COMMITTEE ON OVERSIGHT AND REFORM,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: EARL COMSTOCK

Friday, June 21, 2019

Washington, D.C.

The interview in the above matter was held in Room 6400, O'Neill House Office Building, commencing at 9:35 a.m.

Appearances:

For the COMMITTEE ON OVERSIGHT AND REFORM:

TORI ANDERSON, COUNSEL

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[redacted]

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Ms. Anderson. We can go on the record. I'm just going to read an introduction and then we'll get started this morning.

This is a transcribed interview of Earl Comstock conducted by the House Committee on Oversight and Reform. This interview was requested by Chairman Elijah Cummings as part of the committee's oversight investigation into the addition of a citizenship question into the 2020 Census.

Can you please state your full name and spell your last name for the record?

Mr. Comstock. Earl Wells Comstock, C-o-m-s-t-o-c-k.

Ms. Anderson. Mr. Comstock, my name is Tori Anderson. I work on the majority staff for the Committee on Oversight and Reform. We want to thank you for coming in for a voluntary interview today.

At this time we'll just go around and introduce everyone in the room.

Mr. Anello. Russ Anello, majority staff.

[redacted]

Mr. Castor. Steve Castor with the Republican staff.

Ms. Johnson. Ellen Johnson, Republican staff.

Mr. Sanderson. Tyler Sanderson with the Republican staff.

[redacted]

Ms. Anderson. The way the interview will proceed is as follows. The majority and minority staffs will alternate asking you questions, 1 hour per side per round. The majority staff will begin and proceed for an hour and the minority staff will then have an hour to answer questions. Thereafter, the majority staff may ask additional questions and so on and so forth. We will alternate back and forth in this manner until there are no more questions from either side and then the interview will be over.

During the interview we'll do our best to limit the number of people who are

directing questions at you during any given hour. That said, from time to time followup or clarifying questions may be useful, and if that's the case, you may hear from additional people around the table.

Under committee rules you are allowed to have an attorney present to advise you. Do you have an attorney representing you in your personal capacity today?

Sorry, can you just answer out loud for the record?

Mr. Comstock. I guess the answer is no.

Ms. Anderson. I understand that you do not have a personal attorney with you but instead have agency counsel with you.

Would agency counsel please identify themselves for the record?

Mr. Dewhirst. David Dewhirst, deputy general counsel, Department of Commerce.

Mr. Hull. Cordell Hull, also deputy general counsel Department of Commerce.

Ms. Anderson. Mr. Comstock, do you understand that agency counsel represents the agency and not you personally?

Mr. Comstock. I do.

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

Mr. Comstock. Yes, I am.

Ms. Anderson. The stenographer is taking down everything I say and everything you say to make a written record of this interview. For the record to be clear, please wait until I finish asking each question before you begin to answer and I will endeavor to wait until you finish your response before asking you the next question.

The stenographer cannot record nonverbal answers such as shaking your head, so it's important that you respond with each question audibly and with a verbal answer.

Do you understand?

Mr. Comstock. I do.

Ms. Anderson. We want you to answer our questions in the most complete and truthful manner possible, so we are going to take our time. If you have any questions or do not understand any of the questions, please let us know and we'll be happy to clarify or rephrase the question. Do you understand?

Mr. Comstock. Yes, I do.

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

Mr. Comstock. I understand.

Ms. Anderson. If you need to take a break, please just let us know and we are happy to accommodate. Ordinarily we take a 5-minute break at the end of each hour of questioning, but if you need a break before then, you can just inform us. However, to the extent possible, if there's a pending question, we just ask that you answer that question before we take a break. Do you understand?

Mr. Comstock. Yes, I do.

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

Mr. Comstock. Yes, I do.

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

Mr. Comstock. Yes, I do.

Ms. Anderson. Is there any reason you would be unable to answer truthfully questions today?

Mr. Comstock. No.

Ms. Anderson. If you wish to assert a privilege over any statement today, that assertion must comply with committee rules. Committee Rule 16(c)1 states, quote, "For the chair to consider assertions of privilege over testimony or statements, witnesses or entities must clearly state the specific privilege being asserted and the reason for the assertion on or before the scheduled date of testimony or appearance," end quote.

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

Mr. Comstock. I do.

Ms. Anderson. Do you have any questions before we begin?

Mr. Comstock. No.

EXAMINATION

BY MS. ANDERSON:

Q I will note for the record that it is now 9:40, and we will begin our hour now.

When did you first hear that Secretary Ross was interested in adding a citizenship question to the 2020 Census?

A I don't recall.

Q Do you recall approximately when you first heard it?

A Sometime spring of 2017.

Q And when did you join the Department?

A I started work on January 30th, 2017.

Q What was your role when you joined the Department?

A Director of the Office of Policy and Strategic Planning.

Q What were your duties in that role?

A To basically advise the Secretary on policy matters before the Department.

Q Did your role change at all since you've been at the Department?

A I've since become deputy chief of staff as well.

Q Do you recall whether the Secretary brought up the issue of the citizenship question with you or whether you brought it up with him?

A I first heard about it, I believe, from somebody mentioning that it had come up in a briefing by the Census Bureau staff.

Q Do you recall in what context it came up with Census Bureau staff?

A I don't. I wasn't present at that meeting.

Q Do you recall what they told you about that meeting at all?

Mr. Dewhirst. Sorry. Who is "they"?

BY MS. ANDERSON:

Q Sorry. He mentioned -- you mentioned that someone told you at Census Bureau. Do you remember who that person was?

A David Langdon.

Q Okay. And did Mr. Langdon tell you any more specifics about how it came up, what the context was, what the discussion was?

A I don't recall.

Q What was David Langdon's role at the time?

A He was the Office of Policy and Strategic Planning's career staff person who was covering the Census amongst other areas, and actually is currently still doing so.

Q Did he mention that there was any particular action being taken around a citizenship question at the time or --

A No.

Q When did you next hear about a citizenship question?

BY MR. ANELLO:

Q I'm sorry. Can I just pause on the Census Bureau meeting?

Do you know who from the Census Bureau participated in that meeting?

A I don't know. The Secretary regularly received large briefings from the Census Bureau at that -- especially when he first came on board. You know, we were diving into all aspects of the Census, so he would regularly have 20 people from the Census Bureau in a meeting.

Q But do you know who discussed the citizenship question in particular?

A I have no idea. I wasn't at the meeting, so --

Q Did you have subsequent conversations about the citizenship question with anybody at the Census Bureau?

A Not at that time, no.

Q I'm sorry. What was that time? I don't think we established when that meeting occurred.

A I said I don't recall the exact date, but sometime in the spring of 2017.

BY MS. ANDERSON:

Q Do you recall when you next heard about the citizenship question after Mr. Langdon brought it up to you?

A I don't recall.

Q Are you aware of the Secretary having spoken with anyone else about the citizenship question in the spring of 2017?

A Not that I recall.

Q Do you recall whether he spoke with anyone at the White House at the time about the citizenship question?

A I don't recall.

Q Do you recall whether you spoke with anyone else in the spring of 2017 about the citizenship question?

A I don't recall.

Mr. Anello. Sorry. Just to be clear, you don't recall speaking to anybody else about the citizenship question --

Mr. Comstock. I recall a conversation with --

Mr. Dewhirst. Let him finish his question.

Mr. Comstock. Sorry.

Mr. Dewhirst. Go ahead.

Mr. Anello. Obviously we're going to get into some documents later, but just in terms of your recollection, you don't recall speaking to anybody else aside from that one conversation with David Langdon in the spring of 2017 about the citizenship question?

Mr. Dewhirst. Sitting here today, you can answer questions about your recollection.

Mr. Comstock. I recall speaking with David. I don't recall speaking with anybody else.

BY MS. ANDERSON:

Q Do you recall why the Secretary was interested in the citizenship question?

A I don't recall.

Q Did you ever discuss it?

A Not anything in any detail, no.

Q Do you recall ever speaking with Thomas Hofeller about the citizenship question ever?

A I've never spoken with Thomas Hofeller.

Q Do you ever -- do you recall ever speaking with the President about the citizenship question, either prior to when he was inaugurated or afterwards?

Mr. Dewhirst. If counsel will ask whether he's ever talked to the President, I think he can answer that question. But otherwise, I'll instruct you not to answer.

Mr. Comstock. I have not spoken to the President on that.

Ms. Anderson. Have you ever spoken with Steve Bannon about the citizenship question?

Mr. Dewhirst. Same instruction to the witness.

Mr. Comstock. Which is what?

Mr. Dewhirst. Don't answer the question.

Again, if counsel wants to ask whether you've ever talked to Steve Bannon, you can answer that question.

Ms. Anderson. Have you ever spoken with Steve Bannon?

Mr. Comstock. I have not.

Ms. Anderson. Have you ever spoken with Kris Kobach about the addition of a citizenship question?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. To be clear, Mr. Kobach is not -- he has never been a White House employee, as I understand it, so we don't accept the basis that you can --

Mr. Dewhirst. No need to continue. No need to continue. I appreciate that. I withdraw the instruction.

Mr. Comstock. I've never spoken with Kris Kobach.

Ms. Anderson. Have you ever spoken with Stephen Miller about the addition of a citizenship question?

Mr. Dewhirst. I'll re-interpose the instruction.

Mr. Comstock. Is the question --

Mr. Dewhirst. Counsel can ask whether he's spoken to Stephen Miller.

BY MS. ANDERSON:

Q Have you ever spoken with Stephen Miller?

A Not that I recall.

Q Have you ever spoken with Christa Jones about the addition of a citizenship question?

A Yes.

Q When?

A I believe there was some email traffic, if that constitutes speaking with her. There was some email traffic when we were debating the decision memo.

Q Which decision memo?

A The Secretary's decision memo, but this would be February of 2018.

Q Was February 2018 the first time you spoke with her about the citizenship question?

A That I recall, yes.

Q Do you ever recall speaking with John Baker about the addition of a citizenship question? He's a professor at Georgetown or a visiting professor at Georgetown.

A I've never had a conversation with John Baker.

Q Do you recall ever speaking with anyone else from the Trump transition team about the addition of a citizenship question?

A Mark Neuman.

Q Anyone else?

A Not that I recall.

Q Did you have a role on the transition team?

A I was the Secretary's sherpa.

Q Sorry?

A I was the person who assisted Secretary Ross through his confirmation process.

Q You said sherpa?

A Sherpa, yes.

Q Okay.

A That's what they called us.

Q Yes.

When did you first speak to Mark Neuman about the addition of a citizenship question?

A I don't recall the exact time.

Q Was it before or after inauguration?

A It would have been after.

Q Do you recall approximately if it was in the winter of 2017 or the spring?

A I think it was sometime in the spring.

Q And how did you become connected with Mr. Neuman?

A He was a trusted adviser and part of the -- I guess they call it the landing team for the Department of Commerce. He was the sort of Census expert.

Q Do you remember who connected you with him?

A I think I met him at a meeting with the Secretary. He was not Secretary

then, but --

Q A meeting with Secretary Ross before he was confirmed?

A Correct.

Q Okay.

Mr. Dewhirst. And to be clear -- sorry -- you're answering when you first met Mark Neuman?

Mr. Comstock. Correct.

Mr. Dewhirst. Okay.

Ms. Anderson. Did you ever speak with anyone else at the White House about the addition of a citizenship question or anyone at the White House?

Mr. Comstock. I've not spoken to anyone at the White House about it.

Mr. Anello. One followup on Mr. Neuman there. When -- did you -- when was the first time -- sorry. Rephrase that.

Do you recall if the first time you talked to Mr. Neuman about the citizenship question was before or after the Secretary was confirmed?

Mr. Comstock. Well, it would have been sometime later in the spring, so after.

[Comstock Exhibit No. 1
was marked for identification.]

BY MS. ANDERSON:

Q I'm going to hand you what has been marked as exhibit 1. That's an email from February 2nd, 2017, from David Langdon to Ellen Herbst, and it reads, quote, "Ellen, who is organizing the Census Bureau briefing for Earl and the team? I ask because Jim S. reminded me about the upcoming congressional notification of decennial and ACS topics and the need to gauge Earl's interest in it. I asked. Earl is very interested and thinks the Secretary will be as well. So it would make sense for John Thompson to touch on

this topic in his overview briefing and then to have a followup briefing very soon. I am glad to arrange one or both, but don't want to get in the way of anything already underway. Dave."

Do you know what Mr. Langdon was referring to when he said that you were, quote, "very interested and thinks the Secretary will be as well"?

A I don't recall.

Q Okay. Do you recall what your interest was in the Census and the congressional notification process at this time?

A It was an upcoming deadline. Having been a former Hill staffer I was aware of these kinds of deadlines. And also we had the SOGI question pending on the ACS, so we had to make a decision as to whether that was going to be notified up or not.

Q Do you know what the Secretary's interest was at that time?

A Making sure we didn't miss a congressional deadline.

Q Okay. Did you speak with anyone else at that time about the Secretary's interest in these topics?

A Well, other than Dave Langdon, no, not that I recall.

Q Do you recall if the Secretary had discussed or brought up the citizenship question around February 2nd, 2017?

A I don't believe the Secretary was there in February.

Q Sorry. You had mentioned earlier that you had discussions with the Secretary before he was confirmed and you were his sherpa. Is that correct?

A Correct. And I don't recall him bringing it up then, no.

Q Do you recall having any conversations around this time about the congressional notification process for topics with regards to a citizenship question?

A Other than mentioning to the Secretary that there were statutory deadlines,

no.

BY MR. ANELLO:

Q Sorry. If I could just follow up. Did you discuss the statutory deadline at that point with respect to a citizenship question?

A Not that I recall.

Q Do you know if the issue of a citizenship question had been discussed at all with you and David Langdon or with others at the Department at that point as of, what is it, February 2nd, 2017?

A To the best of my knowledge, no.

Q Did you attend the briefing with John Thompson that's described here?

A I have no idea.

[Comstock Exhibit No. 2

was marked for identification.]

Ms. Anderson. I'm going to hand you what has been marked as exhibit No. 2.

Mr. Dewhirst. Thank you.

[Comstock Exhibit No. 3

was marked for identification.]

Ms. Anderson. I'm also going to hand you what has been marked as exhibit No. 3.

Mr. Dewhirst. Do you want a chance to read through this one?

BY MS. ANDERSON:

Q So I'm going to start with exhibit No. 2. It's an email from March 10th, 2017 at 7:50 p.m. from David Langdon to you entitled "2020 Census Topics." And he wrote, "Earl, what does your schedule look like to receive a 1-hour (max) briefing on 2020 Census and ACS topics later next week? The goal is to help you understand the

congressional notification process as well as the actual topics themselves. Dave."

Do you recall whether you had that briefing?

A I don't recall.

Q Okay. Do you recall what Mr. Langdon told you around this time about congressional notification process?

A I don't recall.

Q Do you recall whether you discussed adding additional topics or questions with Mr. Langdon around this time?

A I don't recall.

Mr. Anello. I think you said earlier that you think the first discussion you had about the citizenship question was with Mr. Langdon. Is that right?

Mr. Dewhirst. He's not talking about this.

Mr. Comstock. This was the --

Mr. Dewhirst. Just answer his question. His question is, did you testify previously that your first discussion on this topic was about -- with -- about the citizenship question was with David Langdon, that you recall?

Mr. Comstock. That I recall, yes.

Mr. Anello. Did this email that you just -- exhibit 3 that you just picked up, did that refresh your recollection about when you had a first discussion?

Mr. Comstock. I recall him telling me that the Secretary had asked a question about it, and I think this email was related to that because I clearly had to dig into finding out whether or not citizenship was on the Census.

BY MS. ANDERSON:

Q Do you recall the Secretary's question?

A I wasn't present for it.

Q Do you recall whether you discussed with Mr. Langdon what the Secretary was asking him about?

A I don't --

Mr. Dewhirst. That's a yes-or-no question.

Mr. Comstock. Yeah. I don't recall.

BY MS. ANDERSON:

Q So you mentioned that this was in response to something that had come up. Do you recall at all anything further about why the topic was being discussed or the particular details that the Secretary wanted?

A I don't recall.

Q And sorry, just to be clear for the record, we were discussing briefly exhibit 3, which is from March 10th, 2017, at 8:31 p.m., and it was an email from you, Mr. Comstock, to Secretary Ross entitled, "Your Question on the Census."

A Right.

Q Do you recall why you wanted to include the particular article in this email entitled "The Pitfalls of Counting Illegal Immigrants"?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. I don't recall.

Ms. Anderson. Do you recall how much research you did on this particular topic at the time?

Mr. Comstock. No, I don't.

BY MR. ANELLO:

Q So just looking at the email, exhibit 3, the first line is -- and, again, this is at 8:30 p.m. on March 10th. The email we looked at before, exhibit 2, I think, is from 7:50 p.m.?

A Uh-huh.

Q It's roughly a little less than an hour before. In this email you write, "I was not able to catch anyone at their desk when I called the numbers I have for the Census Bureau from the briefing. However, the Census Bureau web page on apportionment is explicit and can be found at" -- and then you give a link.

A Uh-huh.

Q And then you write -- you, I guess, paste in from the Census Bureau website. Is that correct?

Mr. Dewhirst. If you recall.

Mr. Anello. The next line there?

Mr. Comstock. I don't recall. That's what it appears.

Mr. Anello. Okay. So the language that appears to be pasted in, it says: "Are undocumented residents (aliens) in the 50 States included in the apportionment population counts? Yes, all people (citizens and noncitizens) with a usual residence in the 50 States are to be included in the Census and thus in the apportionment counts."

Is your understanding of apportionment, does that refer to congressional apportionment? Is that what the word "apportionment" means in that context?

Mr. Dewhirst. You're asking about what he meant in this context?

Mr. Anello. Yeah.

Mr. Dewhirst. You can answer to the extent you recall.

Mr. Comstock. I think what I was responding to here was whether or not --

Mr. Dewhirst. Hold on. I'm going to instruct the witness not to answer. And to the extent you recall information that was passed to you from the Secretary on specific questions --

Mr. Comstock. I don't recall the question from the Secretary.

Mr. Anello. Okay. So you were responding to what then?

Mr. Comstock. I'm not sure because I don't -- the question is not -- not there.

Mr. Anello. Right. So reading this email, you know, seeing the article that's pasted below it, when you say the Census Bureau web page on apportionment is explicit, I mean, this is just a basic question. I'm just trying to understand it. When it says apportionment and when you paste in language about apportionment, that's apportionment for purposes of seats in Congress. Is that what the word "apportionment" means in that context?

Mr. Dewhirst. Again, to the extent you recall what you meant when you wrote this email over 2 years ago, you can answer.

Mr. Comstock. Again, I don't recall the context in which this was being provided.

BY MR. ANELLO:

Q Okay. But you've worked on Census issues now for 2 years, right?

A I -- as one of many, many, many things that I work on, yes.

Q Fair enough. But I'm -- this is -- I'm just basically asking for your understanding of what this word means in your email.

A I don't know what the Census Bureau -- I don't know the context of this from the Census Bureau website, so --

Q Do you know what the concept of apportionment means now?

A I know that we do the Decennial Census in part for the purpose of apportionment, yes, if that's your question.

Q And when we say "apportionment," I'm just trying to make sure we're talking the same language here. When you say "apportionment," you mean apportionment of congressional seats?

A Fair enough.

Q It's not a trick question.

A Fair enough. I agree.

Q So do you recall if you were responding to a question that related to the apportionment of congressional seats?

A As I previously stated, I don't recall the question that generated this email, so I don't know what the context was in which I was responding.

Q So I think you said earlier this was the first time that you recall having been asked about the citizenship question. But is that the -- do you remember any more detail beyond that?

A Again --

Mr. Dewhirst. Again, just --

Mr. Comstock. Can I clarify?

