of my time at the Department. But I would say, on average, Census work made up certainly less than a quarter of what I was doing, at times certainly less than 10 percent.

Q And you listed several things -- I think you said reg reform and trade were big items for the Secretary and for the Department generally. How much time did you spend in 2017 working on reg reform matters and trade matters?

A I'll have to give you rough estimates. Combined, regulatory reform and trade matters probably took on 15 percent of what I was doing during 2017. After November of 2017, I was deeply involved in commercial space activities, and that would have quickly escalated as far as, you know, a breakdown of my portfolio.

Q In terms of all of the priorities you previously listed that you worked on, do you believe the citizenship question was more important than those items or less important than those items?

A Well, you know, I think the Census work generally was probably on an equal footing. And it certainly -- you know, it's listed high up in the Department's, you know, strategic initiatives that are submitted to Congress every year. So the Census was very, very important.

The citizenship topic was just one aspect of my Census work towards furthering that the Department can conduct as complete and as accurate a Census as possible.

Q Okay.

In your professional background, did you work on Census matters previously?

A Could you be more specific?

Q Prior to joining the Department of Commerce, while you were at Jones Day or other previous employment, did you ever deal with any of the Census products, be it the 2010 Census or the American Community Survey or the Current Population Survey or the economic surveys that they do? Did you have any previous knowledge about the Census or any Census products?

A No, not to my recollection. No.

Q So it'd be fair to say that when you joined the Department the 2020 Census and Census generally was a new topic area for you?

A Yes. And in the new administration, everyone is trying to get their bearings.

Q Okay.

So I'm going to provide -- I think we sent you a couple of exhibits. I'm going to pull in two for you, the first one titled "Questions on the January 19 Draft Census Memo to Department of Justice." Do you have that?

Mr. Hull. I'm sorry. This is Cordell Hull. The document, January 2018, internal question responses from Census?

Ms. Johnson. Yeah. "Questions on the Jan 2019 Draft Census Memo on the DOJ Citizenship Question Reinstatement Request." Do you have that?

Mr. Hull. Yes.

Ms. Johnson. Okay.

What do you want me to mark this as?

Ms. Sachsman Grooms. So we have -- 2 is open, if you'd like.

Ms. Johnson. Two? Okay.

Mr. Anello. Well, it's open for now. We have documents up to, like, 20-something.

Mr. Castor. Should we use the letter A?

Ms. Johnson. Yeah. We're going to mark this as A.

[Uthmeier Exhibit No. A

Was marked for identification.]

Ms. Johnson. Okay. And then the second exhibit I'm going to mark as B, and that is Secretary Ross's March 26, 2018, decision memo.

[Uthmeier Exhibit No. B

Was marked for identification.]

Ms. Johnson. Do you have that?

Mr. Hull. Yes.

Ms. Johnson. Okay.

Okay, I want to first start with exhibit A.

Well, first of all, let me back up. Secretary Ross has said that the Department of Justice letter triggered a formal interagency process for reviewing the citizenship request. Would you describe that process?

Mr. Hull. This is Cordell. To the extent he can do so without revealing executive branch confidentiality interests, we'll let him answer.

Mr. Uthmeier. Yes, we were made aware by the Census Bureau career officials that there is a process that must be followed after an agency receives a request -- or after the Census Bureau receives a request from another agency to add a question asked on a

Census survey. They informed us, and a process was initiated to look at the --

Ms. Johnson. Hello?

[Discussion off the record.]

Mr. Dewhirst. Hello?

Ms. Johnson. Oh, yeah. Okay.

Mr. Dewhirst. We're here.

Ms. Johnson. Okay.

Mr. Dewhirst. Where did James drop off? This is Dewhirst.

Ms. Johnson. He said "a process was initiated to look at the" --

Mr. Uthmeier. -- the legal program and policy considerations. The Census Bureau career officials, they led this process and began to conduct an analysis.

Ms. Johnson. And is exhibit A, the memo titled "Questions on the Jan 2019 Draft Census Memo on the DOJ Citizenship Question Reinstatement Request," part of that formal process?

Mr. Uthmeier. Yes.

Ms. Johnson. Have you seen this memo before?

Mr. Uthmeier. Yes, I have.

Ms. Johnson. And what was the purpose of this document?

Mr. Hull. This is Cordell. To the extent he knows.

Mr. Uthmeier. This document was to collect additional information and provide some answers to questions by getting more information from the Census Bureau officials that were leading the review process.

Ms. Johnson. Who were providing the questions? Who wrote these questions? Did you write these questions?

Mr. Hull. This is Cordell. To the extent that calls for revelation of his role as

attorney, I'm going to instruct the witness not to answer.

Ms. Johnson. Okay.

So do you know who drafted this document?

Mr. Uthmeier. Yes.

Ms. Johnson. Was it multiple people in the Department working on the document?

Mr. Hull. Again, I'm going to instruct the witness not to answer that question.

Mr. Castor. That was Cordell.

Mr. Hull. Yes, I'm sorry. That's Cordell.

Ms. Johnson. Are you able to reveal who drafted the document?

Mr. Hull. I'm going to instruct the witness not to answer that question. Cordell Hull.

Ms. Johnson. Okay.

Can you tell me when the first draft of this document was first -- you were first made aware of the first draft of this document?

Mr. Hull. This is Cordell Hull. I'm going to give the witness the same instruction.

Ms. Johnson. Okay.

Does the title, "January 19 Draft Census Memo," does that specifically refer to an early draft of the Wilbur Ross reinstatement of the citizenship question on the 2020 decennial questionnaire memo marked as exhibit B?

Mr. Hull. To the extent the witness can answer -- this is Cordell. To the extent the witness can answer that without revealing executive branch confidentiality interests, we'll permit him to answer.

Mr. Uthmeier. No. The reference to the January 19th draft Census memo, I

believe, is referring to a memo that was put together by the Census career officials that were leading the process, not the Secretary's decision memo that ultimately was released in March.

Ms. Johnson. Okay.

I want to turn to exhibit B. Have you seen this memo before?

Mr. Uthmeier. Yes, I have.

Ms. Johnson. Did you write the first draft of Secretary Ross's decision memo?

Mr. Dewhirst. I'm going to note that this question calls for information that implicates executive branch confidentiality and litigation concerns, but as an accommodation, we're going to allow the witness to answer.

Ms. Johnson. Was that Cordell or David?

Mr. Dewhirst. I'm sorry. It's David.

Mr. Uthmeier. Yes, I was the author of the initial drafting stage of this memo. Yes.

Ms. Johnson. Okay. And, to your knowledge, who else worked on the first draft with you?

Mr. Uthmeier. The Secretary, Wilbur Ross.

Mr. Dewhirst. And I'll interject, even though he's already answered the question, that the same notation and caveat should apply to that answer.

Ms. Johnson. Okay.

BY MS. JOHNSON:

Q Did any other staff, to your knowledge, at the Department of Commerce work on this memo?

A Other staff would have provided input, yes.

Q Can you name those staff?

A I know that Earl Comstock provided some input.

At this point, a new deputy general counsel had come on board, Mike Walsh. He provided some input as well.

I believe that Karen Kelley, who was the -- I believe she was performing the duties of Deputy Secretary at that time. She certainly was the Under Secretary for Economic Affairs. I believe that she had provided some information that was used for this memo.

Certainly, you know, other data and information was provided to us by the Census Bureau and, thus, you know, led to the basis of the decision.

Q Okay.

The memo has listed four options, Options A, B, C, and D. Can you please walk us through, to the best of your recollection, what Option A called for in the Secretary's memo?

A Yeah, as I think the memo lays out, Option A was the status quo baseline of basically the Department's decision to not do anything different and to not reinstate the citizenship question.

Option B, I believe, was consideration of reinstatement of a citizenship question.

Option C was a proposal made by the Census career officials to utilize administrative records to collect more accurate citizenship data in lieu of reinstating a question on the short-form decennial census.

And then Option D was a combination of B and C, asking the citizenship question of everyone on the decennial Census, but also using supplemental records, data to ensure, you know, accurate information -- or more accurate information, I should say.

Q What official at the Census Bureau brought Option C to either your attention or the Secretary's attention?

A I'm sorry. Did you say Option B or C?

Q Option C.

A Option C. I do not recall which specific official would have made that recommendation.

Q And do you recall who recommended Option D?

A I do not. But I know that Option D came after some back-and-forth followup analysis, and it was, you know, information provided to the Secretary, you know, as a result of his questions and analysis.

Q Okay. When did Option D emerge as an option?

A You know, it was certainly after January, so it would've been February or March. I don't remember the specifics, but I do know that it came about as a result of the Secretary's request for, you know, another alternative, more information.

Q How long had you and the Department been considering these three options, A, B, and C? Did you start considering them immediately after the DOJ December 12th letter?

A Immediately after receiving the DOJ letter, the Census Bureau officials began, you know, what was described to us as a typical Census-led process that would have to be conducted to consider an agency request for a Census question.

It was at that time that the officials conducted an analysis and recommended various options to the Secretary for consideration. We certainly were not looking at various options prior to receiving the letter from the Department of Justice, because, you know, we didn't know whether or not there was going to be an agency request for this information.

Q Okay. So you were not looking at any options before DOJ sent their letter on December 12th. Is that correct?

A To the extent you're referring to the options that are laid out in the decision

memo specifically, no, we were not considering the analysis of these options prior to receiving the Department of Justice letter.

Q Previously, you said that, with respect to exhibit letter A, that the January 19 draft Census memo was a document drafted together by Census Bureau career staff, correct?

Mr. Hull. This is Cordell. I don't think he actually said that.

Ms. Johnson. I asked him in exhibit A, January 19 Draft Census Memo, what did that -- did that refer to Secretary Ross's March 26th decision memo, and he said, no, it refers to a memo put together by the Census Bureau.

Mr. Uthmeier. The question -- this is James. The questions are in response to a memo that was put together by the Census Bureau.

Ms. Johnson. Okay.

BY MS. JOHNSON:

Q The memo that was put together by the Census Bureau referenced in exhibit A, was that the first, I guess, time the Census Bureau laid out the various options to the Secretary and the Department of Commerce for responding to the DOJ letter?

A I do not recall.

Q Okay.

So it is still fair -- is it correct to say that the Census Bureau were the ones who put together Options A, B, and C for the Secretary and for the Department of Commerce?

A Yes. And then, at his request, Option D as well.

Q Okay. So, between December 12, 2017, and March 26, 2018, when did Option D emerge as an option?

A I do not remember the specific date, but it would have been subsequent to, you know, the -- subsequent to the submission of questions that you referenced in exhibit

A, so at some point in late January or February.

Q Okay.

And Option D was the option ultimately selected by Secretary Ross in response to the DOJ letter, correct?

A Yeah, as was laid out quite extensively in the decision memo.

Q Okay.

On page 4 of the decision memo, at the bottom, the bottom paragraph, under -- so as the Secretary is laying out Option D, it says, quote: This approach would maximize the Census Bureau's ability to match the decennial Census responses with administrative records.

How did you come to the determination that administrative records were needed in coordination with decennial Census responses?

A I'm not sure I understand your question.

Q So the Secretary says that both administrative records and a question on the decennial Census are both needed. Can you tell me, in your opinion, where the nexus is between those two? How do they work together to get the best, most accurate information for the 2020 Census?

A Sure. So, after the DOJ request came in, the initial analysis that the Census Bureau conducted revealed that where the Census Bureau does collect citizenship information, on the American Community Survey, that that data suffers from significant inaccuracies.

In working to figure out how they came to that conclusion, it was brought to my attention, and others' as well -- it was brought to our attention that the Census Bureau already has access to administrative records in the possession of multiple Federal agencies and that those records are used by the Census for statistical collection and

analysis purposes.

That's where Option C came to play. The Census Bureau recommended that as a possible alternative to reinstatement of the citizenship question on the decennial Census, and the Secretary found it to be a very attractive alternative.

However, upon further review and analysis, Census Bureau officials made clear that that alternative would not be able to reach the entire population, and, I believe, you know, 90 percent or almost 90 percent of the population would be covered by the administrative records, but there would still be millions of people that were not going to be able to be considered under that option.

And that's when the Secretary directed Census staff to come back with Option D, which was utilizing administrative records, which I, at that time, was made aware was a growing trend and movement that the Census Bureau had been working on for several years. It just was not quite ready to be used. But we could utilize administrative records and reinstate the citizenship question to ensure the most complete and accurate data possible.

Q So is it correct to say that the career staff at the Census Bureau were looking into acquiring additional administrative records on citizenship for several years?

A That's my impression and understanding, yes.

Q So, even in the previous administration, career Census Bureau staff were considering requesting additional administrative records to respond to a citizenship -- to enumerate citizenship.

A It's my impression -- and I did not know this when I first began working on all Census issues, but it came to light as part of this process. It is my impression and understanding that the Census Bureau has for some time now been working to utilize administrative records on all Census questions, not just citizenship specifically.

The Census career officials made clear that using administrative records is the way of the future for Census in an effort to reduce costs and better count a growing and changing population where people are moving and living in, you know, new, alternative lifestyles, utilizing Airbnb for more permanent residences, you know, student housing, things like that, that the administrative records will make it easier on everyone to conduct a Census.

Q So is it fair to say that Option D, which incorporates what the career staff at the Census Bureau wanted, for additional administrative records, with the addition of a citizenship question on the 2020 Census questionnaire would provide a greater level of accuracy than just self-response alone?

[11:40 a.m.]

Mr. Uthmeier. I certainly believe option D is the best option. I stand by the decision memorandum. And Secretary Ross certainly agrees with that as well because he, you know, signed and delivered the decision memorandum to Karen Dunn Kelley, who was overseeing the Census in the, you know, Economic Affairs Department.

Ms. Johnson. Okay. On page 5 of Secretary Ross' decision memo, in the paragraph starting with the bolded Consideration of Impacts, it says, quote: I find that the need for accurate citizenship data and the limited burden that the reinstatement of the question would impose outweigh fears about a potential lower response rate, end quote.

Can you tell me what you -- what discussions were about the potential lower response rate?

Mr. Dewhirst. Ellen, this is David Dewhirst. Could you be maybe more specific with what types of discussions you are asking about?

Ms. Johnson. Sure. Were there policy discussions about how a lower response rate could impact how the 2020 Census is budgeted for or how it is perceived by the population as a whole?

Mr. Uthmeier. Yeah. As I mentioned, part of the Census Bureau analysis and review after receiving the Department of Justice letter involving programming analysis and central to programming is budget and cost to execute a Census. So there would have been discussions on -- on budget and response rate, yes.

