

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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September 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 request that you issue a subpoena to compel Secretary of Commerce Wilbur Ross to testify at a hearing before our Committee regarding his misleading testimony about his decision to add a citizenship question to the 2020 Census.

Secretary Ross gave sworn testimony before multiple committees of Congress in both the House and Senate that he added the citizenship question to the Census solely at the behest of the Department of Justice (DOJ). He downplayed his own role to one of merely responding to DOJ's request by weighing the pros and cons and adding the citizenship question based on policy considerations. However, newly disclosed documents directly contradict Secretary Ross' testimony and indicate that he engaged in a secretive, behind-the-scenes campaign to enlist several agencies in his own effort to orchestrate the addition of the citizenship question.

Falsifying or concealing a material fact to Congress is a serious criminal offense.<sup>1</sup> It is our Committee's constitutional duty to investigate this matter and to hold Secretary Ross accountable for his actions.

### **Prior Testimony from Secretary Ross and Other Commerce Department Officials**

In prior sworn testimony, Secretary Ross and other Department of Commerce (DOC) officials asserted multiple times that the decision to include a citizenship question on the 2020 Census arose from a request from DOJ in December 2017. For example:

- On March 20, 2018, before the House Committee on Appropriations, Secretary Ross testified: "We have had a request, as everyone is aware, from the Department of Justice, to add a citizenship question to the 2020 census." He also stated: "We are responding *solely* to the Department of Justice's request."<sup>2</sup>

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<sup>1</sup> 18 U.S.C. § 1001.

<sup>2</sup> House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related

- On March 22, 2018, before the House Committee on Ways and Means, Secretary Ross testified: “The Department of Justice, as you know, initiated the request for inclusion of the citizenship question.”<sup>3</sup>
- On May 8, 2018, before our Committee, Earl Comstock, the Department’s Director of the Office of Policy and Strategic Planning, testified: “We received a request from the Justice Department for this, and their rationale was that the level of information that they needed to enforce the Voting Rights Act was not available.” He also claimed: “This was requested by the Department of Justice for their statutory duty to enforce the Voting Rights Act.” He also testified: “The reason for this question was the Justice Department asked this to get more accurate information at the census block level.”<sup>4</sup>
- On May 10, 2018, before the Senate Committee on Appropriations, Secretary Ross testified in response to a question of why there was a sudden need for this information: “Well, the Justice Department is the one who made the request of us.”<sup>5</sup>

### **New Documents Contradict Sworn Testimony**

Internal documents made public as part of ongoing litigation in *New York v. United States Commerce Department* show that Secretary Ross was taking steps to add the citizenship question to the 2020 Census long before DOJ’s December 2017 request:

- On March 10, 2017, Director of the Office of Policy and Strategic Planning Earl Comstock sent an email to Secretary Ross regarding “Your Question on the Census,” which included an article from the *Wall Street Journal* entitled, “The Pitfalls of Counting Illegal Immigrants.”<sup>6</sup>
- On April 5, 2017, Secretary Ross’ executive assistant sent an email to Secretary Ross’ wife asking about the Secretary’s plans for the evening because “Steve Bannon has asked that the Secretary talk to someone about the Census.”<sup>7</sup>

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Agencies, *FY19 Budget Hearing: Department of Commerce* (Mar. 20, 2018) (emphasis added).

<sup>3</sup> House Committee on Ways and Means, *Hearing on Hearing with Commerce Secretary Ross* (Mar. 22, 2018).

<sup>4</sup> House Committee on Oversight and Government Reform, *Hearing on Progress Report on the 2020 Census* (May 8, 2018).

<sup>5</sup> Senate Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Hearing on Review of the FY2019 Budget Request for the U.S. Department of Commerce* (May 10, 2018).

