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CITY OF SAN JOSE and BLACK ALLIANCE FOR JUST IMMIGRATION

*[Additional Counsel Listed Below]*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CITY OF SAN JOSE, a municipal  
corporation; and BLACK ALLIANCE FOR  
JUST IMMIGRATION, a California  
nonprofit corporation,

Plaintiffs,

vs.

WILBUR L. ROSS, JR., in his official  
capacity as Secretary of the U.S. Department  
of Commerce; U.S. DEPARTMENT OF  
COMMERCE; RON JARMIN, in his  
official capacity as Acting Director of the  
U.S. Census Bureau; U.S. CENSUS  
BUREAU,

Defendants.

3:18-cv-02279-RS

**DECLARATION OF ANDREW CASE  
IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

Date: December 7, 2018  
Time: 10:00 a.m.  
Dept: 3  
Judge: The Hon. Richard Seeborg  
Trial Date: January 7, 2019

1 I, Andrew Case, declare as follows:

2 1. I am an attorney at Manatt, Phelps, & Phillips, LLP, counsel for Plaintiffs City of San  
3 Jose and Black Alliance for Just Immigration in the above-captioned litigation. I submit this  
4 declaration in support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment.

5 2. Attached as **Exhibit A** is a true and accurate copy of a selection of documents  
6 produced by the Department of Commerce in this matter, number stamped  
7 COM\_DISC00017126, COM\_DISC00017127, COM\_DIS00018588, and COM\_DIS00020953.

8 3. Attached as **Exhibit B** is a true and accurate copy of a selection of documents  
9 produced by the Department of Justice in this matter. These documents were not stamped on the  
10 face of the documents but were provided with the file names DOJ0002045, DOJ00020046, and  
11 093\_DOJ00032084.

12 4. Attached as **Exhibit C** is a true and accurate copy of selections from the August 15,  
13 2018 Deposition of Dr. John Abowd.

14 5. Attached as **Exhibit D** is a true and accurate copy of selections from the August 20,  
15 2018 Deposition of Dr. Ron Jarmin.

16 6. Attached as **Exhibit E** is a true and accurate copy of selections from the August 28,  
17 2018 Deposition of Karen Dunn Kelley.

18 7. Attached as **Exhibit F** is a true and accurate copy of selections from the August 29,  
19 2018 Deposition of Dr. John Abowd as a representative of the Census Bureau.

20 8. Attached as **Exhibit G** is a true and accurate copy of selections from the August 30,  
21 2018 Deposition of Earl Comstock.

22 9. Attached as **Exhibit H** is a true and accurate copy of selections from the October 12,  
23 2018 Expert Deposition of Dr. John Abowd.

24 10. Attached as **Exhibit I** is a true and accurate copy of selections from the October 16,  
25 2018 Deposition of John Gore.

26 11. Attached as **Exhibit J** is a true and accurate copy of selections from the October 24,  
27 2018 Deposition of Dr. Stuart Gurra.

12. Attached as **Exhibit K** is a true and accurate copy of selections from the October 25, 2018 Deposition of Sahra Park-Su.

13. Attached as **Exhibit L** is a true and accurate copy of selections from the October 26, 2018 Deposition of David Langdon.

14. Attached as **Exhibit M** is a true and accurate copy of Defendants' Second Supplemental Responses to Plaintiffs First Set of Interrogatories to Defendants United States Department of Commerce and Wilbur Ross, produced on October 11, 2018 in *New York Immigration Coalition et al. v. United States Department of Commerce et al.*, 18-cv-5025 (S.D.N.Y.).

15. Attached as **Exhibit N** is a true and accurate copy of Defendants' Objections and Responses to Plaintiffs' Third Set of Interrogatories, produced on October 12, 2018 in *New York Immigration Coalition et al. v. United States Department of Commerce et al.*, 18-cv-5025 (S.D.N.Y.).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 16th day of November, 2018 in New York, New York.

/s/ Andrew Case  
Andrew Case

**FILER'S ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), regarding signatures, Ana G. Guardado hereby attests that concurrence in the filing of this document has been obtained from all the signatories above.

Dated: November 16, 2018

s/ Ana G. Guardado  
Ana G. Guardado

*Additional Counsel for Plaintiffs*

CITY OF SAN JOSE and BLACK ALLIANCE FOR JUST IMMIGRATION

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# EXHIBIT A

To: Uthmeier, James (Federal) PII  
From: Shambon, Leonard (Federal)  
Sent: Fri 9/15/2017 8:37:51 PM  
Importance: Normal  
Subject: Current version  
Received: Fri 9/15/2017 8:37:52 PM  
foreigners included in enumeration Aug 21 2017.docx

Leonard M. Shambon

Special Legal Advisor

Office of the Chief Counsel for Economic Affairs

U.S. Department of Commerce

PII

DRAFT

8/21/2017 3:35 PM

## I. Chronological History

Here is the history I've been able to compile, from Census instructions and residence rules, for counting foreign citizens residing in the United States in census enumerations for apportionment. The language (quoted from the underlying documents) is in reverse chronological order because the instructions became more explicit over time.

Census Year

2020 (proposed):

### 3. Foreign Citizens in the U.S.

(a) Citizens of foreign countries living in the U.S. – Counted at the U.S. residence where they live and sleep most of the time.

(b) Citizens of foreign countries living in the U.S. who are members of the diplomatic community – Counted at the embassy, consulate, United Nations' facility, or other residences where diplomats live.

(c) Citizens of foreign countries visiting the U.S. such as on a vacation or business trip – Not counted in the census.

...

### 10. College Students

...

(e) College students who are foreign citizens living in the U.S. while attending college in the U.S. (living either on-campus or off-campus) – Counted at the on-campus or off-campus U.S. residence where they live and sleep most of the time. If they are living in college/university student housing (such as dormitories or residence halls) on Census Day, they are counted at the college/university student housing.

See Proposed 2020 Census Residence Criteria and Residence Situations – Proposed Criteria and request for comment, 81 Fed. Reg. 42577, 42582-83 (June 30, 2016). Census would know if any comments were submitted in response. In response to a 2015 Federal Register notice asking for comments on the 2010 residence rule, 80 Fed. Reg. 28950 (May 20, 2015), in anticipation of the 2016 notice, Census 262 comments, but only one dealt with foreigners, specifically how to treat foreign students at U.S. boarding schools. Under the residence criteria, such students are ascribed to their parents' homes outside the U.S. and therefore not counted. Census did not directly address the comment in the notice, but rather adhered to its general rule for boarding school students. See 81 Fed. Reg. at 42578, 42579-80.



2010: 5. Visitors on Census day

...

Citizens of foreign countries who are visiting the U.S. on Thursday April 1, 2010 (Census Day), such as on a vacation or a business trip – Not counted in the census

8. Students

...

Foreign students living in the U.S. while attending college in the U.S. (living either on-campus or off-campus) – Counted at the on-campus or off-campus residence where they live and sleep most of the time.

...

14. Foreign Citizens in the U.S.

Citizens of foreign countries living in the U.S. – Counted at the U.S. residence where they live and sleep most of the time.

Citizens of foreign countries living in the U.S. who are members of the diplomatic community – Counted at the embassy, consulate, United Nations' facility, or other residences where diplomats live.

Citizens of foreign countries visiting the U.S. such as on a vacation or business trip – Not counted in the census.

2000: 13. Foreign Citizens

Citizens of foreign countries who have established a household or are a part of an established household in the U.S. while working or studying, including family members with them – Counted at the household.

Citizens of foreign countries who are living in the U.S. at embassies, ministries, legations, or consulates – Counted at the embassy, etc.

Citizens of foreign countries temporarily traveling or visiting in the U.S. – Not included in the census

1990: 17. Person is a citizen of a foreign country:

- a. Who has established a household while working or studying, including family members living with them – This household
- b. Temporarily travelling or visiting in the United States – DO NOT LIST
- c. Living on the premises of an Embassy, Ministry, Legation, chancellery, or Consulate – DO NOT LIST

1980: The 1980 census residence rules stipulated, as in the past, that citizens of foreign countries living on the premises of an embassy, legation, chancery, or consulate were not to be

enumerated, but those who were living in housing units elsewhere to be canvassed and included in the census.

1970: [Haven't found instructions to enumerators or residence rules]

1960: 33. Citizens of Foreign Countries Temporarily in the United States

a. Do not list citizens of foreign countries temporarily visiting or traveling in the United States or living on the premises on an Embassy, Ministry, Legation, Chancellery, or Consulate.

b. Do enumerate as residents of your ED [Enumeration District] citizens of foreign countries living here who are students or who are employed here (but not living at the Embassy, etc.) even if they do not expect to remain here. Also enumerate the members of their families if they are living with them in this country.

1950: V. Citizens of foreign countries temporarily in the United States:

- A. Students and members of their families – Enumerate
- B. Persons employed here and members of their families (but not living at an Embassy, etc.) – Enumerate
- C. Any other visitors from a foreign country not included in A and B – Do not enumerate
- D. Persons living on premises of an Embassy, Ministry, Legation, Chancellery, or Consulate – Do not enumerate

1940: 313. . . . As a rule, do not enumerate as residents of your district any of the following classes, except as provided in paragraph 314:

. . . .

- d. Persons from abroad temporarily visiting or traveling in the United States and foreign persons employed in the diplomatic or consular service of their country (see par. 331). (Enumerate other persons from abroad who are *students in this country* or who are *employed here*, however, even though they do not expect to remain here permanently.)

331 Diplomatic and Consular Employees of Foreign Governments – Do not enumerate citizens of foreign countries employed in the diplomatic or consular service of their country.

1930: 59. Classes not to be enumerated in your district

. . . should be enumerated as of your district.

- c. Persons from abroad temporarily visiting or traveling in the United States. (Persons from abroad who are *employed* here should be enumerated, even though they do not expect to remain here permanently.

1920: 63. Citizens abroad at the time of the enumeration –

. . . This instruction applies only to citizens of the United States and not to aliens who have left this country, as nothing definite can be known as to whether such aliens intend to return. **[By implication, aliens who had not left the country were to be enumerated.]**<sup>1</sup>

<sup>1</sup> This exclusion for transitory foreign travelers in the U.S. including transitory businessmen has its genesis as far

1910: With minor wording difference, same as for 1920

Before 1910: No instructions found re. enumeration of citizens of foreign countries.

## II. Court Finding

In the district court opinion in Federation for American Immigration Reform (FAIR) v. Klutznick, 486 F. Supp. 564 (D.C.D.C. 1980), dismissing the suit on standing ground, the three judge panel wrote:

The population base used for apportionment purposes consists of a straightforward head count, as accurate as is reasonably possible, of all persons residing within a state on April 1. This has been the practice since the first census in 1790; everyone is counted except foreign diplomatic personnel living on embassy grounds (which is considered "foreign soil," and thus not within any state) and foreign tourists, who do not "reside" here. 486 F. Supp. at 567, 576. [ See also Ridge v. Verity, 715 F.Supp. 1308 (W.D. Pa. 1989).]

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back as 1849. See Sen. Miscellan. No. 64, 30<sup>th</sup> Cong., 2d Sess. 24 (Jan. 20, 1849 correspondence from Jesse Chickering to Senator John Davis, primary Senate author of the 1850 census legislation). Chickering also likely was the source of the place of birth questions included statutory schedule for that census. See id. 24-27.

**To:** Comstock, Earl (Federal) PII  
**From:** Uthmeier, James (Federal)  
**Sent:** Fri 8/11/2017 8:05:48 PM  
**Importance:** Normal  
**Subject:** Re: Census paper  
**Received:** Fri 8/11/2017 8:05:51 PM  
Census Memo Draft Aug 11 2017.docx

Thanks Earl, clean copy attached. I can swing a call any time after 4:30 today.

James

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**From:** Comstock, Earl (Federal)  
**Sent:** Friday, August 11, 2017 3:40 PM  
**To:** Uthmeier, James (Federal)  
**Subject:** Re: Census paper

Thanks James. Please take a look at the attached edits. If you agree then we can send to the Secretary, who wanted to have a call today to discuss. Earl

---

**From:** "Uthmeier, James (Federal)" <PII>  
**Date:** Friday, August 11, 2017 at 10:18 AM  
**To:** "Comstock, Earl (Federal)" <PII>  
**Subject:** Re: Census paper

Made a couple small edits for clarity. Also, I have not yet sent this to Peter. Just let me know if you want me to loop him in-- I think he is heading out pretty early today, and I'm tied up 11-1, but maybe we can walk through with him early next week.

**From:** Uthmeier, James (Federal)  
**Sent:** Friday, August 11, 2017 9:55:52 AM  
**To:** Comstock, Earl (Federal)  
**Subject:** Re: Census paper

Earl-

A draft, predecisional and privileged memo is attached. I know he likes short briefing materials, but I wanted to be more thorough given the issue and our uncertainty regarding the exact question(s) being presented.

I will keep working to clean it up and am happy to incorporate any edits. I am out of the office for some MBDA and infrastructure meetings but can be reached on my cell. I'll be able to talk today other than 11-1. Will be working over the next hour to clean this up a bit.

If you want to provide some handwritten comments, you can deliver to Barb (OGC secretary) and she will get them to me quickly.

I have some new ideas/recommendations on execution that I look forward to discussing. Ultimately, we do not make decisions on how the data should be used for apportionment, that is for Congress (or possibly the President) to decide. I think that's our hook here.

Best,

COM\_DIS00018589

James

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**From:** Comstock, Earl (Federal)  
**Sent:** Friday, August 11, 2017 8:11:41 AM  
**To:** Uthmeier, James (Federal)  
**Subject:** Re: Census paper

Great. Thanks! Earl

Sent from my iPhone

> On Aug 11, 2017, at 7:45 AM, Uthmeier, James (Federal) <[REDACTED]> wrote:  
>  
> Earl-  
>  
> Finishing this up this morning and will have a memo to you by 930.  
>  
> James  
>  
> Sent from my iPhone

## **Questions on the Jan 19 Draft Census Memo on the DOJ Citizenship Question Reinstatement Request**

1. With respect to Alternatives B and C, what is the difference, if any, between the time when the data collected under each alternative would be available to the public?

Since the collection of this data, whether from administrative records or from an enumerated question, occurs prior to the creation of the Microdata Detail File (MDF) from which all tabulations will be performed, there is no difference in the timing of when the data collected under either alternative B or C could be made available to the public.

2. What is the “2020 Census publication phase” (page 1 of the Detailed Analysis for Alternative B) versus Alternative C? Would there be any difference?

