**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF NEW YORK**

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|---|---|
| STATE OF NEW YORK, et al.,<br><br>Plaintiffs,<br><br>v.<br><br>UNITED STATES DEPARTMENT OF COMMERCE, et al.,<br><br>Defendants. | 18-CV-2921 (JMF) |
| NEW YORK IMMIGRATION COALITION, et. al.,<br><br>Plaintiffs,<br><br>v.<br><br>UNITED STATES DEPARTMENT OF COMMERCE, et. al.,<br><br>Defendants. | 18-CV-5025 (JMF) (Consolidated Case) |

**NOTICE OF FILING OF DEPOSITION DESIGNATIONS FOR JOHN GORE**

Plaintiffs hereby file with the Court the synopsis of deposition excerpts for John Gore (Exhibit 1), and the deposition excerpts for John Gore that will be offered as substantive evidence (Exhibit 2).

Respectfully submitted,

By: */s/ Dale Ho*

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Summary: John Gore Deposition (October 26, 2018)

Prior to 9/8/17, Commerce initiated conversations with DOJ, including a conversation between Secretary Ross and Attorney General Sessions, regarding a citizenship question on the Census. Tr. 58-68, 83-84,112. As of 9/8/17, DOJ staff did not want to raise the issue of the citizenship question. Tr. 68-69. Gore first became involved around Labor Day 2017, through Mary Blanche Hankey and AG Sessions. Tr. 73-75. Gore then spoke with various Commerce officials. Tr. 91-95. In September, Gore facilitated a Ross-Sessions conversation. Tr. 95-112.

Gore wrote the first draft of the DOJ Letter requesting a citizenship question. Tr. 127. The only career Civil Rights Division staff to provide input was Voting Section Chief Chris Herren, who provided edits to the initial draft around 11/1/17. Over the next month, Gore received edits from junior political appointees on his staff, and Sessions advisors Rachael Tucker and Robert Troester; none had experience in VRA cases or in assessing the reliability of CVAP data. Tr. 133-42. Final authorization came from AG Sessions. Tr. 158-60.

The DOJ Letter states that American Community Survey (ACS) CVAP data is not ideal for VRA enforcement because it is a separate data set from the decennial census; does not align in time with the census; are statistical estimates with error margins; and require the use of an estimation technique to arrive at block-level data. But for as long as DOJ has enforced the VRA, it has relied on statistical estimates of CVAP with error margins, Tr. 174-76, 201-03; has never had a single data set with both total population and CVAP, Tr. 182-88; and has always relied on estimation procedures for block-level CVAP data, Tr. 234-36. Gore is not aware of any Section 2 cases that were unsuccessful for these reasons. Tr, 190-91, 194-95, 203-04, 236-40. Gore gave contradictory answers about whether he expected block-level CVAP data to reflect answers to the citizenship question. Tr. 213-23. Gore wasn't familiar with disclosure avoidance techniques used by the Census Bureau to preserve confidentiality, and didn't know whether CVAP data derived from the Census questionnaire would be more precise than the CVAP data DOJ currently uses. Tr. 223-34. Gore is not aware of a case where a VRA claim failed due to reliance on 5-year ACS estimates, which the Census Bureau considers reliable for any geographic area. Tr. 242-47. The Trump Administration has not filed any Section 2 cases. Tr. 249-51.

On December 22, 2017, Acting Census Director Ron Jarmin emailed Arthur Gary at DOJ, starting that Census Bureau staff found that they could produce higher quality CVAP data at lower cost without adding a citizenship question to the Census; Gary forwarded the email to Gore. Tr. 254-61. On 1/9/18, Gary and Jarmin scheduled a meeting for 1/19/17. Tr. 262. Prior to 1/16/17, Gore and Gary had conversations about the Bureau's proposal. Tr. 262-64. Gore discussed the issue in-person with AG Sessions, who made the decision not to have the meeting with the Census Bureau. Tr. 265-72. Gore informed Gary of the decision. Tr. 273-74. On 1/16, Gary canceled the meeting. Tr. 262. While testifying in Congress in May, Gore stated that DOJ's goal was to get the most accurate CVAP data possible, but did not mention the Bureau's proposal for higher-quality CVAP data, or DOJ's refusal to meet to discuss it. Tr. 278-84. Gore claimed he did not know the Census Bureau's views as to the most accurate data, and refused to answer whether he wanted to have a meeting to learn about the Bureau's views. Tr. 284-88. Gore agreed that a citizenship question is not necessary for DOJ's VRA enforcement. Tr. 299-300.

A 4/6/18 briefing memo for AG Sessions states that, in 2017, Secretary Ross requested that DOJ send a letter requesting the citizenship question, and specifically notes that this information is "NOT PUBLIC." Tr. 331-33. Gore acknowledged a conversation with AG Sessions about using a metric other than total population for apportionment purposes. Tr. 338. AG Sessions made the decision to request the citizenship question. Tr. 442.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - -x

NEW YORK IMMIGRATION COALITION, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF COMMERCE, et al.,

Defendants.

- - - - - - - - - - - - - - - - -x

Case No.

1:18-CF-05025-JMF

Friday, October 16, 2018
Washington, D.C.

Videotaped Deposition of:

JOHN GORE,

called for oral examination by counsel for the Plaintiffs, pursuant to notice, at the law offices of Covington & Burling, LLP, One City Center, 850 Tenth Street, Northwest, Washington, D.C. 20001-4956, before Christina S. Hotsko, RPR, CRR, of Veritext Legal Solutions, a Notary Public in and for the District of Columbia, beginning at 9:05 a.m., when were present on behalf of the respective parties:

REDACTED

A P P E A R A N C E S

On behalf of New York Immigration Coalition:
DALE HO, ESQUIRE
JONATHAN TOPAZ, ESQUIRE
American Civil Liberties Union Foundation

REDACTED

On behalf of Lupe Plaintiffs:
DENISE HULETT, ESQUIRE
MALDEF

REDACTED

ERI ANDRIOLA, ESQUIRE
Asian Americans Advancing Justice

REDACTED

On behalf of City of San Jose and Black Alliance for Just Immigration:
JON M. GREENBAUM, ESQUIRE
DORIAN L. SPENCE, ESQUIRE
Lawyers Committee for Civil Rights Under Law

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On behalf of Defendants:

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Also Present:

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C O N T E N T S


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* (Exhibits attached to transcript.)

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P R O C E E D I N G S

VIDEO TECHNICIAN: Good morning. We are going on the record at 9:05 a.m. on Friday, October 26th, 2018.

Please note that the microphones are sensitive and may pick up whispering, private conversations, and cellular interference. Please turn off all cell phones or place them away from the microphones, as they can interfere with the deposition audio.

Audio and video recording will continue to take place unless all parties agree to go off the record.

This is media unit 1 of the video-recorded deposition of John Gore, taken by counsel for the plaintiff in the matter of the New York Immigration Coalition, et al. versus the United States Department of Commerce, et al.

This case is filed in the United States District Court for the Southern District of New York.

This deposition is being held at the law

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offices of Covington & Burling, LLP, located at 850 Tenth Street, Northwest, Washington, D.C. 20001.

My name is Dan Reidy from the firm Veritext Legal Solutions, and I'm the videographer. The court reporter is Christina Hotsko from the firm Veritext Legal Solutions.

I am not authorized to administer an oath, I am not related to any party in this action, nor am I financially interested in the outcome.

Counsel and all present in the room will now state their appearances and affiliations for the record. If there are any objections to proceeding, please state them at the time of your appearance, beginning with the noticing attorney.

MR. HO: Detail Ho for the New York Immigration Coalition plaintiffs.

MR. TOPAZ: Jonathan Topaz for NYC plaintiffs.

MS. HULETT: Denise Hulett for Lupe plaintiffs.

REDACTED

MR. SPENCE: Dorian Spence for BAJI and the City of San Jose.

MS. ANDRIOLA: Eri Andriola for the Lupe plaintiffs.

MR. GREENBAUM: John Greenbaum from the City of San Jose and BAJI.

MS. THOMAS: Tina Thomas for the Kravitz plaintiffs.

MS. KOPPLIN: Rebecca Kopplin from the Department of Justice.

MS. LACOUR: Alice Lacour from the Department of Justice.

MR. SHUMATE: Brett Shumate from the Department of Justice.

MR. GARDNER: Josh Gardner for the Department of Justice on behalf of the defendants.

MR. SAINDOM: Andrew Saindom on behalf of the District of Columbia.

MS. NANNERY: And Valerie Nannery from the District of Columbia attorney general's office.

MR. DOREY: David Dorey from the

REDACTED

Department of Commerce.

MR. DEWHIRST: David Dewhirst from the Department of Commerce.

VIDEO TECHNICIAN: Will the court reporter please swear in the witness.

Whereupon,

JOHN GORE,

Global Objection 401/403

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REDACTED

Q. Before you began working at DOJ, you were an attorney in private practice, correct?

A. Yes.

REDACTED

Q. And as an attorney in private practice, you litigated some cases involving claims under Section 2 of the Voting Rights Act, correct?

A. Yes.

Q. You're familiar with the term citizen voting age population, the acronym C-V-A-P, or what I'll refer to as CVAP today?

A. Yes.

Q. And you're familiar with the term ACS for American Community Survey?

A. I am.

Q. You're familiar with the first precondition for Section 2 liability under Thornburg versus Gingles?

A. Yes.

Q. And one way of describing the first Gingles precondition for Section 2 liability under the Voting Rights Act is that plaintiffs must demonstrate that racial minorities are sufficiently numerous so as to form a majority of a compact single-member district. Is that your understanding?

REDACTED

A. That's -- more or less. Yeah.

Q. Prior to coming to the Department of Justice, with respect to all of the cases that you litigated under Section 2 of the Voting Rights Act, you represented defendants, correct?

A. That's correct.

Q. In all of your experience representing defendants in cases under Section 2 of the Voting Rights Act, you never took the position that the plaintiffs block-level CVAP data was insufficient to establish the first Gingles precondition because it was a statistical estimate, correct?

A. When I was in private practice, I was representing a client, so my clients took various positions. And as a lawyer, I pursued those positions on behalf of clients in court. I can't recall an instance where a client of mine took that position.

Q. And in all of your experience litigating cases under Section 2 of the Voting Rights Act, you're not aware of, in any of your cases, a situation where a court held that block-level CVAP

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data was insufficient to satisfy the first Gingles precondition because it was a statistical estimate, correct? 401

A. You're talking about cases I actually was involved in?

Q. That's correct.

A. As a litigant or as attorney?

Q. As an attorney.

A. As an attorney. No, I'm not aware of any such case.

REDACTED

Q. So let me clarify my question. My question is about the technical aspects of 401

REDACTED

actually getting the census data, taking the mapping software, and drawing a district.

You don't have any experience doing that, correct?

A. That's correct. I've never sat in front of a computer with Maptitude and drawn a district.

Q. Okay. You don't have any experience -- so that would mean you don't have any experience drawing districts using ACS data, correct?

A. That's correct.

Q. And you don't have any experience taking census block-group level data and performing an estimation procedure to produce block-level data, correct?