Ms. Johnson. The -- in the next sentence of the memo, the Secretary said, quote: The Department's review found that limited empirical evidence exists about whether adding a citizenship question would decrease response rates materially.

Do you have any sense of what evidence you all looked at to come to that

conclusion?

Mr. Dewhirst. Ellen, this is David Dewhirst again. Could you point to the sentence that you are referring to?

BY MS. JOHNSON:

Q Sure. It is on page 5, the second -- start of the second paragraph under Considerations of Impact. It says: Importantly, the Department's review found that limited empirical evidence exists about whether adding a citizenship question would decrease response rates materially.

Do you see it?

A Yes. I see it. Thank you.

Q Could you tell me --

A What was the question? Sorry.

Q Could you tell me what evidence did you review that led the Secretary to reach that conclusion?

A Specifically, I cannot recall, but I do remember that I was able to review limited empirical evidence that we analyzed whether the citizenship question would, you know, drive down response rates in a material or significant way. And I also looked at the planned budget for the Census, including contingency fees and -- you know, contingency that was prepared in the event of any nonresponse rates. And, again, ultimately, we concluded that, you know, the need for accurate citizenship data was -- you know, it exceeded the burden that we perceived reinstatement of a citizenship question might have on response rates.

Q And the information that was provided to come to that conclusion was provided or looked into by career officials at the Census Bureau, correct?

A Correct. Generally all information was provided to us through Ron Jarmin

or Enrique Lamas.

Q Okay.

A Stakeholders also were consulted by the Secretary and provided information as well. I was involved in some of those meetings, but not many.

Q Okay. I want to dive deeper into option D, calling for the use of additional administrative records in conjunction with adding a citizenship question to the 2020 questionnaire.

Do you know what agencies the Department contacted to implement alternative D with respect to administrative records?

A I do not know the full extent. I am aware that there were communications with the Department of Treasury, Social Security, the State Department, possibly others as well.

Q Were you the point of contact for the Department on setting up those -- that administrative records transfers?

A No, I was not. And, in fact, you know, as it was presented to us by the Census staff, these conversations had already been ongoing prior to any review of DOJ's request that citizenship be reinstated on the Decennial list. This was something that the Census Bureau team was already doing to pursue a more complete and accurate Census.

Q Okay. So it was career Census Bureau staff that worked to execute option D's administrative records request?

A Yes.

Q Okay. To your knowledge --

A To my knowledge, yes.

Q Okay. To your knowledge, does the Department have signed memorandums of understanding to execute alternative option D?

A It was my understanding that there were meetings with Census officials that focused on the topic of the MOUs and the fact that we did not have all of the MOUs executed, which was a concern with option C on its own.

Q Were those MOUs executed between the Department of Commerce and the other agency, or were they executed between the Census Bureau and the other agency?

A I do not know. I have not seen them.

Q Okay. Do you -- when you left the Department in March of 2019, were you aware of the status of the MOUs relating to option D?

A No.

Q Okay. To your knowledge, did any agency decline to provide records to the Census Bureau pursuant to option D?

A Not to my knowledge.

Q Okay. Do you remember when news about the Department of Justice December 12th letter requesting reinstatement of the citizenship question broke?

A I am sorry. Can you repeat that? I want to make sure I am getting the right timeline down.

Q Yeah. When the news broke of the DOJ letter, do you remember when that was?

A I do remember. I remember it was during the holiday time because I was notified in the middle of some sort of holiday gathering.

Q So late December 2017?

A Yes, that sounds right.

Q What was your reaction when you were told that the news about the DOJ letter was going to break?

A You know, I don't know. I was prepared to answer questions as needed. I

was not sure how the letter was leaked. I am not sure how to answer that question. I am sorry.

Q That is okay.

After it came to light that the Department of Justice had sent a letter to the Census Bureau on December 12th asking for reinstatement of the citizenship question, do you know approximately how many letters you received from advocacy groups on the subject?

A I know we received letters. I do not know how many.

Q Were you involved in responding to any of the letters?

A I may have been consulted for some responses, but I do not remember specifically. I was working on -- I was advising and providing legal counsel pertaining to many letters regarding the Census and other issues at the Department.

Q Okay. But it is fair to say that you, the Department, received letters both in support of reinstatement of the citizenship question and in opposition to reinstatement of the citizenship question, correct?

A That is correct.

Q Did you review any comment letters that proposed modifications to the language of the citizenship question that is found in the American Community Survey?

A Not to my recollection. I don't recall.

Q Okay. But Secretary Ross ultimately decided to use the American Community Survey question and just put the question on the 2020 Census questionnaire. Is that correct?

A Yes, the question being reinstated on the Decennial Census form, the short form, is the same question as that which is on the American Community Survey.

Q Do you know why it was decided to use the question as is and not make any

modifications to it?

A To my recollection, the Census Bureau advised that that question had already undergone testing; it had been used in, you know, various samples; it was distributed on surveys to millions of people in the United States every year through the American Community Survey; and that it was the best structure or format for collecting the data.

Q So, to your knowledge, was there any additional testing that could be done that would be more robust than asking the question on the American Community Survey?

A Not in that timeframe. This is what was presented to us by the Census Bureau as, you know, the best way to format the question, and they said it had already gone through testing. I am not an expert on statistical sampling and things like that, but that is what was made known to us by the Census Bureau officials.

Q Okay. So, when you were working with the Secretary and the other folks at the Department of Commerce, did you have a sense that your decision or the Secretary's decision would cause the level of backlash that it has caused?

Mr. Dewhirst. So I am going to again note that I think this question likely calls for information that would implicate executive branch confidentiality and litigation concerns. And, actually, on that basis, I am going to instruct the witness not to answer.

Ms. Johnson. Okay.

Mr. Castor. All right. I was just about to --

Ms. Johnson. We will close with that.

Mr. Castor. -- stop here.

Ms. Anderson. Would you guys like to take another 5-minute break?

Mr. Dewhirst. Can we take a quick break before we jump back in? We will have a hard stop at 12:30. But can we dial back in at 12:00, and we will get a good half

hour in?

Ms. Anderson. Yeah, we will do that.

[Recess.]

Ms. Anderson. All right. We will go ahead and get back --

Mr. Hull. James, you wanted to --

Mr. Dewhirst. Yeah, go ahead and get back on the record.

Mr. Uthmeier. Yeah, this is James. I just want to remind everybody, I do have to leave at 12:30 and can start back again at 2. I appreciate your understanding on that. I did my best to clear the whole day's schedule but had one unavoidable conflict in the calendar. So I will do my best to be back promptly at 2.

Ms. Anderson. Okay. And if you just -- if one of the lawyers just want to -- if you want to just do a 5-minute heads-up, that is always good so I don't get on a roll here.

Mr. Hull. This is Cordell. We will do.

Ms. Anderson. Okay. Great.

BY MS. ANDERSON:

Q So I want to go back to talking about kind of in that spring 2017 time, you indicated that both Secretary Ross and Earl Comstock had asked you to look into the citizenship question.

After those two conversations, what did you do next regarding the citizenship question?

A I conducted research and looked into the issue, as I was directed.

Q And what timeframe was that?

A When I specific -- when I first began doing research, I am not totally certain. It would have been spring of 2017, and I would have continued doing research and analysis throughout the summer. And, you know -- it would have been ongoing really

until we -- you know, we made the decision in March of 2018, till the Secretary released his decision memo.

Q During the summer period from the spring of 2017, let's say, until the end of the summer months, did you discuss or speak with anyone about your research?

A Yes.

Q Who did you speak with?

Mr. Dewhirst. I am going to allow him to answer to the extent that -- I am going to give him some -- some rope here to answer.

Mr. Uthmeier. I spoke with the Secretary about my research. I spoke with other senior Department officials. That would have been, again, the same people that I listed previously that would have been involved in meetings on the topic: Earl Comstock; people working in his policy office; other counsel at the Department; certainly Barry Robinson, who was, you know, the chief counsel for the Census; Peter Davidson at the time he arrived in August; Karen Dunn Kelley.

BY MS. ANDERSON:

Q How many times did you talk to the Secretary about your research?

A Multiple times. I met with the Secretary on this and several other issues, you know, if not daily, when he was in the office, certainly multiple times a week. I would give him updates from time-to-time.

Q Did he ask for updates, or did you just provide updates?

A Sometimes I provided; sometimes he asked.

Q Did you create any documentation about your research?

A Yes.

Q What did you create?

A I put together a legal memo on the topic. I pulled documents from the

Census website. I collected surveys dating back to, you know, the earliest Census forms that are in the Department's possession. I compiled, you know, many public documents, the historical analysis, and timeline, looking at how questions have been asked on the Census dating back to the 1800.

Q Did anyone else ever provide you documentation during your research period?

A Yes.

Q Who was that?

A Census career officials would have provided me documents. Counsel working in the Office of General Counsel would have provided me documents, and --

Q Did it anyone -- I apologize.

A Sorry? Can you all hear us?

Q I apologize for interrupting. Go ahead.

A Occasionally, I asked a law clerk that worked there over the summer to provide some documentation. Usually, those were, you know, items that were available publicly on the Census website. And then I also consulted Mark Neuman, who was someone that was referred to me as an expert on all things Census. He had been involved in the transition team briefings and also provided documents to me.

Q When -- or who referred you to Mark Neuman?

A I do not remember.

Q When did you first talk with him?

A I believe it would have been March or sometime in the spring of 2017.

Q How many times did you consult with him or speak with him?

A I met with Mark on multiple occasions, again, because we had so many issues at Census that were important to us. So I would have talked with Mark about

budget. Mark was working on, you know, providing us with information on past practices at Census that had been unsuccessful and was trying to help advise us on ways we might be able to conduct a more accurate count and, you know, count people in hard-to-reach communities and populations --

Q So let me -- I can?

A -- in --

Q -- it for you a little bit.

So how many times did you speak with Mark Neuman about the citizenship question?

A I can't give you a good number, only because Mark would come in to meet with us on multiple topics. The biggest thing or the thing that Mark discussed most prevalently was the black/white differential undercount and how to address it. The citizenship topic would usually be one of numerous items on a list. So I would have met with him several times in meetings where citizenship would have come up.

Q Okay. And you said that he provided you documents. When was that?

A He provided me documents in the summer of 2017, and these would have been, you know, Census -- publicly available Census documents.

Q Did he provide you anything that was related to the citizenship question?

A Well, he provided me Census documents that had information about citizenship. He had, you know, worked on the transition to provide briefings to get new officials up to speed. And, you know, one topic -- one topic within the document that he provided was citizenship. It would have been, you know, Census information about why citizenship data is collected, how long it has been collected, what years it was collected, and what the data is used for. And he would have provided this information in addition to information on other topics, how they were collected and how that data was used.

Q So I want to talk a little bit about the legal memo that you said that you created. Was that memo related to the citizenship question?

A Yes.

Q Who asked you to create the legal memo?

Mr. Dewhirst. I am going to direct the witness not to answer as that implicates executive branch confidentiality and litigation concerns. This is Dewhirst.

Ms. Anderson. Did someone direct you to write the memo?

Mr. Uthmeier. I do not recall if -- I mean, at some point, someone asked me for a memo. I do not recall whether I began working on it as part of the, you know, research and analysis I was already doing or as part of, you know, a senior official request. I do not recall how it began. But at some point, I was asked to provide a memo for consideration, yes.

Ms. Anderson. Who was the memo supposed to be for?

Mr. Dewhirst. I am going to direct the witness not to answer. That implicates executive branch confidentiality and litigation concerns. Dewhirst again.

Ms. Anderson. I am going to direct you to look at what we emailed that is marked as exhibit 6, and I will mark it as exhibit 6.

[Uthmeier Exhibit No. 6

Was marked for identification.]

Mr. Uthmeier. Okay.

BY MS. ANDERSON:

Q Please let me know when you have had a chance to look at it.

A Okay. Okay. We have it up.

Q Okay.

A Would you like to describe it to make sure we are looking at the same thing?

Q Absolutely. So it is an email -- the top email is from Secretary Ross to Earl Comstock on August 8th. The subject is redacted. And the bottom email -- I am sorry -- to Secretary Ross from Earl Comstock, and the bottom email is from Secretary Ross to Earl Comstock.

The bottom email reads, in the unredacted parts, quote: Were you on the call this morning about Census? 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.

Is that the email that you are looking at?

A I see the email, yes.

Q Okay. Do you know what this call refers to that Secretary Ross mentioned?

A I do not.

Q The email reply from Mr. Comstock in the unredacted parts says, quote: Will be back shortly with an update on Census question. I have two attorneys in the DOC General Counsel's Office working on it.

Was he referring to you as one of those two attorneys?

A I believe he was referring to me, yes.

Q Who else was he referring to, the second attorney?

A I am not sure specifically. I had other attorneys that were providing historical information to me, but I do not know.

Q Do you know -- what was Earl Comstock referring to when he said, quote, "Will be back shortly with an update on the Census question"?

A I don't know.

Ms. Anderson. So I would like you to now look at the email that we sent to you that starts with exhibit 7. And I will mark it here as exhibit 7.

[Uthmeier Exhibit No. 7

Was marked for identification.]

BY MS. ANDERSON:

Q It is an email -- the top email is from Earl Comstock to Wendy Teramoto, and it cc's Secretary Ross from August 16th, 2017. And the bottom email is dated August 11th, 2017, sent from Earl Comstock to the Secretary.

A Yes.

Q Okay. So, in that bottom email on August 11th, Earl Comstock wrote, quote: Mr. Secretary, per your request, here is a draft memo on the citizenship question that James Uthmeier in the Office of General Counsel prepared and I reviewed.

Is that the memo -- the legal memo that you wrote?

A Looks like it, yes.

Q What did the email say? Or what did the memo say?

Mr. Dewhirst. I am going to instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. The email then says, quote, once you have a chance to review, we should discuss so we can refine the memo to better address any issues.

Did you ever receive feedback or comments from Secretary Ross or Earl Comstock about your legal memo?

Mr. Uthmeier. Yes, I did.

Ms. Anderson. What were those comments?

Mr. Dewhirst. I am going to instruct the witness not to answer as the question implicates executive branch confidentiality and litigation concerns. This is Dewhirst.

Ms. Anderson. Thanks.

Mr. Uthmeier, did your legal memo come to any conclusion about whether the

Department of Commerce could add the citizenship question itself to the 2020 Census?

Mr. Dewhirst. Same instruction to the witness.

