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21 **IN THE UNITED STATES DISTRICT COURT**  
22 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
23 **SAN JOSE DIVISION**

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

27 Plaintiffs,  
28

Case No. 5:18-cv-2279

**MOTION TO EXPAND  
DISCOVERY BEYOND THE  
ADMINISTRATIVE RECORD**

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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.

**[Oral Argument Requested]**

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**PRELIMINARY STATEMENT**

Discovery beyond the submitted administrative record (Doc. No. 38) (“AR”) is appropriate in this action. It is plain, even from the AR itself, that the White House demanded the inclusion of a citizenship question in the 2020 Decennial Census to reduce the representation of non-citizens in Congress, and the Department of Commerce (“Commerce”) complied. This evidence also demonstrates that bad faith and improper political influences led to Commerce’s inclusion of the citizenship question. “If there are adequate grounds to suspect that an agency decision was tainted by improper political pressure, courts have a responsibility to bring out the truth of the matter.” *Sokaogon Chippewa Cmty. (Mole Lake Band of Lake Superior Chippewa) v. Babbitt*, 961 F. Supp. 1276, 1280 (W.D. Wis. 1997). Discovery beyond the AR will enable the parties and the Court to bring out the truth here.

In March 2017, the Census Bureau had recommended, as it had every decade since 1950, that the U.S. Census ask only five questions of respondents: age, gender, race/ethnicity, relationship status, and tenure as an owner or renter. Kris Kobach, Kansas Secretary of State and then Deputy Chair of the Presidential Commission on Election Integrity, intended to change that. Mr. Kobach has dedicated his career to so-called voter ID laws, which require voters to bring proof of identity or citizenship to the polls, designed to depress minority voting impermissibly. As the Tenth Circuit has held, Kobach’s policies created a “mass denial of a fundamental constitutional right.” *Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016).

In July 2017, acting (as he claimed) “at the direction of Steve Bannon” (AR000763), then White House Chief Strategist, Mr. Kobach reached out to Defendant Wilbur L. Ross, Secretary of Commerce, stating that the fact that the Census did not demand citizenship status of respondents “leads to the problem that aliens who do not ‘reside’ in the United States are still counted for congressional

1 apportionment purposes.” (*Id.* at 000764). Kobach’s concern that, without a  
 2 citizenship question, the Census would count non-citizens was well-founded:  
 3 Commerce is constitutionally mandated to count every person regardless of  
 4 immigration status.

5 After meeting with members of Congress and independent experts,  
 6 Defendant Ross reviewed a thirty-page memo from Commerce’s professional  
 7 scientific staff concluding that a citizenship question would do more harm than  
 8 good, by diminishing response rates and degrading the quality of responses. Ross  
 9 dismissed the advice of the Census Bureau, cherry-picked quotes from  
 10 conversations with members of Congress, and mischaracterized the statements of  
 11 experts (as these experts themselves have confirmed in public statements). Ross  
 12 concluded that the proper course of action was to include the exact question that  
 13 Messrs. Kobach and Bannon had requested. These facts make, at a minimum, a  
 14 strong preliminary showing of bad faith on the part of Defendants, which is all that  
 15 is required for the Court to order discovery beyond the AR.

### 16 **BACKGROUND FACTS**

17 Soon after winning the presidency, President Donald Trump officially stated  
 18 that he “won the popular vote if you deduct the millions of people who voted  
 19 illegally.”<sup>1</sup> The White House Press Secretary subsequently re-emphasized that  
 20 “[t]he President does believe that.” (Libby Dec. Ex. B)<sup>2</sup> The administration has

21  
 22 <sup>1</sup> See Declaration of John F. Libby in Support of Plaintiffs’ Motion to Expand  
 23 Discovery Beyond the Administrative Record, dated June 14, 2018 (“Libby Dec.”),  
 24 Ex. A. It is proper in the Ninth Circuit to take judicial notice of the official  
 25 statements of the president disseminated over social media. *Hawaii v. Trump*, 859  
 26 F.3d 741, 773 (9th Cir. 2017), *vacated and remanded as moot on other grounds*,  
 138 S. Ct. 377 (2017) (“We take judicial notice of President Trump’s statement as  
 27 the veracity of this statement ‘can be accurately and readily determined from  
 28 sources whose accuracy cannot reasonably be questioned.’”), *citing* Fed. R. Evid.  
 201(b)(2).

<sup>2</sup> Courts in this district have taken judicial notice of recorded press briefings of the  
 White House Press Secretary. See *Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d  
 497, 522 (N.D. Cal. 2017).



1 never offered any evidence of widespread voter fraud perpetuated by immigrants or  
2 anyone else.

3 The administration continued its crusade against immigrant voters with its  
4 “VOTER FRAUD PANEL.”<sup>3</sup> The panel included Vice President Mike Pence as  
5 chair and Kansas Secretary of State Kris Kobach as vice chair. Mr. Kobach first  
6 came to national attention by authoring Arizona’s “Show Me Your Papers” law,  
7 SB-1070, most of which was struck down as unconstitutional in *Arizona v. United*  
8 *States*, 567 U.S. 387 (2012). Later, in *League of Women Voters of United States v.*  
9 *Newby*, 838 F.3d 1, 13 (D.C. Cir. 2016), the D.C. Circuit preliminarily enjoined  
10 action taken by the Executive Director of the Election Assistance Commission at  
11 the request of Kobach, his former boss in the Kansas Secretary of State’s office, to  
12 change the federal voter registration form to require documentary proof of  
13 citizenship. In Kansas, Mr. Kobach required documentary proof of citizenship  
14 from those registering to vote for federal elections until enjoined by the Tenth  
15 Circuit. *Fish*, 840 F.3d at 775.

16 In March 2017, the Census Bureau submitted its regularly scheduled report to  
17 Congress regarding the topics to be included on the 2020 Census and the American  
18 Community Survey.<sup>4</sup> The report set forth the five categories of questions on the  
19 Census itself: age, gender, race/ethnicity, relationship, and tenure (owner/renter). It  
20 included a substantially longer list of topics for the American Community Survey,  
21 including fertility, grandparent caregivers, citizenship, and vehicles available,  
22  
23

24 <sup>3</sup> The panel, officially called the “Presidential Commission on Election Integrity,”  
25 was established by Executive Order 13,799 of May 11, 2017 (82 Fed. Reg. 22,389  
26 (2017), and referred to in an Official Statement of the President as the “VOTER  
FRAUD PANEL.” (Libby Dec. Ex. C)

27 <sup>4</sup> *Subjects Planned for the 2020 Census and American Community Survey*, March  
28 2017 (“2017 Report”) available at  
<https://www2.census.gov/library/publications/decennial/2020/operations/planned-subjects-2020-ac.pdf>.

1 among others. The March 2017 report, like every report and every Census since  
 2 1950, *did not suggest implementing a citizenship question on the Census itself*.

3 In July 2017, Mr. Kobach reached out to Defendant Ross, referencing their  
 4 conversation of “a few months ago” and noting that it was “essential” to add a  
 5 citizenship question to the 2020 Census to address the “problem” that non-citizen  
 6 aliens are “still counted for congressional apportionment purposes.” (AR000763-  
 7 64). Mr. Kobach then contacted Ross’s staff to schedule yet another meeting, for  
 8 Monday, July 24. (*Id.*) What happened at this next meeting is unknown, because  
 9 unlike for dozens of other such meetings, no summary of it appears in the AR.

10 In late 2017, the Department of Justice’s (“DOJ”) Arthur Gary wrote to Ross  
 11 “to formally request that the Census Bureau reinstate on the 2020 Census  
 12 questionnaire a question regarding citizenship.” (AR000663). The purported  
 13 rationale behind the request was DOJ’s need for “citizen voting-age population data  
 14 for census blocks, block groups, counties, towns, and other locations where  
 15 potential Section 2 violations are alleged or suspected.” (AR000664). Just one  
 16 year before, Gary had written to John H. Thompson, the Director of Economic and  
 17 Statistics Administration for the Census Bureau, to state that the only new census  
 18 data that DOJ needed was “a new topic in the ACS relating to LGBT populations.”  
 19 (AR000311). In both 2014 and 2016, Gary had written that “the Department of  
 20 Justice had no needs to amend the current content.” (AR000278; AR000311).

21 Defendant Ross then conducted a number of meetings with elected officials,  
 22 stakeholders, interest groups, and experts. One expert, Professor Robert Groves,  
 23 emphasized that the Census could provide the DOJ the requested data through  
 24 statistical sampling, noting that the Voting Rights Act “calls for data on language  
 25 proficiency but there is not a question about language proficiency on the census.”  
 26 (AR001257). Herbert Habermann, the former Deputy Director of the Census, told  
 27 him that “asking a citizenship question on the Decennial Census would diminish  
 28 response rates and degrade the quality of responses,” causing “the costs of the

1 census to go up and the quality of the data to go down” (AR001259). Christine  
 2 Pierce, of the data firm Nielson, cautioned against a citizenship question because  
 3 “the more sensitive the question, the more likely people are to be turned off by the  
 4 question and decline to respond.” (AR001276).