The 2020 Census publication phase is a broad window stretching from the release of the apportionment counts by December 31, 2020 through the last data product or report published in FY 2023, the final year of decennial funding for the 2020 Census. However, as stated in the answer to question 1, this data could be made available to the public on the same schedule as any other post-apportionment tabulated data product regardless of whether alternative B or C is used in its collection.

3. What is the non-response rate for: (A) each question on the 2000 and 2010 Decennial Census short form and (B) each question on the 2010 ACS and most recent ACS?

The table below shows the item non-response (INR) rate for each question on the 2000 and 2010 Decennial Census short form. This is the percentage of respondents who did not provide an answer to an item.

Item Nonresponse Rates for 2000 and 2010 Short Form Person Questions

	Relationship	Sex	Age	Hispanic Origin	Race	Tenure
2010	1.5	1.5	3.5	3.9	3.3	4.5
2000	1.3	1.1	3.7	3.1	2.9	4.1

Source: Rothhaas, Lestina and Hill (2012) Tables

Notes and Soucre:

Rothhaas, C., Lestina, F. and Hill, J. (2012) “2010 Decennial Census Item Nonresponse and Imputation Assessment Report” 2010 Census Program for Evaluations and Experiments, January 24, 2012.

From report:

The INR rate is essentially the proportion of missing responses before pre-editing or imputation procedures for a given item (i.e., the respondent did not provide an answer to the item). For INR, missing values are included in the rates, but inconsistent responses (i.e., incompatible with other responses) are considered non-missing responses.

Online link to 2010 report that has 2000 information as well.

[https://www.census.gov/2010census/pdf/2010\\_Census\\_INR\\_Imputation\\_Assessment.pdf](https://www.census.gov/2010census/pdf/2010_Census_INR_Imputation_Assessment.pdf)

See attached spreadsheet for the non-response rates for the ACS. Note that these are internal use data.

4. **What was the total survey response rate (i.e. percentage of complete questionnaires) for the 2000 long form and the 2000 short form? Of the incomplete long forms, what percentage left the citizenship question blank? Of the completed long forms, what percentage (if known) contained incorrect responses to the citizenship question?**
5. **For the 2000 long and short forms, what was the percentage unanswered (left blank) for each question (i.e., what percentage of the responses for each question (sex, race, ethnicity, income, citizenship, etc.) were left blank)?**

For the 2000 shortform, the table in question 3a provides the percentage unanswered for each question.

For the 2000 longform, Griffin, Love and Obenski (2003) summarized the Census 2000 longform responses. Allocation rates for individual items in Census 2000 were computed, but because of the magnitude of these data, summary allocation measures were derived. These rates summarize completeness across all data items for occupied units (households) and are the ratio of all population and housing items that had values allocated to the total number of population and housing items required to have a response. These composite measures provide a summary picture of the completeness of all data. Fifty-four population items and 29 housing items are included in these summary measures. The analysis showed that 9.9 percent of the population question items and 12.5 percent of the housing unit question items required allocation. Allocation involves using statistical procedures, such as within-household or nearest neighbor matrices, to impute missing values.

<https://ww2.amstat.org/sections/srms/Proceedings/y2003/Files/JSM2003-000596.pdf>

6. **What was the incorrect response rate for the citizenship question that was asked on the Long Form during the 2000 Decennial Census? Does the response rate on the 2000 Long Form differ from the incorrect response rate on the citizenship question for the ACS?**



**7. What is the incorrect response rate on other Decennial or ACS questions for which Census has administrative records available (for example, age, sex or income)?**

Table 7a. shows the agreement rates between the 2010 Census response and the SSA Numident for persons who could be linked and had nonmissing values, and Table 7b shows the agreement rates between the 2010 ACS and the SSA Numident. Gender has low disagreement (0.4-0.5 percent), and white alone (0.9 percent), black alone (1.7-2 percent), and age (2.1 percent) also have low disagreement rates. Disagreement rates are greater for other races (e.g., 46.4-48.6 percent for American Indian or Alaska Native alone). Hispanic origin is not well measured in the Numident, because it contains a single race response, one of which is Hispanic.

Table 7a. Demographic Variable Agreement Rates Between the 2010 Census and the SSA Numident

2010 Census Response	Percent Agreement with SSA Numident
Hispanic	54.2
Not Hispanic	99.7
White Alone	99.1
Black Alone	98.3
American Indian or Alaska Native Alone	51.4
Asian Alone	84.3
Native Hawaiian or Other Pacific Islander Alone	74.4
Some Other Race Alone	17.7
Age	97.9
Gender	99.4

Source: Rastogi, Sonya, and Amy O'Hara, 2012, "2010 Census Match Study," 2010 Census Planning Memoranda Series No. 247.

Abowd and Stinson (2013) find correlations of 0.75-0.89 between Survey of Income and Program Participation (SIPP) and SSA Detailed Earnings Record annual earnings between 1990-1999.<sup>1</sup>

<sup>1</sup> Abowd, John M., and Martha H. Stinson, 2013, "Estimating Measurement Error in Annual Job Earnings: A Comparison of Survey and Administrative Data," Review of Economics and Statistics, Vol. 95(5), pp. 1451-1467.

- 8. How does the Census presently handle responses on the (A) Decennial Census and (B) the ACS when administrative records available to the Census confirm that the response on the Decennial Census or ACS is incorrect? Is the present Census approach to incorrect responses based on practice/policy or law (statute or regulation)?**

We have always based the short form Decennial Census and the ACS on self-response, and while we have procedures in place to address duplicate or fraudulent responses, we do not check the accuracy of the answers provided to the specific questions on the Census questionnaire. This is a long established practice at the Census Bureau that has been thoroughly tested and in place since 1970, when the Census Bureau moved to a mail-out/respond approach to the Decennial Census. Title 13 of the U.S. Code allows the Census Bureau to use alternative data sources, like administrative records, for a variety of purposes, and we are using data in new ways in the 2020 Census. While this includes the use of administrative records data to fill in areas where a respondent does not provide an answer, we have not explored the possibility of checking or changing responses that a responding household has provided in response to the questionnaire.

- 9. Please explain the differences between the self-response rate analysis and the breakoff rate analysis. The range of breakoff rates between groups was far smaller than the range of self-response rates between groups.**
- 10. The NRFU numbers are comparatively small – approximately one additional household for NRFU per Census enumerator. Is this really a significant source of concern?**

Yes, this is a significant concern. First, it gives rise to incremental NRFU cost of at least \$27.5 million. This is a lower bound because it assumes the households that do not self-respond because we added a question on citizenship have the same follow-up costs as an average U.S. household. They won't because these households overwhelmingly contain at least one noncitizen, and that is one of our acknowledged hard-to-count subpopulations.

- 11. Given that the breakoff rate difference was approximately 1 percent, why did Census choose to use the 5.1 percent number for assessing the cost of Alternative B?**
- 12. Alternative C states that Census would use administrative data from the Social Security Administration, Internal Revenue Service, and "other federal and state sources." What are the other sources?**

In addition to continuing the acquisition of the Social Security Administration and Internal Revenue Service data, the Census Bureau is in discussion with the U.S. Citizen and Immigration Services (USCIS) staff to acquire additional citizenship data.

**13. Is Census confident that administrative data will be able to be used to determine citizenship for all persons (e.g., not all citizens have social security numbers)?**

We are confident that Alternative C is viable and that we have already ingested enough high-quality citizenship administrative data from SSA and IRS. The USCIS data are not required. They would, however, make the citizenship voting age tabulations better, but the administrative data we've got are very good and better than the data from the 2000 Census and current ACS. The type of activities required for Alternative C already occur daily and routinely at the Census Bureau. We have been doing this for business data products, including the Economic Censuses, for decades. We designed the 2020 Census to use this technology too.

**14. For Alternative C, the memo says, "we assume the availability of these record linkage systems and associated administrative data" – does Census already have in place access to this data or would this need to be negotiated? If negotiated, for which data sets specifically?**

The Census Bureau has longstanding contractual relationships with the Social Security Administration and the Internal Revenue Service that authorize the use of data for this project. For new data acquired for this project (i.e., USCIS) we would estimate a six month development period to put a data acquisition agreement in place. That agreement would also include terms specifying the authorized use of data for this project.

**15. Are there any privacy issues / sensitive information prohibitions that might prevent other agencies from providing such data?**

**16. How long would Census expect any negotiation for access to data take? How likely is it that negotiations would be successful? Are MOA's needed/required?**

Current data available to the Census Bureau provide the quality and authority to use that are required to support this project. Additional information potentially available from USCIS would serve to supplement/validate those existing data. We are in early discussions with USCIS to develop a data acquisition agreement and at this time have no indications that this acquisition would not be successful.

**17. What limitations would exist in working with other agencies like IRS, Homeland Security, etc. to share data?**

The context for sharing of data for this project is for a one-way sharing of data from these agencies to the Census Bureau. Secure file transfer protocols are in-place to ingest these

data into our Title 13 protected systems. For those data already in-place at the Census Bureau to support this project, provisions for sharing included in the interagency agreement restrict the Census Bureau from sharing person-level microdata outside the Census Bureau's Title 13 protections. Aggregates that have been processed through the Bureau's disclosure avoidance procedures can be released for public use.

**18. If Alternative C is selected, what is Census's backup plan if the administrative data cannot be completely collected and utilized as proposed?**

The backup plan is to use all of the administrative data that we currently have, which is the same set that the analyses of Alternative C used. We have verified that this use is consistent with the existing MOUs. We would then use estimation and modeling techniques similar to those used for the Small Area Income and Poverty Estimates (SAIPE) to impute missing citizenship status for those persons for whom we do not have administrative records. These models would also include estimates of naturalizations that occurred since the administrative data were ingested.

**19. Does Census have any reason to believe that access to existing data sets would be curtailed if Alternative C is pursued?**

No we do not believe that any access to existing data sets would be curtailed if we pursue Alternative C.

**20. Has the proposed Alternative C approach ever been tried before on other data collection projects, or is this an experimental approach? If this has been done before, what was the result and what were lessons learned?**

**21. Is using sample data and administrative records sufficient for DOJ's request?**

The 2020 Census data combined with Alternative C are sufficient to meet DOJ's request. We do not anticipate using any ACS data under Alternative C.

**22. Under Alternative C, If Census is able to secure interagency agreements to provide needed data sets, do we know how long it would take to receive the data transmission from other agencies and the length of time to integrate all that data, or is that unknown?**

With the exception of the USCIS data, the data used for this project are already integrated into the 2020 Census production schema. In mid-to late 2018, we plan to acquire the USCIS data and with those data and our existing data begin to develop models and business rules to select citizenship status from the composite of sources and attach that characteristic to

each U.S. person. We expect the development and refinement of this process to continue into 2019 and to be completed by third quarter calendar year 2019.

- 23. Cross referencing Census decennial responses with numerous governmental data sets stored in various databases with differing formats and storage qualities sounds like it could be complicated. Does Census have an algorithm in place to efficiently combine and cross reference such large quantities of data coming from many different sources? What cost is associated with Alternative C, and what technology/plan does Census have in place to execute?**

Yes, the 2018 Census End-to-End test will be implementing processing steps to be able to match Census responses to administrative record information from numerous governmental data sets. The Census Bureau has in place the Person Identification Validation System to assign Protected Identification Keys to 2020 Census responses. The required technology for linking in the administrative records is therefore part of the 2020 Census technology. This incremental cost factored into the estimate for Alternative C is for integrating the citizenship variable specifically, since that variable is not currently part of the 2020 Census design. No changes are required to the production Person Identification Validation system to integrate the administrative citizenship data.

- 24. For section C-1 of the memo, when did Census do the analyses of the incorrect response rates for non-citizen answers to the long form and ACS citizenship question? Were any of the analyses published?**

The comparisons of ACS, 2000 Decennial Census longform and SSA Numident citizenship were conducted in January 2018. This analysis has not been published.

- 25. Has Census corrected the incorrect responses it found when examining non-citizen responses? If not, why not?**

In the American Community Survey (ACS), and the short form Decennial Census, we do not change self-reported answers. The Decennial Census and the ACS are based on self-response and we accept the responses provided by households as they are given. While we have procedures in place to address duplicate or fraudulent responses, we do not check the accuracy of the answers provided to the specific questions on the Census questionnaires. This is a long established process at the Census Bureau that has been thoroughly tested and in place since 1970, when the Census Bureau moved to a mail-out/respond approach to the Decennial Census.

- 26. Has the Department of Justice ever been made aware of inaccurate reporting of ACS data on citizenship, so that they may take this into consideration when using the data?**

Not exactly. The Census Bureau is in close, regular contact with the Department of Justice (DOJ) regarding their data requirements. Our counterparts at DOJ have a solid understanding of survey methodology and the quality of survey data, and they are aware of the public documentation on sampling and accuracy surrounding the ACS. However, the specific rate of accuracy regarding responses to the ACS question on citizenship has never been discussed.

**27. Why has the number of persons who cannot be linked increased from 2010 to 2016?**

There are several potential reasons a person might not be linked between the ACS and the SSA Numident and ITIN IRS tax filings. There may be insufficient personally identifiable information (PII) in the ACS response for the person to allow a search for the person in the Numident or ITIN IRS tax filings at all. There may be more than one record in the Numident or ITIN IRS tax filings that matches the person's PII. There may be a discrepancy between the PII provided to the ACS and administrative records. Or the person may not be in the Numident or ITIN IRS tax filing databases, either because the person is a citizen without an SSN, or the person is a noncitizen who has not obtained an SSN or ITIN. Very few of the unlinked cases are due to insufficient PII in the ACS or multiple matches with administrative records. The vast majority of unlinked ACS persons have sufficient PII, but fail to match any administrative records sufficiently closely.

The incidence of ACS persons with sufficient PII, but no match with administrative records increased between 2010 and 2016. One contributing factor is that the number of persons linked to ITIN IRS tax filings in 2016 was only 39 percent as large as in 2010, suggesting that either fewer of the undocumented persons in the 2016 ACS had ITINs, or more of them provided PII in the ACS that was inconsistent with their PII in IRS records.

**28. Independent of this memo, what action does Census plan to take in response to the analyses showing that non-citizens have been incorrectly responding to the citizenship question?**

The Census Bureau does not have plans to make any changes to procedures in the ACS. However, we will continue to conduct thorough evaluations and review of census and survey data. The ACS is focusing our research on the potential use of administrative records in the survey. For instance, we are exploring whether we can use IRS data on income to reduce the burden of asking questions on income on the ACS. We are concentrating initially on questions that are high burden, e.g., questions that are difficult to answer or questions that are seen as intrusive.