<sup>6</sup> Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Secretary Wilbur Ross, Department of Commerce (Mar. 10, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>7</sup> Email from Brooke Alexander, Executive Assistant to the Secretary, Department of Commerce, to Hilary

- On May 2, 2017, Secretary Ross wrote in an email to Mr. Comstock and Chief Financial Officer and Assistant Secretary for Administration Ellen Herbst, “I am mystified why nothing have [sic] been done in response to *my months old request* that we include the citizenship question.”<sup>8</sup>
- That same day, Mr. Comstock promised to begin working with DOJ, stating in an email: “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.”<sup>9</sup>
- In early May, Mr. Comstock spoke with DOJ officials about the citizenship question. Mr. Comstock later reported to Secretary Ross that DOJ initially did not want to raise the question “given the difficulties Justice was encountering in the press at the time (the whole Comey matter).”<sup>10</sup>
- Mr. Comstock then sought out and spoke with officials at the Department of Homeland Security (DHS). Mr. Comstock later informed Secretary Ross that DHS officials felt the question “was best handled by the Department of Justice.”<sup>11</sup>
- On July 21, 2017, Kansas Secretary of State Kris Kobach sent an email to Secretary Ross’ Chief of Staff explaining that he had spoken with Secretary Ross about the citizenship question “at the direction of Steve Bannon, a few months earlier.” He wrote: “The issue is pretty straightforward.” He also provided “the text of the question to be added.”<sup>12</sup>
- On August 9, 2017, Mr. Comstock responded to Secretary Ross’ inquiry about DOJ’s Census analysis, writing that “since this issue [citizenship question] will go to the Supreme Court we need to be diligent in preparing the administrative

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Geary (Apr. 5, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>8</sup> Email from Secretary Wilbur Ross, Department of Commerce, to Earl Comstock, Director, Office of Policy and Strategic Planning, and Ellen Herbst, Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce (May 2, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)) (emphasis added).

<sup>9</sup> Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Secretary Wilbur Ross, Department of Commerce (May 2, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>10</sup> Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Wendy Teramoto, Chief of Staff, Office of the Secretary, Department of Commerce (Sept. 16, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>11</sup> *Id.*

<sup>12</sup> Email from Kris Kobach, Secretary of State, State of Kansas, to Wendy Teramoto, Chief of Staff, Office of the Secretary, Department of Commerce (July 21, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/AR%20-%20FINAL%20FILED%20-%20ALL%20DOCS%20%5bCERTIFICATION-INDEX-DOCUMENTS%5d%206.8.18.pdf#page=775](http://www.osec.doc.gov/opog/FOIA/Documents/AR%20-%20FINAL%20FILED%20-%20ALL%20DOCS%20%5bCERTIFICATION-INDEX-DOCUMENTS%5d%206.8.18.pdf#page=775)).

record.” Secretary Ross replied the next day, “we should be very careful, about everything, whether or not it is likely to end up in the SC.”<sup>13</sup>

- On September 17, 2017, DOJ staff emailed Commerce Department staff, writing, “it sounds like we can do whatever you all need us to do.” They added: “The AG is eager to assist.”<sup>14</sup>

### **Our Efforts to Obtain Information, Documents, and Testimony**

For the past nine months, we have been trying to obtain information about the origin of and reasoning for the addition of the citizenship question, but our efforts have been frustrated by Secretary Ross’ refusal to comply and the failure of Republican Committee Members to join our requests to obtain information, documents, or testimony.

On March 27, 2018, after Secretary Ross announced he would add the citizenship question to the 2020 Census, Ranking Member Elijah E. Cummings called on you to hold hearings regarding the sudden addition of the untested question and included a letter from six former Census Directors from both Republican and Democratic administrations opposing the addition of the question.<sup>15</sup>

On April 4, 2018, we requested documents from the Census Bureau after Secretary Ross admitted that the addition of the citizenship question could “negatively impact the response rate of non-citizens.”<sup>16</sup> We never received the documents we requested. DOC officials cited ongoing litigation and stated they would provide the Committee only documents they considered part of the “administrative record” and would not provide them until they were released to the public.<sup>17</sup>

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<sup>13</sup> Email from Wilbur Ross, Secretary of Commerce, Department of Commerce, to Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce (Aug. 10, 2017) (online at <https://apps.npr.org/documents/document.html?id=4872562-2018-09-11-Letter-Response#document/p40/a453277>).