A. No, I don't have that experience.

Q. You're currently acting assistant attorney general for civil rights at the U.S. Department of Justice, correct?

A. Correct.

Q. And when did you become the acting AAG for civil rights?

A. July 28th, 2018.

REDACTED

Q. In that position, you are the head of the civil rights division, correct?

A. Correct.

Q. And you're a political appointee; you're not career civil rights division staff, correct?

A. Correct.

Q. One of the sections under your purview within the civil rights division is the voting section, correct?

A. Correct.

Q. And one of the duties of the voting section is to enforce Section 2 of the federal Voting Rights Act of 1965, correct?

A. That's correct.

Q. Is it fair to say that, as acting AAG for civil rights, you are authorized to speak on behalf of the civil rights division?

A. I think with respect to matters that fall within the purview of the civil rights division and the Office of the Assistant Attorney General for the civil rights division, that's correct, as a general matter.

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REDACTED

Q. The Department of Justice sent a letter to the Census Bureau on December 12th, 2017, requesting that a citizenship question be included on the 2020 decennial census questionnaire, correct?

A. I have no basis to dispute the date

REDACTED

there. Yes, the department did send a letter. Whether it was December 12th -- I believe that's correct, but I don't have the letter in front of me, so I can't testify to that date necessarily. But yes, there was a letter that was sent in that time frame from the Department of Justice to the Census Bureau.

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Q. The letter does not express any reason for requesting a citizenship question be added to the 2020 decennial census questionnaire besides Voting Rights Act enforcement, correct?

A. Again, I think the letter speaks for itself. And I don't have a copy of it in front of me, so I can't say what it does or doesn't say.

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Q. You agree that the department is seeking the most complete and accurate data regarding total citizenship rates in voting districts that the Census Bureau can provide, correct?

A. Yes, that's correct.

Q. And do you believe that the letter from the Department of Justice to the Census Bureau requesting the inclusion of a citizenship question is consistent with the department's goal of seeking the most complete and accurate data regarding total citizenship rates that the Census Bureau can provide?

A. I think it's consistent with that objective, but is not the full picture of the data that the Department of Justice would use and would want to have at its disposal.

Q. When you say that it is not the full picture of the data that the Department of Justice would use and want to have, what did you mean by that?

REDACTED

A. Well, what I mean is there are various sources of data on citizenship. And in the modern world, we live in a data-driven world. And the Department of Justice is always trying to find the best possible data, whether it's from one source or multiple sources, to analyze jurisdictions for potential Section 2 violations and to bring appropriate Section 2 enforcement actions.

And the letter lays out reasons why -- is my recollection -- reasons why collecting data from the census questionnaire, in addition to other sources, would be an appropriate means for the Department of Justice to collect the best possible total data that it could collect.

REDACTED

REDACTED

Q. Okay. Decennial census questionnaire, American Community Survey. Besides those two sources, are there other sources of citizenship data that you're aware of that the Department of Justice could rely on for purposes of Section 2 enforcement?

A. Not that I'm aware of.

Q. You agree that having the most complete and accurate data regarding citizenship rates that the Census Bureau could provide would allow the department to fulfill its commitment to robustly enforcing the Voting Rights Act?

A. Yes, I do.

Q. I want to show you another document. It's been pre-marked as Exhibit 2.

(Gore Deposition Exhibit 2 marked for identification and attached to the transcript.)

BY MR. HO:

Q. This is a Bloomberg transcript of your testimony on May 21, 2018, before the House Oversight Committee.



REDACTED

Do you remember your testimony that day?

A. I do.

Q. You were under oath that day under penalty of perjury, correct?

A. I was.

Q. And you testified truthfully that day, correct?

A. I did.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

You wanted to make sure that your testimony on May 21st was accurate, right?

A. Yes.

Q. And you wanted to make sure that -- to the extent you could discuss the issues that were



REDACTED

raised that day, you wanted to make sure that your testimony was complete, right? 401

A. Yes, to the extent I was able to testify about matters consistent with Department of Justice policy and privileges.

Q. And you didn't want to leave anything important out of your testimony on May 21st, correct?

MR. GARDNER: Objection. Form.

THE WITNESS: I think that's largely correct, although again, there were strict limits on the testimony that I could give, the topics that I was authorized to discuss, and how I could go about answering questions.

REDACTED

Q. And you held a moot to prepare for your testimony on May 21st, right? 401

A. That sounds right.

REDACTED

REDACTED

REDACTED

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Q. You're not aware of any voting section staff being invited to participate in your moot to prepare for the May 21st hearing, correct? 401

A. To the -- I think that's correct.

Q. And no career voting section staff attended your moot on -- to prepare for the May 21st hearing, correct?

A. That's correct, although voting section staff did help me prepare for the hearing.

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It's still your view that the Department of Justice needs citizen voting age population data at the census block level to enforce Section 2 of the Voting Rights Act, correct?

A. Yes, in some form or another. The citizenship data at the block level is necessary to bring Section 2 cases.

Q. And the census block is the smallest unit of census geography, right?

A. That is correct.

Q. The next sentence of your testimony reads, "And our letter explains why hard count census data would be better suited for that purpose than the ACS. It's easier to use because it's already available at the block level and more accurate because it's hard count and not a" -- and then you were interrupted.

When you say hard count census data, you're drawing a distinction between an actual count, like the decennial census enumeration, and statistical estimates based on a sample survey

REDACTED

like the ACS, correct?

A. That's correct.

Q. Okay. And your testimony is that hard count data is preferable to available statistical estimates, like the ACS, for purposes of VRA enforcement, correct?

A. Yes. And I think what I was testifying to here is what's in the letter, which again, is not in front of me. But my recollection of the letter is that it laid out reasons why that hard count data would be more appropriate than an ACS estimate for that purpose.

Q. How about -- turn to page 27 of the transcript. In the first full paragraph on page 27, you testified, "And having more -- having it on the census would make it easier for us to use and it would also make it more accurate, or at least that's the judgment of the Census Bureau."

When you referred to the judgment of the Census Bureau, what were you referring to?

A. I think I was referring to two things. First of all, I was -- I only know anything about

REDACTED

the judgment of the Census Bureau from publicly available information. Secretary Ross issued a memo of decision with respect to the letter that the Department of Justice submitted in which he decided, among other things, to order reinstatement of the citizenship question on the census questionnaire.

I also had watched at least portions of the May 8th hearing before the committee that you referenced earlier, and understood from testimony at that hearing that that was the position of the Census Bureau.

Q. So when you say the judgment of the Census Bureau, whose judgment, if you could identify individuals, are you referring to?

A. Secretary Ross would be one. And the other would be -- I can't remember who it was who testified at the hearing, but it was whoever testified at the hearing about the accuracy of a hard count versus an estimate. It may have been Ron Jarmin or somebody else. I just can't remember.

REDACTED

REDACTED

Q. And when you say Ron Jarmin, you're referring to the acting director of the Census Bureau?

A. That's who I understand he is. I've never met him.

Q. When you testified that it was the judgment of the Census Bureau that CVAP data collected through the decennial enumeration would be more accurate, what did you mean by more accurate?

A. As I understand the judgment of the Census Bureau, it's that the hard count would be more accurate than an ACS estimate because an ACS estimate has a margin of error associated with it and also requires an extrapolation because, as you're no doubt aware, the ACS estimates are only released at the block group level, and so further extrapolation is required to estimate CVAP levels at the block level.

And it was my understanding, from

REDACTED

Secretary Ross' memo and the testimony that I believe I heard on May 8th, that the Census Bureau believed that a hard count would be more accurate than estimates of an extrapolation with an associated margin of error.

REDACTED

REDACTED

REDACTED

Q. Now, all things being equal, the Department of Justice would want to use the CVAP data that was, in the Census Bureau's view, the more accurate data available, correct?

A. I think that's probably correct. I guess I could imagine a scenario, which I don't know is present here or not, where we would make a different judgment as to what was more accurate than the Census Bureau might. But that's correct.

Q. When you say we would make a different judgment as to what is more accurate than the Census Bureau might, who's we?

A. The Department of Justice.

REDACTED

REDACTED

Q. Do you think you're better situated than career Census Bureau professionals to make an assessment as to the accuracy of various forms of CVAP data?

A. Me personally?

MR. GARDNER: Objection to form.

THE WITNESS: Me personally?

REDACTED

BY MR. HO:

Q. Yes.

A. No, I don't.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

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Q. One more question about your testimony for now. On page 27, the last question on the page from Representative Gowdy: "So if Secretary Ross wanted to include a question, what's your favorite movie, how would a court determine whether or not that was an appropriate question? I mean, I guess what I'm getting at is, what is the standard by which you judge the legitimacy of the inclusion or exclusion of a question on the census form?"

Your response: "I think that is a very good question. It's probably better directed to the commerce department. I'm not involved in the litigation. That's being handled out" -- and then you got cut off.

What do you mean when you testified on May 21st that you're not involved in the litigation over the citizenship question?

A. I am not a counsel of record in that



REDACTED

case. I have not been involved in litigating that case on behalf of the United States. I have not written any of the briefs, filed any of the pleadings, or done anything like that. I am a witness in the case, obviously here -- sitting here today, and was involved in the decision that was made by the Department of Justice.

But under Department of Justice regulations, this is defensive litigation that's being handled by the civil division, and the counsel of record is in the civil division, not the civil rights division.

Q. When you say that you're not counsel of record, are you counsel in some other capacity in this litigation?

MR. GARDNER: Objection. Vague.

THE WITNESS: No.

BY MR. HO:

Q. And you're not a party in this case, right?

A. No.

Q. And neither the civil rights division nor

REDACTED

the Department of Justice itself is a party in this case, correct?

A. That's my understanding. I believe the case was brought against the Department of Commerce, but I've not studied the pleadings closely enough to know whether or not the Department of Justice is a party, but I believe it's not.

Q. And you wouldn't describe yourself as a consultant giving legal advice to counsel of record in this case, would you?

A. No.

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Q. I want to show you a document which we'll mark as Exhibit 3.

(Gore Deposition Exhibit 3 marked for identification and attached to the transcript.)

BY MR. HO:

Q. This bears the Bates number 000311. It's a letter dated November 4th, 2016, from Arthur Gary to then Census Bureau Director John Thompson.

We discussed Mr. Gary before. You sent him those talking points in December of 2017, right?

A. I did. Yes.

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Q. In his first sentence, Mr. Gary writes to Mr. Thompson, "This letter supplements my letter of July 1st, 2016, in which I advised that, at that time, the Department of Justice had no needs to amend the current content or uses or to request new content in the American Community Survey (ACS) for the 2020 census."

Did I read that right?

A. Yes.

Q. On July 1, 2016, DOJ sent a letter to the Census Bureau indicating that it had no need to amend the current content or to request new content in the ACS for the 2020 census, correct?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: I have no basis to answer that question. I wasn't employed at the department on July 1, 2016. And I don't believe I've ever seen a July 1, 2016, letter from the department to the Census Bureau.

That's certainly what that sentence says,

REDACTED

but I can't verify or testify to that. I have no firsthand knowledge on that topic.

BY MR. HO:

Q. You're not aware of the Department of Justice, on July 1st, 2016, requesting new content for the American Community Survey or the 2020 decennial census, are you, Mr. Gore?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: I don't believe I am, no.

REDACTED

Q. Sure. This November 4th, 2016, letter formally requested that the Census Bureau include a topic on the ACS relating to LGBT populations, correct?

601/
802

REDACTED

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: It appears to. Yeah.

