UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al, *Plaintiffs*, v. UNITED STATES DEPARTMENT OF COMMERCE, et al, *Defendants*.	)	No. 1:18-CV-2921 (JMF)

DECLARATION

I, Michael A. Cannon make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under the penalty of perjury the following is true and correct to the best of my knowledge and belief:

Department of Commerce Document Search Process

1. I am the Chief of the General Litigation Division, Office of the General Counsel, U.S. Department of Commerce, and my staff assisted in managing the document collection process for this litigation. As such, I oversaw the search, collection, review, and production of these documents. In the course of my duties, and through personal observation, and upon advice and representations from my staff, I obtained information to confirm the following facts set forth below.

2. My office sent out timely litigation holds to relevant parties in the Department of Commerce and the Census Bureau who had custody of documents that were deemed to be relevant or possibly relevant to this litigation.

3. The Department of Commerce ("Department") conducted searches for all pertinent documents to create the Administrative Record for this case using the manner normally employed by the Department in litigation involving administrative records. This search was designed to identify and produce documentary evidence that was considered during the decision-making process in this case.

4. More specifically, this search included the identification and collection of documents reviewed by the Secretary in the course of making his decision to reinstate the citizenship question on the Decennial Census. These documents included internal Census advisory memos on the decision, documentation of the input given directly to the Secretary through stakeholder letters and phone calls, the contents of a media tracker set up to encompass

all news articles regarding the decision, Census publications, relevant case law, and relevant statutes.

5. Pursuant to the Court's July 3, 2018 order, the Department expanded its search and production in accordance with the parameters set forth by the Court. The Department conducted a search of emails, electronic documents, and hard-copy documents reviewed and created by direct advisors to the Secretary.

6. The emails were obtained by giving search terms to the Office of the Chief Information Officer (OCIO) that were specifically designed to identify responsive documents. Those OCIO employees were directed to run those search terms through the email inboxes of identified "direct advisor" custodians. "Direct advisor" custodians were defined as individuals who demonstrably provided work product or advice directly to the Secretary.[1] My office then requested certifications from the custodians that they understood their emails had been searched.

7. Similar search terms and processes were applied to the direct advisor custodians' desktop computers in order to identify and produce responsive documents. Custodians' physical documents were also searched for relevant hard-copies of information created or received regarding the reinstatement of the citizenship question. Each custodian provided a certification that this search was performed, and responsive documents that were found were produced either directly to the Plaintiffs or identified on a privilege log.

8. The Department also collected materials from indirect advisors to the Secretary, meaning individuals who provided material or advice relied upon by the Secretary's direct advisors in providing their advice or recommendations to the Secretary.[2] Any documents provided to direct advisors by their subordinates either in hard copy or via email were included in the search of the documents held by the "direct advisor" custodian's offices or emails. Specifically, in the case of the Census Bureau's "direct advisors," Dr. Abowd, Dr. Jarmin, and Dr. Lamas, the Department collected and produced both documents from their key advisors and documents generated by Dr. Abowd's subordinates. Those latter documents were housed in a secured shared drive, which included the documents and edits produced by Dr. Abowd's subordinates in the drafting of the Census memos sent to Secretary Ross. The Department also had Dr. Abowd's subordinates, who had access to and stored most materials on the secured shared drive, search their personal files for any digital or hard copy materials that were not on the secured shared drive but that were provided to Dr. Abowd in some form.

9. All custodians were directed to search their offices, desks, and file cabinets for hard copies of any documents that were related to the issues in this litigation. Each custodian provided a certification that this search was performed and any responsive documents that were found were produced either on Commerce's online FOIA reading room, accessible to Plaintiffs, or identified on a privilege log.

[1] **Exhibit A** lists all custodians whose emails were searched and all search terms used.
[2] **Exhibit B** lists all custodians whose documents were searched and all search terms used.