Mr. Dewhirst. No. Hold on.

Again, can you maybe ask that question in a way that doesn't mischaracterize his prior testimony? Because I am not sure he actually did testify to that. You could ask that question if you want to use that as foundation for your question.

Mr. Anello. So was this -- was March 10th the first time that you remember being asked about the citizenship question?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. Okay. And, again, let me just be clear, I recall sometime in this timeframe being asked whether a question on citizenship was on the Census as opposed to, quote, the citizenship question --

BY MR. ANELLO:

Q Right.

A -- which I'm not sure what you mean by that, but I'm assuming you mean the

question --

Q That is exactly what I meant.

A -- that's currently adopted.

Q Sorry. I meant the first time you were asked about the issue of a citizenship question on the Census.

A This is the first time that I -- timeframe that I sort of recall being asked about it, yes.

Q And do you know at that time -- do you recall at that time whether the Secretary expressed an interest in adding such a question?

A I don't recall.

Mr. Dewhirst. Again, I'm going to instruct -- you've got to wait, man. You've got to pause.

Mr. Comstock. All right. I'm frustrating my own counsel, so --

Ms. Anderson. In this particular email, exhibit 3, you cc'd Eric Branstad. What was his role at the Department?

Mr. Dewhirst. Sorry. Which email? Exhibit 3?

BY MS. ANDERSON:

Q Exhibit 3, correct.

A Eric was the senior White House adviser and sort of at the time the senior staff person.

Q For what particular -- for a particular issue or --

A No, just in general.

Q Okay. Do you recall --

A We did not have a chief of staff at the time.

Q Okay. Do you recall why you cc'd him on this particular email about a

citizenship question?

Mr. Dewhirst. To the extent you recall, you can answer.

Mr. Comstock. As a general practice, I cc'd the acting chief of staff or the chief of staff on any communication with the Secretary, so --

BY MS. ANDERSON:

Q Do you recall whether Mr. Branstad had any contact with the White House about a citizenship question around this time?

A I don't recall.

Q I want to turn you to the second page of exhibit 3. There's a few instances in this -- in the article piece of this that are highlighted.

On the second page, the one line that's highlighted, the paragraph begins with, "The ACS was introduced after the 2000 Census and may help overcome a problem with Census numbers exposed in the last Decennial Census." And then the highlighted sentence is, "Many more foreign-born residents were counted in 2000 than was expected based on annual estimates produced by the Bureau."

Do you recall why that sentence was highlighted?

A I don't recall.

Q Do you recall whether there were any discussions about the number of foreign-born residents that were counted in Census surveys at the time?

A Not that I recall.

[Comstock Exhibit No. 4

was marked for identification.]

BY MS. ANDERSON:

Q I'm going to hand you what's marked as exhibit 4. So it's an email from April 14th, 2017, from Mark Neuman to you, and it's replying to a chain called "Census

Question" with "question" misspelled.

The email from you to Mr. Neuman is from April 13th, 2017, and you wrote to Mr. Neuman: "Hi, Mark. Quick question. When does Census need to notify Congress regarding the questions that will be on (A) the ACS and (B) the Decennial Census? Thanks, Earl."

Do you recall why you were reaching out to Mr. Neuman on that particular date about these topics?

A I don't recall.

Q Do you recall whether there was questions about the notification process for the Decennial Census at this time?

A I don't recall.

Q Do you recall why you were reaching out to Mr. Neuman as opposed to someone at the Department of Commerce or at the Census Bureau?

A As I previously stated, he's the trusted adviser, and I probably could reach him easier than I thought I could reach somebody at the Census Bureau.

Q Did you primarily reach him via email, or did you also speak in other ways?

A I think primarily through email.

Q Okay. Did you always use your Department email when contacting Mr. Neuman about --

A I did.

Q And Mr. Neuman wrote back to you, I guess, early the next morning, 3:41 a.m.?

A It appears.

Q And he wrote: "I believe that the annual notification to congressional committee relating to questionnaire content additions to the 2020 Census just took place

(which is why there were a few articles about the lack of planned questions related to sexual orientation). Let me double check on that. There will be another opportunity next year."

I recommend that you ask the Bureau to provide a list of the response rates on all demographic questions currently asked on the ACS. You will see whether certain demographic questions have lower response rates than others especially among certain demographic groups. That is something that can be provided off the shelf.

Do you know what Mr. Neuman meant by "there will be another opportunity next year"?

A I don't recall what he was referring to.

Q Did you ever discuss with Mr. Neuman the congressional notification process for topics and whether there was any issue about when that notification needed to go to a specific congressional committee?

Mr. Dewhirst. Can I ask you to maybe ask that one again? There's a couple of questions in there.

BY MS. ANDERSON:

Q Sure.

Do you recall ever discussing with Mr. Neuman the legal requirements for congressional notification for topics on the Census?

A I don't recall.

Q Do you ever recall speaking with Mr. Neuman about the legal requirement for changing topics after Congress has already been notified?

A I don't recall that, no.

Q Do you ever recall speaking to Mr. Neuman about the process by which the citizenship question was added or could be added to the Census around this time?

A Around this time, no.

Mr. Anello. Did Mr. Neuman ever advise you that because you had -- because the deadline had passed for that year's congressional notification, that the Department would no longer be able to add a citizenship question to the 2020 Census?

Mr. Dewhirst. I'm going to instruct the witness not to answer on the grounds that implicates executive branch confidentiality and litigation concerns.

Mr. Anello. Okay. Well, did he ever advise you one way or the other on whether the Department would be able to add a question given that you missed the deadline?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. If you look at the third paragraph in his email, it says, "I recommend that you ask the Bureau to provide a list of response rates on ALL" -- capitals -- "ALL demographic questions currently asked on the ACS. You will see whether certain demographic questions have lower response rates than others -- especially among certain demographic groups. That is something that can be provided" -- then all caps -- "OFF THE SHELF."

Do you recall the context of why he was talking about demographic questions with you?

Mr. Comstock. I don't, no.

Mr. Anello. Is the citizenship question a demographic question? Was it ever referred to that way in your discussions?

Mr. Dewhirst. Sorry, in his discussions with Mark Neuman or in his -- any discussions about the citizenship question?

Mr. Anello. Correct. Yeah.

Mr. Dewhirst. Okay. Do you understand the question?

BY MR. ANELLO:

Q Have you ever heard it referred to as a demographic question?

A Not that I recall, no.

Q Do you know when this email was sent whether you'd already talked with Mr. Neuman or communicated with him about the citizenship question?

A I don't recall.

Q Was there any other question that you discussed with him -- sorry. Let me strike that.

Do you recall discussing with him response rates to any other demographic questions on the Census?

A I don't recall having the discussion with him about response rates, no.

Ms. Anderson. Did you discuss with anyone else after -- in the spring of 2017 the -- what the Department of Commerce or the Census Bureau had to do to notify Congress about questions that would appear on the Decennial Census?

Mr. Dewhirst. Do you understand the question?

Mr. Comstock. She's asking if there was -- well, repeat the question.

Ms. Anderson. Okay. Do you remember discussing with anyone in the spring of 2017 about congressional notification for the questions that would appear on the 2020 Census?

Mr. Comstock. I don't recall any specific discussion, no.

[Comstock Exhibit No. 5
was marked for identification.]

BY MS. ANDERSON:

Q I'm going to hand you what's been marked as exhibit 5. It's an email from April 20th, 2017, from Brooke Alexander to you, and it cc's Wendy Teramoto. The

subject line is: "Ok...I have tried three times to send from SWLR's email but can't for some reason and he's in his office so I can't use his computer so I'm just sending this note from my email...but it's from him..."

And the email reads: "Earl: Census Director has on April 29th a meeting of the National Advisory Committee on Racial, Ethnic, and Other Populations. We must get our issue resolved before this."

Does SWLR refer to the Secretary?

A It does.

Q Okay. Do you recall what the Secretary by and through Ms. Alexander meant by, we must resolve our issue before the April 29th?

A I don't recall.

Q Do you recall what issues you were involved with or discussing about the Census prior to April 29th or around April 20th?

A I don't recall.

Q Was the citizenship question being discussed around that time?

A I don't recall that, no.

Mr. Dewhirst. To be clear, you don't recall any other Census topics that you were discussing during this time period?

Mr. Comstock. We were discussing a lot of Census topics during this time period.

Mr. Dewhirst. Okay.

Ms. Anderson. Were there any other topics that needed to be particularly resolved in this timeframe?

Mr. Comstock. We were -- I think we were getting ready for a -- when was the timeframe? April 20th. We may have been getting ready for some hearings. It may have been the budget issue. It could have been personnel issues. I have no idea. We

were dealing with all of those.

BY MR. ANELLO:

Q Did you discuss all of those issues personally with the Secretary?

A Yeah.

Q And did those issues relate to the work of the Racial, Ethnic, and Other Populations Advisory Committee?

A I, like I said, I have no idea what he's referring to with this email, so --

Q At some point did the Secretary tell you that you needed to get the issue of the citizenship resolved?

Mr. Dewhirst. To the extent you understand that question.

BY MR. ANELLO:

Q I can repeat it if you don't understand it.

A No, I understand. Yes, at some point much later than this, yes.

Q When did he tell you that?

A Well, again, clarify both what you mean by resolved.

Q What do you mean by resolved? You said you recalled. Why don't we start with what you recall.

A What I recall is being asked to look into the question of why there was a citizenship -- why citizenship was not on the Census.

Q And when did that happen?

A Sometime in the spring of 2017.

Q But much later than April 20th of this -- in the spring of 2017?

A No. I mean, you have earlier emails.

Mr. Dewhirst. Just to the best of your recollection.

Mr. Comstock. The best of my recollection, spring of 2017.

BY MR. ANELLO:

Q Okay. But I want to be clear, because a second ago you said it was much later. So it sounds like maybe it wasn't much later. Is that possible?

A No. In terms of saying -- again, when you say must get it resolved, in other words, start getting further action on something. He did not -- I didn't get any instruction from him to get moving on this until later than this.

Q So you said when then?

A I don't recall exactly when.

Q But you know it was later than this.

Look, if you're not sure, that's fine --

A Yeah, I couldn't say -- I can't say specifically. I don't know.

Q So sometime in the spring of 2017 and it could have been -- is it fair to say then it's possible it was before or this or after this? You're not sure?

Mr. Dewhirst. Do you recall?

Mr. Comstock. I don't recall. And I don't recall that this was referring to that, so -- some issue he wanted resolved. I don't know what issue it was.

BY MR. ANELLO:

Q I understand. But I just want to make sure your testimony is that during spring of 2017 the Secretary told you he wanted the issue -- an issue of the citizenship resolved. You don't know whether this email --

A No, I did not testify to that. I said he asked us to -- he made inquiries about the citizenship question sometime in the spring of 2017.

Q I think you said the inquiry was why the citizenship question was not previously included. Is that the question you got?

A No. The question was, was there a citizenship question on the Census?

To which we answered no. So then the question was, what would be the process for adding one?

Q I see. So that was the issue that he wanted resolved?

A No. I've testified --

Q I'm not talking about this email. I apologize.

A -- that I don't know whether this is related to that at all.

Q I'm not talking about the email. I'm talking about your recollection that he did ask you to get a question resolved about the citizenship question. I'm just trying to figure out what that question was.

A Again, you keep using the word "resolved." I don't know what you mean by the word “resolved.”

Q Let's say answered or completed. It depends on the question, I suppose.

A Did he inquire about a citizenship question and whether one could be placed on the Census. Is that your question?

Q Yes.

A Okay. And the answer is, yes, at some point during 2017 he asked that. I don't recall when.

Q Okay. Was that in the spring of 2017?

A Spring, early summer, summer, not really sure.

Q And the question as you understood it was whether a question could be added? Is that what he asked?

Mr. Dewhirst. I think at this point I'll instruct the witness not to answer about communications with the Secretary.

Mr. Anello. But he did just answer. I'm just trying to get clarification of what he said.

Mr. Dewhirst. I think Mr. Comstock has made clear that he doesn't really recall.

Mr. Anello. That's not at all what he said. I'm sorry, that's not what he said. He did have a recollection, he just described it, but there was a lack of clarity, and I'm trying to make sure I understand it because it was described a couple different ways. He didn't tell us he didn't remember.

So if you're instructing him not to answer, that's different than him not remembering. He did remember, and we're trying to get some clarity. That's all. So if it's a lack of recollection, I'm happy for the witness to tell me --

Mr. Dewhirst. And you're -- I'm sorry. So your question right now is, what were the details of the Secretary's question to Earl on this subject?

Mr. Anello. Mr. Comstock just stated in a couple of different formats what question he received from the Secretary, and I'm trying to get clarity on which of the format was the actual question that was asked. It sounds like there might have been more than one question.

Mr. Dewhirst. So you did, you are asking for details. And to the extent it's beyond what he's already told you, I'm going to instruct him not to answer because it does implicate executive branch confidentiality and litigation concerns.

Mr. Anello. Okay.

Ms. Anderson. Did the Secretary ask you -- I think you mentioned earlier that he asked about you about the process by which one could add the question. Is that --

Mr. Dewhirst. I'm going to instruct the witness not to answer on the same basis.

Ms. Anderson. I'm just asking whether that was an accurate characterization of his testimony. I believe he already said that.

Mr. Comstock. I don't recall saying that.

Ms. Anderson. Okay. Did the Secretary ask you about the process by which

one could, whether the Department or otherwise, add a citizenship question to the Census --

Mr. Dewhirst. You know -- I'm sorry I cut you off a little bit. But I will reinstruct the witness not to answer on the same basis.

Mr. Castor. Didn't we already have testimony on that question today?

Mr. Anello. Today we've had testimony on that.

Mr. Castor. I think he already answered that question.

Mr. Anello. I think --

Ms. Anderson. My recollection --

Mr. Anello. I think what's going to happen is we're going to have an unclear record as a result of this, and if that's what the Department wants, we'll go with that. But the witness has answered three or four questions trying to get to some clarity as to precisely what the Secretary asked him.

We've heard the Secretary asked, for example, whether there was a question. We've heard he's asked why there wasn't a question on previous Census. And then we've heard him ask that he wanted to understand whether a question could be added, I think also about the process.

So we're just trying to understand the full set of those questions. If you don't want to let the witness clarify, I think that's the Department's -- it sounds like that's the Department's position. Our -- I think our request would be that he be permitted to clarify.

Ms. Anderson. Mr. Comstock, in the spring of 2017, did the Secretary ask you about the process by which a citizenship question could be added to the Census?

Mr. Comstock. Not that I recall.

Ms. Anderson. Did he ask you to research or look into a potential process to add

a question to the 2020 Census?

Mr. Dewhirst. And there I will re-interpose the instruction.

[Comstock Exhibit No. 6

was marked for identification.]

Ms. Anderson. I'm going to hand you what has been marked as exhibit No. 6. It's an email from May 2nd, 2017. The bottom email is from 10:04 a.m., and Secretary Ross writes to you in the unredacted parts: "Worst of all, they emphasize that they have settled with Congress on the questions to be asked. I am mystified why nothing has been done in response to my months-old request that we include the citizenship question. Why not?"

What did the Secretary mean by "my months-old request that we include the citizenship question"?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. I don't recall exactly what he meant by that, no.

Ms. Anderson. What did the Secretary mean by, "They have settled with Congress on the questions to be asked"?

Mr. Comstock. Again, I'm not entirely certain what he was referring to there.

Ms. Anderson. Did you discuss with the Secretary about the fact that the questions had already been settled or decided upon for the 2020 Census?

Mr. Comstock. Again, this is a couple years ago, but, I mean, he appears to be -- had a conversation with --

Mr. Dewhirst. Do you recall, Earl?

Mr. Comstock. I don't recall. Thank you.

Mr. Dewhirst. For Pete's sake.

Ms. Anderson. Do you recall when he first -- he mentioned to you his

months-old request. Do you remember when he first made a request of you about the citizenship question?

Mr. Comstock. I don't recall when he first asked me about the citizenship question.

Ms. Anderson. You wrote back to him later that day and said: "I agree, Mr. Secretary. On the citizenship question we will get that in place. The broad topics were what we sent to Congress earlier this year as required. It is next March -- in 2018 -- when the final 2020 Decennial Census questions are submitted to Congress. We need to work with Justice to get them to request that citizenship be added back as a Census question, and we have the court cases to illustrate that DOJ has a legitimate need for the question to be included. I will arrange a meeting with DOJ staff this week to discuss."

What did you mean by, "On the citizenship question we will get that in place"?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. Well, I was referring to a process before looking at the question.

Ms. Anderson. What process was that?

Mr. Dewhirst. And there I'll instruct the witness not to answer because that implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. What did you mean by, "The broad topics were what were sent to Congress earlier this year as required. It is next March -- in 2018 -- when the final Decennial Census questions are submitted to Congress"? What did you mean by that?

Mr. Dewhirst. To the extent you -- no. I'm going to instruct the witness not to answer because that implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. What did you mean by, "We need to work with Justice to get them to request that citizenship be added back as a Census question"?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. When did you determine or when was there a determination that another agency needed to ask for a citizenship question?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. You said next, "We have the court cases to illustrate that DOJ has a legitimate need for the question to be included." Was there an illegitimate need for the question to be included?

Mr. Dewhirst. I'll let you answer that.

Mr. Comstock. No.

Ms. Anderson. Was there a -- which cases were you referring to in that email?

Mr. Dewhirst. And there I'll instruct the witness not to answer.

Mr. Comstock. I don't recall --

Ms. Anderson. Was there a discussion about other rationales besides --

Mr. Dewhirst. I'm sorry, what?

Mr. Comstock. I said I don't recall which cases, so --

Ms. Anderson. Was there a discussion about other rationales that would support an addition or require an addition of a citizenship question besides the one that you identified as the one that would support a request from the Department of Justice? I can repeat that. It's a little complicated.

Mr. Dewhirst. Yeah, one more time.

Ms. Anderson. That's fine.

Was there ever a discussion about other rationales or reasons to add a citizenship question besides the one that would support a request from the Department of Justice?

Mr. Dewhirst. That's a yes or no.

Mr. Comstock. Yes.

Ms. Anderson. What were those reasons or rationales?

Mr. Dewhirst. I'm sorry. Are you sure you understood the question?

Mr. Comstock. The question was, was there ever a discussion of other -- say it again -- other rationales?

Ms. Anderson. Was there ever a discussion about other rationales or reasons to add a citizenship question besides the one that you identified as coming from the Department of Justice?

Mr. Comstock. So unbounded in time, yes.

Ms. Anderson. What were those reasons?

Mr. Dewhirst. So I'm actually -- with that answer I'm not exactly sure how to counsel the witness on that. I'm happy to talk to him, but you have a question pending. So to the extent you do, I'll instruct him not to answer on the basis previously articulated. But if you want to give us a second, I can better counsel the witness on whether or not he can answer the question, or we can do it at the next break.

Mr. Anello. Can we do it on the next break?

Mr. Comstock. We can come back to this.

Mr. Dewhirst. And to be clear, just so we can focus my question to the witness, it's a question about whether there was ever at any time discussion about a rationale other than a request coming from the Department of Justice?

Ms. Anderson. Correct.

Mr. Dewhirst. Okay.

Ms. Anderson. And what that was, was the specific question.

Mr. Dewhirst. Okay. All right. Thanks.

Mr. Anello. I think he answered a yes or no. He said there was.

Mr. Dewhirst. And then when he restated the question he said unbounded in

time, so --

Ms. Anderson. Correct. And we can clarify that at some point.

Mr. Dewhirst. Sure.

BY MR. ANELLO:

Q Well, when was that discussion? When was -- the other rationale, when was it discussed?

A Actually after the Secretary's decision was made, so --

Q When was that?