5 John M. Abowd, the Chief Scientist and Associate Director of Research and  
 6 Methodology at the Census, then conducted three “distinct analyses,” each of which  
 7 “support[s] the conclusion of an adverse impact on self-response and, as a result, on  
 8 the accuracy and quality of the 2020 Census.” (AR001279). Mr. Abowd  
 9 recommended that, to satisfy DOJ’s concerns, the Census could instead use  
 10 sampling to produce “block-level tables of citizen voting age population by race  
 11 and ethnicity during the publication phase of the 2020 Census using the enhanced  
 12 2020 Census microdata.” (AR001283).

13 In March 2018, the Trump/Pence re-election campaign sent multiple emails  
 14 taking credit for the imminent about-face that Commerce was about to make on the  
 15 Census. On March 19, 2018, the campaign sent an email stating that “[t]he  
 16 President wants the 2020 United States Census to ask people whether or not they  
 17 are citizens” and solicited support for the move. (Libby Dec. Ex. D)

18 Eight days later, Defendant Ross issued his letter, rejecting the advice of  
 19 experts, including his own, and instead siding with Messrs. Bannon and Kobach  
 20 and the Trump/Pence re-election campaign. He selectively cited his conversations  
 21 with Mr. Habermann and Ms. Pierce to support his decision, *but failed to note that*  
 22 *each had opposed including the citizenship question*. Both Mr. Habermann and  
 23 Nielsen promptly issued public statements emphasizing that they opposed the new  
 24 question.<sup>5</sup> The next day, the campaign boasted that the President had “officially  
 25

26 <sup>5</sup> Habermann stated, “I told him that I don’t think the case has been made that [the  
 27 question] is so important that it’s worth endangering this fragile instrument”;  
 28 Nielson issued the following statement: “Nielsen does not support the inclusion of a  
 question on citizenship for the 2020 U.S. census because we believe its inclusion  
 could lead to inaccuracies in the underlying data.” (Libby Dec. Ex. E at 6).

1 mandated” that the question be asked and sought money to “defend the President’s  
2 decision.” (Libby Dec. Ex. F)

3 To the extent that Defendant Ross conducted an agency review, he ignored  
4 the advice he was given and instead implemented Messrs. Kobach and Bannon’s  
5 question almost verbatim. This strong evidence, even on the skeletal record  
6 provided by Defendants, demonstrates that extra-record discovery is warranted to  
7 determine whether Defendants acted in bad faith.<sup>6</sup>

### 8 APPLICABLE LAW

9 Discovery beyond the administrative record is permitted “(1) if admission is  
10 necessary to determine whether the agency has considered all relevant factors and  
11 has explained its decision, (2) if the agency has relied on documents not in the  
12 record, (3) when supplementing the record is necessary to explain technical terms  
13 or complex subject matter, or (4) when plaintiffs make a showing of agency bad  
14 faith.” *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005). When  
15 “failure to explain agency action effectively frustrates judicial review,” additional  
16 discovery is warranted. *Animal Def. Council v. Hodel*, 840 F.2d 1432, 1436 (9th  
17 Cir. 1988), *amended*, 867 F.2d 1244 (9th Cir. 1989).

18 If a petitioner alleges bad faith and “there are administrative findings that  
19 were made at the same time as the decision . . . there must be a strong showing of  
20 bad faith or improper behavior before such inquiry.” *Citizens to Pres. Overton*  
21 *Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). But when “there are no such formal  
22 findings [] it may be that the only way there can be effective judicial review is by  
23 examining the decisionmakers themselves.” *Id.* The Ninth Circuit has recognized  
24 that when a petitioner alleges bad faith and is “unable to develop and present” the  
25 claim without further discovery, “petitioners should proceed with discovery to

26 <sup>6</sup> In addition to relevant document discovery, Petitioners seek to depose, among  
27 others, Ross, Jarmin, Abowd, Bannon, and Kobach, along with a number of the  
28 experts who spoke to Ross, including, but not limited to, Pierce, Groves, and  
Habermann.

1 develop these claims, as we do not foreclose here any legal grounds for challenging  
 2 the agency action.” *Pub. Power Council v. Johnson*, 674 F.2d 791, 795 (9th Cir.  
 3 1982). Because the support for a bad faith claim will come from discovery itself, a  
 4 party need only make a “strong preliminary showing[] of bad faith” to be granted  
 5 discovery. *Nat’l Nutritional Foods Ass’n v. Food & Drug Admin., U.S. Dep’t of*  
 6 *Health, Educ. & Welfare*, 491 F.2d 1141, 1145 (2d Cir. 1974); *see also Stand Up*  
 7 *for California! v. U.S. Dep’t of Interior*, 17-cv-00058, 2018 WL 2433576, at \*6  
 8 (D.D.C. May 30, 2018) (granting extra-record discovery when evidence in  
 9 “combination in this case raises substantial suspicion”). Even when an allegation of  
 10 bad faith is to some extent “speculative,” the record may be expanded when  
 11 petitioners have “pointed to specific facts justifying their request.” *Otero v. Kelly*,  
 12 16-cv-090, 2017 WL 3081704, at \*4 (D. Ariz. July 18, 2017).

13 To support a bad faith claim, “plaintiffs must be permitted to introduce  
 14 evidence necessary to make this threshold showing—evidence that is unlikely to  
 15 ever appear within the four corners of the official administrative record.” *Earth*  
 16 *Island Inst. v. Evans*, 256 F. Supp. 2d 1064, 1078 (N.D. Cal. 2003). News reports  
 17 may be considered among other evidence to conclude that “ultimate fairness in this  
 18 case is served by allowing plaintiffs to conduct extra-record discovery.” *Sokaogon*  
 19 *Chippewa*, 961 F. Supp. at 1285.

20 The administrative record is not just “those documents that the agency has  
 21 compiled and submitted as ‘the administrative record.’” *Exxon Corp. v. Dep’t of*  
 22 *Energy*, 91 F.R.D. 26, 32 (N.D. Tex. 1981). The whole record “consists of all  
 23 documents and materials directly or *indirectly* considered by agency decision-  
 24 makers and includes evidence contrary to the agency’s position.” *Thompson v. U.S.*  
 25 *Dep’t of Labor*, 885 F.2d 551, 555 (9th Cir. 1989) (emphasis in original). When  
 26 what is produced by an agency does not include this complete record, further  
 27 discovery is warranted, particularly “when there has been no formal administrative  
 28 proceeding.” *Dopico v. Goldschmidt*, 687 F.2d 644, 654 (2d Cir. 1982); *see also*

1 *Ad Hoc Metals Coal. v. Whitman*, 227 F. Supp. 2d 134, 137 (D.D.C. 2002)  
 2 (discovery permitted when “the agency failed to consider factors which are relevant  
 3 to its final decision or when an agency considered evidence which it failed to  
 4 include in the record”); *Nat’l Career Coll., Inc. v. Spellings*, 07-cv-00075, 2007  
 5 WL 9362682, at \*5 (D. Haw. Aug. 3, 2007) (ordering a record to be supplemented  
 6 when “[p]laintiffs have put forth facts which suggest that the [agency] may have  
 7 relied on documents or materials not included in the record”).

### 8 APPLICATION

9 There have been no administrative findings here—there was no hearing and  
 10 no decision by an administrative law judge—and thus Plaintiffs need only make  
 11 “strong preliminary showings of bad faith.” *Nat’l Nutritional Foods Ass’n*, 491  
 12 F.2d 1141. The facts here not only meet that standard, but they surpass the more  
 13 stringent “strong showing” test of *Overton Park*. 401 U.S. 402. Even on this bare  
 14 record, it appears that Mr. Kobach met with Defendant Ross “at the direction of  
 15 Steve Bannon” (a White House official with no role to play in this process) and  
 16 demanded that Ross include the citizenship question to exclude non-citizen aliens  
 17 from congressional apportionment, in violation of the Enumeration clause.

18 That DOJ later requested the question and that Ross met with elected  
 19 officials and experts does not obviate the need for extra-record discovery. While  
 20 DOJ specifically requested a question on citizenship, its purported basis for doing  
 21 so was to obtain citizenship data by census block. (AR000664). The experts that  
 22 Ross consulted—professors, former Census officials, and his own staff—  
 23 universally affirmed that such data could be provided through statistical sampling.  
 24 (AR001257-1283).

25 This case offers a more egregious version of the conduct that merited  
 26 additional discovery in *Tummino v. Von Eschenbach*, 427 F. Supp. 2d 212, 220  
 27 (E.D.N.Y. 2006). There, FDA officials overruled agency staff, who had concluded  
 28 that over-the-counter access to the birth control medication known as “Plan B” was



1 safe and effective, based on ill-founded concerns of promoting adolescent  
 2 promiscuity, raising the suggestion of bad faith. Here, by contrast, the AR itself  
 3 suggests that Ross’s decision to include the citizenship question was based on a  
 4 plainly unlawful motive, *i.e.*, to avoid making an “actual Enumeration” of the  
 5 population. U.S. Const. Art. I § 2 cl. 3. Evidence that Defendant Ross had met  
 6 with Mr. Kobach, at Mr. Bannon’s direction, to discuss the citizenship question  
 7 would merit extra-record discovery even if the contents of that meeting were  
 8 unknown. *See Sokaogon Chippewa*, 961 F. Supp. at 1285 (providing extra-record  
 9 discovery based on reports of meetings between agency officials and lobbyists).  
 10 The email itself suggests an unlawful motive, providing “specific facts justifying  
 11 their request.” *Otero*, 2017 WL 3081704, at \*4.