Responses to Specific Allegations

10. Plaintiffs attempt to raise "notable omissions" in the Administrative Record and July 3, 2018 productions. None of the documents identified by Plaintiffs indicate "gaps" in the productions. From the information obtained by me in the course of my duties, the Department found no other documents that could constitute a "gap" as alleged by Plaintiffs.

Conversations with Mark Neumann

11. For example, Plaintiffs claim that the Administrative Record shows no notes or other memorialization of certain conversations between Mr. Neumann and Department personnel. In its search the Department found no notes from the conversations Plaintiffs highlight and have no cause to believe such notes exist.

12. In AR 2497, the produced email confirms that Mr. Peter Davidson, the Department's General Counsel, spoke to Mr. Neumann over the phone and could provide Secretary Ross a verbal "read out" of the conversations. My staff confirmed and can attest that neither Secretary Ross nor Mr. Davidson took notes during these phone calls.

13. In AR 3699, Wendy Teramoto writes that she and Mr. Neumann "talk frequently and have dinner." This email describes how often Ms. Teramoto and Mr. Neumann communicate but does not indicate it is for purposes of departmental policy. Furthermore, my staff confirmed and can attest that Ms. Teramoto did not take notes during these calls or meetings

14. AR 3709 is a chain of two emails in which Mr. Neumann responds to a request for information from Mr. Earl Comstock. Mr. Neumann's response is recorded and included in the Administrative Record at the top of AR 3709. These emails do not establish any gap in documentation.

15. Plaintiffs' footnote 3 references emails mistakenly marked as attorney-client privileged in Defendants' earlier production. Those documents are no longer designated as privileged and have been produced to Plaintiffs.

16. Plaintiffs question the absence of a post-call memo reflecting stakeholder input provided by Mr. Neumann to Secretary Ross in March 2018 in a meeting reflected in AR 1815, 3421, and 3491. Mr. Neumann was on the transition team for the Department of Commerce and the Record reflects Department employees consulted him on various Census matters. Mr. Neumann was not seen as an external stakeholder. As such, in this meeting with the Secretary he did not represent a particular constituency and the conversation was not memorialized in the same manner as outside stakeholder calls. Unlike other calls, Mr. Neumann did not provide information on the impact of the reinstatement of a citizenship question on response rates or the quality of the citizenship data. Instead, Mr. Neumann looked past the impacts of reinstating the question and provided information regarding his views on the potential impact the resulting data would have on the political landscape. The presentation Mr. Neumann provided is included in the Record at AR 10237 and the presentation obviated the need for a post call memo. In any event, this information was not considered by the Secretary in his decision to reinstate the citizenship question but was produced per the Court's July 3, 2018 order.

Conversations with other individuals

17. Plaintiffs also claim that "substantive" input from Mr. Kobach, Mr. Bannon, and other key individuals at federal agencies was excluded from the record. However, the Department provided to Plaintiffs the relevant documents produced by the searches conducted. Despite thorough searches, no additional documents have been identified.

18. In AR 763, Mr. Kobach himself memorializes his call with the Secretary. My staff confirmed and can attest that neither the Secretary nor Ms. Teramoto took notes on these phone calls.

19. In AR 2458, Mr. Comstock memorializes his prior conversation with various Federal Agency individuals to inform the Secretary of his activity. Mr. Comstock is the Policy Director of the Department of Commerce and due to the large number of areas he oversees, my staff confirmed and can attest that he did not take notes on these calls or meetings. This memo was in direct response to a request from the Secretary to report on his work related to this topic.

20. In AR 2488, 2491, and 2496, the Administrative Record shows that Mr. Davidson missed calls from Mr. Gore. This indicates that calls did not happen at that time, not that they took place, that notes from those calls were taken, and subsequently were omitted from the record. If those calls eventually took place, the Department has no reason to believe that notes from those calls were taken.

21. In AR 2561, Secretary Ross's assistant indicates that she would like to set up a call at the suggestion of Mr. Bannon while Secretary Ross is en route to an event. If this call did occur, our search did not produce any notes and there is no cause to believe such notes exist.

