

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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WASHINGTON, DC 20515-6143

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<https://oversight.house.gov>

October 1, 2020

The Honorable Dr. Steven Dillingham
Director
United States Census Bureau
4600 Silver Hill Road
Washington, D.C. 20233

Dear Dr. Dillingham:

In light of the Census Bureau's apparent refusal to abide by a federal court order, the Committee is requesting the immediate production of documents related to the impact of that decision on the accuracy and completeness of the 2020 Census.

One week ago today, on September 24, 2020, the Federal District Court in the Northern District of California issued an injunction in *National Urban League, et al. v. Wilbur L. Ross, et al.* stating:

The U.S. Census Bureau's August 3, 2020 Replan's September 30, 2020 deadline for the completion of data collection and December 31, 2020 deadline for reporting the tabulation of the total population to the President are stayed pursuant to 5 U.S.C. § 705; and Defendants Commerce Secretary Wilbur L. Ross, Jr.; the U.S. Department of Commerce; the Director of the U.S. Census Bureau Steven Dillingham, and the U.S. Census Bureau are enjoined from implementing these two deadlines.¹

The Court explained that the Census Bureau's decision on August 3, 2020, to reverse its previous position to delay deadlines for counting as a result of the coronavirus crisis, and instead rush to complete the 2020 Census, would lead to "undercounting hard to count populations."²

On Friday, September 25, 2020, during a briefing for our Committee and two other congressional committees of jurisdiction, Associate Director for Decennial Census Programs Al Fontenot stated that lawyers at the Department of Commerce were "still interpreting" the District Court's order and that the Census Bureau was not yet able to provide any information about how it planned to comply with the court order. Mr. Fontenot and Associate Director for Communications Ali Ahmad promised to provide an update about operational changes "as soon

¹ *National Urban League v. Wilbur L. Ross* (online at www.documentcloud.org/documents/7217559-National-Urban-League-Sept-24-2020-Order.html) (emphasis added).

² *Id.*

as possible,” and they repeatedly referred to the legal work by the Department to interpret the court order.

However, newly released emails show that on the same day that Census Bureau staff were briefing the Committee—last Friday—Deputy Director Ron Jarmin, the highest ranking career official at the Census Bureau, sent an email to you and Daniel Risko, the Chief of Staff to the Deputy Secretary of the Department of Commerce. Deputy Director Jarmin presented two options for the Bureau to move forward, including one that complied with the Court’s order and one that did not. He wrote:

One closes out field work on 10/5 to begin processing on 10/6 and allows us to meet the 12/31 deadline should that be reinstated on appeal. **The second, stays in the field longer to allow additional states to reach the 99% completion rate goal and for better completion rates in hard to count areas such as tribal lands. This option would preclude the meeting the 12/31 date, but furthers the goal of a complete and accurate 2020 Census.**³

This past Monday, on September 28, 2020, at 3:52 p.m., Secretary Ross wrote to Census Bureau officials, including Deputy Director Jarmin, asking them to confirm that “your team’s opinion is that if we stay in the field beyond October 5, we would not be able to meet the statutory deadline of December 31.”⁴

Deputy Director Jarmin replied, stating: “Yes sir, we need to finish work on 10/5 if we are going to have enough time (and assuming all goes well) to finish the processing of the resident population, federally affiliated overseas, and if requested, unlawful aliens in ICE Detention Centers by 12/31.”⁵

At 5:00 p.m. on Monday, the Census Bureau informed Congress that: “The Secretary of Commerce has announced a target date of October 5, 2020, to conclude 2020 Census self-response and field data collection operations.”⁶

At 5:12 p.m. on Monday—twelve minutes after the public announcement of the decision—Secretary Ross responded to the email chain: “Based on the staff recommendation I

³ Email from Ron Jarmin, Deputy Director, Census Bureau, to Dan Risko, Chief of Staff to the Deputy Secretary, Department of Commerce, and Steven Dillingham, Director, Census Bureau (Sept. 25, 2020) (online at www.documentcloud.org/documents/7219683-National-Urban-League-Administrative-Record-for.html#document/p130/a583232) (emphasis added).

