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3 HGO066101

4 INTERVIEW OF JOHN M. GORE, ESQUIRE

5 Thursday, March 7, 2019

6 House of Representatives

7 Committee on Oversight and Government Reform

8 Washington, D.C.

9 The Interview in the above matter was held in Room 6400,
10 O'Neill House Office Building, commencing at 9:29 a.m.

11 Staff Present: S. Tori Anderson, Oversight Counsel;
12 Russell M. Anello, Chief Oversight Counsel; Susanne Sachsman
13 Grooms, Majority Staff; [REDACTED] [REDACTED] [REDACTED] [REDACTED] Stephen
14 Castor, Republican Staff; Caroline Nabity, Republican Staff;
15 Ellen Johnson, Republican Staff.

16 On Behalf of the Witness: Josh Gardner, Special Counsel,
17 Department of Justice; Kira Antell, Acting Deputy Assistant
18 Attorney General, Department of Justice, Legislative Affairs;
19 Brett Shumate, Deputy Assistant Attorney General, Department of
20 Justice.

EXHIBIT INDEX

21

22

E X H I B I T S

23

(Attached to the transcript)

24

GOVERNMENT

PAGE

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Exhibit 1 Email chain; top email dated 48

26

9-18-17 from Wendy Teramoto to John

27

Gore; 0002636 - 2639

28

Exhibit 2 Letter dated December 12, 2017, 65

29

from Arthur E. Gary to Dr. Ron

30

Jarmin; four pages

31

Exhibit 3 Email dated 12-22-17 from 146

32

Ron S. Jarmin to Karen Kelley

33 Ms. Anderson. This is a transcribed interview
34 of John Gore, conducted by the House Committee on Oversight
35 and Reform. This interview was requested by Chairman
36 Elijah Cummings as part of the Committee's oversight of the
37 2020 census, including the decision to add a citizenship
38 question.

39 Can you please state your full name and spell
40 your last name for the record, Mr. Gore.

41 Mr. Gore. John Matthew Gore, G-O-R-E.

42 Ms. Anderson. My name is Tori Anderson. I
43 work as a majority counsel for the Committee on Oversight
44 and Reform. I first want to thank you for coming in today
45 for this interview. We appreciate you being willing to
46 speak with us voluntarily.

47 At this time I'll ask the additional staff in
48 the room to introduce themselves for the record before I
49 begin, and then we can go through the rules.

50 Mr. Anello. Russell Anello, majority staff.

51 Ms. Sachsman Grooms. I'm Susanne Sachsman
52 Grooms from the majority.

53

54 Mr. Castor. Steve Castor with the Republican
55 staff.

56 Ms. Nabity. Caroline Nabity with the
57 Republican staff.

58 Ms. Johnson. Ellen Johnson, Republican staff.

59 Mr. Shumate. Brett Shumate, DOJ.

60 Ms. Antell. Kira Antell, DOJ.

61 Mr. Gardner. Josh Gardner, DOJ.

62 Ms. Anderson. So, before we begin, I would

63 like to go over some ground rules for this interview.

64 First we can go over the structure of the transcribed

65 interview.

66 The witness interview will proceed as follows:

67 The majority and minority staffs will alternate asking you

68 questions, one hour per side per round.

69 The majority staff will begin and proceed for

70 an hour, and the minority staff will then have an hour to

71 ask questions. And, also, just let me know if I'm going

72 too fast.

73 Thereafter the majority staff may ask

74 additional questions and so on.

75 We will alternate back and forth in this manner

76 until there are more no questions from either side and the

77 interview will be over.

78 During the interview, we will do our best to

79 limit the number of people who are directing questions at

80 you during that given hour. That said, from time to time,

81 following-up or clarifying questions may be useful. If

82 that's the case, we will hear from additional people around

83 the table.

84 Presence of counsel. Do you have personal
85 counsel with you today?

86 Mr. Gore. No. I -- department counsel is here
87 today.

88 Ms. Anderson. I understand that you do not
89 have a personal attorney with you today but, instead, have
90 agency counsel with you. Would agency counsel please
91 identify himself.

92 Mr. Gardner. Josh Gardner.

93 Ms. Anderson. Do you understand that agency
94 counsel represents agency and not you personally?

95 Mr. Gore. Yes, I do.

96 Ms. Anderson. And are you choosing to have
97 agency counsel with you in the room today?

98 Mr. Gore. Yes, I am.

99 Ms. Anderson. We'll now discuss court reporter
100 transcription. This is a -- there is a court reporter
101 taking down everything I say and everything you say to make
102 a written record of the interview. For the record to be
103 clear, please wait until I finish each question before you
104 begin to answer, and I will wait until you finish each
105 response before asking you the next question.

106 The court reporter cannot record nonverbal
107 answers such as shaking of your head so it's important that

108 you answer each question with audible, verbal answers.

109 Do you understand?

110 Mr. Gore. Yes.

111 Ms. Anderson. Clarifying questions. We want
112 to answer a question -- we want you to answer our questions
113 in the most complete and truthful manner possible so we are
114 going to take our time.

115 If you have any questions or do not understand
116 any of the questions, please let us know. We'll be happy
117 to clarify or repeat the question for you.

118 Do you understand?

119 Mr. Gore. Yes.

120 Ms. Anderson. If you -- if I ask you about
121 conversations or events in the past and you are unable to
122 recall the exact words or details, you should testify to
123 the substance of those conversations or events to the best
124 of your recollection. If you recall only a part of the
125 conversation or event, you should give us your best
126 recollection of those events or parts of the conversations
127 that you recall.

128 Do you understand?

129 Mr. Gore. Yes.

130 Ms. Anderson. If you need to take a break,
131 please let us know. We are happy to accommodate you.
132 Ordinarily we take a five-minute break at the end of each

133 hour of questioning, but if you need a break before that,
134 just let us know.

135 However, to the extent there is a pending
136 question, I would just ask that you finish answering the
137 question before we take a break.

138 Do you understand?

139 Mr. Gore. Yes.

140 Ms. Anderson. Although you are here
141 voluntarily and we will not swear you in, you are required
142 by law to answer questions from Congress truthfully. This
143 also applies to questions posed by congressional staff in
144 the interview.

145 Do you understand?

146 Mr. Gore. Yes.

147 Ms. Anderson. If at any time you knowingly
148 make false statements, you could be subject to criminal
149 prosecution.

150 Do you understand?

151 Mr. Gore. Yes.

152 Ms. Anderson. Is there any reason that you are
153 unable today to provide truthful answers in this interview?

154 Mr. Gore. No.

155 Ms. Anderson. Please note if you wish to
156 assert a privilege over any statement today, that assertion
157 must comply with committee rules. Committee Rule 16(c)(1)

158 states that "For the chair to consider assertions of
159 privilege over testimony or statements, witnesses or
160 entities must clearly state the specific privilege being
161 asserted and the reason for that assertion on or before the
162 scheduled date of testimony or appearance."

163 In addition, Committee Rule 16(c)(3) states,
164 "The only assertions of executive privilege that the chair
165 of the Committee will consider are those made in writing by
166 an executive branch official authorized to assert that
167 privilege."

168 Do you understand?

169 Mr. Gore. Yes.

170 Ms. Antell. I want to mention at this point, I
171 understand what you've requested. And at this point, at
172 this point in the accommodation process, Mr. Gore is going
173 to be able to answer questions that are related to the
174 Department's request to the Census Bureau to add a
175 citizenship question to the census that can be answered
176 without compromising the ongoing litigation or other
177 executive branch confidentiality interests.

178 Ms. Sachsman Grooms. Is that some kind of a
179 privilege?

180 Ms. Antell. We are not asserting privilege.
181 We feel that this is an accommodation process, and we're
182 happy to answer those questions, as I said several times in

183 email. So I think we'll go through, we'll see the
184 questions that you might have that remain, and we're happy
185 to take that back.

186 Ms. Sachsman Grooms. So he'll come back in?

187 Ms. Antell. If that's necessary, or we can do
188 this by writing. We'll sort of see where the process takes
189 us. At this point at this interview, that's what he'll be
190 prepared to answer.

191 Ms. Sachsman Grooms. Mr. Gore, are you
192 committed to come back to answer those questions?

193 Ms. Antell. He's not committing to anything.
194 We're committing to fully engage in the accommodation
195 process as we always have.

196 Ms. Sachsman Grooms. Sure. My question is to
197 Mr. Gore, though.

198 Mr. Gore, are you committed to come in -- back
199 in to answer those questions for us?

200 Mr. Gore. I'm not making any commitment today.
201 This is an accommodation process between the Committee and
202 the Department of Justice, and I anticipate that that
203 process will play out in the ordinary course, and whether
204 further information is sought from me or from the
205 Department will be handled through the Office of
206 Legislative Affairs.

207 Ms. Anderson. Do you have any questions before

208 we begin?

209 Mr. Gore. I do not.

210

211 Ms. Anderson. I want to note that we're

212 beginning our hour at 9:36.

213 EXAMINATION

214 BY MS. ANDERSON.

215 Q So, Mr. Gore, when did you first have a
216 discussion about the addition of a citizenship question to
217 the 2020 census?

218 A It was in late August or early September of
219 2017.

220 Q When did you first become aware that anyone at
221 the Department of Commerce was interested in a citizenship
222 question?

223 A Through that discussion late August, early
224 September 2017.

225 Q Who was that discussion with?

226 A I received a phone call from two individuals at
227 the Department of Justice, so Attorney General Sessions and
228 Mary Blanche Hankey.

229 Q They were both on the same phone call?

230 A Yes.

231 Q Were you aware of the contents of that
232 conversation prior to their phone call?

233 A I'm a little confused. Which conversation?

234 Q Did they just call you, or were you aware that
235 they were calling about a specific purpose when you got
236 that phone call in late August 2017?

237 A Oh, I see. I had no advance knowledge of what
238 that conversation was about.

239 Q Okay. At any point did you become aware of the
240 reason why Secretary Ross was interested in adding a
241 citizenship question to the 2020 census?

242 A Yes.

243 Q When did you become aware of that?

244 A Around that same time frame.

245 Q So around August 2017?

246 A Late August 2017 or early September.

247 Q And, so, in that late August, early September
248 2017 period, that's when you first became aware that the
249 Department of Justice was interested in helping the
250 Department of Commerce with the citizenship question issue?

251 Mr. Gardner. I instruct the witness not to
252 answer to the extent that it implicates the confidentiality
253 and litigation interests reflected in the Department's
254 letter to the Committee. To the extent you can answer that
255 question without divulging those confidential and
256 litigation interests, you can do so.

257 Q I'll rephrase. When did you become aware of the

258 Department of Justice's interest in the Department of
259 Commerce's efforts to add a citizenship question to the
260 2020 census? Simply when.

261 Mr. Gardner. Same objection and the same
262 instruction. If you can answer that without divulging
263 anything.

264 A Consistent with that instruction, I can't answer
265 it.

266 Ms. Sachsman Grooms. He can't tell us when he
267 became aware?

268 Mr. Gardner. I think the problem is the
269 predicate.

270 Ms. Sachsman Grooms. I don't understand.

271 Mr. Gardner. The predicate of your question
272 assumes something that may or may not be the case. If you
273 want to try to rephrase it, you can do it that way. I am
274 trying to accommodate and I do want to have Mr. Gore
275 testify, so maybe if you can rephrase the question again.

276 Mr. Anello. If I might, I believe you just
277 stated that you did become aware that Secretary Ross wanted
278 to add a citizenship question, correct?

279 Mr. Gore. Yes.

280 Mr. Anello. When did you become aware?

281 Mr. Gore. I believe I already testified that
282 that was in late August or early September of 2017.

283 Mr. Anello. How did you become aware?

284 Mr. Gore. Through the conversation that I had
285 with the Attorney General and Mary Blanche Hankey.

286 Q Had you had any other conversations prior to
287 that conversation in late August, early September 2017
288 about an addition of a citizenship question?

289 A No.

290 Q At any point did you become aware of why the
291 Department of Justice wanted to support the Department of
292 Commerce in an addition of a citizenship question?

293 A Yes.

294 Q When did you become aware of that?

295 A I think that is maybe not as simple of a
296 question as you're making it sound.

297 Q Sure.

298 A I became aware there was -- I became aware of
299 the Department of Commerce's interest in the question in
300 August -- late August, early September 2017, and that there
301 was interest in the Department of Justice in potentially
302 supporting that effort.

303 Q Okay. And so you became involved in this
304 process at that same time; is that correct?

305 A That is correct.

306 Q And so you would put that in that late August,
307 early September time frame still, correct?

308 A Correct.

309 Q You said you received a phone call from Attorney
310 General Jeff Sessions and Mary Blanche Hankey, and they
311 were both on that phone call; is that correct?

312 A That's correct.

313 Q Was there anyone else present during that phone
314 call besides those two people?

315 A No, at least not to my knowledge.

316 Q Sure.

317 Did you take any contemporaneous notes during
318 that phone call?

319 A No, I did not.

320 Q Did anyone at that point tell you not to create
321 documentation about your involvement in that conversation?

322 Mr. Gardner. I instruct the witness not to
323 answer for the same grounds previously stated.

324 Ms. Anderson. So, to be clear, the witness is
325 instructed not to answer the question of whether someone
326 told him not to create documentation based on their
327 conversation?

328 Mr. Gardner. If you're asking about the
329 internal conversations within the Department of Justice,
330 yes. If you want to rephrase the question, we can try it
331 that way.

332 Q Did Attorney General Jeff Sessions tell you not

333 to take notes about your conversation in late August and/or
334 early September 2017?

335 Mr. Gardner. You can answer that question.

336 A No.

337 Q Did Mary Blanche Hankey tell you not to take
338 notes during that conversation?

339 A No.

340 Q Did anyone else tell you not to create notes
341 about that -- about that conversation?

342 A No.

343 Q So you said they initiated that phone call. Did
344 they tell you why they wanted to talk to you at that point?

345 A I believe that they told me why they wanted to
346 talk to me while we were on the phone call. There was no
347 -- no one told me in advance what to expect from the phone
348 call.

349 Q Sure.

350 What did you discuss?

351 Mr. Gardner. Objection. I instruct the
352 witness not to answer.

353 Ms. Anderson. What is the basis for that
354 objection?

355 Mr. Gardner. The same basis I previously
356 stated.

357 Ms. Anderson. Would you state it again for the

358 record, please.

359 Mr. Gardner. Sure. As reflected in our
360 correspondence to the Committee, the Department's
361 confidentiality and litigation interests.

362 Q Did you do anything in response to that
363 particular conversation that you had with Attorney General
364 Jeff Sessions and Mary Blanche Hankey?

365 A I don't recall doing anything specifically in
366 response to that conversation.

367 Q Did you take any action based on that
368 conversation?

369 A I don't know that it was based on that
370 conversation, but I did take action after that
371 conversation.

372 Q Did you have any other conversations with
373 Attorney General Jeff Sessions about the citizenship
374 question?

375 A Yes.

376 Q How many?

377 A I believe it arose maybe three or four times.

378 Q Do you remember when those conversations
379 occurred?

380 A Generally they occurred between September and
381 December of 2017.

382 Q You said September and December?

383 A And December.

384 Q Do you have any -- do you have any recollection
385 on your next conversation after that initial conversation
386 in August -- late August, early September?

387 A With Attorney General Sessions --

388 Q Correct.

389 A -- or with somebody else?

390 I'm trying to remember exactly. It probably
391 would have been late September of 2017.

392 Q Did that conversation occur in person or over
393 the phone?

394 A In person.

395 Q Who initiated that conversation?

396 A That conversation took place as part of a
397 monthly briefing I had with the Attorney General. So every
398 month I had a standing meeting with him to discuss matters
399 related to the Civil Rights Division and its work, and as
400 part of that monthly conversation or briefing, which was a
401 standing meeting, we discussed this issue.

402 Q Was there anyone else present during this
403 monthly meeting?

404 A Yes.

405 Q Who else?

406 A Rachael Tucker and Ben Aguinaga.

407 Q If you could spell the last names for the

408 record, that would be great.

409 A Sure. Let me also spell Rachael's first name.

410 It's R-A-C-H-A-E-L. Tucker is T-U-C-K-E-R.

411 Ben is B-E-N. I'm going to do my best with

412 Aguinaga. I think, if I recall, it's A-G-U-I-N-A-G-A.

413 Q Thank you.

414 What did you discuss at that meeting?

415 Mr. Gardner. I instruct the witness not to

416 answer.

417 Ms. Anderson. On that basis?

418 Mr. Gardner. Same basis I previously stated.

419 Q Did you do anything in response to that

420 discussion you had with Attorney General Jeff Sessions?

421 A I don't recall doing anything specifically in

422 response to that conversation.

423 Q Did you take any actions as a result of that

424 conversation?

425 A I don't recall taking any actions as a result of

426 that conversation.

427 Q Did you conduct any other conversations as a

428 result of that conversation?

429 A I do not recall doing that.

430 Q Did you have any other conversations with Mary

431 Blanche Hankey about the addition of a citizenship

432 question?

433 A I don't recall.

434 Q Did you have any conversations around that time
435 with anyone else about an addition of a citizenship
436 question?

437 A Yes.

438 Q With who?

439 A Within the Department of Justice I discussed the
440 issue, as I mentioned, with Attorney General Sessions, Mary
441 Blanche Hankey, Rachael Tucker, Ben Aguinaga, Danielle
442 Cutrona, C-U-T-R-O-N-A, Gene Hamilton, all of who -- they
443 were employed by the Office of Attorney General. I
444 eventually spoke with Bob Troester, T-R-O-E-S-T-E-R, who at
445 the time -- is a career lawyer at the Department of Justice
446 but at the time was serving in the Office of the Deputy
447 Attorney General.

448 I spoke with Rachel Brand, who was then the
449 Associate Attorney General. I spoke with Jesse Panuccio,
450 J-E-S-S-E, P-A-N-U-C-C-I-O, who was Rachel's principal
451 deputy. I spoke with Patrick Hovakimian,
452 H-O-V-A-K-I-M-I-A-N, who at the time was also in the Office
453 of Associate Attorney General.

454 I eventually spoke later, not in the September
455 time frame, but later, with Bethany Pickett, P-I-C-K-E-T-T,
456 who was in the Civil Rights Division; Chris Herren,
457 H-E-R-R-E-N, in the Civil Rights Division; Arthur Gary,

458 G-A-R-Y, of the Justice Management Division.

459 I can recall speaking to three individuals at
460 the Department of Commerce, Peter Davidson, who I
461 understood to be the general counsel with the Department of
462 Commerce; James Uthmeier, U-T-H-M-E-I-E-R; Wendy Teramoto,
463 T-E-R-A-M-O-T-O. And around October of 2017, I had a
464 conversation with a man named Mark Neuman. I believe he
465 spells his last name N-E-U-M-A-N.

466 I think that's everybody, but if you read back
467 the list, I can tell you if I inadvertently left anybody
468 off.

469 Q I have Mary Blanche Hankey, Rachael Tucker, Ben
470 Aguinaga -- my apologies if I butchered that -- Danielle
471 Cutrona, Gene Hamilton, Bob Troester, Rachel Brand, Jesse
472 Panuccio, Patrick --

473 A Hovakimian.

474 Q Hovakimian. Bethany Pickett, Chris Herren,
475 Arthur Gary, Peter Davidson, James Uthmeier, Wendy
476 Teramoto, and Mark Neuman.

477 A Right. Is Arthur Gary on the list?

478 Q Yes.

479 A Attorney General Sessions, obviously, and then
480 John Zadrozny, J-O-H-N, Z-A-D-R-O-Z-N-Y, who at the time
481 worked for the Domestic Policy Council at the White House.
482 I think that's everybody.

483 Q So outside of the people you mentioned inside of
484 the Justice Department at the time, how many conversations
485 did you have with third parties about the addition of a
486 citizenship question?

487 A Can you clarify what you mean by "third
488 parties"?

489 Q People outside of the Department.

490 A Anybody outside of the Department.

491 Q Correct.

492 A Sure. I had, with Peter Davidson, probably
493 about a dozen phone calls. And with James Uthmeier -- I
494 had one phone call with James Uthmeier where it was just
495 the two of us, and I think James participated in one or two
496 phone calls that involved Peter Davidson and me as well.
497 And I spoke one time with Wendy Teramoto, and I spoke one
498 time with Mark Neuman, and one time with John Zadrozny.

499 Q Do you recall when your conversation was with
500 Mark Neuman?

501 A I think it was in early October of 2017. Late
502 September, early October. I'm pretty sure it was early
503 October.

504 Q Were these conversations that occurred with
505 people who were not in the Justice Department initiated by
506 you or initiated by those parties? And we can -- we can
507 return to some -- to the Department of Commerce later, but

508 specifically with regard to Mark Neuman, was that
509 conversation initiated by you or by Mark Neuman?

510 A Not by me.

511 Q Was it by Mark Neuman or by somebody else?

512 A So Mark Neuman did call me, but I -- it was
513 Peter Davidson who mentioned Mark Neuman to me, and then
514 Mr. Neuman called me.

515 Q And you discussed the citizenship question with
516 Mark Neuman?

517 A Yes, I did.

518 Q What was the nature of those discussions?

519 Mr. Gardner. I instruct the witness not to
520 answer.

521 Ms. Anderson. On what basis?

522 Mr. Gardner. Same grounds.

523 Q Did you do anything -- is Mark Neuman employed
524 -- a government employee?

525 A I don't know whether he's a government employee.
526 I understood Mr. Neuman to have been at least formerly an
527 employee at the Department of Commerce or the Census
528 Bureau, I'm not sure which. And I understood he was an
529 advisor to the Department of Commerce on issues related to
530 the 2020 census or at least the issue of whether to
531 reinstate a citizenship question on the 2020 census
532 questionnaire.

533 Mr. Anello. Can I just clarify a question for
534 counsel. Are you instructing the witness not to answer
535 about a conversation with somebody who is not a federal
536 employee?

537 Mr. Gardner. He was an advisor to the Commerce
538 Department.

539 Mr. Anello. But he was not employed by the
540 Commerce Department, correct?

541 Mr. Gardner. What do you mean, was he being
542 paid by the Commerce Department? Mr. Gore can answer that
543 question. I will represent to you that Mr. Neuman was an
544 advisor to the Commerce Department. And on that basis I
545 instruct him not to answer about the substance of his
546 conversations.

547 Ms. Sachsman Grooms. Do you know more
548 information about Mr. Neuman's employment or advising to
549 the Commerce Department?

550 Mr. Gardner. I'm not here to testify.

551 Ms. Sachsman Grooms. You have just testified
552 to us so you have represented to us --

553 Mr. Gardner. No, I just repeated back what Mr.
554 Gore just said.

555 Ms. Sachsman Grooms. -- that he was an advisor
556 in some capacity that you think makes him somehow protected
557 by this ongoing litigation aspect, which is not a

558 privilege.

559 Mr. Gardner. Is there a question? I'm sorry.

560 Ms. Sachsman Grooms. Yes. My question is,
561 what on earth would be the basis for not answering a
562 question about a conversation with somebody who is not
563 employed, even by the federal government?

564 Mr. Gardner. The confidentiality and
565 litigation interests I previously stated.

566 Ms. Sachsman Grooms. Is there something about
567 the conversation with Mr. Neuman that would impact the
568 ongoing litigation?