12 Even if the record did not show that Kobach requested the citizenship  
 13 question to limit representation of non-citizens, extra-record discovery would be  
 14 needed because the AR provided is facially incomplete. Although agencies are  
 15 granted a presumption of propriety when collecting the record, when an agency  
 16 offers a “lack of reasoned explication for a regulation that is inconsistent with the  
 17 Department’s longstanding earlier position,” courts need not show deference.  
 18 *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2127 (2016); *see also Regents*  
 19 *of Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 279 F. Supp. 3d 1011, 1045 (N.D.  
 20 Cal. 2018). Missing here are communications with the White House (though the  
 21 produced material suggests that such conversations took place) and any substantive  
 22 material other than the short summaries regarding Defendant Ross’s meetings with  
 23 stakeholders. Likewise, materials that Abowd relied on in his study were  
 24 “indirectly considered by agency decision-makers” and should have been included.  
 25 *Georgia River Network v. U.S. Army Corps of Eng’rs*, 2012 WL 930325, at \*5  
 26 (S.D. Ga. Mar. 19, 2012) (adding source material for a study that was in the  
 27 administrative record to the record).

1 Plaintiffs have already served Rule 34 requests setting forth the documents  
 2 and communications that make up the whole administrative record. (Libby Aff. Ex.  
 3 G). Plaintiffs respectfully request that this Court order Defendants to respond so  
 4 that all documents that were considered by the agency can be before this Court. *See*  
 5 *Ad Hoc Metals Coal. v. Whitman*, 227 F. Supp. 2d 134, 137 (D.D.C. 2002) (finding  
 6 supplementation of administrative record appropriate where “the agency failed to  
 7 consider factors which are relevant to its final decision or when an agency  
 8 considered evidence which it failed to include in the record”).

### 9 **CONCLUSION**

10 For the reasons stated above, Plaintiffs respectfully request that this Court  
 11 order that Plaintiffs be entitled to take discovery within the scope of Fed. R. Civ. P.  
 12 26(b)(1) and beyond the administrative record, including depositions under Rule 30  
 13 and Rule 45, and that Defendants respond to the discovery requests submitted by  
 14 Plaintiffs within 30 days of the upcoming Rule 26(f) conference.

15 Respectfully submitted,

16 Dated: June 14, 2018

**MANATT, PHELPS & PHILLIPS, LLP**

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

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

Plaintiffs,

vs.

Case No. 5:18-cv-2279

**DECLARATION OF JOHN F.  
LIBBY IN SUPPORT OF  
PLAINTIFFS' MOTION TO  
EXPAND DISCOVERY BEYOND**

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

5 Defendants.

**THE ADMINISTRATIVE  
RECORD**

6  
7 **DECLARATION**

8 I, John F. Libby, declare and state as follows:

9  
10 **1.** I am an attorney at law, duly authorized and licensed to practice before all of  
11 the courts of the state of California, and before this court. I am a partner of Manatt,  
12 Phelps and Phillips, LLP, counsel for the City of San Jose (“San Jose”) and the  
13 Black Alliance for Just Immigration (“BAJI”) (collectively “San Jose Plaintiffs”),  
14 Case No. 5:18-cv-02279 (the “San Jose Action”), filed in this District on April 17,  
15 2018. I have personal knowledge of the facts stated herein and, if called as a  
16 witness, could testify competently thereto.

17 **2.** I file this Declaration in support of the San Jose Plaintiffs’ Motion to Expand  
18 Discovery Beyond the Administrative Record.

19 **3.** Attached as **Exhibit A** is a true and correct copy of an official statement of  
20 Donald Trump, dated November 27, 2016, *available at*  
21 <https://twitter.com/realdonaldtrump/status/802972944532209664>.

22 **4.** Attached as **Exhibit B** is a true and correct copy of an article titled “Donald  
23 Trump still holds baseless belief that millions voted illegally,” David Smith and  
24 Ben Jacobs, *The Guardian*, January 24, 2017 (including a video link to the material  
25 cited in the brief), *available at* [https://www.theguardian.com/us-](https://www.theguardian.com/us-news/2017/jan/24/donald-trump-illegal-voting-claim-belief-no-evidence)  
26 [news/2017/jan/24/donald-trump-illegal-voting-claim-belief-no-evidence](https://www.theguardian.com/us-news/2017/jan/24/donald-trump-illegal-voting-claim-belief-no-evidence).

5. Attached as **Exhibit C** is a true and correct copy of an Official Statement of the President of the United States, dated July 1, 2017, *available at* <https://twitter.com/realdonaldtrump/status/881137079958241280>.

6. Attached as **Exhibit D** is a true and correct copy of an article titled “Trump Fundraising Off Controversial Push To Include Citizenship Question In Census,” Tierney Sneed, *Talking Points Memo*, March 19, 2018, *available at* <https://talkingpointsmemo.com/muckraker/trump-fundraising-off-controversial-push-to-include-citizenship-question-in-census>.

7. Attached as **Exhibit E** is a true and correct copy of an article titled “Trump officials claim they can avoid 2020 census problems caused by controversial citizenship question. Experts are very skeptical,” Jeffrey Mervis, *Science*, April 13, 2018, *available at* <http://www.sciencemag.org/news/2018/04/trump-officials-claim-they-can-avoid-2020-census-problems-caused-controversial>.

8. Attached as **Exhibit F** is a true and correct copy of an article titled “Trump campaign rallies supporters on Census citizenship question,” Tal Kopan, *CNN*, March 28, 2018, *available at* <https://www.cnn.com/2018/03/28/politics/trump-census-citizenship/index.html>.

9. Attached as **Exhibit G** is a true and accurate copy of San Jose Plaintiffs’ First Set of Requests for Production of Documents, served on May 23, 2018, in this matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of June 2018, in Los Angeles, California.

s/ John F. Libby

John F. Libby

*Additional Counsel for Plaintiffs*

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320509689.2

# Exhibit A



**Donald J. Trump** 

@realDonaldTrump

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In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally

12:30 PM - 27 Nov 2016

**49,839** Retweets **153,546** Likes



 **49K**  **50K**  **154K** 

# Exhibit B



# The Guardian

White House confirms Trump's baseless belief in widespread 'voter fraud'

## Donald Trump still holds baseless belief that millions voted illegally

**President has long believed claim - despite a lack of evidence - based on 'studies and information he has', says press secretary Sean Spicer**

**David Smith and Ben Jacobs** in Washington

Tue 24 Jan 2017 16.52 EST

Donald Trump still believes the false claim that millions of people voted illegally in last year's presidential election, the White House confirmed on Tuesday.

While some Republicans distanced themselves from the assertion, his press secretary, Sean Spicer, stood by it during Tuesday's press briefing but was vague on the possibility of an investigation into the supposed crime.

Asked if the president believes that millions voted illegally in the election, Spicer replied: "The president does believe that. He has stated that before. I think he stated his concerns of voter fraud and people voting illegally during the campaign and he continues to maintain that belief based on studies and evidence that people have presented him."

On Wednesday, Trump tweeted that he intended to launch a "major investigation into voter fraud". However, he cited improper voter registration as the focus of the investigation and did not state a desire to review the 2016 presidential election.

"I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illegal and....," he wrote in a first tweet, adding in a second: "even, those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting procedures!"

The controversy reignited on Monday night when Trump, who won in the electoral college but lost the popular vote, reiterated his view to congressional leaders that millions voted illegally, according to reports. He was criticised by Democrats and some Republicans.

But Spicer, who has the unenviable job of publicly defending Trump's spur-of-the-moment comments and tweets, insisted: "As I said, I think the president has believed that for a while based on studies and information he has."

Pressed further, Spicer said it was "a longstanding belief" of Trump's. "This isn't the first time you've heard this concern of his. I think there have been studies. There was one that came out in 2008 that showed 14% of people who had voted were non-citizens. There are other studies that have been presented to him. It's a belief that he maintains."

The press secretary appeared to be referring to a Washington Post article by the political scientists Jesse Richman and David Earnest which, drawing on the Cooperative Congressional Election Study, argued that more than 14% of non-citizens in 2008 and 2010 samples indicated that they were registered to vote.

The Washington Post's website now prefaces the article with three rebuttals, a response from the authors defending their work, and a peer-reviewed article contending that the findings "were biased and that the authors' data do not provide evidence of non-citizen voting in US elections".

When pressed about whether Trump would call for an investigation into what a reporter said would be the biggest scandal in American electoral history, Spicer said: "Maybe we will." He later added: "Anything is possible. It's a hypothetical question."