<sup>14</sup> Email from Danielle Cutrona, Senior Counselor to the Attorney General, Department of Justice, to Wendy Teramoto, Chief of Staff, Office of the Secretary, Department of Commerce (Sept. 17, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>15</sup> Statement by Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, *Cummings Issues Statement Calling for Hearings on Trump Administration Plan to Add Citizenship Question to Census* (Mar. 27, 2018) (online at <https://democrats-oversight.house.gov/news/press-releases/cummings-issues-statement-calling-for-hearings-on-trump-administration-plan-to>).

<sup>16</sup> Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform et al., to Secretary Wilbur Ross, Secretary of Commerce, Department of Commerce (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](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)).

<sup>17</sup> Briefing from Acting Director Ron Jarmin, Census Bureau, Michael Walsh, Jr., Deputy General Counsel, Department of Commerce, and Jennifer Ortman, Assistant Division Chief, American Survey Office, Census Bureau, to House Committee on Oversight and Government Reform (Apr. 11, 2018).



On April 24, 2018, we wrote to you requesting that you issue a subpoena to DOC and the Census Bureau to produce the documents they were withholding.<sup>18</sup> You declined to issue a subpoena or place the matter before the Committee to allow Members to debate and vote on the subpoena.<sup>19</sup>

On May 1, 2018, we sent a letter requesting documents from DOJ based on Secretary Ross' testimony that he acted in response to DOJ's request and its need for the citizenship question data.<sup>20</sup> DOJ did not provide any documents we requested.

On May 15, 2018, we wrote to you requesting that you issue a subpoena to DOJ to produce the documents we requested.<sup>21</sup> You declined to issue a subpoena or place the matter before the Committee to allow Members to debate and vote on the subpoena.<sup>22</sup>

On May 21, 2018, Ranking Member Cummings renewed his request to you and asked you to subpoena our requested documents from DOC, the Census Bureau, and DOJ.<sup>23</sup> On May 23, 2018, Republicans on the Committee blocked all consideration of any motions to subpoena documents.<sup>24</sup>

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<sup>18</sup> Letter from Ranking Member Elijah E. Cummings et al., House Committee on Oversight and Government Reform, to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (Apr. 24, 2018) (online at <https://edit-democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-04-24.OGR%20Dems%20to%20Gowdy%20re%20Census%20Bureau%20Subpoena%20Request.pdf>).

<sup>19</sup> House Committee on Oversight and Government Reform, *GOP Blocks 12 More Subpoena Motions* (May 23, 2018) (online at <https://edit-democrats-oversight.house.gov/news/press-releases/gop-blocks-12-more-subpoena-motions>).

<sup>20</sup> Letter from Ranking Member Elijah E. Cummings et al., House Committee on Oversight and Government Reform et al., to John Gore, Acting Assistant Attorney General, Department of Justice (May 1, 2018) (online at <https://maloney.house.gov/sites/maloney.house.gov/files/2018-05-01.%20Dem.Members%20to%20DOJ-Gore%20re.Citizenship%20Question-2020%20Decennial%20Census.pdf>).

<sup>21</sup> Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (May 15, 2018) (online at <https://edit-democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-05-15.Dems%20to%20Gowdy%20re.%20Subpoena%20DOJ%20Docs.pdf>).

<sup>22</sup> House Committee on Oversight and Government Reform, *GOP Blocks 12 More Subpoena Motions* (May 23, 2018) (online at <https://edit-democrats-oversight.house.gov/news/press-releases/gop-blocks-12-more-subpoena-motions>).

<sup>23</sup> Letter from Ranking Member Elijah E. Cummings et al., House Committee on Oversight and Government Reform, to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (May 21, 2018) (online at <https://edit-democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-05-21.EEC%20to%20TG%20re.%2012%20Subpoena%20Requests.pdf>).