**29. Did Census make recommendations the last time a question was added?**

Since the short form Decennial Census was established in 2010, the only requests for new questions we have received have been for the ACS. And, in fact, requests for questions prior to 2010 were usually related to the Decennial Census Long Form. We always work

collaboratively with Federal agencies that request a new question or a change to a question. The first step is to review the data needs and the legal justification for the new question or requested changes. If, through this process, we determine that the request is justified, we work with the other agencies to test the question (cognitive testing and field testing). We also work collaboratively on the analysis of the results from the test which inform the final recommendation about whether or not to make changes or add the question.

**30. Does not answering truthfully have a separate data standard than not participating at all?**

We're not sure what you're asking here. Please clarify the question.

**31. What was the process that was used in the past to get questions added to the decennial Census or do we have something similar where a precedent was established?**

Because no new questions have been added to the Decennial Census (for nearly 20 years), the Census Bureau did not feel bound by past precedent when considering the Department of Justice's request. Rather, the Census Bureau is working with all relevant stakeholders to ensure that legal and regulatory requirements are filled and that questions will produce quality, useful information for the nation. As you are aware, that process is ongoing at your direction.

**32. Has another agency ever requested that a question be asked of the entire population in order to get block or individual level data?**

Not to our knowledge. However, it is worth pointing out that prior to 1980 the short form of the Decennial Census included more than just the 10 questions that have been on the short form since 1990.

**33. Would Census linking of its internal data sets, with other data sets from places like IRS and Homeland Security, have an impact on participation as well (i.e. privacy concerns)?**

The potential that concerns about the use of administrative records could have an impact on participation has always been a concern of ours, and it's a risk that we're managing on our risk register. We've worked closely with the privacy community throughout the decade, and we established a working group on our National Advisory Committee to explore this issue. We've also regularly briefed the Congress about our plans. At this stage in the decade there does not appear to be extensive concerns among the general public about our approach to using administrative records in the Nonresponse Operation or otherwise. We will continue to monitor this issue.

**34. Would Alternative C require any legislation? If so, what is the estimated time frame for approval of such legislation?**



No.

- 35. Census publications and old decennial surveys available on the Census website show that citizenship questions were frequently asked of the entire population in the past. Citizenship is also a question on the ACS. What was the justification provided for citizenship questions on the (A) short form, (B) long form, and (C) ACS?**

In 1940, the Census Bureau introduced the use of a short form to collect basic characteristics from all respondents, and a long form to collect more detailed questions from only a sample of respondents. Prior to 1940, census questions were asked of everyone, though in some cases only for those with certain characteristics. For example, in 1870, a citizenship question was asked, but only for respondents who were male and over the age of 21.

Since moving to the short form in 1940, we have never asked a question about citizenship on the short form.

Beginning in 2005, all the long-form questions – including a question on citizenship -- were moved to the ACS. 2010 was the first time we conducted a short-form only census. The citizenship question is included in the ACS to fulfill the data requirements of the Department of Justice, as well as many other agencies including the Equal Employment Opportunities Commission, the Department of Health and Human Services, and the Social Security Administration.



# EXHIBIT B

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## CENSUS CITIZENSHIP QUESTION

### BACKGROUND

- **NOT PUBLIC:** In 2017, Secretary of Commerce Wilbur Ross requested that the Justice Department send a letter requesting the addition of a citizenship question on the 2020 Census.
- On December 12, 2017, the Justice Department—through Art Gary, General Counsel, Justice Management Division (JMD)—sent the requested letter to the U.S. Census Bureau at the Department of Commerce. The letter “formally request[ed] that the Census Bureau reinstate on the 2020 Census questionnaire a question regarding citizenship, formerly included in the so-called ‘long form’ census.” The letter stated that citizenship data “is critical to the Department’s enforcement of Section 2 of the Voting Rights Act[.]” The letter also noted that numerous federal courts of appeals “have held that, where citizenship rates are at issue in a [Section 2] vote-dilution case, citizen voting-age population is the proper metric for determining whether a racial group could constitute a majority in a single-member district.” Finally, the letter emphasized that every “long form” questionnaire from 1970 to 2000 included a citizenship question.
- In early 2018, JMD erroneously disclosed in a FOIA response internal deliberative emails between JMD and Civil Rights Division officials.
- ProPublica subsequently ran a story that published the emails, including one email from Art Gary that stated the letter was sent “at the request of leadership, working with John [Gore].”
- There are now two pending lawsuits against the Census Bureau and the Commerce Department—one in California, and the other in New York—in which plaintiffs have sued to block the addition of the citizenship question to the 2020 Census.

### EXPECTED QUESTIONS

- The Department’s letter, signed only by a career official, to the Census Bureau was plainly disguised to be apolitical. But internal emails show that political appointees within the Department drafted the letter and that the letter itself was sent “at the request of leadership.” Who within the Department or outside the Department requested this letter?
- Including a citizenship question on the 2020 Census will generate inaccurate data, depress participation among immigrants and those who live in mixed-status households, and spread fear among the most vulnerable individuals in our society. Isn’t this request nothing more than a partisan move designed to harm minorities and benefit Republicans?

### RECOMMENDED RESPONSE

- The Department is currently defending the Census Bureau in litigation on this issue across the country. For this reason, it would not be appropriate for me to comment on the issue.

### PREPARED BY

COMPONENT: Civil Rights Division

POC & DIRECT LINE: Ben Aguiñaga, PII

---

**From:** Aguiñaga, Ben (CRT)  
**Sent:** Tuesday, June 12, 2018 10:00 AM  
**To:** Gore, John (CRT)  
**Subject:** QFR responses  
**Attachments:** 2020 Census Hearing Gore QFRs - CRT Draft.docx

Boss:

Attached is a document with draft answers. OLA generally says that less is more and the draft takes that approach. Both answers are taken almost verbatim from the transcript of your hearing. The second draft answer does not directly address the question because the question asks whether this Department agrees with a 2010 OLC opinion and whether any law compels the disclosure of confidential questionnaire responses. I don't think we want to say too much there in case the issues addressed in the OLC opinion or related issues come up later for renewed debate. So, I've just said that the Department will abide by all laws requiring confidentiality. Let me know if you have any questions. Thanks.

Ben

**J. Benjamin Aguiñaga (AH-gheen-YAH-gah)**

Chief of Staff and Counsel  
Office of the Assistant Attorney General  
Civil Rights Division  
United States Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

**PII**

**Responses to Questions for the Record**

**Mr. John M. Gore**

**Acting Assistant Attorney General**

**U.S. Department of Justice**

**Submitted June 11, 2018**

**Submitted by The Honorable Jimmy Gomez  
Committee on Oversight and Government Reform**

**Administrative Records**

On April 25, 2018, Attorney General Session testified in the Senate regarding the citizenship question that people “don’t have to answer it, really, I would think that’s a very reasonable thing, and I think concerns over it are overblown.”

To Mr. Gore:

*Is the Attorney General encouraging people not to respond to the Census, or is he saying that their responses aren’t really that important since responses are really not required?*

**RESPONSE:** It is possible that the Attorney General was referring to the fact that the Census Bureau counts incomplete census questionnaires in the total enumeration. That is, even if a person responding to a questionnaire does not answer a particular question, the Census Bureau counts the questionnaire.

**Census Confidentiality**

On January 4, 2010, the Department of Justice issued a Memorandum Opinion for the Department of Commerce<sup>1</sup> that clarifies that no provision of the PATRIOT Act can compel the Secretary of Commerce to disclose confidential census data.

To Mr. Gore:

*Is the DOJ and Attorney General Sessions still in agreement with that opinion? Is there any provision of any law that may compel Census to disclose confidential census data for law enforcement or national security purposes?*

**RESPONSE:** No one should have to fear responding to the census questionnaire or to a citizenship question, if in fact it is included. To that end, the Department is committed to abiding by all laws protecting the confidentiality and nondisclosure of such responses.

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# EXHIBIT C

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----  
4 NEW YORK IMMIGRATION COALITION, ET AL.,

5 Plaintiffs,

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

7 UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,  
8 Defendants.  
9 -----

10 Washington, D.C.

11 Wednesday, August 15, 2018

12 Deposition of:

13 DR. JOHN ABOWD

14 called for oral examination by counsel for  
15 Plaintiffs, pursuant to notice, at the office of  
16 Arnold & Porter, 601 Massachusetts Avenue NW,  
17 Washington, D.C., before KAREN LYNN JORGENSEN,  
18 RPR, CSR, CCR of Capital Reporting Company,  
19 beginning at 9:08 a.m., when were present on  
20 behalf of the respective parties:  
21  
22

1 request came from Commerce originally?

2 A I have not.

3 Q Had you asked anyone at Census -- have  
4 you spoken to anyone at Census that these requests  
5 came from Commerce essentially?

6 A Ron, Enrique and I briefly  
7 discussed -- mentioned, whatever you want to call  
8 it, the existence of those emails in the  
9 administrative record --

10 Q And what was --

11 A -- in subsequent discovery.

12 Q And what did you say?

13 A All of us were surprised.

14 MR. CASE: Okay. I'm going to hand this  
15 off. Thank you.

16 Go off the record.

17 VIDEOGRAPHER: The time is 5:12 p.m.

18 We're going off the record.

19 (Off the record.)

20 VIDEOGRAPHER: The time is 5:26 p.m.

21 We're back on the record.

22 Please proceed, Counsel.

1 EXAMINATION BY MS. FIDLER:

2 Q Good afternoon, Dr. Abowd. My name is  
3 Danielle Fidler, and I'm an assistant attorney  
4 general with the State of New York here with the  
5 State of New York versus the United States  
6 Department of Commerce, Docket  
7 Number 1:18-CV-2921.

8 I wanted to follow up on the questions  
9 about Question 31 that we were just discussing.  
10 So we were discussing Question 31 and the  
11 differences between your memo, which contained a  
12 copy of the questions that, as you understood it,  
13 Census had put together and a standalone version  
14 that was part of the administrative record that  
15 describes not needing to do any testing.

16 Do you know who wrote the revision -- the  
17 standalone revision, which as we understand it, is  
18 the later in time -- do you know who wrote that  
19 version of Question 31 saying testing wasn't  
20 necessary?

21 A I do not.

22 Q And does that version comport with your



1 view and Census's view of 31 as you attached it to  
2 your March 1st memo?

3 A So I'm operating on the assumption that  
4 the one with Bates number 9822 came from the  
5 archival files that I supplied in cooperation with  
6 the discovery requests. In which case, this would  
7 have been the last one that I was responsible for  
8 collecting content on.

9 Until today, I was unaware of any  
10 discrepancy between the one at 1286 and this one.  
11 So it's hard for me to address the providence of  
12 changes without returning to my own files to see  
13 if those changes originated in the Census Bureau.  
14 As I said, as far as I know, the one with the  
15 Bates number I cited first is the last version I  
16 worked on.

17 Q Sitting here today, is it your view that  
18 the version you're just seeing today, would you  
19 agree with that or do you think that it reflects  
20 the Census Bureau's position today?

21 MR. GARDNER: Objection. Calls for  
22 speculation.

# EXHIBIT D

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----  
4 NEW YORK IMMIGRATION COALITION, ET AL.,

5 Plaintiffs,

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

7 UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,  
8 Defendants.  
9 -----

10 Washington, D.C.

11 Monday, August 20, 2018

12 Deposition of:

13 DR. RON JARMIN

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

21 Veritext Legal Solutions

22 Mid-Atlantic Region

1250 Eye Street NW - Suite 350  
Washington, D.C. 20005

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

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

6 A Yes.

7 Q Where? What? Which of these tests?

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

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

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

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

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

1 operational reasons, not for --

2 Q So if --

3 A -- not for quality assessment reasons.

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

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

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

13 BY MS. GOLDSTEIN:

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

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

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

1 BY MS. GOLDSTEIN:

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

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

5 BY MS. GOLDSTEIN:

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

9 MS. BAILEY: Same objection.

10 THE WITNESS: Some sort of randomized  
11 experiment.

12 BY MS. GOLDSTEIN:

13 Q What would that be?

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

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

19 A Yes.

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

22 A No.

1 A No.

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

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

7 Q Does it mention testing, at all?

8 A No.

9 Q Does it mention public comment?

10 A No.

11 Q Does it mention --

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

14 Q Okay. Does it mention OMB specifically?

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

17 Q Does it mention OMB specifically?

18 A No. It does not.

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

21 A I do not.

22 Q When was the first time you saw the

1 Q Some are on paper?

2 A Yes.

3 Q Some are in person?

4 A Well, most surveys are multimode --

5 Q Okay.

6 A -- any more, so.

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

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

12 THE WITNESS: It isn't necessarily.

13 BY MS. GOLDSTEIN:

14 Q Why not?

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

17 Q What else matters?

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

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



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

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

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

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

18     BY MS. GOLDSTEIN:

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

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

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

6           A     So that -- go ahead.

7           Q     I'm sorry.

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

12                    MS. BAILEY:  Objection.  Hypothetical.

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

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

11 BY MS. GOLDSTEIN:

12 Q In the context of the ACS, correct?

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

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

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

22 THE WITNESS: Yes. We would have gotten

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

5 BY MS. GOLDSTEIN:

6 Q Why do you say that?

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

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

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

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

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

19 Q And the census --

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

1 A Uh-huh.

2 Q I'm sorry?

3 A Yes.

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

8 A I -- I don't know.

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

11 A Yes.

12 Q Anyone else?

13 A Well, members of her team.

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

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

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

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

4 Has this sort of test been run for the  
5 citizenship question?

6 A It has not, as far as I know.

7 Q And do you agree that this methodology  
8 set forth in Subparagraph G would be a way to test  
9 the impact of the citizenship question on survey  
10 response rates?

11 MS. BAILEY: Objection. Form.

12 THE WITNESS: It -- yes. It could be.

13 BY MS. GOLDSTEIN:

14 Q Do you know of any plans to test the  
15 citizenship question in this form?

16 A No, I do not.

17 Q I'll take that back. Thank you.

18 Part of your job, Dr. Jarmin, is to  
19 appoint people to advisory committees; is that  
20 correct?

21 A Yes.

22 Q And what is the role of advisory

1 I'd like to follow up on something you  
2 said earlier. I believe your testimony was that  
3 it's difficult to simulate the decennial census  
4 because it's unique. Is that a fair  
5 characterization?

6 A Correct.

7 Q Okay. But, in fact, that the  
8 Census Bureau does the multiyear testing program  
9 to prepare for the census; is that correct?

10 A That's correct.

11 Q Do you know when that testing process  
12 started?

13 A 2013.

14 Q So seven years in advance of the  
15 decennial census, correct?

16 A Correct.

17 Q And from that testing, the Census Bureau  
18 determines -- obtains various pieces of  
19 information that are useful for development of the  
20 2020 census?