Asked what it meant for democracy, he was evasive and replied only: "It means I've answered your question."

But some members of Trump's own party were critical on Tuesday and urged the president to stop spreading baseless allegations. Lindsey Graham, senator for South Carolina, said: "I wasn't there, but if the president of the United States is claiming that 3.5 million people voted illegally, that shakes confidence in our democracy - he needs to disclose why he believes that."

Graham added: "I would urge the president to knock this off; this is the greatest democracy on Earth, we're the leader of the free world, and people are going to start doubting you as a person if you keep making accusations against our electoral system without justification. This is going to erode his ability to govern this country if he does not stop it."

The House speaker, Paul Ryan, also distanced himself from the comments. "I have no way of backing that up," he said. "It doesn't matter to me. He won the election."

But the Senate majority leader, Mitch McConnell, told reporters: "The notion that election fraud is a fiction is not true ... It does occur, there are always arguments on both sides about how much and how frequent and all the rest, but most states have done a better job on this front."

Colorado Republican Cory Gardner, who said this weekend that he had written in Mike Pence's name in lieu of Trump when voting, said there was voter fraud in the US. When pressed about whether more than 3m illegal votes had been cast, the first-term senator simply said: "I haven't seen any evidence of that."

Other Republicans simply punted. When asked about Trump's comments on Tuesday morning, before the Spicer press conference, the Arizona senator John McCain said: "Long ago I gave up talking about what the president talks about; my concern is what he does."

In contrast, Democrats slammed the president's statement. The Senate minority leader, Chuck Schumer, said: "The president ought to realise he is president. Instead of talking about the election or how many people showed up at the inauguration, he ought to talk about how many jobs he created."

Schumer went on to cast blame on elected Republican senators for not condemning these comments: "When these falsehoods are told, our Republican colleagues have an obligation to reject them, not to skirt around them. The bottom line is simple: you cannot run a government,

you cannot help people, you cannot keep America safe, if you cannot admit to the facts, plain and simple.”

The Vermont senator Bernie Sanders simply said the president’s accusation of voter fraud was a “delusional statement”.

Weeks after the election, Trump insisted in a tweet that he had won the popular vote “if you deduct the millions of people who voted illegally”.

Fact-checking websites and newspapers traced the claim to a two-week-old “random tweet” by a former Republican party official in Texas. Gregg Phillips claimed on 12 November to have found “more than three million votes cast by non-citizens” - but he too failed to provide evidence.

The topic was one Trump long harped on throughout the campaign with claims that the election was “rigged”.

In October, he insisted at a Wisconsin rally: “People who died 10 years ago are still voting.” Trump specifically claimed 1.8 million dead people would vote - and for “somebody else”. This appeared to be a reference to a 2012 study that found up to 1.8 million active voter registrations from deceased voters. That specific study did not provide any evidence of voter fraud or any ballots cast by the deceased. Instead, it simply illustrated that some state voter databases were out of date.

Trump had also long specifically warned of voter fraud in minority communities, specifically in Philadelphia, where Barack Obama won African American neighborhoods by overwhelming majorities in 2012. In an October rally in exurban central Pennsylvania, Trump warned the almost entirely white crowd: “Watch your polling booths, because I hear too many stories about Pennsylvania, certain areas. We can’t lose an election because - you know what I am talking about.”

There is no evidence of widespread voter fraud. Research over the last 16 years has found voter fraud to be extremely uncommon, and 2016 appeared to follow that pattern. ProPublica election monitors saw no evidence of widespread illegal voting.

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- Sean Spicer
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# Exhibit C



**Donald J. Trump** 

@realDonaldTrump

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30K



104K



# Exhibit D

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13

# Trump Fundraising Off Controversial Push To Include Citizenship Question In Census

By Tierney Sneed | March 19, 2018 5:10 pm

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Pool/Getty Images North America

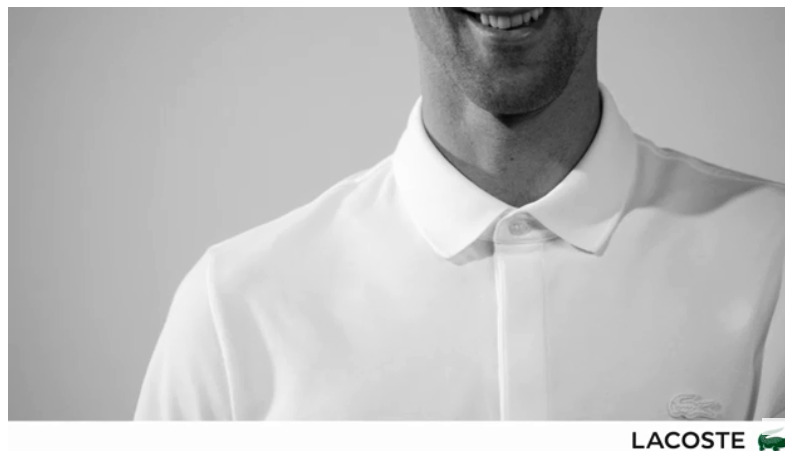
President Trump's campaign committee is fundraising off a controversial request from his Justice Department that the 2020 Census include a question about citizenship.





An email from the campaign committee poses a survey to recipients with the subject line “a truly simple question for you.”


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“The President wants the 2020 United States Census to ask people whether or not they are citizens,” the email said. “In another era, this would be COMMON SENSE... but 19 attorneys general said they will fight the President if he dares to ask people if they are citizens. The President wants to know if you’re on his side.”

The email then includes a survey on the question that leads to page seeking contributions to the campaign.



Friend,

The President wants the 2020 United States Census to ask people whether or not they are citizens. In another era, this would be COMMON SENSE... but 19 attorneys general said they will fight the President if he dares to ask people if they are citizens.

The President wants to know if you're on his side.

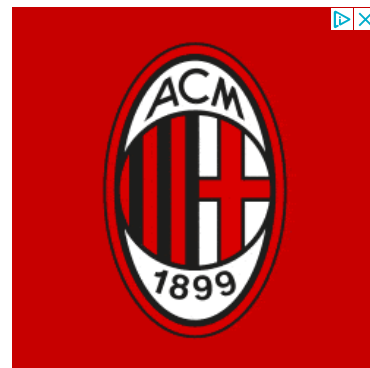
Do you believe the 2020 United States Census should ask if people are American citizens?

ABSOLUTELY! IS THAT EVEN A QUESTION?

NO

Thank you,  
Team TRUMP

TAKE THE SURVEY

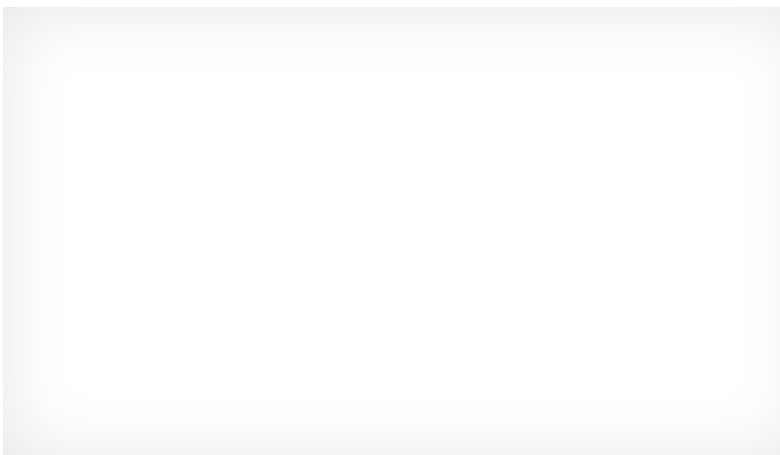


Former Census officials, policy wonks and civil rights advocates have all come out against the idea of asking about citizenship status in the decennial census. They fear that it will depress participation — especially among minority and immigrant communities. Internal Census research has shown that the question prompts fears about confidentiality and privacy among survey takers. Even citizens who live with non-citizens might be fearful about participating if the question is included, particularly given the anti-immigrant rhetoric coming out of the Trump administration, critics of the idea say.

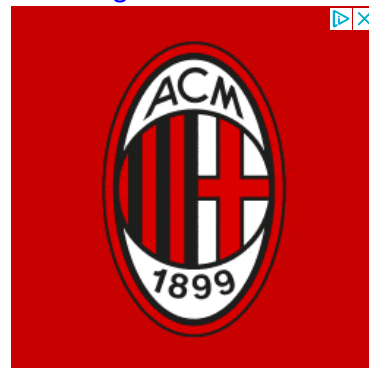
An undercounting of urban and minority communities stands to shift political power and resources to rural and white communities.

Critics also say adding the question this late in Census planning period adds another practical complication for a Census already facing a number of logistical hurdles.

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inRead invented by Teads



ProPublica **reported** recently that John Gore, a political appointee at the Justice Department who previously represented Republicans in high-profile voting rights lawsuits, was behind the request that Census Bureau consider adding the question. An aide to a former Republican senator who championed a bill to include the citizenship question has recently joined the Census as a political appointee, ProPublica also reported.

