

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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MEMORANDUM

June 25, 2019

To: Members of the Committee on Oversight and Reform

Fr: Majority Staff

Re: Interview of James Uthmeier on Addition of Citizenship Question to Census

On June 11, 2019, Democratic and Republican Committee staff conducted a transcribed interview with James Uthmeier, former Senior Advisor and Counsel to Secretary of Commerce Wilbur Ross, regarding the Administration's efforts to add a citizenship question to the Census.

During the interview, the Department blocked Mr. Uthmeier from answering approximately 100 questions from Committee staff. Department lawyers instructed Mr. Uthmeier not to reveal his discussions with the White House about the citizenship question—or even the identities of White House officials to whom he spoke. Equally troubling, the Department directed Mr. Uthmeier not to disclose what Secretary Ross told him about why he was trying to add a citizenship question. Finally, the Department instructed Mr. Uthmeier not to reveal the contents of a secret memo he wrote about the citizenship question at the direction of Secretary Ross and hand-delivered to John Gore at the Department of Justice (DOJ).

Despite these restrictions, Mr. Uthmeier provided the Committee with some new information. He disclosed that he sought advice on adding the citizenship question from John Baker, an outspoken advocate who has argued that “the citizenship question is necessary to collect the data for a redistricting of House seats that excludes aliens from the calculation.” Mr. Baker's views on the citizenship question have nothing to do with enforcing the Voting Rights Act, but instead are focused on redistricting.

Mr. Uthmeier's discussion with Mr. Baker marks the third individual espousing similar views that had contact with Trump Administration or Transition Team officials regarding the addition of a citizenship question. This includes Republican gerrymandering expert Thomas Hofeller, who advised the Transition Team on adding a citizenship question after concluding that the question “would be advantageous to Republicans and non-Hispanic whites.” It also includes former Kansas Secretary of State Kris Kobach, who discussed the citizenship question with President Trump and his top advisors, and then urged Secretary Ross in an email to add a citizenship question to address the “problem” that undocumented immigrants “are still counted for congressional apportionment purposes.”

I. THE OVERSIGHT COMMITTEE’S INTERVIEW WITH JAMES UTHMEIER

On March 20, 2019, Committee staff asked the Department of Commerce to make Mr. Uthmeier available for a voluntary transcribed interview regarding the Administration’s decision to add a citizenship question to the 2020 Census.¹ This request was directed by Chairman Cummings less than one week after he warned Secretary Ross during a hearing on March 14, 2019, that his continued refusal to provide documents and answer questions about his role in this process would result in the Committee being forced to obtain information directly from his top aides.²

The Committee sought to interview Mr. Uthmeier in part to help determine the actual reasons behind the Administration’s decision to add a citizenship question. Secretary Ross testified previously that he added the citizenship question “solely” at the request of DOJ to help enforce the Voting Rights Act.³ But evidence obtained by the Committee indicates that this was merely a pretext and that Secretary Ross began a secret campaign to orchestrate the addition of the citizenship question just days after he was confirmed and months before any request from DOJ.

Documents show that Mr. Uthmeier played a key role in Secretary Ross’ efforts. Months before DOJ requested the addition of a citizenship question, the Director of Policy at the Department of Commerce, Earl Comstock, directed Mr. Uthmeier to “look into the legal issues” surrounding the citizenship question and “how Commerce could add the question to the Census itself.”⁴ Mr. Uthmeier drafted a secret memo analyzing legal issues surrounding the citizenship question, and Mr. Comstock forwarded the memo to Secretary Ross.⁵ Mr. Uthmeier later hand-delivered a copy of that memo to John Gore at DOJ during the period when Mr. Gore was preparing a letter from DOJ requesting the addition of a citizenship question.⁶

¹ Email from Staff, Committee on Oversight and Reform, to Staff, Department of Commerce (Mar. 20, 2019).

² Committee on Oversight and Reform, *Hearing with Commerce Secretary Wilbur L. Ross, Jr.* (Mar. 14, 2019) (online at <https://oversight.house.gov/legislation/hearings/commerce-secretary-wilbur-l-ross-jr>).

³ House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Hearing on FY19 Budget Hearing: Department of Commerce*, 115th Cong. (Mar. 20, 2018) (online at <https://republicans-appropriations.house.gov/calendar/eventsingle.aspx?EventID=395131>); *see also* Committee on Oversight and Reform, *Hearing with Commerce Secretary Wilbur L. Ross, Jr.* (Mar. 14, 2019) (online at <https://oversight.house.gov/legislation/hearings/commerce-secretary-wilbur-l-ross-jr>).