569 Ms. Antell. At this point I understand that
570 you have an interest in this. I'm happy for Mr. Gore to
571 continue answering questions. I don't know that it's
572 helpful for this back-and-forth to continue regarding what
573 Mr. Gardner knows about this.

574 Ms. Sachsman Grooms. He did decide to make a
575 representation on the record.

576 Mr. Gardner. I just repeated what Mr. Gore
577 said.

578 Mr. Gore. I believe I'm the one who testified
579 that I understood that Mr. Neuman was advising the
580 Department of Commerce on this issue.

581 Q Did you do anything in response to your
582 conversation with Mark Neuman?

583 A I reviewed -- yes, I did.

584 Q What did you do?

585 Mr. Gardner. You can answer that question to
586 the extent you can do so without divulging confidential or
587 litigation-based interests the Department has.

588 A I reviewed some documents and information
589 regarding the census.

590 Q I'm sorry, I just missed the first part.

591 A I reviewed some documents and information
592 regarding the census.

593 Q Were those documents and information provided to
594 you or pointed you to?

595 A Yes.

596 Q Which one? Sorry.

597 Mr. Gardner. I instruct the witness not to
598 answer. I'm sorry, I misunderstood your question. Can you
599 rephrase your question. I apologize.
600 Ms. Anderson. Sure.

601 Q Did he provide the documentation to you or did
602 he point you to the documentation?

603 A He provided it.

604 Q Was that information public information or
605 internal private information?

606 A Public information.

607 Q What was it?

608 A He provided some information regarding the
609 census, historical documents about the census. He handed
610 me a pamphlet that was -- had a chart in it that documented
611 which questions had been on the census in various years.

612 Q Was that all he provided you?

613 A No, he also provided me a draft letter.

614 Q A draft letter of what?

615 A It was a draft letter that would request
616 reinstatement of the citizenship question on the census
617 questionnaire.

618 Q Did he tell you where he got that draft letter?

619 Mr. Gardner. I instruct you --

620 A No.

621 Q Did any language in that letter appear in the
622 letter that the Department of Justice sent to the
623 Department of Commerce on December 12th, 2017?

624 Mr. Gardner. I instruct the witness not to
625 answer.

626 Ms. Anderson. On what basis?

627 Mr. Gardner. The same basis.

628

629 Mr. Anello. Can I ask you a question. Was the
630 draft letter that he handed you, was it addressed from the
631 Department of Justice to the Department of Commerce?

632 Mr. Gardner. Same instruction.

633 Mr. Anello. So just to be clear, you've told

634 us that he gave you a draft letter, but you're being
635 instructed not to tell us to whom the draft letter was
636 addressed. Is that the instruction?

637 Mr. Gardner. You're asking about the contents
638 of the letter. I'm instructing him not to answer those
639 questions, correct.

640 Q Besides the pamphlet and the draft letter, was
641 there anything else that he provided you?

642 A No.

643 BY MR. ANELLO.

644 Q The draft letter that he provided you, had you
645 requested that he provide you with that draft letter?

646 Mr. Gardner. You can answer.

647 A No.

648 Q Had somebody else asked him to provide that
649 draft letter to you?

650 A I don't know.

651 Q Why did he give it to you?

652 Mr. Gardner. I instruct the witness not to
653 answer.

654 Q Do you know why he gave it to you?

655 A I don't, actually.

656 Q Did you agree with the contents of the letter?

657 Mr. Gardner. I instruct the witness not to
658 answer.

659 Q Did the letter -- the draft letter that he gave
660 you propose that a citizenship question should be added in
661 order to assist with VRA enforcement?

662 Mr. Gardner. I instruct the witness not to
663 answer.

664 BY MS. ANDERSON.

665

666 Q Did the letter contain any rationale for an
667 addition of a citizenship question?

668 Mr. Gardner. I instruct the witness not to
669 answer.

670 BY MR. ANELLO.

671

672 Q When you -- I apologize for skipping around a
673 little bit with the questions here. I appreciate your
674 indulgence.

675 Mr. Gardner. Sure.

676 Q When you drafted the letter that eventually was
677 sent to the Department of Commerce on December 12th, were
678 the words in that letter all your own? I can rephrase if
679 that's not clear.

680 Mr. Gardner. If you can try to rephrase that.

681 Q You created the first draft of the letter that
682 eventually was sent to Secretary Wilbur Ross requesting a
683 citizenship question, correct?

684 A That's correct.

685 Q When you made your first draft, were the words
686 in that first draft your own?

687 Mr. Gardner. To the extent you can answer that
688 question without divulging the Department's confidentiality
689 and litigation interests, you may do so.

690 A I actually don't know how to answer that
691 question because I believe there were -- I believe that
692 there were words that came from cases, so I'm not sure how
693 to answer that question.

694 Q Aside from quotations from case law, were there
695 any words that were not your own?

696 Mr. Gardner. Same objection. Same
697 instruction. If you can answer that question without
698 divulging those interests, you may do so.

699 A Not that I recall.

700 Q Were any -- when you wrote your letter, did any
701 information that you received from anybody outside the
702 Department of Justice play a role in what you wrote in that
703 first draft?

704 Mr. Gardner. I instruct the witness not to
705 answer.

706 Q Did any information that you received from
707 somebody who is not a federal employee play a role in the
708 letter that you drafted?

709 Mr. Gardner. I instruct the witness not to
710 answer.

711 BY MS. ANDERSON.

712

713 Q Okay. I want to go back to kind of that initial
714 point where you became involved in the citizenship question
715 issue, okay?

716 And you said you had spoken with several other
717 people, both inside and outside of the Department. One of
718 those people inside of the Department -- do you know who
719 James McHenry is?

720 A I do know James McHenry.

721 Q Where is he?

722 A I don't know that I ever discussed the issue
723 with him. I believe he's mentioned in -- I certainly know
724 who he is, but he's mentioned in some documents, and I
725 don't recall whether I had a conversation with him about
726 this issue.

727 BY MR. ANELLO.

728

729 Q You described a conversation in late August or
730 early September with the Attorney General and with Mary
731 Blanche Hankey, correct?

732 A That's correct.

733 Q And you stated that -- I believe, that during

734 that conversation you learned that Secretary Ross wanted to
735 add a citizenship question to the census, correct?

736 A I don't know if that was my testimony.

737 Q Did you learn during that conversation from the
738 Attorney General that Secretary Ross was interested in
739 adding a citizenship question to the census?

740 A Now you've changed the question and, so, yes.

741 Q And I believe you also stated a few minutes
742 earlier that around that same time you learned that there
743 was some interest at the Department of Justice in
744 cooperating with that request.

745 A I'm not sure if cooperating is the right word,
746 but, yes, I had learned that there was interest in the
747 Department of Justice in examining whether something could
748 be done to support that.

749 Q Did Attorney General Sessions tell you in that
750 conversation in late August or early September that he
751 personally had an interest in helping the Department of
752 Commerce add the citizenship question to the census?

753 Mr. Gardner. I instruct the witness not to
754 answer.

755 Q Did the Attorney General tell you that the
756 Department had an interest in assisting the Department of
757 Commerce in adding a citizenship question to the census?

758 Mr. Gardner. I instruct the witness not to

759 answer.

760 Mr. Anello. If I might, I believe the witness
761 has just stated that he learned that the Department of
762 Justice at this time period had an interest in potentially
763 helping the Department of Commerce add the citizenship
764 question. So the only question I'm asking now is did the
765 Attorney General tell you that.

766 Mr. Gardner. I understand your question.

767 Mr. Anello. So you're telling me that that --
768 the fact of the knowledge is not something you would object
769 to, but who gave him that knowledge is objectionable to
770 you?

771 Mr. Gardner. You're asking about a
772 conversation between Mr. Gore and the Attorney General. I
773 instruct the witness --

774 Mr. Anello. Mr. Gore has told us that the
775 Attorney General told him that the Department of Commerce
776 wanted to add a citizenship question. So I'm asking any --

777 Mr. Gardner. I understand. I completely
778 understand. If you can rephrase --

779 Mr. Anello. I fail to understand -- I fail to
780 understand why this question is objectionable.

781 Mr. Gardner. If you can try to rephrase the
782 question, I'm happy to let Mr. Gore testify to the extent
783 he can, consistent with our litigation and confidentiality

784 interests.

785 Q You stated a moment ago that you learned around
786 this time that the Department of Justice had an interest in
787 assisting the Department of Commerce with adding a
788 citizenship question to the census, correct?

789 A I believe that's what I said, yes.

790 Q Did you learn that during a phone call with the
791 Attorney General and Mary Blanche Hankey?

792 Mr. Gardner. I instruct the witness not to
793 answer.

794 Ms. Sachsman Grooms. He's already answered,
795 though.

796 Mr. Gardner. Then why are you asking again? I
797 don't think he did answer that question.

798 Q I'll rephrase.

799 You learned that information either in late
800 August or early September, correct?

801 A That is correct.

802 Q Did you learn that information from somebody at
803 the Department of Commerce?

804 A What information?

805 Q Information that you just said you learned, the
806 information that the Department of Justice was interested
807 in assisting the Department of Commerce in adding a
808 citizenship question. Did you learn that information from

809 somebody at the Department of Commerce?

810 A No.

811 Q Did you learn that information from somebody at
812 the Department of Justice?

813 A Yes.

814 Q Who at the Department of Justice told you that?

815 Mr. Gardner. I'm going to instruct the witness
816 not to answer.

817

818 Ms. Sachsman Grooms. Who at the Department of
819 Justice did you learn that information from?

820 Mr. Gardner. Same instruction.

821 Ms. Sachsman Grooms. So the parameters aren't
822 around the conversation itself? They're not around the
823 words within the conversation. They're around his
824 knowledge set also?

825 Mr. Gardner. I couldn't be more clear. I'm
826 sorry. I'm not trying to be difficult with you. You're
827 asking questions that directly implicate the Department's
828 confidentiality and litigation interests. I instruct him
829 not to answer. Mr. Gore is here to answer questions, and
830 we're trying not to be obstreperous. So if you can come up
831 with a different way to ask these questions, we're happy to
832 facilitate that.

833 Q So you've testified -- you told us that you did

834 not learn that from somebody at the Department of Commerce,
835 and you did learn it from somebody at the Department of
836 Justice.

837 Did you learn it from somebody in the Civil
838 Rights Division?

839 Mr. Gardner. Go ahead.

840 A No.

841 Q Did you learn it from somebody in the Deputy
842 Attorney General's Office?

843 A Excuse me.

844 Mr. Gardner. I think at this point I'm going
845 to instruct the witness not to answer.

846 Q Did you learn it from somebody at the Attorney
847 General's Office?

848 Mr. Gardner. Same instruction.

849 Q I have one more question about that first
850 conversation that you said you had with the Attorney
851 General and Mary Blanche Hankey. You said you took action
852 -- some actions after that conversation. What were the
853 actions you took after that conversation?

854 A I conducted some legal research and some general
855 research regarding the census.

856 Q What research did you conduct?

857 Mr. Gardner. I instruct the witness not to
858 answer.

859 Q Did you conduct research about the citizenship
860 question?

861 Mr. Gardner. So at that level of detail, you
862 can answer that question.

863 A Yes.

864 Q Were you directed by somebody to do so?

865 Mr. Gardner. I'm going to instruct not to
866 answer.

867 Q Was it your own decision to conduct that
868 research?

869 Mr. Gardner. Same instruction.

870 Q Aside from conducting research, did you take any
871 other action?

872 A Not in specific response to that conversation
873 that I can recall. I did, as I mentioned, have
874 conversations with many people about the issue, and as I've
875 already stated, eventually I wrote the first draft of a
876 letter on behalf of the Department of Justice.

877 Q What was the next action you took after -- after
878 that conversation?

879 A I'm sorry, which conversation?

880 Q The conversation with the Attorney General.
881 What was the next action you took related to the
882 citizenship question after that?

883 A As I've just testified, I conducted some legal

884 research and some general research regarding the census.

885 Q And then after that, what was the next step?

886 A Again, I'm not clear on all of the sequencing as
887 it played out, but I did have conversations with many of
888 the people on the list who I just named regarding this
889 issue.

890 BY MS. ANDERSON.

891

892 Q Did you provide that legal research to anyone
893 else inside the Department of Justice?

894 A I discussed that legal research with other
895 individuals within the Department of Justice.

896 Q Who?

897 A I discussed it eventually with the Attorney
898 General, Rachael Tucker, Gene Hamilton, Danielle Cutrona,
899 Rachel Brand, Jesse Panuccio, Patrick Hovakimian, Bob
900 Troester.

901 Q It's fair to say everyone you listed before?

902 A Pretty much everybody. There may have been one
903 or two people I didn't, but ...

904 Q Did you discuss your legal research with anyone
905 outside of the Department of Justice?

906 A Yes, I did.

907 Q Is it anyone else who's not mentioned in that
908 list that you described earlier?

909 A No.

910 Q Was it everyone who's on that list that you said
911 earlier?

912 A More or less everyone. I don't know if I
913 discussed legal research with Mark Neuman, but I certainly
914 discussed it, I think, with everyone else on that list.

915 Q Including those three people you mentioned from
916 the Department of Commerce?

917 A Not Ms. Teramoto. And I can't remember whether
918 I discussed it with Mr. Zadrozny. I think not, but I can't
919 remember.

920 Q What was your initial conclusion after you
921 conducted your legal research?

922 Mr. Gardner. I instruct the witness not to
923 answer.

924 Q At some point you became aware that the
925 Department of Commerce and the Department of Justice had
926 had conversations prior to your involvement in the
927 citizenship question; is that correct?

928 A Yes, at some point I did become aware of that.

929 Q Who informed you of those conversations?

930 A I can't remember how I became aware of those,
931 whether someone informed me or whether it was because
932 there's a memo in the record in one of the litigation cases
933 that was shown in my deposition written by Earl Comstock.

934 It's a memo to the file or something like that. I can't
935 remember if it's because I saw that document or because
936 somebody told me, but at some point I became aware that
937 conversations had occurred prior to my involvement in the
938 issue.

939 Q Who from the Department of Justice was involved
940 in those conversations that you are aware of?

941 A Again, I'd have to go back in my memory to the
942 memo that Mr. Comstock wrote, which I don't have right in
943 front of me, but I believe he mentions having spoken to
944 Mary Blanche Hankey and to James McHenry, and also that he
945 spoke to Gene Hamilton, who at that time was at the
946 Department of Homeland Security. Later he joined the
947 Department of Justice.

948 Q Did you ever become aware of the contents of
949 those conversations that occurred between Mary Blanche
950 Hankey, Gene Hamilton, or anyone else at the Department of
951 Justice and the Department of Commerce?

952 A Only -- only what's reflected in Mr. Comstock's
953 memo, which I believe is dated September 8th, 2017.

954 Q Okay. So to be clear, you did not become aware
955 of those conversations after having spoken with anyone at
956 the Department of Justice about them?

957 A I don't think so. Not that I recall.

958 Q And you also became aware of conversations that

959 occurred between Secretary Ross and Attorney General Jeff
960 Sessions; is that correct?

961 A Yes, I became aware of the conversations.

962 Q And those conversations were about the addition
963 of a citizenship question; is that correct?

964 A Again, I wasn't a party to those conversations,
965 but that's my understanding.

966 Q Sure.

967 Were you aware of more than one conversation
968 that occurred between Attorney General Jeff Sessions and
969 Secretary Ross about an addition of a citizenship question?

970 A I believe so, yes.

971 Q How many conversations?

972 A I think I'm aware of maybe two or three
973 conversations.

974 Q When did those conversations occur that you are
975 aware of?

976 A Again, I wasn't a party to those conversations.
977 It's my understanding that there was at least one
978 conversation before I received a phone call from the
979 Attorney General and Mary Blanche Hankey, and there may
980 have been one or two other conversations thereafter.

981 Q So just to get the timeline, one before that
982 late August, early September phone call that you received
983 from Mary Blanche and Attorney General Jeff Sessions; is

984 that correct?

985 A That's my understanding.

986 Q Sure.

987 A I don't know. Again, I wasn't a party to any of
988 those conversations. I don't know.

989 Q Sure.

990 And then a few that happened after that point,
991 did those conversations, to your knowledge, happen before
992 the December 12th, 2017, letter?

993 A Yes.

994 Q So in that September to December time frame.

995 A Correct.

996 Q Were you aware of anyone else being present
997 during those conversations with Attorney General Jeff
998 Sessions and Secretary Ross?

999 A No, I am not. I have no awareness one way or
1000 the other. I should specify. Since I wasn't a party to
1001 the conversations, I don't know.

1002 Q Did you become aware at any point about the
1003 contents of those conversations between Secretary Ross and
1004 Attorney General Jeff Sessions?

1005 A Yes, at least some of the content.

1006 Q Did you become aware of the content of the
1007 conversation that happened before you became involved in
1008 the citizenship question?

1009 A Yes.

1010 Q When did you become aware of that?

1011 A On that phone call, meaning the late August,
1012 early September phone call.

1013 Q And then did you become aware of the contents of
1014 the conversation that happened between September, that
1015 phone call, and the December 12th letter?

1016 A Yes, at least some of the contents.

1017 Q Who made you aware of the contents of those
1018 conversations?

1019 A It was the Attorney General.

1020 Q What did you discuss during those conversations?

1021 Mr. Gardner. I instruct the witness not to
1022 answer.

1023 Q Let me just be very clear.

1024 The conversation that happened prior to -- when
1025 they called you in September -- late Septem- -- I'm just
1026 going to say early September from now on if that's okay.

1027 A That's fine.

1028 Q Prior to the conversation that happened in early
1029 September 2017, after the Attorney General informed you of
1030 the conversation and the contents of that with Secretary
1031 Ross, what did he tell you about the contents of those
1032 conversations?

1033 Mr. Gardner. I instruct the witness not to

1034 answer.

1035 Q And as per the conversations that happened
1036 between Attorney General Jeff Sessions and Secretary Ross
1037 between early September and December 12th, 2017, what were
1038 the contents of those discussions between Secretary Ross
1039 and Attorney General Jeff Sessions?

1040 Mr. Gardner. Same instruction.

1041 BY MR. ANELLO.

1042

1043 Q Did -- I want to ask you a few more questions
1044 about what you learned about the conversations between
1045 Secretary Ross and the Attorney General. Did you ever
1046 learn that Secretary Ross and the Attorney General -- let
1047 me start here.

1048 You learned that they discussed the citizenship
1049 question, correct?

1050 A That's correct.

1051 Q The Attorney General told you that.

1052 A That's correct.

1053 Q Did he tell you that they discussed how adding a
1054 citizenship question could impact census participation by
1055 immigrants and noncitizens?

1056 Mr. Gardner. I instruct the witness not to
1057 answer.

1058 Q Did the Attorney General tell you that he

1059 discussed with the Secretary of Commerce how adding a
1060 citizenship question could impact congressional
1061 apportionment?

1062 Mr. Gardner. I instruct the witness not to
1063 answer.

1064 Q Did he tell you that he -- "he" being the
1065 Attorney General -- discussed with the Secretary of
1066 Commerce that adding citizenship could impact the outcome
1067 of any election?

1068 Mr. Gardner. I instruct the witness not to
1069 answer.

1070 Q Did the Attorney General tell you that he and
1071 Secretary Ross discussed concealing the process by which
1072 the citizenship would be added to the census?

1073 Mr. Gardner. I instruct the witness not to
1074 answer.

1075 Mr. Anello. Just to be clear, is the
1076 Department of Justice asserting some confidentiality over
1077 concealment from the public of the nature of the decision?

1078 Mr. Gardner. I'm just plainly stating that
1079 your question implicates the Department of Justice's
1080 confidentiality and litigation interests.

1081 Mr. Anello. My question is whether the
1082 Department of Justice was concealing information.

1083 Mr. Gardner. No, your question was about a

1084 specific conversation that the Attorney General and the
1085 Secretary of Commerce had that was then disclosed to
1086 Mr. Gore.

1087 Mr. Anello. Let me rephrase that question
1088 then.

1089 Q Did the Department of Justice seek to conceal --
1090 did anyone at the Department of Justice seek to conceal any
1091 part of the process by which the citizenship question was
1092 added to the census?

1093 A Absolutely not. I don't think there's any basis
1094 for that implication.

1095 Q Well, that's something we can talk about off the
1096 record, but ...

1097 Did you ever -- were there ever any
1098 conversations about concealing discussions between the
1099 Department of Commerce and the Department of Justice on
1100 this topic?

1101 Mr. Gardner. Between whom? I'm sorry, I'm not
1102 clear what your question is. Can you repeat it.

1103 Q Were you ever involved in any discussions about
1104 efforts to conceal communications between the Department of
1105 Justice and the Department of Commerce regarding the
1106 citizenship question?

1107 Mr. Gardner. You can answer.

1108 A No.

1109 BY MS. ANDERSON.

1110

1111 Q One of the people you said that you spoke with
1112 from the Department of Commerce around this time, in that
1113 early September time frame, was Wendy Teramoto; is that
1114 correct?

1115 A Yes. I believe I spoke to her on September 16th
1116 of 2017.

1117 Q And Peter Davidson asked you to reach out to
1118 Wendy Teramoto?

1119 A That's correct.

1120 Q When did he ask you to do that?

1121 A It would have been maybe a few days before that.

1122 Q Why did he ask you to reach out to Wendy?

1123 A There was some confusion at the Department of
1124 Commerce as to what my job was, and Ms. Teramoto had been
1125 tasked with scheduling a call between the Secretary of
1126 Commerce and the Attorney General and thought that I could
1127 be of assistance in that endeavor.

1128 Q So you said that you spoke with her on September
1129 16th. Is that correct?

1130 A That's correct.

1131 Q And that conversation was about -- or at least
1132 about in part the citizenship question; is that correct?

1133 A I understood it to be about scheduling a call

1134 for the Secretary and the Attorney General to discuss that
1135 topic.

1136 Q Did you discuss that topic with Wendy Teramoto?

1137 A Not really, no.

1138 Q Yes or no? Did you discuss it or did you not
1139 discuss it?

1140 A I would -- no. I mean, we really discussed the
1141 scheduling issue, and she asked if I could help schedule a
1142 call on that topic, and I said that's not my job and I'll
1143 put you in contact with somebody who can potentially help
1144 you manage schedules.

1145 Q And you said before, was that the only
1146 conversation you had with Wendy Teramoto?

1147 A Yes. It's the only one I can recall.

1148 Q So after -- after you received -- or you spoke
1149 with Wendy Teramoto, you connected her with Danielle
1150 Cutrona, correct?

1151 A That's correct.

1152 Q And Danielle works at the Department of Justice;
1153 is that correct?

1154 A Yes.

1155 Q You connected them on September 16th as well; is
1156 that correct?

1157 A That's correct, yes.

1158 Q At that point when you introduced Danielle to

1159 Wendy, you said that Danielle is the person to connect
1160 about the issue we discussed today --

1161 A That's correct.

1162 Q Presumably September 16th, correct?

1163 A Yes.

1164 Q -- scheduling to connect Secretary Ross with the
1165 Attorney General Jeff Sessions to discuss the citizenship
1166 question.

1167 A That's correct.

1168 (Exhibit 1 was marked for identification and
1169 attached to the transcript.)

1170 Q So I've handed you a copy of a document that
1171 I've marked now as Exhibit 1. Do you have a copy of that?
1172 I can hand you the one that I've actually marked. We can
1173 trade.