BY MS. ANDERSON:

Q The last part of the email said -- says, quote: Before making any decisions about proceeding, I would also like to bring in Peter Davidson and Census counsel to ensure that we have a comprehensive analysis of all angles.

What does Mr. -- what did Mr. Comstock mean by "proceeding"?

A I don't know. Based on this email, it appears that he is talking about a meeting or discussion. I don't know.

Q Wendy Teramoto responded to that email and said, quote: Peter Davidson and Karen Dunn Kelley -- I believe it is a typo -- wi both be here Monday. Let's spend 15 minutes together and sort this out.

Do you know if that meeting occurred?

A Sorry. Did you ask -- would you repeat that?

Q Sure. The email above that was sent on August 16th from Wendy Teramoto to Mr. Comstock and Secretary Ross said, quote: Let's spend 15 minutes together and sort this out.

Do you know if a meeting occurred with those people?

A I certainly met with those people on the topic. I do not know if this happened as referenced here on this specific Monday.

Q Okay. After you provided Mr. Comstock your -- did you provide your -- you provided your legal memo to Mr. Comstock. Is that correct? I believe you said that.

A Yes.

Q Okay. Who else did you provide it to?

Mr. Dewhirst. I am going to -- well, you can answer it.

Mr. Uthmeier. I cannot remember if I gave it directly to the Secretary or if it was given to him by somebody else, but I know he received it. I provided it to Peter Davidson, the general counsel, to Karen Kelley, and -- sorry. I am just thinking if there was anyone else. I believe Wendy Teramoto received it. And then I would have given it to other attorneys that were providing information and counsel on the topic to assist me.

BY MS. ANDERSON:

Q Did you provide it to anyone outside the Department of Commerce?

A I did. I provided it to the Department of Justice.

Q Who did you provide it to at the Department of Justice?

A I believe the only individual that I directly gave the memo to was John Gore. I was directed to him as the legal expert on Voting Rights Act issues.

Q Do you remember when that was?

A I am sorry. When what was?

Q When you gave Mr. Gore at the Department of Justice the memo.

A I do not remember specifically. I believe it was the summer -- sometime in the summer of 2017.

Q Okay. After you gave the memo to the people you discussed at the Department of Commerce, what did you do next regarding the citizenship question?

A Could you be more specific?

Q Did you take any actions or do anything else regarding the citizenship question after you provided the memo?

A Well, we, you know, continued to consider the question. So, yes, I did take other action.

Q Okay.

Ms. Anderson. I would like you to look at the email that is marked exhibit No. 2.

[Uthmeier Exhibit No. 2

Was marked for identification.]

BY MS. ANDERSON:

Q And the bottom email is an email sent from Peter Davidson to Israel Hernandez, Earl Comstock, you, and cc's Wendy Teramoto from August 29, 2017.

The email says, quote, the Secretary asked to set up a briefing on some of the key legal issues he is concerned about.

A Can you give me -- I am still pulling it up here.

Q Sorry. Sure.

A The last -- just one minute.

Okay. I got it. You are reading at the bottom?

Q Yes. It says, quote: The Secretary asked to set up a briefing on some of the key legal issues he is concerned about. Can we get something on the books for next week when Izzy returns?

And then proceeds. And then in response -- oh, why did Secretary Ross ask to set up a briefing?

A I do not remember specifically. The Secretary likes to be kept well informed on all Department matters.

Q Do you know what, quote, key legal issues Mr. Davidson was referring to?

Mr. Hull. To the extent you can answer without revealing anything privileged. This is Cordell.

Mr. Uthmeier. In the context of this email, no, I do not know.

BY MS. ANDERSON:

Q Mr. Davidson also wrote in that email at the last line, quote: Izzy, I know

you and James have been working on this for a while, and so I will hand off to you to coordinate.

What was Israel Hernandez' role in this -- in the citizenship question?

A Izzy was serving as the deputy chief of staff. And because the senior officials that were at the Department quickly realized that the Census was not being adequately managed upon our arrival, he was directed to immediately take Census under his wing as one of his primary portfolio items and, you know, monitor all of the various workings of the Census. So anything I would have done, I would have communicated with him to make sure he was in coordination.

Q Did you brief the Secretary on the, quote, key legal issues regarding Census around this timeframe?

A I briefed the Secretary multiple times. I am not sure if a briefing took place in the context of this specific email.

Ms. Anderson. I would like to have you look at exhibit -- labeled exhibit 20 in your email.

[Uthmeier Exhibit No. 20

Was marked for identification.]

Mr. Uthmeier. Okay. I believe I have it.

BY MS. ANDERSON:

Q Okay. In the second email on the page written by Chelsea Newhaus, on August 29th, 2017, sent to a variety of people at the Department of Commerce. And there is a list, and it says, quote: Hi all. Would one of you be able to confirm that these are the only attendees that should be included in the next Wednesday Census briefing re: legal questions.

Lists Wendy Teramoto, Israel Hernandez, Earl Comstock, you, Peter Davidson, and

Karen Kelley.

Do you recall what happened at this briefing at all?

A I do not remember what happened at this specific briefing, no.

Mr. Hull. And this is Cordell, counsel. Sorry to interrupt your line of questioning. I just wanted to give you the 5-minute heads-up.

Ms. Anderson. Thank you.

Mr. Uthmeier. And I should add to that -- sorry. I am not even sure that there was a meeting at all. I can't be certain.

Ms. Anderson. I actually think it may be -- before I start on a new area, it may be a good time to break, if that is okay with you guys, and then we can reserve the 35 minutes on the 2 o'clock timeframe.

Mr. Uthmeier. Okay. That is fine with me. This is James. Thanks again.

Mr. Dewhirst. Yeah, whatever -- whatever works best for you all.

Ms. Anderson. If you guys -- I can give you my email address in case there is any timing issue that you need to communicate with us about or you can use the one -- I think my email should be on the email -- we can also go off the record.

[Recess.]

[2:04 p.m.]

Ms. Anderson. It is now 2:04. Mr. Uthmeier, can you please look at the -- the document we emailed you, which is exhibit no. 3.

[Uthmeier Exhibit No. 3

Was marked for identification.]

Mr. Dewhirst. You are referring to exhibit 3?

BY MS. ANDERSON:

Q Yes, exhibit 3. It is an email that was sent. So the top email is from you to Mr. Comstock, ccing Mr. Davidson on September 7, 2017.

A Okay. I am reviewing it.

Q Okay. So the bottom email was sent on September 7, from Earl Comstock to you and Mr. Davidson. It reads, quote, "Hi, Peter and James as I discussed with James a little while ago the Secretary would like an update on progress since the discussion yesterday regarding the citizenship question. If we could get a short email or memo today, that would be great. Thanks, Earl."

Do you recall what discussion he was referring to in that email?

A No. I just recall that the Secretary had some follow-up questions to the August memo that we were discussing prior to the lunch break we just had.

Q What were the Secretary's follow-up questions?

Mr. Dewhirst. I direct the witness not to answer that question, as it implicates executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q Thank you.

Did anyone else have any follow-up questions or comments on your legal memo

from August?

A Yes.

Q Who was that?

A I recall that Karen Dunn Kelley had some comments or questions on the memo and that's all I recall right now.

Q What were her comments or questions?

Mr. Dewhirst. I am going too instruct the witness not to answer because the question implicates executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q What did you understand Mr. Comstock to mean when he said, quote, "the Secretary would like an update on progress since the discussion yesterday."

A The that the Secretary would like an update on the progress.

Q Was there something specific that you were meant to do?

A I don't recall outside the context of this email. But the Secretary was -- if you are working for him, you know he's a demanding guy. When he asks you for additional information and follow-up questions, he expects to get information returned very quickly on all topics.

Q What was Mr. Comstock asking for progress -- what was the Secretary asking for progress on?

A The Census research.

Q Did you prepare an update memo or email for the Secretary?

A I believe I provided some additional information by email and also provided some information by way of an in-person briefing.

Q What was the topic that the Secretary asked for research on or additional?

Mr. Dewhirst. Sorry.

Ms. Anderson. Go ahead.

Mr. Dewhirst. I am going to instruct the witness not the to answer that, because of executive branch confidentiality and litigation concerns.

Ms. Anderson. The email has a redacted response by you. Do you remember what you wrote back to Mr. Comstock?

Mr. Dewhirst. I am going to instruct the witness not to answer, if he has any recollection on the same basis as I stated previously.

Ms. Anderson. Just to be clear, we are just asking whether he remembers what he wrote back. This question was not about the content.

Mr. Dewhirst. That is right. And on that basis, Tori, I will withdraw my objection to the question.

BY MS. ANDERSON:

Q Mr. Uthmeier, do you recall what you wrote back to Mr. Comstock?

A I do not recall what information is redacted here, what my response was to that email, no.

Q When you -- you said that you may have written an email in response to this request from Mr. Comstock. Would you have sent that back to Mr. Comstock or directly to the Secretary?

A If the request is coming from Earl, I probably would be sending it directly to Earl.

Q Now I would like to look at the email we sent you marked as exhibit no. 4.

[Uthmeier Exhibit No. 4

Was marked for identification.]

Mr. Hull. Let me take a quick look at it.

BY MS. ANDERSON:

Q We are just going to start with the top most email.

A Exhibit 4, correct?

Q Yes. Yes exhibit 4.

The email chain is also from September 7, it's an extended version of exhibit no. 3. The top email was sent from Mr. Comstock to you, Mr. Davidson and cc's Ms. Teramoto as well. And Mr. Comstock wrote, quote, "I suggest setting up a call for tomorrow. The Secretary is asking for progress on this."

What did Mr. Comstock mean by the Secretary is asking for progress on this?

A I don't know, other than looking at the document here as it appears, the text speaks pretty much for itself, the Secretary wanted an update on progress.

Mr. Anello. Actually this document is very heavily redacted which is why we are asking -- this is Russ, sorry. But it doesn't speak for itself. So do you remember what he was asking for progress on?

Mr. Dewhirst. I think he has answered that question.

Mr. Anello. This is a different email.

Mr. Dewhirst. Which email are you referring to right now? The very top of the chain?

Mr. Anello. Correct.

Ms. Anderson. Yes.

Mr. Hull. This is Cordell. So if you are asking him to opine on something that's been redacted. We are going to instruct the witness not to answer. He may answer the follow on question, but if follow on question is what did the email below that, we will instruct our witness not to answer on the grounds of executive branch confidentiality and litigation concerns.

Mr. Anello. So what was he asking for progress on?

Mr. Uthmeier. Looking at this email and based on my recollection, I can tell you he was looking for progress on the Census citizenship research that I was working on. More specific than that, I just don't remember looking back at this email today.

Mr. Anello. Was he looking for an update on -- excuse me, was he looking for progress on outreach to other agencies?

Mr. Dewhirst. I am going to instruct the witness not to answer. It implicates executive branch confidentiality and litigation concerns.

Mr. Anello. I'm sorry. He said, the witness Mr. Uthmeier just said that he felt the progress related to research that he was doing. But did it also relate it outreach to other agencies?

Mr. Dewhirst. I think that objection covers it. It is predecisional.

Mr. Anello. He answered one thing --

Mr. Dewhirst. May I finish, please. It is a predecisional document that a senior official at the Department asking the lawyer about something. And you are asking the lawyer what the content of the communication was or what he was asking about. So I think the objection and the instruction stand.

Mr. Anello. But Mr. Uthmeier just told us he thought one of the things he was asking -- the Secretary was asking for was progress on research. And I am asking whether there was also progress on other things.

So why don't we start by saying that, was he asking for progress on other things other than just research potentially?

Mr. Dewhirst. Same objection as before and same instruction to the witness.

Mr. Anello. Had the Secretary already decided at this point that he wanted to add the citizenship question?

Mr. Dewhirst. I am going to instruct the witness not to answer on the basis that

that question implicates executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q At this point, had you spoken to anyone at any other agency about the citizenship question?

A This would have been -- are you talking about at the time that the email was sent?

Q Yes.

A I believe I had already spoken to John Gore at the Department of Justice at this time.

Q When did the Department of Commerce conclude that it may need or wanted another agency to make the request to add a citizenship question?

A Can you repeat that question one more time?

Q Sure. When did the Department of Commerce conclude, or decide that it may need or want another agency to make a request to add a citizenship question?

A I don't think I can answer that on behalf of the Department of Commerce.

Q Okay. When did you -- did you decide that another agency should or could ask for a citizenship question to be added to the 2020 Census?

Mr. Dewhirst. I am going to --

Mr. Hull. This is Cordell Hull, is there a way, Mr. Uthmeier, you can answer that question without revealing privileged information?

Mr. Uthmeier. I want to make sure I know the question. When did I determine that another agency should or could request information on the Census. Is that what you are asking me?

BY MS. ANDERSON:

Q Let's try it this way. When did you first learn that there had been a

determination that another agency could ask the Department of Commerce or the Census Bureau to add a citizen question?

A Okay. That -- I would have come to that understanding in the spring, likely in March, possibly in February, February or March of 2017, as I began to do a deep dive and get up to speed on all the various workings of the Department, Census included, I quickly would have been briefed on the fact that agencies do ask routinely for information from Census and do ask for questions to be included on Census surveys.

I certainly would have reviewed and would have seen requests from other agencies on topics like this in the spring of 2017.

Q When did you become aware that the Department of Commerce concluded that another agency needed to add a citizenship question to the 2020 Census?

Mr. Hull. I am going to object to that. Based on the formulation of the question, you are implicating executive branch confidentiality and litigation concerns.

Mr. Anello. Sorry, just to back up, I think Mr. Uthmeier was able to tell us when he first learned that another agency could make the request. So the question now is when did you first learn that another agency needed to make that request, if you were going to add the question.

Mr. Hull. And there's a lot built into that question, including sort of the internal deliberative process of the Department. And so on that basis, my instruction is going to stand.

Mr. Anello. Did you ever make a -- did you ever learn that the Department of Commerce had made a determination that another agency had to make that request in order to add the question to the 2020 Census?

Mr. Hull. You are addressing that to Mr. Uthmeier?

Mr. Anello. Yes, correct.

Mr. Hull. Will you ask the question again?

BY MR. ANELLO:

Q Yes. Did you ever learn that the Department of Commerce made a determination that another agency would have to request the citizenship question in order to add that question to the 2020 Census?

A When you say the Department of Commerce generally I am not sure how to answer the question. Certain people at the Department have certain opinions on how questions should be added or were added in the past, certain people at the Department had other opinions.

So when you are saying the Department of Commerce made the conclusion, are you referring to me, are you referring to the Secretary, are you referring to Earl Comstock?