REDACTED

Q. Okay. But the face of this letter does not make requests for any additional information on either the ACS or the 2020 census questionnaire

601/
802

REDACTED

other than a request about LGBT populations for the ACS, correct? 601/802

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: That appears to be correct on the face of the letter.

BY MR. HO:

Q. This letter does not make any mention of a request for citizenship data, correct? 601/802

MR. GARDNER: Same objection.

THE WITNESS: It does not on its face.

BY MR. HO:

Q. This letter does not make any request for the inclusion of a citizenship question on the census questionnaire, correct? 601/802

MR. GARDNER: Same objection.

THE WITNESS: It does not appear to.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Are you aware of any changes in law since

REDACTED

November 4th, 2016, with respect to the data that plaintiffs can rely on to establish the first Gingles precondition for Section 2 liability under the Voting Rights Act?

A. I'm not aware of any changes in law on that point, I don't believe.

REDACTED

REDACTED

Q. Are you aware of any changes to the forms of citizenship data available to plaintiffs bringing Voting Rights Act claims in order to satisfy the first Gingles precondition?

A. I'm not aware of any changes in the forms of data. I guess what I'm struggling with on your question is I don't think that that forecloses a request to reinstate the citizenship question on the census questionnaire.

REDACTED

A. So what the department is looking for is the most complete and accurate data it can possibly have to perform it function, and this is one more source of data that would allow the Department of Justice to carry out its enforcement mission.

Non-Responsive

REDACTED

REDACTED

REDACTED

Q. Are you aware of any changes in the social sciences about the assessment in that community of the accuracy of citizenship estimates based on ACS data since November 4th, 2016?

MR. GARDNER: Objection. Form.

THE WITNESS: Which community?

BY MR. HO:

Q. The social scientific community.

A. Okay.

MR. GARDNER: Same objection.

THE WITNESS: I'm not aware of any

601

REDACTED

changes. I am aware that there are questions that have been raised in the social science community about the accuracy of the estimates and extrapolations that are derived from the ACS data.

REDACTED

Q. I'm going to show you a document, Exhibit 4. This is a memo data November -- September 8th, 2017, from Earl Comstock to Commerce Secretary Wilbur Ross. It's in the administrative record in this case. Although this printout doesn't bear the number, I believe it is AR12756.

Do you know Mr. Comstock?

A. No, I don't, actually.

Q. The first paragraph of Mr. Comstock's memo reads, "In early May, Eric Branstad put me in touch with Mary Blanche Hankey as the White House liaison in the Department of Justice. Mary Blanche worked for AG Sessions in his senate

REDACTED

office and came with him to the Department of Justice. We met in person to discuss the citizenship question. She said she would locate someone at the department who could address the issue. A few days later, she directed me to James McHenry in the Department of Justice."

Now, before I read that, were you aware that sometime prior to September 8th, 2017, officials from the Department of Commerce had spoken with officials within the Department of Justice regarding the issue of a citizenship question on the census?

A. Yes.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. The conversations that occurred that are referenced in this paragraph that happened between Commerce and Justice officials before September 8th, 2017 --

A. Yes.

Q. -- you were aware of those conversations

REDACTED

prior to the date when the Department of Justice's letter went to the Census Bureau to request a citizenship question in December of 2017, correct?

A. Yes.

REDACTED

REDACTED

REDACTED

Q. When you say that you were aware that two or more people had talked to each other, which people were you aware had talked to each other?

REDACTED

A. It was my understanding that somebody from Commerce had spoken to Mary Blanche Hankey, that someone had spoken to James McHenry, and that Secretary Ross had spoken to the attorney general.

Q. And that all of those conversations were about the inclusion of a citizenship question on the census?

A. I wasn't a party to those conversations, but my understanding is that they would have touched on that issue.

REDACTED

REDACTED

REDACTED

Q. During this period, Mr. McHenry was not staff in the civil rights division, correct?

A. That's correct.

Q. And Mr. McHenry did not have any formal duties with respect to enforcement of the Voting Rights Act during this period, correct?

A. He had no formal duties. As I recall, he was for some period of time our point of contact in the Office of the Associate Attorney General, which is why I remember he was there. But he did not have formal duties with respect to enforcement.

REDACTED

REDACTED

REDACTED

Q. So you don't know of any reasons why Mr. McHenry could address the issue of including a citizenship question on the census?

MR. GARDNER: Same objection.

THE WITNESS: I -- I don't know one way or the other.

REDACTED

REDACTED

REDACTED

Q. What was your understanding of who initiated those conversations?

A. My understanding was that those conversations were initiated by the Department of Commerce.

Q. Those initial conversations that are referred to in this memo, your testimony is that, to the best of your knowledge, those conversations were not initiated by the Department of Justice, correct?

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

Q. And your working understanding is that the Department of Justice did not reach out to the Department of Commerce to initiate those conversations for the purposes of obtaining better data to enforce the Voting Rights Act, correct?

REDACTED

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: Again, I wasn't a party to those conversations, but that's been my working understanding.

REDACTED

Q. The second paragraph in this memo reads, "I spoke several times with James McHenry by phone and, after considering the matter further, James said that Justice staff did not want to raise the question, given the difficulties Justice was encountering in the press at the time, the whole Comey matter. James directed me to Gene Hamilton at the Department of Homeland Security."

So were you aware, before I read that, that as of September 8th, 2017, Justice staff did not want to raise the citizenship question?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: Before you read that, yes, I was aware of that.



REDACTED

REDACTED

So your understanding is that, as of September 8th, 2017, Justice staff did not want to raise the citizenship question, correct?

A. Yes, that's my understanding, although it wasn't my understanding on September 8th; it was an understanding that I acquired later.

Q. When did you acquire the understanding that, as of September 8th, Justice staff did not want to raise the issue of a citizenship question?

A. Again, I think it was along the same timeline that I learned that these conversations had taken place, the conversations referenced in the first paragraph and the second paragraph involving Mr. McHenry. And I believe I became aware of those sometime after September 8th and before the letter was sent from the Department of Justice.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. When did you first become involved in deliberations about whether or not to request a citizenship question on the decennial census questionnaire?

A. I first became involved in either late August or early September of 2017.

Q. You can't get more precise than late August or early September?

A. Well, I think it was either a day or two before Labor Day in 20 -- the Labor Day weekend in 2017 which I think that year may have fallen in late August.

Q. So as of September 8th, 2017, the date of Mr. Comstock's memo, your best recollection is that, as of that date, you were already involved in deliberations over whether or not to include a -- to request a citizenship question for the 2020 census questionnaire?

A. That is correct. And I don't know -- Mr. Comstock's memo is dated September 8th. He doesn't give any dates for any of these

REDACTED

conversations, so I don't know if this memo was contemporaneous to conversations or related back to prior conversations he'd had.

But yes, that's my recollection, that, as of September 8th, I would have been involved in those deliberations.

Q. How did you become involved in deliberations over whether or not to request the a citizenship question be included on the 2020 census questionnaire?

MR. GARDNER: Objection.

To the extent that that answer would cause you to reveal information subject to deliberative process privilege, I instruct you not to answer. To the extent you can answer that question without divulging such information, you may do so.

THE WITNESS: I became involved through a conversation I had with two individuals at the Department of Justice.

BY MR. HO:

Q. Which two individuals at the Department

REDACTED

of Justice?

A. The attorney general and Mary Blanche Hankey.

Q. Roughly when did your conversations with Mary Blanche Hankey and the attorney general occur?

MR. GARDNER: Objection. Compound.

THE WITNESS: It was the day or two before the Labor Day weekend. The reason I remember that is that the attorney general is a college football fan, and he's a fan of the Auburn Tigers, so I ended the call with the cry for War Eagle, since the Auburn Tigers were playing their first game of the season that weekend.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Had the decision already been made as of the date of your conversation with Attorney General Sessions to request a citizenship question be included on the 2020 census questionnaire?

REDACTED

Q. As of the date of your first conversation

REDACTED

with Attorney General Sessions, did you already have a few that hard count CVAP data would better suit DOJ's needs with respect to VRA enforcement than ACS estimates?

A. No, I don't believe I did.

Q. When did you arrive at the view that hard count decennial census data with respect to citizenship would better suit DOJ's VRA enforcement needs as compared to ACS citizenship estimates?

A. I'm sorry. Your question was when?

Q. Yes.

A. Sometime before the letter was sent.

Q. Can you give a more specific time frame than that?

A. Probably not.

REDACTED

REDACTED

REDACTED

Q. As of the date of your conversation with Attorney General Sessions, did you already have the view that the decennial census questionnaire would be the best vehicle for collecting CVAP data for purposes of VRA enforcement?

A. I don't recall having a view on that one way or the other as of that time.

Q. As of the date of Mr. Comstock's memo on September 8th, 2017, did you already have the view that the decennial census would be the best vehicle for collecting CVAP data for purposes of VRA enforcement?

A. I don't recall having a view on that issue one way or the other.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. You mentioned you had a conversation with the attorney general around Labor Day. Did you understand from that conversation that the Secretary of Commerce initiated the conversation between the Secretary of Commerce and the attorney general? Correct?

A. That's been my working understanding.

REDACTED

Yes.

Q. Your working understanding is not that the attorney general initiated a conversation with the Secretary of Commerce about the citizenship question, correct?

A. That's correct.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Who are the three individuals at the Department of Commerce --

A. Sure.

Q. -- that you spoke to about the citizenship question on the census?

REDACTED

A. I didn't mean to cut you off, and I apologize, again, to the court reporter for being a fast talker.

I recall speaking to Peter Davidson, James Uthmeier, U-T-H-M-E-I-E-R -- and Wendy Teramoto.

REDACTED

Q. Who was the first of those three individuals that you had a conversation with about the inclusion of a citizenship question on the 2020 census?

A. Peter Davidson.

REDACTED

Q. And roughly when was your first conversation with Peter Davidson about including a citizenship question on the 2020 census?

A. I don't recall exactly, but I would say it was probably around mid-September of 2017 or somewhere in that time frame.

Q. After you spoke to Mr. Davidson in mid-September, what was the next conversation that you had among those three individuals from Commerce about the citizenship question?

A. I don't recall exactly when it was. I had several conversations with Peter Davidson beginning in September and continuing through December. I had a couple of conversations as well with Mr. Uthmeier, including at least one between just Mr. Uthmeier and me and one, and maybe two, where Mr. Uthmeier and Peter Davidson were both involved. Then I had a conversation at one point with Wendy Teramoto about a scheduling issue that I think took place in October of 2017, but I don't recall exactly. Somewhere in that time frame.

Q. Roughly when was your first conversation

REDACTED

with Mr. Uthmeier about the citizenship question?

A. I think it would have been either late September or sometime in October of 2017.

REDACTED

Q. Mr. Gore, I just want to follow up on something from before the break. The communications between the Department of Justice and the Department of Commerce about the citizenship question, those communications were not initiated by the voting section, correct?

REDACTED

A. That's correct. That's my understanding.

Q. And those communications were not initiated by anyone else in the civil rights division, correct?

A. Correct.

Q. And you did not initiate the communications between Commerce and Justice about the citizenship question, correct?

A. That's correct.

REDACTED

Q. In front of you is a document that's been marked as Exhibit 7. It's an e-mail thread between, among other people, you, Macie Leach, and Wendy Teramoto. The first page of the document is Bates marked 0002628. It's from the administrative record.

MR. GARDNER: I think you may have said Exhibit 7. It's Exhibit 6.