22. AR 2634 indicates that Ms. Teramoto spoke with Mr. Gore. My staff confirmed and can attest that Ms. Teramoto did not take notes on this phone call.

23. AR 11160 indicates that Mr. Zadrozny, Mr. Hamilton, Mr. Sherk, and Mr. Lenihan set up a call to speak with Mr. Uthmeier regarding the leak of the Department of Justice's request to the Department of Commerce. Mr. Uthmeier provided updates on the status of the Department of Commerce's review and analysis of the Department of Justice Request. He did not take notes on that conversation because he was not receiving information.

24. In AR 11193, Secretary Ross asks Mr. Davidson to set up a call with the "responsible person at Justice." Mr. Davidson responds that there is "no need for you to call." This indicates that the call likely did not happen, not that call notes were omitted. Our search did not produce any notes, and there is no cause to believe such notes exist.

Michael A. Cannon 8/15/18

Michael A. Cannon
Chief, General Litigation Division
Office of General Counsel
U.S. Department of Commerce

EXHIBIT A

Email Searched	Query 1	Query 2	Query 3	Query 4
Brook Alexander	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	"Gore" (DOJ)
Earl Comstock	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	"Gore" (DOJ)
Enrique Lamas	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	
Israel Hernandez	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	"Gore" (DOJ)
James Uthmeier	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	"Gore" (DOJ)
John Abowd	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	
Karen Kelley	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	"Gore" (DOJ)
Michael Walsh	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	"Gore" (DOJ)
Peter Davidson	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	"Gore" (DOJ)
Ron Jarmin	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	
Sally (Macie) Leach	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	"Gore" (DOJ)

Secretary Wilbur Ross	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	"Gore" (DOJ)
Wendy Teramoto	"citizenship" & "question/topic"	"DOJ/Justice" & "census/decennial"	"Citizenship" & "Census"	"Gore" (DOJ)

Query 5	**Query 6**
Jeff “Sessions” (DOJ)	KA Secretary of State Kris “Kobach.”
Jeff “Sessions” (DOJ)	KA Secretary of State Kris “Kobach.”
Jeff “Sessions” (DOJ)	KA Secretary of State Kris “Kobach.”
Jeff “Sessions” (DOJ)	KA Secretary of State Kris “Kobach.”
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Jeff “Sessions” (DOJ)	KA Secretary of State Kris “Kobach.”
Jeff “Sessions” (DOJ)	KA Secretary of State Kris “Kobach.”

EXHIBIT B

Custodian	Search Terms
Wilbur L. Ross Wendy Teramoto Earl Comstock Karen Dunn Kelley Peter B. Davidson Michael J. Walsh, Jr. James Uthmeier Ron Jarmin Enrique Lamas Christa Jones	a. Query 1: "citizenship & question" b. Query 2: "citizenship & topic" c. Query 3: "DOJ & census" d. Query 4: "DOJ & decennial" e. Query 5: "Justice & census" f. Query 6: "Justice & decennial" g. Query 7: "Citizenship & Census" h. Query 8: "John & Gore" i. Query 9: "Jeff & Sessions" j. Query 10: "Kris & Kobach"

Custodian	Search Terms
Misty L Heggeness John L. Eltinge Shawn D. Klimek Michael A. Berning J. David Brown Patrick J. Cantwell Vincent T. Mule, Jr Burton H. Reist	Considered by John Abowd or provided for his consideration in his creation of the memos on the citizenship question, and a. Query 1: "citizenship & question" b. Query 2: "citizenship & topic" c. Query 3: "DOJ & census" d. Query 4: "DOJ & decennial" e. Query 5: "Justice & census" f. Query 6: "Justice & decennial" g. Query 7: "Citizenship & Census" h. Query 8: "John & Gore" i. Query 9: "Jeff & Sessions" j. Query 10: "Kris & Kobach"