A In his decision memo in March 2018.

Q So when were the other -- when was the other rationale discussed?

A It was simply a question of could somebody other than Justice Department ask this question. In the course of doing our research we determined that, yes, other agencies could do this, potentially even including the Department of Commerce, so --

Q But, I'm sorry, you said that discussion happened after the Secretary made his decision in March 2018?

A It happened amongst attorneys right about the timeframe he made his decision.

Q I want to back up because we're going to go through emails that obviously show you contacted multiple agencies and that there were discussions about maybe the Department of Commerce asking this question -- adding the question itself. We'll get into all that. But all of those emails are in spring and summer of 2017. So is it possible that maybe you're misremembering the time and that those discussions actually happened in spring or summer of 2017?

A Entirely possible, yes. I could --

Mr. Dewhirst. No.

Mr. Comstock. At this point, I don't recall because you've now confused me.

Mr. Anello. Well, it's not our intention to confuse you. It's just that after the Secretary made his decision, it wouldn't seem like there's any reason to --

Mr. Comstock. That's when I recall having specific conversations about that, but I could be in error. You know, it's a couple years ago.

Mr. Anello. I see.

Ms. Anderson. You said next that you would arrange a meeting with DOJ staff this week to discuss. When did you or the Department of Commerce identify the Department of Justice as having -- potentially having a need for a citizenship question of data?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. It would have been when they -- I mean, at some point I became aware that they asked -- they were the genesis for the ACS questions, so that would have been what would have led me to that.

BY MS. ANDERSON:

Q Had you had any discussions at that time with the Department of Justice or was --

A At the time of this email?

Q Correct.

A Not that I recall.

Mr. Anello. How did you become aware that DOJ was the genesis of the ACS questions?

Mr. Comstock. I don't recall who told me, but some -- at some point I was -- must have asked about that.

Mr. Anello. Some point prior to the May 2nd email that we're looking at now?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. I don't recall exactly when I would have learned it.

Ms. Anderson. Had you identified other agencies at this point that could be potential agencies to request a citizenship question?

Mr. Comstock. Again, I think my email speaks for itself. I didn't mention any other agency. I don't recall any other agency.

BY MR. ANELLO:

Q So I want to just go back to the May 2nd email from Secretary Ross, the one between -- sandwiched between the redactions. It says, "Worst of all they emphasize they have settled with Congress on the questions to be asked."

Do you know who "they" is?

A I'm not going to speculate.

Q Do you have any recollection of who "they" might have been?

A I don't recall.

Q Was it the Census Bureau?

Mr. Dewhirst. He said he's not going to speculate, and he doesn't have any recollection about who "they" is.

Mr. Anello. I understand that. But I guess, based on the context, there are not that many individuals or organizations that would have settled with Congress on the questions to be asked, right?

Mr. Hull. He said he doesn't recall.

Mr. Dewhirst. He's not going to speculate, and he doesn't have any recollection.

BY MR. ANELLO:

Q Do you remember getting this email from the Secretary?

A I don't.

Q Do you remember a point when the Secretary was upset or concerned that a previous request he had made about the citizenship question had not been followed through on to his satisfaction even if you don't remember getting this particular email?

A No.

Q Do you remember if he ever told you personally that he was unhappy that there had not been more progress made on that topic?

A I don't recall a specific instance, no.

Q Is he right that nothing had been done on his months-old request?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. It's not unusual for me to get these emails.

Mr. Anello. Do you know what his request was? You mentioned a few different requests before. I think one request was to find out whether there was a citizenship question -- apologies if I got that wrong -- and if there wasn't, why there wasn't, and then what the process would be to add one. Do you know which of those questions he's talking about here?

Mr. Comstock. Just to be clear, I don't believe I ever testified that he asked me about the process to add one. I said that he clearly -- through David Langdon it was communicated that he asked was a citizenship question on the Decennial Census, and if not, you know, when it had fallen off. That's what I know he asked me.

Mr. Anello. All right. Well, here he's not asking whether it was on or why it had fallen off. He's asking to include it, right? That's what he says, "my months-old request that we include the citizenship question."

Mr. Comstock. So that's --

Mr. Dewhirst. To the extent you understand what the Secretary meant in a --

Mr. Comstock. Right.

Mr. Dewhirst. -- 3-year-old email you don't remember receiving, you can answer that question.

Mr. Comstock. Again, the email stands for itself, so I don't recall the --

Mr. Anello. It's also consistent with what you told us before. That's why I am trying to understand how this fits in with what you --

Mr. Dewhirst. Actually, he just clarified the testimony from previously.

Mr. Comstock. Again, I'm not sure what you're driving at here. What's your question?

Mr. Anello. My question is, if you understand when he says he had a months-old request to include the citizenship question, does that mean to include the citizenship question, where, on the 2020 Census? Is that the idea? Is that your understanding of this?

Mr. Dewhirst. Again, that's --

Mr. Comstock. My understanding --

Mr. Dewhirst. That's not been his -- first of all, that has not been his testimony. And, again, to the extent you understand what the Secretary was saying in a 2-1/2-year-old email that you don't remember receiving from him, you can answer that question -- about what the Secretary meant by the words he was using.

Mr. Comstock. I don't know what the Secretary meant.

Mr. Anello. Okay. Let's look at what you said then. You said, "On the citizenship question we will get that in place." Did you mean we will get that in place on the 2020 Census?

Mr. Comstock. Again, as I previously testified, I would get the process of looking into a citizenship question on the Census in place. That's all I can do as policy director.

Mr. Anello. Got it. So when you say the process of looking into a citizenship

question, is it the process -- I just want to make sure we're not kind of -- we're not sort of talking past each other. The process would be getting the process in place to add a citizenship question to the Census? Is that the process? Or would you describe it differently?

Mr. Dewhirst. Again, that's -- you're asking him about a 2-year-old email. You haven't asked him whether he even remembers sending this email.

And whether or not you recall what you meant when you sent this email.

Mr. Anello. He was just describing what he meant.

Mr. Dewhirst. To that extent, you can answer.

Mr. Comstock. Well, I do not recall sending the email, so I can't speak to exactly what I might have meant.

Mr. Anello. You say: We need to work with Justice to get them to request that citizenship question -- I'm sorry -- We need to get them -- We need to work with Justice to get them to request that citizenship question be added back as a Census question.

Mr. Comstock. Right.

Mr. Anello. How did you come to the understanding that you needed to work with Justice to get them to request that citizenship be added back as a Census question?

Mr. Dewhirst. I'm going to instruct the witness not to answer, and I'll also note that I believe that question has already been asked.

BY MR. ANELLO:

Q You also said: We have the court cases to illustrate that DOJ has a legitimate need for the questions to be included.

Do you remember who got those court cases, who collected them or found them?

A I don't.

Q Do you remember anybody that collected or found court cases at the

Department relating to the citizenship question?

A James Uthmeier did the legal research.

Q Had he been doing legal research as of May 2nd, 2017?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. I don't recall when James joined the Department.

Mr. Anello. Was there anybody else that was doing legal research on this issue?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. Outside of that, no, I don't recall anybody specific.

Mr. Anello. Did the legal research -- sorry. So later in the sentence it says, "We have the court cases to illustrate that DOJ has a legitimate need..." what was the legitimate need that DOJ had?

Mr. Dewhirst. I'll instruct the witness not to answer on the same basis.

Mr. Comstock. Again, I don't recall this email.

Mr. Dewhirst. Okay. On the same basis.

Mr. Anello. Well, do you recall in May of 2017 or around that time understanding that DOJ had a need for this information -- sorry, for a citizenship question?

Mr. Dewhirst. Does he recall being aware at that time? Do you recall sitting here today whether you were aware at that time?

Mr. Comstock. I don't really recall, no.

Mr. Anello. You seem to be aware of the email, right?

Mr. Comstock. Right. This is a couple years ago, and I've worked on literally hundreds of issues since then. So I couldn't tell you what I worked on last week much less 2 years ago, so --

Mr. Anello. Do you remember when you first had an understanding that DOJ

might need a citizenship question?

Mr. Comstock. I think I previously testified I understood that they were the genesis for the ACS question. They use it for Voting Rights Act enforcement. That's about the extent of my understanding of it.

Mr. Anello. Around this time had you ever heard that there might be other uses for a citizenship question aside from Voting Rights Act enforcement?

Mr. Comstock. Not that I recall, no.

Mr. Anello. I think our hour is up.

[Recess.]

[10:50 a.m.]

Mr. Castor. We're back on the record.

I'm Steve Castor with the Republican staff. I'm going to ask a couple of questions and turn it over Ellen at that point.

Mr. Dewhirst. Do you mind actually if I address the point that I talked about with your colleagues before the break?

Mr. Castor. Okay.

Mr. Dewhirst. Okay. They had asked the question, and I just want to address that now with the witness, if you'll indulge me.

Mr. Castor. Okay.

Mr. Dewhirst. Okay. All right. You received a question in the last hour which asked whether you ever knew of any rationale other than that the Department of Justice was interested in acquiring citizenship data from the Census which would better enable it to enforce the Voting Rights Act, whether you're aware of any other rationale motivating a desire to reinstate the citizenship question. Did you misunderstand that question?

Mr. Comstock. I understood the question to be did any other agency -- did we ever discuss any other agency asking the question.

Mr. Dewhirst. So to your knowledge, were you ever aware of any other rationale supporting the reinstatement of the citizenship question on the Census other than the Department of Justice's desire for the data for Voting Rights Act purposes?

Mr. Comstock. No. I've never heard any other rationale.

Mr. Dewhirst. You never heard any other rationale?

Mr. Comstock. I never heard any other rationale.

Mr. Dewhirst. And what you attempted to explain had to do with how your view of the process for how questions are added to the Census evolved over time, is that

correct?

Mr. Comstock. Correct. If you're going to go through this process, not only does the Secretary have the discretion, you have to have a legitimate government purpose in order to get past other elements, particularly OMB. And so were an agency other than the Department of Justice, for example, the Department of Commerce decide to seek to put the question on, Commerce would need a legitimate government purpose. I'm not aware of that purpose at this point in time, but that would be the process we would have to go through.

Mr. Dewhirst. Okay. So to the extent you answered earlier, you were referring to the fact that under the law, you understand that the Secretary of the Department of Commerce could add a question, you know, under certain circumstances without a request from a different department of the government. Is that right?

Mr. Comstock. Right. Or if another agency asked us, they would have to have a legitimate government purpose as well. It's the same analysis.

Mr. Dewhirst. All right. But to be clear, you don't remember ever hearing any rationale supporting the reinstatement of the citizenship question of the Census other than the fact that the Justice Department might want this information for Voting Rights Act purposes?

Mr. Comstock. That's the only rationale I've ever heard advanced.

Mr. Dewhirst. All right.

Mr. Castor. Russ, do you have any follow up there because I don't --

Mr. Anello. I do. I do. And I don't want to take your time. I mean, it's --

Mr. Castor. Well, I'd rather do it now because I don't want to do a replay of this to refresh his recollection.

Mr. Anello. Sure. Yeah. I do have a few questions.

So if I'm understanding the colloquy we just heard, it sounds like you're saying that you did hear discussions that other agencies other than the Department of Justice might request a citizenship question. Is that fair?

Mr. Dewhirst. First of all --

Mr. Anello. I'm sorry. I'd like to ask the witness. I appreciate that you guys just went out and talked, and now you did your own Q&A with the witness, but this is the committee's interview. We're here to ask the questions. You are not here to ask the questions. If you have a privilege you'd like to assert, then you can speak up. I'd like to ask the witness the question. Is that okay?

Mr. Comstock. So to answer your question --

Mr. Dewhirst. Do you recall the question? Restate the question.

BY MR. ANELLO:

Q The question is, is it correct, then, that you do recall discussions that an agency other than the Department of Justice might request a citizenship question? Is that correct?

A That is not correct. I do not recall discussions of other agencies asking the question. What I'm saying is what I recall is having a conversation within the people working on the decision memos that what is the process. You have to have an agency request it, legitimate government purpose, and through that process came to the conclusion that oh, ultimately, yes. Theoretically, the Department of Commerce could ask for this --

Q Right. So you --

A -- question.

Q Okay.

A We would need a legitimate government purpose. I'm not aware of such a

purpose at the moment. Doesn't mean it doesn't exist. I'm not aware of it. And the same if an agency other than the Department of Justice were to ask for this question. They would need a legitimate government purpose. I'm not aware of any other purpose or other agency. That's why the Department of Justice, they asked for it on the ACS. They clearly had a legitimate government purpose, so they were the logical agency.

Q Okay. When did those discussions take place?

A Again --

Mr. Dewhirst. Again, what discussions? He said he didn't have the discussions that you actually asked about in your question.

Mr. Anello. Again, I'm going to -- I would appreciate if I can ask the question. If you have an objection to the question, if you would just state that. He just -- the witness just explained in a long discussion or a series of discussions about -- and I'm asking --

Mr. Dewhirst. Hold on.

Mr. Hull. Don't talk over each other.

Mr. Anello. The question is the discussion that you just described that involved considering other agencies, considering whether the Department of Commerce could do this on your own, determining that you couldn't identify a legislative purpose -- excuse me -- a legitimate government purpose at another agency or the Department of Commerce, when did that discussion take place?

Mr. Dewhirst. I'm going to instruct the witness not to answer because that question is loaded, it is loaded with mischaracterizations of what he just said.

Mr. Anello. The discussion that you just said took place, okay, if you recall the description you gave. When did that discussion take place?

Mr. Dewhirst. To the best of your recollection.

Mr. Comstock. To the best of my recollection, that occurred after the decision was made.

BY MR. ANELLO:

Q Okay. When we talked earlier about this issue, you said that it was possible that a discussion on these topics took place beforehand because once the decision -- is that correct? Did you say that?

A If I can be allowed to state what I said.

Q Yeah. Please do.

A I originally said this occurred after because there was a discussion amongst attorneys after that. Again, we're discussing the theoretical legal process for how you get this question on there, right. Somebody wants to put a question on. You have to go through this process.

The only one that I was ever aware of up and through the Secretary's decision was the Department of Justice seeking this question. In a theoretical context of lawyers talking, we later determined in those discussions that yes, theoretically, we could ask for it. I can't think of the rationale we would use, but it's possible.

So when you asked had there ever been a discussion, I was honestly answering truthfully. That's what I'm trying to do here.

Mr. Anello. I have a number of other questions, but I want to be respectful of your time on this. There are a number of documents that go to this that I think cast grave doubt on the idea that this was not discussed prior to 2018.

So again, I don't to take all of your time on this, so if you want to go ahead. I'm happy to let you do it, and I'll come back.

EXAMINATION

BY MR. CASTOR:

Q Okay. As I understand it, the witness's testimony, and you can correct me if I'm wrong, you're talking about the theoretical legal process, not -- you're not talking about ways to add different types of questions to the Census. You're talking about theoretically from a legal process standpoint, what needs to occur as a predicate before the question is added, correct?

A Correct.

Q So any agency, any government agency could write to the Commerce Department and request that a question be added to the Census. You would then, as I understand your testimony, evaluate that question and determine whether there is a legitimate need for it, whether the agency has stated a legitimate need. You would talk to your Census experts. You would go through the legal evaluation of whether that is something that could happen, correct?

A That's correct.

Q And on the 2020 Census, that happened one time with one agency. The Justice Department asked that the citizenship question be added for assistance with the Voting Rights Act, is that correct?

A That's correct.

Q No other agency wrote in to Commerce with any other questions. Is that fair to say?

A Not to my knowledge, no.

Q Okay. So I think with all of these interviews and hearings we've had on the citizenship question, it does a disservice to all that's going on with the Census. It overshadows, from a committee perspective, the fact that the citizenship question is just a piece of a multitude of issues that are going on with the Census. Is that fair to say?

A That's very fair to say, yes.

Q And likewise, your involvement with this -- I mean, you are a senior official at the Commerce Department, correct?

A Correct.

Q And you're a staffer for the Secretary. You're helping the Secretary with a multitude of issues, right?

A That's correct.

Q The Census is just one of many, right?

A That's correct.

Q And inside the Census, the citizenship question is just among a bunch of other issues?

A That's correct.

Q I mean, is it fair to say that there are a multitude of IT questions heading into the 2020 Census? Is it going to work?

A There are lots of concerns around cyber security.

Q Cyber security, contracting.

A Contracting was a big one.

Q Is employment another issue of all the enumerators?

A Yeah. The largest peacetime mobilization ever. I mean, 500,000 people we've got to hire in a tight market, so yes, that occupies a lot of time.

Q So setting aside the citizenship question, getting ready for the 2020 Census is a major undertaking?

A A very major undertaking, yes.

Q Okay. With the change in administrations, you know, you have all of these new top officials coming in with the new administration at the top of 2017. A number of issues have to be decided very quickly. Is that fair to say?

A Yes. That's true.

Q So in 2017 and 2018, there are a number of legal requirements to get locked in; reporting to Congress, getting the contracts in place?

A Right.

Q Getting the technology lined up. Is that all fair to say?

A Yeah. If you don't get it all done, then you're not going to have a successful Census, yes.

Q Okay. Are there other issues that were big occupiers of time with regard to the Census other than the ones that we touched on?

A Well, the biggest one that occupied incredible amounts of time was the deep dive on the life cycle cost estimate which I know we reported to this committee. Shortly -- actually, in the sort of late spring, I don't recall whether it was actually May or June, somewhere in that timeframe, we had -- it's the CDAP or something like that.

CEDCaP. CEDCaP is what it is? I can't recall. There was something that at the time Director Thompson was coming up to testify to some House committee. I can't remember whether it was Appropriations or somebody. And they had this massive cost overrun, and that just set off alarm bells left, right, and center. So I mean, that actually -- and then the Director Thompson left, so now we were scrambling to find new top personnel for the Census.

Those were the things that occupied the vast majority of everybody's time on Census who were doing the deep dive on the life cycle cost estimate. We were successful in getting the administration's support and Congress' support for a 25 percent increase in the Census numbers so that we could do a complete and accurate count.

And that literally consumed, I would say, 90 -- 99 percent of the time, that and contracts, understanding the contract situation that they had. That was the bulk of the

summer and fall of 2017 going into 2018, so this was not -- I think you can tell from the length of time between the various emails that are being presented here that this was not a big priority issue.

Q So it's an issue that came up intermittently. Is that fair to say?

A Yeah. About a month between each one of these emails.

Q Could you articulate a little bit about your portfolio and the types of issues you were working on?

A Pretty much everything in the Department. So we spanned -- I mean, we've got USPTO, Census Bureau, National Institutes of Standard and Technology, National Telecommunications Information Administration, NOAA which has the National Weather Service, National Fishery Service, National Oceanographic Service, and we have our International Trade Administration which has various subcomponents. We have EDA and MBDA. That may not be important to some folks, but there's a constant challenge with MBDA and EDA because they get zeroed out by the administration. Then they get funded by Congress. We have got leadership with them, so that was taking time.

We had a big fishery issue for those of you who follow the Gulf red snapper. That was consuming a considerable amount of time. In addition, we were working on Section 232, steel and aluminum tariffs. We had trade negotiations with China. We had trade negotiations with Europe. Up until the USTR came on board, Secretary Ross was sort of the lead trade person for the administration, so that was consuming quite a bit of my time. So basically lots of issues.

Q So your portfolio spanned the gamut. Is that fair to say?

A Correct.

Q And largely whatever the Secretary needed, you were --

A I was working on it.

Q And the Secretary, as we've come to learn, is a details-oriented official?

A Very much so.

Q Has a lot of questions?

A He has a lot of questions.

Q And he demands answers?

A Yes, he does.

Q He demands answers quickly?

A Very quickly.