Q Well who do you know who had an opinion on that topic?

A Who had an opinion on the topic?

Q Yes.

A I believe that Earl Comstock had an opinion on the topic.

Q And what was his opinion?

Mr. Hull. I am going to instruct the witness not the to answer. That question implicates executive branch confidentiality and legislation concerns.

Mr. Anello. Okay. Who else had an opinion?

Mr. Uthmeier. Several of the census career officials also had an opinion?

Mr. Anello. And what was their opinion?

Mr. Hull. Same instruction.

Mr. Anello. Okay. Anybody else?

Mr. Uthmeier. I had an opinion of my own.

Mr. Anello. Okay, what was your opinion?

Mr. Dewhirst. Same instruction.

Mr. Anello. Okay. Anybody else? Did Secretary Ross have an opinion?

Mr. Uthmeier. I do not recall if Secretary Ross had an opinion there.

Ms. Anderson. Was your opinion the same as Earl Comstock's opinion?

Mr. Hull. I am going to object on the same basis and deliver the same instruction to the witness.

BY MS. ANDERSON:

Q Did you share your opinion with Secretary Ross?

A Yes, I did.

Q Were you aware that Earl Comstock shared his opinion with Secretary Ross?

A Yes, I believe he did.

Q Did you share that opinion before or after you provided your legal memo to the Department of Justice?

A I do not recall.

Q Did you share your opinion before or after Secretary Ross spoke with the Attorney General about this issue?

Mr. Dewhirst. Sorry, to clarify, did he share his opinion with who or at all?

Ms. Anderson. With the secretary.

Mr. Uthmeier. I do not recall specifically when the Secretary met or spoke with the Attorney General. And I also do not recall specifically when I would have expressed my opinion.

BY MS. ANDERSON:

Q Okay I just want to go back to a little bit of the timeline. So you said that you provided your legal memo to Earl Comstock, eventually it got to the Secretary.

Were you instructed or did you do anything else regarding the citizenship question after you provided the memo, and after you received this email asking for progress and provided a progress update email?

A Did I do anything about --

Q The citizenship question?

A With regard to the citizenship question?

Q Yes.

A Can you repeat that question? I'm sorry.

Q Sure.

You said earlier that you provided a legal memo to Earl Comstock and the Secretary. And then after that we talked about the emails that were sent in early September. And you said you remember providing an update email to the Secretary or a response to him asking for progress.

Did you do anything after that time period with regard to the citizenship question?

A Yes.

Q What did you do?

A I continued to collect information and receive counsel from Census officials as well as attorneys that worked on Census issues. And I would have had other conversations within the administration on the topic.

Q Who did you have conversations with within the administration?

A I consulted John Gore at the Department of Justice. Again, as I said earlier, I was referred to him as the Department's, you know, Voting Rights Act expert. I believe at the time he was heading up the Office of Civil Rights at Justice. And I would have provided updates to individuals at the White House.

Q Who at the White House would you provide updates to?

Mr. Hull. I am going to instruct the witness not to answer.

Mr. Anello. The names of the officials? Is it a secret who works at the White House? I mean what's the basis for that?

I think the question was he said he provided updates to people at the White House. The question is to whom did he provide the updates, it is not a substantive question about the updates themselves.

Mr. Dewhirst. The instruction remains.

Mr. Anello. On what basis? These are public servants, right? Taxpayers are paying their salaries. So if they work at the White House I think we can know that they were there. And if he can tell us that he talked to someone at the White House, I think he can tell us who. I am not aware of any basis for withholding the name of somebody that he spoke to.

You haven't held that line anywhere else during this many-hour conversation.

Mr. Dewhirst. The instruction remains in effect.

Mr. Anello. Did you talk to the President of the United States about this?

Mr. Dewhirst. Yeah, same instruction.

Mr. Anello. On what basis? Is it a confidentiality interest to talk to -- the fact that he had a conversation? I am is serious, what is the basis for this objection?

Mr. Dewhirst. Look, Russ or Ross, what --

Mr. Anello. It's Russ. Thank you.

Mr. Dewhirst. The instruction remains in effect.

Mr. Anello. But I haven't heard what the basis for the objection is.

Mr. Dewhirst. Okay.

Mr. Anello. Our rules require us to have the basis for the objection. Is there a basis for the objection? Maybe I missed it. I don't know. Does anybody know what

the basis is?

So you are just sort of refusing to tell us who you talked to at the White House, is that what we have, but without a reason?

Mr. Dewhirst. Yeah, I don't know how much clearer I can be on this, Ross. But he's --yeah, he's instructed not to answer.

Mr. Anello. Without a basis, it is just a clean instruction not to answer?

Mr. Dewhirst. No, it is on the same basis.

Mr. Anello. What is the basis for the instruction?

Mr. Dewhirst. Executive branch confidentiality concerns.

Mr. Anello. So the identity of the White House officials with whom Mr. Uthmeier spoke is something that you cannot tell Congress?

Mr. Uthmeier, did you speak with Steve Bannon about this issue?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. Did you speak with the chief of staff at the White House this time?

Mr. Dewhirst. Same instruction.

Mr. Anello. Did you speak to anybody at Domestic Policy Council?

Mr. Dewhirst. Same instruction.

Mr. Anello. Did you to Stephen Miller about it?

Mr. Dewhirst. Same instruction.

Mr. Anello. Did anybody at the White House tell you to pursue this issue?

I haven't heard an answer or an instruction to that question. Did anybody at the White House tell you to pursue the issue of citizenship question?

Mr. Uthmeier. No.

BY MR. ANELLO:

Q Okay. Did anybody at the White House express interest in the citizenship

question?

A No different than interest in other ongoings at the Department. Communications made to the White House on this topic were in briefing nature, in update nature, coordination in keeping the White House apprised as I would do on any other topic.

Q Did anybody at the White House express interest in the citizenship question issue question?

Mr. Dewhirst. Beyond what Mr. Uthmeier has just answered, I am going to instruct him not to answer this question, same basis as before.

BY MR. ANELLO:

Q Well he already told us they did not tell him to do anything, but now, what is the difference between that question is something he can't answer, but expressing interest is something that he cannot answer? I am not sure I understand the basis there.

A I did not receive any directives or direction from the White House on the topic of the Census citizenship question. Communications I made to the White House were of the nature that they were briefings and updates.

Q Great. So it sounds like there should not be confidentiality issues then. So who did you brief?

Mr. Dewhirst. Same instruction as before.

BY MR. ANELLO:

Q Was the White House involved in the decision to add a citizenship question? Did they play a role in that decision?

A No, they did not.

Q Okay. If they didn't play a role in the decision, then there is provided your

legal no basis for the objection. So can you tell us who you spoke to at the White House about this in the briefing that you gave?

Mr. Dewhirst. Ross, I appreciate your opinion on this, but my previous instruction still applies.

Mr. Anello. So what is the confidentiality interest that you are protecting?

Mr. Dewhirst. This is what is -- the confidentiality interest, Russ, is the free willed advice between the folks in the Department and the White House and he's trying to answer the question, give the committee information it needs but you guys are asking that beyond that and you are asking specifics and you are asking.

And at this point the Department is not prepared to have Mr. Uthmeier to answer it that question. It is something that we can certainly try to get the committee the information it needs through the accommodation process. As we said earlier, we are committed to working through that with you guys, but sitting here today we are not going to permit Mr. Uthmeier to answer that question.

Mr. Anello. Did you talk to John Zadrozny at the White House about the issue?

Mr. Hull. I am going to instruct the witness not to answer, on the same basis previously stated.

Mr. Castor. This is Steve Castor from the Republicans. Can you guys off-line and think about this some more because we have had plenty of witnesses come in and tell us that they had meetings with Mr. Zadrozny. And Zadrozny called them up on the phone and they had meetings, you know all sorts of things with John Zadrozny.

Even the Justice Department hasn't asserted a litigation interest in John Zadrozny. Does it make sense to think this through or what is the best way to maybe unlock an answer like that?

Mr. Dewhirst. Do you want to pause for a few minutes while we think it over

and see if we can --

Mr. Castor. This is the Democrat time, so would you like to pause or would you just like to have them take it up on the next 5 minute break?

Ms. Anderson. So we are going to have a 5 minute break in about 10 minutes so maybe we can allow you to think about it during that time.

Mr. Dewhirst. Sure.

BY MS. ANDERSON:

Q Okay. You mentioned that Peter Davidson came to work at the Department in the summer of 2017. Is that correct?

A Yes.

Q And he started working on this issue as well. Is that accurate?

A Yes.

Q Did he review your legal memo?

A Yes.

Q Did he ever provide feedback, an opinion or comments about the legal issues that were analyzed in that memo?

A We certainly discussed the memo after he reviewed it. I cannot recall any specific feedback or questions he may have had.

Q And what did you guys discuss?

Mr. Dewhirst. I going to instruct the witness not to answer. That question implicates the executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q Did he direct you to do anything in response to the update that was requested by the Secretary?

A Which update?

Q The update that was referenced in early September of 2017.

A Can you repeat the question?

BY MS. ANDERSON:

Q Sure. So in exhibit 3 and 4 there was a request by the Secretary for progress update on the citizenship question issue. Did Mr. Davidson direct you or ask you to do anything with regards to that request?

A I do not recall. The Secretary, you know, asked for updates and more information on multiple things and Peter was the general counsel. So any legal research issues would have been coordinated with him absolutely.

Q I would like you to look at exhibit no. 8 that we emailed to you.

[Uthmeier Exhibit No. 8

Was marked for identification.]

Mr. Uthmeier. Okay.

BY MS. ANDERSON:

Q All right. It's an email from you to Mark on September 8, 2017, the subject is questions Re: Census. And it reads, hi, Mark, I am working on some Census legal questions for the Secretary and Peter Davidson, our new GC, and they asked me to reach out to you about some research that I have been doing. Any chance you might have a few minutes this morning to discuss? I am available all morning at the number below or happy to give you a call whenever convenient.

Did you write that email to Mark Neuman?

A It appears that I did.

Q What role did -- what questions did you want to ask Mark Neuman.

Mr. Dewhirst. Instruct the witness not to answer on the basis that the question implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. Why did the -- sorry. Are you finished?

Mr. Dewhirst. No, I was just saying my name. Let you know who's talking.

BY MS. ANDERSON:

Q Was Mark Neuman a member of the executive branch at this time?

A No.

Q Okay. Why did the Secretary and Peter Davidson ask you to reach out to Mark Neuman.

Mr. Dewhirst. I am going to instruct the witness no the to answer, same instruction as before.

Ms. Anderson. What questions did you ask Mark Neuman?

Mr. Dewhirst. Same instruction as before.

BY MR. ANELLO:

Q Did you know who -- sorry this is Russ.

Did you know who Mark Neuman was at the time?

A I believe so, yes.

Q Okay. What did you know about him?

A I knew that he was a brilliant man on all things Census. He had just an unbelievable amount of knowledge on the inner workings of Census, especially historical information from prior years, prior administrations. And I believe I had already spoken with him on such topics.

Q Who introduced you to him?

A I do not recall.

Q Okay. When did you first talk to him?

A I believe it was at some point in the spring or summer of 2017, but I do not remember the specific date.

Q And what did you talk about when you first spoke to him?

A I talked to him about multiple subjects. I talked to him about hard to reach

populations for the Census I think we probably spoke about the rate base undercount in every meeting or discussion we ever had. I talked to him about advertising and ways to develop new community groups through partnerships, and agreements to better get the word out about Census. And then I also asked him for background information on citizenship and other topics that are asked about on the Census.

Q Did you have a particular reason for asking him -- is there a particular a reason that you went to him for information on citizenship?

Mr. Dewhirst. Instruct the witness not to answer on the same basis articulated before.

Mr. Anello. The question is did you have a reason to think he -- is there a reason you picked him as your source?

I am not asking why you were motivated to ask about the citizenship question generally, I am asking why did you pick Mr. Neuman as somebody to ask?

Mr. Dewhirst. Well, I can tell you this, I am going to assert -- I am going to provide the same instruction. I mean, even though you are trying to parse the question a certain way Ross, I think it still implicates the same interest. And so I am going to instruct the witness not to answer.

BY MS. ANDERSON:

Q You talked earlier before we took our break that -- and you said Mr. Neuman provided you documentation, some documents. Was one of those a draft letter from the Department of Justice to the Census Bureau requesting a citizen question?

A No.

Q Did he ever provide you with any draft language that would go into a letter from the Department of Justice to the Census Bureau asking for addition of citizenship question?

A No, not to my recollection, he never provided me anything like that.

Q Did he ever provide you with legal research about adding a citizenship question to the 2020 Census?

A No. He may have provided me some cases, case names or information on prior legal issues that face the Census Bureau during previous administrations, knowing that I was a new political counsel and would be working on Census issues.

Other than cases and a brief overview of some of those litigation matters, no, no legal research.

Q Did he ever provide you with any information about citizen voting age population data?

A Yes.

Q What did he provide you?

A I do not recall specifically, but it would have been Census data, most likely public information.

Q Did he ever provide any analysis or comments on that citizen voting age population data?

Mr. Dewhirst. I am going to jump in and instruct the witness not to answer, that implicates the executive branch confidentiality and litigation interests.

Ms. Anderson. Just to be clear, I was asking whether he provided that, not specifically what his analysis was at this point.

Mr. Dewhirst. Okay. On that basis I will withdraw the instruction. Can you please ask the question one more time?

BY MS. ANDERSON:

Q Sure. Did Mark Neuman provide any comments, thoughts, opinions or analysis of citizen voting age population data?

A He commented and did provide analysis. Yes, he was an expert on the Census and we relied on him for information and feedback.

Q Was that related to the citizenship question?

A I believe so, but it was in relation to many topics. I mean, I -- knowing that Mark had been a transition team -- I don't know if he was a volunteer or what he was, but I know he was pretty active in providing briefings and thus turned to him for consultation.

Q So what was the comment or comments that were related to the citizenship question?

Mr. Dewhirst. And on that I am going to reassert the instruction and instruct you not to answer.

Ms. Anderson. Okay. I believe we are at the end of our hour and you guys would like to take your hour?

Mr. Castor. Yes.

Ms. Anderson. Okay. So we will a 5 minute break and we will allow you to consult about the White House issue and we will returned at 2:45, 2:46.

Mr. Dewhirst. That sounds good, thank you.

[Recess.]

BY MS. JOHNSON:

Q This is Ellen Johnson and I will note that it is 2:56 and we will begin.