⁴ Memorandum from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Sept. 8, 2017) (online at <https://apps.npr.org/documents/document.html?id=4896064-Administrative-Record-For-Census-Citizenship#document/p2/a454666>).

⁵ Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Aug. 11, 2017); Committee on Oversight and Reform, Transcribed Interview of James Uthmeier (June 11, 2019).

⁶ Committee on Oversight and Reform, Transcribed Interview of John Gore (Mar. 7, 2019); Committee on Oversight and Reform, Transcribed Interview of James Uthmeier (June 11, 2019).

In response to the request on March 20, 2019, the Department declined to make Mr. Uthmeier available.

On May 7, 2019, the Committee wrote directly to Mr. Uthmeier, who had recently left the Department, to ask that he appear for a voluntary transcribed interview.⁷ Mr. Uthmeier refused to acknowledge receipt of the Committee's letter and did not make himself available for an interview.

On June 3, 2019, more than two months after the initial request, the Committee scheduled a vote to authorize a subpoena to compel Mr. Uthmeier to testify. The following day, the Department and Mr. Uthmeier agreed to a voluntary transcribed interview, and the subpoena was not issued.

II. OBSTRUCTION BY DEPARTMENT OF COMMERCE

Following instructions from Department of Commerce lawyers, Mr. Uthmeier refused to answer around 100 questions from Committee staff during the interview. This prevented the Committee from obtaining key information about the Trump Administration's decision to add a citizenship question.

For example, although Mr. Uthmeier told Committee staff that he "spoke with White House personnel" regarding the addition of the citizenship question, Department attorneys instructed him not to identify the individuals he talked to at the White House. The Department allowed him to confirm that he had spoken to one individual, John Zadrozny, but only after determining that their communications were already "demonstrated in documents." Mr. Uthmeier told Committee staff he also spoke to "at least ... a couple of other individuals" at the White House about the citizenship question, but the Department instructed him not to identify those individuals or reveal the contents of any of these conversations.⁸

In addition, Mr. Uthmeier told Committee staff that Secretary Ross directed him to start examining the possibility of adding the citizenship question within weeks of the Secretary being sworn in. He explained, "The Secretary asked me to look into the issue. I would say at some point in the spring of 2017, likely March or April." Mr. Uthmeier explained that he discussed this issue with the Secretary "multiple times." However, Department lawyers instructed Mr. Uthmeier not to disclose to Committee staff the substance of any of his conversations with Secretary Ross regarding the citizenship question.

As a result, Mr. Uthmeier refused to tell the Committee why the Secretary said he wanted to add the citizenship question, whether the Secretary discussed President Trump's interest in the

⁷ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to James Uthmeier (May 7, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-07.EEC%20JR%20to%20Uthmeier%20re%20TI.pdf>).

⁸ Committee on Oversight and Reform, Transcribed Interview of James Uthmeier (June 11, 2019). At the direction of Department counsel, Mr. Uthmeier stated that he has not spoken with the following White House officials: Stephen Miller, Reince Priebus, Steve Bannon, or President Trump. However, he refused repeatedly to identify to the White House officials he did talk to about the citizenship question.

issue, or whether the Secretary believed the citizenship question would impact legislative apportionment.

In addition, the Department instructed Mr. Uthmeier not to reveal the contents of the secret memo he wrote about the citizenship question and hand-delivered to John Gore at DOJ. Mr. Uthmeier confirmed that he drafted a memo on the citizenship question and that the memo was circulated to Secretary Ross and other senior Department of Commerce officials. He also confirmed that he delivered the memo by hand to Mr. Gore at DOJ, along with a handwritten note. However, Department counsel instructed him not to disclose the contents of the memo, the feedback he received on it, or the contents of his discussions with Mr. Gore.⁹

III. NEW INFORMATION PROVIDED BY UTHMEIER

Although Mr. Uthmeier refused to answer about 100 questions from Committee staff, he provided some new information about the Administration's efforts to add a citizenship question to the Census. For example, he disclosed to Committee staff that he discussed the citizenship question and legislative apportionment with his "long-time mentor" John Baker. Mr. Baker is a law professor who has advocated for adding a citizenship question to the Census in order to exclude immigrants when drawing congressional boundaries.