21 A Correct.

22 Q For example, self-response rates?

1           A     That's one thing that --

2           Q     Okay.

3           A     So a testing self-response rate is not  
4     that indicative of a census self-response rate  
5     because of the lack of advertising and --

6           Q     But, in fact, you do do tests to  
7     determine self-response rates in preparation for  
8     the decennial census?

9           A     I don't think we did any tests whose  
10    purpose it was to determine what the self-response  
11    rate was.

12          Q     Do you also use these tests to determine  
13    or to obtain information about nonresponse  
14    follow-up procedures?

15          A     About procedures, yes.

16          Q     And about the use of administrative  
17    records?

18          A     And about -- yes.

19          Q     And about the use of data capture systems  
20    or the functionality of the those systems?

21          A     Correct.

22          Q     How about for language support



1 systems --

2 (Conference call interruption.)

3 THE WITNESS: Okay. All right. Please  
4 say the question again.

5 BY MR. TILAK:

6 Q And how about language support systems or  
7 translations services?

8 MS. BAILEY: Objection. Vague.

9 THE WITNESS: So there was some stuff  
10 done with language, yes.

11 BY MR. TILAK:

12 Q So in short, this multiyear testing  
13 program does provide meaningful information that  
14 the Census Bureau uses to prepare for the 2020  
15 census?

16 A Yes.

17 Q Did you do any tests where the sole  
18 purpose was not self-response rates but one of the  
19 items that was looked at was self-response rates?

20 MS. BAILEY: Objection. Form.

21 THE WITNESS: So we always look at the  
22 self-response rate as a matter of course.

1 A He did not.

2 Q Grandparents as caregivers?

3 A We don't -- weren't discussing that,  
4 though.

5 Q Has he ever -- has anyone from Commerce  
6 ever expressed concern about imputed data for  
7 items on the ACS that weren't on the short form?

8 MS. BAILEY: Objection. Foundation.

9 THE WITNESS: No.

10 BY MR. CASE:

11 Q In either of the meetings that you had  
12 where Secretary Ross was present, did he say that  
13 he had been interested in the question before the  
14 DOJ letter?

15 A He did not.

16 Q Did he say that the Census Department had  
17 reached out to DOJ to create that letter?

18 MS. BAILEY: Objection. Assumes facts  
19 not in evidence.

20 THE WITNESS: That the Census Department  
21 had reached out --

22 BY MR. CASE:

1 Q The Commerce Department. Sorry.

2 A No. He did not.

3 Q Do you remember the 35 questions you were  
4 asked about this morning?

5 A Uh-huh.

6 (Plaintiffs' Exhibit 38, Email, was  
7 marked.)

8 BY MR. CASE:

9 Q I'm going to show you Number 38, if I  
10 may. This is an email Bates stamp 9190. Do you  
11 recall this email?

12 A Not off the top of my head, no.

13 Q I'm -- who is Sahra or Sahra Park-Su?

14 A So she's -- works at the Department.

15 Q And did you have communications with  
16 Ms. Park-Su regarding the 35 questions?

17 A I imagine she would have been in the  
18 chain on this, yeah.

19 Q And does this question at the bottom of  
20 the email look familiar?

21 A Yeah.

22 Q What is it?

# EXHIBIT E

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----  
4 NEW YORK IMMIGRATION COALITION, ET AL.,

5 Plaintiffs,

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

7 UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,  
8 Defendants.  
9 -----

10 Washington, D.C.

11 Tuesday, August 28, 2018

12 Deposition of:

13 KAREN DUNN KELLEY

14 called for oral examination by counsel for  
15 Plaintiffs, pursuant to notice, at the office of  
16 Arnold & Porter, 601 Massachusetts Avenue NW,  
17 Washington, D.C., before KAREN LYNN JORGENSEN,  
18 RPR, CSR, CCR of Capital Reporting Company,  
19 beginning at 9:04 a.m., when were present on  
20 behalf of the respective parties:

21 Veritext Legal Solutions

22 Mid-Atlantic Region

1250 Eye Street NW - Suite 350

Washington, D.C. 20005

1 A Who are you speaking to, sir?

2 Q Well, let me ask, first, Secretary Ross?

3 A Not that I recall.

4 Q What about Mr. Comstock?

5 A Not -- he could have. Could not have. I  
6 can't -- what I have said is that I knew the  
7 conversations were going on about the citizenship  
8 question. If somebody briefed me, I don't know  
9 who it was, when it was. It was not on the top of  
10 my radar. It was a back-burner issue that I knew  
11 at some point would need to possibly be addressed  
12 from the -- again, the work I was doing, which was  
13 the budgetary work, the operational/technical  
14 work, as well as the leadership work.

15 Q Were you surprised when the letter came  
16 over in December 2017, that it was sort of out of  
17 the blue?

18 A As we got closer to the letter coming,  
19 there was a discussion that we thought we were  
20 going to get a letter, and then a letter came,  
21 and --

22 Q Okay. Who -- who had that discussion

1           Q    Let me just review a couple things to see  
2   if it refreshes your recollection.

3                    You knew the Secretary was interested in  
4   reviewing -- adding a citizenship question at  
5   least by the summer of 2017, correct?

6                   MR. GARDNER: Did you say summer or  
7   December?

8                   MR. GROSSI: Summer.

9                   MR. GARDNER: Summer. Objection.

10                  THE WITNESS: Oh, summer. I thought you  
11   said December.

12                  MR. GARDNER: I thought you did, too.  
13   You're saying summer? Mischaracterizes the  
14   witness's testimony.

15   BY MR. GROSSI:

16                  Q    We talked earlier that by the summertime,  
17   you knew that the Secretary was interested in  
18   adding a question to the census or at least  
19   considering that, right?

20                  MR. GARDNER: Objection.  
21   Mischaracterizes the witness's testimony.

22                  THE WITNESS: I have said that he was

1 interested in considering the question.

2 That -- that's two very different things that you  
3 said, so thank you for clarifying.

4 BY MR. GROSSI:

5 Q Okay. He was, at least, considering the  
6 question as of the summer, correct?

7 A Yeah.

8 Q And you know, now, certainly, that in  
9 August, September, October, November, he and  
10 Mr. Comstock attempted to get the  
11 Department of Justice to request that, correct?

12 MR. GARDNER: Objection. Lack of  
13 foundation.

14 BY MR. GROSSI:

15 Q You know that for a fact?

16 MR. GARDNER: Objection. Lack of  
17 foundation.

18 THE WITNESS: That's what you've been  
19 telling me. I'm not --

20 BY MR. GROSSI:

21 Q You have no knowledge of whether they  
22 were requesting --



# **EXHIBIT F**

Page 1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----  
NEW YORK IMMIGRATION COALITION, ET AL.,

4 Plaintiffs,

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

6 UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,  
7 Defendants.

8 -----  
9 Washington, D.C.

10 Wednesday, August 29, 2018

11 Deposition of:

12 DR. JOHN ABOWD

13 called for oral examination by counsel for  
14 Plaintiffs, pursuant to notice, at the office of  
15 Arnold & Porter, 601 Massachusetts Avenue NW,  
16 Washington, D.C., before KAREN LYNN JORGENSEN,  
17 RPR, CSR, CCR of Capital Reporting Company,  
18 beginning at 9:06 a.m., when were present on  
19 behalf of the respective parties:

20 Veritext Legal Solutions

Mid-Atlantic Region

1250 Eye Street NW - Suite 350

21 Washington, D.C. 20005  
22

1 testing has not been conducted without a nativity  
2 question preceding the citizenship question.

3 BY MR. HO:

4 Q So you're not aware of any testing -- any  
5 cognitive testing of the citizenship question  
6 without a preceding question about nativity; is  
7 that right, Dr. --

8 A I'm not aware of -- sorry. I'm not aware  
9 of any, no.

10 Q Are you aware of any prior census in  
11 which cognitive testing of the full short form  
12 questionnaire had not been conducted before using  
13 that questionnaire for the actual census?

14 A I am not aware of any -- well, let me be  
15 careful.

16 Many censuses were conducted without  
17 cognitive testing, the equivalence of cognitive  
18 testing existed for much of the 20th century. In  
19 preparing for this deposition, I reviewed the  
20 generic answer to the question, how was this  
21 tested, and in some cases, that question elicited  
22 some cognitive testing, for example, the

1 field period.

2 BY MR. HO:

3 Q Thank you. And this would have been the  
4 only testing of the 2020 decennial questionnaire  
5 with a citizenship question in it, correct?

6 A This is the only field testing with and  
7 without citizenship question, directly analyzing  
8 the citizenship question that we have considered  
9 at the Census Bureau.

10 I also verified that the 2010 census  
11 questionnaire had full cognitive and field  
12 testing. That the 2020 questionnaire without the  
13 citizenship question had -- so I asked him the  
14 same way you asked me, was adequately, cognitively  
15 tested; yes.

16 Q I'm sorry. Who did you ask whether or  
17 not?

18 A I asked my staff -- the same group that I  
19 had been asking generally about the testing, I  
20 specifically asked about the cognitive testing for  
21 the 2020 questionnaire, with and without the  
22 citizenship question, and their answer was that it

1 was adequately tested with the citizen- -- without  
2 the citizenship question, but not adequately  
3 tested with the citizenship question, cognitive  
4 testing.

5 Q Thank you.

6 A Okay.

7 And, thirdly, in this table, Exhibit 12,  
8 the third panel, the CAPI response rate, I  
9 confirmed, so I can now say the way the tract was  
10 put into deciles was based on the five-year  
11 American Community Survey for the middle five  
12 years of the table, so 2011 through 2015. That  
13 the CAPI response rate is just the CAPI response  
14 rate in the nonresponse follow-up system, okay.

15 I think those were all the things we had  
16 unresolved. If you think there were others -- we  
17 went over our notes, but I think I've answered the  
18 questions that that were unresolved.

19 MR. HO: I don't have any others right  
20 now, so I'm going to pass you along to one of the  
21 other lawyers for one of the other plaintiff  
22 groups, subject, of course, to the issue that I've

1 A Yes.

2 Q Now, for -- have any of the tests to date  
3 in the 2020 census testing program, have any of  
4 them included a citizenship question?

5 A No.

6 Q And so none of these tests, to the extent  
7 that they were used to project staffing levels or  
8 to refine the projections, would have accounted  
9 for the citizenship question?

10 A Directly, no.

11 Q Would they have done so indirectly?

12 A Well, we used -- we didn't use evidence  
13 from a test, but we used evidence similar to the  
14 evidence generated in the test to make indirect  
15 inferences. But directly, no.

16 Q What was -- what were the sources you  
17 used for the indirect inferences?

18 A These are the experiments that I  
19 described -- the natural experiments that I  
20 described in my fact witness testimony.

21 Do you want to go through them again?

22 Q Are those the ones discussed in your

1 January 19th memo?

2 A The ones that existed at that point in  
3 time are discussed in the memo, yes.

4 Q And since then, are there any other ones  
5 that have been done?

6 A There are more extensive ones that have  
7 been done in the full version of the technical  
8 paper that was developed after the memo was  
9 written.

10 Q Is that the document that was just  
11 produced to us yesterday?

12 A Yes.

13 Q And besides those two sources, are there  
14 any other -- let me rephrase.

15 Besides the sources discussed in those  
16 two documents, are there any other sources that  
17 you used to develop indirect inferences?

18 A They haven't been used yet, but we intend  
19 to examine the field operation data from the  
20 end-to-end test, because it occurred as the  
21 information about the citizenship question was  
22 becoming public. It's not clear how useful it

1 would be, but that would be another form of  
2 indirect inference. There was no citizenship  
3 question, but there were environmental factors  
4 that intervene.

5 Q Besides that, are there any other  
6 sources?

7 A None that I'm aware of.

8 Sorry. From our test operations.

9 Q And so to the extent that any tests  
10 conducted to date have been used to project the  
11 number of offices that the Census Bureau will open  
12 in 2020, those projections would not have  
13 accounted from the citizenship question, correct?

14 A In general, that's correct, yes.

15 Q And to the extent the tests were used to  
16 test the adequacy or amount of enumerator  
17 training, they would not have accounted for the  
18 citizenship question, correct?

19 A That's correct.

20 Q And the same question with respect to the  
21 testing of NRFU protocols. To the extent that  
22 testing has been used to test the adequacy of



1 those protocols, they would not have accounted for  
2 the citizenship question, correct?

3 A That's correct.

4 Q And the same question with respect to the  
5 census questionnaire assistance. To the extent  
6 the testing was used to develop a projection about  
7 call loads for peak operations, those projections  
8 would not account for the citizenship question,  
9 correct?

10 A That's correct.

11 Q In light of the Secretary's decision to  
12 add the citizenship question, will the  
13 Census Bureau conduct any testing on the impact of  
14 that question on staffing levels?

15 MR. EHRLICH: Objection. Form.

16 THE WITNESS: It's hard to imagine what  
17 kind of testing we might do, other than on a  
18 relatively small scale. However, we are working  
19 closely with the integrated communication  
20 campaign, which the Secretary has recommended  
21 increasing the budget to 500 million. They are  
22 developing messaging and other tools that we fully

1 citizenship question may make modifications.

2 Those modifications will have to be made  
3 relatively soon. The field operations actually  
4 start with address canvass and address canvases  
5 start next summer. So we don't have a lot of  
6 time. But the final forms of the training  
7 materials and the final onboarding of those  
8 activities hasn't happened. So we do have the  
9 scope to make modifications, and we are intending  
10 to analyze the data from the end-to-end test and  
11 other data as they became available to us in order  
12 to optimize that.

13 Q And the end-to-end didn't test  
14 citizenship, right?

15 A There was no citizenship question on the  
16 form.

17 Q And these additional data you mentioned  
18 with respect to citizenship, those are possible  
19 small scale tests that the Census might do, right?

20 A What I said was that the focus groups  
21 from CBAMS were small scale tests and the in place  
22 testing of instruments would necessarily be small

1 when we evaluate it whether we were successful.

2 Q Do you agree that adding the citizenship  
3 question will make it more difficult to achieve  
4 that goal of reducing undercount for hard-to-count  
5 populations?

6 MR. EHRLICH: Objection. Form.

7 THE WITNESS: It will make it more  
8 difficult to correct -- to collect accurate data  
9 on the enumeration, which will complicate the  
10 assessment of net undercount, because the  
11 indicators, the right-hand side variables, won't  
12 be as accurate as they are if you get more  
13 self-responses.

14 MR. TALIK: We can go off record.

15 VIDEOGRAPHER: We're going off the  
16 record. The time on the video is 4:19 p.m.

17 (Off the record.)