Q And so is it fair to say that a good portion of any day that you have at work is just chasing down answers for the Secretary?

A I rarely get to work on the things that I started my day listing as what I needed, so --

Q And when you're staffing a principal of that sort, it's hard to have the proper context when you're trying to get all the answers because you're just trying to help the Secretary find the answer that he needs. You're sending emails, you're calling people, you're moving at lightning speed. Is that correct?

A In general, yeah.

Q And so consequently, the Secretary could have a question. You could just type it up, send it off in an email, and it might not have the proper context, in hindsight?

A That certainly happens, yeah.

Q Okay. And likewise, if we go back and we try to have a look at your emails that you sent 2 years ago, you know, it must be difficult for you as you sit here today to go back in time, 1, 2 years ago, for the proper context.

And so when you, you know, have struggled with not remembering, you know, the

context, I mean, is it fair to say that the background is the Secretary is asking a lot of questions, your portfolio is huge, you're just getting up to speed with running the Department, the senior officials at the Commerce Department? Is that a full picture of what's going on?

A Well, I get an average of 100 emails a day and respond to about 30 of them, so yeah. It's fairly busy, and I'm trying to basically keep all the trains running.

Q And you assisted the Secretary with his confirmation process?

A I did.

Q So you developed a relationship with him. Is that correct?

A Correct.

Q Where he relied on you?

A I would say so, yeah.

Q And you're probably one of the people at the Department when he has a question -- when he needs something answered, you're one of the people that he goes to. Is that correct?

A Particularly now and in the early days, yes.

Q Okay. So I want to pivot a little bit to -- I think you answered these before, but I just want to be clear.

You never had any conversations with this fellow Thomas Hofeller?

A I never heard of him until his name appeared in the press.

Q Okay. So a couple of weeks ago, his name was in breaking news, New York Times?

A Yes.

Q But prior to that breaking news, you never heard of him?

A No. Never heard of him.

Q So you never had any discussions with him, obviously?

A I did not.

Q How about Kris Kobach? You never had any discussions with him?

A I have never spoken to Kris Kobach.

Q Okay. So to your knowledge, from your own personal knowledge, did he have any influence on anything with regard to the citizenship question?

A Not that I'm aware of, no.

Q Stephen Miller. Never had any discussions with him, communications?

A I've never had a discussion with Steve Miller on Census-related matters, no.

Q Okay. The same with Steve Bannon?

A I've never spoken with Steve Bannon.

Q The Attorney General Sessions?

A What's your question?

Q Have you ever --

A Have I spoken --

Q Yes.

A -- with Attorney General Sessions?

Q Yes.

A Other than saying hello, no.

Q How about Gene Hamilton?

A I spoke with Gene Hamilton, yes.

Q About the Census?

A Yes.

Q Okay. How many times, do you remember?

A I don't recall exactly.

Q One of the emails said there was a reference to the Secretary. I think it's No. 3. No. 5. The terminology SWLR stands for Secretary Wilbur L. Ross. Is that -- did I get that right?

A Yes.

Q Okay. And that's just the way some people referring to him as SWLR?

A We use that as a shorthand, yeah.

Q Okay. I think I'm going to pivot now to Ellen. Thank you.

A Sure.

BY MS. JOHNSON:

Q So I want to go to the other issues, challenging issues, before the 2020 Census. I just want to make sure that the record is clear.

When you consider the state of the 2020 Census in 2017 in the context of all the other issues you worked on, do you believe that you and the Secretary were more concerned about fixing the challenges left over from the previous administration for the 2020 Census?

A I just said we -- the vast majority of our time on the Census matters was focused on trying to understand the budgeting issues, the contracting issues, assessing whether or not the budgets we had been left with was adequate to do the job.

The Census Bureau was concerned about continuing decline in response rates, so what could be done to improve the advertising campaign. How we could do greater outreach, you know? How could we get things started earlier. So there was -- yeah. There was a tremendous amount of time, and you know, this was an issue that going into the Secretary's confirmation was one of his key issues because there had been a GAO report where once again, the Census appeared as one of the top risks for the Department, so he was mostly focused on their budget and oversight and management

issues.

And then as I said, especially with Director Thompson leaving very shortly into his tenure, a little faster than we had anticipated, that threw a monkey wrench into the whole thing as well.

Q Would it be fair to say that when you came to the Department that the 2020 Census had been mismanaged up until that point?

A They are very dedicated career professionals, so I'm not sure I would say mismanaged, but they were underfunded.

Q And that's why the Secretary requested a 25 percent increase?

A For the deep dive assessment that was led personally by the Secretary and now Under Secretary Kelley who is -- she was the Under Secretary of Economic Analysis and now the Deputy Secretary. They went through everything.

They had two teams that looked at it, a Census team and an outside of Census team to go through the life cycle cost estimates. They went through it in great detail, and the result of that assessment was a 25 percent increase in funding was needed, yes.

Q Do you think the senior officials at the Commerce Department at the end of the Obama administration were as keenly focused on the 2020 Census as you and the Secretary have had to be coming in 2017?

A I wouldn't want to speculate on their level of focus.

Q Do you think that the management of the Census when you and the Secretary came on board was greatly increased?

A Yes. I think as the Secretary put it, clearly there was a management issue. We had a CEDCaP cost overrun magically appear. A good management team would have caught that, so --

Q So you were surprised at the lack of management when you came in? I

mean, clearly, you just said you were surprised that there wasn't even the funding resources for the 2020 Census that were ultimately going to be needed.

A We were certainly surprised by the CEDCaP overrun and the fact that that had not been brought to anybody's attention prior to that occurring. I think that set off a lot of alarm bells.

I mean, the Secretary, as I said, already focused on this as an area that needs a lot of oversight. It's a massive mobilization, you know, whenever you do it, but having to do this once every 10 years and stand something up, it was a big undertaking. So he was very focused on that from the start. But at least the initial experience was not -- I think made him much more concerned as to the state of the Census than he originally came in thinking it was.

Q So we understand that the Secretary has, I think, monthly meetings with the Census Bureau on the 2020 Census. Is that correct?

A I think that's the frequency now, but at the time, he was actually doing weekly meetings.

Q He was having weekly meetings. Okay. Was his first meeting on the 2020 Census, did that happen his first week after he was confirmed?

A You'd have to check his calendar. I don't recall specifically, but I certainly had a meeting shortly after his arrival, yes.

Q Did he direct you to ensure that there were weekly meetings to update him on the status of the 2020 Census?

A Ellen Herbst who was the career staff, the person who was the acting Deputy Secretary at the time, was sort of his go-to person on the Census. I mean, I was called in to work on a number of things and sort of provide an outside set of eyes on things, but Ellen was sort of handling the day-to-day management of the briefings.

Q Okay. So Ellen was the one that he would go to if he wanted a briefing with the Census Bureau on a weekly basis?

A Or Brooke Alexander would schedule it. We had -- I forget the name of the woman who was doing the scheduling at the time, but he would have talked me, Eric, or Ellen and said set up a meeting. And like I say, Ellen was the one most connected with the Census folks.

Q And in, you know, early 2017, how often would you participate in those regular weekly, now monthly, meetings?

A I mean, as often as I could, but I had a lot of other issues I was dealing with, so there was only so many bodies to go around.

Q Right. And if you weren't in the meetings for the policy team, did you send someone else?

A Typically David Langdon would be there.

Q And you said David Langdon is still there working on --

A He's still there. He's a career staffer who was detailed over from, I guess, ESA.

Q Okay. And can you just give us a sense of how your policy office is structured? Like, you are the head of the policy office. How many people do you have under you, and how do issues get reported up to you?

A I think I have about a half dozen people under me. It changes as we get detailees in and out, but it's -- well, especially at the time, it was all detailees plus me and one assistant, so I've got half a dozen people who cover the different things. There's a person who covers NOAA. Yeah, pretty much NOAA, and then somebody else does ITA, BIS, the Bureau of Industry and Security. We've got Dave who covers EDA, MBDA, the Census, and PTO, I think.

So it's just -- they sort of -- I've got somebody else who covers NIST and NTIA, so basically they're people who are all career staffers. Somebody at one of the bureaus will volunteer and be sent up, and then they are there, and I've had -- out of the half dozen, I think half have been -- well, at this point, two-thirds have been replaced over time with new detailees coming in.

Q And how have you instructed those folks to, you know, move information up to you? What are the sort of parameters for identifying key issues?

A They typically send me emails or will grab me, you know, step into my office and tell me about them.

Q And you rely on their judgment as to what's a key issue and what's not a key issue?

A That's -- yeah. That's their primary focus is to make sure we're alerted to issues in their departments. And then, of course, if the Secretary has something that, you know, we're working on with their department, their typically sort of go-to person for finding out who in the Department or who in that particular bureau we need to work with.

Q So when David Langdon tells you that there's a statutory report required to be submitted to Congress within the third -- in the third month the administration has been constituted, you would take that seriously, and you -- you know, that would be something that you would hope that David would flag for you?

A Yeah. I would certainly hope that. We also have an Exec Sec process which sort of moves paper up through the things. The letters and other things for response, those come up through our office as well.

So those detailees review those letters, work with the bureaus on trying to get them done. Reports to Congress typically come up through that path, and as deadlines

approach or unfortunately get missed, they try to increasingly wave the flag and try to get attention to them.

Q But the Commerce Department complied both with the deadline for the topics on time and the deadline for the questions on time?

A To the best of my knowledge, yes.

Q How do you decide what information flows up to Secretary Ross, or is it a situation where primarily you're dealing with Secretary Ross asking you to do things from the top down?

A It's both. But early in his tenure, he, for example, instructed that all Federal Register notices needed to be approved by him.

Q That's a lot.

A Yes. So for a while, that was actually the way it worked. Now it's not quite as rigorous, but pretty much, yeah. Every Federal Register notice, major announcement all comes up to the Secretary's office, and he signs most of the letters himself, so we move a lot of paper.

Q Yeah. Can you just give us a better sense of what it's like to work for Secretary Ross? Obviously we've heard that he's extremely detail oriented. If he early on asked you to give him all Federal Register notices, I mean, that's a significant amount of not just paper but review from the Secretary level. Can you just give us some context connection of the work environment?

A He is a very hard worker. He works -- I think as you can see from various emails, he works not quite around the clock, but it's not unusual to get emails from him over the weekend. I get calls from him over the weekend. I get calls late into the evening a lot of time and emails, and he typically -- he comes from the private sector and a business environment where he's used to getting answers quite quickly, and so the

bureaucratic process is not necessarily what he has in mind. And so a lot of my time is spent figuring out how to get the answers faster for what he wants.

By the same token, it's not unusual for him to ask for information and then for whatever reason it wasn't delivered to him, 3 weeks later he could pop back up and say where is that information I asked you for 3 weeks ago, and you thought it had fallen off the radar screen. It hadn't. So he -- and then sometimes I get requests for the same data twice. I mean, it's just -- he's got a lot going on, too, so I may have given it to him. He forgot that I gave it to him, and I get the request again, so it just depends.

Q And if Secretary Ross says to you I want something -- I want information from you as soon as possible, what do you take that to mean?

A If I can get it to him in the next 5 minutes, that would be appreciated.

Q And if you don't get it --

A And he'll stand there while you call somebody.

Q How many times has he done that?

A A lot.

Q And if you don't get him information in the next 5 minutes, what is an acceptable turnaround time for the information?

A Again, it depends on what it's for, but pretty much he wants it as quickly as possible. And like I said, if I don't get it to him and other things come up, then it falls off the radar screen until he remembers that he asked me for it or he asked somebody else for it, and then he'll ask me for what he asked somebody else for, ask me how come I haven't got it. I don't know because I didn't know you asked that other person, so --

BY MR. CASTOR:

Q And this is his management style across the board?

A Across the aboard.

Q Okay. So it's all issues?

A Right.

Q And the fact that he is engaged on one issue doesn't mean that he's not engaged on 500 others?

A He's usually engaged on quite a few issues with multiple people. And like I said, it's not uncommon for any of the senior staff to get -- having him demanding why you didn't produce the information that he clearly asked you for but he had not asked me. He asked somebody else, so that happens.

BY MS. JOHNSON:

Q I want to get a sense of, you know, the 2020 Census and the mobilization for that is extremely important. You mentioned several other issues here today, red snapper, you know, steel and aluminum tariffs, other trade issues, other NOAA issues.

In a given week, can you give us a sense of, especially early in 2017, how much of your time was focused on the 2020 Census, how much of your time was focused on the citizenship question, how much time was focused on trade issues, how much time was focused on NOAA issues, et cetera?

A In early 2017?

Q Uh-huh.

A Well, practically zero on the citizenship discussion. Census? Maybe, I don't know, 5 or 10 percent of my time, and fish was consuming a lot of time at that time, the trade issues, a lot of time, 232s when they got started, and I don't recall the exact timeframe, but that was sort of I think in March, April. That consumed a lot of time. Probably, you know, 20 percent of my time. Just answering whatever the issue du jour was a lot of time, and then we were trying to onboard people, bring people in so you had to interview folks and move his mail, clear the Federal Register notices, so long days.

Q As you moved throughout, you know, deeper into 2017, looking at the fall of 2017, can you give us a sense of how your time was allocated in sort of August, September, October, November across all the many issues that you worked on at the time for the Secretary?

A I think at that point, we added Space Commerce. We were starting to do stuff on Space Commerce. Snapper at that point was done. We were doing the deep dive, so that -- now Census was probably 20 percent of my time. We're starting to get into budgeting, then, for the next year.

Also, the office of Strategic Planning, so we were starting to look at gearing up on the budget. That was eating time.

Q The budget for the entire Department?

A Yeah. Yeah. And what were our agency priority goals, and of course, that was all new, so that took more time. I've never been in the executive branch before. What else were we working on? 232s. I think there was big China negotiations in the fall. That was taking a lot of time. I don't recall exactly what other cats and dogs.

Q But it's fair to say that the citizenship question was a very small part of what you were working on for the Census but also -- not only for the Census but also a very small part of your portfolio and what you were working on in the fall of 2017 generally?

A Yes.

Q Whenever you had conversations with the Secretary about the Census, was his priority always to ensure a full, fair, and accurate count in 2020?

A That's all I ever heard him articulate, yes.

Q And he wants to make sure that the Constitution is followed, and you want to make sure the Constitution is followed to count everyone once accurately once and in the right place?

A The bureau -- the Census Bureau and the Department is fully behind a full and accurate -- a complete and accurate count.

Q Of everyone?

A Of everyone, yes. No question. We count everybody.

BY MR. CASTOR:

Q And you want to comply with the law, right?

A Everything we do, we try to comply with the law.

Q And the Census data is protected. You can't take the Census data and ship it off to ICE, for example, right?

A No. It has got some of the best protections I've ever seen on data.

Q You can't take the Census data and ship it off to DOJ for some sort of prosecution, right?

A Absolutely not.

Q The Census data is safeguarded and used for specific purposes?

A As the Secretary says, he was once a former enumerator himself. You take an oath for life to protect that data. I don't have access to that data. I'm not cleared for Title 13 data. Most of the people in the department aren't.

So if you're a Census Bureau employee, you've been cleared for access to Title 13 data, you take an oath to keep that data confidential for life.

BY MS. JOHNSON:

Q So are you familiar with the exact penalties for disclosing that data?

A I don't recall the exact details, but I'm aware that there are penalties under Title 13, or actually, I think it refers to Title 18 for the actual penalties.

Q So if I told you that the penalties were up to 5 years in prison and a $250,000 fine, is that consistent with your understanding of the protections?

A Again, I don't recall the exact details, but that sounds in the ballpark, yes.

Q Significant penalties, certainly. I mean, I wouldn't want to spend 5 years in jail, and I don't have $250,000 to comply.

A I would agree with that statement.

Q Okay.

BY MR. CASTOR:

Q Any government officials ever try and convince you or anybody you know at the Census Department or the Commerce Department to violate any of those laws?

A No.

Q So nobody at DOJ tried to get you to give up your Census data, right?

A Not that I'm aware of.

Q You're not aware of anyone at DHS that ever tried to coerce the Commerce Department to give up their data?

A Not that I'm aware of, no.

Q Nobody at the White House ever sought the data?

A No.

BY MS. JOHNSON:

Q I want to be more specific with what Steve's saying. It's not just the data because statistically anonymized data is publicly available at the Census Bureau, correct?

A As far as I know, yes.

Q But no one at the Department of Justice, to your knowledge, has ever requested Census responses, specific responses?

A We'd be prohibited from providing them.

Q And no one at the Department of Homeland Security, to your knowledge, ever asked for specific Census responses?

A No.

Q You said you're aware of the lifetime confidentiality oath that anyone who comes in contact with Title 13 data has to sign.

A Yes.

Q How would you react if you learned that a person who signed this oath disclosed Census question responses in violation of the oath?

A I would hope they would be prosecuted.

Q You hope that the Department of Commerce and the Office of General Counsel of the Department of Commerce would refer the violation to the Department of Justice for criminal prosecution?

A I would expect that would be what we would do, yes.

Q I mean, you said that you're familiar with the Secretary, and you have a lot of interaction with him. Would the Secretary, if he came across this situation, would he insist that the Department of Justice -- that criminal prosecution be swiftly prosecuted?

A I mean, I can't speak for him, but that would be based on my experience with the man. Yes, I think he would.

Q To your knowledge, how does the Department of Commerce monitor access to records at the Census Bureau, Census response records?

A I'm not intimately familiar with their process, but I do know from the Census Bureau briefings on cyber security and other issues that they take the security quite seriously. As I understand it, they've got all kinds of pass cards and things like that.

Not everybody has access to certain parts of the building, et cetera, so they spend a lot of time talking about their security protocols, how to safeguard the data, including recent discussions on methods to further make sure nobody can reverse engineer using the vast hordes of internet data out there. How do you prevent people from reverse

engineering back to figure out an individual response. So there's a lot of time devoted to that.

Q Okay. To your knowledge, has anyone been prosecuted for failing to complete a Census questionnaire?

A Not that I'm aware of.

Q To your knowledge, has anyone ever been prosecuted for failing to return a Census questionnaire?

A Again, not to my knowledge, no.

Q If you don't return a questionnaire, do you know what the Census Bureau would do in that situation?

A Well, we have a whole non-response follow up, so we spend a lot of time talking about NRFU. And so they would send somebody out to knock on your door, and if I think -- I don't recall what the protocol is, but they do it a couple of times.

And if they're unsuccessful, they would see if you've got any neighbors that might be able to answer the questions. They would look at administrative records. They would impute the data at some point. I think our protocol calls for up to six attempts, including three in-person.

Q So it's fair to say that the Census Bureau makes a, you know, robust, good faith effort to ensure -- to get someone to respond to the questionnaire?

A We do.

Q And if they don't respond, you try other sources, neighbors, other administrative records that you have agreements to share between agencies. And then, you know, after that, to your knowledge, no one has been prosecuted further under the law?

A Further under the law for what?

Q Well, the law -- you know, it's the law to return your Census form, but you don't have any--

A To my knowledge, no one has ever been prosecuted for failing to do so, and we do actually have a full program to even count people that don't actually have a physical address.

So there's efforts to get out and find homeless people and everything else. We do the best we can. Can we get absolute 100 percent accuracy? No. We're certainly going to make the best run at it I think that's ever been done.

Q So you've said that you had conversations with other government agencies, Department of Justice. For example, when you talked to those agencies, did you speak with them because you believed that they could use the data for any law enforcement prosecution or deportation proceeding?

A No.

Q I just want to make sure. You did not -- it is not the purpose of this data to go for law enforcement or deportation or any immigration proceeding, correct?

A No. It cannot be used for that.

Q And to the best of your knowledge, Secretary Ross would not allow data -- any data responses to be used for law enforcement or deportation proceedings?