During the interview, Mr. Uthmeier followed instructions from the Department and refused to say whether he discussed "legislative apportionment, restricting, or election outcomes in connection with the citizenship question" with any other Trump Administration official. However, he admitted that he discussed these issues with Mr. Baker. He explained:

I consulted a law professor, a long-time mentor, to obtain information on how citizenship data was used historically, as I was just beginning to brief up on all topics census at the Department. He would have provided some overview to me on the statutory authorities that dictate how censuses are conducted. In that context, he may have discussed the various reasons why certain questions are asked on certain forms, and he may have discussed apportionment in that context.¹⁰

On September 17, 2018, Mr. Baker wrote an article in the Georgetown Journal of Law and Public Policy in which he discussed the addition of a citizenship question to the 2020 Census. Mr. Baker concluded:

Far from being unconstitutional, the citizenship question is necessary to collect the data for a redistricting of House seats that excludes aliens from the calculation. That, in turn, will set the stage for the Supreme Court to decide the constitutional question of whether aliens are to be included in the allocation of House seats and votes in the Electoral College.¹¹

⁹ *Id.*

¹⁰ *Id.*

¹¹ John S. Baker, Jr., *Controversy Over Re-introducing The Citizenship Question to the Decennial Census*, Georgetown Journal of Law & Public Policy (Sept. 17, 2018) (online at www.law.georgetown.edu/public-policy-

Mr. Baker has repeatedly expressed the view that the Census—and Congressional districts—should exclude non-citizens. For example, in 2009, he co-authored an editorial in the *Wall Street Journal* arguing that the Census “enumeration should count only citizens and persons who are legal, permanent residents” so that “illegal residents” could be excluded from congressional apportionment.¹² In 2011, he filed a motion with the U.S. Supreme Court on behalf of the State of Louisiana, which asked the Court “to declare that the inclusion of non-immigrant foreign nationals in the population figures used to apportion seats in the United States House of Representatives is unconstitutional.”¹³ The motion was denied.¹⁴

Mr. Baker’s rationale for including a citizenship question—to provide the data needed to exclude non-citizens from legislative apportionment—has nothing to do with enforcing the Voting Rights Act.¹⁵ Mr. Baker’s rationale for the citizenship question is, however, similar to views expressed by Republican gerrymandering expert Thomas Hofeller and former Kansas Secretary of State Kris Kobach—both of whom communicated with officials in the Trump Transition Team and the Executive Branch about adding a citizenship question.

Mr. Hofeller had direct contact with the Census Bureau and the Trump Transition Team about adding a citizenship question.¹⁶ In 2015, Mr. Hofeller wrote a secret study concluding that adding a citizenship question to the 2020 Decennial Census was necessary to gather the data needed to exclude immigrants when drawing up legislative districts. This, he concluded, “would be advantageous to Republicans and non-Hispanic whites.”¹⁷

Kris Kobach was a member of President Trump’s Transition Team. Another member of the Transition Team, Gene Hamilton, told Committee staff during a transcribed interview that Mr. Kobach had contacted him about adding a citizenship question to the Census.¹⁸ Mr. Kobach told the Committee that he met with President Trump and his top advisors after the inauguration to discuss adding a citizenship question. He later communicated directly with

journal/blog/controversy-over-re-introducing-the-citizenship-question-to-the-decennial-census/).

¹² John S. Baker, Jr. and Elliott Stonecipher, *Our Unconstitutional Census*, Wall Street Journal (Aug. 9, 2009) (online at www.wsj.com/articles/SB10001424052970204908604574332950796281832).

¹³ Louisiana v. Bryson, Plaintiffs’ Motion For Leave To File A Complaint (Nov. 2011) (online at http://sblog.s3.amazonaws.com/wp-content/uploads/2011/11/Louisiana_v_Bryson.pdf).

¹⁴ Louisiana v. Bryson, 565 U.S. 1258 (2012).

¹⁵ To the contrary, Mr. Baker has written that Census citizenship data could be used by states to *defend themselves* against claims that they violated the Voting Rights Act by discrimination in redistricting. John S. Baker, Jr., *The Importance of Answering the Citizenship Question on the Census*, The Hill (June 13, 2018) (online at <https://thehill.com/blogs/congress-blog/politics/391932-the-importance-of-answering-the-citizenship-question-on-the>).

¹⁶ Deposition of A. Mark Neuman, Civ. No. 8:18-cv-01041-GJH (D. Md. Oct. 28, 2018); Email from Christa Jones, Census Bureau, to Thomas Hofeller (Jan. 7, 2015) (online at <https://apps.npr.org/documents/document.html?id=6154258-January-2015-Emails-From-Christa-Jones-To-Thomas#document/p2/a507303>).

¹⁷ Thomas Hofeller, *The Use of Citizen Voting Age Population in Redistricting* (2015) (online at <https://assets.documentcloud.org/documents/6111284/May-31-2019-Unredacted-Exhibits.pdf>).

¹⁸ Committee on Oversight and Reform, Transcribed Interview of Gene Hamilton (May 30, 2019).