So Mr. Uthmeier, do you believe that a citizenship question is needed on the decennial Census questionnaire?

A I do, yes.

Q Why do you believe that?

A I believe that for all of the reasons that are laid out in the Secretary's March decision memorandum. As I have stated already, I was involved in working with him in

drafting that and stand by it entirely.

Q So it's fair to say that your opinion on the matter is the same or similar to Secretary Ross' decision memo?

A My opinion on the matter is reflected in the decision memo that Secretary Ross sent to Karen Dunn Kelley on March, 26, 2018, yes.

Q Do you believe it is important to know the number of citizens in the United States?

A I do, yes.

Q Why do you believe that?

A Well, I think the Census Bureau clearly publishes online the reasons for collecting citizenship data. Citizenship data is used for a host of reasons, knowing about the population in the country is important for a host of reasons ranging from education, to healthcare, to infrastructure. Is part of my review. And it quickly became apparent that the Department of Justice has requested citizenship data in the past and used it for the Voting Rights Act enforcement specifically. And we review that the Census Bureau officials conducted of the policy program and legal review revealed that there are sufficiency of data concerns with regard to Census citizenship data. That information is laid out in the March 26 memo.

And for all the reasons laid out in the memo, option D is what the Secretary and I believe to be the best course forward to ensuring a complete and accurate a Census as possible.

Q Okay. Do you believe in the principle of one person, one vote?

A I haven't really thought about it. Yes, I suppose so.

Q Okay. I am going to ask you some questions that may sound familiar. So on the citizenship question, did you have contact with Gene Hamilton?

A As I think I already stated I do not recall communicating directly with Gene Hamilton, but certainly overheard his name I believe in the context of scheduling a meeting between the Secretary and the Attorney General.

Q But you did not have any specific conversations with Mr. Hamilton directly on the citizenship question?

A Not to my recollection, no.

Q Did you have any contact with Kris Kobach on the citizenship question?

A No.

Q Did you have any contact with John Zadrozny on the citizenship question?

Mr. Dewhirst. So I think Mr. Uthmeier has already testified that, this is Dewhirst, that the White House in no way factored in the decision-making process at the Department. I think Mr. Zadrozny has demonstrated in documents that he was in contact with Mr. Uthmeier. And so on that basis I will allow him to answer that question.

Mr. Uthmeier. Yes, I did speak with John Zadrozny.

BY MS. JOHNSON:

Q When did you speak with Mr. Zadrozny?

A I do not recall specifically when. It would have been fall or late 2017.

Q How many times did you speak with Mr. Zadrozny on the citizenship question?

A Certainly more than once, but not many times. I would say two or three occasions roughly.

Q Were your conversations with him over email and over the phone?

A I do recall emailing with him on multiple occasions. I do recall speaking on the phone as well. And I believe I met with him in person on one occasion.

Q And all of those calls, emails, and meetings were in the fall or winter 2017, correct?

A It is possible that I may have had a conversation with him in January of 2018.

Q What did you discuss with Mr. Zadrozny related to the citizenship question?

Mr. Dewhirst. I am going to instruct the witness not to answer based on executive branch confidentiality and litigation concerns.

Ms. Johnson. All right. Have you had any contact with Stephen Miller on the citizenship question?

Mr. Dewhirst. So on these questions, you know, we did -- this is Dewhirst. We did spend some time sort of working through this issue. As you can see on Zadrozny we sort of resolved that piece of it, but we are still sort of working through this.

And so if you ask these questions again right now, you are probably going to get the same answer, but we are working through them. And hopefully we will have -- we may be in a different position on that.

Mr. Castor. Okay. Would it be okay if we then gave you the names that we are interested in and we'd be interested in a yeah, yes or no, I spoke with them. And then if he did speak with them, any clarity, was it on the phone, email, some of the questions Ellen just asked about Zadrozny.

There's not a lot of officials here, it's Miller, Bannon, the AG, personally, the AG, the President personally, and the chief of staff, Reince Preibus. And, you know, I understand that you have got some serious concerns over litigation, but, you know, a lot of these, I think you can probably -- if the answer is no you can probably answer no without impacting the litigation. If the answer on it's face seems like obviously it would be no. So anyway.

Mr. Dewhirst. So, no I appreciate that. So I have written the names down and

we will circle back to those. The one person on that list of five that you just gave me, the Attorney General I think is -- that's probably one you could ask about right now.

Ms. Johnson. Okay. Did you have any contact with Attorney General Sessions on the citizenship question?

Mr. Uthmeier. No.

Mr. Castor. And just one more name, that Hofeller guy, which I think you already testified this morning that you didn't have any communications with him, if I am remembering that correctly.

Mr. Uthmeier. I did not have any communications with him, no.

Mr. Castor. Okay, I will turn it back to Ellen. Thank you.

BY MS. JOHNSON:

Q Can you describe what an average day was like at the Department of Commerce?

A That varied from day to day. I can tell you they were very long days and very stressful days. I was usually running around and working on, you know, a dozen topics per day.

Certainly would have had some senior staff meetings in the morning, sometimes those may have been focused on the Secretary's immediate office staff. Sometimes those meetings would have been focused on agency heads, coordination. Sometimes those meetings would have been focused on the general counsels or chief counsels at the various Commerce agencies.

I certainly would have been reviewing congressional requests for information. I would have been reviewing many proposed rules, regulations, final rules. I would have been working with other agencies on executive order drafts, joint rules, reviewing proposed legislation.

I would have been reviewing general litigation matters, contract matters. I would have been reviewing trade related issues, antidumping investigation issues, numerous issues.

[3:08 p.m.]

BY MS. JOHNSON:

Q So you said that generally in the mornings, you would have a meeting with senior staff. Did those happen generally every morning, or how many times a week would those senior staff meetings occur?

A The schedule for those meetings would change from time to time. Usually there was a weekly bureau heads meeting that would take place, I often attended those. There would usually be one or two front office secretary suite meetings to focus more so on his schedule and immediate priorities of the week.

If there was any travel, we would walk through that as well. I would often attend the Office of General Counsel senior staff meeting, where every single bureau would report on ongoing legal activities. There are some bureaus at the Department that the general counsel, once he arrived. He would run those meetings, but I often would run them in several respects before he arrived. Even after I moved into the Secretary's suite, I still would attend those meetings on occasion.

Generally, the legislative affairs office would have staff meetings that incorporated individuals relevant to briefing candidates for confirmation processes, or discussing possible legislation, congressional hearings, oversight and productions, all of those sorts of things.

I also worked very closely with the Secretary and would review correspondence, would review speeches, would consult him on legal questions he may have on all these topics. I worked -- I worked as the regulatory reform officer, which I we already established, and in that capacity, was interacting with all the various bureaus, working with NTIA on legal issues pertaining to Federal spectrum allocation, the Patent and

Trademark Office, looking at some efforts they were doing to try to empower minorities and women and revitalize the workforce.

I did a lot of work with NOAA relating to infrastructure, permitting, and licensing timelines. I did a lot of work with the Bureau of Industry and Security on export control reform. I also served as the Department's chief environmental review protection officer, CERPO for short. I might be getting that --

Ms. Johnson. Hello, are you -- are you there? We can go off the record.

[Discussion off the record.]

Ms. Johnson. We can go back on the record.

Mr. Uthmeier. It dropped again.

BY MS. JOHNSON:

Q Last thing I heard was chief environmental review officer.

A Yeah, in that capacity, I served on various agency working groups for multiple agencies who are involved in --

Ms. Johnson. Hello.

Mr. Uthmeier. Hello. Is there someone else on the conference?

Ms. Johnson. Is there someone else there?

Mr. Uthmeier. Hello. Hello.

Ms. Johnson. Okay.

Mr. Uthmeier. That is unsettling.

BY MS. JOHNSON:

Q Mr. Uthmeier, do you want to finish your answer.

A Yeah, in my capacity as the chief environmental review permitting officer, CERPO for short, I would work with career teams at NOAA on environmental reviews as they pertain to certain infrastructure projects, and also ensure that we were complying

with our FAST-41 obligations.

Q Okay. And so, you have listed several senior staff meetings across the Department. Did Secretary Ross attend any of those meetings regularly?

A Not regularly. He would attend some of those meetings on occasion.

Q Do you know in what circumstance Secretary Ross would attend -- generally attend the meeting versus determining not to attend the meeting?

A I think if his schedule permitted him to come in and provide updates to staff on his priorities and administration-wide priorities, I mean, he would come in there. He would certainly come in, you know, after holidays, or if there was going to be some sort of social gathering, he always made strong efforts to come in and thank the staff for all the hard work that they were doing. He is a brilliant man, but a very tough man to work for, and he expects topnotch service all the time, but he was very grateful for those of us who traveled a lot with him and devoted a lot of time and energy and short hours of sleep.

Q Can you describe what you mean by "tough man to work for"?

A He is the most detail-oriented person I have ever met. He reads and reads and reads. In addition to, you know, staying apprised of current events, he is always reading publications all the time, and he expects if the material touches on an issue that you should be familiar with, that you have also read everything. He expects the senior staff to be very well-briefed, and to have answers. And if people do not have answers, then he expects you to go and find the answers if they are out there as quickly as possible. He is very meticulous, very demanding, and very much in the details on all matters that touch the Department of Commerce.

He is the kind of guy that will figure out who a specialist is on a matter. Bankruptcy, for example, and rather than speak to the general counsel on something, he

may just pick up the phone and get connected right to that expert and put him through the ringer trying to get information. He is borderline obsessed with expanding new commercial markets like space commerce, and that is why he asked me personally spearhead a new space team focus at the Department. In that capacity, I would speak with him, you know, almost daily, we spent hours and hours talking about new ways to stimulate growth and bring down the cost and access to entry into space to try to help entrepreneurs that are engaging in small satellite constellation enterprises, small launch telecommunications, 5G, you know, remote sensing, you name it. Secretary Ross wants to do anything possible to create more American jobs, and go from the depths of the seas all the way up to the stars, as he likes to joke with me.

Q So Secretary Ross is intimately involved with every step of the development of Department of Commerce positions from birth to final execution? Is that correct?

A Generally, yes. And, within reason, he is not speaking to all 50,000 or so, you know, Department employees, but he is the guy that wants to get into the weeds. He does not like the high level, and rather than getting a short summary on something, if he wants to be well-informed, he wants to have all the publications and data, you name it.

Q You said you interacted with Secretary Ross on a daily basis regarding space commerce issues. Were there any other issues on which you interacted with Secretary Ross on a daily basis?

A I would often interact with the Secretary on multiple issues at a time. If he was in the office, I would say I met with him almost daily, but occasionally, it was infrequent. We often discussed infrastructure. We often discussed regulatory reform. You know, all the big issues I talked about, I updated him as often as possible.

Q Would it be fair to characterize Secretary Ross as a micro manager?

A You know, I don't know that that is true. He certainly trusts people to do their jobs, but he has high expectations and certainly demands results. He trusts his staff to bring him information, but if people have trouble, he is going to go looking for it, he is not going to wait for the answers to come to him.

Q Okay.

A I cannot emphasize enough how detail driven he is. He reviews data and if he sees inconsistencies or the numbers don't add up, it is amazing how quickly he will realize it. And that goes from everything, trade, infrastructure, Census data, space, you know, economic development numbers, everything.

Q Do you have an example of the detail to which Secretary Ross -- that you can recall?

A One example is there was a report on the transition of the international space station that had come out, it was a pretty lengthy document that I believe NASA published. I had not reviewed it. I had no idea that he even knew it existed, and he called me in one day and it was sitting on his desk and he asked me a specific question about some data on, you know, how profitable or challenges to profitability of utilizing something like that for commercial purposes in space, as opposed to government purposes, and then he had a specific question about something on a page and assumed that I would have the answer. So I had to go read the document.

Q Okay. So referring back to the majority's exhibit No. 4, the top part of the email, unredacted. It says: The Secretary was asking for progress on this. The expectation would then be that the Secretary would need an answer quickly, within -- would it be fair to say within 24 hours? What do you -- when the Secretary gives a direction asking for progress, what is your expectation of turnaround for that?

A Are you referring to a specific exhibit or --

Q Yes.

A -- or are you asking me generally?

Q Well, I am referring to exhibit No. 4, but also generally is fine as well.

A That would vary. If there was some sort of deadline where we needed to make a decision by, you know, a certain timeframe, you know, he would charge me to meet deadlines. But if it was general research and information generally, he wanted it as soon as possible, yesterday. At times, he would ask me to find something and I would be in meetings with him for a couple hours, and he would see me at the end of the meeting and ask me what the answer was, and I would look at him, and say, Sir, I have been sitting in meeting with you for the last 2 hours, so I certainly have not had time to find the answer. But that is the way he operates.

Q Would he accept that answer and allow you to go and look up the information?

A The urgency that he placed on all questions would not dissipate, it would remain. He sometimes would not have a choice, because I needed to go spend some time on it.

Q Okay. Okay. I am going to shift gears a little bit. Are you familiar with Title 13 protections for Census data?

A I know a little bit about them, but it has been a while since I reviewed Title 13. I did in the context of my position at the Department.

Q As part of your background research into the Census generally, when you first joined the Department, did you research the requirements of Title 13 with respect to data protection?

A I do remember researching those topics, yes. I do not know if I read everything, but I certainly did include that in my research.

Q Do you recall the penalties under Title 13 for disclosing confidential responses to the citizenship question?

A I only recall that there are significant penalties, but I cannot remember specifics, no.

Q If I told you that the penalties were 5 years in prison and a $250,000 fine, would that be consistent with your research into the topic?

A Yes, that sounds right.

Q Okay. To your knowledge, will the responses to the 2020 Census question on citizenship be used by either the Department of Justice, the Department of Commerce, or any other law enforcement agency in any judicial proceeding?

A To my knowledge the data is not allowed to be used for those purposes pursuant to Federal law.

Q And to your knowledge, would responses to the 2020 Census question be permitted to be used in any immigration or deportation proceeding?

A No.

Q If such information were to be used, either in a judicial proceeding, deportation proceeding, or other immigration-related proceeding, and the Department of Commerce found out about it, what do you believe the Department's response would be?

A Can you ask that question one more time?

Q Sure. If the Department of Commerce became aware that data from the Census was used in any sort of judicial deportation or immigration proceeding, what do you think the Department's response would be to that disclosure?

A I don't want to speculate for the Department, but I can tell you if I was still there in my capacity as a senior lawyer, I would ask the Department of Justice to take immediate action.