A He's prohibited by law from doing so.

Q Do you plan to fill out your Census form in 2020?

A I do.

Q And you're going to hopefully answer all the questions that are asked?

A I will answer every question that's asked.

Q If one of your neighbors or a friend or someone you know came to you and said that they were not going to return their Census form, how would you respond to

them?

A I would educate them on the fact that the data is protected and that there -- actually, I wouldn't be sure why they would not want to, but they're actually harming the overall count and the ability to determine correct apportionments of seats if they don't fill out the Census.

Q And not just apportionment, but ensuring that their local community and the businesses and the people in their community receive their fair share of Federal funding, correct?

A That would be right.

Q Would you talk to them about all the statistical uses that go into -- that people can use the data for; for example, businesses using the data to inform business decisions?

A I perhaps would mention that, yes.

Q And local governments, you know, determining where to build new schools or new community centers and whatnot?

A I would absolutely assure them that there's every reason they should fill out the Census and no reason why they shouldn't. And if they were concerned about any of the particular questions, for example, the citizenship one, I would point out that answering a citizenship question does not answer the question of whether you're here legally or illegally. So it simply determines whether you're a citizen or noncitizen which is really relevant only for voting purposes.

BY MR. CASTOR:

Q I just have a couple wrap-up questions.

The Commerce Department invests a great deal of time and money in getting the best count, correct?

A That's correct.

Q The Commerce Department invests a great deal of time and money to safeguard the data and to comply with the law that the data must be kept safe. Is that --

A Absolutely. It's the highest priority.

Q And there has been no effort by anyone in the White House, anyone in the Department of Homeland Security, anyone in the government to call out anybody at the Commerce Department to use this data for any other reason than counting people?

A Certainly not to my knowledge, no.

Q Okay. And the addition of the citizenship question is simply for the reasons stated in the decision memo?

A That's correct.

Q Okay. And the decision memo -- the Secretary did not make his final decision until the decision memo was signed off on, is that correct?

A That's correct. He was absolutely prepared to look at the data, and I have no doubt in my mind that had the data been such that it was -- the cost outweighed the benefits, then he would have told the Justice Department that we need to find a different solution.

Q And ultimately, the Secretary was the decision maker?

A Absolutely.

Q And in your experience, if the Secretary had decided that he did not want to go that way, he would have had the inner strength and gumption to tell the Department of Justice or anyone else in government that this is his decision, and this is the way it's going to be. Is that fair to say?

Mr. Dewhirst. Sorry. Would you repeat that one more time?

BY MR. CASTOR:

Q The decision was the Secretary's --

A Yes.

Q -- in the decision memo. And based on your experience working with the Secretary, you believe if the Secretary had decided to go a different way and had not added the citizenship question that he would have had the gumption, the inner strength to stand on that?

A Absolutely.

Q And he would have told the Justice Department no, we're not going to add it because I've decided we're not going to do that if he decided not to added citizenship question?

A If he decided not -- well, if he decided not to add the citizen question, I'm quite certain he would stand by that and defend it. If you're getting at that there were multiple options for addressing --

Q Right.

A -- the request from the department.

Q I'm just --

A So he may have been able to address --

Q But the decision memo reflects when the decision was made and who made the decision?

A Correct.

Mr. Castor. Okay. That's all I've got.

Ms. Johnson. We can go off the record.

[Recess.]

[11:53 a.m.]

Ms. Anderson. We'll go back on the record. It's 11:53, and we will start our second hour.

[Comstock Exhibit Nos. 7 and 8
were marked for identification.]

Ms. Anderson. I'm going to hand you what's marked as exhibits 7 and 8.

Mr. Dewhirst. This is 7?

Mr. Anello. Sorry, that's 8.

Mr. Dewhirst. 7 and 8. Which one -- okay.

Mr. Castor. Sorry, what number are we up to?

Ms. Anderson. 7 and 8.

Mr. Castor. 7 and 8?

Ms. Anderson. Yes.

I'd also -- if you can pull 6 back out. Thank you. So just for refreshing our timeline and what time we're talking about, number 6 was sent -- exhibit 6 was sent on May 2nd, 2017.

And then if we can go to exhibit 7, that was sent on May 4th, 2017. It's an e-mail from Mr. Branstad to Mr. Flynn at the bottom, asking, "Who is your best counterpart to reach out to at DOJ - Regarding Census and Legislative issues?"

Do you recall this time period, reaching out and asking about a contact at the Department of Justice?

A I mean, nothing specific about this one. I mean, can you rephrase your question? Do I recall May 2017? Is that what you're asking?

Q Do you recall asking Mr. Branstad for a contact at the Department of Justice regarding Census and legislative issues?

A I recall asking Eric, yes.

Q What were the Census and legislative issues that you were asking -- going to be speaking with the Department of Justice about?

A That was Eric's characterization. I don't recall what I asked Eric, other than for a contact at DOJ.

Q What did you want to speak with the Department of Justice about?

A I was following up to see what their Voting Rights Act needs were.

Q Was there any particular reason why he connected you with Mary Blanche Hankey at the Department of Justice?

A I have no idea.

Q Had you ever spoken with her before?

A Never met her.

Q Did he tell you anything in particular about why she would be the best point of contact at the Department of Justice for your questions?

A He did not.

Mr. Anello. You said you were -- you asked for a contact at DOJ because you were following up on what their voting rights needs were?

Mr. Comstock. I was following up on --

Mr. Dewhirst. Sorry. He just asked you if that's what you said.

Mr. Comstock. Yes, that's what I said.

Mr. Anello. Is that accurate? Is that an accurate --

Mr. Comstock. I don't recall exactly what I was trying to follow up with on, other than that I was trying to reach out to the Department of Justice.

Mr. Anello. So you don't know if it was about the Voting Rights Act?

Mr. Comstock. Not sitting here today, recalling back then. I mean, I'm looking

at a series of documents that might indicate that, but that's -- I don't recall it. So --

Mr. Anello. No, and I apologize, I didn't see it in the email. That's why -- I didn't see anything on the Voting Rights Act in the email.

Mr. Dewhirst. There's no question there. There's no question there.

BY MR. ANELLO:

Q Now, the email from May 2nd was about the citizenship question. So were you following up -- were you asking to find a contact at DOJ to discuss the citizenship question?

A Again, I don't recall.

Q Do you have any recollection -- you said you remember looking for a contact at DOJ.

A I remember asking Eric to find me a contact. I don't recall exactly why.

Q Do you remember anything about why?

A I don't recall this time period. Like I said, it's 2-plus years ago. I don't recall specifically anything about any of these emails.

Q Okay. Again, I'm not trying to be argumentative at all with the question. I'm just trying to understand, if you do remember looking for a contact, if you remember any context about why you were looking for a contact.

A No, I don't at this point.

Q Okay.

A Sitting here today, I do not. I have no recollection of these emails.

Q So you don't remember if it related to the Census, for example?

A Not sitting here today, no, I don't.

Q You don't know if it related to the citizenship question?

A Again, not sitting here today, no, I don't.

Q And you don't know if it related to voting rights?

A I don't recall sending this series of emails, so --

Q No, but I'm not asking about the email. I'm asking about your recollection of looking for a contact or asking for a contact at the Department of Justice.

A I don't specifically remember asking Eric for the contact at the Department of Justice. I can obviously read emails and see what's there, but I don't recall this series of events right now, sitting here today.

Q Okay.

A If these were not in front of me, I would have no recollection of that. It was an insignificant event at the time.

Ms. Anderson. Were you working on other issues at the Department of Justice in May 2017?

Mr. Comstock. Not that I recall.

Ms. Anderson. Did you ever reach out to the White House in this time period about the citizenship question?

Mr. Dewhirst. I think he's answered that question at least a couple times, but I'll allow him to answer it again.

Mr. Comstock. Not that I recall.

BY MS. ANDERSON:

Q Do you know Matthew Flynn, the --

A I don't know Matthew Flynn.

Q Do you know where he works in the White House? Or where he worked at the time in the White House?

A I don't know him, so I don't know where he works.

[Comstock Exhibit No. 9

was marked for identification.]

BY MS. ANDERSON:

Q I'm going to hand you what's marked as exhibit 9.

Did you have a chance to review it?

A Okay.

Q Do you remember why you wrote this email with the included memo?

A I don't recall specifically why I gave it to him other than what's on the paper here, so --

Q So exhibit 9 is an email from September 16th, 2017. It was sent from you to Ms. Teramoto, and it includes a memo dated September 8th about Census discussions with DOJ.

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

Does this memo refresh your recollection at all about the contacts that you had with Ms. Hankey in May of 2017?

A Other than what's stated on the page, no.

Q Do you recall why she specifically directed you to James McHenry at the time?

A I have no idea.

Q Do you recall what you discussed with her when you met in person to talk about the citizenship question?

A I don't.

Q Do you recall discussing why the Department of Commerce was interested in inquiring whether the Department of Justice could use the question on the Census?

Mr. Dewhirst. Will you state that again?

Ms. Anderson. Sure.

Do you recall discussing with her why the Department of Commerce was inquiring whether the Department of Justice could use the question on the Census?

Mr. Dewhirst. I'll instruct the witness not to answer because that implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. Did you discuss with her what the Department of Justice could or should do in order to request a citizen question be added to the Census?

Mr. Dewhirst. The same instruction to the witness.

Ms. Anderson. Did you discuss with her the Secretary's interest in the citizenship question?

Mr. Dewhirst. The same instruction to the witness.

Ms. Anderson. Did you discuss with her why the Attorney General might be interested in supporting the Department of Commerce's efforts to add a citizenship question?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Do you know where James McHenry worked in the Department of Justice?

Mr. Comstock. No idea.

Ms. Anderson. Do you recall whether he works on voting rights issues?

Mr. Comstock. I don't know what he worked on.

Mr. Anello. Yeah. With respect to your meeting with Ms. Hankey, do you

remember how many times, let's say, in your first few months working at the Department of Commerce, you met in person with somebody at DOJ?

Mr. Comstock. I don't recall any meeting at -- I mean, I don't recall any other meetings at the Department of Justice.

Mr. Anello. So just this one meeting with Ms. Hankey?

Mr. Dewhirst. To the best of your --

Mr. Comstock. To the best of my recollection, yeah.

Mr. Anello. And this meeting was about the citizenship question?

Mr. Comstock. Again, I don't recall other than what's on the paper.

Mr. Anello. Do you recall what you told her about the citizenship question?

Mr. Comstock. I don't.

Mr. Anello. Do you recall what she told you about the citizenship question?

Mr. Dewhirst. Caution the witness.

Mr. Comstock. Yeah, again, I really have no recollection of the meeting.

BY MR. ANELLO:

Q Do you know who else was present?

A I don't believe anybody else was present.

Q Where did you meet?

A In the Department of Justice in an office. I don't -- nothing stands out about it.

Q Did you request to meet in person with her?

A Again, I think what's on the memo is -- and I -- I know I testified to this in deposition, but at this point, you know, looking back over 2 years, no, I don't really recall any details of this meeting.

Q At the point when you had that meeting, had the Secretary told you that he

wanted to add a citizenship question and wanted you to make it happen?

Mr. Dewhirst. I'm going to instruct the witness not to answer because that implicates executive branch confidentiality and litigation concerns.

Mr. Anello. At the point when you had that meeting, had the Department of Justice sent a request, formal or informal, for a citizenship question to the Department of Commerce?

Mr. Dewhirst. Could you be more specific?

BY MR. ANELLO:

Q At the time of the meeting, which was -- at the time that you met with Ms. Hankey --

A Right.

Q -- had the Department of Justice sent a request to your Department, the Department of Commerce, be it formal or informal, to add a citizenship question to the Census?

A Certainly to the ACS, they had.

Q I'm talking about the 2020 Decennial Census.

A Well, you know when they sent their letter.

Q Okay. I'm asking -- I've asked the questions. I'd appreciate it if you just answer it. And I do know they --

A I don't know the exact date they sent their letter, but --

Q There is a letter that came on December 12th, 2017, so that one -- clearly it was after.

A After this.

Q So I'm trying to understand --

Mr. Hull. Maybe he doesn't know what you asked.

Mr. Anello. What I'm trying to understand is whether you had received some other communication from the Department of Justice, formal or informal, seeking out a question on the 2020 Census?

Mr. Comstock. Not to my knowledge, no.

Mr. Anello. Okay. So it was the Department of Commerce, your Department, that was raising this for the first time with the Department of Justice. Is that correct?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

Mr. Castor. Russ, exhibit 8, do we know that this has to do with the citizenship question?

Mr. Anello. Exhibit 8? So we're looking right now at exhibit 9, which is the memo.

Mr. Castor. That was the Mary Blanche email. Do we know that this has to do with the citizenship question?

Mr. Anello. I think that's a question. It came 2 days after he was asked a question by the Secretary about --

Mr. Castor. Okay.

Mr. Anello. -- the citizenship question, and in his response, he said he would reach out to DOJ and get them to add that question.

Mr. Castor. Okay.

Mr. Anello. And then 2 days later, he did reach out to DOJ. So I think it's --

Mr. Castor. But there's nothing on this email that --

Mr. Anello. No. Well, that's exactly the question.

Mr. Castor. Okay. Because you said DOC.

Mr. Anello. And then later, of course, he said --

Mr. Castor. Okay, I'm sorry.

Mr. Anello. -- he talked to Ms. Blanche. So, it would be shocking to me, you know -- he also said I think he never met with DOJ in person about any other issues that year, so it seems unlikely to me that it was about a different topic, but if it was, obviously, he should let us know.

Mr. Dewhirst. Proceed to your next question.

Mr. Anello. Sorry, did you -- is there something you wanted to say?

BY MS. ANDERSON:

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

Do you recall whether you only spoke with Mr. McHenry by phone or whether you also communicated with him in any other fashion?

A I don't recall.

Q Do you recall what you discussed with Mr. McHenry about the citizenship question over those several phone calls?

A I'm not -- no, I don't. Not at this time.

Q Do you recall why the conversation spanned over several phone calls?

A Again, other than what's on the memo, I really don't have any recollection of it.

Q Do you recall why he directed you to Gene Hamilton at the Department of Homeland Security?

A Outside of what's stated in the email there, no.

Q Do you recall why he directed you to the Department of Homeland Security?

A I don't recall.

Q Do you recall whether you discussed or he discussed why, if there was a reason that the Department of Homeland Security could use the data collected from a citizenship question on the Census?

A I don't recall.

Q Do you recall ever hearing any reason discussed, inside or outside of the Department of Commerce, of whether the Department of Homeland Security could use the data for any particular reason?

Mr. Dewhirst. Would you repeat that, please?

Ms. Anderson. Sure.

BY MS. ANDERSON:

Q Do you ever remember or recall any conversations, inside or outside the Department of Commerce, about why the Department of Homeland Security could use data collected from a citizenship question on the Census?

A I'm not -- I'm not aware of any such discussion.

Q You said before that you identified that the Department of Justice had requested the addition of a citizenship question to the American Community Survey, correct?

A Correct.

Q And that's what caused to you initially reach out to the Department of Justice. Is that correct?

Mr. Dewhirst. You're asking whether that was his testimony, that's what made him reach out?

Ms. Anderson. Is that accurate?

Mr. Dewhirst. Okay. So you're asking the question whether it was his knowledge of the fact that DOJ had requested inclusion of the citizenship question on the ACS that led him to reach out to DOJ? That's what you're asking?

Ms. Anderson. Correct, yeah.

Mr. Dewhirst. Okay. You can answer that.

Mr. Comstock. That would be my basis, yes.

Ms. Anderson. So once the Department of Justice, the agency that determined -- that you determined was the genesis for the question on the American Community Survey, said that they could not or were not going to add -- request the question be added in May of 2017, why did you go and speak with someone at a different agency?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

BY MR. ANELLO:

Q Does the Department of Homeland Security enforce the Voting Rights Act?

A Not to my knowledge.

Q All right. Does the Department of Homeland Security have a reason to use Census data to your -- citizen -- I'll just say Census data, to your knowledge?

A Can you restate that question?

Q Are you aware of a use that the Department of Homeland Security would have for Census citizenship data?

A Not to my knowledge, no.

Q So then why did you call them?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

Mr. Anello. I mean, is there any reason why you would have called them? I mean, can you tell us a possible reason that they might need the census citizenship data?

Mr. Dewhirst. Going to instruct the witness not to speculate.

Ms. Anderson. Prior to James McHenry identifying someone for you to speak to at the Department of Homeland Security, were they on a list, or had you considered them as being an agency that could use the data?

Mr. Dewhirst. I'm going to -- I'm going to instruct the witness -- had Mr. Comstock considered -- sorry, will you just restate that?

Ms. Anderson. Prior to Gene Hamilton -- or sorry -- James McHenry at the Department of Justice identifying Gene Hamilton at the Department of Homeland Security as someone to talk to about the citizenship question, had you considered the Department of Homeland Security in your analysis of which Department could request or could use citizenship data?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

BY MS. ANDERSON:

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

Do you recall these conversations with Mr. Hamilton?

A I don't.

Q Do you recall why they spanned over several phone calls?

A I don't.

Q Do you recall what you asked him to discuss with DHS regarding the matter, meaning the citizenship question?

Mr. Dewhirst. Do you -- sorry.

BY MS. ANDERSON:

Q You approached -- you called Mr. Hamilton, correct?

A Correct.

Q Do you recall how -- what was the business of that phone call? Did Mr. McHenry, was he on the phone with you, introducing you to Mr. Hamilton? Did you call him out of the blue? What was the context for your first conversation with Mr. Hamilton?

A Again, at this point in time, I don't recall. I testified to this before.

Q Do you recall whether he -- what you asked him when you were on your first phone call with Mr. Hamilton?

A I don't recall the details of the conversations.

BY MR. ANELLO:

Q What do you recall about the conversation with Mr. Hamilton?

A I really don't recall anything about it at this point in time.

Q Well, during the last hour, you were asked if you spoke with Mr. Hamilton without the document about the citizenship question, and you said yes, you recall speaking --

A The name is familiar. I recall that I spoke with Gene Hamilton. I mean, look, we've -- it has been through testimony, litigation. I otherwise don't know Gene Hamilton from -- I wouldn't know him if he was sitting in the room, other than unless he introduced himself. So I don't know this person.

Q Do you recall --

A I mean, I know his name.

Q Sorry. Do you recall why you called him?

A I was told to by Gene -- by whatever the other guy's name is, McHenry.

Q You were told to -- you recall that Mr. McHenry told you to call him?

A That's the only way I got his name.

Q And for what purpose did he tell you to call him?

A I don't honestly know. I don't know why McHenry thought that would be a good person to contact. I mean, this was a new administration. I didn't know a lot of these people.

Q I guess my question is a little broader. I'm not asking why he was the particular person at the Department of Homeland Security. Maybe I'm asking a little bit more broadly, why did Mr. McHenry suggest that you reach out to someone, let's say, at the Department of Homeland Security?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

Mr. Anello. Well, can I just ask this, do you remember the reason why you were told to reach out to the Department of Homeland Security?

Mr. Dewhirst. Again, I think he's answered that question several times in the last 10 minutes.

Mr. Comstock. Yeah, I don't recall the conversation.

Mr. Dewhirst. But I'm going -- that's a yes-or-no question, do you recall?

Mr. Comstock. And the answer is no.

Ms. Anderson. What did you mean by DHS really felt that it was best handled by the Department of Justice?

Mr. Comstock. I don't recall.

Ms. Anderson. The last paragraph in the memo says, "At that point the conversation ceased and I asked James Uthmeier, who had by then joined the

Department of Commerce Office of General Counsel, to look into the legal issues and how Commerce could add the question to the Census itself."

Did you direct him to do that?

Mr. Comstock. I don't recall that conversation.