Secretary Ross at the request of Steve Bannon.¹⁹ He also wrote an email to Secretary Ross that a citizenship question would address “the problem that aliens who do not actually ‘reside’ in the United States are still counted for congressional apportionment purposes.”²⁰

IV. CONCLUSION

Despite Mr. Uthmeier’s refusal to answer dozens of questions from Committee staff, his interview confirmed key information about the Administration’s efforts to add a citizenship question to the Census.

Mr. Uthmeier disclosed that Secretary Ross directed him to begin examining the citizenship question within weeks of being sworn in as Secretary and that they had multiple conversations about it well before any request came from DOJ—erasing any doubt about the inaccuracy of Secretary Ross’ claim that he added the citizenship question “solely” at DOJ’s request.

Mr. Uthmeier confirmed that he had multiple conversations with White House officials about adding the citizenship question, raising further questions about the White House’s claims that this decision was “made at the Department level.”²¹

Finally, Mr. Uthmeier refused to answer any questions about whether Secretary Ross added the citizenship question for reasons unrelated to the Voting Rights Act—such as using citizenship data to manipulate legislative districts—and he confirmed that he spoke with an outside advocate who supports adding a citizenship question for redistricting purposes.

This new information makes it even more important that the Committee obtain the information and documents currently being withheld by the Departments of Commerce and Justice regarding the real reasons the Trump Administration added the citizenship question.

¹⁹ Committee on Oversight and Reform, Transcribed Interview of Kris Kobach (June 3, 2019).

²⁰ Email from Kris Kobach, Kansas Secretary of State, to Secretary Wilbur L. Ross, Jr., Department of Commerce (July 14, 2017) (online at <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p776/a428457>).

²¹ White House Daily Press Briefing (Mar. 27, 2018) (online at www.c-span.org/video/?443176-1/white-house-backs-citizenship-question-2020-census). Although Mr. Uthmeier told Committee staff he was not instructed to pursue the addition of a citizenship question by the White House, he refused to say whether White House officials expressed interest in adding a citizenship question, he refused to identify the White House officials with whom he spoke, and he refused to provide details about communications he was aware of between the Department of Commerce and the White House on this issue. Committee on Oversight and Reform, Transcribed Interview of James Uthmeier (June 11, 2019).

APPENDIX
Excerpts from Transcribed Interview with James Uthmeier

Department of Commerce Instructed Mr. Uthmeier Not to Disclose White House Contacts

Q: Are you aware of any conversations that Mr. Bannon participated in relating to the citizenship question?

Department Counsel: This is [Department Counsel]. And to the extent the witness can answer that without revealing privileged information, we will permit him to answer.

A: I am aware of at least an email communication that took place involving Mr. Bannon only as a result of discovery for litigation purposes.

Q: Okay. Are you aware of any other conversations with White House staff aside from Mr. Zadrozny, which I guess we addressed separately, related to the citizenship question?

Department Counsel: Again, this is [Department Counsel]. And reiterating the bases on which we have had the discussion about this. But I will allow him to answer to the extent that he can answer within the parameters we have set out.

A: Yeah. As I have stated, I spoke with White House personnel. I am aware of at least, you know, a couple of other individuals that would have also spoken with the White House on this topic, always in a briefing capacity, providing updates, insuring that, you know, the executive branch is coordinated and that there are no surprises.

When the DOJ letter was leaked, immediately there were press stories, there were—there were allegations, things were misconstrued. And myself and other Commerce personnel provided—you know, answered questions and provided briefings to other administration officials to explain, you know, what we were working on and just provide updates generally.

Q: Okay. Who at the White House did you brief about the citizenship question?

Department Counsel: And again, this is [Department Counsel]. Again, we have laid out the parameters on this, so I would instruct the witness not to answer.

Department of Commerce Instructed Mr. Uthmeier Not to Disclose Communications with Secretary Ross

Q: So when did you become aware that reinstating the question was something the Secretary might ultimately decide to do?

A: The Secretary asked me to look into the issue. I would say at some point in the spring of 2017, likely March or April.

Q: How did he let you know that?

A: And to be clear, are you asking written or orally, is that still the question?

Q: For now, yes, let's start there.

A: To the best of my recollection, it would have come up in one of our in person briefings, likely while we were talking about multiple topics, where he was trying to get more information to help him make decisions. I know that I was also asked by Earl Comstock, the policy director, to begin looking into the issue as well.

Q: What did the Secretary ask you to look into?

Department Counsel: [Name of Department Counsel] I am going to direct the witness not to answer, that implicates executive branch confidentiality and litigation concerns.

...

Q: What did Earl Comstock tell you to do regarding the citizenship question in the spring of 2017?