Commerce Secretary Wilbur Ross, who will have the final say over whether the question is included, is required to submit to Congress the questions Census intends to ask by the end of the month.

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- ☐ I'm not sure.
- ☐ I support President Trump's health care policy decisions.
- ☐ Yes. I'm more skeptical about a federal role in health care provision.
- ☐ No. The answer is to get a President with better policies.

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Dear GOP: have you no sense of decency, at long last, have you no sense of decency

(This is, of course, a rhetorical question - the answer is obviously no, they have none)

[19 Mar](#)

[otterqueen](#)

Well, if the question is included, I know what my answer is going to be. In fact, it wouldn't surprise me if the number of non-citizens counted in this country suddenly skyrocketed.

[19 Mar](#)

[epicurus](#)

Gee, and here I thought the Census was all about counting the populace of the United States, not checking peoples' papers. Silly me.

[1 reply](#)
[19 Mar](#) [▶ epicurus](#)

[slbinva](#)

It is about counting the populace. That's why the Republicans want to make non-citizens (especially those without papers) to respond to the census at all. As the story points out, they tend to reside disproportionately in large urban areas, and since

Congressional representation is apportioned not on the number of actual citizens in a state, but the total number of residents of all statuses, if the non-citizen responders can be suppressed, then cities will lose representation in comparison to rural areas, which are already over-represented in the House thanks to gerrymandering and to the fact that states with small populations have more congressional reps per thousand residents than those with larger populations.

(For example, Wyoming, with a 2017 population of 579,315, has one representative in Congress. California, with a 2017 population of 39,536,653, has 53 representatives in Congress, or one per 745,974 people. If California had representatives in the same proportion that Wyoming has, they would have 68 representatives, or 15 more than they are currently allotted.)

The fight it about how the populace is counted. The last time the census was taken, there was a lot of discussion about using modern statistical analysis to adjust the raw counts to correct for the inevitable errors and biases that are introduced by a manual count, and which would help with populations (like homeless people) who tend to be badly undercounted and give, actually, a more accurate count. The Republicans wouldn't hear of it.

Census population counts are also used in a lot of allocation formulas for federal funds, so in addition to having their fair share of Congressional representation diminished, states with proportionately high non-citizen residents would also have their fair share of many federal grants diminished if the census includes a question that would tend to suppress (by way of intimidation) participation by non-citizen populations.

19 Mar



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# Talking Points Memo

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Some 7200 new citizens from more than 100 countries celebrate at a naturalization ceremony last month in Los Angeles, California. MARIO TAMA/GETTY IMAGES

## Trump officials claim they can avoid 2020 census problems caused by controversial citizenship question. Experts are very skeptical

By **Jeffrey Mervis** | Apr. 13, 2018 , 4:30 PM

The Trump administration's plan to deal with a possible significant undercount on the 2020 U.S. census is seriously flawed, according to former agency officials and other experts in survey research.

**Late last month, Commerce Secretary Wilbur Ross endorsed a controversial request** from the Department of Justice to add a citizenship question to the decennial census. Justice Department



off the 's the in ed more detailed information on every U.S. resident to prevent discrimination under the 1965 Voting Rights Act.

**Civil rights groups and others blasted the decision**, predicting that the new question would prompt many immigrants to refuse to fill out the form. The resulting undercount, critics say, could invalidate census data used to apportion congressional seats and distribute three-quarters of a trillion dollars in federal funds.

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**In an eight-page memo released 26 March**, Ross asserted there was no evidence supporting the critics' claim that the new question would result in depressed response rates or a sizable undercount, citing several unnamed experts. But even if that happens, Ross said, the Census Bureau would be able to use the massive trove of information already on file with the government—relating to employment, taxes, health, education, housing, and social welfare benefits—to get an accurate count.

*ScienceInsider* has learned that at least three of the experts consulted by Ross disagree—sometimes strongly—with his decision to add the question. And they and other census specialists believe Ross has vastly understated the many technical and legal barriers to both accessing and making effective use of those data, known as administrative records. That process is unlikely to be completed by Census Day on 1 April 2020, they add, increasing the chances that a significant undercount could become reality.

"It would be incredibly challenging ... [and] it's going to be very hard to meet that deadline," says Amy O'Hara, who until last fall directed the Census Bureau's efforts to expand its use of administrative records. She is now a senior research scholar at Stanford University's Institute for Economic Policy Research in Palo Alto, California.

"The process sounds easy to a lay person, but it's not," says Hermann Habermann, a former deputy census director under President George W. Bush and now an occasional consultant to the Committee on National Statistics at the National Academies of Sciences, Engineering, and Medicine in Washington, D.C. All data sets have errors, for example, but it is not always clear how to correct them. Further complicating matters, other experts note, is research showing that some immigrants do not tell the truth when answering a similar citizenship question posed by another census survey.



## Antennas in request

In its December 2017 request to Ross, Justice Department officials argued that current data weren't sufficient for their needs. In particular, they asserted that numbers arising from a three-part citizenship question included on the American Community Survey (ACS), which annually polls 3.5 million households using 72 questions taken from what used to be the long form of the decennial census—didn't provide sufficiently detailed, census block-by-block coverage.

Civil rights and immigration advocates panned the request as a thinly veiled political move by the Republican administration of President Donald Trump. The people most likely to sit out the 2020 census and miss being counted for apportioning congressional seats, critics say, would likely vote disproportionately in any election for candidates running as Democrats. The critics noted that previous Justice Department officials had been satisfied with the smaller sampling of the U.S. population provided by the ACS and had never asked for data on every resident. They also said there wasn't time for census officials to do a thorough job of determining what impact the question might have on response rates and the overall accuracy of the decennial census.

In his memo laying out his decision, Ross said he embraced the goal of "a complete and accurate" census. And he weighed three options to achieve it—omit the question, add the question but don't use administrative records to shore up the results, or rely exclusively on administrative records.

Ross says he rejected all three in favor of what he called "Option D": Ask the question, and use administrative records to fill in any holes. To that end, he said, the agency "is working to obtain as many additional federal and state administrative records as possible."

## Mission impossible?

Administrative records can be used to improve a count's accuracy in several ways, experts say.

One common use is to identify households that have not responded to requests to fill out a survey. For example, if postal or tax records suggest that people are living at a specific address not already in the census's master address file, but nobody at that address has returned a census form, the agency would target the address for follow-up mailings. The last resort is to send out enumerators, sometimes repeatedly, to knock on the door. (Those field operations are also the biggest expense for any decennial census, with in 2020 is estimated to cost \$15.6 billion.)

Another way the Census Bureau uses administrative records is to double check the accuracy of survey answers, or fill gaps in an incomplete survey. But that process has never been tested for a citizenship question on the decennial census, and specialists say it is much easier said than done.

The first step, O'Hara says, would be to identify which other agency or commercial firm might have data on citizenship. But although the Census Bureau has the authority to request data from other agencies, only the Internal Revenue Service (IRS) "is compelled to share its data," she notes. So

ce 73 3 of 2 in 'd need to negotiate a data-sharing agreement with the second entity that would also spell out how to transfer the data securely.

Even if another agency is amenable to such an agreement, the negotiations can take a long time. For example, the Census Bureau has spent 7 years negotiating with the Department of Veterans Affairs to obtain a usable list of all veterans that it could use to verify information from the ACS, she notes.

The next barrier is what O'Hara calls "harmonization of the data source"—meshing different data sets in a way that makes them usable. In the case of citizenship, O'Hara says, "I can't estimate how difficult [harmonization] would be because these data have never been drawn together."

With respect to the citizenship question, O'Hara speculates that census officials might turn first to Social Security records. The bureau already uses such "high-quality data" to check age and sex, she notes, as well as to fill in missing race and ethnicity answers.

Unfortunately, those records have serious limitations with regard to citizenship. Anyone with a legal right to work in the United States can receive a Social Security card, even if they are not a citizen. Although the government asks for citizenship information "when someone first applies," O'Hara notes, "the file is never updated, because there's no requirement to do so." In other words, a person's immigration status could change, and the Social Security Administration wouldn't necessarily know about it.

Given those limitations, she says, census officials might look to other federal agencies for current information on immigration status. That could mean trying to mesh their records with a taxpayer number from IRS or with the U.S. Citizenship and Immigration Services (CIS), which issues green cards for permanent residency. But CIS, she says, "wouldn't necessarily" know both a person's naturalization and work status.

Even a name and date of birth may not be specific enough for the agency to track down needed information unless the record also includes a current address. That's because agency officials "need to be able to identify a person, at a place, with certain attributes" before they can be included in the decennial census, O'Hara says. "You have to connect the siloes," she emphasizes.

Another huge challenge is what to do when government records contain conflicting data on the same person. Race is a good example, O'Hara says. Researchers have found that "people respond differently to a question about race and ethnicity depending on how it's asked," she notes. "And I think that interpreting answers to a question about citizenship is likely to be even more complicated."