MR. HO: Oh, I'm so sorry. Exhibit 6.

REDACTED

REDACTED

Q. And that's two days after your exchange with Mr. Gary regarding 2020 census questions, correct?

A. Correct.

REDACTED

Q. The DOJ-DOC issue that you're referring to in this e-mail is the citizenship question,

REDACTED

correct?

A. Correct.

Q. What prompted you to reach out to Ms. Teramoto to talk to her about the citizenship question?

MR. GARDNER: Objection.

To the extent that that answer calls for the divulsion of information subject to deliberative process privilege, I instruct you not to answer. To the extent you can answer that question without divulging such information, you may do so.

THE WITNESS: It was a conversation I had with Peter Davidson.

REDACTED

Q. And what is Mr. Davidson's role at Commerce?

A. I don't know what his current role is. At the time, I understood him to be the general

REDACTED

counsel of the Department of Commerce.

Q. How did you come to talk to Mr. Davidson?

A. He called me.

REDACTED

Q. And Mr. Davidson asked you to reach out to Ms. Teramoto?

A. Yes, he did.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Okay. I'm going to show you an e-mail that's been marked as Exhibit 7. It's an e-mail exchange between, among other people, you and Ms. Teramoto. The first page of it bears the Bates number 0002657. The top e-mail on the chain is dated 9/16/2017 from Danielle Cutrona to you, Mr. Gore, with a cc to Ms. Teramoto. It's part of the administrative record.

This e-mail thread -- or the top e-mails on this thread, these are subsequent to the e-mail that we talked about earlier between you and Ms. Teramoto, correct?

A. Correct.

REDACTED

Q. And you, after speaking with Ms. Teramoto, then introduced her to Danielle Cutrona from the Department of Justice, correct?

A. That's correct.

REDACTED

Q. And Ms. Cutrona was a senior advisor to the attorney general at this time, correct?

A. That's probably a fair characterization, yeah.

REDACTED

REDACTED

REDACTED

Q. You're not aware of any experience that Ms. Cutrona has with respect to enforcing Section 2 of the Voting Rights Act, correct?

A. That's correct.

Q. Did Ms. Teramoto and Ms. Cutrona connect after this e-mail exchange?

A. I believe that they did.

Q. How do you know that?

A. Because I believe that Danielle let me know that they had.

REDACTED

REDACTED

REDACTED

Q. This is a continuation of the e-mail chain between you and Ms. Cutrona and Ms. Teramoto. The first page of it has the Bates number 0002653. It's part of the administrative record in this case. And the e-mail at the top is dated September 17th, 2017, from Ms. Cutrona to Ms. Teramoto.

The e-mail from Ms. Cutrona to Ms. Teramoto at the top reads, "Wendy, the attorney general is available on his cell. His number is" -- and then the number is redacted. "He is in Seattle, so he's three hours behind us. From what John told me, it sounds like we can do whatever you all need us to do and the delay was due to a miscommunication. The AG is eager to

REDACTED

assist."

So you had a conversation with Ms. Cutrona, correct?

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Okay. I'm going to show you another document. We'll mark this as Exhibit 9.

(Gore Deposition Exhibit 9 marked for identification and attached to the transcript.)

REDACTED

BY MR. HO:

Q. This is another e-mail from the administrative record, the first page of which -- the only page of which has Bates number 0002636. The top e-mail is an e-mail to you dated September 18th, 2017. September 18th, 2017, that's two days after you connected Ms. Teramoto and Ms. Cutrona, correct?

A. That seems to be correct. Yes.

Q. And the e-mail to you states, "Hi. AG and Sec spoke. Please let me know when you have a minute."

What did you understand that to mean, AG and Sec spoke?

A. I understood it to mean what it says it means, that the attorney general and the Secretary spoke.

REDACTED

REDACTED

REDACTED

Q. I'm not asking for the content of the conversation, just whether or not they spoke about the citizenship question. Is that your understanding?

A. Yes, that would be my understanding.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Let me show you another document. We'll mark this as Exhibit 10.

(Gore Deposition Exhibit 10 marked for identification and attached to the transcript.)

BY MR. HO:

Q. This is an e-mail to you dated September 22nd, 2017. Just so the record is clear, this was produced to us in discovery. The

802

REDACTED

electronic version has a file name that's stamped DOJ 30651, but the document itself does not bear a Bates number.

Mr. Gosre, this is an e-mail to you from Camille Legore-Traore, correct?

A. Legore-Traore is I believe how she says it, but yes.

Q. And it's dated September 22nd, 2017?

A. Correct.

Q. And this e-mail informs you that James Uthmeier from the Department of Commerce called to speak with you, correct?

A. That's correct.

REDACTED

REDACTED

REDACTED

Q. And at the time Mr. Uthmeier -- of this e-mail -- at the time of this e-mail, Mr. Uthmeier worked in the general counsel's office in the Commerce Department, correct?

A. That's correct.

Q. To the best of your knowledge, Mr. Uthmeier does not have any Voting Rights Act enforcement responsibilities, correct?

A. Correct.

REDACTED

Q. And to the best of your knowledge, Mr. Uthmeier does not have any experience enforcing the Voting Rights Act, correct?

A. That is correct as well. Yeah.

Q. Did you ever return Mr. Uthmeier's call?

A. Yes. I believe I did.

REDACTED

Q. Did you talk to him about the citizenship question?

A. Yes, among other things.

Q. At some point you received a note and a memo from Mr. Uthmeier concerning the citizenship question, correct?

A. That's correct.

Q. Was the note handwritten?

REDACTED

A. Yes, it was.

Q. How was the note transmitted to you?

A. Along with the memo, it was delivered to my office.

REDACTED

Q. Was it after receiving this phone call to your office from Mr. Uthmeier on September 22nd, 2017?

A. I believe so, yes.

Q. Was it before the Department of Justice sent its letter to the Census Bureau on December 12th, 2017, requesting the citizenship question?

A. Yes.

REDACTED

REDACTED

REDACTED

Q. Did the note solicit legal advice from you?

REDACTED

A. No.

Q. And you didn't provide legal advice in response to that note, correct?

A. I believe I may have, actually.

REDACTED

Q. Okay. So you think you did provide legal advice to Mr. Uthmeier in response to the memo?

A. Now you've changed the question.

Q. Yeah.

A. No, I didn't provide legal advice to Mr. Uthmeier.

Q. Did you provide legal advice to the Department of Commerce in response to the note from Mr. Uthmeier?

A. I did -- I did discuss -- now that you

REDACTED

mention it, I did discuss the note with Mr. Uthmeier and Mr. Davidson.

Q. Did you provide legal advice to the Department of Commerce in connection with the note from Mr. Uthmeier?

A. Yes.

Q. At this point were you anticipating litigation over the possibility of including a citizenship question in the census?

A. I'm sorry. Can you say that again?

Q. At this point --

A. Right.

Q. -- when you received the handwritten note from Mr. Uthmeier, were you anticipating litigation over the possibility of the inclusion of the citizenship question on the census?

A. Absolutely.

Q. Did the -- was the note shared with you in anticipation of litigation over the citizenship question?

MR. GARDNER: Objection. Lack of foundation. Calls for speculation.

601

REDACTED

BY MR. HO:

Q. If you know.

A. That would be speculating. I don't know.

Q. Did the note state one way or the other whether or not it was prepared in anticipation of litigation?

A. I don't recall that it did.

Q. And did the note state one way or the other whether or not it was requesting legal advice from you?

A. Yes, it did.

Q. And your answer is it was requesting legal advice, the note?

A. Yes.

REDACTED

Did the Department of Justice rely on that note in drafting its request to the Census Bureau to include a citizenship question on the census?

MR. GARDNER: Objection. Vague.

THE WITNESS: The note contained information regarding that issue that was

REDACTED

considered by the Department of Justice in drafting its request.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. This is marked as Exhibit 11. This is an e-mail to you -- from you to Mr. Herren -- Chris Herren, sorry -- dated November 1st, 2017, with a cc to Ben Aguinaga, correct? 802

A. That is correct.

Q. Chris Herren is the chief of the voting section, correct?

A. Yes. And a great lawyer.

Q. The subject line of your e-mail is, Confidential and closehold draft letter, correct?

A. That's correct.

Q. And in your e-mail to Mr. Herren you say that the draft letter is attached, correct?

A. Correct.

Q. Did you write the draft letter that is attached to this e-mail?

A. Yes, I did.

Q. The draft letter that is attached to this e-mail is an early draft of the December 12th letter from the Department of Justice to the Census Bureau requesting a citizenship question on

REDACTED

the 2020 census questionnaire, correct?

A. Correct.

REDACTED

Q. Is it fair to say that you wrote the first draft of the letter from the Department of Justice to the Census Bureau requesting a citizenship question on the 2020 census questionnaire?

A. Yes.

REDACTED

REDACTED

REDACTED

Q. Did you have any conversations with Mr. Herren about the citizenship question before you sent this letter to him?

A. Yes.

Q. How many conversations did you have with Mr. Herren before you sent the draft of the letter to him?

A. I don't recall exactly. It would have been a few.

Q. More than one?

A. Yes.

REDACTED

REDACTED

REDACTED

What do you mean by confidential and closehold?

A. I meant that Mr. Herren should review the letter and this was not for broad dissemination, as it represented a draft. And I had asked him to

REDACTED

take a look at it.

Q. When you say confidential and closehold, does that mean that Mr. Herren was not permitted to share the draft letter with anyone?

A. No. It meant that if he was interested in sharing the draft letter with someone, he could ask me if he was allowed to do that.

Q. So your understanding was that Mr. Herren should ask you before sharing any drafts of the letter with anyone?

A. I believe my understanding was that he should communicate with me if he wanted to share this particular draft with anyone.

Q. Did Mr. Herren ever communicate with you that he wanted to share the draft letter with anyone?

A. I can't recall.

Q. Do you know whether or not Mr. Herren shared this draft letter with anyone?

A. I don't.

REDACTED

REDACTED

REDACTED

Q. Did you not want it to become public information that the Department of Justice at this point was drafting a letter to request a citizenship question on the 2020 census questionnaire?

MR. GARDNER: Objection to form.

REDACTED

THE WITNESS: I never want any of our drafts to become public information unless required by legal process because I believe that the Department of Justice should facilitate robust and open conversation and deliberations at all level before a decision is made.

BY MR. HO:

Q. I didn't ask if you wanted the draft to not become public. I just asked if you wanted the fact that the Department of Justice was drafting a letter to request a citizenship question on the 2020 census questionnaire, if you wanted that fact to remain non-public at this time.

A. I would have preferred that that fact remain non-public because the final letter hadn't been issued and no final decision had yet been made about it.

REDACTED

REDACTED

REDACTED

Q. Did you authorize Mr. Aguinaga to send the draft letter that you had sent to Mr. -Herren to forward that to Bethany Pickett?

A. Yes.

Q. Now, at the time, Mr. Aguinaga and Ms. Pickett both worked with you in the front office of the civil rights division, correct?

A. That's correct.

Q. Both of them were political hires rather than career staff, correct?

A. Correct.

REDACTED

REDACTED

REDACTED

Q. Both of them graduated from law school in 2015 or more recently, correct?

A. Sounds about right.

REDACTED

Q. You're not aware of any experience that Mr. Aguinaga or Ms. Pickett had as counsel in Voting Rights Act cases prior to them coming to

REDACTED

the civil rights division, correct?