Ms. Anderson. What legal issues did you ask him to look into?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. Did Mr. Uthmeier conclude or determine whether the Department of Commerce could add the question to the Census itself?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Did you direct anyone else at this time to do anything else regarding the citizenship question?

Mr. Comstock. Not that I recall.

Mr. Anello. So the email that we've just looked at shows that you had contact with the Department of Justice, and then with the Department of Homeland Security, and then that you asked Mr. Uthmeier to look into how Commerce could add the question, meaning the citizenship question, to the Census itself. Is that right?

Mr. Comstock. Uh-huh.

Mr. Anello. I just want to make sure --

Mr. Dewhirst. Ask the question again.

Mr. Anello. Yeah. The email we just looked at shows that you reached out to the Department of Justice about the citizenship question, that you then reached out to the Department of Homeland Security about the citizenship question after the Department of Justice said they didn't want to request it. And then after the Department of Homeland Security said they didn't want to request it, you then asked

Mr. Uthmeier to look into how Commerce could add the question to the Census itself. Is that accurate?

Mr. Hull. Mr. Anello, you're asking him whether that's what the email says or you're asking him if that's what happened?

Mr. Anello. I'm asking if that's what the email says.

Mr. Dewhirst. I'm going to instruct him not to answer. He doesn't need to testify about the document --

Mr. Anello. On what basis?

Mr. Dewhirst. On the basis that having him testify again about documents to which he's testified in civil litigation, and which resolution is imminent at the Supreme Court, and in which the House of Representatives appeared as an interested party in an adverse position, and allowing you to again interrogate him on some of these documents about which you can read as well as we can, that implicates executive branch confidentiality and litigation concerns, and I'm going to instruct him not to answer. If you want to ask him about his recollection sitting here today, you may do that.

Mr. Anello. You won't let him answer about his recollection. I'm asking about whether I'm interpreting the document correctly. That's fine. I'll take that --

Mr. Dewhirst. No, I'm sorry, I'm sorry. I have not at any point not allowed him to ask -- answer about his recollection sitting here today.

Mr. Anello. Actually, you've objected almost every time we've asked about --

Mr. Dewhirst. You're asking about what this document says, Mr. Anello, and not only do I not think that's a particularly good use of anyone's time, but I'm instructing the witness not to answer that question.

Mr. Anello. I hear your instruction. In terms of use of time, I think the yes or no would have been a lot faster than the objection, but I'll move on from that.

BY MR. ANELLO:

Q You told us earlier today that you recall discussions about whether -- about the need for a legitimate government purpose --

A Uh-huh.

Q -- in requesting the citizenship question. Is that right?

A I said that was part of the process, yes.

Q Right. And you discussed how -- you said the discussion involved whether particular agencies had such a legitimate government purpose?

A No. I said, if you're going through the process and an agency requests something, then there's a question, a second hurdle of is there a legitimate government purpose. Whatever the agency is, Commerce, Justice, anybody, there has to be a legitimate government purpose for us to get past OMB.

Q And so were you aware of those parameters, those procedural requirements, at the time that you made all these phone calls?

Mr. Dewhirst. I'm going to instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns.

Mr. Anello. So did those conversations, in fact, take place in 2017 before you had these calls?

Mr. Dewhirst. What conversations?

Mr. Anello. He just -- he described a few times today conversations relating to the process that needed to be followed, and the email we just discussed describes a process that he followed. And my question is whether the conversations you had in which you came to understand what that process needed to be, actually happened in 2017, not in 2018?

Mr. Dewhirst. I'm going to instruct the witness not to answer, same basis as

previously articulated.

[Comstock Exhibit No. 10

was marked for identification.]

Ms. Anderson. I'm going to hand you what's marked as exhibit 10.

Mr. Comstock. Thank you.

Mr. Castor. This is exhibit 10?

Ms. Anderson. Yes.

So I handed you what's marked as exhibit 10. It's an email from August 8th, 2017. Secretary Ross wrote to you, and the unredacted parts that we have, "Were you on the call this morning about Census? Where is the DOJ in their analysis? If they still have not come to a conclusion, please let me know your contact person, and I will call the AG."

What did the Secretary mean by that?

Mr. Dewhirst. I'm going to instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. Did the Secretary ever indicate why he wanted to call the Attorney General specifically about the DOJ's analysis?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Did the Secretary ever say what he intended to ask or tell the Attorney General at the time about the citizenship question?

Mr. Dewhirst. Same instruction.

Ms. Anderson. You wrote back in the unredacted part, "Will be back shortly with an update on the Census question. I have two attorneys in the DOC General Counsel's Office working on it."

What update are you referring to.

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

Ms. Anderson. Was it an update about where the Department of Justice was on their analysis?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Or was it an update about where the Department of Commerce analysis was on whether the Department of Commerce could add the question itself?

Mr. Dewhirst. You want to restate that one?

Ms. Anderson. Or was it an update on the analysis within the Department of Commerce about whether the Department of Commerce could add the question itself?

Mr. Dewhirst. I'm sorry. It's the beginning of the question. Was it --

Ms. Anderson. The update, referenced in the email.

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Which two attorneys were you referring to as the attorneys in DOC General Counsel's Office that was working on the Census question?

Mr. Dewhirst. You're asking what he was referring to in this email?

Ms. Anderson. Correct.

Mr. Dewhirst. All right. I'm going to instruct the witness not to answer.

Mr. Anello. I'm sorry, what is the basis for that? She's asking for the name of the attorneys who worked on the issue.

Mr. Dewhirst. I understood the question. It's the same basis that I previously explained to you. If you'd like to ask about his recollection --

Mr. Anello. We had the attorneys in for interviews. I'm not sure why we can't identify their names.

Mr. Dewhirst. I'm sorry that you don't, but if you'd like to ask him about his recollection today about any attorneys he asked to work on this, I think that's

permissible, but we're not going to ask him about his understanding of emails from 2 years ago, not at this time. We're not going to do that. Well, I'm sorry, you can ask him. You're saying he did not --

Mr. Anello. You're saying he did not -- you're not permitting the witness to talk about his recollection of the emails?

Mr. Dewhirst. You can ask him whether he recalls the email.

Mr. Anello. Your Department provided this email to us, correct?

Mr. Dewhirst. Yeah, I understand.

Mr. Anello. Okay. But you're saying he's not allowed to discuss his recollection of the email that was provided to us?

Mr. Dewhirst. You haven't asked him whether he recalls this email.

Mr. Anello. She asked what he meant, who the two attorneys were.

Mr. Dewhirst. She hasn't established whether or not he recalls the email, but to the extent you're asking him to opine upon what he meant in this email, then I am instructing him not to answer.

Mr. Anello. It's not an opinion. It's a question of who the attorneys were.

Mr. Dewhirst. I understand the question.

BY MS. ANDERSON:

Q Do you recall sending this email?

A I don't recall sending this email.

Q Do you recall which two attorneys were working on the citizenship question issue in August of 2017?

A I recall that James Uthmeier was one of them.

Q Do you recall the other attorney?

A I don't.

Q Do you recall whether in general you provided the Secretary with an update around this time?

A I have no recollection.

Voice. Eleven?

[Comstock Exhibit No. 11

was marked for identification.]

Ms. Anderson. So the bottom email is a slightly less redacted version of the email we were discussing in exhibit 10. The part that's unredacted in this version, and I'll just read it all, is, "Were you on the call this morning about Census? They seem dig in about not sling the citizenship question, and that raises the question of where is the DOJ in their analysis."

Do you recall what the Secretary meant by "they seem dig in about not sling the citizenship question"?

Mr. Dewhirst. To the extent anyone could answer that question, I'm going to instruct the witness not to answer.

Ms. Anderson. Do you recall who the -- who was on the phone call that the Secretary's referring to when he asked the question, "Were you on the call this morning about Census?"

Mr. Dewhirst. To the --

Mr. Hull. You're simply asking whether he recalls?

Ms. Anderson. Does he recall who that call involved?

Mr. Comstock. I do not.

Ms. Anderson. Was there any particular party at that time that was dug in about the citizenship question and whether asking it or not asking it?

Mr. Comstock. Not that I recall.

Mr. Anello. Can I just -- do you remember ever hearing from anybody at the Census Bureau that the Bureau itself had made a decision it did not plan to proactively request -- sorry -- proactively add a citizenship question?

Mr. Dewhirst. Can you restate that again, please?

BY MR. ANELLO:

Q Yeah, sure.

Did you ever hear that the Census Bureau had made a decision that it did not plan to proactively add a citizenship question to the 2020 Census absent some other request?

A No.

Q You didn't hear that?

A Never heard that.

Q Do you remember if you ever -- or if anybody else at the Department of Commerce ever asked the Census Bureau whether the Bureau would be willing to add a citizenship question without a request coming from a different agency?

A I don't have any recollection of that, no.

Q Do you know whether you ever considered or other folks ever considered whether the Census Bureau could add a citizenship question without a request coming from another agency?

Mr. Dewhirst. It's a yes-or-no question.

Mr. Comstock. State the question again.

Mr. Anello. Do you know whether you or others at the Department of Commerce ever considered whether the Census Bureau could add a citizenship question to the 2020 Census without receiving a request to do so from a different Federal agency?

Mr. Dewhirst. It's a yes-or-no question.

Mr. Comstock. Again, in what time period?

Mr. Anello. Anytime, let's say anytime in 2017, anytime before the decision was made -- the final decision was made to actually add the question.

Mr. Comstock. Not that I'm aware of.

Mr. Anello. Do you remember that discussion happening at any other time?

Mr. Comstock. I don't recall any such -- again, say the question again. It's been so long that I --

Mr. Anello. I'm sorry. It is a long question. The question is whether --

Mr. Dewhirst. Here, sit up, drink some water.

Mr. Anello. We don't want to lose you.

The question is whether you or other folks at the Department of Commerce ever looked at the issue of whether the Census Bureau could add a citizenship question without first receiving a request from a different Federal agency to do so?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

Mr. Anello. You should have done that the first time.

Mr. Dewhirst. Took me a few times to hear it. Sorry.

Mr. Comstock. It was a good long question, though.

Mr. Anello. It was.

Ms. Anderson. So you wrote back to the Secretary and you wrote, "Mr. Secretary, we are preparing a memo and full briefing for you on the citizenship question. The memo will be ready by Friday, and we can do the briefing whenever you are back in the office. Since this issue will go to the Supreme Court, we need to be diligent in preparing the administrative record."

Why were you preparing a memo and full briefing for the Secretary on the citizenship question?

Mr. Dewhirst. I'm going to instruct the witness not to answer as that implicates executive branch confidentiality --

Ms. Anderson. Did you prepare a memo --

Mr. Dewhirst. I'm sorry.

Ms. Anderson. Go ahead.

Mr. Dewhirst. -- and litigation interests. Sorry. Go ahead.

Ms. Anderson. Did you prepare a memo and full briefing for the Secretary on the citizenship question?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. Again, I don't recall specifically.

Ms. Anderson. Do you recall whether a briefing occurred with the Secretary about the citizenship question in this time?

Mr. Dewhirst. Will you be more specific about "in this time"?

Ms. Anderson. Yeah, sorry, in this timeframe, in August of 2017 or September 2017.

Mr. Dewhirst. August or September?

Mr. Comstock. Yeah, I don't -- I don't recall a specific timeframe, no.

Ms. Anderson. You wrote, "Since this issue will go to the Supreme Court, we need to be diligent in preparing the administrative record." What did you mean by "diligent"?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. Were ever there any discussions about what would go into the administrative record regarding the citizenship question?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Were there ever any discussions about what should not or did not go into the administrative record regarding the citizenship question?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Were you involved in preparing the administrative record?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. On what basis?

Mr. Dewhirst. The same.

Mr. Anello. What's the confidentiality interest in understanding whether he prepared the administrative record?

Mr. Dewhirst. In how the Department prepared an administrative record?

Mr. Anello. That wasn't the question. The question was just whether he played a role. It wasn't how --

Mr. Dewhirst. It's requesting information that affects how the Department --

Mr. Hull. Part and parcel.

Mr. Dewhirst. Yeah, I mean, it's exactly within the realm of the instruction, so it will stand.

Ms. Anderson. The Secretary wrote back, "I would like to be briefed on Friday by phone. I will probably need an hour or so to study the memo first. We should be careful, about everything, whether or not it is likely to end up in the Supreme Court."

What did he mean by "We should be careful, about everything"?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Did you have discussions with the Secretary or anyone else at the Department of Commerce about being careful or not careful about what goes into the administrative record?

Mr. Dewhirst. You can answer that.

Mr. Comstock. Not that I recall, no.

Ms. Anderson. Did you have discussions about whether this would end up in the Supreme Court or in a court?

Mr. Dewhirst. Sorry, concerns?

Ms. Anderson. Discussions.

Mr. Dewhirst. I'm sorry. Did you have discussions about whether this would end up in the Supreme Court? I'm going to instruct the witness not to answer on the same basis.

Ms. Anderson. I'm going to hand you what's marked as exhibit 12. Actually, can I have 12?

Mr. Dewhirst. You want to switch this back? Why don't we give it back.

Ms. Anderson. Yeah. Yeah, yeah.

Mr. Dewhirst. You can present it when you're ready.

Ms. Anderson. Correct. Apologies.

Mr. Dewhirst. No worries.

Mr. Hull. I scribbled on that.

Mr. Dewhirst. Oh, yeah, we wrote on it, though.

Ms. Anderson. That's fine. We'll give you the exact one back in a minute.

Mr. Dewhirst. And you're going to have to decipher between Cordell and my chicken scratch.

Mr. Anello. All right. This is which one?

Ms. Anderson. 12, yeah.

Mr. Dewhirst. Thank you.

Ms. Anderson. Newly marked 12.

Mr. Dewhirst. The amended 12.

[Comstock Exhibit No. 12

was marked for identification.]

BY MS. ANDERSON:

Q Sorry.

So it's an email. The bottom email is from August 11th, 2017, and you wrote to the Secretary, "Mr. Secretary, per your request, here is a draft memo on the citizenship question that James Uthmeier in the Office of General Counsel prepared and I reviewed. Once you have a chance to review, we should discuss so we can refine the memo to better address any issues. Before making any decisions about proceeding, I would also like to bring in Peter Davidson and Census counsel to ensure we have a comprehensive analysis of all angles."

Do you recall the draft memo that you referenced in this email?

A I do not.

Q Do you recall reviewing it?

A I don't recall reviewing it, no.

Q Do you recall the contents of the memo?

Mr. Dewhirst. Caution the witness, to the extent you recall, I will instruct you not to answer.

Ms. Anderson. Can he answer whether he recalls the contents?

Mr. Dewhirst. Yes.

Ms. Anderson. Okay.

Do you recall the contents of the memo?

Mr. Comstock. Not at this time.

Ms. Anderson. Do you recall any of the legal analysis that you asked Mr. Uthmeier to produce and then he subsequently produced about the citizenship

question?

Mr. Dewhirst. Yes or no.

Mr. Comstock. Yes.

Ms. Anderson. What do you recall?

Mr. Dewhirst. And I'll instruct the witness not to answer, because that implicates executive branch confidentiality and litigation interests.

Ms. Anderson. Why did you provide the Secretary with a memo about the citizenship question that analyzed legal issues?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Did the Secretary respond or comment on any of the legal analysis you presented him? That's a yes or no.

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

Mr. Comstock. Yes.

Ms. Anderson. What did he respond or comment?

Mr. Dewhirst. And that's where you have the instruction not to answer.

Mr. Anello. Did the legal analysis pertain to the process that the Department needed to follow in order to add a citizenship question?

Mr. Dewhirst. I'll instruct the witness not to answer, same basis.

Mr. Anello. Did the analysis pertain to the potential uses of the data?

Mr. Dewhirst. Same instruction to the witness.

Are you good?

Mr. Comstock. Yeah.

Mr. Dewhirst. You good? You all right?

Mr. Comstock. Yeah.

Mr. Dewhirst. Got to get you an espresso, man.

Mr. Comstock. Getting hungry, though. But I'll last until the end of the session.

Mr. Dewhirst. All right.

[Comstock Exhibit No. 13

was marked for identification.]

BY MS. ANDERSON:

Q Hand you what's marked as exhibit 13.

A Okay.

Q So it's an email chain from August 29th, 2017, that includes you and a number of other people. Why don't we start on the second page of exhibit 13.

A Okay.

Q In it Peter Davidson wrote to you, James Uthmeier, Israel Hernandez, and cc'd Wendy Teramoto. The subject of the email, "Census." And in it, Mr. Davidson wrote, "The Secretary asked to set up a briefing on some of the key legal issues he is concerned about. Can we get something on the books for next week when Izzy returns? I can't find Karen in the directory...but she should be included as well. Izzy, I know you and James have been working on this for a while...so I will hand off to you to coordinate."

What was Israel Hernandez's role in the citizenship question?

Mr. Dewhirst. You can answer.

Mr. Comstock. He was, at the time, the deputy chief of staff and had previously been in the Department. So he was helping with various aspects of the Census.

Ms. Anderson. Do you recall what he was working on with James Uthmeier regarding the Census specifically?

Mr. Comstock. I don't recall, no.

Ms. Anderson. What were the key legal issues that the Secretary was concerned about in and around August 29th, 2017?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. So the email chain goes on, and we can kind of work back up towards the front page, and it includes a list of -- can't count right now, but several people from the Department -- Wendy Teramoto, Israel Hernandez, you, Mr. Uthmeier, Peter Davidson, and Karen Dunn Kelley.

Do you know -- do you recall this briefing that occurred between -- whether this briefing occurred? And if so, do you recall the contents of the briefing? We can start with the first one.

Mr. Dewhirst. Break it up. Do you recall any such briefing.

You ask the question. I'm sorry. You ask the questions?

Ms. Anderson. Do you recall any such briefing?

Mr. Comstock. No, I do not.

Ms. Anderson. Do you recall briefing the Secretary of Commerce on or about August 29th, 2017, about legal issues related to the Census or the citizenship question?

Mr. Comstock. I do not, no.

Mr. Dewhirst. You want a Clif bar?

Mr. Comstock. What?

Mr. Dewhirst. You want to crack open the Clif bar?

Mr. Comstock. We're doing all right, we're good.

Ms. Anderson. So we're going to hand you what I tried to hand you before.

Mr. Dewhirst. Okay.

[Comstock Exhibit No. 14

was marked for identification.]

Ms. Anderson. But it's now 14.

Mr. Dewhirst. 14, okay.

Mr. Anello. Should we do 15 at the same time?

[Comstock Exhibit No. 15

was marked for identification.]

Ms. Anderson. Yes. And then we'll also hand you what will be exhibit 15.

Mr. Comstock. Two pages?

Mr. Dewhirst. 15 is.

Ms. Anderson. We'll start with exhibit 14. It's an email from September 7th, 2017. And you wrote to Peter Davidson and James Uthmeier, "Hi Peter and James, as I discussed with James a little while ago, the Secretary would like an update on progress since the discussion yesterday regarding the citizenship question. If we could get a short email or memo today, that would be great."

What did the Secretary want an update on regarding progress with the Census on or about September 7th, 2017.

Mr. Dewhirst. I'm going to instruct the witness not to answer because that implicates executive branch confidentiality and litigation concerns.

Ms. Anderson. What did you discuss with James Uthmeier on or about September 7th, 2017, regarding the Census and citizenship question?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Did Peter Davidson or James Uthmeier provide you or the Secretary with a short email or memo on or about September 7th regarding updates on the citizenship question?

Mr. Comstock. I don't recall.

Ms. Anderson. Do you recall at any point Mr. Davidson or Mr. Uthmeier providing updates on the citizenship question to you or the Secretary in the fall

of -- summer, fall of 2017?