---

## The 2020 census will have a new question on citizenship

He 73 thr 'zens' 2 in question the administration has decided to add to the 2020 census. Trump officials claim... they can avoid problems caused by the controversial question, but experts are skeptical.

### Is this person a citizen of the United States?

- ☐ Yes, born in the United States
- ☐ Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas
- ☐ Yes, born abroad of U.S. citizen parent or parents
- ☐ Yes, U.S. citizen by naturalization – *Print year of naturalization* ↗
- 
- ☐ No, not a U.S. citizen

U.S. CENSUS BUREAU

## What they actually said

The only issue on which Ross and his critics may agree is that a question on citizenship will likely strike a nerve among respondents. But that represents a tiny patch of common ground.

Ross asserts several times in his memo that critics have not provided any evidence to back up their claim that response rates would be “materially” lower if the question appears on the 2020 census. He attempts to bolster his argument by offering comments from three of the more than two dozen unnamed experts he consulted before making his decision.

ScienceInsider was able to identify some of the experts because Ross identified them by past or present job titles. And contrary to the impression left by the memo, three of the experts cited have serious misgivings about adding a citizenship question to the 2020 census.

One is Habermann, the former senior Census Bureau official. Ross writes that Habermann (and a second expert) “confirmed that ... no empirical data existed on the impact of a citizenship question on response” rates. Habermann says that is correct, as far as it goes, but that Ross left out something even more important.



its to put a question on the census, there's a high burden of proof that must be met about its value," Habermann says. "And I told him that I don't think the case has been made that [the citizenship question] is so important that it's worth endangering this fragile instrument."

The second expert referred to by Ross is Christine Pierce, senior vice president for data science at Nielsen, a global information and measurement company best known for its monitoring of television viewing. Pierce declined to speak with *ScienceInsider*. But a company spokesperson based in New York City says that "Nielsen does not support the inclusion of a question on citizenship for the 2020 U.S. census because we believe its inclusion could lead to inaccuracies in the underlying data."

Ross's memo also asserted that Nielsen has found no "appreciable decrease in response rates" when it has used "sensitive" questions from the ACS on its own surveys. That is not correct, according to a source familiar with the Nielsen surveys who requested anonymity. The company found that questions relating to religion and sexuality do depress response rates, according to the source. In addition, the source notes, a question about citizenship in a marketing or viewer survey is far less politically charged than were the same question to appear on the U.S. census.

The third identifiable person in Ross's memo is Robert Groves, who led the agency from 2009 to 2012. Ross writes that Groves told him "while he wished there were data to answer the question [of response rates], none existed to his knowledge."

Groves, now provost of Georgetown University in Washington, D.C., didn't respond to requests to discuss the matter. But it's no secret that he strongly opposes adding a citizenship question to the 2020 census.

"It is highly risky to ask untested questions," Groves wrote in a public letter to Ross on 26 January that was co-signed by five other former census directors. "There is a great deal of evidence that even small changes in survey question order, wording, and instructions can have significant, and often unexpected, consequences for the rate, quality and truthfulness of response."

Ross's repeated assertion that there's no evidence to support critics of the added question is a red herring, says another co-signer of that letter, John Thompson, who retired last spring after 4 years as census director. "That question has never been tested in a contemporary census environment," says Thompson, who is now executive director of the Council of Professional Associations on Federal Statistics in Washington, D.C. "So of course, there's not going to be any evidence."

## Whose data do you trust?

There's one more wrinkle in the complex web of issues surrounding the citizenship question. Research casts doubt on the accuracy of the answers to the three citizenship questions on the ACS. The research points to men born in Mexico and those who have lived for less than 5 years in the United States as the cohorts most likely to overrepresent their citizenship status.

73 Hc 'o t' ese in ers know? They compared ACS data with records from the Office of Immigration Statistics (OIS) within the Department of Homeland Security, and assume that the OIS records are more accurate than self-reported data on the ACS.

Still, there are important caveats to both sets of data. For example, to know the actual number of naturalized citizens in the country at any one time, researchers also must estimate the number who have died since becoming naturalized and the number who have left the United States—returning to their place of birth, perhaps, or moving to another country.

“The OIS records only tell you if a person has been naturalized at some point in the past,” says Jennifer Van Hook, director of the Population Research Institute at Pennsylvania State University in University Park and lead author on a 2013 paper that examined the ACS’s ability to count naturalized citizens. “We don’t know what happens to them after that.”

There’s also reason to believe that the ACS doesn’t capture a representative sample of this immigrant population, Van Hook says. As a result, she notes, any count of naturalized U.S. citizens comes with large error bars.

Like many social scientists, Van Hook thinks that the current hyperpartisan debate over immigration could make the data from future surveys even less reliable. “I think it’s safe to say that any research done prior to January 2017 [when Trump took office] is now out of date. So my study would have to be done over,” she says.

Next month, Congress will get a chance to ask census officials about the citizenship question. The oversight and government reform committee for the U.S. House of Representatives has scheduled a public hearing for 8 May, following up on a closed-door briefing it received on Tuesday. This week, civil rights groups urged the relevant Senate panel to do likewise, reinforcing a request last month from Democrats on the panel.

Posted in: [Scientific Community](#), [Sociology](#)

doi:10.1126/science.aat8801



### Jeffrey Mervis

Jeff tries to explain how government works to readers of *Science*.

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2



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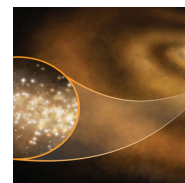
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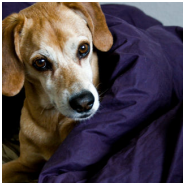
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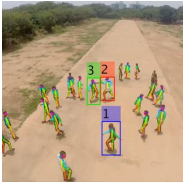
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# Exhibit F



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# Trump campaign rallies supporters on Census citizenship question

By [Tal Kopan](#), CNN

Updated 4:39 PM ET, Wed March 28, 2018

## Dem Congressman battles WH over Trump's census change 03:32

**Washington (CNN)** — Amid accusations of politicizing the US Census, President Donald Trump's campaign touted the administration's move to add a question about citizenship status on the consequential survey in an email to supporters on Wednesday.

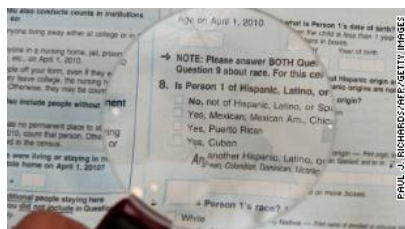
The email with the subject line "GOOD NEWS: We are asking about citizenship" was sent to the President's backers and touts the move by the Commerce Department at the request of the Justice Department, giving credit to Trump himself.

The email states that "President Trump has officially mandated that the 2020 United States Census ask people living in America whether or not they are citizens," adding that "the sanctuary state of California is now SILENCING the Trump

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**Related Article:** California sues over Census citizenship question

Trump campaign rallies supporters on Census citizenship question - CNN Politics  
government or participate in the census, especially given the Trump administration's aggressive push to curtail illegal and some legal immigration.



TRUMP MAKE AMERICA GREAT AGAIN COMMITTEE

Friend,

The people spoke.

President Trump has officially mandated that the 2020 United States Census ask people living in America whether or not they are citizens.

*And the sanctuary state of California is now SUING the Trump Administration to stop this commonsense order.*

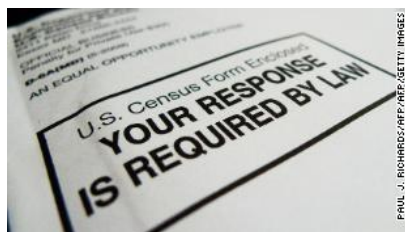
**Please sign our Official Petition to defend the President's decision to make citizenship a question on the 2020 United States Census.**

That could lead to underreporting, and thus undercounting by the federal government in diverse communities. Critics accused the administration of pursuing the move without adequately testing it because of political motivations.

The Commerce Department announced Monday it would include a question about a person's citizenship status on the 2020 Census, the first time such a question will appear on the widely distributed once-a-decade survey since the 1950s, though it has appeared on more narrowly distributed, longer surveys also run by the Census Bureau.

The data collected in the decennial Census is used to determine important representation for states and localities like congressional districts and allocation of federal resources, and thus an accurate count is essential to those areas for the next 10 years.

The fundraising email asks supporters to sign a petition to "defend the President" and the decision. Once someone inputs their information to the data collection, they are prompted to donate money, as well.



**Related Article:** Why putting a citizenship question on the census is a big deal

"It's time to fight back. It's time to once again reclaim our voice in America," the email closes.

The campaign fundraising emails are run by the joint committee between the Republican National Committee and the President's campaign apparatus.

Democrats also were quick to capitalize on the controversy to raise money. Democratic National Committee Chairman Tom Perez signed an email to supporters opposing the move and saying "it's up to us to stop them."



## 10 Moscow hotels for budgets big and small



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2 names that explain why Republican politicians are afraid of criticizing...