A. That's correct.

Q. You're not aware of any experience that either Mr. Aguinaga or Ms. Pickett had assessing the reliability of CVAP data for purposes of VRA enforcement, correct?

A. That's correct.

REDACTED

REDACTED

REDACTED

Q. Other than Ms. Pickett, Mr. Aguinaga, and Mr. Herren, did you solicit input on the draft

REDACTED

letter from anyone else within the civil rights division?

A. Not that I can recall.

Q. Other than Ms. Pickett, Mr. Aguinaga, and Mr. Herren, did you receive input on the draft letter from anyone else within the civil rights division?

A. Not that I can recall.

REDACTED

REDACTED

REDACTED

802

(Gore Deposition Exhibit 14 marked for identification and attached to the transcript.)

BY MR. HO:

Q. I show you a document that's been marked as Exhibit 14. It's an e-mail exchange between you, Robert Troester, T-r-o-e-s-t-e-r, and Rachael, spelled R-a-c-h-a-e-l, Tucker.

The top e-mail on the thread is November 30th, 2017. This was produced to us in discovery. The electronic version has DOJ 14798

REDACTED

on it, although the hard copy doesn't have that Bates number.

It we look at the bottom of this page, the first e-mail on this thread is from you to Ms. Tucker and Mr. Troester on November 27th, 2017, correct?

A. That's correct. Except that he pronounces his last name Troester.

REDACTED

Q. Now, at this time, Ms. Tucker was counsel in the front office of the attorney general, correct?

A. That's correct.

Q. And Mr. Troester was associate deputy attorney general, correct?

A. That's my understanding, yes.

REDACTED

Q. Okay. Now, neither Ms. Tucker nor Ms. [sic] Troester, as far as you're aware, had any experience as counsel in Voting Rights Act cases, correct?

A. Mr. Troester -- yes. That's correct.

Q. What about Ms. Tucker?

A. Also correct. You called him Ms. Troester, so -- sorry.

Q. Thank you.

A. But, yes, I was not aware that either had any enforcement responsibility or experience with respect to the Voting Rights Act.

Q. And as far as you're aware, neither of them had any experience assessing the reliability of CVAP data used in Voting Rights Act litigation, correct?

A. Correct.

Q. Ms. Tucker and Mr. Troester were both political appointees in the Department of Justice at this time, correct?

A. That's correct for Ms. Tucker. I believe Mr. Troester was a career employee on detail to

REDACTED

the office of deputy attorney general and had served a long career in the Department of Justice as an assistant United States attorney, and maybe even more than once as the acting United States attorney in his home state of Oklahoma.

Q. In your e-mail to them on November 27th, you wrote, "Attached please find the near final draft of the letter to census on the citizenship issue we discussed a couple of weeks ago."

So you had discussed the citizenship issue with Ms. Tucker and Mr. Troester a few weeks before the date of this e-mail, November 27th, 2017, correct?

A. Correct.

REDACTED

At the time, Ms. Tucker was responsible

Non-Responsive

REDACTED

for the civil rights division portfolio in the Office of Attorney General and Mr. Troester was responsible for the civil rights division portfolio in the Office of the Deputy Attorney General. So I had many conversations with them over time about issues related to the civil rights division.

REDACTED

Q. So fair to say that on November 27th, 2017, a decision had already been made to request a citizenship question on the census?

A. No, I don't think that's fair to say.

Q. Okay. Ms. Tucker and Mr. Troester both offered you edits to the letter, correct?

A. I believe that's correct.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

(Gore Deposition Exhibit 16 marked for identification and attached to the transcript.)

BY MR. HO:

Q. Exhibit 16 is what I'm handing to you now. Another e-mail chain between you and Mr. Gary. The top e-mail on the thread is dated December 8th, 2017. The subject line of this is, Request for citizenship information.December 8 red-line edits, 002. Is that right?

A. Appears to be right, yeah.

REDACTED

REDACTED

REDACTED

Q. Is there anyone that you can think of who was giving you edits in the last few days before this letter was sent from any of those offices other than Ms. Tucker and Mr. Troester?

A. Not that I can specifically recall.

REDACTED

Q. You write, "With these changes, we are

802

REDACTED

authorized to send. Sending on Monday is fine." 802

Did I read that correctly?

A. That's correct.

REDACTED

Q. When you say, "With these changes we are authorized to send," on December 8th, 2017, when

REDACTED

you wrote that, a decision had been made as of December 8th, 2017, to send the citizenship question -- the request for the citizenship question as long as it had these changes, correct?

REDACTED

Q. So as soon as you made those changes to that letter, you had authorization to send that letter, correct?

A. I believe we might have had authorization to send, but it would have been my practice to check in one last time before the letter was sent.

Q. Okay. You didn't have reason to believe that you weren't authorized to send the letter once you had made those changes as of December 8th, 2017, right, Mr. Gore?

A. I don't recall what I thought or didn't think on December 8th of 2017.

Q. Okay. You didn't say in this e-mail to Mr. Gary that you were going to check in again

REDACTED

after you made these changes, did you?

MR. GARDNER: Objection.

Mischaracterizes the document.

THE WITNESS: I did not use those words in that e-mail.

REDACTED

Q. You didn't tell Mr. Gary in this e-mail that, after these changes were made, you would have to check in with leadership one more time before sending it, right?

A. Again, I did not use those words in that e-mail, but that's standard practice, certainly my standard practice, and I believe the standard practice of others at the Department of Justice.

Non-Responsive; 602

Q. You sent this e-mail on Friday, December 8th, which means Monday would have been Monday, December 11th, correct?

A. That's correct.

REDACTED

REDACTED

REDACTED

Q. So just so I understand the process here, you had -- you first had communications about the issue of a citizenship question sometime around Labor Day of 2017, correct?

A. Give or take, yes, that's correct.

Q. You drafted the initial draft of the letter to request the citizenship question sometime around the end of October or early November of 2017, correct?

A. Correct.

Q. The conversations to add the citizenship question with the Department of Commerce were not initiated by the civil rights division, correct?

A. Correct.

Q. And they were not initiated by the Department of Justice, correct?

A. That's my working understanding.

REDACTED

REDACTED

REDACTED

Q. Okay. Around November 1st of 2017, the only career staff in the civil rights division

REDACTED

from whom you received input on the letter was from Mr. Herren, correct?

A. That's correct.

REDACTED

of 2017 when you had drafted the initial draft of that letter, Mr. Herren gave you some edits, correct?

A. That's correct.

REDACTED

Q. So you have no recollection of receiving input from career civil rights division staff on the letter requesting a citizenship question other than that one occasion in early November around the time of the first draft from Mr. Herren, correct?

A. I believe that's correct. Yeah.

Q. You continued to revise the letter after early November of 2017 with input from different people. But after that first round of edits from Mr. Herren, you received no subsequent edits from

REDACTED

people who were career staff in the civil rights division, correct?

MR. GARDNER: Objection. Compound.

THE WITNESS: To the extent I understand your question, I believe that's correct.

BY MR. HO:

Q. During this period when you were revising the letter to request a citizenship question, you had multiple conversations with legal staff at the Department of Commerce, correct?

A. Yes.

Q. And the edits that you were receiving to the letter from other DOJ personnel included political appointees in the front office of the Department of Justice and in the front office of the civil rights division, correct?

A. I -- certainly that's correct with respect to the leadership offices at the Department of Justice. I can't remember if I was receiving edits from the front office of the civil rights division at that time after receiving the edits from Ms. Pickett.

REDACTED

Q. Who made the final decision to send the letter requesting the citizenship question be added to the 2020 census questionnaire?

A. I'm not sure I know. And I can't recall who communicated the final decision to me.

REDACTED

Q. Who gave the final signoff to put that letter in the mail?

MR. GARDNER: Objection. Asked and answered.

THE WITNESS: I don't recall who gave the final signoff.

BY MR. HO:

Q. Was it you?

A. No, I don't believe I would have given the final signoff. But maybe. I guess it depends on what you're asking. Like, who told Art Gary he could press "send" on the e-mail? I don't

REDACTED

understand your question.

Q. Yes, that's my question.

A. I don't know.

Q. You don't know whether or not you did?

A. I don't recall whether it was me or somebody else.

Q. All right.

A. It's possible it could have been me.

REDACTED

Q. I'm going to show you what's been marked as Exhibit 17. This is a document in the administrative record, the first page of which has the number 000663. This is a letter stamped December 12th, 2017, from Arthur Gary at the Department of Justice addressed to Ron Jarmin at the Census Bureau, correct?

A. Yes. It appears to be.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. And on either Monday, December 11th or Tuesday, December 12th, when you checked in with them, did either Ms. Tucker or Mr. Troester give you authorization to send the letter out?

MR. GARDNER: Objection. Compound.

THE WITNESS: I believe one of them must have, because the letter went out around that time.

REDACTED

Q. So -- but your best memory is that you received final authorization to send the letter

REDACTED

from either Ms. Tucker or Mr. Troester, correct?

A. Correct.

REDACTED

Q. You said that you -- you testified that you had spoken with either Ms. Tucker or Mr. Troester on either Monday or Tuesday, December 11th or December 12th.

So it was when you had a conversation

REDACTED

with them, with one of them, on either the 11th or the 12th, that you received final authorization for the letter to go out, correct?

A. I believe that's correct.

Q. So one of them, either Ms. Tucker or Mr. Troester, gave final authorization to send the letter, and it was either on December 11th or on December 12th, correct?

A. I would say that one of them communicated final authorization on one of those dates, and I imagine it was the 12th, since that's the date the letter went out.

Q. If one of them, as you say, communicated final authorization, where did that final authorization come from?

MR. GARDNER: Objection. Vague.

THE WITNESS: I believe it would have come from the attorney general.

REDACTED

REDACTED

REDACTED

Q. So the first -- reading the first page doesn't refresh your recollection as to whether or not this is the letter?

A. It appears to be the letter.

Q. Okay. The letter signed by Mr. Gary represents the Department of Justice's final decision and statement of position with respect to the issue of the citizenship question on the census, correct?

A. Yes.

REDACTED

Q. And this letter represents the views of the Department of Justice, connect?

A. Correct.

REDACTED

BY MR. HO:

Q. Mr. Gore, can you look at what we marked earlier as Exhibit 12 -- I'm sorry, Exhibit 2. It was your testimony in Congress.

802

REDACTED

A. Uh-huh.
Q. Please turn to page 23.
A. Sure.
Q. Sorry. I think I meant page 24. Oh, no, no. I'm sorry. I had it right. Page 23.
The fourth paragraph down here, there's a question from Member Lynch: "This is Attorney General Sessions you're talking about."
Your answer is, "It represents the view of the department, so I believe the attorney general agrees with that view. Yes."
That was your testimony in Congress, correct?
A. Yes.
Q. And you gave truthful testimony that day, correct?
A. I did.

REDACTED

REDACTED

REDACTED

Q. Are there any -- just to be clear, there are no reasons that you're aware of that the Department of Justice wants a citizenship question on the 2020 census that are not reflected in this letter, correct?

A. That's correct. I'm aware of no such reasons.

Q. This letter is addressed to Dr. Ron Jarmin, correct?

A. Yes, it is.

Q. And Dr. Jarmin is the acting director of the Census Bureau, correct?

A. That's my understanding. Yes.

REDACTED

REDACTED

REDACTED

Q. Who do you think knows more about the accuracy of various forms of CVAP data, Dr. Jarmin or you?

MR. GARDNER: Objection. Calls for speculation. Lack of foundation.