<sup>24</sup> House Committee on Oversight and Government Reform, *GOP Blocks 12 More Subpoena Motions* (May 23, 2018) (online at <https://edit-democrats-oversight.house.gov/news/press-releases/gop-blocks-12-more-subpoena-motions>).

On June 28, 2018, we wrote to Secretary Ross detailing our serious concerns about his contradictory and misleading statements after he filed a supplemental memorandum in the ongoing litigation.<sup>25</sup> In that memorandum, he admitted to considering the inclusion of the citizenship question shortly after he was appointed Secretary of Commerce in February 2017 and further admitted that he asked DOJ to request the addition of the question. He wrote:

My staff and I thought reinstating a citizenship question could be warranted, and we had various discussions with other governmental officials about reinstating a citizenship question to the Census. As part of that deliberative process, my staff and I consulted with Federal governmental components and inquired whether the Department of Justice (DOJ) would support, and if so would request, inclusion of a citizenship question as consistent with and useful for enforcement of the Voting Rights Act.<sup>26</sup>

Secretary Ross also noted “other senior Administration officials had previously raised” the issue of the citizenship question.<sup>27</sup>

This memorandum directly contradicted Secretary Ross’ prior sworn testimony before various Committees of Congress. We asked Secretary Ross to address these contradictions. To date, we have not received a response.

On August 2, 2018, we wrote again to you and requested that you convene a hearing with Secretary Ross to investigate his misleading statements.<sup>28</sup> This request was made in light of additional documents that indicated that the rationale for addition the citizenship question was nothing but a pretext. No hearing was scheduled.

On August 3, 2018, we renewed our request to Secretary Ross directly and requested that he answer questions about his misleading testimony.<sup>29</sup> We have yet to receive a reply.

### **Request for Subpoena**

For all of these reasons, we request that you issue a subpoena to compel Secretary Ross to testify at a hearing before our Committee. If you decide not to issue this subpoena, then I ask that you place this matter on the agenda for our next regularly scheduled business meeting so all Committee Members will have the opportunity to debate and vote on this motion.

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<sup>25</sup> Supplemental Memo from Wilbur Ross (June 21, 2018) (online at <https://assets.documentcloud.org/documents/4550954/Wilbur-Ross-Supplemental-Memo.pdf>).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Letter from Ranking Member Elijah E. Cummings et al., House Committee on Oversight and Government Reform, to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (May 21, 2018) (online at [https://connolly.house.gov/uploadedfiles/ogr\\_dems\\_request\\_ross\\_hearing\\_8.2.18.pdf](https://connolly.house.gov/uploadedfiles/ogr_dems_request_ross_hearing_8.2.18.pdf)).

<sup>29</sup> Letter from Rep. Carolyn Maloney et al. to Wilbur Ross, Secretary of Commerce, Department of Commerce (Aug. 3, 2018) (online at <https://maloney.house.gov/sites/maloney.house.gov/files/2018%200803%20Letter%20to%20Secretary%20Ross.pdf>).

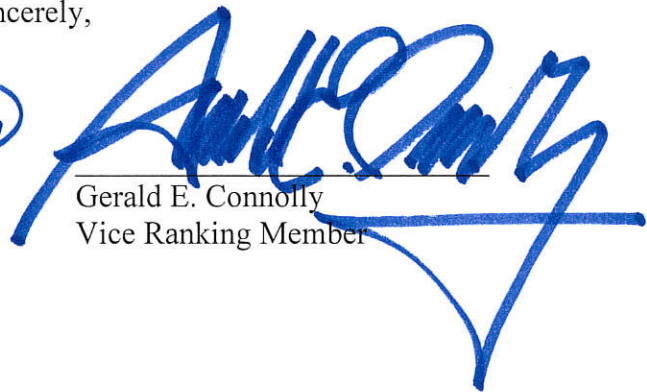
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Thank you for consideration of this request.

Sincerely,



Elijah E. Cummings  
Ranking Member



Gerald E. Connolly  
Vice Ranking Member