# Exhibit G

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*Attorneys for Plaintiffs*  
CITY OF SAN JOSE and BLACK ALLIANCE FOR JUST  
IMMIGRATION

*[Additional Counsel Listed on Signature Page]*

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

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

Plaintiffs,

Case No. 5:18-cv-2279-RS

**PLAINTIFFS CITY OF SAN  
JOSE'S AND BLACK ALLIANCE  
FOR JUST IMMIGRATION'S  
FIRST SET OF REQUESTS FOR**



**PRODUCTION OF DOCUMENTS**

1 vs.

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

9 Defendants.

10 Pursuant to Rules 26(d)(2) and 34 of the Federal Rules of Civil Procedure  
11 and the applicable Civil Local Rules of the U.S. District Court for the Northern  
12 District of California, plaintiffs City of San Jose (“San Jose”) and Black Alliance  
13 for Just Immigration (“BAJI”) (collectively “Plaintiffs”), by and through their  
14 undersigned counsel, hereby request that defendants Wilbur L. Ross Jr., the  
15 United States Department of Commerce, Dr. Ron Jarmin, and the United States  
16 Census Bureau (collectively, “Defendants”), identify and produce the documents  
17 requested below at the offices of Manatt, Phelps and Phillips, LLP, 11355 West  
18 Olympic Boulevard, Los Angeles, California 90064. Pursuant to Rule 34(b)(2)(A)  
19 of the Federal Rules of Civil Procedure, Defendants must produce the requested  
20 documents within 30 days after the parties’ first Rule 26(f) conference in this  
21 matter.

22 In responding to these requests, the following definitions and instructions  
23 shall apply.

**DEFINITIONS**

24 1. “Complaint” means the original complaint filed on or about April 17,  
25 2018 in the above-referenced action.

26 2. “Department of Commerce” means the United States Department of  
27 Commerce, including its agents, employees, representatives, and assigns,  
28 inclusively.

1       3.     “Ross” or “Secretary Ross” means United States Secretary of Commerce  
2 Wilbur L. Ross Jr., a defendant in this action, and anyone acting on his behalf or  
3 under his direction.

4       4.     “Census Bureau” means the United States Census Bureau, including its  
5 agents, employees, representatives, and assigns, inclusively.

6       5.     “Jarmin” or “Acting Director Jarmin” means Dr. Ron S. Jarmin, Associate  
7 Director for Economic Programs of the U.S. Census Bureau, also performing the  
8 non-exclusive functions and duties of the Director of the U.S. Census Bureau and a  
9 defendant in this action, and anyone acting on his behalf or under his direction.

10      6.     “You” or “Defendants” means Department of Commerce, Ross, Census  
11 Bureau, and Jarmin, inclusively.

12      7.     “DOJ” means the United States Department of Justice, including its  
13 agents, employees, representatives, and assigns, inclusively.

14      8.     “Civil Rights Division” means the Civil Rights Division of the United  
15 States Department of Justice, including its agents, employees, representatives, and  
16 assigns, inclusively.

17      9.     “ACS” means each and every American Community Survey conducted by  
18 the Census Bureau, inclusively.

19      10.    “Decennial Census” means each and every census conducted every ten  
20 years by the Census Bureau pursuant to Article I, § 2 of the United States  
21 Constitution.

22      11.    “2020 Decennial Census” means the Decennial Census that will be  
23 conducted in the year 2020, including all studies, surveys, analyses, and testing  
24 conducted in preparation for such Decennial Census.

25      12.    “March 2017 Report” means the report submitted by the Census Bureau  
26 to the United States Congress on March 28, 2017 setting forth the proposed subjects  
27 planned for the 2020 Decennial Census.

28

13. “December 2017 Letter” means the letter from Arthur E. Gary to Jarmin referenced in Paragraph 6 of the Complaint and attached thereto as Exhibit 1.

14. “March 2018 Letter” means the letter from Ross to Karen Dunn Kelley referenced in Paragraph 7 of the Complaint and attached thereto as Exhibit 2.

15. “Citizenship Question” means a question on a Decennial Census asking a respondent to reveal such respondent’s citizenship status.

16. “2020 Citizenship Question” means the Citizenship Question proposed for the 2020 Decennial Census described in the March 2018 Letter.

17. “Meyers Report” means the November 2, 2017 report titled “Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census,” prepared for the Census Bureau.

18. “2020 Census Operational Plan” means each and every version and draft of the document currently titled “2020 Census Operational Plan: A New Design for the 21<sup>st</sup> Century,” currently issued as version 3.0, dated September 2017, and available on the website for the Census Bureau at <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan3.pdf>.

19. “Documents” means all original writings and recordings of any nature whatsoever, in Your possession, custody or control, regardless of where located. Such writings or recordings include, but are not limited to, contracts, agreements, records, notes, cancelled checks (front and back), receipts, Correspondence, books, pamphlets, reports, summaries, telegrams, drafts, projections, invoices, ledgers, drawings, graphs, charts, indexes, photographs, film, microfilm, print-outs, videotapes, audio tapes, computer tapes and disks, computer memory files, and other tapes and disks recorded electronically, magnetically or otherwise, and other data compilations from which information can be obtained or translated, if necessary, through detection devices, into reasonably usable form, and all other written, printed, typed, photostatic, photographed, recorded or otherwise

1 reproduced communications or representations; and (a) all drafts of the foregoing;  
 2 (b) all non-identical copies thereof (whether different from the original because of  
 3 notes made on such copy or otherwise); and (c) all attachments to or enclosures  
 4 with any Document.

5 20. “Communication” or “Communications” means all letters, notes,  
 6 memoranda, notices, telegrams, telexes, teletypes, electronically transmitted  
 7 facsimiles, facsimiles, emails, electronic messages, text messages, or voicemail  
 8 messages.

9 21. The terms “relates to,” “regarding,” “comprising,” “evidencing,”  
 10 “showing,” and “concerning” are used interchangeably and in their broadest  
 11 possible connotations.

12 22. The terms “any” and “all” are used interchangeably and in their most  
 13 inclusive meaning.

14 23. The term “person” means any individual or group of individuals, any  
 15 corporation, partnership, company or other entity, or any public entity or  
 16 government agency.

17 24. The present tense includes the past and future tenses. The singular  
 18 includes the plural, and the plural includes the singular.

### 19 **INSTRUCTIONS**

20 25. The Documents and Communications requested herein shall be produced  
 21 as they are kept in the usual and ordinary course of business or organized and  
 22 labeled to respond to the categories in these requests.

23 26. Documents or Communications maintained in the ordinary course of  
 24 business in hard copy format shall be produced in hard copy format with a unique  
 25 Bates number affixed to each page. Documents or Communications maintained in  
 26 the ordinary course of business in electronic format shall be produced  
 27 electronically.  
 28

1       27. If You cannot comply with any specific request herein in full, You shall  
2 comply with it to the extent possible and explain why full compliance is not  
3 possible.

4       28. If You object to any of the requests herein, or part thereof, You shall state  
5 with specificity all grounds for Your objection. Any ground not stated in an  
6 objection within the time provided, or any extensions thereof, shall be deemed to be  
7 waived.

8       29. For every Document or Communication requested, Plaintiffs request (a)  
9 every non-identical copy of the Document and Communication (whether different  
10 from the original because of stamps, notes, or other marks made upon or missing  
11 from such copy or otherwise), and (b) every note, “post-it,” facsimile transfer cover  
12 page and other Document that accompanied or is or was affixed to any Document  
13 and Communication requested herein.

14       30. If any Document or Communication requested herein was at one time in  
15 existence, but has been lost, discarded, or destroyed, identify: (a) each such  
16 Document or Communication, including the (i) date, (ii) nature, (iii) subject matter,  
17 (iv) person who originated it and (v) person to whom it was sent; (b) last known  
18 custodian of the Document or Communication; (c) date the Document or  
19 Communication was lost, discarded, or destroyed; (d) reason(s) for discarding or  
20 destroying the Document or Communication; (e) each person having knowledge of  
21 the Document or Communication; and (f) each person having knowledge of the  
22 circumstances of it being lost, discarded, or destroyed.

23       31. These demands require the production of all information embraced within  
24 the scope hereof, regardless of the medium in which maintained, and include (by  
25 way of example and not by way of limitation) information stored, maintained,  
26 and/or filed electronically, on word processing equipment, computer, computer  
27 software or diskette, microfilm, and/or microfiche, or on back-up tapes.

28

32. If You withhold any Document or Communication responsive to these requests under a claim of privilege, in order that the Court and the parties may determine the validity of the claim of privilege, You must set forth in Your response to these requests a privilege log which specifically provides for each Document or Communication withheld: (a) the date, author(s), addressee(s), recipient(s), subject matter, title, number of pages and any other information necessary to sufficiently identify the document and to permit the evaluation of the claim of privilege; (b) a specific statement of the basis upon which privilege is claimed; and (c) whether any non-privileged or non-protected matter is included in the Document or Communication.

33. All grounds for an objection shall be stated with specificity.

34. Unless otherwise indicated, these requests shall be deemed to cover the time period between January 1, 2008 to the present.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. All studies, reports, analyses, or surveys concerning the impact that including a Citizenship Question would have on the response rate to any Decennial Census created by or in the possession of the Census Bureau since 1950.

