

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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August 2, 2018

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

The Honorable Mark Meadows  
Chairman  
Subcommittee on Government Operations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairmen:

Based on newly released information and documents, we are writing to request that you convene a hearing with Secretary of Commerce Wilbur Ross to investigate the misleading testimony he and other Commerce Department officials provided to Congress regarding the March 26, 2018, decision to add a citizenship question to the 2020 Census. Misleading Congress is a serious offense, and our Committee must hold Secretary Ross accountable.

In sworn testimony before multiple Committees of Congress in both the House and Senate, Secretary Ross and other Commerce Department officials repeatedly claimed that they decided to add a citizenship question to the Census “solely” in response to a request from the Department of Justice (DOJ) on December 12, 2017. For example:

- On March 20, 2018, before the House Committee on Appropriations, Secretary Ross testified: “We have had a request, as everyone is aware, from the Department of Justice, to add a citizenship question to the 2020 census.” He also stated: “We are responding solely to the Department of Justice’s request.”<sup>1</sup>
- On March 22, 2018, before the House Committee on Ways and Means, Secretary Ross testified: “The Department of Justice, as you know, initiated the request for inclusion of the citizenship question.” He elaborated: “Because it is from the Department of Justice, we are taking it very seriously and we will issue a fulsome documentation of whatever conclusion we finally come to.”<sup>2</sup>
- On May 8, 2018, before our Committee, Earl Comstock, the Department’s Director of the Office of Policy and Strategic Planning testified: “We received a

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<sup>1</sup> House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *FY19 Budget Hearing: Department of Commerce* (Mar. 20, 2018).

<sup>2</sup> House Committee on Ways and Means, *Hearing on Hearing with Commerce Secretary Ross* (Mar. 22, 2018).

request from the Justice Department for this, and their rationale was that the level of information that they needed to enforce the Voting Rights Act was not available.” He also claimed: “This was requested by the Department of Justice for their statutory duty to enforce the Voting Rights Act.” He also testified: “The reason for this question was the Justice Department asked this to get more accurate information at the census block level.”<sup>3</sup>

- On May 10, 2018, before the Senate Committee on Appropriations, Secretary Ross testified in response to a question of why there was a sudden need for this information: “Well, the Justice Department is the one who made the request of us.”<sup>4</sup>

Based on newly released documents, it now appears that this testimony was highly misleading.

On June 21, 2018, Secretary Ross submitted a supplemental memo to the court in ongoing litigation in *New York v. United States Commerce Department*. His memo calls into question prior testimony by him and other officials that the Department of Commerce was merely responding to the DOJ request on December 12, 2017. He wrote:

My staff and I thought reinstating a citizenship question could be warranted, and we had various discussions with other governmental officials about reinstating a citizenship question to the Census. As part of that deliberative process, my staff and I consulted with Federal governmental components and inquired whether the Department of Justice (DOJ) would support, and if so would request, inclusion of a citizenship question as consistent with and useful for enforcement of the Voting Rights Act.<sup>5</sup>

He noted that discussions about the addition of a citizenship question began shortly after he became Secretary and reflected an idea that “other senior Administration officials had previously raised.”<sup>6</sup>

In addition to Secretary Ross’ supplemental memo, other documents now made public as part of this litigation illustrate how the request was initiated by the Commerce Department and coordinated with then-White House Chief Strategist Steve Bannon long before the December 2017 request from DOJ:

- On February 2, 2017, Ellen Herbst, the Chief Financial Officer and Assistant Secretary for Administration at the Department of Commerce, requested a

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<sup>3</sup> House Committee on Oversight and Government Reform, *Hearing on Progress Report on the 2020 Census* (May 8, 2018).

<sup>4</sup> Senate Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Hearing on Review of the FY2019 Budget Request for the U.S. Department of Commerce* (May 10, 2018).

<sup>5</sup> Supplemental Memo from Wilbur Ross (June 21, 2018) (online at <https://assets.documentcloud.org/documents/4550954/Wilbur-Ross-Supplemental-Memo.pdf>).

<sup>6</sup> *Id.*

briefing from the Census Bureau for Mr. Comstock, the Director of the Department's Office of Policy and Strategic Planning, on "the upcoming Congressional notification of decennial and ACS [American Community Survey] topics," noting that "Earl is very interested and thinks the Secretary will be as well."<sup>7</sup>

- On March 10, 2017, Mr. Comstock sent an email to Secretary Ross regarding "Your Question on the Census," which included an article from the *Wall Street Journal* entitled, "The Pitfalls of Counting Illegal Immigrants."<sup>8</sup>
- On April 5, 2017, Secretary Ross' executive assistant sent an email to Secretary Ross' wife asking about the Secretary's plans for the evening because "Steve Bannon has asked that the Secretary talk to someone about the Census."<sup>9</sup>
- On April 20, 2017, Secretary Ross' executive assistant sent an email she said was from Secretary Ross to Mr. Comstock, which stated: "Census Director has on April 29 a meeting of the National Advisory Committee on Racial, Ethnic and Other Populations. We must get our issue resolved before this!"<sup>10</sup>
- On May 2, 2017, Secretary Ross wrote in an email to Mr. Comstock and Ms. Herbst, "I am mystified why nothing have [sic] been done in response to my months old request that we include the citizenship question."<sup>11</sup>
- That same day, Mr. Comstock promised to begin working with DOJ, stating in an email: "We need to work with Justice to get them to request that citizenship be added back as a census question, and we have the court cases to illustrate that DOJ has a legitimate need for the question to be included. I will arrange a meeting with DOJ staff this week to discuss."<sup>12</sup>