Q So when you were there, you believe that if the Census data was disclosed, you would recommend the Department immediately refer a criminal case to the Department of Justice?

A Yes. Yes, absolutely. The Title 13 protections are imperative to data collection to ensure that people across the country feel comfortable providing information to the government. The data and studies show that Americans are generally suspect of the government coming in to their homes and asking questions about anything. So Title 13, we certainly at Commerce, I know the Census Bureau had some advertising that they were working on, that tries to make it known to the public, that this data cannot be used for anything other than statistical collection purposes, and it cannot be used for law enforcement or immigration purposes.

I wish that attorneys general in all the States were also echoing that information rather than startling people through, you know, negative press and, you know, allegations.

Q When you were at the Department, did you do any research, or were you aware of the safeguards put in place by the Census Bureau to prevent unauthorized disclosures?

A I am aware that the Bureau has been involved in those efforts. I cannot speak specifically about it today. On that topic, though, one thing that does come to mind is the discussions I had with Census Bureau officials on administrative records ensuring data protections and privacy as administrative records are shared with the Bureau with other agencies. That was a major concern and something the Bureau was looking into. They wanted to make sure before the Census begins moving towards more administrative records uses as has been in the plan for, I believe, years, that data security and cyber security, data protection, that all of that is accounted for and in good shape.

Q Okay. In your research, when you were at the Department, how does the Census Bureau and the Department ensure that field staff, so enumerators who are out in the field, or address canvassers who are going around collecting and updating the address list, adhere to the confidentiality oath that they sign, acknowledging the requirements under Title 13?

A I could tell you that I know that there are procedures in place, and that the enumerators are trained and made aware of the Title 13 requirements. There is specific training and technology used. But sitting here today, I cannot speak with any more specificity. I think the people have to take an oath that they will adhere to Title 13 before they have given access to Title 13 data collected via the Census.

Q And do you think that if, in your experience in the general counsel's office, if a field enumerator, someone in the field staff at the Census Bureau were to break that confidentiality oath, that the Department's Office of General Counsel would also refer that person for criminal prosecution to the Department of Justice?

A Again, today, I don't want to speak for the Department, but if I am a senior lawyer and somebody is breaking Federal law, is breaking their confidentiality oath, then, yes, I am going to seek immediate criminal sanctions and solicit the Department of Justice to help.

Q And so, all of these Title 13 protections that we have discussed, they apply to every question the Census Bureau asks, and would also apply to the proposed reinstatement of the citizenship question, correct?

A Yes.

Q To your knowledge, has anyone been prosecuted for failing to complete a Census questionnaire?

A I don't know.

Q To your knowledge, has anyone been prosecuted for not returning a Census questionnaire at all?

A I'm not aware of anyone, but I don't know.

Q To your knowledge, what does the Census Bureau do if someone doesn't return a questionnaire in its entirety?

A I am not exactly sure, but I am not aware of any prosecutions having taken place, but it is a Federal crime to not complete the Census. And I do know that the Census Bureau has nonresponse follow-up questions if the people do not submit information, where they will conduct calls at certain defined hours of the day. And in last event circumstances, send people door-to-door in an attempt to get information if people -- if the Census Bureau enumerators are not successful at that point, there are occasions where they will solicit information from neighbors.

Q And so, after these multiple attempts at contacting a nonresponding household, and then trying to use a proxy or a neighbor to respond to the household, and the Census Bureau is still not able to obtain an answer to the decennial questionnaire, do you know what happens at that point?

A I am aware that there are instances where the Census Bureau will make best efforts to impute data.

Q Meaning, they will use administrative records to try to answer the questions for a nonresponding household?

A Yes, if the career officials believe that they have sufficiently accurate administrative records to be able to impute such data, then, yes, I have been made aware through this process that that occurs, yes.

Q So if a household does not respond to the citizenship question on the 2020 Census, then the Census Bureau would use administrative records to attempt to answer

that question for them, correct?

A I believe that is the correct, but only if the Census Bureau determines that it has sufficiently accurate records.

Q Right. And that is what Option D outlined in Secretary Ross's March 26 decision memorandum was attempting to obtain additional administrative records relating to citizenship to accurately enumerate nonresponding households. Is that correct?

A Option D does discuss use of administrative records in tandem with reinstatement of the question on the decennial to ensure that it goes to every person in the United States in an attempt to collect more complete and accurate data. To that extent, Option D does mention use of administrative records. But I do want to be clear, something I did not realize when I began working at the Department, but discovered through this review and other preparations for 2020, the Census Bureau has been working very diligently over the last few years to improve its access to administrative records generally.

Q Can you tell me, not relating to this citizenship question, to your knowledge, what other records has the Census Bureau attempted to obtain to better enumerate households on the 2020 Census?

A I probably could have told you this with more specificity, you know, a year ago. I know there are SNAP records, information on women and children, I forget the acronym, Social Security information, Department of State information, passport information, driver's license information, that the Federal Government seems to have a document for everything these days. And if the Census gets access to it, given that the protections that are in place, in an attempt to reduce the cost of administering the Census and achieve more accurate data, then I think it is a good idea for the Census to

continue pursuing more records.

The Census Bureau career officials, and I can tell you that the attorneys don't get angry at me here, the Secretary is very motivated to reach hard-to-count population. He is very serious about that, and Karen Dunn Kelley, who is overseeing the Census work, she is as well. I know the Department, on that note, has spent about a half a billion dollars in communications to try to reach more individuals in community groups, that they have set a record almost, everywhere possible, with regards to advertising efforts to target hard-to-count groups.

Q And when you are talking about hard-to-count groups, how do you define that term?

A I just know that that is a term that is used by career officials quite often. I don't know that I would be the best one to define it, but as the population evolves where we are in a situation where housing circumstances are very different today than they were in past generations, more young adults are having to live with their parents on occasion, even when they become adults. Several individuals often share housing. You know, I mentioned earlier, Airbnb and some of these new housing opportunities where people are taking advantage of housing share platforms, to lower their rent, and the new advertising technology -- everything is trying to make it less intrusive for the government to conduct the Census, and more accurate.

Q And, so, your belief is that Secretary Ross is highly motivated to ensure that all the hard-to-count populations are accurately enumerated?

A Yes.

Q Do you believe that that includes all races, all genders, all ages?

A Secretary Ross wants to count everyone. That I know for sure.

Q Okay. And regardless of their -- anything related to their situation, it is just

a blanket, everyone -- the Constitution says everyone should be counted, and so we should country everyone. Is that your understanding?

A Yes.

Q Okay. So when you talked to -- I believe you said you talked to a John Gore or other government officials, like Mr. Zadrozny about the citizenship question, did you do so believing that any citizenship data would be used for law enforcement or deportation proceedings?

A I think -- can you repeat that?

Q Sure. When you went into these conversations with DOJ or other government officials, did you enter those conversations thinking that data collected by asking the citizenship question would be used by the government or other agencies for law enforcement or deportation proceedings?

A I just --

Mr. Hull. Obviously, we had a discussion about that in the last round, so let me try to get at it this way. If the witness can answer that in a way that doesn't invoke any of the interests we have asserted, go ahead and answer that.

Mr. Uthmeier. I did not have communications with anyone that touched on the topic of using this data for law enforcement purposes, and I was never under the impression that any government actor was considering use of this data for law enforcement purposes.

Ms. Johnson. Okay. So we are -- we are done with our round two. So we will take a 5-minute break and come back.

Mr. Dewhirst. That sounds great. Maybe for your colleagues on the majority side, we are just trying to -- Cordell and I sort of need to plan for how long we are going to need to use the room that we are occupying tonight. Does anyone there have a

sense about the amount of time you have left?

Ms. Anderson. I think it is hard for us to put an exact number on it. It could be that we need another two rounds. It could be that we end in the next round. Sorry, it is a very lawyerly answer.

Mr. Dewhirst. I would say that answer myself. Okay. Thank you very much. We will call back in 5 minutes.

Ms. Johnson. Okay.

Ms. Anderson. Thank you.

[Recess.]

Ms. Anderson. Okay. We can go back on the record, it is 3:54 p.m.

[Uthmeier Exhibit No. 25

Was marked for identification.]

BY MS. ANDERSON:

Q Before we took our break on the majority side, Mr. Uthmeier, we were talking about your interactions with Mark Neuman, I would like you to look at exhibit No. 25. We will mark it as such here. It is a copy of a Word document that came off of Thomas Hofeller's drive. It says in quotes: "We note that in these two cases, one in 2006 and one in 2009, courts reviewing compliance with requirement of the Voting Rights Act and its application in legislative redistricting, have required Latino voting districts to contain 50 percent plus one of 'Citizen Voting Age Population,' or CVAP. It is clear that full compliance with these Federal Court decisions will require block level data that can only be secured by a mandatory question in the 2020 enumeration. Our understanding is that data on citizenship is specifically required to ensure that the Latino community achieves full representation in redistricting."

Did you ever receive any documentation from Mark Neuman that contained this

wording or this information?

A I do not recall ever receiving this document at all. You know, this seems to be the first time I am looking at it, so information contained herein I would have even gleaned from my own -- from my own research.

Q And I would like you to also look at exhibit 24. And not to be confused, it is marked as exhibit 18, but we will mark it for our purposes as exhibit 24.

[Uthmeier Exhibit No. 24

Was marked for identification.]

Mr. Uthmeier. Okay. I have opened it up. I am looking at it now.

BY MS. ANDERSON:

Q Did Mr. Neuman ever provide you with this document or any part of this document?

A No.

Q Did you ever discuss with Mark Neuman why the Department of Commerce wanted -- or did you ever talk to Mark Neuman about whether he knew why Secretary Ross was interested in a citizenship question?

A No.

Q Did you ever discuss legislative apportionment or redistricting with Mark Neuman?

A Not to my recollection. To the extent it doesn't just deal with ensuring majority, minority populations obtained fair representation.

Q Did you ever discuss with Mark Neuman about how adding a citizenship question could affect participation of immigrants or noncitizens in the Census?

A Can you repeat that question?

Q Sure. Did you ever discuss with Mark Neuman about how adding a

citizenship question could impact Census participation by immigrants and noncitizens?

Mr. Dewhirst. I am going to note that I think this implicates executive branch confidentiality and litigation concerns, but as an accommodation, I am going to allow the witness to answer if he can.

Ms. Anderson. Who was that speaking?

Mr. Dewhirst. Sorry, this is Dewhirst.

Mr. Uthmeier. I want to make sure I heard the question correctly. I apologize. Can you repeat it one more time?

BY MS. ANDERSON:

Q Sure. Did you discuss with Mark Neuman about how adding a citizenship question could impact Census participation by immigrants or noncitizens?

A I do not recall.

Q We talked a little bit earlier about a memo that you provided to John Gore at the Department of Justice. Do you recall?

A Yes.

Q Did someone direct you or instruct you to provide that to Mr. Gore?

Mr. Dewhirst. I am going to instruct the witness not to answer, that implicates executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q Was Mr. Gore the first person you spoke with at the Department of Justice about the citizenship question?

A I do not recall, however, I do remember being pleasantly surprised when I was referred to John Gore, and I believe it was someone else at the Department of Justice that suggested I reach out to him because I was seeking advice, legal advice, on the Voting Rights Act from someone that was a specialist in the area. And I recognized the name because he had been a partner, and someone that I looked up to at Jones Day when I was in private practice.

Q Who was it at the Department of Justice that referred to you John Gore?

A I do not remember.

Q And so you reached out to him first. Is that correct?

A I believe so, but I am not totally sure. I wanted to get advice pertaining to the Voting Rights Act. It had come up in my research, and I am not well-versed on the law.

Q Had the Voting Rights Act come up from anyone else or just in your research?

Mr. Dewhirst. I am going to assert an objection and instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns. I am sorry, Tori, is there a way that you can answer the question without doing that?

Ms. Anderson. Had you come across the Voting Rights Act in any other context besides your research with regards to this citizenship question?

Mr. Uthmeier. Here is what I can say, and I believe I have already said, I was looking at why questions had been asked in the past and uses for questions on multiple topics, and I quickly found documentation at the Department that had been received from the Department of Justice. It was, you know, included in court documents that I received from the Census Bureau.

BY MS. ANDERSON:

Q I guess I can try to ask this in a slightly different way that might be helpful. Did anyone else bring up the Voting Rights Act to you prior to your conversation with John Gore, or the person that referred you to John Gore at the Department of Justice?

A I believe I did speak with other internal individuals about DOJ's use of citizenship data for Voting Rights Act enforcement and other issues, and then I also was involved -- or I also was aware of legal opinions that were out there talking about majority, minority voting populations and requirements that States not redistrict or gerrymander in a way that would be unfair to certain communities. And I was aware of

the fact that DOJ had requested citizenship data on Voting Rights Act issues in the past, and that led me to try to better understand what DOJ's uses for the citizenship data were, and if they needed more granular data.

Q Did you discuss with John Gore why the Department of Commerce was interested in a citizenship question?

Mr. Dewhirst. I am going to instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q When you asked John Gore whether the Department of Justice could use the data, did he give you a response on your initial conversation about whether they could use or wanted to use the data?

Mr. Dewhirst. Same instruction to the witness.

BY MS. ANDERSON:

Q Did you discuss with him at the time why Secretary Ross was interested in the citizenship question?

Mr. Dewhirst. Same instruction.

BY MS. ANDERSON:

Q Did you discuss any rationales that would support the citizenship question to the 2020 Census?

Mr. Dewhirst. Same instruction.

BY MS. ANDERSON:

Q Did you ask or discuss with Mr. Gore or anyone at the Department of Justice other efforts to talk to other agencies about whether they could use the data?

Mr. Dewhirst. Same instruction.

BY MS. ANDERSON:

Q Did you ask Mr. Gore or discuss with Mr. Gore -- well, let me start with this. Did you ask Mr. Gore whether the Department of Justice would make a request for the citizenship question at that time?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Okay.

BY MS. ANDERSON:

Q And you said that you provided Mr. Gore with your legal memo. Is that correct?

A I did so that he could review it.

Q Did you provide him any other materials besides the legal memo?

A I remember -- I had hoped to give the memo to John and have a conversation with him about it. He was busy when I, you know, when I attempted to give him the memo, and I remember leaving it with his secretary, and I believe I pulled a note card out of my jacket pocket to leave him a note in addition to the memo.

Q What did the note say?

Mr. Dewhirst. I am going to instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q Why did you send him the legal memo?

A Again, I was -- in my research, the Voting Rights Act came up, and I am not very familiar with the Voting Rights Act and all of its nuances, and thus, I was hoping John would provide legal advice that dealt with the memo and the topics that I was investigating.