Department Counsel: Again, I am going to instruct the witness not to answer, because that implicates executive branch confidentiality and litigation concerns.

Q: Did Secretary Ross express a particular view about whether he thought the question should be added in the spring of 2017?

Department Counsel: Same instruction to the witness.

Q: Did Earl Comstock express of you about whether he thought the question should be added in the spring of 2017?

Department Counsel: Same instruction to the witness.

Q: Did Secretary Ross state or tell you why he was interested in a citizenship question?

Department Counsel: Same instruction.

Q: Did Earl Comstock say or tell you why he thought he was interested, or why the Secretary was interested in the citizenship question?

Department Counsel: Could you ask that question again, please?

Q: Sure. Did Earl Comstock tell you or indicate to you why he might be interested in adding a citizenship question, or discussing a citizenship question?

Department Counsel: I am going to instruct the witness not to answer.

Q: Yes or no, basis?

Department Counsel: You have a couple of questions wrapped in there.

...

Q: Did Earl Comstock tell you why the Secretary was interested in a citizenship question? That's a yes or no.

Department Counsel: I am going to instruct the witness not to answer.

...

Q: Did Earl Comstock indicate to you or tell you why he was interested in learning more about the citizenship question?

Department Counsel: Same instruction to the witness.

Q: Did Secretary Ross tell you that he was interested in adding a citizenship question because the White House instructed him that this was a priority?

Department Counsel: Same instruction to the witness.

Q: Did the Secretary tell you that he was interested in adding a citizenship question because Steve Bannon had told him that this was a priority?

Department Counsel: Same instruction to the witness.

Q: Did Secretary Ross tell you that he was interested in adding a citizenship question in order to influence congressional apportionment or redistricting?

Department Counsel: Could you repeat that, please?

Q: Did Secretary Ross tell you that had he was interested in adding the citizenship question in order to influence congressional apportionment—

Department Counsel: Before you get to the end, start over again. I am missing a word or two in the middle of that.

Q: Did Secretary Ross tell you that he was interested in adding a citizenship question in order to influence congressional apportionment or redistricting?

Department Counsel: Same instruction to the witness.

Q: Were you ever told explicitly or implicitly not to ask why the Secretary was interested in the citizenship question?

Department Counsel: Same instruction to the witness.

Q: In the spring of 2017 what was the rationale offered as a basis for considering adding a citizenship question?

Department Counsel: Yeah, I am going to instruct the witness not to answer.

Department of Commerce Instructed Mr. Uthmeier Not to Disclose Contents of Secret Memo

Q: Okay. So, in that bottom email on August 11th, Earl Comstock wrote, quote: Mr. Secretary, per your request, here is a draft memo on the citizenship question that James Uthmeier in the Office of General Counsel prepared and I reviewed. Is that the memo—the legal memo that you wrote?

A: Looks like it, yes.

Q: What did the email say? Or what did the memo say?

Department Counsel: I am going to instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns.

Q: The email then says, quote, once you have a chance to review, we should discuss so we can refine the memo to better address any issues. Did you ever receive feedback or comments from Secretary Ross or Earl Comstock about your legal memo?

A: Yes, I did.

Q: What were those comments?

Department Counsel: I am going to instruct the witness not to answer as the question implicates executive branch confidentiality and litigation concerns. This is [Department Counsel].

Q: Thanks. Mr. Uthmeier, did your legal memo come to any conclusion about whether the Department of Commerce could add the citizenship question itself to the 2020 Census?

Department Counsel: Same instruction to the witness.

Mr. Uthmeier Consulted with John Baker About the Citizenship Question and Apportionment

Q: Mr. Uthmeier, did you ever discuss legislative apportionment, restricting, or election outcomes in connection with the citizenship question?

Department Counsel: I am going to instruct the witness not to answer as that implicates executive branch confidentiality and litigation concerns.

Q: Did you have any discussions about legislative apportionment, redistricting, or election outcomes in connection with the citizenship question with anyone outside of the administration?

Department Counsel: To the extent that you can answer in a way that doesn't implicate executive branch confidentiality and litigation concerns, you may.

A: I consulted a law professor, a long-time mentor, to obtain information on how citizenship data was used historically, as I was just beginning to brief up on all topics census at the Department. He would have provided some overview to me on the statutory authorities that dictate how censuses are conducted. In that context, he may have discussed the various reasons why certain questions are asked on certain forms, and he may have discussed apportionment in that context. But absent that, I am not aware of any conversations, no.

Q: And who was that?

A: His name is John Baker.

Q: And where does he currently work?

A: I do not know. I believe he still teaches at Georgetown Law on occasion.