Mr. Dewhirst. One more time.

Ms. Anderson. September timeframe, fall of 2017, do you remember whether Peter Davidson or James Uthmeier ever provided you or Secretary Ross with an update on the citizenship question?

Mr. Dewhirst. Sorry, September or the fall of 2017?

Ms. Anderson. Yeah.

Mr. Dewhirst. Oh, both? Either?

Ms. Anderson. Yes.

Mr. Dewhirst. At any time --

Mr. Comstock. At any time?

Mr. Dewhirst. -- in the fall of 2017.

Mr. Comstock. Do I remember? Not really, no.

BY MS. ANDERSON:

Q We can turn to exhibit 15. It's a longer version of exhibit 14, although it is more heavily redacted.

Do you recall what James Uthmeier responded to you when you requested a progress update, short email or memo, for the Secretary?

A I have no recollection of this email.

Q At the top, there's an email from you to Mr. Davidson, Mr. Uthmeier, and Ms. Teramoto, and you wrote, "I suggest setting up a call for tomorrow. The Secretary is asking for progress on this."

Do you recall whether a phone call occurred?

A I do not.

Q Do you recall what the Secretary was asking for with regards to progress at

or about this time?

Mr. Dewhirst. It's a yes or no.

Mr. Comstock. No.

BY MR. ANELLO:

Q Do you recall a phone call or meeting between Secretary Ross and the Attorney General?

A I do not, no.

Q Are you aware that the Attorney General spoke with Secretary Ross regarding the citizenship question?

A Yes.

Q Okay. When did that conversation occur?

A I don't recall.

Ms. Anderson. How did you become aware of that conversation?

Mr. Comstock. I don't recall.

Ms. Anderson. Did you learn what they discussed?

Mr. Dewhirst. It's a yes or no.

Mr. Comstock. That's something I'd have to think about it. Did I learn what they discussed? No.

Ms. Anderson. Did the Department of Justice's position regarding whether they wanted to request a citizenship question change after Secretary Ross and Attorney General Sessions spoke?

Mr. Dewhirst. To the extent you know, I'm going to instruct you not to answer, because that implicates executive branch confidentiality and litigation interests.

Mr. Comstock. But I actually don't know.

BY MR. ANELLO:

Q Did you ever hear that the Secretary -- excuse me -- Attorney General Sessions communicated to the Department of Commerce that he was eager to assist with the citizenship question?

A I don't recall that, no.

Q Or that he could do whatever the Department of Commerce needed him to do with respect to the citizenship question?

A Again, I don't recall that.

Q Do you recall hearing that anybody at the Department of Justice had told the Department of Commerce that DOJ was eager to assist?

A Again, I don't recall hearing that specifically, no.

Q Did you talk to anybody at the Department of Justice aside from the one conversation -- or the conversations we've already talked about with Mr. McMaster and Ms. Hankey? Did you talk with anybody else?

Mr. Dewhirst. McHenry.

Mr. Anello. I apologize. McHenry.

Aside from the conversations you've already discussed with Mr. McHenry and Ms. Hankey, did you discuss the citizenship question with anybody at the Department of Justice?

Mr. Comstock. Do you want to define a timeframe?

Mr. Anello. Before March 26th, 2018.

Mr. Comstock. No.

Mr. Anello. Do you recall a June -- do you recall a June 27th, 2017, meeting between you and Mr. Uthmeier, James Uthmeier, to discuss the Census and citizenship?

Mr. Dewhirst. The date you said was June 27th?

Mr. Anello. Actually, I'm sorry. June 28th, 2017.

Mr. Comstock. I don't recall that meeting, no.

BY MR. ANELLO:

Q Do you remember ever sitting down to meet with Mr. Uthmeier about the Census?

A Yes.

Q And about the citizenship question?

A Yes.

Q Okay. When did you sit down with him?

A I couldn't tell you the dates.

Q And do you remember --

A Sometime in the summer of 2017. Summer, early fall.

Q Do you remember why you sat down with him?

Mr. Dewhirst. That's a yes or no.

Mr. Comstock. No. I mean, specifically, no.

Mr. Anello. Do you remember generally why?

Mr. Dewhirst. It's another yes or no.

Mr. Comstock. Yes.

Mr. Anello. Okay. Generally, why did you sit down with him?

Mr. Dewhirst. And that's where I'll instruct the witness not to answer as that implicates executive branch confidentiality and litigation interests.

Mr. Comstock. All right.

Ms. Anderson. Was there a particular reason you wanted -- or sat down with James Uthmeier, as opposed to someone else from the Department -- at the Department General Counsel's Office?

Mr. Dewhirst. Is there some reason --

Ms. Anderson. I mean, Mr. Uthmeier is one person.

Mr. Dewhirst. Sure.

Ms. Anderson. The General Counsel's Office has, I presume, more than one attorney, because we have several attorneys here with us today. Is there a particular reason why you sat down or spoke with Mr. Uthmeier?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. He was the primary person in the General Counsel's Office I interfaced with. We were relatively thin-staffed in the beginning, so -- yes, I did interface with other folks in the OGC's office, but he was the person on this issue.

Ms. Anderson. Is there a particular reason why he worked on this issue himself as opposed to assigning it out to someone else in the General Counsel's Office?

Mr. Dewhirst. And to the extent you know, I'm going to instruct you not to answer because that implicates executive branch confidentiality and litigation interests.

Ms. Anderson. Did he direct him specifically to work on this issue, as opposed to having someone else work on it?

Mr. Dewhirst. Sorry, did Mr. Comstock direct him?

Ms. Anderson. Uh-huh.

Mr. Dewhirst. Same instruction to the witness.

Mr. Comstock. Clarify one thing?

Mr. Dewhirst. Do you have a question?

Mr. Comstock. Yeah, I mean --

Mr. Dewhirst. I'm going to say no.

Mr. Comstock. Yeah, okay, never mind.

Mr. Dewhirst. Sorry.

Mr. Comstock. I disagree with your characterization of the question, so --

Mr. Dewhirst. If it's a question about the question, I think that's totally fine.

Mr. Comstock. The implication is that James was the only person working on this, and I just, for the record, disagree with that statement. There were other people in the OGC's office working on this.

Ms. Anderson. Who were those people?

Mr. Comstock. I couldn't tell you exactly, but I do know there were other folks working on it. My own email that you showed me not long ago mentioned two attorneys. So at a minimum, there were two.

Ms. Anderson. Okay. I'll recharacterize. He was the primary point person on this issue, is that a fair characterization from -- in the General Counsel's Office?

Mr. Comstock. Until Peter Davidson came along, yes.

Ms. Anderson. Was there -- go ahead.

Mr. Anello. Go ahead.

Ms. Anderson. Was there a particular reason why he was the point person besides the reason you shared earlier that he was your primary point person?

Mr. Dewhirst. To the extent you recall, I'm going to instruct you not to answer.

Mr. Comstock. Okay.

Mr. Dewhirst. On the basis previously stated, but only to the extent you recall.

BY MR. ANELLO:

Q Did you speak with anybody at the Department of Commerce about the citizenship question other than the folks we've talked about so far today?

A Well, again, I guess you'd have to list the people we talked about.

Q Sure. So aside from the Secretary, the Secretary's Chief of Staff, Mr. Uthmeier, and Mr. Davidson?

A Ellen Herbst.

Q Ms. Herbst and Mr. Langdon. Anybody else at the Department?

A Probably several other people. Sahra Park-Su, who was in my office, was helping out at some point. I mean, there were quite a few folks, actually.

Q What was Ms. -- what was Sahra Park-Su's role with respect to the citizenship question?

Mr. Dewhirst. You can answer that.

Mr. Comstock. Primarily, just assisting.

BY MR. ANELLO:

Q Assisting in what?

A Attending meetings. I don't know. She was partially helping out on Census issues. So to the extent there was -- I couldn't tell you exactly what she did, but she worked on some stuff. I remember her being in meetings.

Q Okay. You said that there were several other people. Do you remember any of the others?

A Well, again, Ellen Herbst. I mean, again, this spans a time period, so --

Q So I'm talking about the period --

A But Ellen often had people in her office. You know, we were doing a deep dive, so, again, part of these people just floated together. I mean, there were a lot of people working on Census issues. Who specifically at any given meeting was working on citizenship versus something else is hard to recall.

Q What about at -- outside of the Department of Commerce, who did you interact with outside of the Department of Commerce related to the citizenship question?

A Other than Mark Neuman, no one.

Q Well, what about at other Federal agencies, who did you interact with?

A We just went over the -- I guess three people outside that I talked to.

Q So you didn't speak with anybody else at the Department of Homeland Security, for example, other than Gene Hamilton?

A No.

Q At the Department of Justice it was just the two people we've mentioned, Ms. Hankey and Mr. McHenry?

A Correct.

Q And who -- and did you speak to anybody at the White House about this issue?

A I did not.

Mr. Dewhirst. He did not.

Mr. Anello. Are you aware of any communications between the White House and the Department of Commerce on the issue of the citizenship question?

Mr. Dewhirst. Sorry, say that one more time.

BY MR. ANELLO:

Q Are you aware of any communications between the White House and the Department of Commerce about the citizenship question?

A I'm not, no.

Q Did you hear that the White House had communicated with the Department of Commerce --

A I never heard.

Q -- if you were not a participant in the communication?

A No. I'm not aware of any communication.

Ms. Anderson. Are you aware of anyone else at the Department of Commerce consulting with anyone outside of the Department of Commerce about the citizenship question? I can do individuals if that's more helpful, but --

Mr. Comstock. Again, I'm not sure who else might have spoken to somebody. I'm not aware of any specific conversations.

BY MR. ANELLO:

Q How about the Secretary, are you aware of the Secretary communicating with anybody outside the Department?

A Again, other than AG Sessions that you mentioned, I was not particularly aware of any communications, so --

Q For example, are you aware that he communicated with Mr. Kobach? Kris Kobach?

A I was told about that, yes.

Q When were you told about that?

A I couldn't tell you.

Q Were you told about it in 2017 while the -- while these emails were going back and forth and these issues were being discussed?

A Again, I don't know when the conversation occurred exactly, so -- I think when you mentioned it, but that's it. I don't have any specific recollection of it.

Q Are you aware that the Secretary talked to Mr. Bannon at the White House?

A I was not aware of that, no.

Mr. Anello. Are we out of time?

Ms. Anderson. Yeah.

Mr. Castor. Just two quick things?

Mr. Anello. Yeah.

Mr. Castor. You testified earlier you're not aware of any influence Kobach had. So he may have had a call, but you're not aware of any influence?

Mr. Comstock. Right.

Mr. Castor. And the other question was, were you asking the DOJ officials he was communicating with?

Mr. Anello. Yes.

Mr. Castor. Was John Gore one of them?

Mr. Comstock. I never spoke to John Gore.

Mr. Castor. Okay.

Ms. Anderson. We can go off the record.

Mr. Dewhirst. Okay.

[Recess.]

[1:38 p.m.]

BY MR. ANELLO:

Q So you -- a little bit earlier this afternoon you were describing the purposes that citizenship data from the Census -- for which citizenship data for the Census could be used, and I think you said it can be used only for voting purposes. Is that correct?

A No, that would not be a correct statement.

Q Sorry. So what is your understanding of how citizenship data from the Census could be used?

A Oh, I'm sorry, you're saying -- I thought you were saying Census data.

Q Sorry. I meant citizenship data derived from the Census.

Mr. Dewhirst. Are you asking now or are you asking about what he said earlier? Or what are you asking exactly?

BY MR. ANELLO:

Q So I was just trying to -- I was asking about what he said earlier.

I think earlier you said that citizenship data from the Census could only be used -- could be used only for voting purposes. Is that right?

Let's just go on and I'll ask the question myself since it sounds like you don't remember that.

A Yeah. Rephrase your question because I'm not sure exactly what I said.

Q Okay. So I understand from the Secretary's decision memo that according to that memo the reason for adding the citizenship question was because of a request from DOJ. Is that correct?

A Yes.

Q And the request for DOJ was based on a professed desire to use citizenship data for the enforcement of the Voting Rights Act. Is that correct?

A That's my understanding, yes.

Q Okay. Was there another reason in the decision memo, other than that?

A Not that I'm aware of, no.

Q Okay. Was there a different request from DOJ for -- to use the data for a different reason?

A Not that I ever heard of.

Q Okay. Is there a restriction, though, on using the data for other purposes?

Mr. Dewhirst. To the extent you can answer.

Mr. Comstock. Well, again, under title 13 we can only provide anonymous data. So to the extent you collected citizenship data you could derive numbers from that -- you know, so many people in this area are citizens -- and that's about all you can derive from it.

Mr. Anello. So with respect to the anonymous data, could the anonymous data be used for purposes other than enforcing the Voting Rights Act?

Mr. Dewhirst. To the extent you want to speculate.

Mr. Comstock. I mean, I'm not -- nothing springs to mind outside of that at the moment, but --

Mr. Anello. Could it be used -- I'm sorry.

Mr. Comstock. I was going to say, if you have some suggested use, I don't know. I mean --

Mr. Anello. Could anonymized citizenship data be used in legislative apportionment?

Mr. Dewhirst. Anonymized data?

Mr. Anello. Citizenship data from the Census, could that data be used in legislative apportionment?

Mr. Dewhirst. To the extent you want to speculate.

Mr. Comstock. Not to my knowledge under the current law, no.

BY MR. ANELLO:

Q Why not?

A Again, you'd have to consult the statutes, but I think the statutes do apportionment right now based on total population.

Q Did you ever hear that the data from the citizenship question that was being added to the 2020 Census might in the future be used for apportionment purposes?

A I never heard that, no.

Q Did you ever hear about -- were there ever discussions that described how the data might impact congressional apportionment -- or, sorry, legislative apportionment -- in the future?

A Not that I'm aware of.

[Comstock Exhibit No. 16
was marked for identification.]

BY MR. ANELLO:

Q I want to show you an email which we are going to mark as exhibit 16. So this is an email from David Langdon to you on May 24th, 2017. Subject line is, "Counting of Illegal Immigrants." And I guess there must -- oh, and sorry, he also sent it to Ellen Herbst.

And he wrote, "Earl and Ellen, long story short is that the counting of illegal immigrants or the larger group of noncitizens has a solid and fairly long legal history.

"The most recent case was Louisiana v. Bryson. In a lawsuit filed directly in the Supreme Court, without prior action in lower courts, the State contended that it has been denied one potential seat in the House because illegal immigrants are counted in Census

totals, putting Louisiana at a disadvantage in House apportionment. The motion for leave to file was denied.

"A second piece of interest in a Bush 41 era DOJ opinion that proposed legislation to exclude illegal aliens from the Decennial Census was illegal. Let me know if you need additional background on the legal arguments. Dave."

Do you remember this email?

A I do not.

Q Do you remember communicating with David Langdon on the issue of counting illegal immigrants?

A I do not.

Q Do you remember him providing you information about legal issues relating to counting illegal immigrants?

A I do not.

Q Do you remember any communications about Louisiana v. Bryson?

A No.

Q Do you remember any conversations about a DOJ opinion from George H.W. Bush's Presidency?

A No.

Q The legal analysis that he seems to be providing you is getting at whether -- appears to be getting at whether it would be permissible to not count illegal immigrants for apportionment purposes. Was that a question that was under consideration in May of 2017 at the Department of Commerce?

A Not to my knowledge.

Q So then why was he providing this to you?

Mr. Dewhirst. I'm going to instruct the witness not to answer, to the extent he

recalls.

Mr. Comstock. I don't recall.

Ms. Anderson. Was it an issue being discussed in the administration in May of 2017?

Mr. Comstock. Not to my knowledge.

BY MR. ANELLO:

Q Mr. Langdon reported to you, correct?

A Uh-huh. Yes, he did.

Q And Ellen Herbst, you said, at that point, this was May of 2017, what role did she have at that point?

A She was the acting deputy secretary, and I believe her actual role was chief financial officer for the Department.

Q Okay. And May 24th was 22 days, I guess, after the May 2nd email that we looked at before, in which the Secretary asked you to follow up on the citizenship question issue, correct?

Mr. Dewhirst. I'm sorry?

Mr. Comstock. The math is wrong there.

Mr. Dewhirst. What dates did you refer to --

Mr. Anello. Did I get it wrong? Twenty-two days after May 2nd?

Mr. Dewhirst. You said 22.

Mr. Comstock. Well, you said two originally.

Mr. Dewhirst. Yeah, that's what I heard in that question too.

Mr. Comstock. It's 22 days after.

Mr. Anello. Right. Did this email relate to the citizenship question?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that

implicates executive branch confidentiality and litigation concerns.

BY MR. ANELLO:

Q Was there a desire on the part of anybody at the Department of Commerce not to count immigrants who were in the country illegally for apportionment purposes?

A Not to my knowledge.

Q There's an attachment referenced here. It says, "Crawford Letter & DOJ Memo.pdf." Do you see that at the top?

A Yeah, I see it.

Q Okay. Do you know what that attachment was?

A I do not.

Q Do you know what the Crawford letter is?

A I do not.

Q Did the issues described in this email -- were the issues described in this email also included in the legal analysis that Mr. Uthmeier did later in 2017?

Mr. Dewhirst. I'm going to instruct the witness not to answer on the basis previously articulated.

BY MS. ANDERSON:

Q Besides the May 2nd email where you discussed the counting of illegal immigrants with the Secretary, at any other point did you talk about the counting of illegal immigrants with Secretary Ross?

A Not that I recall.

Q How about with anyone else in the administration?

A Again, not that I recall.

Q You mentioned before that you consulted with Mark Neuman about the citizenship question. Is that correct?

A I mentioned I'd spoken to him. I didn't --

Q Sure, you'd spoken to him.

A -- characterize it as consulting with him.

Q Okay. We can say speak. That's fine. How many times did you speak with Mark Neuman about the citizenship question?

A I don't recall.

Q Did he ever provide you with any documentation related to the citizenship question?

A He was mostly focused on --

Mr. Dewhirst. Just the question.

Mr. Comstock. Yes.

BY MS. ANDERSON:

Q What did he provide you?

A A court case.

Q Which court case was that?

A I don't actually recall.

Q Do you recall when he provided that to you?

A I do not.

Q Do you remember in what context you discussed that particular court case?

Mr. Dewhirst. Answer yes or no.

Mr. Comstock. No.

Ms. Anderson. Did he ever provide you any other documentation besides the court case?

Mr. Comstock. Not that I recall.

Ms. Anderson. Did you -- did he offer you any analysis or thoughts about that particular court case when he gave it to you?

Mr. Dewhirst. It's a yes or no.

Mr. Comstock. When he gave it to me, no.

Ms. Anderson. Did you ever discuss it further, the court case that he gave you?

Mr. Dewhirst. With anyone or with Mark Neuman?

Ms. Anderson. With anyone.

Mr. Comstock. Once he gave it to me --

Mr. Dewhirst. Yes or no.

Mr. Comstock. I'm thinking. Possibly. I don't recall.

Ms. Anderson. When you say possibly, who would you have possibly discussed it with?

Mr. Dewhirst. To the extent you want to speculate.

Mr. Comstock. I honestly don't know. It's possible I discussed the case. I don't recall which case it was, so it's a little hard to figure out whether I might have discussed it.

Ms. Anderson. Did you provide the document -- or, sorry, the court case -- did

you give it to anyone else?

Mr. Comstock. It's possible. I don't know. Like I said, I don't recall which court case it was, so -- I remember generally what Mark was interested in, but that's -- which court case was related to that, I couldn't tell you.

Mr. Anello. Do you remember in what format you received the court case?

Mr. Comstock. To the extent I received the court case from him, he probably -- he would have emailed it to me.

Mr. Anello. Okay. Do you remember around what time he would have emailed that court case to you?

