

Congress of the United States

House of Representatives

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Statement on Resolution Recommending Holding Attorney General Barr and Secretary Ross in Contempt

Chairman Elijah E. Cummings

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Today, we are considering a resolution and report that would recommend holding Attorney General William Barr and Secretary of Commerce Wilbur Ross in contempt of Congress. They have both refused to comply with duly authorized subpoenas issued by this Committee that require them to produce documents relating to the addition of the citizenship question to the 2020 Census against the advice of experts at the Census Bureau.

What we have learned so far in this investigation is disturbing. Secretary Ross testified that he added the citizenship question “solely” in response to a request from the Department of Justice in December 2017 to help enforce the Voting Rights Act. We now know this was a pretext.

We have obtained evidence showing that Secretary Ross was aggressively pressing his staff to add the citizenship question months before any request from the Justice Department—in the Spring of 2017—and he was doing it at the urging of the White House.

We also now have evidence that President Trump’s advisors began discussing the citizenship question long before he took office. After the inauguration, President Trump discussed the idea with his top White House aides, Reince Priebus and Steve Bannon, who in turn pressed it with Secretary Ross.

Although we have limited information about this scheme, we have been blocked from fully determining the real reason the Administration sought to add the citizenship question. That is because the Department of Justice and the Department of Commerce have refused to turn over key documents requested by the Committee.

For these reasons, on April 2, 2019—more than two months ago—this Committee voted on a bipartisan basis to authorize subpoenas to Attorney General Barr and Secretary Ross for key documents regarding their efforts to add the citizenship question.

During that time, we have tried repeatedly to resolve this impasse. As an accommodation, we narrowed the scope of our subpoenas to a small subset of the documents we originally requested. I even invited Secretary Ross to meet with me personally so we could discuss a way forward. Unfortunately, he refused.

So that is why we are here today.

I have heard some of the arguments against moving forward with this contempt vote today, and I would like to address them directly.

First there is the claim that the Administration has produced more than 17,000 pages of documents. That is true. But the vast majority of these documents were already public. Others were heavily redacted. And many were not responsive to the subpoenas at all. That 17,000 number is meaningless if it includes print-outs from the Internet and pages that are blacked-out.

Second is the claim that we are trying to interfere with the Supreme Court case. That is not true. Congress has an independent responsibility under the Constitution to oversee the Census—separate from any private litigation. The Supreme Court has made clear that Congress' authority does not cease just because private litigants bring a case.

That argument also ignores the fact that we have been pursuing this investigation for more than a year—long before the Supreme Court ever took it up. I first called for this investigation in March 2018, as Ranking Member, just one day after Secretary Ross announced his decision. When I became Chairman in January, I renewed these requests—again, well before the Supreme Court took the case.

Finally, let me address the argument about Executive Privilege. Last night, we received a letter from the Department of Justice asking us to delay today's vote so the President could have even more time than he has had to consider whether to claim executive privilege.

That was it. They did not produce any of the key documents required by the subpoenas. They did not commit to producing any of these key documents in the future. And they did not make any kind of counter-offer for these key documents.

Here is the bottom-line. We have been seeking these documents for more than a year. We issued bipartisan subpoenas in April. We made clear that we were moving forward with contempt this week. And we offered that if they began producing one or two categories of the key documents in our subpoenas, we would be willing to considering postponing today's vote.

But both Departments declined this offer, which is why we are proceeding today.

The Census is critical to our democracy and our constituents. The Constitution gives Congress the responsibility and the authority to ensure that the Census is working as it was intended. That includes making sure that it is used properly to allocate federal funds, apportion legislative districts, and for other purposes.

We must protect the integrity of the Census, and we must stand up for Congress' authority under the Constitution to conduct meaningful oversight. I urge all of my colleagues to support the resolution.

In addition, I want to update the Committee on letters we just received a few moments ago from the Department of Justice and Department of Commerce.

The letters state that the President has asserted executive privilege over all of the subpoenaed documents. The letters assert executive privilege over the specific key documents that are essential to our inquiry and include a “protective” assertion of executive privilege over the rest of the documents.

The agencies apparently waited until the last minute—the day before our contempt vote—to ask the President whether he wanted to assert privilege. These subpoenas have been outstanding for more than two months. They are bipartisan. They are based on request letters sent months before that. They delineate specific, unredacted documents that are priorities for the Committee.

I wrote letters last week making it clear that the Committee would vote on contempt this week if we did not receive a narrow subset of these documents. Yet, the agencies have produced none of the key unredacted documents required by the subpoena, they have made no commitments to produce any of these key documents, and they have made no counter-offers relating to these key documents.

The Department of Justice’s letter says that they were prepared to produce additional documents responsive to the subpoena. But they made clear that they will not produce the key documents that we have identified as priorities.

This does not appear to be an effort to engage in good-faith negotiations or accommodations. Instead, it appears to be another example of the Trump Administration’s blanket defiance of Congress’ constitutionally-mandated responsibilities.

The report we are considering today anticipates many of the Trump Administration’s arguments because they have been making them for months—for example, deliberative process and attorney client privilege.

For months, the Trump Administration has claimed that the decision to add the citizenship question was made at the Department level rather than at the White House, but now the President is asserting executive privilege over all of these documents.

This begs the question—what is being hidden?

Here is what I am going to do. I am having copies of this letter made for every Member so all of you can review it for yourselves. Next, we will proceed to debating the contempt motion. However, I will postpone the vote until later this afternoon so Members have additional time to review this letter and any other materials they deem necessary.

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