2. All public comments submitted in any form concerning the inclusion of a Citizenship Question on any Decennial Census received by or in the possession of the Census Bureau since January 1, 2008.

3. All Documents and Communications concerning the March 2017 Report, including but not limited to Documents and Communications concerning the decision whether to include a Citizenship Question as a topic in the March 2017 Report.

4. All Documents and Communications concerning the decision whether to include a Citizenship Question in the 2020 Decennial Census made prior to December 12, 2017.

1           5.     All Documents and Communications concerning the December 2017  
2 Letter.

3           6.     All drafts of the March 2018 Letter.

4           7.     All Communications concerning the March 2018 Letter.

5           8.     All Documents and Communications concerning the “comprehensive  
6 review” that the Department of Commerce conducted regarding the 2020  
7 Citizenship Question as referenced in Paragraph 2 of the March 2018 Letter.

8           9.     All Documents and Communications concerning the “thorough  
9 assessment” conducted regarding the Citizenship Question referenced in Paragraph  
10 4 of the March 2018 Letter.

11          10.    All Documents and Communications concerning the “multiple  
12 meetings” between Secretary Ross and the Census Bureau leadership referenced in  
13 Paragraph 4 of the March 2018 Letter.

14          11.    All Documents and Communications concerning Secretary Ross’s  
15 meetings with “over 24 diverse, well informed and interested parties representing a  
16 wide range of views” referenced in Paragraph 4 of the March 2018 Letter.

17          12.    All Documents and Communications concerning the impact that the  
18 inclusion of the 2020 Citizenship Question will have on the enforcement of the  
19 Voting Rights Act as referenced in Paragraph 5 of the March 2018 Letter.

20          13.    All Documents and Communications concerning “Option A” as set  
21 forth in Paragraph 9 of the March 2018 Letter, including but not limited to  
22 Documents and Communications concerning the Census Bureau’s advice that “it  
23 would need to deploy a team of experts to develop model-based methods that  
24 attempt to better facilitate DOJ’s request for more specific data” to provide DOJ  
25 with citizenship data without including the 2020 Citizenship Question on the 2020  
26 Decennial Census.



1           14. All Documents and Communications concerning stakeholder opinions  
2 that “Option B . . . would negatively impact the response rate” as set forth in  
3 Paragraph 10 of the March 2018 Letter.

4           15. All Documents and Communications concerning Defendants’ plans to  
5 increase non-response follow up operations to compensate for the fact that that  
6 including the 2020 Citizenship Question on the 2020 Decennial Census could  
7 “reduce the accuracy of the decennial census” as set forth in the March 2018 Letter.

8           16. All Communication between any Defendants and the “former director  
9 of the Census Bureau” identified in Paragraph 10 of the March 26, 2018 concerning  
10 inclusions of a Citizenship Question on the 2020 Decennial Census.

11           17. All Communications with “the national survey agency Nielsen”  
12 concerning the potential inclusion of a Citizenship Question on the 2020 Decennial  
13 Census, including but not limited to Communications referenced in Paragraph 10 of  
14 the March 2018 Letter.

15           18. All Documents created by the Census Bureau as part of its “attempt[]  
16 to assess the impact that a reinstatement of a citizenship question on the decennial  
17 census would have on response rates” as set forth in Paragraph 11 of the March  
18 2018 Letter.

19           19. All Documents and Communications concerning the Census Bureau  
20 analysis referred to in Paragraph 12 of the March 2018 Letter which “showed that  
21 using administrative records could be more accurate than self-responses in the case  
22 of non-citizens.”

23           20. All Documents and Communications regarding Secretary Ross’s  
24 consideration of the “Options” identified in the March 2018 Letter and his selection  
25 of “Option D” as described in Paragraph 16 of the March 2018 Letter.

26           21. All Documents and Communications concerning how Secretary Ross  
27 “carefully considered the argument that the reinstatement of the citizenship  
28



1 question on the decennial census would depress response rate” as described in  
2 Paragraph 17 of the March 2018 Letter.

3 22. All Documents concerning the Department of Commerce’s “review”  
4 described in Paragraph 18 of the March 2018 Letter, including but not limited to all  
5 reports, summaries, analyses, recommendations, or other work product concerning  
6 that review.

7 23. All Documents supporting or refuting the conclusion in Paragraph 18  
8 of the March 2018 Letter that “there is no information available to determine the  
9 number of people who would in fact not respond due to a citizenship question being  
10 added, and no one has identified any mechanism for making such a determination.”

11 24. All Communications between Defendants and the “former Deputy  
12 Director and Chief Operating Officer of the Census Bureau during the George W.  
13 Bush administration” referenced in Paragraph 19 of the March 2018 Letter  
14 concerning adding a Citizenship Question to the Decennial Census.

15 25. All Communications between Defendants and the “former Census  
16 Bureau Director during the Obama administration” referenced in Paragraph 19 of  
17 the March 2018 Letter concerning adding a Citizenship Question to the Decennial  
18 Census.

19 26. All Communications and Documents regarding the “empirical  
20 evidence about the impact of sensitive questions on survey response rates” from the  
21 SVP of Data Science at Nielson as referenced in Paragraph 20 of the March 2018  
22 Letter.

23 27. All Communications and Documents concerning the recommendation  
24 from the Census Bureau staff concerning the “costs of preparing and adding the  
25 question” to the Decennial Census as set forth in Paragraph 21 of the March 2018  
26 Letter.

27 28. All Communications and Documents concerning the “rough estimate”  
28 from the Census Bureau regarding the increased cost of non-respondent follow up

1 operations that would be imposed by adding a Citizenship Question to the  
2 Decennial Census as set forth in Paragraph 22 of the March 2018 Letter.

3 29. All Documents supporting or refuting the conclusion in Paragraph 23  
4 of the March 2018 Letter that “inclusion of a citizenship question on the 2020  
5 decennial census will provide more complete information for those who respond.”

6 30. Any report created pursuant to 13 U.S.C. § 141(f)(3) concerning “the  
7 subjects, types of information, or questions as proposed be modified” from the  
8 subjects set forth in the March 2017 Report to the 2020 Decennial Census,  
9 including any Documents and Communications concerning such report.

10 31. All Documents and Communications concerning the design and  
11 implementation of any and all studies that were conducted in preparation for the  
12 Meyers Report.

13 32. All Communications between Defendants and any member of the  
14 Census Scientific Advisory Committee concerning the inclusion of a Citizenship  
15 Question on the 2020 Decennial Census.

16 33. All Documents concerning the 2017 Census Test (as described in  
17 Section 4.1.4 of the 2020 Census Operational Plan), including Documents  
18 concerning the design, implementation, operation, and results of the 2017 Census  
19 Test.

20 34. All Documents concerning the 2018 End-to-End Census Test (as  
21 described in Section 4.1.5 of the 2020 Census Operational Plan), including but not  
22 limited to Documents concerning the design, implementation, and operation of the  
23 2018 End-to-End Census Test.

24 35. All Documents concerning any testing that the Census Bureau has  
25 conducted to determine the impact on the response rate of including a Citizenship  
26 Question on the 2020 Decennial Census, including but not limited to Documents  
27 concerning the design, implementation, and operation of such tests.  
28

1           36. All Documents and Communications concerning the language to be  
2 used for the 2020 Citizenship Question.

3           37. All production schedules, calendars, or timetables concerning the  
4 development, printing, and distribution of questionnaires for the 2020 Decennial  
5 Census.

6           38. The complete administrative record supporting the inclusion of the  
7 2020 Citizenship Question in the 2020 Decennial Census.

8           39. All Communications between or among the Department of Commerce,  
9 the Census Bureau, any other federal or state agency, and/or non-governmental  
10 organizations concerning the inclusion of a Citizenship Question in the 2020  
11 Decennial Census.

12           40. All Documents, including Communications, Defendants have provided  
13 to or received from any member of Congress, including congressional committees,  
14 concerning the inclusion of a Citizenship Question in the 2020 Decennial Census.

15           41. All Documents, including Communications, Defendants have provided  
16 to or received from the Executive Office of the President, including, but not limited  
17 to, the White House Office, the Office of Management and Budget, the Office of  
18 the U.S. Chief Statistician, and the Office of Information and Regulatory Affairs,  
19 concerning the inclusion of a Citizenship Question in the 2020 Decennial Census.

20           42. All Documents, including Communications, Defendants have provided  
21 to or received from the DOJ (including but not limited to communications provided  
22 to or received from the Civil Rights Division, the Voting Section, and the National  
23 Origin Working Group) concerning the inclusion of a Citizenship Question in the  
24 2020 Decennial Census.

25           43. All documents and communications relating to the citizenship  
26 questions on the American Community Survey (ACS), including but not limited to  
27 any statistical models or analyses correcting for non-responses to these questions.  
28

Respectfully submitted,

Dated: May 23, 2018

**MANATT, PHELPS & PHILLIPS, LLP**

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