Mr. Comstock. I --

Mr. Dewhirst. I think he's answered that question, but --

Mr. Comstock. -- couldn't tell you because I don't recall the court case specifically or the conversation directly with Mark, so --

Mr. Anello. And did he send you -- did he send you any -- a summary of a court case, or did he send you only the actual opinion?

Mr. Comstock. That I don't recall.

Mr. Dewhirst. Where are we? 17?

[Comstock Exhibit No. 17
was marked for identification.]

Ms. Anderson. Seventeen.

Mr. Dewhirst. Just wait until you get a question on it, unless you want him to read it. Do you want him to read it?

Mr. Anello. Please read it.

Mr. Dewhirst. Okay.

Mr. Comstock. And the significance of this is what?

Mr. Dewhirst. Well, they'll probably ask you questions about that.

BY MR. ANELLO:

Q Yes. The significance is we're going to ask you questions about it.

A Okay. Glad it's got a purpose.

Q Did Mr. Neuman send this analysis to you?

A Not that I recall.

Q Does this refresh your memory as to the cases that he sent to you or the case -- sorry, you said he sent you a case. Does this refresh your recollection as to the subject matter of the case that he sent you?

A Not particularly. I mean, this is consistent with what Mark's issues seem to have been, so it is Mark -- who authored this?

Q I think that's a great question as to who authored it. But for now, the question is, we're just trying to understand whether this refreshes your recollection as to the case.

A It does nothing to refresh my recollection because I've never seen it before.

Q Is it possible that Mark Neuman sent you two cases, one from 2016 and one from 2009?

Mr. Dewhirst. If you want to speculate, you can. I think he's testified extensively --

Mr. Comstock. I don't recall exactly what Mark sent me, so --

Mr. Anello. So is it possible he sent you this paragraph in addition to the case itself?

Mr. Dewhirst. If you want to speculate you can.

Mr. Comstock. I don't recall. So, like I said, I don't believe I've ever seen that before.

BY MR. ANELLO:

Q Well, I just want to make it really clear. Do you know you haven't seen it, or do you not remember whether you've seen it? Because a minute ago you said you didn't remember what he sent you. So I don't want to -- I just want to make sure --

A To the best of my knowledge, I've never seen that before.

Q But you're also not sure what Mr. Neuman sent you, whether he sent you just the court case or some other document as well. Is that correct?

A I -- and, again, without consulting email records -- I couldn't tell you.

Q Sorry. I'll ask you just one more question.

At the end it says -- so it says -- I'm sorry. I'm just going to go over this one more time. So it says that there were these two court cases reviewing compliance with requirements of the Voting Rights Act and its application in legislative redistricting that have required Latino voting districts to contain 50 percent-plus-one of citizen voting-age population. It is clear that full compliance with these Federal court decisions will require block-level data that can only be secured by a mandatory question in the 2020 enumeration.

Did you discuss that issue with Mr. Neuman?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation interests.

Mr. Anello. Did you discuss legislative redistricting with Mr. Neuman more generally?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. Did you discuss whether citizenship -- data on citizenship is specifically required to ensure that the Latino community achieves full representation of redistricting?

Mr. Dewhirst. Are you talking about him discussing it with Mark Neuman?

Mr. Anello. Correct.

Mr. Dewhirst. Same instruction.

Mr. Castor. In fairness, though, he looked at it and said he'd never seen it before.

Mr. Anello. And so I'm asking about the substance of it.

Mr. Castor. Right. He read it like nothing in it jogged his memory.

Mr. Anello. He -- okay. I understand.

[Comstock Exhibit No. 18

was marked for identification.]

Ms. Anderson. Handing you what was previously labeled as 18, and we will label it as 18.

Mr. Anello. Oh, look at that.

Mr. Comstock. That's pretty efficient.

Mr. Dewhirst. It's almost like you planned that.

Do you want him to read the whole thing?

Ms. Anderson. Yes.

Mr. Dewhirst. Yeah?

Ms. Anderson. He's almost done, it seems like.

Did you ever discuss with Mr. Neuman any draft language that could go into a request from any other agency to the Census Bureau to add a citizenship question?

Mr. Dewhirst. I'm going to instruct the witness not to answer on the same basis previously articulated.

Ms. Anderson. Did you ever discuss with Mr. Neuman whether he would provide any draft language to the Department of Justice about --

Mr. Dewhirst. I really apologize. Sorry. Go ahead.

Ms. Anderson. -- about a request to add a citizenship question to the Census?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Do you know whether Mr. Neuman provided draft language or discussed draft language with the Department of Justice about adding a citizenship question?

Mr. Dewhirst. Same instruction, to the extent you recall.

Mr. Comstock. What's the instruction to the extent I recall?

Ms. Anderson. Is it not to answer or is it --

Mr. Comstock. I'm confused.

Mr. Dewhirst. I don't know. Same instruction. Don't answer.

Mr. Comstock. Okay.

BY MR. ANELLO:

Q Have you ever seen this document before?

A Never seen this document.

Q Did you ever see a draft letter from the Department of Justice to the Census Bureau requesting a citizenship question?

A I did not.

Q Did Mr. Neuman tell you that he was going to send this to -- did Mr. Neuman tell you that he was going to send a draft letter to the Department of Justice to assist them in making the request?

A He never made such a statement to me, no.

[Comstock Exhibit No. 19
was marked for identification.]

Ms. Anderson. I'm handing you what has been marked as or --

Mr. Dewhirst. 19?

Ms. Anderson. Yes, 19.

Mr. Comstock. Am I supposed to review this?

BY MS. ANDERSON:

Q No. We can go through it together. That's fine.

A Oh, okay.

Q Why don't we turn to page eight of nine. The conclusion section of this particular document talks about citizenship data collected, and then the second bullet point -- would you just review the conclusion section, so starting on page eight through page nine?

Did you ever participate in conversations or are aware of conversations about shifting redistricting from a total population base to an adult population base?

A No.

Q Did you ever have any discussions or are aware of any discussions about how a switch to the use of citizen voting age population for redistricting could be advantageous to Republicans and non-Hispanic Whites?

A No.

Q Did you ever have any conversations at all about how any switch in how you calculate apportionment could be advantageous to any political party?

A No.

Q Are you aware of any such conversations occurring?

A Not aware of any such conversations.

Q Have you ever seen any of these conclusions before in any other context?

A I've never seen this document or these conclusions.

BY MR. ANELLO:

Q You mentioned that Mr. Uthmeier was the primary point of contact at the General Counsel's Office on this issue until Mr. Davidson arrived at the Department. Is that correct?

A To the best of my knowledge, yes.

Q What role did Peter Davidson play with respect to the citizenship question?

A He was the general counsel, so he was a participant in the discussions.

Q And what did he do specifically?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. I couldn't name anything specific.

BY MR. ANELLO:

Q Did he form any legal analysis related to the citizenship question?

A I have no reason not to believe he didn't.

Q Do you have any reason to believe he did?

A He was --

Mr. Dewhirst. Do you have any reason -- just do you have any reason to believe he did provide legal analysis?

Mr. Comstock. Yes, I do have a reason to believe that.

Mr. Anello. Okay. Why is that?

Mr. Comstock. He was on emails connected with legal analyses.

Mr. Anello. What legal analysis was he on emails about?

Mr. Dewhirst. I would caution the witness to tread carefully here.

Mr. Comstock. Thanks for the help.

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. I mean, there were emails back and forth with analyses that were being considered and he was on those emails. I don't recall --

Mr. Anello. What were the analyses that were being considered --

Mr. Dewhirst. And there I will --

Mr. Anello. -- in these documents?

Mr. Dewhirst. Sorry. Sorry, Russ.

I'll instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns.

BY MR. ANELLO:

Q Was Mr. Davidson in touch with folks outside of the Department of Commerce about the citizenship question?

A I don't know.

Q Are you aware of his conversations with the Department of Justice?

A Not the specifics, no.

Q Are you aware that he was in touch with the Department of Justice?

A I believe that I recall hearing that, yes.

Q Are you aware that he was in touch with John Gore?

A I don't know who he was speaking to directly.

Q Are you aware that John Gore was put in touch with Mark Neuman?

A I was not aware of that, no.

Q Did you ever ask Mr. Neuman to get in touch with the Department of Justice?

A I did not, no.

Ms. Anderson. Do you know why Peter Davidson reached out to the Department of Justice?

Mr. Comstock. I wouldn't speculate.

Ms. Anderson. Is the answer no or --

Mr. Dewhirst. Is that because you don't know?

Mr. Comstock. I mean, I don't recall. I didn't instruct him to, so --

Ms. Anderson. My question was a little bit different. I understand that you may not have instructed him to, but are you aware of why he reached out to the Department of Justice?

Mr. Dewhirst. That's a yes-or-no question.

Mr. Comstock. Yes.

Ms. Anderson. Why did he reach out to the Department of Justice?

Mr. Dewhirst. There I'll instruct the witness not to answer on the basis previously articulated.

Mr. Anello. Did he reach out to the Department of Justice to try to get them to change their mind about their previous decision not to request a citizenship question?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Do you know whether Mr. Davidson or anyone else at the Department of Commerce offered comments or thoughts or input into the Department of Justice's drafting of their December 12th, 2017, letter?

Mr. Comstock. I do not know.

Ms. Anderson. Do you know why Mr. Uthmeier reached out to the Department of Justice?

Mr. Comstock. No.

Mr. Dewhirst. Yes or no. I'm sorry.

Mr. Comstock. I said no.

Mr. Dewhirst. No, okay.

BY MR. ANELLO:

Q Did you have a role in the discussions leading up to Secretary Ross' decision memo in March of 2018?

A Yes.

Q What was your role?

A As policy adviser. So I reviewed the documents, made suggestions and comments.

Q I think you said earlier that you mentioned pros and cons. What was your understanding of the pros and cons that were under consideration with respect to that decision?

Mr. Dewhirst. I'm going to instruct the witness not to answer to the extent that implicates executive branch confidentiality and litigation concerns.

Mr. Anello. Okay. You know, you explained earlier also that, you know, that you would counsel someone to fill out the Census, and under a variety of circumstances

you would continue to counsel them to do so. Were you aware that the chief scientist at the Census Bureau had estimated that, I believe, 5.1 percent -- there would be a 5.1 percent reduction in self-response as a result of the citizenship question?

Mr. Dewhirst. I'm going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

Mr. Anello. I mean, are you aware of the memo that he wrote to the Secretary that said that?

Mr. Dewhirst. Well, because of the end of that question, I am going to give you the same instruction not to answer.

Mr. Anello. Are you aware of the memo he wrote to the Secretary related to the citizenship question in, I think it was, January of 2018?

Mr. Comstock. Yes.

Mr. Anello. Okay. Are you aware that in that memo he noted that his best estimate is that there would be a reduction in self-response as a result of adding the citizenship question?

Mr. Dewhirst. And there I will interpose the instruction not to answer on the same basis.

Mr. Anello. This is a public document, correct?

Mr. Dewhirst. And there's a pretty exhaustive record out there. And as you know, the very issues you're asking about are currently before the Supreme Court. And so I'm going to instruct the witness not to answer those questions at this time.

Mr. Anello. Do you have any reason to doubt -- I mean, do you have a different estimate than Dr. Abowd?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. Have you come up with an estimate as to the -- have you come up

with an estimate, other than the one he provided, have you come up with an estimate as to how the addition of the citizenship question would impact self-response?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. Okay. Are you generally aware of concerns that the citizenship question would reduce self-response on the Census?

Mr. Dewhirst. I'll allow you to answer that.

Mr. Comstock. I'm aware of those concerns. They were discussed in the decision memo.

Mr. Anello. Okay. And do you have a reason to doubt the estimates that are, I believe, also discussed in the citizenship -- sorry, in the decision memo relating to the increase in nonresponse?

Mr. Dewhirst. Do you want to try that one again?

Mr. Anello. Sure. Do you have a reason to doubt the estimates that have been provided by Dr. Abowd and that are discuss discussed in the decision memo regarding the decline in nonresponse -- in self-response?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. Who else was involved in the drafting of the decision memo?

Mr. Comstock. I don't recall exactly, but certainly I was, Peter Davidson, James Uthmeier, Karen Dunn Kelley, the Census Bureau staff. Particular individuals I'm not sure beyond that, but definitely those.

Mr. Anello. Do you know if anybody at the Census Bureau or the Department of Commerce reached out to any individuals who were in favor of adding a citizenship question as part of the process of coming to a decision?

Mr. Dewhirst. Could you restate that?

Mr. Hull. Yeah. I'm sorry. I lost that one, too.

Mr. Anello. Sorry.

So thinking about the time period between when DOJ sent its request in December 2017 and when the Secretary wrote his decision, are you aware of whether anybody at the Census Bureau or the Department of Justice reached out to anyone outside of the Department who was in favor of adding a citizenship question?

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

Mr. Anello. It's just a yes or no about whether they reached out to anybody.

Mr. Dewhirst. The instruction stands.

Mr. Anello. So just to be clear, we've asked several times about whether he talked to anybody outside the Department and we've gotten both the yes or no, and we've gotten the names of who he reached out to, so I'm not sure what the difference is here.

Mr. Dewhirst. I think the nature of your question is you're asking about the Department's internal process, which is also documented quite extensively. But to the extent you're asking about that process, the decisionmaking process during that time period, those matters are currently before the Supreme Court. They're squarely at issue. And I'm going to instruct the witness not to answer those questions.

Mr. Anello. Do you know if anybody at the Department or the Census Bureau reached out to someone by the name of Mark Krikorian?

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

Mr. Anello. On what basis?

Mr. Dewhirst. On the same basis. I can say it again if you want.

Mr. Anello. Do you know if anybody at the Department of Commerce has ever reached out to someone named Mark Krikorian for any reason?

Mr. Comstock. Not to my knowledge.

Mr. Anello. Do you know whether anybody at the Department or -- Department of Commerce or the Census Bureau ever reached out to someone named Steve Camarota?

Mr. Comstock. Again, not to my knowledge. Never heard the name.

Mr. Anello. Do you know if there was any effort to reach out to anybody who was supportive of adding a citizenship question as part of the process of coming to a decision?

Mr. Dewhirst. And that's where I will instruct the witness not to answer as that implicates executive branch confidentiality and litigation interests.

BY MR. ANELLO:

Q Were you aware that the Census Bureau had requested to meet with Department of Justice to talk about the Department's request?

A Yes.

Q And how did you become aware of it?

A They told the Secretary.

Q And were you aware that the Department of Justice declined to meet with them?

A I was aware of that fact, yes.

Q And how did you become aware of that fact?

A They told the Secretary.

Q And the Secretary told you or --

A I can't remember if I was in a meeting or not, but I became aware of it. I couldn't tell you exactly how.

Q Do you know why the Department of Justice refused to meet with the Census Bureau to talk about their request?

Mr. Dewhirst. And there I'm going to instruct the witness not to answer because that implicates executive branch confidentiality and litigation issues.

Mr. Anello. Again, this is a yes or no, just whether he has awareness of this.

Mr. Dewhirst. And, again, the instruction stands.

Mr. Anello. Do you find it unusual that the Department of Justice, which purportedly had a question about the Voting Rights Act that it posed to the Census Bureau, then refused to meet with them to discuss the request?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. Are you aware of any other instance in which one department sent a request to the Census Bureau and then when the Census Bureau's experts reached out to talk about it they refused?

Mr. Dewhirst. To the extent you accept those characterizations and you want to speculate, you're welcome to answer.

Mr. Comstock. This is my first Census, so I have had no prior experience on which to base any comment.

Mr. Anello. So are you aware of any other instance in the Census or in any issue, frankly?

Mr. Dewhirst. Same instruction to the witness.

Mr. Comstock. I'm not going to speculate. I don't know.

Mr. Anello. No, but I'm asking your awareness. I'm not asking for your speculation. Are you aware of a similar situation?

Mr. Comstock. I'm not aware, no.

Mr. Anello. Okay. Did that raise any red flags for you about the Department's request?

Mr. Dewhirst. And there's the instruction not to answer on the same basis

previously articulated.

Mr. Anello. Did you discuss with the Secretary the fact that the Department of Justice was refusing to meet with the Census Bureau?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. Did you discuss with the Secretary that the Department had requested -- the Department -- the Census Bureau had requested a meeting with the Department of Justice?

Mr. Dewhirst. Same instruction to the witness.

Ms. Anderson. When did the Secretary become aware that the Census Bureau had reached out to the Department of Justice?

Mr. Dewhirst. To the extent you recall.

Mr. Comstock. I don't recall.

Mr. Anello. Was it before he issued his decision?

Mr. Dewhirst. To the extent you recall, you can answer.

Mr. Comstock. I don't recall the exact timeframe on that.

Mr. Anello. Did you ever participate in a discussion about how the citizenship question -- the addition of the citizenship question would impact Census participation by immigrants?

Mr. Comstock. Can you say that one more time, please?

Mr. Anello. I asked whether -- I'll just repeat it. Did you ever participate in a conversation about how the addition of a citizenship question would impact Census participation by immigrants?

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

Mr. Comstock. As part of a broader context, yes.

Mr. Anello. With whom did you discuss that?

Mr. Dewhirst. I'm going to there instruct the witness not to answer for the same reasons previously articulated.

Mr. Anello. Was it before the Secretary made his -- issued his decision?

Mr. Dewhirst. Same instruction to the witness.

Mr. Anello. Did you ever discuss how adding a citizenship question could impact the outcome of an election or whether it could impact the outcome of an election?

Mr. Comstock. No.

Mr. Anello. Did you ever discuss how the Department should speak publicly with respect to the process that was followed to add the citizenship question?

Mr. Dewhirst. You're going to have to restate that one.

Mr. Anello. Did you ever have any discussions regarding how the Department should characterize or should speak publicly about the process that it followed --

Mr. Dewhirst. And I'm going to --

Mr. Anello. -- to add the citizenship question?

Mr. Dewhirst. I apologize.

Mr. Anello. And I can just, if it's helpful, I'm speaking about the period prior to the decision actually being issued. So I'm not talking about any litigation-related matters. I'm talking about, before the decision was issued in March of 2018, did you have any discussions about how the Department should publicly characterize the process that you followed?

Mr. Dewhirst. I'm going to instruct the witness not to answer for the same basis previously articulated.

Mr. Anello. Just about whether those conversations occurred?

Mr. Dewhirst. Uh-huh.

Mr. Anello. Were you ever told that you shouldn't talk about any

communications or conversations that occurred with respect to the addition of the citizenship question?

Mr. Comstock. No.

Mr. Anello. Were you ever told that you should deemphasize certain parts of the process that you followed and emphasize other parts instead?

Mr. Comstock. No.

Mr. Anello. Were you ever told that you shouldn't talk about the efforts you made in spring of 2017 to reach out to DOJ, then DHS, and then to look into adding the question yourself?

Mr. Dewhirst. I'm just --

Mr. Comstock. No.

Mr. Dewhirst. Okay.

Mr. Anello. Do you consider those conversations that you had with DOJ and DHS to be part of the process that was followed to add the citizenship question?

Mr. Dewhirst. I'm going to instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns.

Mr. Anello. So I think we're almost wrapped.

Mr. Dewhirst. Do you want a little break?

Mr. Anello. Yeah, can we just go off the record for a minute?

[Discussion off the record.]

Mr. Anello. So just focusing on the March 26th, 2018, decision memo from Secretary Ross, so are you aware of any reasons that Secretary Ross or others in the administration were interested in adding the citizenship question beyond what was written in that memorandum?

Mr. Comstock. No.

Mr. Anello. Okay. I think we're done. We'll go off.

[Whereupon, at 2:33 p.m., the interview was concluded.]

Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

_____

Witness Name

_____

Date