18 VIDEOGRAPHER: We're back on the record.  
19 The time on the video is 4:20 p.m.

20 EXAMINATION BY MR. ADAMS:

21 Q Good afternoon, Dr. Abowd. My name is  
22 Rory Adams. I represent the City of San Jose and

# EXHIBIT G

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----  
4 NEW YORK IMMIGRATION COALITION, ET AL.,

5 Plaintiffs,

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

7 UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,

8 Defendants.  
9 -----

10 Washington, D.C.

11 Thursday, August 30, 2018

12 Deposition of:

13 EARL COMSTOCK

14 called for oral examination by counsel for  
15 Plaintiffs, pursuant to notice, at the office of  
16 Arnold & Porter, 601 Massachusetts Avenue NW,  
17 Washington, D.C., before KAREN LYNN JORGENSEN,  
18 RPR, CSR, CCR of Capital Reporting Company,  
19 beginning at 9:08 a.m., when were present on  
20 behalf of the respective parties:  
21  
22

1 we don't ask the question.

2 Q And you testified earlier that the  
3 Secretary is the first person who raised it to  
4 you?

5 A In my employment at the Department of  
6 Commerce, yes.

7 Q Do you recall discussing it before you  
8 worked at the Commerce Department?

9 A Probably sometime in the last 30-odd  
10 years, I'm in -- you know, in political science  
11 and politics, so I'm sure I discussed at.

12 Q But the first time in 2017 that you  
13 recall considering this issue is when the  
14 Secretary raised it with you?

15 A Correct.

16 Q And this memo says the Secretary began  
17 considering it soon after his appointment?

18 A Correct.

19 Q And his appointment was February 28th  
20 we've established --

21 A That's correct.

22 Q -- of 2017?

1 a citizenship question could be warranted?

2 A Again, my formulation of a -- of a  
3 decision that it could be warranted is largely  
4 based on common sense.

5 Q Okay. I just want to make sure that I  
6 understand. That as to the part of your answer  
7 that related to the practices of other countries,  
8 in the spring of 2017, you formed that view by  
9 Googling it?

10 A I may have asked if other countries did  
11 it or I may have gotten online and looked. I  
12 don't recall.

13 Q Who would you have asked if you asked?

14 A I likely would have asked somebody from  
15 Census or I might have asked David Langdon.

16 Q And if you asked, would that be reflected  
17 in your -- in your email or your memo somewhere?

18 A If it was, you could have found the  
19 email. So I, obviously, did not send an email if  
20 I asked that question.

21 Q Okay. The --

22 MR. GARDNER: Matt, I'm sorry. I didn't

1           A     That part of the process, yes.

2           Q     And that email says we need to work with  
3 Justice to get them to request that citizenship be  
4 added back as a census question; is that right?

5           A     That's right.

6           Q     Why would you say you needed to work with  
7 the Justice Department to get them to request that  
8 citizenship be added back?

9           A     Because based on a very preliminary  
10 review, they appeared to be the most likely  
11 government body that would have a specific need  
12 for the information that would support adding a  
13 citizenship question to the decennial census.

14          Q     Who conducted that preliminary review?

15          A     We were told by the Census Bureau that  
16 the Justice Department was the person that had  
17 requested the citizenship question on the ACS and  
18 that they utilized the ACS data for Voting Rights  
19 Act information.

20          Q     Who in the Census Bureau told you that?

21          A     I couldn't tell you.

22          Q     And why did you need a request from



1 Justice?

2 A Again, based on the preliminary review,  
3 the understanding we had was questions are added,  
4 based on requests from a government agency. There  
5 is such a thing as the Paperwork Reduction Act  
6 where you have to justify to OMB why do I need  
7 this information? That has to get cleared. So  
8 there are certain hurdles you have to get through.  
9 So if at the end of the day the Secretary decided  
10 to pursue this question, we would need to clear  
11 certain legal thresholds.

12 Q Why not just tell the Census Bureau to  
13 add the citizenship question and say the Secretary  
14 wanted it?

15 A Because I'm not sure that that would be  
16 the process they would necessarily agree to  
17 follow.

18 Q So you had to have it come from DOJ in  
19 order for the Census Bureau to agree to follow it?

20 A Again, that was a preliminary conclusion  
21 based on a cursory analysis.

22 Q Your email then says, "We have the court

1       there's -- what their explanation would be, but  
2       they were obviously not our first choice.

3           Q     So you were looking for an agency to make  
4       this ask?

5           A     Again, my understanding of the process,  
6       based on the research I've been able to do, and  
7       consequently was advising the Secretary was an  
8       agency needed to make the request; therefore, you  
9       have to find an agency that would have a reason to  
10      be using this information. And Justice,  
11      obviously, was the primary recipient of the CVAP  
12      data from the ACS, so they were the logical place  
13      to start. Justice then says go to  
14      Homeland Security, and I say, okay, maybe there's  
15      something about Homeland Security that I don't  
16      know about that might justify this data. So you  
17      follow up on a call, get more information, informs  
18      your decision, you might change it.

19          Q     And so my question was: So you were  
20      looking for an agency to make this ask and --

21          A     Correct. In order to implement the  
22      process that had been outlined to us, you needed

1 was that?

2 A A call from the Secretary to talk to the  
3 Attorney General about whether or not Justice  
4 would be interested in a citizenship question.

5 Q And why was the Secretary talking to the  
6 Attorney General about whether or not Justice  
7 would be interested in the citizenship question?

8 A Again, if -- if the -- if the  
9 Justice Department was not going to request the  
10 question, had no use for the information, then  
11 that would probably put an end to the citizenship  
12 question.

13 Q And the Secretary wanted the citizenship  
14 question?

15 A I think he felt -- well, I don't know  
16 what he felt. Yes. He was continuing to explore  
17 that possibility.

18 MS. BOUTIN: I'm sorry. Can you speak  
19 up?

20 THE WITNESS: I don't know what he felt,  
21 but he was continuing to explore the possibility.

22 BY MR. COLANGELO:

1           Q    All right. And this is where she asks  
2   you -- withdraw this. Isn't what I want --

3                   Let me direct your attention to Lines 2  
4   through 5, okay.

5           A    All right. Let me read the context of  
6   which Lines 2 through 5 appear.

7           Q    Let me ask your question and then you can  
8   read whatever you need.

9           A    All right. Very good.

10          Q    On Lines 2 through 5, Ms. Norton asked  
11   you, "My question to the two of you" -- and you  
12   were there with Mr. Jarmin; is that right?

13          A    Correct.

14          Q    She says, "My question to the two of you  
15   is: Why did this question, which was dropped for  
16   70 years, suddenly appear on the decennial census?  
17   What was the point?"

18                   And then you answered, "Thank you very  
19   much, Congresswoman, for the question. We  
20   received a request from the Department of Justice  
21   for this, and their rationale was that the level  
22   of the information that they needed to enforce the

1 Voting Rights Act was not available."

2 That's the testimony you gave, correct?

3 A Again, this is not the official  
4 transcript, but presuming your person transcribed  
5 this correctly, that appears to be what I said.

6 Q And this squares with your memory of what  
7 you said, right?

8 A Correct.

9 Q And when she says, why did this question  
10 get added, and you say, we received a request from  
11 the Department of Justice, that's not the whole  
12 truth; is it?

13 A That's a -- that's a factual statement.

14 Q It's a factual statement that you  
15 received a request from Department of Justice,  
16 right?

17 A Correct.

18 Q But the reason the Department of Justice  
19 made the request is because you guys at the  
20 Department of Commerce put them up to it; isn't  
21 that right?

22 A I don't agree with that characterization.

1           A     Okay.

2           Q     Didn't you say to the  
3     Department of Justice when you were talking to  
4     them, in words or substance, we would appreciate  
5     it if you would ask us to include a citizenship  
6     question?

7           A     I never made such a request.

8           Q     And I take it, based on your prior  
9     testimony, you don't know what conversation  
10    occurred between the Secretary and the Attorney  
11    General?

12          A     That's correct.

13          Q     Did you understand that Ms. Teramoto was  
14    on that call between the Secretary and the  
15    Attorney General?

16          A     I don't know who was on the call.

17          Q     In any case, however we word it, you  
18    didn't tell Representative Norton when she asked  
19    why is this question being added, that you had  
20    gone to the Department of Justice and suggested  
21    that this might be something they'd be interested  
22    in?

1 A That's correct.

2 Q Why is that?

3 A Again, because until the department makes  
4 its independent decision to request this  
5 information, that was the -- there was no question  
6 that was going to be added.

7 Q When Representative Norton says, why is  
8 the question being added? Don't you think it's  
9 relevant that the Secretary of Commerce wanted  
10 this question added independent of the  
11 Department of Justice's request?

12 MR. GARDNER: Objection. Form.

13 THE WITNESS: Again, now --

14 MR. GARDNER: What's your -- withdrawn.

15 MR. GERSCH: What's your objection?

16 MR. GARDNER: I didn't understand that  
17 question. Is it relevant to Secretary -- or I'm  
18 sorry -- Representatives Norton Holmes question  
19 that the Secretary had requested DOJ to ask? I  
20 didn't even --

21 MR. GERSCH: I got it.

22 BY MR. GERSCH:

1 would be more appropriately handled by the  
2 Department of Justice, you said that the  
3 interaction ceased; is that correct?

4 A Well --

5 Q From you?

6 A My efforts at that point to track down  
7 somebody ceased because they had run into a dead  
8 end. I mean, our initial conclusion was that  
9 Department of Justice was the right place to go.  
10 They seemed occupied on other matters, so they  
11 referred us to DHS. DHS referred us back, so now  
12 I'm back to where I started.

13 Q So once you were referred back to DOJ,  
14 you didn't ask another follow-up as to who in the  
15 voting section would be more appropriate to talk  
16 about this particular issue?

17 A Again, I was working on literally dozens  
18 of issues that consumed a lot of time. And so I  
19 had put the time into it that I could afford to  
20 put into it and had come up empty. So I reported  
21 that to my boss, and basically, said if absent  
22 some instruction from higher up, it appears that



# EXHIBIT H

Dr. John M. Abowd , Ph.D.

Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

NEW YORK IMMIGRATION :  
COALITION, et al., :

Plaintiffs, :

v. :

UNITED STATES DEPARTMENT :  
OF COMMERCE, et al., :

Defendants. :

- - - - -x

Friday, October 12, 2018  
Washington, D.C.

Videotaped Deposition of:

JOHN M. ABOWD, Ph.D.,  
called for oral examination by counsel for the  
Plaintiffs, pursuant to notice, at the law offices of  
Arnold & Porter Kaye Scholer, LLP, 601 Massachusetts  
Avenue, Northwest, Washington, D.C. 20001-3743,  
before Christina S. Hotsko, RPR, CRR, of Veritext  
Legal Solutions, a Notary Public in and for the  
District of Columbia, beginning at 9:06 a.m., when  
were present on behalf of the respective parties:

Dr. John M. Abowd , Ph.D.

Page 288

1     increase the net undercount or increase  
2     differential net undercounts for identifiable  
3     subpopulations?

4             MS. WELLS: Object to the form.

5             THE WITNESS: Because we believe the  
6     qualitative analysis that we've already produced  
7     is sufficient to justify our recommendation not to  
8     ask the question.

9     BY MR. FREEDMAN:

10            Q. Has anybody within the Census Bureau  
11     proposed doing that additional analysis to produce  
12     credible qualitative evidence that the addition of  
13     a citizenship question in the 2020 census will  
14     increase the net undercount or increase the  
15     differential net undercounts for identifiable  
16     subpopulations?

17            A. Yes.

18            Q. Who?

19            A. Me.

20            Q. And what happened?

21            A. Well, I had to do a feasibility study by  
22     discussing it with the experts and determining

Dr. John M. Abowd, Ph.D.

Page 289

1 whether they had artifacts that might be useful  
2 for that or, if not, whether the methods that we  
3 are experienced in implementing for dual system  
4 estimation could be used for that.

5 I consulted internal experts, including  
6 the person I consider to be the world's biggest  
7 expert on this, and they didn't think that we  
8 could do it.

9 Q. Is that still an open question, whether  
10 you can do it?

11 A. It's not an open question as to whether I  
12 should devote staff research time to doing it.  
13 I'd say it's an open question as to whether the  
14 coverage measurement program could be used for  
15 that purpose. Yes.

16 Q. So whose decision was it not to undertake  
17 any analysis to see if the --

18 A. So we don't make decisions like that,  
19 like chain of command on things like that. It was  
20 within my scope of authority to assemble the team  
21 to do that. I would have had to pull most of them  
22 off their current 2020 operations and divert them

Dr. John M. Abowd , Ph.D.

Page 290

1 from other research projects that are directly  
2 related to other interests.

3 And as I've said, we didn't believe that  
4 credible quantitative information about net  
5 undercounts was necessary for our recommendation  
6 to the Secretary or to defend our current  
7 mitigation.

8 All of the components are going to be  
9 affected. And they could drive the net  
10 undercounts way up or they could drive them way  
11 down. And I wish that I had a better assessment  
12 of that, but it is my expert opinion that the  
13 resources required to do that are better deployed  
14 in making the 2020 census work.

15 Q. In terms of the OMB clearance package,  
16 who is responsible for approving the package to  
17 send to OMB at the Census Bureau?

18 A. So the responsibility for preparing it  
19 lies with the program area that wants to do the  
20 activity. So the responsibility for preparing it  
21 lies with the associate director for decennial  
22 census.

# EXHIBIT I

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x  
NEW YORK IMMIGRATION :  
COALITION, et al., :  
:  
Plaintiffs, :  
:  
v. :  
:  
Case No. :  
1:18-CF-05025-JMF :  
UNITED STATES DEPARTMENT :  
OF COMMERCE, et al., :  
:  
Defendants. :  
- - - - -x

Friday, October 16, 2018  
Washington, D.C.

Videotaped Deposition of:

JOHN GORE,  
called for oral examination by counsel for the  
Plaintiffs, pursuant to notice, at the law offices of  
Covington & Burling, LLP, One City Center, 850 Tenth  
Street, Northwest, Washington, D.C. 20001-4956,  
before Christina S. Hotsko, RPR, CRR, of Veritext  
Legal Solutions, a Notary Public in and for the  
District of Columbia, beginning at 9:05 a.m., when  
were present on behalf of the respective parties:

1 A. That's -- more or less. Yeah.

2 Q. Prior to coming to the Department of  
3 Justice, with respect to all of the cases that you  
4 litigated under Section 2 of the Voting Rights  
5 Act, you represented defendants, correct?