1174 Mr. Gardner. Why don't you trade.

1175 Ms. Anderson. We can trade. I think that's a
1176 little bit --

1177 Q I handed you a document that's marked as Exhibit
1178 1.

1179 A Okay.

1180 Q I would like you to turn to the second page of
1181 that document, the bottom of which -- it's numbered. It's
1182 numbered 0002637. Are you on that page?

1183 A I am.

1184 Q And this email, the email I'm going -- there are
1185 several emails on the page so I'm just going to point you
1186 towards a particular email.

1187 Oh, I'm sorry.

1188 If you just want to review that document for
1189 just one second.

1190 A Sure. (Document review.)
1191 Ms. Anderson. Just give me one second.

1192 Mr. Gardner. Take your time.

1193 Q So the top of that -- I'm actually going to
1194 refer you to the first page, 2636. The top of that is an
1195 email that's dated September 18th, 2017. And it's an email
1196 from Wendy Teramoto to John Gore. That would be you; is
1197 that correct?

1198 A It appears to be.

1199 Q Sure.

1200 That email says, "Hi. AG and Sec spoke.

1201 Please let me know when you have a minute."

1202 Presumably that's referring to Attorney General
1203 Jeff Sessions and Secretary Ross; is that correct?

1204 A I think that's correct.

1205 Q Did you speak to Wendy Teramoto on that day?

1206 A I don't recall speaking to her after this email.

1207 Q And then I want -- I want to go to the second
1208 page -- again, sorry, 2637. There's an email there, the

1209 second email on the page from September 17th, 2017, at
1210 12:10 p.m. from Danielle Cutrona to Wendy Teramoto.

1211 In that Danielle writes, "From what John said,
1212 it sounds like we can do whatever you all need us to do."

1213 Did you say that to Danielle Cutrona?

1214 Mr. Gardner. I instruct the witness not to
1215 answer.

1216 Q What did you mean by that?

1217 Mr. Anello. I'm sorry, are you -- this email
1218 is -- this is an email that I believe you actually produced
1219 in litigation, correct?

1220 Mr. Gardner. That's correct.

1221 Mr. Anello. So are you saying the witness is
1222 not permitted to talk about this document?

1223 Mr. Gardner. I didn't say that.

1224 Mr. Anello. I think he's been asked simply
1225 whether the statement in the document is accurate.

1226 Mr. Gardner. He's been asked whether
1227 Ms. Cutrona's reference to a statement that John might have
1228 told him is accurate. That's what I've objected to. These
1229 aren't John's words.

1230 Ms. Sachsman Grooms. So is this a different
1231 objection?

1232 Mr. Gardner. No, it's the exact same
1233 instruction.

1234 Try to rephrase it. See if we can do it that
1235 way.

1236 Q She then says, "The delay was due to
1237 miscommunication." Did you tell Danielle Cutrona that the
1238 delay was due to miscommunication?

1239 Mr. Gardner. I instruct the witness not to
1240 answer.

1241 Q She then says, "The AG is eager to assist." Did
1242 you tell Danielle Cutrona that the AG was eager to assist?

1243 Mr. Gardner. Same instruction.

1244 Q Did you have a discussion with Danielle Cutrona
1245 prior to connecting her with Wendy Teramoto?

1246 A Yes, I did.

1247 Q When was that conversation?

1248 A It was on the phone on September 16th, 2017.

1249 Q Did you communicate to Danielle Cutrona why you
1250 were connecting her with Wendy Teramoto?

1251 Mr. Gardner. You can answer that with a yes or
1252 no.

1253 A Yes, I did.

1254 Q What did you tell her the reason was for you to
1255 connect her to Wendy Teramoto?

1256 Mr. Gardner. I instruct the witness not to
1257 answer.

1258 Q Did you tell her that you wanted to connect her

1259 to schedule a phone call between the Attorney General and
1260 Secretary Ross?

1261 Mr. Gardner. You can answer that.

1262 A Yes.

1263 Q Did you tell her anything else on that phone
1264 call?

1265 Mr. Gardner. You can answer that with a yes or
1266 no.

1267 A Yes.

1268 Q Did you tell her anything else on that phone
1269 call regarding the addition of a citizenship question?

1270 Mr. Gardner. You can answer that with a yes or
1271 no.

1272 A Yes.

1273 Q Did you tell her at any point during that
1274 conversation about why the Department of Justice was
1275 interested in adding a citizenship question to the census?

1276 Mr. Gardner. You can answer that question yes
1277 or no.

1278 A Yes, to the extent I understand your question.

1279 Q Did you tell her on that phone call anything
1280 about the Attorney General's interest in a citizenship
1281 question?

1282 Mr. Gardner. I'm sorry, can you rephrase that?
1283 That question was a little confusing.

1284 Ms. Anderson. Sure.

1285 Q Did you communicate to Danielle Cutrona on that
1286 phone call anything about what the Attorney General's
1287 interest was in a citizenship question?

1288 Mr. Gardner. I instruct the witness not to
1289 answer.

1290 Q Did you communicate with Danielle Cutrona on
1291 that phone call anything that you had learned from your
1292 discussion or conversation with Wendy Teramoto?

1293 A Anything I learned from Ms. Teramoto?

1294 Q Yes.

1295 A Yes.

1296 Q Were the contents of what you told Danielle
1297 Cutrona that you had learned from Wendy Teramoto anything
1298 besides scheduling?

1299 A No.

1300 BY MR. ANELLO.

1301

1302 Q You've read this email from Danielle Cutrona,
1303 correct?

1304 A Yes, I have.

1305 Q Is it accurate?

1306 Mr. Gardner. I instruct --

1307 Q Are the representations she made accurate?

1308 Mr. Gardner. I instruct the witness not to

1309 answer.

1310 Q When you spoke to Danielle Cutrona, did you tell
1311 Ms. Cutrona what the Attorney General had communicated to
1312 you?

1313 Mr. Gardner. I instruct the witness not to
1314 answer.

1315 Mr. Anello. I'm only asking for a yes or no.

1316 Mr. Gardner. You're asking about the content
1317 of the conversation.

1318 BY MS. ANDERSON.

1319

1320 Q Okay. So after you received an email from Wendy
1321 Teramoto saying AG and Secretary Ross spoke, you learned
1322 that they had, in fact, spoken around that time frame; is
1323 that correct?

1324 A That is correct.

1325 Q Did you become aware of the contents of the
1326 conversation that happened -- I'm going to put it as
1327 September 17th, is that okay, for the purposes of this?

1328 A On or about.

1329 Q On or about September 17th --

1330 A Sure.

1331 Q -- did you become aware of the contents of that
1332 particular conversation between Secretary Ross and Attorney
1333 General Jeff Sessions?

1334 A Am I aware of the contents? Yes, I believe so,
1335 at least some of the contents.

1336 Q Who made you aware of that?

1337 A I think I heard from Danielle Cutrona about it.

1338 Q Was she on the phone call?

1339 A Maybe -- I don't know. I wasn't a party to that
1340 call. And I can't recall whether I specifically heard from
1341 the Attorney General about that conversation or not.

1342 Q What did you learn the Attorney General and
1343 Secretary Ross spoke about on that phone call?

1344 Mr. Gardner. I instruct the witness not to
1345 answer.

1346 Q Did Attorney General Jeff Sessions ask you to do
1347 anything after his phone call with Secretary Ross?

1348 Mr. Gardner. You can answer that with a yes or
1349 no.

1350 A No.

1351 Q Did anyone else ask you to do anything after
1352 Secretary Ross and Attorney General Jeff Sessions spoke on
1353 or about September 17th, 2017?

1354 A No.

1355 Q Did the Department of Justice's position change
1356 regarding the addition of a citizenship question after
1357 Attorney General Jeff Sessions and Secretary Ross spoke on
1358 or about September 17th, 2017?

1359 Mr. Gardner. I'm going to instruct the witness
1360 not to answer.

1361 Q Were you aware of any conversations between
1362 Attorney General Jeff Sessions and Kris Kobach regarding a
1363 citizenship question?

1364 A No.

1365 Q Were you aware of any conversations between
1366 Attorney General Jeff Sessions and Steve Bannon about the
1367 addition of a citizenship question?

1368 A No.

1369 Q Were you aware of any conversations with anyone
1370 else at the Department of Justice and Kris Kobach about an
1371 addition of a citizenship question?

1372 A No.

1373 Q Were you aware of any conversations between
1374 anyone at the Department of Justice and Steve Bannon about
1375 an addition of a citizenship question?

1376 A No.

1377 Q Were you aware of any conversations between
1378 Attorney General Jeff Sessions and the White House about an
1379 addition of a citizenship question?

1380 A So, can I just ask for clarification? You keep
1381 asking me, was I aware, were you aware. Are you talking
1382 about a specific time frame or at any point in time?

1383 Mr. Anello. Is the question you're trying to

1384 clarify --

1385 Mr. Gardner. At what point did he know.

1386 Mr. Anello. -- once you became aware of the
1387 conversation?

1388 Mr. Gore. Well, that assumes there's a
1389 predicate, but you're asking a past-tense question, "Were
1390 you aware?" Are you referring to on September 17th or 18th
1391 or ever?_

1392 Q No, I'm referring to ever, yes.

1393 A I'm not aware of any conversations between the
1394 Department of Justice and Attorney General Sessions and any
1395 of the other individuals you've named.

1396 Q Okay. So I think we paused --

1397 A At any point in time.

1398 Q Sure.

1399 I think we paused on whether Attorney General
1400 Jeff Sessions had spoken with anyone at the White House
1401 regarding this issue. Is your answer -- it remains no on
1402 that as well?

1403 A I have no awareness that he ever spoke with
1404 anyone at the White House regarding this issue.

1405 Q Do you have any awareness of anyone speaking --
1406 from the Department of Justice speaking with anyone at the
1407 White House besides the conversation you identified with
1408 John Zadrozny in October of 2017?

1409 A No, but I will clarify that, as I recall that
1410 conversation with Mr. Zadrozny, it was a conference call in
1411 which Rachael Tucker and Gene Hamilton also participated,
1412 but I don't recall anyone else participating on that call.

1413 Q And no other --

1414 A So it wasn't just -- I'm just trying to clarify.
1415 It wasn't just Mr. Zadrozny and me. Rachael and Gene were
1416 also on the call, as I recall.

1417 Q And that was your only conversation, that you're
1418 aware, people from the Department of Justice and people
1419 from the White House.

1420 A That is correct.

1421 Q Okay. You said one of the other people -- let
1422 me just -- you said one of the other people from the
1423 Department of Commerce that you had a discussion with was
1424 Peter Davidson, or discussions with.

1425 A That is correct.

1426 Q And Peter Davidson initiated those conversations
1427 with you; is that correct?

1428 A Yes, he did.

1429 Q How did he get in contact with you?

1430 A Called me.

1431 Q Did he tell you why he called?

1432 A Yes.

1433 Q Why did he call?

1434 A He called to discuss the Department possibly
1435 requesting reinstatement of a citizenship question on the
1436 2020 census questionnaire.

1437 Q Did he tell you how he came to come in contact
1438 with you in particular at the Department of Justice?

1439 A I believe he did.

1440 Q How?

1441 Mr. Gardner. I instruct the witness not to
1442 answer.

1443 Q Did Peter Davidson tell you that someone had
1444 told him to contact you?

1445 Mr. Gardner. Same instruction.

1446 Q Had you spoken with anyone else at the
1447 Department of Commerce prior to Peter Davidson contacting
1448 you?

1449 A No.

1450 Q So he was your first point of contact from the
1451 Department of Commerce; is that correct?

1452 A That is correct.

1453 BY MR. ANELLO.

1454

1455 Q So that conversation with Mr. Davidson, you said
1456 he told you the reason he was calling was to inquire about
1457 the Department of Justice requesting a citizenship question
1458 being added on the census. That's what you just said,

1459 correct?

1460 A I don't think I said to inquire. He called me
1461 to discuss that issue.

1462 Q To discuss the Department of Justice making that
1463 request.

1464 A Potentially, yes.

1465 Q And why did he tell you he was calling to
1466 discuss that?

1467 Mr. Gardner. Same instruction.

1468 Q Did he express a particular view on whether the
1469 Department of Justice should make that request?

1470 Mr. Gardner. Same instruction.

1471 BY MS. ANDERSON.

1472

1473 Q Did he provide a reason why or did he ask you
1474 why you might be interested in making that request?

1475 Mr. Gardner. Same instruction.

1476 Q Did you -- what did you do after -- did you do
1477 anything in particular after you had your conversation with
1478 Peter Davidson?

1479 A No.

1480 Q Did you follow up with anyone else following
1481 your conversation with Peter Davidson besides Wendy
1482 Teramoto?

1483 A No. Just to clarify, I had many conversations

1484 with Mr. Davidson, and I'm answering with respect to all of
1485 them. I don't recall doing anything in particular in
1486 response to his phone calls.

1487 Q How many conversations would you say you had
1488 with Peter Davidson between -- between when he first
1489 contacted you --

1490 A At any time?

1491 Q Yes.

1492 A I think I said earlier it was about a dozen.

1493 Q Were they all by phone?

1494 A Yes, they were.

1495 Q Did you take any notes during those phone calls?

1496 A No, I did not.

1497 Q Was anyone else ever on those phone calls
1498 besides you and Peter Davidson except for that one or two
1499 phone calls you mentioned with James Uthmeier?

1500 A No.

1501 Q Did Peter Davidson provide any documentation to
1502 you throughout this time period?

1503 A No, he did not.

1504 Q Did you provide any documentation to Peter
1505 Davidson besides perhaps the legal research that you
1506 mentioned earlier?

1507 A No, and I didn't provide him any legal research,
1508 but we discussed it. I provided him no documents.

1509 Q You called Peter Davidson on November 28th,
1510 2017; is that correct?

1511 A If you say so. I don't recall exactly when I --
1512 that I called him on that date, but I think there's a
1513 document in the record indicating that I did call him on
1514 that date.

1515 Q And that would be consistent with your
1516 recollection that you had a dozen phone calls in this time
1517 period.

1518 A Yes, that I had phone calls with him over that
1519 time period. He initiated the first one. I can't remember
1520 if I ever initiated phone calls or if I just simply called
1521 him back every time. But we talked over the phone.

1522 Q And during those dozen or so conversations, you
1523 discussed the citizenship question; is that correct?

1524 A That's correct.

1525 Q Did you discuss where DOJ was in their
1526 production of a possible request to the Department of
1527 Commerce?

1528 Mr. Gardner. I instruct the witness not to
1529 answer.

1530 Q You testified -- you stated earlier that he
1531 contacted you to see whether the Department of Justice
1532 would consider making a request to the Department of
1533 Commerce; is that correct?

1534 A I think what I said is that he contacted me to
1535 discuss the possibility of the Department requesting
1536 reinstatement of the citizenship question on the census
1537 questionnaire.

1538 Q Did you discuss that topic at every single one
1539 of your later conversations or at some point did you
1540 discuss other things?

1541 A We certainly discussed that at every one of our
1542 conversations. I can't remember -- I believe I had a
1543 conversation with him at one point where he was quite
1544 literally on a ski slope, and so I asked him how the ski
1545 conditions were on that particular day. But other than
1546 that -- we may have exchanged pleasantries, but every
1547 conversation we had was about that topic.

1548 Mr. Anello. Did he -- did Mr. Davidson tell
1549 you in any of those calls that he was calling on the
1550 instructions of Secretary Ross?

1551 Mr. Gardner. I instruct the witness not to
1552 answer.

1553 Mr. Anello. Did he provide any information to
1554 you about Secretary Ross' views on the citizenship
1555 question?

1556 Mr. Gardner. Same instruction.

1557 Q Did you discuss with the Attorney General the
1558 fact that you had been in contact with Peter Davidson?

1559 Mr. Gardner. I instruct the witness not to
1560 answer the question.

1561 Q Did you discuss with the Attorney General
1562 anything that you had discussed with Peter Davidson?

1563 Mr. Gardner. Same instruction.

1564 Q Did you do anything in response to David -- your
1565 discussions with Peter Davidson?

1566 A I don't recall doing anything specifically in
1567 response to those discussions.

1568 Q Did Peter Davidson direct you to look at any
1569 documents or any particular legal research during your
1570 conversations?

1571 Mr. Gardner. Same instruction.

1572 Ms. Sachsman Grooms. Why so many conversations
1573 with Peter Davidson?

1574 Mr. Gardner. Objection. To the extent you can
1575 answer that question without divulging confidential or
1576 litigation interests of the Department, you may do so.

1577 Otherwise, I instruct you not to answer.

1578 Mr. Gore. I don't know.

1579 Q Did he always call you?

1580 A Yes.

1581 Ms. Sachsman Grooms. Was he checking on the
1582 status? Was that what was going on?

1583 Mr. Gardner. Same instruction.

1584

1585 Mr. Anello. Did the calls stop once the DOJ
1586 sent its letter?

1587 Mr. Gore. I can't recall when the last time
1588 was when I spoke to Mr. Davidson.

1589 Ms. Anderson. I think we've reached our hour.
1590 If we could go off the record for five minutes.

1591 (A brief recess was taken.)

1592 Mr. Castor. Back on the record. It's 10:47.
1593 I'm Steve Castor with the Republican staff.

1594 I'm going to mark as Exhibit 2 the
1595 December 12th letter.

1596 (Exhibit 2 was marked for identification and
1597 attached to the transcript.)

1598 EXAMINATION

1599 BY MR. CASTOR.

1600 Q At the time you were the acting Assistant
1601 Attorney General for the Civil Rights Division when this
1602 letter was prepared?

1603 A Yes, I was.

1604 Q Could you help us understand why that letter
1605 went out under the Justice Management Division letterhead
1606 and why Mr. Gary signed it?

1607 A Sure, I would be happy to. Mr. Gary serves as
1608 general counsel of the Justice Management Division, and one

1609 of his responsibilities on behalf of the Department of
1610 Justice is to make formal request to the Census Bureau
1611 whenever the Department is seeking addition of questions to
1612 the census questionnaire or the American Community Survey.

1613 So Mr. Gary had signed these letters -- letters
1614 such as this one in the past on behalf of requests that had
1615 been made by the Department, including by the Civil Rights
1616 Division. There had been a request related to the American
1617 Community Survey, I believe, sent in about 2016, and
1618 Mr. Gary is the point person -- think of him as the point
1619 person between the Department of Justice and the Census
1620 Bureau for formal requests like this one. So it is
1621 consistent with standard practice and process in the
1622 Department of Justice for Mr. Gary to be the signatory for
1623 this letter.

1624 Q And you obviously drafted the letter?

1625 A As I testified before, I wrote the first draft
1626 of the letter, and I think the record reflects that several
1627 other people made comments or suggested edits to the
1628 letter, including Mr. Gary. And this is the final product,
1629 represents the Department's letter.

1630 Q You testified earlier that you first started
1631 looking at this question the end of August, beginning of
1632 September, and this letter is dated December 12th. Is it
1633 fair to say that the Department was considering the issue

1634 at the heart of the matter here for that time period?

1635 A Yes.

1636 Q September, October, November, it's about three
1637 and a half months; is that fair?

1638 A Sounds about right.

1639 Q Is it fair to consider that as a thoughtful
1640 effort by the Justice Department before this letter was
1641 sent?

1642 A Yes.

1643 Q And by "thoughtful," I think if the letter was
1644 sent, you know, on September 1st or September 2nd, you
1645 might be -- you might not be able to call that a thoughtful
1646 process, but this is the product of three months of careful
1647 consideration; is that fair?

1648 A Yes, that's fair.

1649 Q Could you walk us through -- there's a Supreme
1650 Court oral argument on April 23rd; is that correct?

1651 A That sounds right, yes.

1652 Q And the Supreme Court is looking at the New York
1653 case, but there are several other pieces of litigation
1654 surrounding this question right now. Is that correct?

1655 A That's my understanding, yes.

1656 Q Are you aware of the various cases?

1657 A I have limited knowledge and awareness of the
1658 cases. Those cases are being handled by the Civil Division

1659 of the Department of Justice on behalf of the Department of
1660 Commerce, which is the defendant in those cases. The Civil
1661 Rights Division is not involved in those cases. We're not
1662 counsel of record. We're not managing the day-to-day on
1663 those cases, so what I know is what I've seen reported in
1664 the press, and I've read portions of the New York decision.

1665 There's a case in New York, a case in
1666 California, and a case in Maryland, and I think there might
1667 be one more case. And I understand the Supreme Court has
1668 granted certiorari before judgment in the New York case.

1669 The Department filed its opening brief on the
1670 merits in that case yesterday, and I do believe the oral
1671 argument before the Supreme Court is on April 23rd.

1672 Q It hasn't been considered at the appellate
1673 level; it went from District Court straight to the Supreme
1674 Court; is that right?

1675 A That's correct.

1676 Q That's relatively unusual, right?

1677 A In my experience, it is.

1678 Q And would you say it's fair to conclude that
1679 this is a unique issue, relatively important question for
1680 the Supreme Court to reach down and take it right out of
1681 the District Court level?

1682 A Like I said, it's very unusual. I have a fair
1683 amount of experience litigating before the Supreme Court.

1684 I'm not aware of any case where this has happened before.
1685 It certainly never happened in any of my cases. I can't
1686 characterize what the court's thinking on that might be,
1687 but I can certainly say it's an unusual procedural posture
1688 for a case to arrive in the Supreme Court.

1689 Q I know you're not litigating the case, but what
1690 are the questions presented as you understand them? You
1691 got into this a little bit with your May testimony before
1692 the Committee.

1693 A I don't know much about the issues presented
1694 except that the appeal on behalf of the United States and
1695 the Department of Commerce is an appeal from Judge Furman's
1696 findings of fact and conclusions of law. And, as I have a
1697 very limited understanding of what Judge Furman decided in
1698 that 277-page opinion, but I think he found a violation of
1699 the Administrative Procedure Act, I would imagine that
1700 that's being appealed from, as well as any other claims he
1701 may have upheld in that opinion.

1702 Q Bear with me with this question. We're not as
1703 expert in the history of the citizenship question by the
1704 Census Bureau, but as I understand it, the question has
1705 been asked of -- by the census probably since the beginning
1706 of time. Is that fair?

1707 A I don't know exactly when it was started. What
1708 I can tell you is that there is a citizenship question on

1709 the census questionnaire that went to every household
1710 through the 1950 census, as I recall. It was later moved
1711 to what's called the long form of the census, which was a
1712 longer form with more questions, as the name implies, that
1713 went to about one out of every six households from 1960 to
1714 2000.

1715 That was the data -- that long-form
1716 questionnaire included a question about citizenship. And
1717 that was -- data derived from that long-form questionnaire
1718 is what the Department of Justice and other plaintiffs
1719 relied upon when bringing Section 2 vote dilution cases
1720 where citizenship rights are at issue or can be at issue.

1721 There's no dispute that the Department of
1722 Justice and other plaintiffs bringing Section 2 vote
1723 dilution cases need citizenship data and need that data at
1724 the block level. The question here is where that data
1725 comes from.

1726 So between 1960 and 2000, it came from the long
1727 form of the census questionnaire. After the 2000 census,
1728 in about 2004 and 2005, the Census Bureau decided no longer
1729 to use the long-form questionnaire and started using what's
1730 called the American Community Survey. The American
1731 Community Survey is sent, I believe, to about one out of
1732 every 38 households every year across the country.