THE WITNESS: I have no idea.

REDACTED

REDACTED

Q. Do you think that you know more about the accuracy of various forms of CVAP data than the professionals at the Census Bureau?

MR. GARDNER: Objection. Calls for speculation. Lack of foundation.

THE WITNESS: Again, I don't know what the professionals at the Census Bureau know or don't know.

REDACTED

REDACTED

Q. Do you have any background in statistics, Mr. Gore?

A. No.

Q. No graduate degree in survey -- I'm sorry, in anything quantitative?

A. No.

REDACTED

REDACTED

Q. Any experience assessing the statistical validity of survey data?

A. No.

Q. You know that people in the Census Bureau do have a lot of experience assessing the statistical validity of survey data, right?

A. I imagine that there are people in the Census Bureau who have that expertise and experience. I don't know whether Dr. Jarmin or anyone else in particular does. And I couldn't identify anyone at the Census Bureau who has that expertise.

Q. But you would expect that there are people in the Census Bureau with expertise in assessing the validity of various forms of survey data, wouldn't you, Mr. Gore?

A. I would certainly hope so.

Q. And you don't have any such expertise, right?

A. That's correct.

Q. Okay. Prior to this letter, in the entire 53-year history of the Voting Rights Act,



REDACTED

the Department of Justice had never requested a citizenship question on the decennial census questionnaire that's sent to every household in the United States, correct?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: That is correct. To my knowledge.

REDACTED

It's the position of the Department of

REDACTED

Justice that the decennial census questionnaire is the most appropriate vehicle for collecting CVAP data for purposes of VRA enforcement, correct?

A. Yes. And -- I think the letter speaks for itself. But yes, that's the position.

Q. And the letter purports to establish why the decennial census questionnaire is the most appropriate vehicle for collecting CVAP data for purposes of VRA enforcement, correct?

A. Correct.

Q. You testified in Congress that your belief is that the decennial census questionnaire is the most appropriate vehicle for collecting CVAP data for purposes of VRA enforcement, correct?

A. I believe I did. Yes.

REDACTED

REDACTED

REDACTED

To your understanding, is it accurate to say the from the 1970 through the 2000 censuses, the Census Bureau collected citizenship information through the census long form?

A. That's my understanding.

Q. And the long form was not sent to every household in the United States, correct?

A. That's my understanding.

Q. The long form was sent to a sample of households in the United States, correct?

A. That appears to be correct.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. So you agree with me that, if you take a survey sample and you try to derive generalizable data from that survey sample, that that generalized data would be a statistical estimate, correct?

A. Sure.

REDACTED

Q. My question was, you understand that

REDACTED

citizenship data derived from the long form would be a statistical estimate, correct?

A. I believe that to be correct.

REDACTED

Q. Okay. So for years, the Department of Justice relied on citizenship data collected through the census long form for purposes of VRA enforcement, correct?

A. That's my understanding. Yes.

Q. And after the long form was discontinued, the Department of Justice began relying on citizenship data collected through the ACS for purposes of VRA enforcement, correct?

REDACTED

A. Correct.

Q. And -- so it would be accurate to say that even when there was a citizenship question on the census long form, the Department of Justice, when it was using citizenship data for purposes of VRA enforcement, it was using data that were statistical estimates based on a sample, correct?

A. I believe that's correct, if I follow your question.

Q. So it's accurate to say that the Department of Justice, for as long as it's been enforcing the Voting Rights Act, when it's needed citizenship data, it has always relied on statistical estimates rather than hard count data, correct?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: To the best of my knowledge, I think that's correct.

BY MR. HO:

Q. You're not aware of any period of time in which the Department of Justice had access to hard

601

REDACTED

count citizenship data for purposes of VRA enforcement, are you, Mr. Gore?

A. I'm not aware of that, no.

REDACTED

Q. And you're aware that the Census Bureau produces different estimates based on the ACS in the form of one-year ACS estimates and five-year ACS estimates, right, Mr. Gore?

A. That's correct. I think they have three-year ACS estimates as well.

REDACTED

Q. One-year ACS estimates are statistical estimates based on a single year of ACS survey

REDACTED

responses, correct?

A. That's my understanding.

Q. And five-year ACS estimates are statistical estimates that are based on ACS responses that are aggregated from a consecutive five-year period, correct?

A. It's my understanding. Yes.

Q. As of the date of the Gary letter, you understood the difference between one-year and five-year ACS estimates, right?

A. Yes.

REDACTED

The Census Bureau intends that ACS one-year estimates be used for areas with a population larger than 65,000, right?

A. I think that's right.

REDACTED

REDACTED

(Gore Deposition Exhibit 18 marked for identification and attached to the transcript.)

BY MR. HO:

Q. It's a screenshot from the Census Bureau website entitled, American Community Survey (ACS): When to use one-year, three-year, or five-year estimates.

Do you see this table titled, Distinguishing features of ACS one-year, one-year supplemental, three-year, and five-year estimates, Mr. Gore?

A. I do, yes.

Q. And the far left-hand column has information about one-year estimates, correct?

A. Correct.

Q. And do you see in the third row of that table, second depending on whether you include the header, that the Census Bureau states that one-year estimates are data for areas with populations of 65,000-plus?

A. Yes, I see that.

REDACTED

Q. So that comports with your understanding, right, that one-year ACS estimates are intended for use only in areas with a population larger than 65,000, correct?

A. Yes, that's correct.

Q. And did you understand that one-year ACS estimates were intended for use in areas with a population over 65,000 as of the date of the Gary letter?

A. Yes.

Q. The far right-hand column of the table has information on five-year ACS estimates. Do you see that?

A. Yes, I do.

Q. And you see where the Census Bureau indicates that five-year ACS estimates have the largest sample size of different ACS estimates?

A. I do see that on this chart. Yes.

Q. You don't have any reason to doubt that, right?

A. No.

Q. Okay. And you see where on the chart it

REDACTED

states -- the Census Bureau states that five-year ACS estimates are data for all areas, correct?

A. Yeah, I do see that.

Q. As of the date of the Gary letter on December 12th, 2017, were you aware that the Census Bureau considers five-year ACS estimates to be usable data for all geographic areas regardless of population size?

A. Yes.

REDACTED

In the sentence when the letter refers to "such purposes," that means for purposes of VRA enforcement, correct?

A. It refers to that and other purposes.

Q. Okay. What other purposes?

A. It also refers to use by state and local jurisdictions in drawing our redistricting plans.

Q. Redistricting plans for purposes of

REDACTED

compliance with the Voting Rights Act, correct?

A. Yes, with the Voting Rights Act, and with other federal and state law requirements.

Q. Why would you need ACS citizenship data to draw districts to comply with other federal and state legal requirements other than Section 2 of the Voting Rights Act?

A. Section 2 would be predominant. I don't know every state law requirement that might be implicated by that. There might be state law requirements that require a reference to citizenship data. Currently, to my knowledge, every state in the union uses total population to achieve compliance with the equal protection clause's one-person/one-vote mandate. But I believe that in the past there have been jurisdictions that have used other measures. And whether a jurisdiction might choose to use that measure, I don't know -- measure of citizenship as opposed to something else.

REDACTED

REDACTED

REDACTED

When the letter says that ACS data does not yield ideal data for such purposes, the predominant purpose that you're referring to there for which the ACS is not ideal is Section 2 compliance, correct?

A. I think the predominant purpose to which the letter is referring is Section 2 compliance. That's correct.

Q. Okay. After the letter has that statement, there are four bullet points, correct?

A. That is correct.

REDACTED

REDACTED

REDACTED

Q. Okay. So tell me if I have this right. The point that's being expressed in this bullet is that citizenship data from the ACS is not ideal for purposes of Section 2 compliance and enforcement because ACS citizenship data is a different data set that's separate and apart from the total population data derived from the decennial census; is that right?

A. I believe the point speaks for itself, and I think the way you've described it is more or less correct.

Q. Okay. Any ways in which the way I just

REDACTED

described it strike you as incorrect?

A. Not as I sit here right now, no.

REDACTED

Q. Now, how does the fact that the decennial enumeration data is in one data set, the PL data file, whereas the ACS citizenship data is in a different data set, the CVAP table -- how does the fact that they're in two different data sets render the ACS not ideal data for purposes of Section 2 enforcement?

A. Particularly for a map drawer, if -- a map drawer drawing a map in Maptitude or some other software needs to have both of these forms

601, 602, 802, Improper Expert Testimony under 702

REDACTED

of information in order to draw districts that comply with the 14th Amendment and with Section 2. And map drawers currently have to go to two different data sets and try to match up those data sets in geography and specificity to the block level in order to perform that function.

If all of the data were available in the PL94-171 data set, they wouldn't have to do that. And experts engaged in redistricting litigation, including analyzing alleged violations of Section 2 and proposed remedial plans for proven violations of Section 2, could use a single data set to draw maps and otherwise to analyze Section 2 claims.

Q. If the Census Bureau could produce citizenship data as part of the PL data file without including a citizenship question on the census, would that resolve the concern that's expressed in this bullet point?

MR. GARDNER: Objection. Calls for a hypothetical.

THE WITNESS: Yeah, again, that's



REDACTED

hypothetical. I don't know they can do that either as a matter of law or technical capacity. And I think -- so I don't know the answer to that question.

REDACTED

REDACTED

REDACTED

Q. You don't know whether or not you'd be interested in a proposal from the Census Bureau to give you CVAP data as part of the PL data file without including a citizenship question on the census?

MR. GARDNER: Same objection.

THE WITNESS: Again, you're asking me a hypothetical without fleshing out all the facts and circumstances, so I can't tell you how anyone, the department or anyone else, would respond to that.

REDACTED

REDACTED

REDACTED

Q. Okay. So you're not aware of any time where the Department of Justice, in enforcing the Voting Rights Act, had a single data set which had total population data and citizenship data in it, right, Mr. Gore?

A. I'm not aware one way or the other.

REDACTED

REDACTED

Q. But you're not saying that -- this letter is not saying that there was a prior point in time in which the Department of Justice had both total population and citizenship data in a single data set, correct?

A. I think the letter speaks for itself, and this particular bullet doesn't say that.

REDACTED

REDACTED

REDACTED

Q. So the cases that DOJ has filed, you're not aware of any of those cases being unsuccessful because citizenship data and total population data were in two different data sets, correct?

A. That's correct. Again, we're not talking about cases that weren't filed. And, obviously, any case that was filed was a case that the Department of Justice believed it could win.

Q. Okay. You're not aware of any case filed by any plaintiff anywhere under the Voting Rights Act where the claim failed because of the fact that total population data and citizenship data

REDACTED

were in two different data sets, correct?

A. Again, that's correct with respect to cases that were actually filed. And we're not talking about cases that weren't filed.

Q. You're not aware of a case -- and I'm not even going to talk about the Department of Justice -- where people have talked about filing a case publicly, but said, you know what, we're just not going to file this case because population data and citizenship data, they're in two different data sets, right?

MR. GARDNER: Objection to form.

THE WITNESS: I believe that's right, as I understand your question.

REDACTED

REDACTED

REDACTED

Q. The point that's being expressed -- correct me if I'm wrong -- in this bullet is that citizenship data from the ACS is not ideal for VRA enforcement purposes because ACS citizenship data purportedly does not align in time with the decennial census data, correct?