6 A. That's correct.

7 Q. In all of your experience representing  
8 defendants in cases under Section 2 of the Voting  
9 Rights Act, you never took the position that the  
10 plaintiffs block-level CVAP data was insufficient  
11 to establish the first Gingles precondition  
12 because it was a statistical estimate, correct?

13 A. When I was in private practice, I was  
14 representing a client, so my clients took various  
15 positions. And as a lawyer, I pursued those  
16 positions on behalf of clients in court. I can't  
17 recall an instance where a client of mine took  
18 that position.

19 Q. And in all of your experience litigating  
20 cases under Section 2 of the Voting Rights Act,  
21 you're not aware of, in any of your cases, a  
22 situation where a court held that block-level CVAP



1 data was insufficient to satisfy the first Gingles  
2 precondition because it was a statistical  
3 estimate, correct?

4 A. You're talking about cases I actually was  
5 involved in?

6 Q. That's correct.

7 A. As a litigant or as attorney?

8 Q. As an attorney.

9 A. As an attorney. No, I'm not aware of any  
10 such case.

11 Q. Do you have any experience drawing  
12 districts for purposes of complying with the first  
13 Gingles precondition?

14 A. That's a -- that's a fair question. In  
15 one of our cases, we did have a case that went to  
16 a remedial phase. I wouldn't say I was involved  
17 in drawing the district, but I was certainly  
18 involved in reviewing various remedial proposals  
19 and other proposals that were submitted to the  
20 court in the course of litigation.

21 Q. So let me clarify my question. My  
22 question is about the technical aspects of

1 actually getting the census data, taking the  
2 mapping software, and drawing a district.

3 You don't have any experience doing that,  
4 correct?

5 A. That's correct. I've never sat in front  
6 of a computer with Maptitude and drawn a district.

7 Q. Okay. You don't have any experience --  
8 so that would mean you don't have any experience  
9 drawing districts using ACS data, correct?

10 A. That's correct.

11 Q. And you don't have any experience taking  
12 census block-group level data and performing an  
13 estimation procedure to produce block-level data,  
14 correct?

15 A. No, I don't have that experience.

16 Q. You're currently acting assistant  
17 attorney general for civil rights at the U.S.  
18 Department of Justice, correct?

19 A. Correct.

20 Q. And when did you become the acting AAG  
21 for civil rights?

22 A. July 28th, 2018.

1 issue of reinstating a citizenship question on the  
2 census questionnaire. Beyond that, I can't  
3 answer.

4 BY MR. HO:

5 Q. What was your understanding of who  
6 initiated those conversations?

7 A. My understanding was that those  
8 conversations were initiated by the Department of  
9 Commerce.

10 Q. Those initial conversations that are  
11 referred to in this memo, your testimony is that,  
12 to the best of your knowledge, those conversations  
13 were not initiated by the Department of Justice,  
14 correct?

15 A. Again, I wasn't a party to those  
16 conversations, but that's been my working  
17 understanding.

18 Q. And your working understanding is that  
19 the Department of Justice did not reach out to the  
20 Department of Commerce to initiate those  
21 conversations for the purposes of obtaining better  
22 data to enforce the Voting Rights Act, correct?

1 MR. GARDNER: Objection. Lack of  
2 foundation.

3 THE WITNESS: Again, I wasn't a party to  
4 those conversations, but that's been my working  
5 understanding.

6 BY MR. HO:

7 Q. The second paragraph in this memo reads,  
8 "I spoke several times with James McHenry by phone  
9 and, after considering the matter further, James  
10 said that Justice staff did not want to raise the  
11 question, given the difficulties Justice was  
12 encountering in the press at the time, the whole  
13 Comey matter. James directed me to Gene Hamilton  
14 at the Department of Homeland Security."

15 So were you aware, before I read that,  
16 that as of September 8th, 2017, Justice staff did  
17 not want to raise the citizenship question?

18 MR. GARDNER: Objection. Lack of  
19 foundation.

20 THE WITNESS: Before you read that, yes,  
21 I was aware of that.

22

1 BY MR. HO:

2 Q. Okay. When did you become aware -- so --

3 I'm sorry. Let me start that question.

4 So your understanding is that, as of  
5 September 8th, 2017, Justice staff did not want to  
6 raise the citizenship question, correct?

7 A. Yes, that's my understanding, although it  
8 wasn't my understanding on September 8th; it was  
9 an understanding that I acquired later.

10 Q. When did you acquire the understanding  
11 that, as of September 8th, Justice staff did not  
12 want to raise the issue of a citizenship question?

13 A. Again, I think it was along the same  
14 timeline that I learned that these conversations  
15 had taken place, the conversations referenced in  
16 the first paragraph and the second paragraph  
17 involving Mr. McHenry. And I believe I became  
18 aware of those sometime after September 8th and  
19 before the letter was sent from the Department of  
20 Justice.

21 Q. How did you become aware of the fact  
22 that, as of September 8th, 2017, the Department of

1 BY MR. HO:

2 Q. When did you first become involved in  
3 deliberations about whether or not to request a  
4 citizenship question on the decennial census  
5 questionnaire?

6 A. I first became involved in either late  
7 August or early September of 2017.

8 Q. You can't get more precise than late  
9 August or early September?

10 A. Well, I think it was either a day or two  
11 before Labor Day in 20 -- the Labor Day weekend in  
12 2017 which I think that year may have fallen in  
13 late August.

14 Q. So as of September 8th, 2017, the date of  
15 Mr. Comstock's memo, your best recollection is  
16 that, as of that date, you were already involved  
17 in deliberations over whether or not to include a  
18 -- to request a citizenship question for the 2020  
19 census questionnaire?

20 A. That is correct. And I don't know --  
21 Mr. Comstock's memo is dated September 8th. He  
22 doesn't give any dates for any of these

1     conversations, so I don't know if this memo was  
2     contemporaneous to conversations or related back  
3     to prior conversations he'd had.

4             But yes, that's my recollection, that, as  
5     of September 8th, I would have been involved in  
6     those deliberations.

7             Q.   How did you become involved in  
8     deliberations over whether or not to request the a  
9     citizenship question be included on the  
10    2020 census questionnaire?

11            MR. GARDNER:  Objection.

12            To the extent that that answer would  
13    cause you to reveal information subject to  
14    deliberative process privilege, I instruct you not  
15    to answer.  To the extent you can answer that  
16    question without divulging such information, you  
17    may do so.

18            THE WITNESS:  I became involved through a  
19    conversation I had with two individuals at the  
20    Department of Justice.

21    BY MR. HO:

22            Q.   Which two individuals at the Department

1 of Justice?

2 A. The attorney general and Mary Blanche  
3 Hankey.

4 Q. Roughly when did your conversations with  
5 Mary Blanche Hankey and the attorney general  
6 occur?

7 MR. GARDNER: Objection. Compound.

8 THE WITNESS: It was the day or two  
9 before the Labor Day weekend. The reason I  
10 remember that is that the attorney general is a  
11 college football fan, and he's a fan of the Auburn  
12 Tigers, so I ended the call with the cry for War  
13 Eagle, since the Auburn Tigers were playing their  
14 first game of the season that weekend.

15 BY MR. HO:

16 Q. What was communicated to you during that  
17 conversation with Attorney General Sessions?

18 MR. GARDNER: Objection. Calls for  
19 information subject to deliberative process  
20 privilege.

21 I instruct you not to answer.

22 THE WITNESS: Consistent with that



1 Yes.

2 Q. Your working understanding is not that  
3 the attorney general initiated a conversation with  
4 the Secretary of Commerce about the citizenship  
5 question, correct?

6 A. That's correct.

7 Q. You responded to Mr. Gary's e-mail by  
8 asking him to give you a call. Did you have a  
9 conversation with Mr. Gary?

10 A. I don't know. I don't know if I had a  
11 conversation with him with specific reference to  
12 this e-mail. I can't -- I don't recall that.

13 Q. After receiving this e-mail, did you  
14 learn more from Mr. Gary about what he was  
15 referring to when he talked about concerns that  
16 the Commerce Secretary had?

17 A. I don't recall -- as I said, I don't  
18 recall discussing this with Mr. Gary. Obviously,  
19 we had some short e-mail correspondence, as this  
20 document lays out, but that's all I recall about  
21 it at this time.

22 Q. Mr. Gary said in this e-mail that he

1 from whom you received input on the letter was  
2 from Mr. Herren, correct?

3 A. That's correct.

4 Q. After that period of early November  
5 of 2017 when you had drafted the initial draft of  
6 that letter, Mr. Herren gave you some edits,  
7 correct?

8 A. That's correct.

9 Q. After that time, did you receive any  
10 further edits from Mr. Herren to the draft letter?

11 A. I don't recall one way or the other.

12 Q. So you have no recollection of receiving  
13 input from career civil rights division staff on  
14 the letter requesting a citizenship question other  
15 than that one occasion in early November around  
16 the time of the first draft from Mr. Herren,  
17 correct?

18 A. I believe that's correct. Yeah.

19 Q. You continued to revise the letter after  
20 early November of 2017 with input from different  
21 people. But after that first round of edits from  
22 Mr. Herren, you received no subsequent edits from

1           A.    Correct.

2           Q.    And -- so it would be accurate to say  
3   that even when there was a citizenship question on  
4   the census long form, the Department of Justice,  
5   when it was using citizenship data for purposes of  
6   VRA enforcement, it was using data that were  
7   statistical estimates based on a sample, correct?

8           A.    I believe that's correct, if I follow  
9   your question.

10          Q.    So it's accurate to say that the  
11   Department of Justice, for as long as it's been  
12   enforcing the Voting Rights Act, when it's needed  
13   citizenship data, it has always relied on  
14   statistical estimates rather than hard count data,  
15   correct?

16               MR. GARDNER:  Objection.  Lack of  
17   foundation.

18               THE WITNESS:  To the best of my  
19   knowledge, I think that's correct.

20   BY MR. HO:

21          Q.    You're not aware of any period of time in  
22   which the Department of Justice had access to hard

1 statistical estimates when it was actually  
2 collecting the responses to the long form  
3 questionnaire.

4 Q. Thank you.

5 The letter doesn't mention that the  
6 Department of Justice has always relied on  
7 statistical estimates of citizenship with margins  
8 of error for purposes of VRA enforcement, does it?

9 A. I believe that's correct. Again, the  
10 letter speaks for itself.

11 Q. Okay. You're not aware of a single filed  
12 case by the Department of Justice where the  
13 Department of Justice was unable to succeed on a  
14 VRA claim because of the fact that the CVAP data  
15 on which DOJ was relying was a statistical  
16 estimate with a margin of error that increases as  
17 the geographic area decreases, correct?

18 A. I am not aware of any such filed case.

19 Q. You're not aware of any case where a  
20 plaintiff was unable to succeed on a VRA claim  
21 because of the fact the five-year ACS citizenship  
22 data have a margin of error associated with them,

1 correct?

2 A. Five-year estimates? That's correct.

3 Q. Okay. You're not aware of any case where  
4 plaintiffs, other than DOJ, declined to bring a  
5 VRA case -- let me start that question again.

6 You're not aware of any case where  
7 plaintiffs declined to bring a VRA claim because  
8 ACS data are statistical estimates with a margin  
9 of error, correct?

10 A. That is correct. I am aware of one case  
11 in which a court held that the one-year ACS  
12 estimate, because of its associated margin of  
13 error, was insufficiently reliable to allow the  
14 plaintiff in that case to proceed with a Section 2  
15 claim.

16 Q. Right. That's the Benavidez case, right?

17 A. That is correct.

18 Q. We'll talk about that in a bit, but I  
19 want to talk about something else first.

20 (Gore Deposition Exhibit 19 marked for  
21 identification and attached to the  
22 transcript.)

1 Jarmin to Mr. Gary reads, "Arthur, thank you for  
2 your letter dated 12/12/2017 regarding improving  
3 the quality of citizenship information for DOJ  
4 enforcement of the Voting Rights Act. Let me  
5 start by saying the bureau is fully supportive of  
6 providing DOJ with the highest quality statistical  
7 information possible. To that end, I directed  
8 staff to review all possible ways to address the  
9 needs expressed in the letter. They have now  
10 briefed me, and their findings suggest that the  
11 best way to provide PL94 block-level data with  
12 citizen voting population by race and ethnicity  
13 would be through utilizing a linked file of  
14 administrative and survey data the Census Bureau  
15 already possesses. This would result in higher  
16 quality data produced at lower cost. I suggest we  
17 schedule a meeting of census and DOJ technical  
18 experts to discuss the details of this proposal.  
19 We look forward to working with you on this  
20 important statistical matter."

21 From this e-mail, do you understand that  
22 the Census Bureau director, or acting director, is

1     that --

2                 MR. GARDNER: Decision as to whether to  
3     pursue that proposal.

4                 MR. HO: Okay. That's what I just wanted  
5     to clarify because --

6                 MR. GARDNER: Yeah. Okay.

7                 MR. HO: -- it wasn't clear to me.

8                 MR. GARDNER: Sorry. I thought that was  
9     clear. I apologize. Yeah, that's the decision.  
10    BY MR. HO:

11                Q. Okay. So the conversation with the  
12    attorney general included a discussion about  
13    whether or not to pursue the Census Bureau's  
14    proposal to produce block-level CVAP data for DOJ  
15    for VRA enforcement purposes without including a  
16    citizenship question, correct?

17                A. That is correct. And just to clarify, I  
18    wasn't familiar with all the particulars of their  
19    proposal.

20                Q. That's fine.

21                         The decision was made not to pursue the  
22    Census Bureau's alternative proposal for producing

1 block-level CVAP data for purposes of VRA  
2 enforcement through a means other than including a  
3 citizenship question on the census, correct?

4 A. That is correct.

5 Q. Who made that decision?

6 A. The attorney general.

7 Q. When was that decision made?

8 A. Around this time. I don't know exactly  
9 when it was made. I can't remember the specific  
10 date.

11 Q. When you say "around this time," you mean  
12 around January of 2018, correct?

13 A. That is correct.

14 Q. Are the reasons for that decision  
15 memorialized anywhere?

16 A. Not to my knowledge.

17 Q. Were those reasons ever communicated to  
18 you?

19 A. Yes.

20 Q. What were those reasons?

21 MR. GARDNER: Objection. Calls for  
22 information subject to deliberative process



1 decision?

2 A. It would have been around this  
3 January 29th date, I believe. But I don't recall  
4 specifically.

5 Q. And who informed you that the Department  
6 of Justice should not meet with the Census Bureau  
7 to discuss the Census Bureau's alternative  
8 proposal for producing block-level CVAP data?