1733 It's a very long survey. I think it takes 45

1734 minutes to an hour to complete. It asks all kinds of
1735 questions about demographics and socioeconomics. I think
1736 one of the questions is whether you have a dishwasher in
1737 the house or something like that, but it does ask a
1738 citizenship question.

1739 And that -- the results of the American
1740 Community Survey are aggregated into one -- now one- and
1741 five-year rolling averages. There used to be a one-year,
1742 three-year, and five-year. They got rid of the three-year.
1743 Now they're one-year and five-year averages.

1744 That's the data that was used in the 2010
1745 redistricting cycle with respect to citizenship, came from
1746 the American Community Survey. And it was used both by map
1747 drawers and by litigants litigating cases under Section 2
1748 or under the one person, one vote mandate of the
1749 Constitution or racial gerrymandering cases or other cases
1750 that might have arisen under state law.

1751 Q You walked through in the first hour the sort of
1752 a roster of folks that you spoke with about this issue.

1753 A Correct.

1754 Q Would you be able to go through and help us
1755 understand where these people fit into the big picture.

1756 A I can certainly tell you --

1757 Q To the extent you know.

1758 A -- some job descriptions about each of these

1759 people.

1760 Q Yeah.

1761 A Obviously, Attorney General Sessions was the
1762 Attorney General. Thank you.

1763 Mr. Gardner. He's here all day.

1764 Mr. Gore. I take tips too.

1765 A The Office of Attorney -- within the Office of
1766 the Attorney General, the Attorney General has a chief of
1767 staff and has what are called counsel or senior counsel to
1768 the Attorney General. It's his personal staff that advises
1769 him. And so, Rachael Tucker, Danielle Cutrona, and Gene
1770 Hamilton were all counsel to the Attorney General. I
1771 believe at the time Mary Blanche Hankey -- I had a
1772 conversation with Mary Blanche Hankey. That was her title
1773 as well. She moved on to a different role in the
1774 Department. She may have been the White House liaison at
1775 the time as well. I can't recall.

1776 Underneath -- within the organizational
1777 structure of the Department of Justice, the next office
1778 below the Office of Attorney General is the Office of the
1779 Deputy Attorney General. The current Deputy Attorney
1780 General is Mr. Rosenstein. At the time, I spoke with Bob
1781 Troester, as I mentioned before, T-R-O-E-S-T-E-R.
1782 Mr. Troester is a long-time career lawyer at the Department
1783 of Justice. He was an Assistant United States Attorney in

1784 Oklahoma. I think he's on his second or third tour of duty
1785 now as the acting U.S. Attorney in Oklahoma. He at the
1786 time was on detail to the Office of Deputy Attorney
1787 General, serving as what's called an Associate Deputy
1788 Attorney General, and was our point of contact in that
1789 office for civil rights-related issues.

1790 I mentioned Rachel Brand was the Associate
1791 Attorney General. That made her the third highest ranking
1792 official in the Department after Mr. Sessions and Deputy
1793 Attorney General Rosenstein. Her principal deputy was
1794 Jesse Panuccio. And Patrick Hovakimian -- I can't remember
1795 if he was the deputy or -- I think he was a deputy in her
1796 office, but he was our point of contact in that office. He
1797 had the civil rights portfolio.

1798 Q And then the Justice Management Division, does
1799 that report up through the Associate Attorney General?

1800 A I don't know.

1801 Q Or is it up through the DAG?

1802 A It's one of -- either one or both. I'm not
1803 sure. I don't know where it fits in the org chart.

1804 Q And the Civil Rights Division reports up through
1805 the DAG?

1806 A We report through the Associate Attorney
1807 General, then to the Deputy Attorney General and then to
1808 the Attorney General.

1809 Q Okay.

1810 How about Bethany Pickett? Have we talked
1811 about her yet?

1812 A Yes, Bethany Pickett was counsel in the Civil
1813 Rights Division's Office of Assistant Attorney General,
1814 which was the office where I worked, and that's about it.

1815 Q How long were you the Acting Assistant Attorney
1816 General for the Civil Rights Division?

1817 A I was Acting Assistant Attorney General for just
1818 over 15 months while the Senate very thoroughly deliberated
1819 the nomination of Eric Dreiband.

1820 Q And currently you are the principal deputy?

1821 A That's correct.

1822 Q How many deputies are there in the Civil Rights
1823 Division?

1824 A There's a principal deputy and then four
1825 deputies.

1826 Q How is the work split up? What are the various
1827 responsibilities of the four deputies?

1828 A So each of the deputies has a portfolio. So the
1829 Civil Rights Division is divided into sections that perform
1830 the law enforcement mission of the division, and each
1831 deputy has oversight over some number of those sections
1832 depending on what their portfolio is. And things flow up
1833 from the sections to the deputy level and then ultimately

1834 to the principal deputy and the Assistant Attorney General
1835 where appropriate.

1836 Q Did you have any assistance in preparing the
1837 December 12th letter? Did you have any staffers helping
1838 you?

1839 A As I mentioned before, I think the record
1840 reflects that I received comments on and edits to the
1841 letter from a variety of people.

1842 Q But you primarily drafted it, or did you assign
1843 it out to a more junior attorney?

1844 A I did the drafting.

1845 Q Prior to coming to the Justice Department, did
1846 you litigate any Section 2 Voting Rights Act claims?

1847 A Yes, I did.

1848 Q Could you maybe just explain a little bit about
1849 your experience in that space.

1850 A Certainly. So I handled a number of voting
1851 rights cases while I was in private practice. I had a
1852 case, a racial gerrymandering case with Virginia. I had
1853 some Section 2 and equal population, one person, one vote
1854 cases in South Carolina and New York as well.

1855 Q So you have some experience in this topic area?

1856 A Yes, I do.

1857 Q Did you personally believe that the Justice
1858 Department needed additional information from the census as

1859 reflected in this letter?

1860 Mr. Gardner. I'm going to instruct the witness
1861 not to answer.

1862 Q Did you believe in the content of the letter
1863 that you were preparing or was it simply an assignment?

1864 Mr. Gardner. Same instruction.

1865 Q If the Justice Department received more accurate
1866 citizenship data, would that be of assistance in performing
1867 the mission of enforcing the Voting Rights Act?

1868 A I believe the Department's letter speaks for
1869 itself and states what the Department's position is on that
1870 question. The Department is always looking at the academic
1871 literature, looking for the best sources of data to carry
1872 out its law enforcement mission. That's certainly what we
1873 do in the Civil Rights Division. We want to have the best,
1874 most complete, most comprehensive, and most accurate set of
1875 data on all the questions that we deal with, including a
1876 citizenship question where it's implicated by Voting Rights
1877 Act cases.

1878 So, our goal is to collect as much data as we
1879 possibly can to identify potential violations of the Voting
1880 Rights Act and bringing enforcement actions where
1881 appropriate.

1882 Q And the most accurate data; is that correct?

1883 A Sure.

1884 Q Mr. Zadrozny, of the Domestic Policy Council,
1885 how did he enter into the mix here?

1886 A As I believe I've testified previously, both
1887 today and in my deposition, I was -- I received an invite
1888 to be on a conference call in which Mr. Zadrozny also
1889 participated, along with Rachael Tucker and Gene Hamilton.

1890 Q And when was that?

1891 A I believe it was in October of 2017.

1892 Q Do you remember the -- how long that call
1893 lasted?

1894 A Half an hour, maybe.

1895 Q Were there any requests from Mr. Zadrozny?

1896 Mr. Gardner. Objection.

1897 Q Were there any marching orders?

1898 Mr. Gardner. To the extent you can answer that
1899 question without divulging confidential or litigation
1900 interests of the Department, you may do so. Otherwise, I
1901 instruct you not to answer.

1902 Mr. Gore. Can I give a yes or no to that?

1903 Mr. Gardner. You may.

1904 A No.

1905 Q Was the information exchanged bilateral or was
1906 the Justice Department giving information to the Domestic
1907 Policy Council? Was the Domestic Policy Council giving
1908 information to you? Could you help us understand sort of

1909 the contours of that call.

1910 Mr. Gardner. Same instruction. To the extent
1911 you can answer that question without divulging the
1912 confidential and litigation interests of the Department,
1913 you may do so.

1914 A What I can say is all four participants who I
1915 named who participated in that call spoke during the call.

1916 Q I guess my question was, was the purpose of the
1917 call, to the extent you know, because the Domestic Policy
1918 Council wanted to hear from you, wanted an update, or was
1919 the purpose of the call something else?

1920 Mr. Gardner. Same instruction.

1921 A I don't think I can answer that question
1922 consistent with that instruction.

1923 Q Did you ever speak with a little known official
1924 named Steve Bannon?

1925 A I have never spoken to Mr. Bannon in my life.

1926 Q Ever speak with any other official with --
1927 associated with the White House?

1928 Mr. Gardner. About the census question?
1929 Mr. Castor. Yes.

1930 A Specifically about the census question, no, just
1931 Mr. Zadrozny.

1932 Q Okay. And is that the sum total of your
1933 communications with the White House staff about the census?

1934 A About the census, yes.

1935 Q The individuals at the census -- I'm sorry -- at
1936 the Commerce Department that you spoke with, obviously we
1937 identified Mr. Davidson as the general counsel. And then
1938 you named two other people at the Commerce Department, Ms.
1939 Teramoto and Mr. Uthmeier?

1940 A Uthmeier.

1941 Q How do they fit into this? Do you know what
1942 their jobs were?

1943 A Ms. Teramoto at the time was Secretary Ross'
1944 chief of staff, and Mr. Uthmeier was at least at that time
1945 employed in the Office of General Counsel of the Commerce
1946 Department. I don't know whether he's still in that office
1947 or somewhere else, but I understand that he's still with
1948 the Commerce Department.

1949 Q Did you ever get a readout from the telephone
1950 call between -- or any of the communications between the
1951 Secretary and the Attorney General?

1952 Mr. Gardner. You can answer that with a yes or
1953 no.

1954 A Yes.

1955 Q Do you know how many communications there were,
1956 how many phone calls there were between the Secretary and
1957 the Attorney General?

1958 A I think I stated earlier today that I'm aware of

1959 one phone call before I received the late August, early
1960 September -- early college football season call from the
1961 Attorney General and Mary Blanche Hankey. I believe I'm
1962 aware of maybe two further conversations between the
1963 Attorney General and Secretary Ross related to this
1964 particular issue.

1965 Q Did you get readouts from all of them or ...

1966 A Yes, I did. That's how I know about them.

1967 Q Is it still the position of the Justice
1968 Department that the census should include a citizenship
1969 question?

1970 A To my knowledge, that remains the position of
1971 the Justice Department and the Department of Commerce in
1972 the litigation.

1973 Q Did you receive any feedback from other
1974 government agencies other than Department of Commerce about
1975 the inclusion of that question?

1976 A I'm sorry, at what point in time?

1977 Q After the December 12th letter.

1978 A After the December 12th letter?

1979 Q Yes.

1980 A I don't believe so.

1981 Q Did you ever have any communications with the
1982 Department of Homeland Security about the inclusion of this
1983 question?

1984 A At what point in time?

1985 Q After the December 12th letter.

1986 A No, I didn't.

1987 Q Or any other -- any other components, such as

1988 ICE?

1989 A No.

1990 Q Have you ever been involved with any discussions

1991 about use of this data in enforcement actions for

1992 immigration?

1993 Mr. Gardner. Are you talking about discussions

1994 with Homeland Security?

1995 Q Or other Justice Department officials. I mean,

1996 he's just -- he's just testified that after the 12th --

1997 MR. GARDNER. I was just clarifying what your

1998 question was.

1999 To be fair, could you just ask the question one

2000 more time so we're all clear what you're asking.

2001 Q After the December 12th letter, did you have any

2002 communications about use of this data for immigration

2003 enforcement matters?

2004 A No, I did not, except I believe I was asked

2005 about that when I testified in front of the full committee,

2006 and I testified to the best of my knowledge as to how this

2007 data could or could not be used, but I'm not an expert on

2008 that.

2009 Q So, to your knowledge, is there anybody at the
2010 Justice Department that wanted this information for
2011 purposes of pursuing immigration enforcement matters?

2012 Mr. Gardner. You can answer that question to
2013 the extent you can do so without divulging confidential or
2014 litigation interests of the Department. Otherwise, I
2015 instruct you not to answer.

2016 A Not to my knowledge.

2017 Q So there's no plan that you're aware of to take
2018 this data, use it to prosecute immigration matters?

2019 Mr. Gardner. Same instruction with the same
2020 caveat.

2021 A Not to my knowledge.

2022 Q What data does the Civil Rights Division receive
2023 from the Census Bureau on a regular basis?

2024 A The Civil Rights Division receives a lot of data
2025 from the Census Bureau, but one -- we are a principal
2026 consumer of the Census Bureau's data and product, and it
2027 falls into a variety of different categories. Virtually
2028 all of the data that we use in the Civil Rights Division is
2029 publicly available. It's aggregate data. We don't get any
2030 individual census responses or any individual questionnaire
2031 responses or any data by any individual person. What we
2032 get is aggregate data at various levels of census
2033 geography, the smallest of which is the census block level.

2034 We get data about citizenship through the
2035 American Community Survey. We get socioeconomic data
2036 through the American Community Survey. We get racial data,
2037 which comes from the short-form census. We also get
2038 Hispanic origin or Latino origin data from both the census
2039 questionnaire, and then we get certain data related to that
2040 from the ACS, including language data.

2041 Every five years the Census Bureau makes
2042 determinations about coverage under Section 203 of the
2043 Voting Rights Act, which is the language minority provision
2044 of that act. And those determinations identify
2045 jurisdictions that have to provide voting-related
2046 materials, ballots, signs, translators, poll workers in the
2047 covered language. That's all done by the American
2048 Community Survey every five years.

2049 So, there's a whole host of data that we
2050 receive. I'm aware of at least one occasion in which we
2051 requested Section 203 data in some kind of table format
2052 that the Census Bureau otherwise wouldn't have produced
2053 publicly, but other than that, I understand that everything
2054 else we've received has been publicly available data,
2055 aggregate data.

2056 Q Completely anonymous.

2057 A Completely anonymous.

2058 Q Do you know if the Census Bureau provides data

2059 to any other government agency that's in any other form?

2060 A I imagine the Census Bureau provides data to
2061 many government agencies, but I don't have any knowledge of
2062 that.

2063 Q But is it all anonymous?

2064 A I would believe so. I don't know particularly.
2065 I'm not an expert on that. I don't work at the Census
2066 Bureau. Title 13 of the U.S. Code places criminal
2067 penalties on unauthorized disclosure of individual census
2068 responses or survey responses to the Census Bureau. I
2069 don't know how all of that works, but I do know that there
2070 are other programs within the government where census data
2071 would be at least relevant, if not important to those
2072 government programs, so I imagine the Census Bureau shares
2073 the data with those agencies.

2074 Q It would be against the law for somebody at the
2075 Census Bureau of the Commerce Department to take specific
2076 information about a specific person and use that to go find
2077 them and prosecute them; is that fair to say?

2078 A I think what -- I think what's -- my
2079 understanding -- I haven't studied Title 13 and I'm not an
2080 expert in that. My understanding is that individuals at
2081 the Census Bureau who handle the individual questionnaires
2082 have to sign a nondisclosure agreement and that an
2083 unauthorized disclosure of one of those questionnaires or

2084 its contents would be a criminal violation of federal law.

2085 Q So, as we understand it, DOJ exclusively uses
2086 the sampling data to determine voting right -- Voting
2087 Rights Act violations?

2088 A That's the use -- I'm sorry, which census data?

2089 Q The sampling data.

2090 A That is a use for which we use it in the Civil
2091 Rights Division. I don't know if there are other uses.

2092 Q Okay. Maybe it would help to just walk us
2093 through the -- what data sampling is for the record and how
2094 the Civil Rights Division uses it.

2095 A Data sampling in particular?

2096 Q Yes.

2097 A Or the data we receive from the Census Bureau?

2098 Q The data you receive from the Census Bureau.

2099 A Sure. So as I mentioned, take the American
2100 Community Survey, for example. That's a sample of data
2101 since it goes to one in every 38 households. It's not
2102 given to everybody, so it's not a hard count. And the --
2103 through the ACS, the Census Bureau can generate estimates
2104 about -- can extrapolate estimates from the survey
2105 responses to a larger population.

2106 And the Census Bureau currently reports the ACS
2107 citizenship data estimates at the level of what's called a
2108 census block group. A census block group is a collection

2109 of census blocks, usually on -- it's an average of about
2110 39. But it could be fewer or it could be a lot more,
2111 depending on how the census has drawn its block groups in a
2112 particular geographic area.

2113 And so we take that data and conduct further
2114 estimates to extrapolate it down to the census block level.
2115 We need census block-level data to identify potential
2116 Voting Rights Act violations for investigation and
2117 appropriate enforcement actions.

2118 Q Can you explain how both the asking and
2119 answering of the citizenship question will help the
2120 Department enforce the Voting Rights Act?

2121 A As I said, as I think the letter speaks for
2122 itself, the Department's trying to get the most accurate,
2123 complete, and comprehensive data on citizenship that it
2124 possibly can, just like it tries to get the most accurate,
2125 complete, and comprehensive data it can on race or on
2126 Hispanic origin or on the language minority issues that are
2127 raised by Section 203 of the Voting Rights Act.

2128 We haven't asked for the ACS to go away. Quite
2129 to the contrary, the letter requests that the ACS continue
2130 both for use in Section 203 cases but also for use in
2131 Section 2 cases. It's a data-driven world, and we think if
2132 we have more data and the best possible data, we can
2133 identify cases and investigations that the Department can

2134 conduct under Section 2 of the Voting Rights Act.

2135 Q Before the September -- late August, early
2136 September communication with the Attorney General, was
2137 adding the citizenship question something that the Civil
2138 Rights Division had planned for or advocated for?

2139 Mr. Gardner. I'm going to instruct the witness
2140 not to answer.

2141 Q Can you help us understand how the lack of data
2142 prior to, I guess, the current situation impacts the
2143 prosecution of Voting Rights Act cases?

2144 A So, as I've explained, we've been making do with
2145 the ACS data --

2146 Q Right.

2147 A -- and extrapolating the ACS block group level
2148 estimates down to the block level to identify potential
2149 investigations and enforcement actions.

2150 Q Right.

2151 A There's, I think, an acknowledgment that the ACS
2152 data is an estimate. The Census Bureau puts confidence
2153 intervals and margins of error around it. And we don't
2154 bring cases unless we can win them. So we've been able to
2155 file cases and litigate them under -- using the ACS data.

2156 We would like to get an additional source of
2157 data because there may be districts or cases out there
2158 where that data provides a clearer picture of what's going

2159 on at the block level and within a particular district or
2160 redistricting plan, and we might be able to identify
2161 additional cases for investigation and potential
2162 prosecution.

2163 Q We may not have time to go through all of this,
2164 as we only have about 30 minutes left, but I guess we could
2165 start. Could you walk us through the Section 2 cases filed
2166 by the Justice Department in 2010 to the extent you can
2167 list them all?

2168 A The Justice Department did not file any Section
2169 2 cases in 2010.

2170 Q Do you know if the Justice Department filed any
2171 in 2009?

2172 A Yes, the Justice Department filed one case in, I
2173 believe it was May 2009. It was a vote dilution case
2174 involving a locality in Florida that ultimately was
2175 resolved by consent decree.

2176 Q Okay. That's one case in 2009?

2177 A Correct.

2178 Q You said there were zero cases in 2010?

2179 A That's correct.

2180 Q How about in 2011?

2181 A Zero cases.

2182 Q 2012?

2183 A Zero.

2184 Q 2013?

2185 A There were three Section 2 cases filed by the
2186 Department in 2013. Only one of those cases was a
2187 redistricting case. That's the case, United States versus
2188 the State of Texas. It was challenges to redistricting
2189 plans drawn by the Texas legislature in 2011 for the State
2190 House and for Congress.

2191 Now, ironically at the time the Justice
2192 Department filed that lawsuit in 2013, the Texas
2193 legislature had already adopted new plans to supersede
2194 those 2011 plans. So the case was in a very unusual
2195 posture.

2196 The Department filed two other Section 2 cases
2197 in 2013. One was a challenge to Texas' voter ID
2198 requirement. Another case -- the style was the United
2199 States versus the State of Texas. And then there was a
2200 case that the Department filed against the State of North
2201 Carolina related to voter ID requirement and several other
2202 voting-related laws that the North Carolina legislature had
2203 enacted.

2204 Q You need data to file these cases, right?

2205 A Yes, you need data to file all of those cases,
2206 and you, in particular, need block-level citizenship data
2207 to file the redistricting cases and vote dilution cases.

2208 Q How many lawyers are there that work on these

2209 cases?

2210 A I don't -- I don't know exactly. We have a
2211 voting section that handles these cases as well as any
2212 other voting-related cases under Section 203 of the Voting
2213 Rights Act. We also enforce the Uniformed and Overseas
2214 Citizens Absentee Voting Act, which protects military
2215 voters and other overseas voters. And we enforce the
2216 National Voter Registration Act, Help America Vote Act, and
2217 the federal laws pertaining to the right to vote.

2218 Q How many lawyers work on Section 2 cases?

2219 A At any given time, I don't know. Any lawyer
2220 within the voting section could be staffed on any case
2221 arising under any of the statutes that we enforce.

2222 Q Could you list all the cases in 2014?

2223 A There were no -- the Department filed zero
2224 Section 2 cases in 2014.

2225 Q Could you list all the cases in 2015?

2226 A The Department filed zero Section 2 cases in
2227 2015.

2228 Q Could you list all the cases in 2016 that were
2229 filed?

2230 A The Department filed zero Section 2 cases in
2231 2016.

2232 Q So, any cases filed in 2017?

2233 A Yes, there was a case filed in January 2017,

2234 United States against Eastpointe, Michigan. That is a vote
2235 dilution claim brought against Eastpointe's at-large method
2236 of electing the city council.

2237 Q How about so far in -- or in 2018?

2238 A The Department filed zero Section 2 cases in
2239 2018.

2240 Q Any this year so far?

2241 A None so far this year.

2242 Q So it's four cases during the previous
2243 administration and one case during the current
2244 administration?

2245 A The 2017 case was actually filed about ten days
2246 before this administration took office. It was filed on, I
2247 think, January 10th or something like that. We've
2248 continued to litigate that case on behalf of the United
2249 States. It's still in District Court. We have, I believe,
2250 cross motions for summary judgment pending with the
2251 District Court.

2252 Q Does the Justice Department collect any of its
2253 own data to enforce the Voting Rights Act or does it rely
2254 exclusively on the Commerce Department?

2255 A I'm not aware of the Justice Department
2256 collecting any citizenship or demographic data.

2257 Q You get that all from the Census Bureau?

2258 A That data, yes.

2259 Q Has the Civil Rights Division ever requested the
2260 raw data from the Census Bureau that could be used to
2261 identify ACS respondents?

2262 A I'm not aware of any such request.

2263 Q Has that request ever come up during litigation
2264 where it was challenged?

2265 A I'm not sure I understand the question, but to
2266 the extent I understand the question, I'm not aware of that
2267 ever happening.

2268 Q I think you answered this before, but the
2269 responses to the -- any of the information collected from
2270 individual respondents on the census can never be used by
2271 the Justice Department or any other law enforcement agency
2272 in any judicial proceeding. Is that fair?