A. That's correct.

REDACTED

Q. What does the department mean?

A. I believe what the department means is -- it dovetails with the conversation we had just a moment ago about what the ACS data are.

So the ACS data are -- at least for the

REDACTED

five-year estimates, are rolling. So they represent some estimate over five consecutive years. And the one-year estimate is a snapshot of one single year.

Now, the citizenship data from the decennial census is a recording of data at that point in time, and the ACS data doesn't always align with that particular point in time. So you may be measuring citizenship data from, if you're using a five-year estimate, four or five years before the census or four or five years after the census. And jurisdictions use the total population data in the census, and courts use that as well, throughout the entire decade.

602, Improper Expert Testimony under 702

REDACTED

REDACTED

REDACTED

Q. Are you aware of a filed case by the Department of Justice under the Voting Rights Act where the department was unable to succeed on a VRA claim because of the fact that ACS citizenship data does not align in time with the decennial census data?

A. I am not aware of any such filed case.

Q. Okay. Are you aware of any case filed by any plaintiff anywhere where the court found that -- against the plaintiffs because the ACS data does not align in time with the decennial census?

A. I am not aware of any such filed case.

Q. Are you aware of any plaintiff ever declining to file a case because ACS data -- and I'm not talking about the department, not filed cases, because I understand that that's

REDACTED

privileged.

But just based on your knowledge as someone who's knowledgeable about the Voting Rights Act, are you aware of any case where any plaintiff outside of DOJ did not bring a case under Section 2 of the Voting Rights Act because ACS data does not align in time with the decennial census?

A. I'm not aware of that, and certainly not aware of it from any public information.

REDACTED

REDACTED

REDACTED

Okay. When the letter says, "margin of error," what do you understand that to mean?

A. Because the ACS estimates are estimates, and not a hard count, there's an associated margin in which -- that the Census Bureau assigns a value, usually a percentage, that the Census Bureau assigns to convey that, from a matter of statistics, it has confidence that the true result is somewhere within that range. And that's referred to as the margin of error.

REDACTED

REDACTED

REDACTED

Q. And you'd agree with me that estimates with a smaller margin of error are more precise than an estimate with a bigger margin of error, right?

A. Yes.

Q. Now, the point that's being expressed in this bullet is that citizenship data from the ACS is not ideal for purposes of VRA enforcement because ACS citizenship data has a margin of error that increases as you get to smaller and smaller geographic units, correct?

A. That's correct.

Q. Okay. And the letter contrasts those ACS estimates with those margins of error with decennial census data, which are a full count of the population, right?

A. That's correct.

Q. You're aware that decennial census data

REDACTED

that's published at the block level also has a margin of error associated with it; it's just not published by the Census Bureau, right?

A. I'm aware of that. Yes.

REDACTED

Q. But as of the date of the Gary letter, you knew that even what is referred to in the Gary letter as full count data has margins of error associated with it, too, correct?

A. Yes.

Q. Okay. The Gary letter doesn't mention that full count data from the decennial census has margins of error, does it?

A. It doesn't appear to, no.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Okay. So let's try that again. The ACS data are described in this bullet as having a margin of error, correct?

A. That's correct.

Q. And the letter reads, "By contrast, decennial census data is a full count of the population," correct?

A. That's correct.

Q. And the bullet does not mention that

REDACTED

decennial census data have margins of error associated with them, correct?

A. That's correct, as I've already testified.

Q. Okay. Now, when citizenship data was derived from the long form questionnaire, that was data that also had a margin of error associated with it, correct?

A. I would imagine that's correct.

Q. Okay. So you'd agree that, as far as you know, the Department of Justice, when it's relied on citizenship data, that citizenship data has always had a margin of error associated with it, correct?

A. That's my understanding.

REDACTED

REDACTED

REDACTED

Q. And the letter doesn't mention the fact that citizenship data collected from the long form questionnaire and reported from the long form questionnaire were, like the ACS, also statistical estimates that had margins of error, correct?

A. I think that's correct with respect to reported from the long form questionnaire. I don't know if that's correct with respect to collected by the long form questionnaire because I don't know if the Census Bureau engaged in

REDACTED

statistical estimates when it was actually collecting the responses to the long form questionnaire.

Q. Thank you.

The letter doesn't mention that the Department of Justice has always relied on statistical estimates of citizenship with margins of error for purposes of VRA enforcement, does it?

A. I believe that's correct. Again, the letter speaks for itself.

Q. Okay. You're not aware of a single filed case by the Department of Justice where the Department of Justice was unable to succeed on a VRA claim because of the fact that the CVAP data on which DOJ was relying was a statistical estimate with a margin of error that increases as the geographic area decreases, correct?

A. I am not aware of any such filed case.

Q. You're not aware of any case where a plaintiff was unable to succeed on a VRA claim because of the fact the five-year ACS citizenship data have a margin of error associated with them,

REDACTED

correct?

A. Five-year estimates? That's correct.

REDACTED

You're not aware of any case where plaintiffs declined to bring a VRA claim because ACS data are statistical estimates with a margin of error, correct?

A. That is correct. I am aware of one case in which a court held that the one-year ACS estimate, because of its associated margin of error, was insufficiently reliable to allow the plaintiff in that case to proceed with a Section 2 claim.

Q. Right. That's the Benavidez case, right?

A. That is correct.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

THE WITNESS: The position of the Department of Justice is that we want to have the most complete, accurate, reliable data we can possibly have.

We have the ACS data. We have been bringing cases using the ACS data. We believe that having a hard count citizenship data from the census questionnaire would give us another

Non-Responsive

REDACTED

data point that we could use to identify jurisdictions for potential Section 2 investigations and enforcement.

I don't believe it's disputed by anybody that a litigant, any plaintiff, the Department of Justice or a private plaintiff, needs block-level data in order to bring Section 2 redistricting claims -- now, whether that's derived from the ACS or from some other source -- because when jurisdictions draw districts to achieve equal population, they use block-level data.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Right. So let's take this block of five people. Right? If the block group that this was

601

REDACTED

in, the ACS reported 60 percent of the people in that block group are citizens, what you would do right now is you take that 60 percent number and then you apply it to the individual blocks. So you would look at this group of five and you'd say, well, our estimate is three of those five people are citizens, correct?

MR. GARDNER: Objection. Form. Objection. Hypothetical.

THE WITNESS: That would be one way to estimate census block citizenship data from an ACS estimate at the block group level.

BY MR. HO:

Q. And what the Department of Justice is saying is that we have these estimates, but we'd also like a hard count, because if we had the decennial census questionnaire out there and had the citizenship question posed, we would know with a hard count instead of an estimate -- instead of only an estimate -- how many of those five people are, in fact, citizens, correct?

MR. GARDNER: Objection. Form.

REDACTED

THE WITNESS: That's more or less correct. I believe we want to have the best, most accurate and most complete data we can possibly have.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Okay. Your expectation is that when you requested a citizenship question on the census questionnaire, that the Census Bureau was going to include it, collect that information, and give it to the Department of Justice on a block-by-block level, correct?

REDACTED

A. Yes.

REDACTED

REDACTED

REDACTED

Q. Okay. What's your understanding of what the Census Bureau is going to give you for this census block of one person in terms of CVAP data when the citizenship question is included on the census?

MR. GARDNER: Objection. Calls for a hypothetical.

THE WITNESS: I have no understanding of

REDACTED

what the Census Bureau is going to do or what data it's going to provide us in the future related to this request.

BY MR. HO:

Q. You don't know one way or the other, is what you're saying, whether or not, when the Census Bureau gives you block-by-block CVAP data derived from responses to the census questionnaire, whether or not, with respect to a block that has one person on it, that that individual block-level CVAP data is going to reflect that person's response to the citizenship question on the census, correct?

MR. GARDNER: Objection. Form. Objection. Hypothetical.

THE WITNESS: Again, that's hypothetical. What I'm telling you is I don't know how the Census Bureau planned to report the data that we've requested.

REDACTED

REDACTED

REDACTED

You want block-by-block data from the Census Bureau. That's what you've requested, correct?

A. That is correct.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

It's that when the Census Bureau gives you block-by-block citizenship data, as you've requested, based on responses to the citizenship questionnaire, right now, you don't know, if you're looking at a block with one person on it, whether or not that citizenship data that you get from the Census Bureau is going to reflect the response to the citizenship questionnaire, correct? 601

MR. GARDNER: Same objections.

THE WITNESS: Of course I don't know that, because I don't know what the data is going to be. And I don't know whether the person who completes the census questionnaire is going to complete it fully or something else. I have no idea.

REDACTED

REDACTED

A. You're asking about something that might happen in the future. That's a hypothetical. I don't know.

Q. Well, this is the data that the Department of Justice has requested. You've requested that the Census Bureau go block by block and ask --

A. That's correct.

Q. -- people block by block, every member of every household, how many people are citizens and not, correct?

A. That is correct.

Q. And you expect that the CVAP table that you get from the Census Bureau on a block-by-block basis is going to reflect answers to those citizenship questions, correct?

A. That would be my expectation. Yes.

REDACTED

REDACTED

REDACTED

Q. Well, Mr. Gore, it's not hypothetical. You understand that there are census blocks with one human on them, correct?

A. I do understand that. Yes.

Q. Okay. If the Census Bureau is going to give you CVAP data for that block and tell you whether or not that person is a citizen, you don't know, sitting here today, whether or not that -- that data that the Census Bureau is going to give you is going to reflect that person's answer to the citizenship question on the census, correct?

A. I don't know what that data is going to reflect because, again, you're asking me about a hypothetical.

REDACTED

REDACTED

REDACTED

Q. Sure. Is it your understanding that, when the Census Bureau reports CVAP data block by block after the 2020 census, that, with respect to blocks that have only one person on it, that the CVAP data reported by the Census Bureau will reflect the answer that that person gave to the citizenship question on the census questionnaire?

MR. GARDNER: Objection. Form.

THE WITNESS: My understanding is that

REDACTED

that would certainly be possible, just like it would reflect information about that person's race that they would have provided on the census questionnaire.

BY MR. HO:

Q. Now, you're aware that the Census Bureau intends to use techniques such as synthetic data noise infusion to avoid the disclosure of people's responses to the census questionnaire?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: I'm aware that there are some techniques. I don't know that particular technique. I'm not familiar with it.

BY MR. HO:

Q. So you've never heard the term "synthetic data noise infusion" before?

A. I believe I may have heard it. I just don't understand it.

Q. You're not aware that synthetic noise infusion is a practice whereby the Census Bureau intends to replace some sensitive information

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REDACTED

about a census respondent with different information based on sample data from a statistical model when it publishes the data?

A. I generally have that understanding. I cannot perform that particular data manipulation myself.

REDACTED

Q. Sure. You're aware that, because of disclosure avoidance procedures like synthetic noise infusion, which we talked about a second ago, that even with the citizenship question on the 2020 census questionnaire, the CVAP data produced by the Census Bureau at the block level will have error margins associated with it,

REDACTED

correct?

A. I'm not aware of that because I don't understand the causal relationship between those masking techniques and any margin of error. Moreover, I don't know what techniques the Census Bureau plans to use or how it plans to deploy those with respect to responses to the 2020 census.