9 A. The attorney general.

10 Q. You received this e-mail thread from  
11 Arthur Gary, which includes the initial e-mail  
12 from Dr. Jarmin describing the alternative  
13 proposal for collecting CVAP data at higher  
14 quality produced at lower cost on January 29th,  
15 2018, correct?

16 A. On this e-mail chain, that's correct. I  
17 don't know whether I received it before then or  
18 not. But yes, this e-mail -- the e-mail dated  
19 January 29th, 2018, at 2:33 p.m., is the first  
20 e-mail in this chain where Mr. Gary sent me that  
21 information.

22 Q. When you told Congress on May 21st, 2018,

1 December 12 letter, the Gary letter, did not use  
2 the word "necessary" with respect to the inclusion  
3 of a citizenship question on the 2020 census,  
4 correct?

5 A. Yes, I have just noted that in my  
6 testimony. I will say I don't know -- I have no  
7 recollection of what this comment is referring to.

8 Q. You agree, right, Mr. Gore, that CVAP  
9 data collected through the census questionnaire is  
10 not necessary for DOJ's VRA enforcement efforts?

11 A. I do agree with that. Yes.

12 Q. I'm going to show you another document.  
13 We'll mark this as 26 and 27.

14 (Gore Deposition Exhibits 26 and 27  
15 marked for identification and attached to  
16 the transcript.)

17 BY MR. HO:

18 Q. 26 is an e-mail from Mr. Aguinaga to you  
19 dated June 12th, 2018, correct?

20 A. Yes, it is.

21 Q. And the subject is, QFR responses,  
22 correct?

# EXHIBIT J

STUART GURREA, PH.D.  
STATE OF CALIFORNIA vs WILBUR L. ROSS, J.R.

October 24, 2018

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

STATE OF CALIFORNIA, by and  
through Attorney General  
Xavier Becerra,

Plaintiff,

vs.

Case No.  
3:18-cv-01865

WILBUR L. ROSS, JR., in his  
official capacity as Secretary  
of the U.S. Department of  
Commerce; et al.,

Defendants.

CITY of SAN JOSE, a municipal  
corporation; et al.,

Plaintiffs,

vs.

Case No.  
5:18-cv-02279

WILBUR L. ROSS, JR., in his  
official capacity as Secretary  
of the U.S. Department of  
Commerce; et al.,

Defendants.

VIDEO DEPOSITION OF STUART D. GURREA, PhD

October 24, 2018

10:06 a.m.

101 Mission Street, Suite 1000

San Francisco, California

Reported by: QUYEN N. DO, CSR No. 12447

STUART GURREA, PH.D.  
STATE OF CALIFORNIA vs WILBUR L. ROSS, J.R.

October 24, 2018  
103

1 BY MS. BOUTIN:

2 Q Okay. So I'll ask my next question.

3 A Okay.

4 Q Do you have any opinions about any  
5 variation in nonresponse rate, as a result of the  
6 citizenship question, across either -- either  
7 geographic areas or demographic groups?

8 A So I haven't formed any independent  
9 opinions on that issue. I'm familiar with what I  
10 have read in this -- as part of my preparation for  
11 this report.

12 Q Okay. And what -- can you think of any  
13 articles in particular that have related to the  
14 subjects that you've reviewed?

15 A No.

16 Q Okay. Do you have any opinions on how  
17 effective the Census Bureau's nonresponse follow-up  
18 efforts are likely to be for the 2020 census?

19 MS. FEDERIGHI: Objection. Vague.

20 THE WITNESS: No.

21 BY MS. BOUTIN:

22 Q Okay. And this is a little -- little bit  
23 related to the last one. Do you have any opinions  
24 on how effective the Census Bureau's nonresponse  
25 follow-up efforts -- and I'm going to -- I'm going

STUART GURREA, PH.D.  
STATE OF CALIFORNIA vs WILBUR L. ROSS, J.R.

October 24, 2018  
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1           Could there be a full enumeration and yet  
2 also effects on congressional seats apportionment or  
3 distribution of federal assistance programs?

4           A     If everybody is -- is counted, no. If  
5 simply there's errors in one direction and another  
6 that -- that offset each other and result in a --  
7 a -- a -- a total that doesn't change, then that is  
8 possible.

9           Q     Okay, paragraph 54, you state in the  
10 second -- you state that "Defendants asked me to  
11 recalculate Plaintiffs' predictions assuming NRFU  
12 would have the same success rate as it had in the  
13 2010 census: 98.58 percent ('Historical NRFU-Rate  
14 Scenario')." "

15                     And you cite, for that, a memorandum from  
16 John Abowd and David Brown, September 28th, 2018.

17                     Other than that memorandum, is there any  
18 other basis that you're aware of for the  
19 98.58 percent Historical NRFU-Rate Scenario?

20           A     No.

21           Q     Did you read the September 28th Abowd and  
22 Brown memo?

23           A     Yes.

24           Q     Did you agree with its analysis?

25           A     I didn't assess the -- the validity of the

STUART GURREA, PH.D.  
STATE OF CALIFORNIA vs WILBUR L. ROSS, J.R.

October 24, 2018  
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1 analysis.

2 Q Okay. Is it fair to say that you took the  
3 number that was provided with you and just applied  
4 it to the data that you were working with?

5 A Yeah. That's my assignment.

6 Q Okay. Since -- since, I believe, you  
7 stated earlier that you have not spoken about  
8 this -- these cases with anyone at the Census  
9 Bureau, is it fair to say you did not discuss the  
10 Historical NRFU-Rate Scenario with anyone at the  
11 Census Bureau?

12 A That's correct.

13 Q Okay. Did you communicate about it in any  
14 other way with the Census Bureau other than --

15 A No.

16 Q -- through the memo?

17 A Just -- other than through the memo, I --  
18 I mean, I -- I guess, yeah, I -- I -- I wasn't  
19 communicating. I'm -- I did receive it. I guess it  
20 is a communication.

21 Q Okay.

22 A Yes, no --

23 Q Okay.

24 A -- nothing else.

25 Q Okay. Are you aware whether the memo was

STUART GURREA, PH.D.  
STATE OF CALIFORNIA vs WILBUR L. ROSS, J.R.

October 24, 2018  
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1           it will fully mitigate any decline in  
2           self-response rates attributable to a  
3           citizenship question through NRFU and  
4           imputation."

5           Do you have any opinion on whether or not  
6           the Census Bureau will fully mitigate any decline in  
7           self-response rates attributable to a citizenship  
8           question through NRFU and imputation?

9           A     No.

10          Q     Okay. In the analysis that you conducted  
11          by applying historical NRFU rate, what demographic  
12          groups does that rate apply to?

13          A     The assumption that I took was to apply a  
14          hypothetical NRFU across demographics in all the  
15          different scenarios that I considered.

16          Q     Okay.

17          A     These scenarios involved noncitizen  
18          households and in the Maryland case, Hispanic,  
19          noncitizen, non-Hispanic households. I think that's  
20          about it.

21          Q     Okay. Do you know whether it is  
22          reasonable to assume that historical NRFU rate would  
23          apply to all demographic groups in 2020?

24          A     I -- I don't know one way or another.

25          Q     Do you know whether in 2010 the NRFU



# EXHIBIT K

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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CITY OF SAN JOSE, et al.,	:	
	:	
Plaintiffs,	:	
	:	Case No.
vs.	:	3:18-cv-2279-RS
	:	
WILBUR ROSS, JR., et al.,	:	
	:	
Defendants.	:	

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Thursday, October 25, 2018

Videotape Deposition of SAHRA PARK-SU,  
taken at the Law Offices of Manatt, Phelps &  
Phillips, LLP, 1050 Connecticut Avenue NW,  
Washington, D.C., beginning at 9:40 a.m.,  
before Ryan K. Black, a Registered Professional  
Reporter, Certified Livenote Reporter and Notary  
Public in and for the District of Columbia.

Veritext Legal Solutions  
Mid-Atlantic Region  
1250 Eye Street NW - Suite 350  
Washington, D.C. 20005

1 BY MR. ADAMS:

2 Q. And Question 31 appears on Page 11.

3 A. Mm-hmm.

4 Q. What is the process that was used  
5 in the past to get questions added to the  
6 Decennial Census, or do we have something  
7 similar where a precedent was established?

8 A. Mm-hmm.

9 Q. And as we saw in Exhibit 17, the  
10 Department of Commerce responded with your name  
11 when asked for all people who worked on any  
12 draft of the response.

13 A. Yep.

14 Q. And what work did you do on a draft of  
15 re -- of the response to this question?

16 A. Yes. It goes back to what I mentioned  
17 earlier. Census, based off of our understanding  
18 of our meetings with them, had indicated that  
19 there was a distinction between the process  
20 that's used at questions to the American  
21 Community Survey, which they had shared with  
22 us, and that the Decennial Census did not  
23 necessarily have a similar process, to their  
24 knowledge, that they could point to.  
25 And, therefore, it would not be an accurate

1           characterization to say that it was the same.

2                       And so based off of that, Census was  
3           to go about -- my understanding from the meeting  
4           was that Census was going to go back and work on  
5           the draft response to Question 31.

6                       Now, as I mentioned, these were  
7           extremely busy times. And I think a few days,  
8           if not a week or so had gone by, and this was  
9           not updated. And I was in a meeting with Mike  
10          Walsh, we had a call with Census in lieu of an  
11          in-person meeting that we typically have, and  
12          had a hard copy of this and had asked Mike  
13          Walsh, our Deputy General Counsel, based off  
14          of his recollection of our meeting with Census,  
15          could he draft together a draft response so that  
16          I can send it to Census for clearance, comments  
17          or edits so I could get the ball rolling so we  
18          can finalize these answers.

19                      Mike Walsh then handwrote the draft  
20          response for me on my paper, which then I then  
21          went back and typed it up and sent it to Census.  
22          I sent it to -- by e-mail to Ron Jarmin, I  
23          believe Enrique Lamas, Christa, which those are,  
24          typically, the people that I'll e-mail asking  
25          for their comments, suggestions or clearance on

1           this.

2                   And that was my involvement regarding  
3           this question and answer.

4           Q.    When was -- so Census sent a draft  
5           response to Question 31 to Commerce?

6           A.    Mm-hmm.

7           Q.    And you asked at some point for a  
8           revision to that response?

9           A.    I don't recall myself asking.  I  
10          remember at the meeting the understanding was  
11          Census was going to go back, because I don't  
12          believe this was the only one where they were  
13          going to revisit.  This was one of some that  
14          Census was supposed to come back with their  
15          revision.

16          Q.    Do you recall when Census was first  
17          asked to revisit their initial response to  
18          Question 31?

19          A.    I don't.  I would imagine it  
20          probably wasn't too long after they provided  
21          this response, and it was probably during the  
22          course of one of our subsequent meetings with  
23          them, either weekly or biweekly, or even a phone  
24          conversation -- no, it was an in-person meeting.  
25          Excuse me.

1 or feedback from Mr. Jarmin, Mr. Lamas or  
2 Ms. Jones about this proposed response?

3 A. No. And the reason why Christa is  
4 always copied on any e-mail to Ron and Enrique  
5 is so that she can also ping them and check with  
6 them in the event that they missed an e-mail  
7 from us.

8 And so Christa was my liaison  
9 over there to ensure that we could get a timely  
10 response from Census, and, if she responded,  
11 then that was good as -- as what census was  
12 going forward with, so that was my  
13 understanding.

14 Q. So your understanding -- was it  
15 your understanding that Census had reviewed and  
16 approved of the language that Mr. Walsh wrote on  
17 your hard copy and you retyped here?

18 A. That's what I took it as.

19 Q. Following -- following this exchange,  
20 did Commerce send to you any other revisions to  
21 a response to Question 31?

22 A. No, not that I can recall.

23 Q. Can you recall -- do you know whether  
24 they -- whether Census sent anyone within the  
25 Department of Commerce a further revision of the

1 response to Question 31?

2 A. I do not know. As far as I was  
3 concerned, this was done and over and we can  
4 move on.

5 Q. From your perspective, you said it's  
6 done and over and we can move on, so you view  
7 this language as having been approved final  
8 language for the response to Question 31?

9 A. With regards to Census's review, that  
10 was my understanding.

11 Q. Was there further review of the  
12 response within the Department of Commerce?

13 A. I do not know. At this point there  
14 are a lot of e-mails going back and forth,  
15 so ...

16 MR. ADAMS: I'd like to show you  
17 what's been marked as Exhibit Number 22, and  
18 this is Bates Number 9812.

19 (Deposition Exhibit No. 22, a document  
20 Bates Numbered 9812, was marked.)

21 MR. ADAMS: Before we go to this  
22 exhibit, I want to go back to what we were just  
23 discussing and show you Exhibit 23.

24 (Deposition Exhibit No. 23, a document  
25 Bates Numbered 3403, was marked.)

1 response in Exhibit 21 to the version that's in  
2 Exhibit 18, --

3 A. Okay.

4 Q. -- I just want to go back to 21  
5 and make sure I understand what, if anything,  
6 happened to this version of the response after  
7 February 23rd, 2018. Did you make any further  
8 revisions to the response to Question 31?

9 A. No.

10 Q. To your knowledge, did Mr. Walsh  
11 make any further revisions to the response?

12 A. No.

13 Q. To your knowledge, did Secretary Kelly  
14 make any revisions to this version?

15 A. No.

16 Q. Are you aware of anyone who made  
17 revisions to this version of Question 31 after  
18 February 23rd?

19 MS. BAILEY: Objection. Asked and  
20 answered.

21 THE WITNESS: No.

22 BY MR. ADAMS:

23 Q. If we could compare Exhibit 21 with  
24 Exhibit 18, --

25 A. Okay.



# EXHIBIT L

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

- - - - - x  
ROBYN KRAVITZ, et al., :  
Plaintiffs, :  
vs. : Civil Action No.  
U.S. DEPARTMENT OF COMMERCE, : 8:18-cv-01041-GJH  
et al., :  
Defendants. :

- - - - - x  
LA UNION DEL PUEBLO ENTERO, :  
et al., :  
Plaintiffs, :  
vs. : Civil Action No.  
WILBUR L. ROSS, sued in his : 8:18-CV-01570-GJH  
official capacity as U.S. :  
Secretary of Commerce, et al., :  
Defendants. :

- - - - - x  
VIDEOTAPED DEPOSITION OF: DAVID SANFORD LANGDON  
DATE: Friday, October 26, 2018  
TIME: 9:08 a.m.  
LOCATION: Covington & Burling  
850 Tenth Street, D.C.  
Washington, D.C.  
REPORTED BY: Denise M. Brunet, RPR,  
Reporter/Notary  
Veritext Legal Solutions  
1250 Eye Street, D.C., Suite 350  
Washington, D.C. 20005

1 making in your previous answer? How --

2 A That it's not easy. It's not easy. It  
3 takes a lot of work. And you have to -- the  
4 reason it takes a lot of work is because the  
5 administrative data may not measure what you think  
6 it's measuring, how you think it's measuring it.