2273 A I don't know the answer to that question because
2274 I haven't studied the issue. It's a legal question about
2275 the contours of Title 13. It's my understanding that Title
2276 13 imposes criminal penalties on the unauthorized
2277 disclosure of census questionnaire responses or other data
2278 collected by the Census Bureau.

2279 I don't know as I sit here today exactly what
2280 the contours of that are. I am not aware of the Department
2281 of Justice bringing any kind of enforcement action against
2282 anyone based on a response to the census questionnaire. I
2283 think I may have read an article suggesting there was some

2284 kind of action in the 1970s against somebody who said or
2285 did something on a census questionnaire, but I don't know
2286 anything about it.

2287 Q What are the penalties if somebody does not fill
2288 out the census form?

2289 A Again, I've not studied that question. That's a
2290 legal question. I don't know what the answer is to that.
2291 I think there may be some penalty somewhere in the federal
2292 code about that. I don't know what it is. I will say it's
2293 my understanding that the Census Bureau counts all of the
2294 information from the census questionnaire that it can, even
2295 from an incomplete questionnaire.

2296 So, let's say, I don't know how many questions
2297 are on the questionnaire as I sit here today, but let's say
2298 there are ten. If somebody answers only eight questions,
2299 the Census Bureau will tally the information received in
2300 response to those eight questions. It doesn't reject the
2301 questionnaire in total. So if somebody for whatever reason
2302 doesn't answer a question or answers it in a way that's
2303 unintelligible, the Census Bureau still collects from that
2304 questionnaire whatever data it can make out.

2305 Q You're required by law to fill out the census
2306 form?

2307 A That's my understanding, but as I said, I
2308 haven't studied it.

2309 Q But in reality nobody ever gets prosecuted for
2310 not filling out their census form, right?

2311 A My understanding is that any such prosecution is
2312 extraordinarily rare to vanishing.

2313 Q Are you aware of any ever?

2314 A As I said, I think I read an article suggesting
2315 there was -- something happened in the 1970s on this, but I
2316 don't know the details of that, and I can't independently
2317 verify that that case even exists.

2318 Q Are you aware of any plan to change that? Is
2319 the Justice Department talking about possibly prosecuting
2320 people going forward for not responding to the census?

2321 Mr. Gardner. I'll instruct the witness not to
2322 answer.

2323 Mr. Castor. On what basis?

2324 Mr. Gardner. You're asking about the
2325 Department of Justice's deliberations about prosecution
2326 plans, correct?

2327 Mr. Castor. Okay.

2328 Mr. Gardner. Is that your question?

2329 Mr. Castor. Right.

2330 Mr. Gardner. Based on confidentiality and
2331 litigation interests, I instruct the witness not to answer.

2332 Q I think we had a hearing during 2018, and
2333 Justice Department officials said there are, in fact, no
2334 plans to prosecute people for failing to respond to the

2335 census. Are you aware of any information to the contrary?

2336 Mr. Gardner. Just to be clear, that's a

2337 different question. You asked whether there any

2338 discussions in the Department. Now is your question are

2339 there current plans? I'll let him answer that question.

2340 A I'm sorry, can you restate your question just so

2341 I understand it.

2342 Q Are you aware of any effort to prosecute people

2343 for failing to answer the census? As I mentioned, there's

2344 been testimony before our Committee that, in fact, there is

2345 not a plan to prosecute people for failing to answer the

2346 census, and that's testimony from Commerce Department

2347 officials.

2348 A I'm not aware of any plan to prosecute.

2349 Q So you're not aware of any reason that that

2350 testimony from the Commerce Department is contradicted?

2351 A No, I'm not.

2352 Q How many times have you been asked to testify

2353 about this topic? You had your deposition. You had your

2354 May 2018 appearance before the Committee. Are there other

2355 instances where you've been on the record?

2356 A Today. Those are the only three instances.

2357 Q Okay. So you gave a deposition in the New York

2358 case?

2359 A I believe it was -- I think it may have been

2360 designated in other cases as well.

2361 Q And that deposition is the only one that you've
2362 given as part of the numerous pieces of litigation?

2363 A Yes. I gave one deposition, and it went the
2364 full seven hours allowed by the federal rules.

2365 Q Are you aware of former Kansas Secretary of
2366 State Kris Kobach?

2367 A I am aware of Mr. Kobach, yes.

2368 Q Have you ever had any communications with him?

2369 A Not on this issue. I met Mr. Kobach once at a
2370 meeting of the National Association of Secretaries of
2371 State. He came over to meet during a lunch and introduced
2372 himself. I believe that's the only time I ever spoke to
2373 him.

2374 Q Do you remember when that was?

2375 A It was in early 2017.

2376 Q Have you ever had any discussions with Stephen
2377 Miller at the White House?

2378 A No, I have not.

2379 Q There's a fellow by the name of Thomas Brunell?

2380 A No, I have not, not on this issue.

2381 Q But on different issues?

2382 A Yes. I believe when I was in private practice,
2383 I had conversations with Mr. Brunell connected to a voting
2384 rights case, but it had nothing to do with the census or

2385 with the Department's request to reinstate a citizenship
2386 question on the census questionnaire. Maybe it's Dr.
2387 Brunell, too, I'm not sure, but I think he's a doctor.

2388 Q Does the Justice Department have any role in the
2389 Commerce Department's submissions to Congress? You know,
2390 the Commerce Department submits a census question to
2391 Congress at two points in time before it's finalized. Does
2392 the Justice Department have a role in that?

2393 A I have no idea.

2394 Q But you probably would know if the -- I mean, if
2395 the Justice Department was involved with the process, you
2396 know, you would likely know that, right?

2397 A I don't know. I don't know one way or the
2398 other.

2399 Q For the 2020 census, Secretary Ross submitted
2400 the topics to Congress on March 28, 2017. This is required
2401 by Title 13. And then the final questions were submitted
2402 in -- a year later. And the question is whether you had
2403 any role in that submission, or anyone else in your
2404 Department.

2405 A Not to my knowledge. I know I didn't. Not to
2406 my knowledge on behalf of the Department of Justice.

2407 Q Who does the Commerce Department consult about
2408 the propriety of the various questions that go on the
2409 census? Is that handled inside the Commerce Department or

2410 do they seek legal advice from the Justice Department?

2411 A I don't know.

2412 Q Do you know whether the Office of Legal Counsel
2413 has any role in helping the Commerce Department with these
2414 questions?

2415 A I don't know.

2416 Q In any of your discussions with Mr. Davidson,
2417 did that come up? Did he seek your legal counsel on the
2418 propriety of this question?

2419 Mr. Gardner. I instruct the witness not to
2420 answer to the extent it would -- to the extent it would
2421 divulge confidential or litigation-protected information.
2422 Otherwise, you may answer the question.

2423 A Yes.

2424 Q What more can you tell us about that?

2425 Mr. Gardner. Same instruction.

2426 Q Anything?

2427 A No.

2428 Q Mr. Gowdy at the May hearing asked the question
2429 whether if the Secretary wanted to add what's your favorite
2430 movie onto the census, would he be permitted to do so.

2431 Do you know the answer to that question?

2432 A I don't.

2433 Q If you wanted to add a question, what's your
2434 favorite movie, what would be the process to get that on

2435 the form? Do you know what type of internal deliberations
2436 the Commerce Department officials go through, or the Census
2437 Bureau officials?

2438 A I've never worked at the Department of Commerce
2439 or Census Bureau. I don't know what process they would
2440 follow. I also understand that the legal standard
2441 governing addition of questions to the citizenship -- to
2442 the census questionnaire is pending in litigation. I don't
2443 know what the statute says about that in particular or -- I
2444 understand the Secretary is authorized to make that
2445 determination, but I don't know under what circumstances,
2446 so I really don't know. I'm the wrong guy to ask that
2447 question.

2448 Q Okay. Fair enough.

2449 Do you have any independent knowledge of
2450 communications Secretary Ross may have had with White House
2451 officials about this topic?

2452 A I have no knowledge of any such communications.

2453 Q So you don't know whether somebody at the White
2454 House instructed the Secretary to pursue this?

2455 A I have no knowledge on that one way or the
2456 other.

2457 MR. CASTOR. I think that's it for now. We can
2458 come back if we have additional questions later. Thanks.

2459 Ms. Sachsman Grooms. Let's go off the record.

2460 (A brief recess was taken.)

2461 MS. ANDERSON. Back on the record.

2462 So, for the record, again, my name is Tori
2463 Anderson, and the time is now 11:51.

2464 FURTHER EXAMINATION

2465 BY MS. ANDERSON.

2466 Q So, I want to talk a little bit about the third
2467 person that you discussed things with at the Department of
2468 Commerce. That's James Uthmeier. Is that how you
2469 pronounce it?

2470 A Close enough.

2471 Q We'll just stick with that.

2472 You said you also first spoke with him around
2473 September of 2017; is that correct?

2474 A That is correct.

2475 Q Did he reach out to you or did you reach out to
2476 him?

2477 A He reached out to me.

2478 Q Via phone, via email?

2479 A Phone.

2480 Q Is that the first time you had spoken to him?

2481 A Ever?

2482 Q No, as -- about the citizenship question.

2483 A Yes.

2484 Q Did he tell you why he was reaching out to you?

2485 A Yes. He told me he was reaching out to me to
2486 discuss the possibility of the Department of Justice
2487 requesting reinstatement of the citizenship question on the
2488 census questionnaire.

2489 Q And just so I understand kind of the ordering by
2490 which you had contact with the Department of Commerce, you
2491 talked to Peter Davidson first and then James Uthmeier and
2492 then Wendy, or was it a different order?

2493 A I can't remember whether I spoke with Wendy -- I
2494 think I may have spoken with Wendy before I spoke to James.
2495 I think there's an email in the record somewhere that says
2496 that James called me around September 22nd or something
2497 like that.

2498 Q Okay. Did he indicate that anyone had asked him
2499 or told him to contact you?

2500 Mr. Gardner. You can answer that yes or no.

2501 A I think so, yes.

2502 Q Who was that?

2503 Mr. Gardner. I instruct the witness not to
2504 answer.

2505 Q Was that person inside the Department of
2506 Justice?

2507 Mr. Gardner. Same instruction.

2508 Q Was that person inside the Department of
2509 Commerce?

2510 Mr. Gardner. Same instruction.

2511 Q You guys discussed the citizenship question, is
2512 that correct, on or about that September 22nd date?

2513 A Yes.

2514 Q What did you discuss?

2515 Mr. Gardner. I instruct the witness not to
2516 answer.

2517 Q Did he ask you or tell you to do anything in
2518 light of that discussion?

2519 Mr. Gardner. Same instruction.

2520 Q Did you do anything based on your conversation
2521 with James Uthmeier?

2522 Mr. Gardner. You can answer that to the extent
2523 you can do so without divulging confidential or litigation
2524 interests of the Department.

2525 A No.

2526 Q You mentioned that you had several conversations
2527 with Mr. Uthmeier; is that correct?

2528 A No, I said I had one conversation with him, and
2529 then he was a participant in one or two of the phone calls
2530 I had with Mr. Davidson.

2531 Q Those conversations with Mr. Davidson and
2532 Mr. Uthmeier, were those in the after early September time
2533 frame? Is that correct?

2534 A That is correct.

2535 Q In the conversation that you had, when he called
2536 you that first time, did you -- did he tell you he was
2537 going to provide you any documentation about the
2538 citizenship question?

2539 Mr. Gardner. You can answer that with a yes or
2540 no.

2541 A Yes.

2542 Q Did he tell you what that was?

2543 A Yes.

2544 Q What was it?

2545 A That was a memorandum.

2546 Q Was there anything else that he was going to
2547 send you besides the memorandum?

2548 A I don't know whether he mentioned anything else.
2549 I don't recall that.

2550 He did, in fact, send me a handwritten cover
2551 note along with the memorandum.

2552 Q What was the memorandum about?

2553 Mr. Gardner. To the extent you can answer that
2554 question without divulging any confidential or litigation
2555 interests of the Department, you may do so. Otherwise, I
2556 instruct you not to answer.

2557 A The memorandum was about reinstatement of a --
2558 potential reinstatement of a citizenship question on the
2559 census questionnaire.

2560 Q Did that memorandum come before or after you did
2561 your legal research about the reinstatement of the
2562 citizenship question?

2563 A It came during the time I was doing that
2564 research.

2565 Q So you had already started doing that research?

2566 A Yes, I had.

2567 Q Did he tell you that the memo you were going to
2568 receive was about the reinstatement of the citizenship
2569 question on that phone call?

2570 A Yes, he did.

2571 Q Did he tell you anything else about the contents
2572 of that memorandum?

2573 Mr. Gardner. I instruct you not to answer.

2574 Ms. Anderson. Sorry, just to be clear, I'm
2575 asking him did the conversation just include I will send
2576 you a memo, or did it include I will send you a memo and
2577 some other?

2578 Mr. Gardner. I see. Okay. To the extent
2579 that's the question, you may answer that.

2580 A So as I understand your question, you're asking
2581 if he told me he was going to send me anything in addition
2582 to the memo?

2583 Q No. My question was --

2584 Mr. Gardner. That was my understanding what

2585 you asked. Try it again.

2586 Q When you were on the phone with him, did he
2587 simply tell you I'm going to send you a memorandum about
2588 the reinstatement of the citizenship question or did you
2589 discuss anything else about the memorandum? Not what did
2590 you discuss, did you discuss anything else?

2591 Mr. Gardner. Let's try this one step at a
2592 time. You can answer that with a yes or no.

2593 A Yes, we did discuss -- the phone call lasted
2594 about 15 or 20 minutes, and I knew Mr. Uthmeier previously.
2595 We had been employed at the same law firm. So a bunch of
2596 discussion -- I hadn't spoken to him since around January
2597 of 2017 when we had come into the government, and so much
2598 of the conversation was just a social call to catch back
2599 up.

2600 Q Okay. But just to be really clear, he did not
2601 just tell you I'm going to send you a memo. You discussed
2602 other -- did you discuss other things about the memo?

2603 Mr. Gardner. Once again, you can answer that
2604 with a yes or no.

2605 A Yes.

2606 Q When did you receive the memo?

2607 A I don't recall exactly when I received the memo.
2608 It was hand delivered to my office with a handwritten cover
2609 note, and I don't recall how long it took -- how much time

2610 elapsed between that phone call and when I received the
2611 memo.

2612 Q In that phone call when you were talking -- when
2613 he informs you he's going to send you a memo, what did you
2614 specifically discuss?

2615 Mr. Gardner. I'll instruct the witness not to
2616 answer.

2617 Q You said that he -- it came -- it was delivered
2618 to you. How was it delivered, that you're aware of?

2619 A All I know is that my assistant brought it to me
2620 and said it had been hand delivered. I don't know who
2621 delivered it or whether Mr. Uthmeier did it himself or
2622 whether somebody else did it. Is that your question?

2623 BY MR. ANELLO.

2624

2625 Q Can I ask a follow-up on that?

2626 A Sure.

2627 Q I don't mean to sound facetious, but you
2628 obviously have access to email, correct?

2629 A I do.

2630 Q And Mr. Uthmeier, obviously, has access to
2631 email.

2632 A I imagine he does, yes.

2633 Q So, is it fair to say that he could have emailed
2634 the memorandum to you if he had wanted to?

2635 A I don't know. You would have to ask him that.

2636 I don't know what format he had the memorandum in and

2637 whether that would have been possible.

2638 Q Do you know why it was hand delivered to you?

2639 A I don't.

2640 Q Do you know whether he was instructed to hand

2641 deliver it to you, Mr. Uthmeier?

2642 A I don't.

2643 Q How often do you receive memorandum -- paper

2644 memos from other agencies rather than receiving memorandums

2645 in electronic form?

2646 A I don't know.

2647 Q Would you say this was unusual?

2648 A No, not necessarily. I sometimes receive memos

2649 in paper rather than through email certainly within the

2650 Department, too.

2651 Q My question is from other agencies. Is a

2652 memorandum coming from the Department of Commerce -- let's

2653 say have you received other hand -- other hand-delivered

2654 memoranda from the Department of Commerce?

2655 A Not that I recall.

2656 Q Have you received other hand-delivered memoranda

2657 from other agencies, outside?

2658 A I don't believe I received memoranda from any

2659 other agencies. This would be the only memorandum I

2660 received from another department or agency, and it was
2661 delivered by hand. So I guess, to follow your line of
2662 questioning, that makes it usual.

2663 Q I guess that's a definitional question we could
2664 quibble with a little bit.

2665 A You were trying to compare it to some other
2666 practice, and this is the only other practice I've ever
2667 experienced --

2668 Q It sounds like you're saying it's the only time
2669 you've ever received a memo from another agency and the
2670 only time you've ever received one -- a handwritten memo
2671 hand delivered to you, so I would describe it as unusual.

2672 A No, that was not my testimony. What I said was,
2673 it's the only time I've received a memorandum from another
2674 department, and I have on several occasions received
2675 hand-delivered memoranda within the Department of Justice.
2676 BY MS. ANDERSON.

2677 Q When you were on the phone and he informed you
2678 that he was going to send you a memo, did you discuss the
2679 form of delivery?

2680 A Yes.

2681 Q Did you discuss why he wanted to send it to you?
2682 Mr. Gardner. I'll instruct the witness -- you
2683 can answer that with a yes or no.

2684 A Why he wanted to send it to me at all?

2685 Q Sorry. When you discussed the form of delivery,
2686 did he tell you at that point in time that it was going to
2687 be hand delivered?

2688 A Yes, he did.

2689 Q Did he tell you why it was going to be hand
2690 delivered?

2691 Mr. Gardner. You can answer that yes or no.

2692 A Yes, he did.

2693 Ms. Sachsman Grooms. I thought you just said
2694 you didn't know why he hand delivered it to you. Do you
2695 know why he hand delivered it to you?

2696 Mr. Gore. I know -- I know why he told me he
2697 wanted to hand deliver it to me. I don't know why he did
2698 it.

2699 Q What did he tell you?

2700 Mr. Gardner. I instruct the witness not to
2701 answer.

2702 Q So you received the memo and you received a
2703 handwritten note accompanying it; is that correct?

2704 A Yes, I did.

2705 Q Was that the extent of the documentation that
2706 you received from Mr. Uthmeier?

2707 A Yes, it was.

2708 Q Was that the extent of the documentation you
2709 received from the Department of Commerce?

2710 A That's the extent of the documentation I
2711 received from Mr. Uthmeier. As I've testified previously,
2712 I got sent documentation from Mr. Neuman, but I did not
2713 receive documentation from Mr. Davidson or anyone else at
2714 the Department of Commerce.

2715 Q Okay. And, so, the handwritten note and the
2716 memo were together; is that correct?

2717 A That is correct.

2718 Q Had Mr. Uthmeier on the phone indicated to you
2719 that he was going to be giving you the memo alongside any
2720 other notations, any other notes or anything else?

2721 A Not that I recall.

2722 Q Did you discuss -- did you ask -- how do I
2723 phrase this.

2724 Did you follow up on any discussion -- on the
2725 statement that Mr. Uthmeier made to you about why he wanted
2726 to hand deliver the memo? Did you ask any additional
2727 questions of him?

2728 A No, I didn't.

2729 Q After you received the handwritten note and the
2730 memo, did you talk to Mr. Uthmeier again about those
2731 contents -- about the memo or the note?

2732 A Yes, on one of the conversations I had with him
2733 and Mr. Davidson, one of the telephone conversations.

2734 Q Is that the only time you discussed with him the

2735 memo and the note?

2736 A Yes. Again, it may have been one or two
2737 conversations, but I can recall one in particular.

2738 Q Did you read the memo?

2739 A Yes, I did.

2740 Q Did you read the note?

2741 A Yes, I did.

2742 Q Okay. What did the note say?

2743 Mr. Gardner. I instruct the witness not to
2744 answer.

2745 Q Did the note talk about the contents of the
2746 memo?

2747 Mr. Gardner. Same instruction.

2748 Q Did the note talk about the citizenship
2749 question?

2750 Mr. Gardner. Same instruction.

2751 Q Did the note talk about any other rationales
2752 related to the addition of a citizenship question?

2753 Mr. Gardner. Same instruction.

2754 Q Did the note contain any directives or possible
2755 decisions or actions you might have to take from there?

2756 Mr. Gardner. Same instruction.

2757 Q Did the note indicate to you that you should
2758 include any material in your own personal legal research?

2759 Mr. Gardner. Same instruction.

2760 Mr. Anello. Can I just ask a question. Are
2761 you -- one of those questions was whether the note related
2762 to the citizenship question. You're saying the witness is
2763 not allowed to tell us whether the note related to the
2764 citizenship question?

2765 Mr. Gardner. That's a fair clarification.
2766 You're right. I think he can answer that high-level
2767 question. So please re-ask that. Thank you.
2768 Ms. Anderson. Sure.

2769 Q Did the note relate to the addition of a
2770 citizenship question?

2771 A Yes.

2772 Q What did the memo say?

2773 Mr. Gardner. Same instruction.

2774 Q Did the memo talk about the addition of a
2775 citizenship question?

2776 A Yes, as I've already stated.

2777 Q Okay. Did it include any legal research?

2778 Mr. Gardner. I instruct the witness not to
2779 answer.

2780 Q Did it include anything besides legal research?

2781 Mr. Gardner. Same instruction.

2782 Q Did you show or share the memo with anyone else,
2783 or the note? We'll start with the memo. Did you show or
2784 share the memo with anyone else?

2785 A So, with respect to the memo, I did not show or
2786 share it to anyone with the exception of Kathleen Toomey in
2787 the Civil Rights Division, who managed the document
2788 collection in the litigation. So once the litigation was
2789 filed and document requests were propounded, to which the
2790 memo might potentially be responsive, I turned it over to
2791 Ms. Toomey for review and potential production or assertion
2792 of privilege in the litigation.

2793 Q So that would have been around March?

2794 A I don't recall. It was certainly after the
2795 letter was sent on December 12th.

2796 Q Did you show or share the note with anyone else?

2797 A I did the same thing with the note that I did
2798 with the memo. I didn't show or share it to -- show it to
2799 or share it with anyone until I gave it to Ms. Toomey as
2800 potentially responsive to document requests in the
2801 litigation.

2802 Q Besides Peter Davidson and James Uthmeier, did
2803 you discuss the contents of the memo with anyone else?

2804 A No.

2805 Q Besides Peter Davidson and James Uthmeier, did
2806 you discuss the contents of the note with anyone else?

2807 A No, with the exception on both fronts of handing
2808 it to Ms. Toomey and telling her what it was.

2809 Q Okay.

2810 Mr. Anello. Why didn't you share the note or
2811 the memo with anyone else?

2812 Mr. Gardner. I instruct the witness not to
2813 answer.

2814 Mr. Anello. Did it -- I'm not asking the right
2815 question then.

2816 Did the memorandum or the note play a role in
2817 the Department of Justice's decision to request a
2818 citizenship question?

2819 Mr. Gardner. I instruct the witness not to
2820 answer.

2821 Mr. Anello. It's just a yes-or-no question I'm
2822 asking him.

2823 Mr. Gardner. I understand. I instructed the
2824 witness not to answer.

2825 Mr. Anello. Did you consider the memo in
2826 drafting the -- sorry. Did you consider the memo and the
2827 note from Mr. Uthmeier in drafting the memo that you
2828 eventually sent back to the Department of Commerce?

