

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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April 24, 2018

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We are writing to respectfully request that you issue a subpoena to compel the Department of Commerce and the Census Bureau to produce documents they have been withholding for nearly three weeks relating to concerns raised by the Census Bureau itself about the Trump Administration's sudden decision to add an untested new citizenship question to the 2020 census. We ask that you issue this subpoena this week so Committee Members can have the benefit of reviewing these documents before our Committee's hearing on May 8, 2018.

On April 4, 2018, six Democratic Committee Members wrote to the Department of Commerce and the Census Bureau requesting documents relating to concerns raised by career experts at the Census Bureau before the Trump Administration decided to add a new citizenship question to the census.¹ The letter was based on a memo issued by Commerce Secretary Wilbur Ross announcing the decision and acknowledging that the Census Bureau "expressed concern" that adding a citizenship question "would negatively impact the response rate for non-citizens."²

The Members requested these documents so we would be able to review them before a briefing that the Commerce Department and the Census Bureau were scheduled to provide to the Committee on April 11, 2018. Specifically, the Members requested:

¹ Letter from Ranking Member Elijah E. Cummings et al., House Committee on Oversight and Government Reform, to Secretary Wilbur Ross, Department of Commerce, and Acting Director Ron Jarmin, Census Bureau (Apr. 4, 2018) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-04-04.%20EEC%20Maloney%20Norton%20Clay%20Connolly%20%26%20Gomez%20to%20Commerce%20re.Cens_....pdf).

² Memorandum from Secretary Wilbur Ross, Department of Commerce, to Karen Dunn Kelley, Under Secretary for Economic Affairs, Department of Commerce, *Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire* (Mar. 26, 2018) (online at www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf).

- (1) all documents and communications relating to any concerns expressed by the Bureau regarding the addition of a citizenship question;
- (2) all analyses, including drafts, relating to the potential impact that adding a citizenship question would have on response rates;
- (3) all communications between or among officials from the Department of Commerce, the Census Bureau, and any other office or entity inside or outside of the government regarding the addition of a citizenship question; and
- (4) all documents, communications, and analyses relating to cost increases that could result from the addition of a citizenship question.

On April 11, 2018, the Commerce Department and Census Bureau briefed Members of the Committee. However, they did not provide any of the documents requested on April 4, 2018. Instead, they informed Committee Members that they were collecting documents in response to separate requests in ongoing litigation, that they hoped to provide these documents to parties in the lawsuits by Memorial Day, and that they would provide a copy of these documents to the Committee and the public at about the same time. They explained that they would provide documents they considered to be part of the “administrative record” documenting the addition of the citizenship question.³

This response by the Commerce Department and the Census Bureau is inadequate for three reasons:

- First, Congress in general—and our Committee in particular—has an independent responsibility under the Constitution to conduct oversight of the census, and we are not limited to obtaining only those documents that the Trump Administration is required to provide to litigants or the public. We are charged with serving a role that is separate and distinct from the Judicial Branch, and we regularly conduct our own investigations that may run parallel to outside litigation.
- Second, the Committee is scheduled to hold a hearing on the census on May 8, 2018, and we will be prevented from adequately preparing for this hearing if the Commerce Department and the Census Bureau continue withholding the documents we requested. We should not be required to wait until Memorial Day merely because there is litigation that is separate from the Committee’s constitutional oversight role.
- Third, our request for documents is different—and in some cases may be much broader—than the “administrative record” relating to the addition of the citizenship question. For example, we have requested “all” documents and

³ Briefing from Acting Director Ron Jarmin, Census Bureau, Michael Walsh, Jr., Deputy General Counsel, Department of Commerce, and Jennifer Ortman, Assistant Division Chief, American Community Survey Office, Census Bureau, to House Committee on Oversight and Government Reform (Apr. 11, 2018).

communications in the custody, control, or possession of all officials at the Commerce Department and Census Bureau relating to any concerns expressed regarding the addition of a citizenship question.

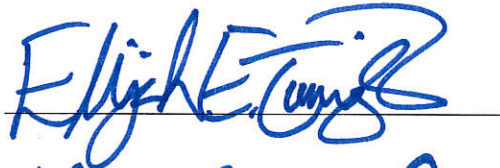
Our request is even more critical in light of subsequent testimony from the Census Bureau. On April 18, 2018, during a hearing before the House Committee on Appropriations' Subcommittee on Commerce, Justice, Science, and Related Agencies, the Acting Director of the Census Bureau, Ron Jarmin, was asked whether the addition of the citizenship question would have only a "minimal" impact on response rates. In response, he testified: "I wouldn't say minimal. It could be, in some communities, important."⁴

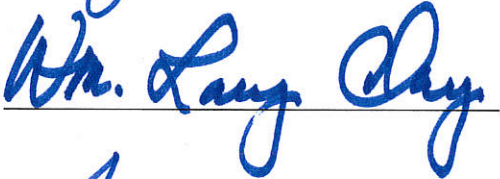
We understand that you declined to join our request for documents on April 4, 2018. However, we believe these documents are critical for our Committee to understand the concerns raised internally by career experts at the Census Bureau itself about the dangers of adding this untested new citizenship question to the census—as well as why the Trump Administration disregarded these concerns.

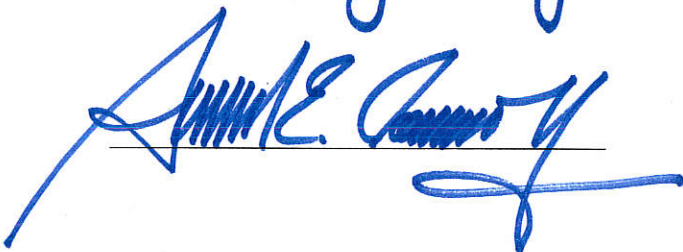
For all of these reasons, and to adequately prepare for our upcoming hearing on May 8, we request that you issue a subpoena to compel the Commerce Department and the Census Bureau to produce, by May 6, 2018, all of the documents requested in the letter on April 4, 2018. If you decide not to issue this subpoena, we ask that you bring this matter before the Committee at a business meeting so all Committee Members can have the opportunity to debate and vote on a motion to issue the subpoenas.

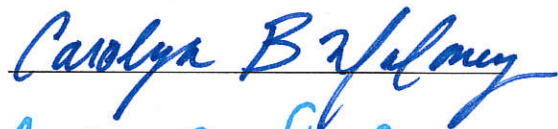
Thank you for your consideration of this request.

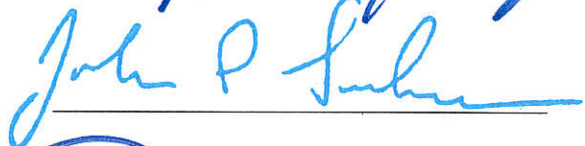
Sincerely,













⁴ House Committee on Appropriation, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Hearing on FY 2019 Bureau of the Census* (Apr. 18, 2018).

MARK DSE.

Janie Raski

Robin Kelly

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Bonnie Watson Coleman

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Tom

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cc: Members of the House Committee on Oversight and Government Reform