Q Did the memo discuss the Voting Rights Act?

Mr. Dewhirst. I instruct the witness not to answer as that implicates executive

branch confidentiality and litigation concerns. Dewhirst.

BY MS. ANDERSON:

Q Did you provide anything to John Gore that was not included in the legal memo version that you had sent to the Secretary, I guess, the month before?

A I don't remember.

Q Did the document contain any draft language or cases that you thought would be useful to the Department of Justice if they were to make a request to have the citizenship question?

Mr. Dewhirst. I am going to instruct the witness not to answer for the reasons previously stated. Dewhirst.

BY MS. ANDERSON:

Q Did any of the contents of either the memo or the note appear in the December 12, 2017, letter from the Department of Justice to the Census Bureau requesting the addition of the citizenship question for the 2020 Census?

Mr. Dewhirst. Can you ask that question again, please?

BY MS. ANDERSON:

Q Did any of the content of the note or the legal memo appear in the Department of Justice's December 12, 2017, letter to the Census Bureau requesting addition of a citizenship question to the Census?

Mr. Dewhirst. I am going to instruct the witness not to answer, that implicates executive branch confidentiality and litigation concerns. Dewhirst.

Ms. Anderson. Did the document -- sorry, did you get that -- who was talking. Mr. Dewhirst.

Mr. Dewhirst. Do you want me to keep doing that? I am happy to not say my name after --

Ms. Anderson. No, the stenographer would appreciate that. I will endeavor not to cut you off.

Mr. Dewhirst. Definitely -- definitely if it is helpful, I will keep doing it.

Ms. Anderson. Yes, please.

BY MS. ANDERSON:

Q Did the document or the memo discuss the effects -- of the possible effects of a citizenship question on the Census?

Mr. Dewhirst. The same instruction previously stated. Dewhirst.

BY MS. ANDERSON:

Q Mr. Uthmeier, how did you deliver or leave the memo and the note for Mr. Gore?

A I left -- I left it with his secretary, I believe, or someone, an administration official in his office. He was in a meeting and would be tied up for some time, I believe.

Q And you discussed with Mr. Gore before you left the memo that you intended to hand-deliver the memo. Is that correct?

Mr. Dewhirst. I am going to -- I think you are asking about substance of conversations between James and Gore, and James was communicating with Gore for the purpose of soliciting legal advice. I offer as an accommodation, I will -- I am going to not instruct Mr. Uthmeier to not answer this question. He can answer the question.

Ms. Anderson. Okay.

Mr. Dewhirst. Dewhirst.

Mr. Uthmeier. If I recall, I had been speaking to John on the phone and I did tell him that I was going to be in the area and would swing by with the document to discuss.

BY MS. ANDERSON:

Q Did you hand-deliver or drop off the memorandum and the note in order to

avoid it being part of the administrative record?

A No, absolutely not.

Q Did you hand-deliver or drop off the memorandum and the note in order to conceal the process by which the citizenship question was added to the Census?

A No.

Q Presumably, when you worked at that the Department of Commerce, you had a government email. Is that correct?

A Yes, I did.

Q Was your initial conversation with Mr. Gore on the phone or in person?

A I first communicated with John in his capacity as a Department of Justice official by phone. I may have run into him in person, you know, on occasion as well. But the first communication while we were both working in the administration, was over the phone.

Q And on that phone call you indicated to him that you were going to send him this memo. Is that correct? Or provide him the memo?

Mr. Dewhirst. Again, I think you are getting at the substance of communication between the two. I think it implicates the interest, but as an accommodation, I am going to allow Mr. Uthmeier to answer.

Mr. Uthmeier. Could you please repeat the question.

BY MS. ANDERSON:

Q Sure. And when you talked to him on the phone, you indicated to him that you were going to provide him with a legal memo. Is that correct?

A Yes, I told him that I put together a memo and that I was going to give it to him for review.

Q So I just -- I am trying to understand, why didn't you just email it to him?

A I was going to be in the neighborhood. Again, I knew John from my life in private practice before. I had not seen him in several months. I had not seen him since we were working at Jones Day, and I hoped to run into him in person and speak with him a little bit about the research I was doing, because he was unavailable and would be tied up for some time, I was not able to wait for him. So I -- that is the reason I left a note in addition to the memorandum.

Q Were you made aware of conversations that occurred between Secretary Ross and Attorney General Sessions about this citizenship question?

A Was I aware that there were conversations?

Q Yeah.

A Yes.

Q How did you become aware?

Mr. Dewhirst. I am just going to caution the witness that he can answer this if there is a way for him to do so without implicating executive branch confidentiality and litigation concerns.

Mr. Uthmeier. I believe I said before, most of these senior Department officials worked in a bullpen setting, a large room with multiple desks and a work station. And I remember overhearing the scheduling discussions about that issue, about the meeting taking place.

BY MS. ANDERSON:

Q When did you overhear those discussions? When did you become aware of those discussions between the Secretary and the Attorney General occurred?

A I do not recall a specific date, it was -- it would have likely been in the summer or fall of 2017.

Q Did you ever become aware of the contents of what Secretary Ross and the

Attorney General discussed?

A I do not recall specifically. I am aware that they spoke about the Census.

Q Did you become aware that they spoke about the citizenship question issue?

Mr. Dewhirst. And there I am going to instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns. Dewhirst. Sorry.

BY MS. ANDERSON:

Q Were you ever made aware of a specific conversation that happened between Secretary Ross and the Attorney General on September 17, 2017?

A Again, I am aware that there was at least one conversation between the individuals, but I do not -- you know, I can't state that I remember that date for certain. I also, you know, I continued to work as counsel at the Department, you know, up until 2019, and may have been made aware of that fact through litigation. But I recall overhearing some discussions about the scheduling, but I also recall having seen documents that discuss a meeting taking place between the Secretary and the Attorney General.

Q Are you aware of the Department of Justice's position changing regarding whether they would like to ask for the addition of a citizenship question around September of 2017?

[4:14 p.m.]

Mr. Uthmeier. I am not aware of --

Mr. Hull. This is Cordell. To the extent the witness can answer that without revealing privileged information, we will of course let him answer that, but I would caution him to keep in mind his role as a lawyer.

Mr. Uthmeier. I am not aware of any positions changing. I can tell you we received a request from the Department of Justice in December, on the 12th, I believe. I am not aware of any request or direction one way or the other from Justice prior to that time.

Ms. Anderson. Okay. I would now like you to look at exhibit no. 10.

[Uthmeier Exhibit No. 10

Was marked for identification.]

Mr. Dewhirst. Tori, do you know which email that was attached to, the first or the second?

Ms. Anderson. I believe it would have been the first.

Mr. Dewhirst. Okay. Yep. There it is. Okay.

Tori, you said exhibit 10?

Ms. Anderson. Yes.

Mr. Dewhirst. Thank you.

BY MS. ANDERSON:

Q And specifically the second email. I don't think at this point we need to have you read the entire chain.

Have you had a chance to look at it?

A Yes.

Q Okay. So on September 17th, 2017, Danielle Cutrona from the Department of Justice emailed Wendy Teramoto at the Department of Commerce. And part of the that email says, quote, from what John told me, it sounds like we can do whatever you-all need us to do and the delay was due to a miscommunication. The AG is eager to assist. And then proceeds to say thank you.

Do you know what she meant by that?

A No.

Q Do you know why the Attorney General was eager to assist the Department of Commerce?

A No.

Q Were you ever made aware of why later the Attorney General told Department of Justice officials to decline an offer to meet with Census Bureau officials about the Department's December 12, 2017, letter?

A No, I -- I am not made aware of that fact.

Q I want to return to some of the people that the minority staff asked you about before we took our break.

Did you ever speak with Steve Bannon about the addition of a citizenship question to the 2020 Census?

Mr. Dewhirst. So, Tori, Cordell and I have diligently been trying during the breaks to figure out a way to accommodate your interest in the list. I think -- I think Russ asked about them, and then Steve asked in the last round. And I think one way -- I can think of a way to address this, I believe, but I think that we probably -- we have to ask the questions in a particular way, and you can tell me if you don't think that is a good idea.

But if you -- if you will indulge me for a minute -- I don't want to take your

time -- but maybe I can put the questions to James in a way that would provide you with the information that you are interested in but also safeguard the interests that we are striving to protect on our end.

So I am going to put a couple of questions to James, and just let me know if you can't hear any of this.

James, have you -- have you ever had a conversation with Steven Miller?

Mr. Uthmeier. Not to my knowledge, no.

Mr. Dewhirst. Have you ever had a conversation with Stephen Bannon?

Mr. Uthmeier. Not to my knowledge, no.

Mr. Dewhirst. Have you ever had a conversation with former Chief of Staff Reince Priebus?

Mr. Uthmeier. Not to my knowledge, no.

Mr. Dewhirst. Do you recall ever having a conversation with President Trump?

Mr. Uthmeier. I did not ever speak with President Trump. Any interactions I may have had with him or senior staff prior to him becoming President would have been, you know, as part of my private practice and would not have involved the Census.

Mr. Dewhirst. And you never had a direct conversation with Donald Trump before he was President?

Mr. Uthmeier. Not to my knowledge.

Mr. Dewhirst. And you have already testified earlier today that before your time as a Commerce Department employee, you didn't discuss the issue of the citizenship question on the Census with anyone; isn't that right?

Mr. Uthmeier. Right.

Mr. Dewhirst. Okay.

So that is sort of -- maybe you find that helpful, maybe you didn't. But I believe

that is the way that we can provide that information in a way that safeguards our interests and provides you with -- with the information you are looking for.

BY MS. ANDERSON:

Q Did you ever become aware of conversations between anyone at the Department of Commerce and anyone at the White House about the citizenship question?

A Yes.

Q Okay. Who did those conversations occur between?

Mr. Dewhirst. And that is where I am going to instruct the witness not to -- not to answer on the bases previously stated.

Ms. Anderson. Were you aware --

Mr. Dewhirst. If I could -- I am sorry to cut you off. But the witness has previously testified a couple of times today that -- that he received -- no one at the Department received any direction on the issue of the citizenship question and that the White House is not involved in the ultimate decision the Secretary made on the citizenship question.

Ms. Anderson. I understand that. My question was --

Mr. Dewhirst. I am sorry. Go ahead.

Ms. Anderson. My question was a little bit different than that. So I will just repeat it just so the record is very clear about what my question was, which was --

Mr. Dewhirst. Sure.

Ms. Anderson. He answered yes to the question that he was aware of conversations that happened between the Department of Commerce and the White House. And then I asked about the citizenship question, and I asked him who did those conversations occur between.

And then I understand that is where you were not allowing him to answer that question. Is that correct?

Mr. Dewhirst. That is correct.

BY MS. ANDERSON:

Q Were you ever aware of Secretary Ross speaking with Kris Kobach about the citizenship question?

A I was made aware of that fact, but I believe -- I cannot remember when I learned of that fact. I was made aware of it. It may have been while I was conducting research and meeting with senior Department officials on the topic. But it may also have been as a result of litigation, having seen some emails.

I have also heard at least part of the Secretary's testimony before the committee, and I believe information on this topic came out at the time. So I do not recall when I learned that fact, but I did not ever participate in any of those discussions.

BY MR. ANELLO:

Q This is Russ Anello. Are you aware of any conversations involving the citizenship question that the President participated in?

A No.

Q Are you aware of any conversations that Mr. Bannon participated in relating to the citizenship question?

Mr. Hull. This is Cordell. And to the extent the witness can answer that without revealing privileged information, we will permit him to answer.

Mr. Uthmeier. I am aware of at least an email communication that took place involving Mr. Bannon only as a result of discovery for litigation purposes.

Mr. Anello. Okay. Are you aware of any other conversations with White House staff aside from Mr. Zadrozny, which I guess we addressed separately, related to the

citizenship question?

Mr. Hull. Again, this is Cordell. And reiterating the bases on which we have had the discussion about this. But I will allow him to answer to the extent that he can answer within the parameters we have set out.

Mr. Uthmeier. Yeah. As I have stated, I spoke with White House personnel. I am aware of at least, you know, a couple of other individuals that would have also spoken with the White House on this topic, always in a briefing capacity, providing updates, insuring that, you know, the executive branch is coordinated and that there are no surprises.

When the DOJ letter was leaked, immediately there were press stories, there were -- there were allegations, things were misconstrued. And myself and other Commerce personnel provided -- you know, answered questions and provided briefings to other administration officials to explain, you know, what we were working on and just provide updates generally.

Mr. Anello. Okay. Who at the White House did you brief about the citizenship question?

Mr. Hull. And again, this is Cordell. Again, we have laid out the parameters on this, so I would instruct the witness not to answer.

Mr. Anello. But I guess I don't understand. He is allowed to say who he didn't talk to, but he can't say who he did talk to? Is that what you're saying?

Should we, like, read a list of everybody at the White House, and he can say no and then just not answer the people he did talk to?

Mr. Hull. Mr. Anello, we are trying to provide accomodation to the committee. You asked about a certain number of people --

Mr. Anello. The minority staff had unlimited number of people. I would like to

know anybody that he talked to.

Mr. Hull. We have let you finish. I am trying to explain the basis. You continue to interrupt me. We have explained the basis for this. I understand that the committee doesn't agree with that, and that is fine, and we will continue to look for a way to try and get the committee the information it seeks.

We tried to make an accomodation earlier during this round to get you the information you are seeking. I understand you believe that to be unacceptable. But sitting here today, right now, this is where we are.

Mr. Anello. Okay. But just to be really clear, you will not tell us who you talked to at the White House? If we guess the name is wrong, you will tell us the name is wrong, but you will not --

Mr. Castor. That is not true. I mean, we --

Mr. Anello. I am serious. I want to know who he talked to.

Mr. Castor. I understand you want to know that.

Mr. Anello. If we give him a name he didn't talk to, he will tell us that, but he won't tell us who he did talk to. That doesn't any make sense.

Mr. Castor. Based on what we do know, we know that it is unlikely that he talked to the President, and so he was able to confirm that. I mean --

Mr. Anello. But that is why we are here for the interview, to learn something new from him, to learn who he talked to. And if he is only willing to tell us people that we know he didn't talk to, I am not sure what --

Mr. Castor. I mean, if you give him a list of names, I am sure he will --

Mr. Anello. The list is anybody who worked in the White House. Why would I have to give him the list of names? He knows who he talked to. He can tell us.