2829 Mr. Gardner. I instruct the witness not to
2830 answer.

2831 Q Did any of the language in the note or the memo
2832 appear in the draft letter that you made?

2833 Mr. Gardner. Same instruction.

2834 Ms. Sachsman Grooms. I'm sorry, just to

2835 clarify. Did you consider the note or the memo when you
2836 drafted the initial draft of this December 12th, 2017,
2837 letter?

2838 Mr. Gardner. Same instruction.

2839 BY MR. ANELLO.

2840 Q Did the -- did either the note or the memo
2841 discuss the issue of congressional apportionment?

2842 Mr. Gardner. I instruct the witness not to
2843 answer.

2844 Q Did your conversations with Mr. Uthmeier involve
2845 the discussion of congressional apportionment?

2846 Mr. Gardner. Same instruction.

2847 Q Did the note or the memo discuss whether the
2848 addition of a citizenship question would reduce
2849 participation in the census by certain groups?

2850 Mr. Gardner. Same instruction. I'm sorry.
2851 Same instruction.

2852 Q Did the note or the memo discuss or contain a
2853 rationale for the addition of the citizenship question?

2854 Mr. Gardner. I instruct the witness not to
2855 answer.

2856 Q Did the note or the memo contain a rationale
2857 that was different from the one that the Department of
2858 Justice ultimately put in writing?

2859 Mr. Gardner. Same instruction.

2860 Q Did you -- did you describe the note or the memo
2861 in your testimony to Congress?

2862 A I don't recall whether it came up in that
2863 testimony or not.

2864 Q Was the Attorney General aware or made aware of
2865 the note or the memo?

2866 Mr. Gardner. To the extent you can answer that
2867 question without divulging confidential and litigation
2868 interests of the Department, you may do so. Otherwise, I
2869 instruct you not to answer.

2870 A I don't recall specifically, but I don't think
2871 so.

2872 Q Is the existence of the note or the memo
2873 inconsistent with his testimony to Congress regarding the
2874 process that was followed for the addition of a citizenship
2875 question?

2876 Mr. Gardner. I'm sorry. Can you re-ask that
2877 question.

2878 Mr. Anello. Sure.

2879 Mr. Gardner. I am not sure I understood it.

2880 Q Secretary Ross has testified about the decision
2881 to add a citizenship question to the census, correct? Were
2882 you aware of that?

2883 A I'm aware of that generally, yes.

2884 Q And he testified that that request came from the

2885 Department of Justice.

2886 A I'm not familiar with Secretary Ross' testimony
2887 or the particulars of it, nor am I Secretary Ross so I
2888 can't speak to that testimony.

2889 Q You're not familiar with his testimony?

2890 A I'm aware of the fact that he did testify. I
2891 haven't watched or reviewed that testimony, nor would
2892 watching it or reviewing it put me in a position really to
2893 comment on it since it's his testimony and not mine.

2894 Q Let's just go to your knowledge then. Are you
2895 aware of any public testimony about this issue that would
2896 be contradicted by the existence of this memo or what is
2897 written in this memo? That's the memo from Mr. Uthmeier.

2898 Mr. Gardner. I'm not sure I fully understand
2899 your question. But to the extent you understand it and to
2900 the extent you can answer without disclosing confidential
2901 and litigation interests of the Department, you may do so.
2902 Otherwise, I instruct you not to answer.

2903 A I didn't follow your question. Would you mind
2904 restating it.

2905 Mr. Gardner. I'm sorry.

2906 Q Sure. I understand you may not have watched
2907 every word of it, of every piece of testimony in this
2908 matter, but to the extent that you're aware of any public
2909 testimony regarding the addition of a citizenship question,

2910 are you aware of -- does the -- is there any testimony that
2911 is contradicted by the existence of this memo?

2912 Mr. Gardner. So I think I understand the
2913 problem. Could you lay a foundation as to what testimony
2914 he's aware of? Because I think that will make for a much
2915 better question and answer.

2916 Mr. Anello. Sure.
2917

2918 Q You're aware of the testimony that you gave,
2919 correct?

2920 A I am aware of that testimony, yes.

2921 Q Is there anything in your testimony inconsistent
2922 with what was written in the memo?

2923 A I'm still not sure I totally follow the
2924 question. Let me -- let me put it this way. I'm not aware
2925 of anything in my testimony that's inconsistent with the
2926 existence or contents of the memo. You've asked me about
2927 the existence. You've asked me about the contents.

2928 Q I appreciate you answering both.

2929 A I'm trying to answer your question.

2930 Mr. Gardner. We're trying to work with you.

2931 We're still trying to understand your question.

2932 A Maybe I can just say it this way. I'm not aware
2933 of anyone else's testimony that would be -- in any
2934 particular respect or any general respect that would be
2935 contradicted by the existence or contents of a memo, but I

2936 will say I have I haven't studied anybody else's testimony.
2937 I'm generally aware that testimony was given, but I'm not
2938 really in a position to answer that question, I guess is
2939 what I'm trying to tell you, other than with respect to my
2940 own testimony.

2941 BY MS. ANDERSON.

2942 Q Would you say that -- can you answer the same
2943 question with regards to the note that accompanied the
2944 memo.

2945 A Yes. Same answer with regard to the note.

2946 Mr. Anello. Did the memorandum from
2947 Mr. Uthmeier include a draft of a letter from the
2948 Department of Justice back to the Department of Commerce
2949 requesting the citizenship question?

2950 Mr. Gardner. You can answer.
2951 Mr. Gore. No, it did not.

2952 Q Did it include any other draft language that the
2953 Department of Justice might send to the Department of
2954 Commerce?

2955 Mr. Gardner. Sorry, are you asking did the
2956 memo itself provide draft language; is that your question?
2957 Ms. Anderson. Yes.

2958 Mr. Gardner. I instruct the witness not to
2959 answer.

2960 Q So you became involved in this decision around
2961 that early September date, just going back to that.

2962 A I wasn't aware of a decision at that point. I
2963 became aware --

2964 Q Sorry, in these conversations about --

2965 A I became aware of a conversation or a
2966 consideration of this issue.

2967 Q Yes. I'm just going to go back to that time
2968 frame.

2969 A Fine.

2970 Q Who told you what your role was going to be
2971 going forward from when you became aware that these
2972 discussions were happening?

2973 A Attorney General Sessions.

2974 Q Did Attorney General Sessions ask -- tell you or
2975 ask you not to inquire as to why there was interest in this
2976 question?

2977 Mr. Gardner. I'll instruct the witness not to
2978 answer.

2979 Q Did anyone else ask you or tell you not to
2980 inquire as to why there was interest in this question?

2981 Mr. Gardner. Same instruction.

2982 Q What role were you told you were going to have
2983 in this consideration process?

2984 Mr. Gardner. I instruct the witness not to
2985 answer.

2986 Q I want to kind of go back to the people that you

2987 discussed the citizenship question with after you became
2988 involved.

2989 A Okay.

2990 Q So I'm just going to go through that list again,
2991 and I apologize. I sometimes can't read my own handwriting
2992 so I might butcher some names, so if you could clarify
2993 that, that would be great.

2994 So you said that you spoke with Mary Blanche
2995 Hankey. That was sort of when you got introduced to this.
2996 Did you discuss immigration with her with regards to the
2997 citizenship question?

2998 Mr. Gardner. I instruct the witness not to
2999 answer.

3000 Q You said you also talked to Rachael -- and
3001 I'm -- I did not quite grab her last name.

3002 A Tucker.

3003 Q Tucker. Did you discuss immigration with her as
3004 it related to a citizenship question?

3005 Mr. Gardner. Same instruction.

3006 Q How about with Danielle Cutrona?

3007 Mr. Gardner. Same instruction.

3008 Q How about with Gene Hamilton?

3009 Mr. Gardner. Same instruction.

3010 Q Bob Troester?

3011 Mr. Gardner. Same instruction.

3012 Q Rachel Brand?
3013 Mr. Gardner. Same instruction.

3014 Q Jesse Panuccio?
3015 Mr. Gardner. Same instruction.

3016 Q Patrick -- how do you say it?

3017 A Hovakimian.

3018 Q Hovakimian.
3019 Mr. Gardner. Same instruction.

3020 Q Bethany Pickett?
3021 Mr. Gardner. Same instruction.

3022 Q Chris Herren?
3023 Mr. Gardner. Same instruction.

3024 Q Arthur Gary?
3025 Mr. Gardner. Same instruction.

3026 Q Peter Davidson?
3027 Mr. Gardner. Same instruction.

3028 Q James Uthmeier?
3029 Mr. Gardner. Same instruction.

3030 Q Wendy Teramoto?
3031 Mr. Gardner. Same instruction.

3032 Q Mark Neuman?
3033 Mr. Gardner. Same instruction.

3034 Q John Zadrozny?
3035 Mr. Gardner. Same instruction.

3036 BY MR. ANELLO.

3037 Q There are a couple of these conversations I

3038 don't think we've talked about yet so I wanted to ask you
3039 about one or two.

3040 A Sure.

3041 Q You mentioned Gene Hamilton.

3042 A Yes.

3043 Q When did you speak with him about this issue?

3044 A I spoke with Gene in September or October of
3045 2017.

3046 Q Was he at the Department of Justice?

3047 A He was at the Department of Justice at that
3048 time, yes.

3049 Q Whereabout?

3050 A He was in the Office of Attorney General.

3051 Q What was his role?

3052 A I believe he was counsel in the Office of
3053 Attorney General.

3054 Q What issues did he cover?

3055 A I don't know in particular. I had interactions
3056 with him, conversations with him about a couple of
3057 different civil rights issues. And I understand he worked
3058 on immigration issues and maybe other issues. There were
3059 issues within -- when Attorney General Sessions was the
3060 Attorney General, there were people in the Office of
3061 Attorney General who worked across a variety of areas, and
3062 both Gene and Danielle would sometimes touch on civil

3063 rights issues. Our main point of contact was Rachael
3064 Tucker, but the office was fairly horizontal in terms of
3065 the roles.

3066 Q So why did you speak with him about this issue?
3067 You said -- I believe you said it was early -- did you say
3068 it was September, October?

3069 A Yes, probably October. It might have been
3070 September.

3071 Mr. Gardner. To the extent you can answer that
3072 question without divulging confidential or litigation
3073 interests of the Department, you may do so. Otherwise, I
3074 instruct you not to answer.

3075 A Consistent with that instruction, I can't
3076 answer.

3077 Q What did you talk about with him?

3078 Mr. Gardner. Same instruction.

3079 Q Did somebody ask you to speak with him?

3080 Mr. Gardner. Same instruction.

3081 Q You can't say yes or no whether somebody asked
3082 you to speak with Mr. Hamilton?

3083 Mr. Gardner. I think he can answer yes or no.

3084 A I don't recall.

3085 Q Did you take any steps as a result of your
3086 conversation with Mr. Hamilton related to the citizenship
3087 question?

3088 A Not that I can recall.

3089 Q Were other people involved in the discussion you
3090 had?

3091 A I think I talked to Gene, I'm trying to
3092 remember, once, maybe twice. I think from one of those
3093 conversations that I can remember, Danielle and Rachael
3094 were also present.

3095 Q When did you talk to Ms. Brand?

3096 A I spoke regularly with Rachel Brand about civil
3097 rights issues. As I mentioned before, the Civil Rights
3098 Division reports up to the Office of Associate Attorney
3099 General, to the Office of Deputy Attorney General, and to
3100 the Office of Attorney General.

3101 I had regular meetings with Ms. Brand at least
3102 every two weeks on civil rights issues generally and to
3103 update her on what was going on in the Division.

3104 I can recall talking to her about this issue
3105 maybe four or five times, sometimes in connection with
3106 those meetings. And maybe once or twice we had a separate
3107 meeting or conversation about this issue, and that would
3108 have started in that September -- in September and gone
3109 into October 2017.

3110 Q What did you talk about with Ms. Brand regarding
3111 the citizenship question?

3112 Mr. Gardner. I instruct the witness not to

3113 answer.

3114 BY MS. ANDERSON.

3115

3116 Q Did you talk to or hear from any other agencies
3117 like DHS or ICE about the citizenship question before
3118 September 12, 2017?

3119 A Yes, I -- the question earlier reminded me, I
3120 did have a phone call with somebody -- I was on a phone
3121 call with somebody from DHS about the issue.

3122 Q Do you remember who?

3123 A I don't.

3124 Q About when was that conversation?

3125 A It was in October of 2017, I think.

3126 Q Was anyone else on the phone call?

3127 A Gene Hamilton was on. I think Rachael Tucker
3128 may have been on. I can't remember whether -- I always
3129 want to call him by his nickname, Patrick Hovakimian was
3130 on -- I think he may have been on. And I don't recall who
3131 else.

3132 Q Do you recall who set up that meeting?

3133 A I think it was Gene, but I don't recall. It
3134 wasn't a meeting. It was a phone call.

3135 Q Oh, who arranged the phone call, then?

3136 A Yes.

3137 Q About how long was that conversation?

3138 A Oh, gosh. Maybe it was 15 minutes or less.

3139 Q What did you discuss?

3140 Mr. Gardner. I instruct the witness not to
3141 answer.

3142 Q Did the person -- were there multiple people
3143 from DHS on the call or just one?

3144 A I think there was more than one, but I don't
3145 recall either way.

3146 Q Did they participate in the conversation?

3147 A Yes, they were parties to the conversation.

3148 Q Sure. They spoke during the phone call?

3149 A I believe so, yes.

3150 Q Did they tell you to do anything?

3151 Mr. Gardner. To the extent you can answer that
3152 question without divulging confidential or litigation
3153 interests of the Department, you may do so. Otherwise, I
3154 instruct you not to answer.

3155 A No.

3156 Q Did they instruct you to do anything?

3157 Mr. Gardner. Same instruction.

3158 Q And that call, I think you said earlier,
3159 concerned the citizenship question; is that correct?

3160 A That is correct.

3161 Q Did you talk about immigration on that call?

3162 Mr. Gardner. I instruct the witness not to

3163 answer.

3164 Mr. Anello. I think -- just to make sure I'm
3165 understanding, just whether that call involved immigration
3166 is something that the witness can't answer?

3167 Mr. Gardner. Right. I gave my instruction,
3168 yes.

3169 Q Did you ever make an effort to limit staff
3170 involvement in the request to add a citizenship question?

3171 Mr. Gardner. To the extent you can answer that
3172 question without divulging confidential or litigation
3173 interests of the Department, you may do so. Otherwise, I
3174 instruct you not to answer.

3175 A To the extent I understand your question, no.

3176 Q Did you ever make an effort to limit who you
3177 consulted with on your staff regarding your drafting of the
3178 December 12th letter?

3179 Mr. Gardner. Same objections. Same
3180 instruction.

3181 A To the extent I understand your question, no.

3182 Q So I want to talk a little bit --

3183 Mr. Anello. Sorry, can we go back to the DHS
3184 call again?

3185 Ms. Anderson. Sure.

3186 BY MR. ANELLO.

3187 Q I just want to make sure I'm understanding the

3188 context of this DHS call. Generally, DHS is not involved
3189 in enforcing the Voting Rights Act, correct?

3190 A That's correct.

3191 Q They do enforce immigration laws, correct?

3192 A That's my understanding, yes, as does the
3193 Department of Justice.

3194 Q So was there an -- did DHS express an interest
3195 in the citizenship question?

3196 Mr. Gardner. I instruct the witness not to
3197 answer.

3198 Q Why were they on the call?

3199 Mr. Gardner. Same instruction.

3200 Q Did DHS ask the Department of Justice to make a
3201 request for a citizenship question?

3202 Mr. Gardner. I instruct the witness not to
3203 answer.

3204 Mr. Anello. To be clear, we've already heard
3205 statements today that the Department of Commerce made that
3206 request. Did the Department of Homeland Security make that
3207 request? I don't know why he can't answer that.

3208 Mr. Gardner. I understand. I'm instructing
3209 the witness not to answer.

3210 Mr. Anello. What is the basis for that?

3211 Mr. Gardner. The instruction is
3212 confidentiality and litigation interests of the Department.

3213 Mr. Anello. What is the difference between the
3214 Department of Commerce and the Department of Homeland
3215 Security?

3216 Mr. Gardner. I gave you my objection, my
3217 instruction not to answer.

3218

3219 Q Did the Department of Homeland Security indicate
3220 that they thought adding the citizenship question would
3221 help with immigration enforcement efforts?

3222 Mr. Gardner. I instruct the witness not to
3223 answer.

3224 Q Did the Department of Homeland Security indicate
3225 that adding the citizenship question would have some other
3226 impact on immigration policy that they thought was
3227 beneficial?

3228 Mr. Gardner. Same instruction.

3229 Q Do you normally consult with the Department of
3230 Homeland Security on civil rights issues relating to
3231 voting?

3232 Mr. Gardner. You can answer that question to
3233 the extent you can do so without divulging the
3234 confidentiality -- the confidential and litigation
3235 interests of the Department.

3236 A I have consulted with the Department of Homeland
3237 Security on civil rights issues, yes.

3238 Q On voting rights issues?

3239 A Not on -- not that I can specifically recall,
3240 but certainly on civil rights issues.

3241 Q But not on voting. I think your memo -- sorry,
3242 the letter you wrote to the Department of Commerce was
3243 about voting.

3244 A Now that I have -- I have actually consulted
3245 with the Department of Homeland Security on voting issues.

3246 Q About what issues?

3247 Mr. Gardner. To the extent you can answer that
3248 question without divulging confidential or litigation
3249 interests of the Department, you may do so. Otherwise, I
3250 instruct you not to answer.

3251 A I think consistent with that instruction, I
3252 can't answer.

3253 Q Were those other conversations also related to
3254 the citizenship question then?

3255 Mr. Gardner. Same instruction.

3256 Q I'm losing the train here. We've talked about
3257 one call, correct, that you had with the Department of
3258 Homeland Security about the citizenship question? That
3259 testimony is on the record, correct? That -- you agree
3260 with that statement, that this one call we talked about was
3261 about the citizenship question?

3262 A Yes.

3263 Q Okay. Were there other calls that you had with
3264 the Department of Homeland Security about the citizenship
3265 question?

3266 A I do not recall any other calls or conversations
3267 with the Department of Homeland Security about the
3268 citizenship question.

3269 To answer your other question, I have consulted
3270 with the Department of Homeland Security about civil rights
3271 issues, including voting-related issues.

3272 Q Which voting-related issues have you consulted
3273 about?

3274 Mr. Gardner. Same instruction.

3275 Mr. Anello. I guess I don't understand. Is
3276 there -- I'm not understanding because the testimony didn't
3277 relate to the citizenship question.

3278 Mr. Gardner. You're asking him for the content
3279 of his discussions with another agency about voting rights
3280 enforcement, correct? Is that what you're asking?

3281 Mr. Anello. Correct.

3282 Mr. Gardner. I instruct the witness not to
3283 answer.

3284 Mr. Anello. Are you in litigation about these
3285 other topics? Did they relate to topics in which you're in
3286 ongoing litigation?

3287 Mr. Gardner. Again, it's a confidentiality and

3288 litigation-related interest, just so we're clear, Russ.

3289 Again, the instruction remains.

3290 Q I think you said you didn't recall the name of
3291 the person that you spoke to; is that correct?

3292 A We're talking about the one conversation --

3293 Q The Department of Homeland Security about the
3294 citizenship question.

3295 A I don't recall the name of that person.

3296 Q Do you recall which office within the Department
3297 they were in?

3298 A I don't.

3299 Q Were they in an operating division like ICE, for
3300 example, or were they in DHS headquarters?

3301 A I don't recall.

3302 BY MS. ANDERSON.

3303

3304 Q Did Gene Hamilton tell you why he set up that
3305 phone call?

3306 Mr. Gardner. The phone call with Homeland
3307 Security now?

3308 Ms. Anderson. Correct.

3309 Mr. Gardner. You can answer that with a yes or
3310 no.

3311 A Yes, he did.

3312 Q Why did he set up that phone call?

3313 Mr. Gardner. I instruct the witness not to
3314 answer.

3315 Q I want to talk a little bit about the phone
3316 call -- I guess conference call you had with John Zadrozny
3317 in October 2017. And I think you said who participated --
3318 who else was there, but could you just repeat it really
3319 quickly.

3320 A I remember Rachael Tucker and Gene Hamilton also
3321 being on that call. Whether others were on the call as
3322 well, I don't recall.

3323 Q And who set up that phone call, conference call?

3324 A I don't recall.

3325 Q Did Mr. Zadrozny indicate why he was involved in
3326 that conference call?

3327 Mr. Gardner. You can answer that with a yes or
3328 no.

3329 A I don't recall whether he did or not.

3330 Q Do you know why?

3331 A I don't think I specifically know why, no.

3332 Q Did you discuss with anyone else why he was on
3333 the conference call?

3334 Mr. Gardner. You can answer that with a yes or
3335 no.

3336 A Yes, I guess I did.

3337 Q Who was that?

3338 A Rachael.

3339 Q What did you discuss?

3340 Mr. Gardner. I instruct the witness not to
3341 answer.

3342 Q What did you discuss on that phone call?

3343 Mr. Gardner. Same instruction.

3344 Q Did you take any action after that phone call?

3345 A After the phone call, yes.

3346 Q Related to the phone call?

3347 A No.

3348 Q Did anyone else take any action after that phone
3349 call related to that phone call?

3350 A I don't know.

3351 Q You said that was your only conversation with
3352 Mr. Zadrozny, is that correct, about the citizenship
3353 question?

3354 A About the citizenship question, yes.

3355 Q You also said earlier, just to clarify, you
3356 didn't speak with anyone else at the White House about the
3357 citizenship question; is that correct?

3358 A That is correct.

3359 BY MR. ANELLO.

3360 Q Mr. Gore, you spoke to Attorney General Sessions
3361 regarding apportionment, correct?

3362 A Yes, I believe, as I testified in my deposition,

3363 I've -- I did discuss that topic with him.

3364 Q And when did you discuss that topic with him?

3365 A It was sometime in the fall of 2017, around the
3366 time when the State of Alabama filed a lawsuit about
3367 apportionment issues against the Department of Commerce.

3368 Q Was that the same discussion that we talked
3369 about earlier that happened in early September when you
3370 also discussed the issue of the citizenship question with
3371 the Attorney General?

3372 A No, it was not.

3373 Q Did the issue of the citizenship question come
3374 up in your discussion with him about apportionment?

3375 Mr. Gardner. I instruct the witness not to
3376 answer.

3377 Q Was the lawsuit that was filed that you
3378 mentioned related to the census?

3379 Mr. Gardner. You can answer.

3380 A I don't recall the specifics of that lawsuit. I
3381 think it was. I think they -- I think the case is still in
3382 litigation so I'm going off of my memory. Again, I'm not
3383 counsel of record so I can't speak for the Department or
3384 bind anybody with respect to that. I believe I've read
3385 part of the complaint or seen part of the complaint, but I
3386 believe that Alabama has brought a claim against the
3387 Department of Commerce or the Census Bureau. I do believe

3388 it's somehow census related, about apportionment and
3389 whether certain individuals should be counted or how they
3390 should be allocated for purposes of apportionment.