⁴ Email from Wilbur Ross, Secretary, Department of Commerce, to Ron Jarmin, Deputy Director, Census Bureau, et al. (Sept. 28, 2020) (online at www.documentcloud.org/documents/7219920-National-Urban-League-Sept-28-2020-Unredacted.html).

⁵ Email from Ron Jarmin, Deputy Director, Census Bureau, to Wilbur Ross, Secretary, Department of Commerce, et al. (Sept. 28, 2020) (online at www.documentcloud.org/documents/7219920-National-Urban-League-Sept-28-2020-Unredacted.html).

⁶ Email from Christopher Stanley, Chief, Office of Congressional and Intergovernmental Affairs, Census Bureau, to Committee staff (Sept. 28, 2020).

am extending the field operation to October 5.”⁷

Since the Census Bureau announced that it would rush the end of field operations, the Court and the Committee have received numerous whistleblower reports from Census Bureau employees across the country explaining that they have requested guidance from their chain of command on how to comply with the Court’s order. Instead of directing them to comply, their chain of command reportedly directed them to finish their enumeration work before the October 5, 2020, “by whatever means necessary”—in defiance of the Court’s order and at the expense of the accuracy and completeness of the 2020 Census.⁸ And they have reported that the Census Bureau has issued guidance to employees that “NRFU operations will finish on October 5.”⁹

Secretary Ross’ actions to continue to rush the 2020 Census have resulted in the scheduling of a contempt hearing before the Federal District Court for tomorrow Friday, October 2.¹⁰

The Trump Administration’s defiance of a federal court order reflects a shocking disrespect of the rule of law. Regardless of who the President is, Census Bureau officials have an independent obligation to respect orders from federal courts and comply with congressional oversight.

For these reasons, the Committee requests that the Census Bureau schedule by close of business tomorrow a briefing from Census Bureau officials—including Deputy Director Jarmin—regarding the decision to end field operations by October 5 and the impact of that decision on the accuracy and completeness of the 2020 Census.

The Committee also requests the production—by Monday, October 5—of all documents referring or relating to the decision to end field operations by October 5 and the impact of that decision on the accuracy and completeness of the 2020 Census.

Lastly, the Committee requests that you confirm by close of business tomorrow whether the Census Bureau will voluntarily provide the transcribed interviews requested in my letters of September 22 and August 4. So far, the Department of Commerce has offered only one abbreviated staff briefing of two hours, which Committee staff have informed the Department is an inadequate accommodation.

⁷ Email from Wilbur Ross, Secretary, Department of Commerce, to Ron Jarmin, Deputy Director, Census Bureau, et al. (Sept. 28, 2020) (online at www.documentcloud.org/documents/7219920-National-Urban-League-Sept-28-2020-Unredacted.html).

⁸ Email from Census Enumerator to Lucy H. Koh, District Judge, Northern District of California (Sept. 29, 2020) (online at <https://twitter.com/hansilowang/status/1311043013100138498/photo/2>).

⁹ Console Message to Census Bureau Employees (Sept. 29, 2020).

¹⁰ *Appeals Judges Uphold Lower Court’s Order to Continue Census Count*, Washington Post (Sept. 30, 2020) (online at www.washingtonpost.com/local/social-issues/appeals-judges-uphold-lower-courts-order-to-continue-census-count/2020/09/30/f937d8d4-0363-11eb-a2db-417cddf4816a_story.html).

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The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. In addition, the Committee has jurisdiction over “Population and demography generally, including the Census.”¹¹

If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,

A handwritten signature in blue ink that reads "Carolyn B. Maloney". The signature is written in a cursive style and is positioned above a horizontal line.

Carolyn B. Maloney
Chairwoman

Enclosure

cc: The Honorable James R. Comer, Ranking Member

¹¹ House rule X, clause 1(n)(8).

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.