Mr. Castor. I don't think it is anybody other than Zadrozny, but --

Mr. Anello. Well, then, he can tell us that. I am not trying to be -- this is not a trick question.

Mr. Castor. I know, but I mean, it is not fair for them -- for us to ask him to go back and say, like, check the names Trump and Priebus and --

Mr. Anello. He doesn't have to check anything. I am asking from his recollection.

Mr. Castor. I know, but it is just -- I mean, it was like a good faith effort by them, and you kind of got -- you kind of quarreled a little bit there with them.

Mr. Anello. Well, I don't mean to quarrel. I just don't understand the basis here. I just would like to know, if you are able to start picking off individual people he didn't talk to, it seems a little unreasonable to tell us you are not going to tell us who he did talk to.

Mr. Castor. And I think they will go back --

Cordell, you can go back and figure out if there is a way to answer this?

Mr. Dewhirst. This is David, and we will absolutely continue to try to figure out ways to accommodate the committee's interest.

But I will note this. With the information the witness has provided, Russ, what I haven't heard from you, given the fact that we have established the White House wasn't involved in any way with the decision-making process that --

Mr. Anello. That is you -- you have stated that. I don't think we have established that.

Mr. Dewhirst. Let me finish, please. Let me finish. I don't appreciate that you are constantly talking over me.

So let me -- let me finish my thought, please.

And that is this. What is the legislative purpose for this inquiry in the first place if

we have already had the witness testify truthfully about the underlying issue, that they had no material involvement, that the nature of the conversations were mere briefings. I mean, he said that multiple times, Russ.

And if you -- if you can't articulate why you have a particularized need for this information, if you can't articulate what the legislative purpose is for that piece of information, then we have to refer you to the White House for that information, and we are happy to do that.

Mr. Anello. Okay. I take it that you are refusing to answer -- you are refusing to allow the witness allow --

Mr. Dewhirst. Please, Russ, please let me finish.

Mr. Anello. Go ahead.

Mr. Dewhirst. Please. We will be -- as I mentioned to Steve, just like we have already done today in the span of a couple of hours, we are going to put our heads together and try to figure out a way to provide the information, because we know you are interested in it.

But I will say, on the other hand, that this accommodation process is a two-way street. And this information seems highly immaterial to the investigation, to the fact-finding you are trying to conduct. And if you can't articulate a purpose for that specific piece of information, then we will just have to refer you to the White House.

Mr. Anello. Okay. If you are finished, we have articulated our purposes for asking these questions and all the questions in this investigation many times. The role of the White House is absolutely material. We have heard many instances in which the White House was involved in this decision-making process, contrary to what you just asserted, and the question is what Mr. Uthmeier knows about that.

Now, I understand his opinion is that they did not play a role in the

decision-making process. But it is also possible that he may have limited information about the role that they played. And the communications that he did have with the White House might be extremely material in helping us understand who at the White House was involved in these issues.

So I don't think there is any question -- I am sorry -- I am going to finish now.

I don't think there is any question that we have a legislative purpose. I am kind of surprise to hear you suggest otherwise. And I understand the instruction that you have made to the witness, which is not to answer the question. And I am happy for us to move on at this point.

Mr. Dewhirst. I think we can move on. I think that is fine.

[Uthmeier Exhibit No. 14

Was marked for identification.]

BY MS. ANDERSON:

Q If you could look at Exhibit 14.

A 14?

Q Yes. 14.

A I am sorry. Give me just a minute.

Q Okay. And it should be in the first email.

Have you had a chance to review?

A Yes, I have.

Q Okay. It is an email from John Zadrozny on February 16, 2018, to you, Gene Hamilton, and -- it is blacked out, but Brian.

And it says, quote, I want to connect with the three of you about having that conversation we discussed at some point this week.

Why was he connecting the three of you?

A I do not recall.

Q Was the conversation that he was referring to about the citizenship question?

A I am not sure. I do not recall ever meeting with Gene Hamilton. You know, if I may have had interaction with him and forgotten, I apologize. But I am not even sure if this meeting took place.

Q Do you remember speaking with John Zadrozny around this time?

A I remember speaking with John on multiple occasions around this time, yes. I don't know if it was specific to this day.

Q Okay. And you spoke with him about the citizenship question; is that correct?

Mr. Dewhirst. I am going to interpose an instruction of the witness not to answer. That implicates the executive branch and litigation concerns, confidentiality and litigation concerns.

Ms. Anderson. Was John Zadrozny --

Mr. Dewhirst. Dewhirst.

Ms. Anderson. I am sorry. That was Mr. Dewhirst.

Mr. Dewhirst. I am sorry, too. That is an awkward thing, but anyway.

BY MS. ANDERSON:

Q Was John Zadrozny one of the people at the White House that you did brief about the citizenship question issue?

A Yes, among several other individuals.

Q How many times did you brief him about the citizenship question?

A I provided updates on a couple of occasions. I know I provided updates following this leak of the DOJ letter and several press stories that broke thereafter. But

it is kind of hard for me to remember how many times I spoke to John on this topic, because I -- I did know him prior to his service in the White House, and I would have seen him at several social settings as well.

Q Did you discuss the rationale that the Department of Justice used to support their request on December 12, 2017, to add the citizenship question to the Census?

Mr. Dewhirst. I am going to instruct the witness not to answer as that question implicates executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

Q You mentioned when you were speaking with minority staff that you did a draft of Secretary Ross' March 2018 memo. Is that correct?

A I am not familiar with a March 18th memo.

Q I am sorry. March 2018.

A 2018. Oh, his decision memo?

Q Yes.

A Yes, I was involved in that.

Q Did the White House have any role in drafting that decision memo?

A No.

Q Did Mark Neuman have any role?

A No.

Q Did anyone else have any role in drafting that memo?

Mr. Hull. This is Cordell. And, again, this is getting into an area that does have confidentiality -- to the extent that the witness can answer in a way that doesn't implicate those interests, we will permit him to answer.

Mr. Uthmeier. You know, I -- I was the principal author, but I was working in close collaboration with the Secretary as he, you know, laid out his -- his decision. I

would have also consulted several other senior officials. I believe Census senior leadership reviewed and cleared the memorandum. Our policy director would have reviewed and cleared the memo, and I know he had some comments and edits.

Mike Walsh, our deputy general counsel; probably Peter Davidson, our general counsel. Karen Dunn Kelley certainly would have, you know, reviewed and provided updates.

Ms. Anderson. Did Secretary Ross direct you to include or exclude any information in the decision memo that you drafted?

Mr. Dewhirst. I am going to instruct the witness not to answer, because it implicates executive branch confidentially and litigation concerns.

And I will also note that his response to the last question did pull the curtain back a little bit, and we allowed that question to move forward as an accommodation to the committee.

Ms. Anderson. Did Earl Comstock direct you to exclude any particular information from the 2008 March decision memo?

Mr. Dewhirst. I am sorry, Tori. I didn't mean to cut you off. Same instruction, though, to the witness.

BY MS. ANDERSON:

Q Did you ever consider the issue of whether the Department of Commerce needed to request -- to receive a request of another agency in order to add a citizenship question to the 2020 Census?

A Could you please repeat that question?

Are you there?

Q Yeah. Just one second.

A Oh, yeah.

Q Mr. Uthmeier, did you ever discuss legislative apportionment, restricting, or election outcomes in connection with the citizenship question?

Mr. Hull. I am going to instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. Did you have any discussions about legislative apportionment, redistricting, or election outcomes in connection with the citizenship question with anyone outside of the administration?

Mr. Hull. To the extent that you can answer in a way that doesn't implicate executive branch confidentiality and litigation concerns, you may.

Mr. Uthmeier. I consulted a law professor, a long-time mentor, to obtain information on how citizenship data was used historically, as I was just beginning to brief up on all topics census at the Department.

He would have provided some overview to me on the statutory authorities that dictate how censuses are conducted. In that context, he may have discussed the various reasons why certain questions are asked on certain forms, and he may have discussed apportionment in that context. But absent that, I am not aware of any conversations, no.

BY MS. ANDERSON:

Q And who was that?

A His name is John Baker.

Q And where does he currently work?

A I do not know. I believe he still teaches at Georgetown Law on occasion.

Q Mr. Uthmeier, you mentioned briefly that part of your role at the Department of Commerce was responding to congressional requests. Is that correct?

A That is correct, yes.

Q Did you have any role in responding to requests from the oversight -- the House Oversight Committee?

A Can you be more specific?

Q Sure. Did you have any role in responding to requests from the House Oversight Committee about the Census or the citizenship question?

Mr. Dewhirst. I am going to instruct him not to answer. That implicates executive branch confidentiality and litigation concerns. This is Dewhirst.

Ms. Anderson. And just to be clear, it was a yes-or-no question about whether or not he had a role in responding.

Mr. Dewhirst. That is right. And the instruction stands.

BY MS. ANDERSON:

Q Mr. Uthmeier, did you ever review a draft of the Department's December 12, 2017, letter?

A What letter are you talking about specifically?

Q Sure. The letter that the Department of Justice sent to the Census Bureau. Did you ever review or comment on a draft of that?

A No.

Q Okay. Did you ever discuss with anyone at the Department of Justice a letter -- the letter or draft of the letter that they ultimately sent on December 12?

Mr. Hull. This is Cordell. I mean, this also implicates executive branch confidentially and litigation concerns. But to the extent that the witness can answer it without revealing privileged information, we will of course let him answer it.

Mr. Uthmeier. No, I have never discussed a draft of anything that became the letter in December. I certainly talked with John about my research in the context of getting his legal opinions, but nothing about the contents of the letter, no.

I did not review a draft or see any element of the letter until we received it at the Department. I believe a courtesy copy was sent to the Office of General Counsel, you know, sometime shortly after the December 11 date of the letter.

BY MR. ANELLO:

Q This is Russ. Mr. Uthmeier, I believe you mentioned, maybe an hour or two ago now, that there were discussions after -- after receiving the letter from the Department of Justice, the December 2017 letter, about how a citizenship question would impact response rates. Is that right?

A Could you repeat the question? I --

Q Yeah, I am sorry. I think you said in response to my Republican colleague's question that you had discussions after receiving the December 2017 letter from the Department of Justice that touched on the issue of response rates and how a citizenship question could impact response rates.

A That was certainly a topic of discussion as part of the Census Bureau's program review that they initiated following receipt of the Department of Justice's letter, yes, although I certainly was not leading any of those discussions.

Q Okay. And what did you learn about how a citizenship question would impact response rates?

Mr. Dewhirst. I am going to instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns.

I will note that a lot of the information you just asked about is available in the expansive public record that we have provided to the committee.

BY MR. ANELLO:

Q Okay. Seems like it either is or is not confidential. But okay.

Did you have discussions about the response rate and how -- oh, sorry -- how the

citizenship question could impact the response rate prior to receiving the letter from the Department of Justice in December of 2017?

A No.

Q Was that an issue that you researched?

Mr. Dewhirst. I am going to again interpose an instruction not to answer as that implicates the executive branch confidentiality and litigation concerns. Dewhirst.

BY MR. ANELLO:

Q Mr. Uthmeier, were you aware of a request, -- again, after the December 2017 letter, a request from the Census Bureau to meet with the Department of Justice and discuss the letter?

A I am not aware of any specific request, no.

Q Were you aware generally that a request was made?

A Could you repeat the question again?

Q Were you aware generally that a request was made? You said you weren't aware of a specific request.

A Again, here I am not sure if my recollection is from information I learned as part of the litigation or if -- if I made these factual discoveries prior to the beginning of the litigation.

But I am aware that Census Bureau officials were going to reach out to the Department of Justice to gather more information. I am aware of that, yes.

Q And are you aware of what happened when they made that request?

A I am not aware, no.

Q Okay. So do you know whether DOJ accepted the meeting or rejected it?

A I remember speaking with, you know, John Gore on multiple occasions, but, you know, I cannot speak for what other people did or did not do at the Department.

Q Okay.

Mr. Anello. If you can just give us just one minute. We are at the end of the hour, but we are checking to see whether we have anything else we wanted to cover.

Mr. Uthmeier. Okay. Take your time.

Mr. Anello. Thanks.

Ms. Anderson. I don't think we have any other questions for you at this time.

I don't believe the Republican staff has any further questions.

Mr. Castor. We have one more hour.

Just joking.

Ms. Anderson. Mr. Uthmeier, is there anything that we did not ask you that you would like to say on the record before we conclude?

Mr. Uthmeier. No.

Ms. Anderson. Okay. We can go off the record.

[Whereupon, at 4:50 p.m., the interview was concluded.]

ERRATA SHEET

INSTRUCTIONS: After reading the interview transcript, please note any change, addition, or deletion on this sheet. DO NOT make any marks or notations on the actual transcript. Use additional paper if needed.

Investigation Name	Census Investigation
Witness Name	James Uthmeier
Date of Interview	June 11, 2019

PAGE	LINE	CORRECTION	APPROVED*
6	14	Change "6(c)(1)" to "16(c)(1)"	Y
7	17	Change "in" to "and"	Y
9	11	Change "Chris" to "Kris"	Y
12	18	Change "Newhaus" to "Neuhaus"	Y
14	11-12	Change "Newhaus" to "Neuhaus"	Y
17	9	Change "McClellan" to "McClelland"	Y
17	16	Add "to" after "I was aware that every Census leads"	Y
21	15	Delete "position"	Y
24	14	Change "nonprivilege" to "nonprivileged"	Y
25	8	Add "him" after "And then when asked more detail about what that instruction was, you have prohibited"	Y
25	11	Change speaker to Mr. Dewhirst	Y
25	11	Change "comment" to "question"	Y
26	5	Change speaker to Mr. Hull	Y

* For COR Majority Staff use only.

ERRATA SHEET

PAGE	LINE	CORRECTION	APPROVED*
27	6, 8	Change "?" to "."	Y
28	21	Change "at" to "as"	Y
29	17	Change "?" to "."	Y
33	24	Change "Carrie Ann Kelly" to "Karen Dunn Kelley"	Y
34	2	Change "he" to "she"	Y
69	13	Add "that" after "We will do"	Y
76	10	Change "wi" to "we"	Y
79	19, 21	Add quotation marks	Y
79	19	Change "Newhaus" to "Neuhaus"	Y
82	7	Change "too" to "to"	Y
101	14	Add "take" after "Okay. So we will"	Y
101	15	Change "returned" to "return"	Y
102	15	Change "we" to "the"	Y
137	25	Change "unlimited" to "a limited"	Y

* For COR Majority Staff use only.

JIM JORDAN.

○