3391 It's -- I'm puzzled by the lawsuit, to be
3392 honest with you, because there's a federal statute that
3393 directly deals with this and says how apportionment is to
3394 be conducted, and it's consistent with the 14th Amendment.
3395 So I don't know enough about the lawsuit to know whether it
3396 makes sense to be suing the Department of Commerce over
3397 this or not, but that's just my memory off the top of my
3398 head. As I said, I don't know much about it other than
3399 that.

3400 Q And so, what was the nature of your discussion
3401 about apportionment with the Attorney General?

3402 Mr. Gardner. I'm going to instruct the witness
3403 not to answer.

3404 Mr. Anello. On what basis?

3405 Mr. Gardner. On the same basis,
3406 confidentiality and litigation interests.

3407

3408 Q You said this took place in the fall of 2017.
3409 Can you give us more precision? Was it before or after the
3410 conversation when you learned that the Department of
3411 Commerce wanted the Department of Justice to request a
3412 citizenship question? Before or after that conversation?

3413 A After.

3414 Q Was it before or after you began drafting a
3415 letter back to the Department of Commerce making that
3416 request?

3417 A I don't recall specifically.

3418 Q Who else was involved in the conversation where
3419 you discussed apportionment?

3420 A I think Rachael Tucker was in the room, but I
3421 don't recall.

3422 Q Who initiated the call or the meeting? Was it a
3423 meeting or a call?

3424 A No, it was -- it was an in-person meeting, and I
3425 don't recall who initiated it.

3426 Q Were you given any instructions in the meeting?
3427 Mr. Gardner. You can answer that with a yes or
3428 no.

3429 A No, I was not.

3430 Q Did you do anything as a result of that meeting?

3431 A No, I did not.

3432 Q Did you discuss with the Attorney General
3433 whether adding a citizenship question to the census would
3434 impact apportionment?

3435 Mr. Gardner. I instruct the witness not to
3436 answer.

3437 Q Who else did you talk to at the Department of

3438 Justice about apportionment issues?

3439 A Let me think. I don't -- I don't recall exactly
3440 who all I spoke to about it.

3441 Q Did you talk to other people other than the
3442 Attorney General and Ms. Tucker?

3443 A I imagine I did.

3444 Q Do you know whether the Attorney General had
3445 other discussions about apportionment other than the one
3446 that you described?

3447 A I don't.

3448 Q Do you know whether he talked to Secretary Ross
3449 about apportionment?

3450 A I don't.

3451 Q Did you talk about apportionment yourself with
3452 anybody at the Department of Commerce?

3453 A I believe I discussed it with Peter Davidson and
3454 James Uthmeier.

3455 Q When did those conversations take place?

3456 A Again, in the September or October 2017 time
3457 frame.

3458 Q So do you remember the first time you talked
3459 with Mr. Davidson, let's start with him, about
3460 apportionment?

3461 A I don't.

3462 Q Do you remember the first time you talked to Mr.

3463 Uthmeier about apportionment?

3464 A I don't.

3465 Q About how many times would you say you talked to

3466 Mr. Davidson about apportionment?

3467 A Once.

3468 Q And was that in a conversation when you also

3469 discussed the citizenship question?

3470 Mr. Gardner. I instruct the witness not to

3471 answer.

3472 Q You did talk to him about apportionment in the

3473 fall of 2017, right?

3474 A Yes.

3475 Q You did -- you also talked to him about the

3476 citizenship question in the fall of 2017.

3477 A Yes.

3478 Q Were those in the same conversation?

3479 Mr. Gardner. I instruct the witness not to

3480 answer.

3481 Q So you said you talked to Mr. Uthmeier about

3482 apportionment, correct?

3483 A Yes.

3484 Q You also talked to him about the citizenship

3485 question.

3486 A Yes.

3487 Q Both of those conversations took place in the

3488 fall of 2017 or -- I'm sorry, let me rephrase that.

3489 You talked to him about both of those issues in
3490 the fall of 2017, correct?

3491 A Correct.

3492 Q Were they in the same conversation?

3493 Mr. Gardner. Same instruction.

3494 Q Did his memorandum to you, hand delivered to
3495 your office, talk about apportionment?

3496 Mr. Gardner. Same instruction.

3497 Q Did his handwritten note to you -- again, with
3498 Mr. Uthmeier, did his handwritten note to you talk about
3499 apportionment?

3500 Mr. Gardner. Same instruction.

3501 Q When you spoke to Mr. Davidson, what was the
3502 substance of your discussion regarding apportionment?

3503 Mr. Gardner. Same instruction.

3504 Ms. Sachsman Grooms. What's the instruction
3505 again?

3506 Mr. Gardner. Not to answer.

3507 Ms. Sachsman Grooms. No, I got that part. But
3508 what's the basis?

3509 Mr. Gardner. The same basis as we've been
3510 talking about all day, confidentiality and litigation
3511 interests.

3512 Mr. Anello. But that presupposes, I guess,

3513 that there's -- strike that. We'll keep going.

3514

3515 Q What was the substance of your conversation with
3516 Mr. Uthmeier regarding apportionment?

3517 Mr. Gardner. I instruct the witness not to
3518 answer.

3519 Q Was your conversation -- did you talk to
3520 Mr. Davidson and Mr. Uthmeier in a single conversation
3521 together about apportionment or were these separate
3522 conversations?

3523 A I hope so. I'm thinking. Are you asking me
3524 whether --

3525 Q I'll just rephrase.

3526 A I think I had one conversation with Peter and
3527 James together. Is that your question?

3528 Q So it's a single conversation with the
3529 Department of Commerce and two lawyers from the Department
3530 of Commerce on the call.

3531 A Two lawyers on the call.

3532 Q Was anybody else on the call?

3533 A No.

3534 BY MS. ANDERSON.

3535 Q On the phone call with Peter Davidson and James
3536 Uthmeier together, did you talk about apportionment on that
3537 phone call?

3538 A I talked about apportionment on a phone call
3539 with James and Peter together. Is that what you're asking?

3540 Q Yes.

3541 A Okay.

3542 BY MR. ANELLO.

3543 Q Did you talk about apportionment with anybody at
3544 the Department of Homeland Security?

3545 A Not that I can recall.

3546 Q Did you talk about apportionment with anybody at
3547 the White House?

3548 A Not that I can recall.

3549 Q Did you talk about apportionment with Mark
3550 Neuman?

3551 A Not that I can recall.

3552 Q Let's focus in on this period of time from,
3553 let's say, the fall of 2017. Did you have any other
3554 discussions with anybody else that we haven't talked about
3555 yet regarding apportionment?

3556 A As I mentioned, I may have talked about it with
3557 one or two other people in the Department of Justice. I'm
3558 trying to remember who those might have been. I think I
3559 may have spoken to one of the U.S. Attorneys in Alabama
3560 about it since. Once the lawsuit was filed, I believe he
3561 called me about it. I would have talked to Ben Aguinaga
3562 about it, as he was just generally interested in voting

3563 issues, but I can't recall whether I spoke to anybody else.

3564 Q Those conversations you just mentioned, did they
3565 also relate to the decision or the request, I should say,
3566 to add a citizenship question to the census?

3567 Mr. Gardner. I instruct the witness not to
3568 answer.

3569 BY MS. ANDERSON.

3570 Q Did you have any other conversations with
3571 Attorney General Jeff Sessions about apportionment besides
3572 the one that you previously mentioned?

3573 A I can only -- I can recall it only coming up
3574 once.

3575 Q When was that?

3576 A In the fall of 2017.

3577 Q After or before the conversation that you
3578 mentioned previously?

3579 Mr. Gardner. I think you guys are talking past
3580 each other. I think he's referring to the conversation you
3581 already talked about.

3582 A I had the one conversation we talked about. I
3583 don't recall another one.

3584 Mr. Gardner. I'm just trying to be helpful.
3585 Ms. Anderson. That's fair.

3586 A I'm not sure I'm following all of this.

3587 Q You just talked to him once in the fall of 2017.

3588 Did you have any other conversations with Attorney General
3589 Jeff Sessions about apportionment?

3590 A Not that I recall.

3591 Q So I want to talk for a second about what
3592 happened soon after the letter was sent from the Department
3593 of Justice on December 12th, 2017.

3594 A Okay.

3595 Q So that's the day that Arthur Gary sent a letter
3596 to the Department of Commerce, correct?

3597 A That's correct.

3598 Q And then Arthur Gary received a communication
3599 from the Department of Commerce, specifically Ron Jarmin,
3600 acknowledging the receipt of that letter. Is that correct?

3601 A As I recall, yes, that's correct.

3602 Q And that email also included a request to have
3603 technical people at the Department of Commerce meet with
3604 technical people at the Department of Justice; is that
3605 correct?

3606 A I don't know whether -- I don't have that
3607 communication right in front of me. I believe I've seen it
3608 before. I can't recall whether there was a reference to
3609 technical people or -- sure. It was a reference to some
3610 kind of meeting, but I don't -- I can't testify as to
3611 whether it was technical people or somebody else.

3612 Q But you acknowledge he reached out to set up a

3613 meeting. Would that be fair?

3614 A He reached out to offer a meeting, yes, would be
3615 the way I would say that.

3616 Q Okay. And Arthur Gary communicated to you that
3617 the Department of Commerce offered a meeting with the
3618 Department of Justice; is that correct?

3619 A Yes, he did.

3620 Q And that was -- do you remember when that was?

3621 A I believe he sent me an email shortly after he
3622 received that one because he wished my family and me happy
3623 holidays, so I think he sent it to me shortly before
3624 Christmas.

3625 Ms. Anderson. I'm going to mark this email,
3626 from December 22nd, 2017, as Exhibit 3.

3627 (Exhibit 3 was marked for identification and
3628 attached to the transcript.)

3629 Q I'm going to hand you what's marked as Exhibit
3630 3. Would you mind just taking a second to read that.

3631 A (Document review.)

3632 Q And in particular the email that appears on the
3633 lower part of the page.

3634 A All right.

3635 Q Is it fair to say that this is the email -- the
3636 second part -- the second email that appears on the lower
3637 half of the page that's entitled "Request to reinstate

3638 citizenship question on the 2020 census questionnaire"

3639 directed at Arthur from Ron Jarmin, is it fair to say

3640 that's the email that Arthur Gary provided to you at sort

3641 of the holiday time in 2017?

3642 A Yes, this looks like -- it appears -- of course

3643 the "to" line on the email address is redacted, but it

3644 appears to be that email.

3645 Q That email says in the part that -- the Census

3646 Bureau staff has -- I'm going to quote. "They have now

3647 briefed me, and their finding suggests that the best way to

3648 provide PL94 block-level data with citizenship voting

3649 population by race and ethnicity will be through utilizing

3650 a linked file of administrative and survey data the Census

3651 Bureau already possesses."

3652 Did I read that correctly?

3653 A You did.

3654 Q Then it says, "This would result in higher

3655 quality data produced at lower cost."

3656 Did I read that correctly?

3657 A You did.

3658 Q So fair to say that you received this forwarded

3659 communication through Arthur Gary around that sort of

3660 holiday time in 2017, and you said earlier that it was the

3661 Department of Justice's goal to get the highest quality

3662 data; is that correct?

3663 A That is correct.

3664 Q And to be able to receive that from the Census
3665 Bureau; is that correct?

3666 A That is correct.

3667 Q And this offer to have a meeting between the
3668 Department of Justice and the Department of Commerce, that
3669 did not happen; is that correct?

3670 A The offer didn't happen, or the meeting did not
3671 happen?

3672 Q Sorry. That the meeting did not happen.

3673 A Oh, the meeting did not happen.

3674 Q I guess my statement is that it did happen, the
3675 offer, but not --

3676 A The offer happened.

3677 Q The meeting did not happen between --

3678 A That's correct.

3679 Q Why did that meeting not occur?

3680 Mr. Gardner. To the extent you can answer that
3681 question without divulging confidential or litigation
3682 interests of the Department, you may do so. Otherwise, I
3683 instruct you not to answer.

3684 A Consistent with that instruction, I can't
3685 answer.

3686 Q Did you decide on your own to not have that
3687 meeting, or was there another decision made to not have the

3688 meeting?

3689 Mr. Gardner. Same instruction with the same

3690 caveat.

3691 A I guess consistent with that instruction, I

3692 can't answer.

3693 Mr. Anello. Haven't you previously testified

3694 that the Attorney General told you to cancel the meeting?

3695 Mr. Gore. I was never told to cancel a meeting

3696 because no meeting was ever scheduled.

3697 Mr. Anello. Have you previously testified that

3698 the Attorney General told you not to accept the offer of a

3699 meeting?

3700 Mr. Gore. I believe what I previously

3701 testified to in my deposition is that the Attorney General

3702 decided not to have the meeting.

3703 Q How was that communicated to you?

3704 A I don't recall.

3705 Q How was that communicated to Arthur Gary?

3706 A I told Arthur, Art.

3707 Q Art, okay.

3708 How did you know that the Attorney General did

3709 not -- did not want to have the meeting with the Department

3710 of Commerce -- or the Census Bureau, to be specific?

3711 A As I said, I don't recall how that was

3712 communicated to me.

3713 BY MR. ANELLO.

3714 Q Can I ask you a question?

3715 Did you want to have the meeting?

3716 Mr. Gardner. I instruct the witness not to

3717 answer.

3718 Mr. Anello. On what basis?

3719 Mr. Gardner. Confidentiality and litigation

3720 interests of the Department of Justice.

3721 Q I mean, I want to maybe back up a second. I

3722 want to make sure I'm understanding the context. The

3723 context here is that this letter you sent says, "As

3724 demonstrated below, the decennial census questionnaire is

3725 the most appropriate vehicle for collecting that data" --

3726 which is the citizenship data -- "and reinstating a

3727 question on citizenship will best enable the Department to

3728 protect all American voting rights under Section 2."

3729 That was a quote from your letter of December

3730 12th. I'm sorry, I was quoting from the end of the first

3731 paragraph of your letter on December 12th.

3732 A Okay.

3733 Q Is that right?

3734 A I wasn't reading along, but if you tell me that

3735 that's -- that you read it out loud, then it's good enough

3736 for me.

3737 Q If I made a mistake, I will correct the record.

3738 I was just reading from the letter.

3739 A Terrific.

3740 Q Then the email that was handed to you just now
3741 from Ron Jarmin -- who was, I believe, the head of the
3742 Census Bureau, correct -- the acting head of the Census
3743 Bureau?

3744 A That's my understanding of who he was at the
3745 time. I don't know what role he plays now.

3746 Q His email says, "The best way to provide PL94
3747 block-level data with citizenship -- citizen voting
3748 population by race and ethnicity would be by utilizing a
3749 linked file of administrative and survey data the Census
3750 Bureau already possesses. This would result in higher
3751 quality data produced at a lower cost."

3752 A That's not what this email says. You've left
3753 off -- now, let me be clear on this. You've truncated the
3754 sentence in a way that takes out a very important phrase.
3755 He says that his staff -- somebody at the Census Bureau
3756 made findings that suggest that conclusion, not that that's
3757 the conclusion of the Census Bureau. In fact, that turns
3758 out to be false. There are gaps in the administrative
3759 records. Administrative records can't actually provide
3760 this data. And that was the determination that Secretary
3761 Ross made in his memo of decision, which is why he decided,
3762 and I understand from publicly available information, to

3763 reinstate the question and use some kind of administrative
3764 records data to get at block-level citizenship data. You
3765 didn't say their findings suggest that. You started with
3766 "the best way to provide." That's inaccurate.

3767 Q Fair enough. I was not attempting to miss
3768 something that was in the document. That's right. That's
3769 exactly what the document says. The question that I'm
3770 asking -- I didn't get to my question. That was just
3771 trying to lay a foundation for you.

3772 The question I'm trying to understand is, the
3773 letter you sent was a request to Dr. Ron Jarmin. This
3774 email is a response from Dr. Ron Jarmin expressing, as you
3775 said, the views of his staff as expressed in a briefing to
3776 him. Is that fair?

3777 A I think it speaks for itself. It says that he's
3778 had this briefing and that somebody suggested some findings
3779 that suggest a particular outcome.

3780 Q Can you explain to me why -- strike that.

3781 Wouldn't it have been important in a
3782 circumstance like this, given a response like this from Dr.
3783 Jarmin, to meet and talk about the issue?

3784 Mr. Gardner. To the extent you can answer that
3785 question without divulging confidential or litigation
3786 interests of the Department, you may do so. Otherwise, I
3787 instruct you not to answer.

3788 A Can you ask the question again? I didn't follow
3789 it.

3790 Q Yes. Given the letter that you sent, the
3791 response that you got back, wouldn't it be important to
3792 meet with the Census Bureau and talk through these issues?

3793 Mr. Gardner. Same instruction.

3794 A I think consistent with that instruction, the
3795 only answer I can give is, not necessarily.

3796 Q So you don't think it would be important -- you
3797 don't think it was important to meet with them to discuss
3798 this email and the views expressed in this email?

3799 A What I can tell you is no meeting took place,
3800 and, in fact, the conclusion suggested by these findings is
3801 inaccurate.

3802 Ms. Sachsman Grooms. Did you -- you just
3803 stated the conclusions suggested by the findings described
3804 in this email are inaccurate. Did you know that those were
3805 inaccurate at the time you received the email?

3806 Mr. Gardner. To the extent you can answer that
3807 question without divulging confidential or litigation
3808 interests of the Department, you may do so. Otherwise, I
3809 instruct you not to answer.

3810 Mr. Gore. Consistent with that instruction, I
3811 can't answer.

3812 Q Did you tell the Attorney General -- did you

3813 tell the Attorney General that the Census Bureau had sent
3814 this email?

3815 Mr. Gardner. I instruct you not to answer.

3816 Q Did you conduct additional research after you
3817 got this email?

3818 A I don't recall.

3819 Q Shouldn't you have conducted additional
3820 research?

3821 Mr. Gardner. Sorry, can you rephrase that
3822 question?

3823 Q Wouldn't it have been reasonable and
3824 responsible, given this -- after having received this
3825 email, to conduct additional research on the topic?

3826 Mr. Gardner. You can answer that question if
3827 you can.

3828 A Again, not necessarily.

3829 Q After you received this email, did you have
3830 further discussions with anybody at the Department of
3831 Commerce about the issues described here?

3832 A I don't recall.

3833 Q Did you have further discussions with anybody at
3834 the Department of Justice about these issues?

3835 A Which issues in particular are we talking about?

3836 Q The issues described -- the issues in the
3837 quotation I just read from Dr. Jarmin.

3838 A I believe I did.

3839 Q Who did you speak to?

3840 A Rachael Tucker, and I think I spoke with the
3841 Attorney General as well.

3842 Q Why did you have those conversations?

3843 Mr. Gardner. To the extent you can answer that
3844 question without divulging confidential or litigation
3845 interests of the Department, you may do so. Otherwise, I
3846 instruct you not to answer.

3847 A Consistent with that instruction, I can't
3848 answer.

3849 BY MS. ANDERSON.

3850

3851 Q Did you talk with anybody in the Voting Rights
3852 Section about the contents of this email?

3853 Mr. Gardner. Same instruction.

3854 A Yes.

3855 Q Who did you talk to?

3856 A Chris Herren.

3857 Q When did you talk to him?

3858 A I don't recall specifically when I talked to
3859 him.

3860 Q What did you talk about?

3861 Mr. Gardner. I instruct the witness not to
3862 answer.

3863 Q Did you talk about scheduling this meeting or
3864 scheduling a potential meeting?

3865 Mr. Gardner. Sorry, can you ask that one more
3866 time? I just got a little lost in the meaning of what.

3867 Q Did you talk with Chris Herren about scheduling
3868 a possible meeting with the Department of Commerce?

3869 Mr. Gardner. I think at that level you can
3870 answer that question.

3871 A Yes. Let me clarify. I talked to him about the
3872 offer to hold a meeting.

3873 Q Sure.

3874 Did you talk with him about the suggestions
3875 that are in the email from Ron Jarmin?

3876 Mr. Gardner. You can answer that with yes or
3877 no.

3878 A Yes, I did.

3879 Q What did Mr. Herren say about the suggestions
3880 that are outlined in this email?

3881 Mr. Gardner. I instruct the witness not to
3882 answer.

3883 Q What did he say about the offer for a meeting?

3884 Mr. Gardner. I instruct the witness not to
3885 answer.

3886 Q Did he want to have a meeting with the
3887 Department of Commerce?

3888 Mr. Gardner. I instruct the witness not to
3889 answer.

3890 I don't mean to interrupt you, but we've been
3891 going about an hour again. Is it almost a good time for
3892 lunch?

3893 Ms. Anderson. Yes.

3894 Mr. Gardner. If you have a question or two, I
3895 don't want to stop you. It's lunchtime.

3896 Ms. Anderson. We can go off the record.

3897 (A lunch recess was taken.)

3898 Ms. Anderson. Back on the record.

3899 For the record, my name is Tori Anderson, and
3900 the time, just to be aware, is 1:53.

3901 BY MS. ANDERSON.

3902 Q So I just want to go back through -- at the very
3903 beginning we went through a list of a bunch of people that
3904 you discussed. So I'm just going to go back through and
3905 kind of -- and go through that list with you, obviously
3906 skipping over the ones that we already talked about.

3907 You said that one of the people that you
3908 discussed the citizenship question with was Rachael Tucker;
3909 is that correct?

3910 A That's correct.

3911 Q How many times did you talk with her about the
3912 citizenship question?

3913 A I don't recall specifically, and at the time she

3914 was our point of contact in the Office of Attorney General,
3915 and I imagine I spoke with her maybe five to ten times
3916 about the issue either as part of regular conversations
3917 about the Civil Rights Division work generally or
3918 specifically with respect to this issue, and she would have
3919 participated in conversations between me and the Attorney
3920 General regarding the issue. She would have sat in on
3921 those conversations.

3922 Q And did you speak with her substantively about
3923 the citizenship question issue?

3924 A Yes.

3925 Q What did you discuss with her?

3926 Mr. Gardner. I instruct the witness not to
3927 answer.

3928 Q How many times did you have a substantive
3929 discussion with her about the citizenship question?

3930 A I don't recall specifically.

3931 Q The next one I have is Ben. Is that correct?
3932 What was his last name game?

3933 A Aguinaga.

3934 Q I'm not going to get that right.

3935 How many times did you discuss with him the
3936 citizenship question?

3937 A I don't recall specifically. He was my chief of
3938 staff at the time, so he attended meetings with me, and we

3939 generally discussed the issues in the Division.

3940 Q Did you have substantive conversations with him
3941 about the addition of a citizenship question?

3942 A Yes, I did.

3943 Q What were the contents of those discussions?

3944 Mr. Gardner. I instruct the witness not to
3945 answer.

3946 Q Do you remember speaking with him after you
3947 first became aware of interest in the citizenship question
3948 in early September 2017?

3949 A I certainly did speak with him after that time.
3950 I don't know when I first spoke to him about the issue.

3951 Q You said Bob Troester was in the Office of the
3952 Attorney General; is that correct?

3953 A Troester.

3954 Q Troester.

3955 A Office of the Deputy Attorney General.

3956 Q How many times did you talk to Bob Troester,
3957 about?

3958 A So Bob was a point of contact in the Office of
3959 Deputy Attorney General on civil rights issues, so I talked
3960 to him regularly about issues in the Civil Rights
3961 Division -- I can't remember specifically how many times --
3962 either through more general conversations or broader
3963 conversations or specific conversations I talked to him

3964 about this particular issue.