7 Q Are you aware of any testing that's been  
8 done to evaluate the effects of including a  
9 citizenship question on the 2020 decennial on  
10 response rates or the accuracy of -- and quality  
11 of survey data?

12 A So the -- no, so there hasn't been.  
13 There hasn't been any testing to date. And the  
14 time frame wouldn't -- the Secretary's decision  
15 wouldn't -- you know, wouldn't accommodate that  
16 kind of testing.

17 That said, the Census Bureau presented a  
18 reasonable -- very reasonable alternative to get  
19 at those kinds of issues, which was looking at,  
20 you know, the impacts -- there was no change.  
21 Citizenship has always been part of the American  
22 Community Survey, but nonetheless, looking at

# EXHIBIT M

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

NEW YORK IMMIGRATION  
COALITION, *et al.*,

Plaintiffs,

v.

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

Defendants.

No. 1:18-cv-5025 (JMF)

**DEFENDANTS' SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST  
SET OF INTERROGATORIES TO DEFENDANTS UNITED STATES DEPARTMENT  
OF COMMERCE AND WILBUR ROSS**

Pursuant to Federal Rules of Civil Procedure 26, 33, and 34, Defendants United States Department of Commerce and Wilbur Ross submit these second supplemental objections and responses to Plaintiffs' First Set of Interrogatories to Defendants United States Department of Commerce and Wilbur Ross, as modified by Plaintiffs' counsel by email dated August 27, 2018.

**OBJECTIONS AND RESPONSES TO INTERROGATORIES**

**Interrogatory No. 1.** With regard to the document found in the Administrative Record at 1321, please IDENTIFY:

- a. the "senior Administration officials" who "previously raised" reinstating the citizenship question;
- b. the "various discussions with other government officials about reinstating a citizenship question to the Census";
- c. the consultations Secretary and his staff participated in when they "consulted with Federal governmental components";
- d. the date on which the "senior Administration officials" who "previously raised" reinstating the citizenship question first raised this subject; and
- e. all PERSONS with whom the "senior Administration officials had previously raised" reinstating the citizenship question.

**Objections:**

Defendants object to this interrogatory to the extent that it seeks (a) communications or information protected by the attorney-client privilege or (b) communications or information protected by the deliberative-process privilege.

Defendants further object to this interrogatory as vague and overbroad to the extent it seeks information about meetings or conversations with government officials and other persons whose identities are immaterial to the claims in this litigation, and because the burden of responding is disproportionate to the needs of this case.

**Response:**

After conducting a diligent search, Defendants do not distinguish among the terms used synonymously in the Secretary's Supplemental Memorandum: "senior Administration officials," "other government officials," and officials at other "Federal governmental components." In order to respond as fully as possible to this interrogatory, Defendants therefore will construe subparts a, b, and c, as coextensive and will identify, as a single group, the individuals within the executive branch but outside the Department of Commerce who, before the December 12, 2017 Department of Justice letter, and as referenced in the Secretary's Supplemental Memorandum, either (a) discussed the citizenship question with Secretary Ross, (b) had raised or discussed whether to reinstate a citizenship question, or (c) were consulted by Secretary Ross or his staff regarding whether the Department of Justice would support, and if so would request, inclusion of a citizenship question as consistent with and useful for enforcement of the Voting Rights Act. In accordance with that interpretation, and subject to and without waiving the above objections, Defendants identify the following individuals.

Mary Blanche Hankey, James McHenry, Gene Hamilton, Danielle Cutrona, John Gore, and Jefferson Sessions. Although Kris Kobach is not a "government official" within the meaning of the Supplemental Memorandum, the Defendants identify him

nonetheless for the sake of completeness. Secretary Ross recalls that Steven Bannon called Secretary Ross in the Spring of 2017 to ask Secretary Ross if he would be willing to speak to then-Kansas Secretary of State Kris Kobach about Secretary Kobach's ideas about a possible citizenship question on the decennial census. The Defendants therefore are also listing Mr. Bannon for the sake of completeness. In addition, Secretary Ross discussed the possible reinstatement of a citizenship question on the 2020 decennial census with Attorney General Sessions in the Spring of 2017 and at subsequent times.

As to Interrogatories, see Verification page *infra*.

As to objections:

Dated: October 11, 2018

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

BRETT A. SHUMATE  
Deputy Assistant Attorney General

JOHN R. GRIFFITHS  
Director, Federal Programs Branch

CARLOTTA P. WELLS  
Assistant Director, Federal Programs Branch

/s/ Stephen Ehrlich

KATE BAILEY  
GARRETT COYLE  
STEPHEN EHRLICH  
CAROL FEDERIGHI  
Trial Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
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Washington, DC 20005  
Tel.: (202) 305-9803  
Email: stephen.ehrlich@usdoj.gov

*Counsel for Defendants*



**CERTIFICATION OF EARL COMSTOCK**

I certify under penalty of perjury that the foregoing second supplemental response to Plaintiffs' Interrogatory No. 1 is true and correct to the best of my knowledge, information, belief, understanding, or recollection, with the understanding that the Department of Commerce is continuing to research its responses to Plaintiffs' interrogatories and reserves the right to further supplement its responses.

Dated: October 11, 2018

A handwritten signature in black ink, appearing to read 'Earl Comstock', written over a horizontal line.

Earl Comstock

# EXHIBIT N

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NEW YORK IMMIGRATION  
COALITION, *et. al*,

Plaintiff,

v.

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

Defendant.

Civil Action No. 1:18-cv-05025-JMF

Hon. Jesse M. Furman

**DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFFS' THIRD SET OF  
INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of this Court Defendants, the United States Department of Commerce and Wilbur Ross, Secretary of Commerce, in his official capacity, by and through their attorneys of record, provide the following objections and response to Plaintiffs' third set of interrogatories.

**OBJECTIONS WHICH APPLY TO ALL REQUESTS FOR ADMISSION**

1. Separate and apart from the specific objections set forth below, Defendants object to any discovery taking place in this case to the extent such discovery is brought pursuant to claims purportedly under the Administrative Procedure Act, as resolution of any such claims should be based upon the administrative record in this case.

2. Each and every response contained herein is subject to the above objection, which applies to each and every response, regardless of whether a specific objection is interposed in a specific response. The making of a specific objection in response to a particular request is not intended to constitute a waiver of any other objection not specifically referenced in the particular response.

**OBJECTIONS TO DEFINITIONS**

1. Defendant object to the inclusion of definitions for any term not relied on in these interrogatories. Any requirement that Defendant respond to such definitions in the abstract is not proportional to the needs of the case and the burden of such a response outweighs its likely benefit, which is none. Defendant does not hereby waive any future objection to the definition of such terms, or waive the right to employment of Defendant's own definition of such terms.

**OBJECTION TO INSTRUCTIONS**

1. Defendants object to instructions number 1, 3, 4, 5 to the extent they seek to impose requirements beyond those required by Federal Rules of Civil Procedure.

2. Defendants object to instruction number 3 to the extent it requires Defendants to "identify each PERSON or organization having knowledge of the factual basis, if any, upon which the objection, privilege, or other ground is asserted," as such an instruction exceeds the requirements of Federal Rule of Civil Procedure 33 and constitutes a discrete subpart.

3. Defendants object to instruction numbers 1, 4 and 5, to the extent they seek the production of documents, which goes beyond the scope of the requirements of Federal Rule of Civil Procedure 33. Defendants will not produce documents in response to Plaintiffs' third set of interrogatories. Defendants further object to instructions 4 and 5 to the extent they seeks information in a privilege log that exceeds the requirements of Federal Rule of Civil Procedure 26(b)(5).

**DEFENDANTS' RESPONSES TO PLAINTIFFS' INTERROGATORIES**

**INTERROGATORY NO. 5**

With regard to draft and final response to Question 31 in the "Questions on the Jan 19 Draft Census Memo on the DoJ Citizenship Reinstatement Request" found at AR 2303-2304 and AR 196, please IDENTIFY:

- a. all persons who worked on any draft of the response;
- b. all persons outside the CENSUS BUREAU who worked on any draft of the response;

c. the date on which each person outside the CENSUS BUREAU who worked on the response first worked on the response; and

d. the person or persons responsible for removing discussion of the “well-established process” when adding or changing content of the DECENNIAL CENSUS.

**OBJECTIONS:** Defendants incorporate by reference the above objections to the definitions and instructions. Defendants further object that this request is irrelevant to any claim or defense and not proportionate to the needs of the case. Defendants further object to Plaintiffs’ interrogatory number five on the grounds that it constitutes four discrete subparts. Accordingly, Defendants will treat this interrogatory as four discrete interrogatories.

**RESPONSE:**

- a. Ron Jarmin, Enrique Lamas, Burton Reist, Christa Jones, Michael Walsh, and Sahra Park-Su.
- b. Michael Walsh and Sahra Park-Su.
- c. On or about February 23, 2018.
- d. Once Census and the Department of Commerce started to confer on the question and realized that there was no process for adding such a question to the 2020 Decennial because it had not been done in recent memory, the individuals identified in response to part “a” of this interrogatory collectively approved the final language.

**INTERROGATORY NO. 6**

For each Request for Admission, to the extent that your responses is anything other than unqualified admissions, for each such response please identify with specificity all facts upon which you base your denial or qualified admission of any portion of the requested admission, including identifying with specificity all documents, events, occurrences, or conduct on which you base your denial or qualified admission.

**OBJECTIONS:** Defendants incorporate by reference the above objections to the definitions and instructions. Defendants further incorporate by reference each and every objection made to Plaintiffs' request for admissions. Defendants further object that this interrogatory asks for the basis for responses that are "anything other than unqualified admissions" to requests for admissions that are not relevant to any claim or defense and not proportionate to the needs of the case. Many of Plaintiffs' requests for admissions have no relevance as to whether the Secretary of Commerce's decision to reinstate a citizenship question is arbitrary or capricious or whether his decision violates equal protection principles.

Defendants further object to this interrogatory as constituting multiple, discrete subparts. *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 445-46 (C.D. Cal. 1998) (holding that an interrogatory that asks for the basis for the denial of each request for admission constitutes multiple interrogatories); *Jovanovich v. Redden Marine Supply, Inc.*, No. C10-924, 2011 WL 4459171, \*2-3 (W.D. Wash. Sept. 26, 2011) (same); *Estate of Manship v. United States*, 232 F.R.D. 552, 557 (M.D. La. 2005) (same); *American Chiropractic Assoc. v. Trigon Healthcare, Inc.*, No. 1:00-CV-00113, 2002 WL 534459, \*3 (W.D. Va. 2002) (same); *Commodores Enter. Corp. v. McClary*, No. 6:14-cv-1335, 2015 WL 12843874 (S.D. Fla. Nov. 6, 2015) (same).

Furthermore, Plaintiffs' request that Defendants provide up to 141 separate interrogatory responses is unduly burdensome and not proportionate to the needs of the case. Accordingly, because Defendants do not stipulate to responding to more than 25 interrogatories in total, *see* Federal Rule of Civil Procedure 33(a)(1), and interrogatory 5 constitutes four discrete subparts, Defendants will only respond to the first sixteen requests for admissions that are not unqualified admissions.

**RESPONSES:**

**Interrogatory No. 9 (request for admission no. 1):** The reason Defendants did not provide an unqualified admission to request for admission number 1 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 10 (request for admission no. 2):** The reason Defendants did not provide an unqualified admission to request for admission number 2 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 11 (request for admission no. 3):** The reason Defendants did not provide an unqualified admission to request for admission number 3 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 12 (request for admission no. 4):** The reason Defendants did not provide an unqualified admission to request for admission number 4 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 13 (request for admission no. 5):** The reason Defendants did not provide an unqualified admission to request for admission number 5 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 14 (request for admission no. 6):** The reason Defendants did not provide an unqualified admission to request for admission number 6 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 15 (request for admission no. 7):** The reason Defendants did not provide an unqualified admission to request for admission number 7 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 16 (request for admission no. 8):** The reason Defendants did not provide an unqualified admission to request for admission number 8 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 17 (request for admission no. 9):** The reason Defendants did not provide an unqualified admission to request for admission number 9 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 18 (request for admission no. 10):** The reason Defendants did not provide an unqualified admission to request for admission number 10 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 19 (request for admission no. 11):** The reason Defendants did not provide an unqualified admission to request for admission number 11 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 20 (request for admission no. 12):** The reason Defendants did not provide an unqualified admission to request for admission number 12 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 21 (request for admission no. 13):** The reason Defendants did not provide an unqualified admission to request for admission number 13 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 22 (request for admission no. 14):** The reason Defendants did not provide an



unqualified admission to request for admission number 14 is because Defendants lack any reasonable means of verifying the accuracy of statements purportedly made by a private party not within the control of the United States at the time the statement is said to have been made.

**Interrogatory No. 23 (request for admission no. 15):** The reason Defendants did not provide an unqualified admission to request for admission no. 15 is that Defendants lack any reasonable means of verifying whether statements attributed to President Donald J. Trump as reported by TIME Magazine are accurately reported.

**Interrogatory No. 24 (request for admission no. 16):** The reason Defendants did not provide an unqualified admission to request for admission no. 16 is because is that Defendants lack any reasonable means of verifying whether statements attributed to President Donald J. Trump as reported by the media are accurately reported.

**Interrogatory No 25 (request for admission 17):** The reason Defendants did not provide an unqualified admission to request for admission no. 17 is because the request for admission did not accurately characterize President Donald J. Trump's January 27, 2017 executive order. An accurate characterization of that executive order is reflected in Defendants' response to Plaintiffs' request for admission no. 17.

As to Interrogatories, see Verification page *infra*.

As to objections:

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

BRETT A. SHUMATE  
Deputy Assistant Attorney General

JOHN R. GRIFFITHS  
Director, Federal Programs Branch

CARLOTTA P. WELLS  
Assistant Director, Federal Programs Branch

/s/ Stephen Ehrlich

---

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*Counsel for Defendants*

Dated: October 23, 2018

**CERTIFICATION OF EARL COMSTOCK**

I certify under penalty of perjury that the foregoing responses to Plaintiffs' Interrogatories No. 5 and 6, both of which contain multiple discrete subparts that are not separately numbered, are true and correct to the best of my knowledge, information, belief, understanding, and recollection.

Dated: 10/12/2018

A handwritten signature in black ink, appearing to read 'Earl Comstock', written over a horizontal line.

Earl Comstock