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<sup>7</sup> Email from Ellen Herbst, Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce, to David Langdon, Senior Policy Advisor, Economics and Statistics Administration, Department of Commerce (Feb. 2, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>8</sup> Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Secretary Wilbur Ross, Department of Commerce (Mar. 10, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>9</sup> Email from Brooke Alexander, Executive Assistant to the Secretary, Department of Commerce, to Hilary Geary (Apr. 5, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>10</sup> Email from Brooke Alexander, Executive Assistant to the Secretary, Department of Commerce, to Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce (Apr. 20, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>11</sup> Email from Secretary Wilbur Ross, Department of Commerce, to Earl Comstock, Director, Office of Policy and Strategic Planning, and Ellen Herbst, Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce (May 2, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>12</sup> Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Secretary Wilbur Ross, Department of Commerce (May 2, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

- The next day, Mr. Comstock emailed a contact at the White House to inquire who was the “best counterpart to reach out to at DOJ—Regarding Census and Legislative issue.” On May 4, 2017, Mr. Comstock contacted a political appointee at DOJ.<sup>13</sup>
- On July 21, 2017, Kansas Secretary of State Kris Kobach sent an email to Secretary Ross’ Chief of Staff explaining that he had spoken with Secretary Ross about the citizenship question “at the direction of Steve Bannon, a few months earlier.” He wrote: “The issue is pretty straightforward.” He also provided “the text of the question to be added.”<sup>14</sup>
- By September 8, 2017, officials from the Commerce Department had met in person with DOJ officials to discuss the citizenship question and also had spoken to the Department of Homeland Security about the matter, which “really felt it was best handled by the Department of Justice.”<sup>15</sup>
- On September 13, 2017, Acting Assistant Attorney General John Gore asked to set up a meeting with Commerce Department officials.<sup>16</sup>
- On September 17, 2017, DOJ staff emailed Commerce Department staff, writing, “it sounds like we can do whatever you all need us to do,” and “The AG is eager to assist.”<sup>17</sup>
- The next day, Secretary Ross’s Chief of Staff confirmed that Secretary Ross and Attorney General Sessions “connected.”<sup>18</sup>

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<sup>13</sup> Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Matthew Flynn, Special Assistant to the President and Senior Director of Cabinet Affairs, Executive Office of the President, White House (May 3, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)); Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Mary Blanche Hankey, Chief of Staff and Counsel, Department of Justice (May 4, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>14</sup> Email from Kris Kobach, Secretary of State, State of Kansas, to Wendy Teramoto, Chief of Staff, Office of the Secretary, Department of Commerce (July 21, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/AR%20-%20FINAL%20FILED%20-%20ALL%20DOCS%20%5bCERTIFICATION-INDEX-DOCUMENTS%5d%206.8.18.pdf#page=775](http://www.osec.doc.gov/opog/FOIA/Documents/AR%20-%20FINAL%20FILED%20-%20ALL%20DOCS%20%5bCERTIFICATION-INDEX-DOCUMENTS%5d%206.8.18.pdf#page=775)).

<sup>15</sup> Email from Earl Comstock, Director, Office of Policy and Strategic Planning, Department of Commerce, to Wendy Teramoto, Chief of Staff, Office of the Secretary, Department of Commerce (Sept. 16, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

<sup>16</sup> Email from John Gore, Acting Assistant Attorney General, Civil Rights Division, Department of Justice, to Wendy Teramoto, Chief of Staff, Office of the Secretary, Department of Commerce (Sept. 13, 2017) (online at [www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)).

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

<sup>18</sup> Email from Wendy Teramoto, Chief of Staff, Office of the Secretary, Department of Commerce, to Danielle Cutrona, Senior Counselor to the Attorney General, Department of Justice (Sept. 18, 2017) (online at



These newly released documents indicate that the Trump Administration's purported rationale for adding a citizenship question to the Census—that it would help enforce the Voting Rights Act—was nothing but a pretext. These new documents also indicate that Secretary Ross, Mr. Comstock, and Mr. Gore misled Congress in their sworn testimony—claiming that the Department of Commerce was merely responding passively to a request from DOJ when in fact Secretary Ross and his aides concealed their extensive coordination over many months with the White House, the Attorney General, and others to orchestrate that very request.

Unfortunately, the Department of Commerce has been withholding from our Committee the documents described above for months.<sup>19</sup>

For all of these reasons, we request that you convene a hearing as soon as possible so our Committee may obtain testimony from Secretary Ross regarding these newly released documents. Secretary Ross swore an oath to testify truthfully to our Committee, and he must be held accountable.

Sincerely,

Elijah E. Cummings      Mark E. Tully  
Eleanor H. Norton      Conor B. Maloney  
Peter Welch      John  
Patrick Hilly      Brenda Lawrence  
Mark Tully      Jamie Raski

[www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip](http://www.osec.doc.gov/opog/FOIA/Documents/CensusProd001.zip)

<sup>19</sup> Letter from Ranking Member Elijah E. Cummings et al., House Committee on Oversight and Government Reform, to Secretary Wilbur Ross, Department of Commerce, and Acting Director Ron Jarmin, Census Bureau (Apr. 4, 2018) (online at [https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-04-04.%20EEC%20Maloney%20Norton%20Clay%20Connolly%20%26%20Gomez%20to%20Commerce%20re.Cens\\_....pdf](https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-04-04.%20EEC%20Maloney%20Norton%20Clay%20Connolly%20%26%20Gomez%20to%20Commerce%20re.Cens_....pdf)).

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