3965 Q Did you have substantive conversations with him?

3966 A Yes, I did.

3967 Q What did you talk about?

3968 Mr. Gardner. I instruct the witness not to
3969 answer.

3970 Q Did you talk to him first, would you say, more
3971 closely to when you first became aware that this -- the DOJ
3972 might be considering the Department of Commerce's request
3973 or later in time?

3974 Mr. Gardner. Could you ask that question one
3975 more time?

3976 Q Did you first talk to him around that early
3977 September date or did you talk to him more towards
3978 December?

3979 A I don't recall.

3980 Q How many times did you talk to Rachel Brand
3981 about the addition of a citizenship question?

3982 A I don't recall specifically. I think I said
3983 earlier it was four or five or three or four. I can't
3984 remember what I said earlier today, but that sounds about
3985 right.

3986 Q You had substantive conversations with her; is
3987 that correct?

3988 A Yes, I did.

3989 Q What were the contents of those conversations?

3990 Mr. Gardner. I instruct the witness not to
3991 answer.

3992 Q Did you first speak with her in that early
3993 September range or did you first speak with her later, if
3994 you can recall?

3995 A I can't recall specifically, but I think I first
3996 spoke with Rachel in mid to late September about the issue.

3997 Ms. Sachsman Grooms. I'm sorry, did you say
3998 mid to late September?

3999 Mr. Gore. Yes.

4000 Ms. Sachsman Grooms. Why do you think that?

4001 Mr. Gore. I'm sorry?

4002 Ms. Sachsman Grooms. I thought that the
4003 beginning time frame that we were starting at was late
4004 September, early October.

4005 Mr. Gore. No, it was late August, early
4006 September.

4007 Ms. Sachsman Grooms. Sorry, okay.

4008 Q When you had discussions with Rachel Brand, were
4009 they with -- was anybody else present or were they with
4010 her?

4011 A Other people were present. I can recall Jesse
4012 Panuccio being present and Patrick Hovakimian being present
4013 for at least some of those conversations.

4014 Q How many times did you talk to Jesse Panuccio?

4015 A I don't recall exactly. Probably -- I think I
4016 talked to Jesse a couple of times in addition to the times
4017 I spoke with Rachel. So I talked to him two or three more
4018 times about the issue than I did with Rachel.

4019 Q Just with him or with other people present as
4020 well?

4021 A Either just with him or with him and Pat
4022 Hovakimian.

4023 Q Were those subsequent conversations?

4024 A Yes.

4025 Q What did you discuss?

4026 Mr. Gardner. I instruct the witness not to
4027 answer.

4028 Q You said at some point later you talked to
4029 Bethany Pickett; is that correct?

4030 A That is correct.

4031 Q And Chris Herren; is that correct?

4032 A That's correct.

4033 Q When did you first have conversations with them?

4034 A With Bethany, I think I first had conversations
4035 with her in October of 2017. I don't recall specifically
4036 when I first had conversations with Chris Herren. My
4037 standard practice within the Civil Rights Division, that if
4038 someone from the Office of Assistant Attorney General wants

4039 to solicit the views of career attorneys or a career
4040 section within the Division, to speak directly to and only
4041 to the section chief, so it would have been extraordinary
4042 for me to talk directly to any other career staff regarding
4043 this. So that's our standard practice. That's been
4044 standard practice in the division going back a very long
4045 time, it's my understanding. So I would have raised it
4046 with Chris, and Chris then could have solicited the views
4047 of other career attorneys if he thought it was appropriate
4048 to do so.

4049 Q I think -- I think what I would like to do is
4050 kind of just get a more global understanding of sort of the
4051 timeline of events and sort of when you were talking and
4052 who was talking to who, if that makes sense.

4053 A Sure.

4054 Q So I'm going to walk through it to my
4055 understanding and probably do some follow-up questions.

4056 So you first became aware of this issue in
4057 early September through talking with Mary Blanche Hankey
4058 and Attorney General Jeff Sessions. That's still correct?

4059 A That is correct.

4060 Q What did you do next about this issue?

4061 A So, as I mentioned before, I conducted some
4062 legal research and some general research regarding the
4063 census.

4064 Q Who did you talk to after talking with Mary
4065 Blanche Hankey and Attorney General Jeff Sessions, and in
4066 what time frame was that?

4067 A Eventually I spoke to everyone on the list,
4068 obviously.

4069 Q Sure.

4070 A I think if you're -- I don't recall exactly the
4071 timeline of everything. I received my first call from
4072 Peter Davidson pretty shortly after that initial
4073 conversation I had, and within the September time frame I
4074 would have spoken to Rachel, Jesse, Pat -- Rachel Brand,
4075 Jesse, Pat, Rachael Tucker, Danielle, obviously. I spoke
4076 with Wendy Teramoto again on September 16th, James Uthmeier
4077 I think towards the end of September.

4078 I don't recall when I first talked to Gene or
4079 Bob Troester or Chris Herren. I probably would have spoken
4080 to Ben Aguinaga pretty soon after since he was the chief of
4081 staff. I know I talked to Bethany in October.

4082 Q Besides the draft letter that you wrote prior to
4083 the, I guess the more formal letter on December 12th, did
4084 you produce any other documents related to the addition of
4085 the citizenship question?

4086 A Can you clarify what you mean by "produce"?

4087 Q Did you write -- put together any documents?

4088 A I'm trying to think about how to answer that

4089 question. I don't recall. I think at one point I
4090 participated in or reviewed some talking points regarding
4091 the issue for the hearing that the Attorney General was
4092 going to testify at here on the Hill, but I don't recall.
4093 I think Ben may have written the first draft of those. I
4094 don't recall. And I don't recall producing -- writing
4095 anything else related to that other than emails.

4096 Q About what time would -- to your recollection
4097 were the talking points written?

4098 A I believe it was in October of 2017, but I'm not
4099 sure. Might have been later. It probably was later now
4100 that I think about it. So I don't know. I shouldn't put a
4101 date on it when I don't remember.

4102 Q Okay.

4103 So then that's sort of the September time
4104 frame. What happened next?

4105 A Let's see, so September time frame. And then in
4106 October I continued to do some research, legal research and
4107 research generally about the census. Began drafting -- at
4108 some point began drafting the first draft of the letter,
4109 continued to talk to those individuals I mentioned before.
4110 And at some point along the way, I don't know if it was
4111 September or October, I talked to Chris Herren and Art Gary
4112 and the other individuals on the list, Mark Neuman, and, as
4113 I mentioned, continued to have conversations with other

4114 people in the Department regarding this issue.

4115 Q Did you discuss, with anyone outside of the
4116 Department of Justice while you were drafting the letter,
4117 your drafting process?

4118 Mr. Gardner. Sorry, I'm not sure I understand
4119 the question.

4120 Q Did you discuss drafting what ultimately became
4121 the December 12th letter with anyone else outside of the
4122 Department of Justice?

4123 Mr. Gardner. I'm sorry, is your question did
4124 he discuss the fact that he was drafting the letter?

4125 Ms. Anderson. Yes, that's my first question.

4126 Mr. Gardner. You can answer that.

4127 A Yes.

4128 Q Who did you discuss it with?

4129 A I discussed it with Peter Davidson. I may have
4130 discussed it with James Uthmeier, although I don't recall
4131 specifically.

4132 Q Did they give you any comments, feedback, advice
4133 about the drafting of that letter?

4134 Mr. Gardner. You can answer that with a yes or
4135 no.

4136 A Yes.

4137 Q Just to be clear, does that yes pertain to both
4138 Peter Davidson and James Uthmeier or one or the other?

4139 A Both.

4140 Q How many times would you say you discussed,
4141 received comments, talked about the drafting of that letter
4142 with Peter Davidson?

4143 A The fact that -- as I understand, you were
4144 asking about the fact that I was drafting the letter --

4145 Q Sure.

4146 A -- or that process was going on?

4147 Q Yes.

4148 A I think I would have discussed that with him
4149 every time I talked to him or almost every time I talked to
4150 him.

4151 Q Did you discuss the contents of what you were
4152 drafting with Peter Davidson?

4153 A Yes, I did.

4154 Q Every single time as well?

4155 A Maybe not -- probably not every time, but more
4156 than once.

4157 Q Did he give you any advice, feedback, or
4158 comments about the contents of your drafting letter?

4159 Mr. Gardner. You can answer that yes or no.

4160 A Yes.

4161 Q Would you say he gave those comments or feedback
4162 or -- every single time you spoke with him?

4163 A No.

4164 Q Do you remember when that time was where you
4165 received a comment or anything from Peter Davidson on the
4166 more substantive parts of the drafting?

4167 A Not specifically.

4168 Q Did you incorporate any of those feedback or
4169 comments into your draft letter?

4170 Mr. Gardner. I instruct the witness not to
4171 answer.

4172 Q Did you discuss the -- you said you discussed
4173 the fact that you were drafting the letter with James
4174 Uthmeier as well; is that correct?

4175 A Correct.

4176 Q Did you discuss the contents of what was in your
4177 draft letter with James Uthmeier?

4178 A Yes, I did.

4179 Q How many times?

4180 A Once, maybe twice.

4181 Q Did you receive any comments or feedback or
4182 thoughts about the contents of your draft letter from James
4183 Uthmeier?

4184 Mr. Gardner. You can answer that with a yes or
4185 no.

4186 A Yes.

4187 Q What were the substance of those comments?

4188 Mr. Gardner. I instruct the witness not to

4189 answer.

4190 Q Did any of those comments or thoughts or
4191 questions go into the draft letter that you wrote?

4192 Mr. Gardner. Same instruction.

4193 Q So you were drafting as part of that October
4194 time frame, and then what happened next?

4195 A At some point, I believe around November 1st, I
4196 solicited comments on the draft from a variety of people in
4197 the Department of Justice.

4198 Q Who were those people?

4199 A Chris Herren. As I explained before, it was
4200 standard practice in the Civil Rights Division. I wanted
4201 to get input from the career staff who has a lot of
4202 experience in Voting Rights Act cases and Voting Rights Act
4203 issues, and the conduit to do that is to contact the
4204 section chief, in this case the chief of the Voting
4205 Section, Chris Herren, and that's what I did with Chris.
4206 Comments -- I also received comments from Bethany Pickett,
4207 Ben Aguinaga, Bob Troester, Rachael Tucker.

4208 Q If you could just slow down for just a second.
4209 Thank you.

4210 Okay. Go ahead.

4211 A Art Gary.

4212 Q Could you just, sorry, quickly remind me of
4213 those people's positions? I can name them back to you if

4214 that's helpful.

4215 A Chris Herren is the chief of the Voting Section.

4216 Q Yes.

4217 A Bethany Pickett was counsel in the Civil Rights

4218 Division. Ben Aguinaga was chief of staff in the Civil

4219 Rights Division. Bob Troester was an Associate Deputy

4220 Attorney General in the Office of the Deputy Attorney

4221 General. Rachael Tucker was a counsel in the Office of the

4222 Attorney General, and Art Gary is the general counsel of

4223 the Justice Management Division.

4224 Ms. Sachsman Grooms. Did all of those people

4225 give you feedback?

4226 Mr. Gore. Yes, those are all the people I

4227 received comments or feedback or edits to the letter from.

4228 Ms. Sachsman Grooms. Were there additional

4229 people who you sent the letter to that you did not get

4230 feedback from?

4231 Mr. Gore. Not that I recall.

4232

4233 Q Was there anyone else additional that you had

4234 contact with outside the Department of Justice about the

4235 draft letter or that November 1st, I guess, more done draft

4236 letter?

4237 Mr. Gardner. I'm sorry, I don't understand the

4238 question.

4239 A I didn't understand. Try again.

4240 Q Besides James Uthmeier and Peter Davidson, did
4241 you consult with anyone else about the substance of your
4242 draft letter outside of the Department of Justice?

4243 A Oh, I see. No.

4244 Ms. Sachsman Grooms. What about Mr. Neuman?

4245 Mr. Gore. No.

4246 Q Okay. So then after you, I guess, solicited
4247 comments from that list of people, what did you do next?

4248 A I received comments from each of those people at
4249 various points in time and incorporated some of those
4250 comments into the draft.

4251 Q Whose comments did you incorporate?

4252 Mr. Gardner. To the extent you can answer that
4253 question without divulging confidential or litigation
4254 information, you may do so. Otherwise, I instruct you not
4255 to answer.

4256 A I'm not sure I can answer the question
4257 consistent with that instruction.

4258 Q Were there comments that you received that you
4259 did not incorporate into the letter?

4260 Mr. Gardner. You can answer that with a yes or
4261 no.

4262 A Yes.

4263 Q Whose comments were those?

4264 Mr. Gardner. I instruct you not to answer.

4265 Q What did you do next?

4266 A I don't recall specifically what I did next.

4267 During that period of time, I was continuing to have

4268 conversations with people in the Department and with

4269 Mr. Davidson about the letter. And after incorporating all

4270 of the edits and discussing the letter, at one point -- at

4271 some point I had a conversation with Art Gary about the

4272 letter.

4273 Q When you were having discussions with Peter

4274 Davidson, did you send to him or review with him your more

4275 updated draft letter, the one that incorporated comments

4276 from November 1st?

4277 A No.

4278 Q Did you review or send to James Uthmeier your

4279 more updated letter that incorporated comments from

4280 November 1st?

4281 A No.

4282 Q Did you send Peter Davidson your original draft

4283 of the letter?

4284 A No.

4285 Q Did you send James Uthmeier the original draft

4286 of the letter?

4287 A No.

4288 Let me just clarify. There was a draft around

4289 November 1st, and then there were many drafts after that
4290 that incorporated rounds of comments.

4291

4292 Ms. Sachsman Grooms. Just to make sure I'm
4293 clear on this, you had conversations about the contents of
4294 the draft of your letter with Mr. Uthmeier and
4295 Mr. Davidson, but you never sent them an actual copy of it.
4296 Is that accurate?

4297 Mr. Gore. That is correct.

4298 Q What happened next?

4299 A At some point -- I'm trying to remember. So
4300 that gets us through November, and into December I was
4301 still receiving comments on the letter and at some point
4302 incorporated those comments and had further communications
4303 and conversations with Art Gary and with Rachael Tucker and
4304 Bob Troester regarding finalizing that letter and whether a
4305 final decision was made to send the letter.

4306 Q Did you ever show -- let's start with your
4307 original draft before this sort of rounds of drafts.

4308 Did you ever show that draft to the Attorney
4309 General?

4310 A No.

4311 Q Did you ever show any subsequent draft to the
4312 Attorney General?

4313 A I can't recall specifically sharing a draft with

4314 the Attorney General. I don't know whether anyone else
4315 did. It's certainly possible.

4316 Q And then can you just talk about that final, I
4317 guess, end of November to December 12th time period?

4318 A Sure. As I recall, I was still receiving
4319 comments on the letter during that time period. And at
4320 some point, I believe it was on the morning of December
4321 12th, I understood that the final decision had been made to
4322 send the letter, and the letter was sent -- the decision
4323 became final and the letter was sent that day.

4324 Q Okay. Who did you understand was making the, as
4325 you said, final decision?

4326 A I believe it came from Department leadership.

4327 Q Who did that include? Who do you mean by
4328 "Department leadership"?

4329 A The Attorney General.

4330 Q Is that the normal process of approval for
4331 sending out a letter, or can you talk through what the
4332 normal process is?

4333 Mr. Gardner. Just to be clear, do you mean any
4334 letter of the Department? I think we need to be clear
4335 about this.

4336 Ms. Anderson. Sure.

4337 Q So what was the process that was used to have
4338 this letter be approved to send out?

4339 Mr. Gardner. If you can answer that question.

4340 A Yes. May I describe what process we actually
4341 did in fact use?

4342 Q Sure.

4343 A There are within the Department certain issues
4344 that --

4345 Q Sorry. I want to cabin it so you don't have to
4346 talk about everything all the way back.

4347 A Okay.

4348 Q But that final phase, once you were done
4349 incorporating the comments, what was -- from that point to
4350 December 12th.

4351 A As I said, I mean, I think I had further
4352 conversations with Bob Troester and Rachael Tucker
4353 regarding the letter, and it was conveyed to me that we
4354 should send the letter on December 12th, and it was sent on
4355 December 12th.

4356 Q Who conveyed that to you?

4357 A I think I heard from both Bob and Rachael, but I
4358 think I heard from Rachael last.

4359 Ms. Sachsman Grooms. Do you know what
4360 packaging form, what set of documents would have gone to
4361 the Attorney General for the decision-making on this point?

4362 Mr. Gore. I have no idea.

4363 Ms. Sachsman Grooms. So did you get any

4364 package back? You didn't formulate some package together
4365 with a final letter in a recommendation memo and then send
4366 that up the chain? Did you do that?

4367 Mr. Gore. No, I did not.

4368 Ms. Sachsman Grooms. You didn't get some piece
4369 of paper back saying that he had approved it?

4370 Mr. Gore. No, I did not.

4371 Q From January 20th, 2017, to March 2018, so that
4372 ...

4373 A Okay.

4374 Q Did you have any communications or were you
4375 aware of any communications involving executive branch
4376 officials or others about whether adding a citizenship
4377 question would help with redistricting?

4378 Mr. Gardner. You can answer that with a yes or
4379 no. You might want to break that up into multiple
4380 questions because it's awful broad.

4381 Ms. Anderson. Do we have the same time frame
4382 or would you like me to --

4383 Mr. Gardner. Yes, keep the time frame. Just
4384 like you can ask him first is he aware of any conversation.

4385 Ms. Anderson. Sure.

4386 Q Did you have any conversations involving
4387 executive branch officials about whether adding a
4388 citizenship question would help with redistricting?

4389 Mr. Gardner. You can answer that question with
4390 a yes or no.

4391 A Yes.

4392 Q Who?

4393 Mr. Gardner. I will instruct you not to
4394 answer.

4395 Q So between the same time frame -- we're just
4396 going to keep that for now, but if you would like me to
4397 repeat it, I'm happy to do that -- did you become aware of
4398 any conversations involving executive branch officials
4399 involving whether the citizenship question would help with
4400 redistricting?

4401 Mr. Gardner. Same instruction. You can answer
4402 yes or no.

4403 A Yes.

4404 Q Who?

4405 Mr. Gardner. I'll instruct you not to answer.

4406 Q We'll stick with the executive branch officials
4407 about whether redistricting -- whether the citizenship
4408 question would help with redistricting. Do you know when
4409 you were aware of those conversations occurring?

4410 A I was aware of the conversations I participated
4411 in when they occurred.

4412 Q We can start there. When did those occur?

4413 A Those occurred -- I can recall conversations

4414 between September and December of 2017.

4415 Mr. Gardner. I thought you were asking between
4416 January and March.

4417 Ms. Anderson. January 2017.

4418 Mr. Gardner. I'm sorry.

4419 Ms. Anderson. And March 2018.

4420 Mr. Gardner. I'm sorry. That's why I was
4421 confused. Okay. I'm sorry.

4422 Q Now, going back to were you aware about
4423 conversations involving executive branch officials about
4424 whether a citizenship question would help with
4425 redistricting, were you aware of when those conversations
4426 occurred?

4427 A I participated in those conversations and I was
4428 aware of them when they occurred.

4429 Q Okay. Were you involved with any conversations
4430 with other people about whether adding a citizenship
4431 question would help -- would help with redistricting?

4432 A Other than who?

4433 Q Other than executive branch officials.

4434 A I think I have given you the list of everyone I
4435 spoke to.

4436 Q Between the same -- I'll just -- between January
4437 2017 and March 26, 2018, did you have any communications or
4438 conversations about whether adding a citizenship question

4439 would influence the outcome of an election?

4440 Mr. Gardner. I'm sorry, can you say that one
4441 more time? I apologize.

4442 Q Between January 20th, 2017, and March 26th,
4443 2018, did you have any communications or conversations
4444 about whether adding a citizenship question would influence
4445 the outcome of an election?

4446 Mr. Gardner. I see. You can answer that
4447 question with a yes or no.

4448 A Not that I recall.

4449 Q Were you aware in that same time frame of
4450 conversations or communications between any executive
4451 branch officials about whether adding a citizenship
4452 question would influence the outcome of an election?

4453 Mr. Gardner. You can answer that question with
4454 a yes or no.

4455 A Not that I recall.

4456 Ms. Anderson. I don't think we have any more
4457 questions at this time.

4458 Mr. Gardner. Thank you.

4459 Ms. Sachsman Grooms. We can go off the record.

4460 (Interview concluded at 2:21 p.m.)

ERRATA SHEET

INSTRUCTIONS: After reading the interview transcript, please note any change, addition, or deletion on this sheet. DO NOT make any marks or notations on the actual transcript. Use additional paper if needed.

Investigation Name	Census Investigation
Witness Name	John Gore
Date of Interview	March 7, 2019

PAGE	LINE	CORRECTION	APPROVED*
1	17	Change “Senior Counsel” to “Acting Deputy Assistant Attorney General”	Y
19	443	Insert “except for Ben”	N
56	1362	Change “Chris Kovach” to “Kris Kobach”	Y
56	1370	Change “Chris Kovach” to “Kris Kobach”	Y
72	1779	Add “General” to “Deputy Attorney General”	Y
73	1794	Add period to end sentence after “Jesse Panuccio”	Y
96	2366	Change “Chris Kovach” to “Kris Kobach”	Y
96	2367	Change “Chris Kovach” to “Kris Kobach”	Y
96	2369	Change “Mr. Kovach” to “Mr. Kobach”	Y
136	3365	Insert “and again 2018” (see attached letter from DOJ)	N
143	3559	Add “U.S.” in front of “attorneys”	Y
148	3673	Delete quotation marks	Y
153	3795	Add comma after “is”	Y

* For COR Majority Staff use only.

ERRATA SHEET

PAGE	LINE	CORRECTION	APPROVED
164	4074	Delete “Rachel, Jesse, Pat”	N

* For COR Majority Staff use only.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 21 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Cummings and Ranking Member Jordan:

This responds to the Department of Justice's (Department) review of a transcript from the March 7, 2019 interview of John Gore, Principal Deputy Assistant Attorney General of the Civil Rights Division. The Department provided proposed errata as noted in the draft transcript on March 19, 2019 and is providing one substantive revision below.

- p. 135-138; 144: Mr. Gore was asked whether he had discussed apportionment with Attorney General Sessions, how many conversations on the topic had occurred, and when those conversations occurred. Mr. Gore indicated that he discussed the topic one time with Attorney General Sessions in the fall of 2017, "around the time when the state of Alabama filed a lawsuit about apportionment issues against the Department of Commerce." p.136. On review of the transcript, Mr. Gore realized that case was filed in 2018 (*see, Complaint, Alabama v. United States Dep't of Commerce*, 18-cv-772 (N.D. Al. May 21, 2018)) and on reflection, he now believes that there were two conversations on this topic – one in the fall of 2017 and one in the spring of 2018. The Department is not prepared at this time to discuss the content of those conversations. As the Department has repeatedly explained to the Committee, not only does the Department have an essential need to maintain the confidentiality of its internal deliberations, but it also has the more specific concern that the Department's litigation position regarding privileges, which was not challenged in litigation, could be compromised if those very same confidential deliberations were made public through a concurrent oversight process.

The Honorable Elijah E. Cummings
The Honorable Jim Jordan
Page Two

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Antell", with a stylized flourish extending to the right.

Kira Antell
Acting Deputy Assistant Attorney General