REDACTED

REDACTED

Q. But you're aware, are you not, that the Census Bureau today does not know whether or not the margins of error associated with the CVAP data that it produces based on responses to the census questionnaire will have margins of error that are larger or smaller than the CVAP data currently used by the Department of Justice?

MR. GARDNER: Objection.

BY MR. HO:

Q. Right?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: I am not aware of the Census Bureau's view on that issue.

BY MR. HO:

Q. Okay. So you didn't try to determine, before requesting a citizenship question on the census questionnaire, whether or not CVAP data derived from that citizenship question would, in fact, have smaller margins of error than the CVAP data currently relied on by the Department of Justice, correct?

REDACTED

A. Are you asking about me, personally? You used the word "you" in your question. I just want to understand who you're asking --

Q. The Department of Justice.

A. Ah. I'm not aware of what the Department of Justice may or may not have done.

REDACTED

REDACTED

REDACTED

Q. You're not aware of any such communications between the Department of Justice and the Census Bureau about whether or not, due to disclosure avoidance techniques, the CVAP data produced from responses to the decennial census questionnaire, would, in fact, have smaller margins of error than the CVAP data currently relied on by the Department of Justice, correct?

A. I don't believe I'm aware of any such communication.

REDACTED

REDACTED

REDACTED

Q. The Gary letter doesn't mention the fact that CVAP data derived from the decennial census would have margins of error due to disclosure avoidance techniques that might even be larger than the margins of error currently associated with ACS CVAP data relied on by the Department of Justice at present, correct?

A. Again, I don't -- I'm not sure I'm following all the chains of that hypothetical, and

REDACTED

I don't know one way or the other.

REDACTED

REDACTED

REDACTED

Q. So here's my question with respect to this bullet. If the Census Bureau could produce to you full count CVAP data that didn't have sampling margins of error like the ACS CVAP data but -- and could do so without including a citizenship question on the census, that would resolve the concerns expressed in this bullet, correct? 601

MR. GARDNER: Objection. Calls for hypothetical.

THE WITNESS: That's hypothetical. I can't answer that.

BY MR. HO:

Q. You don't know one way or the other?

MR. GARDNER: Objection. Calls for hypothetical.

THE WITNESS: It's a hypothetical. I can't answer a hypothetical.

REDACTED

REDACTED

Q. Do you remember how we talked about how, when data has smaller margins of error, we'd -- you and I agree that that data would be more

REDACTED

precise than data that has larger margins of error, right?

A. Yes.

Q. Today, do you believe that CVAP data produced from responses to a question about citizenship on the census questionnaire will be more precise than the data that the Department of Justice is currently relying on with respect to CVAP for purposes of VRA enforcement purposes?

A. I'm not sure I have a view on that one way or the other, since I don't know what the margin of error is that the Census Bureau will assign to census responses and, particularly, the citizenship question should it be asked on the 2020 census.

Q. So just to clarify, right now you don't know whether or not CVAP data produced from responses to the citizenship question on the census questionnaire will, in fact, be more precise than the CVAP data on which DOJ is currently relying for purposes of VRA enforcement?

A. I believe that's correct. I don't know

REDACTED

what the margin of error is that will be assigned to that, to that data.

REDACTED

Q. Okay. Correct me if I'm wrong, but the

REDACTED

point that's being expressed in this bullet is that citizenship data from the ACS is not ideal for purposes of VRA enforcement because ACS citizenship data is published at the block group level and DOJ is required to perform further estimates to generate CVAP data at the census block level, correct?

A. Correct.

REDACTED

Q. You're not aware of any time previously where DOJ has had at its disposal CVAP data broken down by race and ethnicity at the census block level, correct?

A. I am not aware of that.

Q. You're not aware of any time previously where DOJ did not have to use an estimated -- an estimation procedure in order to convert CVAP data from the Census Bureau from one geographical level

REDACTED

into block level data broken down by race or ethnicity, correct?

A. As I understand your question, that's correct.

Q. The Gary letter doesn't mention the fact that, for purposes of VRA enforcement, DOJ has always had to use an estimated -- an estimation procedure in order to convert CVAP data from the Census Bureau at one geographic level into CVAP data by race and ethnicity at the block level, correct?

A. I've just testified that I don't know whether that's a fact or not. But there's no mention of that issue in the Gary letter.

Q. You've never assessed the statistical reliability of estimation techniques for deriving block level CVAP data from block group level CVAP data, correct?

MR. GARDNER: Objection. Form.

THE WITNESS: I don't believe I have, no.

BY MR. HO:

Q. You're not aware of any case that was

REDACTED

filed by DOJ where DOJ was unable to succeed on a VRA claim because of the fact that DOJ performed an estimation procedure to derive census block level CVAP data correct?

A. I'm not aware of any such filed case.

Q. You're not aware of any case where any plaintiff was unable to succeed on a VRA claim because of the fact that the plaintiff had to perform an estimation procedure to derive block-level CVAP data, correct?

A. I'm not aware of any such filed case, and I understand your question to be limited to filed cases.

Q. You're not aware of any situation where a plaintiff did not bring a case because of the fact that the plaintiff would have to perform an estimation procedure in order to generate CVAP data at the census block level, correct?

MR. GARDNER: Objection to the extent that you're calling for information subject to the law enforcement privilege. To the extent you are asking for that information, I would instruct the

REDACTED

witness not to answer.

To the extent you can answer that question without divulging law enforcement-sensitive information, you may do so.

THE WITNESS: I am not aware of any public, nonprivileged information to indicate the existence of any such case.

BY MR. HO:

Q. If the Census Bureau could produce CVAP data at the block level for the Department of Justice instead of at a different level of geography, and could do so without including a citizenship question on the census, would that alleviate the concern that's expressed in this bullet point?

MR. GARDNER: Objection. Calls for a hypothetical.

THE WITNESS: It's a hypothetical I can't engage in.



REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. You're just refusing to answer the question, correct?

A. I'm telling you my answer is I won't engage in a hypothetical.

Q. Okay. Aside from the four bullets expressed in this letter, are there any other reasons why ACS CVAP data are not the ideal data for purposes of VRA enforcement of which you are aware?

A. Not that I'm aware of.

Q. Okay. I'm going to show you a document. We'll mark this as 20.

(Gore Deposition Exhibit 20 marked for identification and attached to the transcript.)

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. You're not aware of any of these cases failing because of the quality of CVAP data available to the Department of Justice, correct?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: I am not aware.

BY MR. HO:

Q. You mentioned earlier a case, the Benavidez case. Do you remember that?

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A. Yes.

Q. It's a case from the Northern District of Texas, right?

A. Yes.

Q. It's not a circuit court case, right?

A. That is correct.

REDACTED

REDACTED

Q. No, I appreciate that.

So just so that the record is clear, the Benavidez case is the only case that you're aware of where the plaintiff's claim failed in part due to reliance on ACS CVAP data, correct?

A. Correct.

Q. And just to be clear, the Benavidez case was not brought by the Department of Justice, correct?

A. Correct.

Q. Now, your understanding is that the plaintiffs in the Benavidez case relied on one-year ACS estimates, correct?

A. That's my recollection from the case. Yes.

Q. And your recollection is that the plaintiffs in the Benavidez litigation did not rely on five-year ACS estimates, correct?

A. That is my recollection. Correct.

Q. And your recollection is that, in the Benavidez case, the court found that the one-year ACS data that the plaintiffs were relying upon was

REDACTED

not sufficiently reliable for the geographic areas at issue in that case, correct?

A. Correct.

REDACTED

Q. And the plaintiffs in the Benavidez case didn't rely on those five-year ACS estimates, correct?

A. That's correct.

Q. And you --

A. That's my recollection.

Q. And you're not aware of a single case in which a plaintiff's VRA claim failed due to reliance on five-year ACS estimates, correct?

REDACTED

A. Correct. I'm not aware of any such case.

Q. You described the Benavidez case in your testimony to Congress, correct?

A. I believe I mentioned it. Yes.

Q. At the time you testified in Congress, you were aware that the plaintiffs in the Benavidez case relied on one-year rather than five-year ACS data, correct?

A. I believe that's correct.

Q. Okay. In your testimony in Congress, you didn't mention the fact that although the Census Bureau considers one-year ACS estimates to be reliable only for areas that are -- have 65,000 people or more, it considers five-year ACS estimates to be reliable for any geographic area, correct?

A. I don't recollect the specifics of my testimony on that point.

REDACTED

REDACTED

REDACTED

Q. That wasn't my question. My question was, you don't recall mentioning the five-year ACS estimates during your testimony in Congress, correct?

A. I don't recall mentioning it or not mentioning it.

Q. In fact, you didn't mention the five-year ACS estimates during your testimony, correct?

A. I answered that question. I don't recall whether I did or I didn't.

REDACTED

REDACTED

Q. Can you think of any reason why you wouldn't mention the fact that the -- that there are five-year ACS estimates during your congressional testimony?

A. I was not asked -- I don't believe I was asked the intervals of estimates that are available through the ACS. I was responding to a different question, as I recall my testimony. But if you point me to where my testimony is in the transcript, I'd be happy to discuss it further.

REDACTED

REDACTED

REDACTED

Q. Going back to the list of cases that's in front of you --

A. Exhibit 20?

Q. Yes.

A. Okay.

Q. None of these cases have been filed since you were acting assistant attorney general for civil rights, correct?

I meant just the Section 2 cases on the first page, sorry.

A. That is correct.

Q. In fact, none of the Section 2 cases

REDACTED

listed on the first page have been filed since the start of the Trump administration, correct?

A. That is correct.

Q. Okay. The previous administration -- for part of its time, the previous administration, in addition to having responsibilities under Section 2 of the Voting Rights Act, also had obligations under Section 5 of the Voting Rights Act, correct?

A. That's correct.

Q. The current administration does not have obligations under Section 5 of the Voting Rights Act to the same extent, correct?

MR. GARDNER: Objection to form.

THE WITNESS: That's correct.

REDACTED

Q. What obligations, if any, does the current administration have with respect to Section 5 enforcement?

A. That is a fair question. There are a couple of jurisdictions that are covered under Section 3(c) of the Voting Rights Act, which is

REDACTED

similar to Section 5. We may, in fact, have no obligations with respect to Section 5 at this point due to the Supreme Court's decision in Shelby County, which was a 2013 decision, so it was about in the middle of the prior administration's tenure.

Q. Okay. If you look at the previous administration, 2009 through the beginning of 2017, it looks like the Department of Justice filed five Section 2 cases during that period.

A. I believe that's correct.

Q. Okay. So previous administration had Section 5 obligations to review voting changes in all or part of 16 states for part of that time, correct?

A. I believe until the Shelby County decision in 2013.

Q. Okay. And the current administration doesn't have those obligations and hasn't filed any Section 2 cases?

A. That's correct. We also haven't had a decennial census which has required every state in

REDACTED

the union to redistrict during the time of this administration, which the prior administration did in the 2010 census.

Q. You would say that it is not unusual for the Department of Justice to go several years without filing a Section 2 case, right?

A. While I review this list, I think that's -- that may or may not be correct. But there have certainly been years and multiyear periods where the Department of Justice has not filed Section 2 cases.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

MR. HO: We'll mark this as Exhibit 21.

(Gore Deposition Exhibit 21 marked for identification and attached to the transcript.)

BY MR. HO:

Q. It's an e-mail exchange between you, Arthur Gary, and others. The top e-mail on the thread is from you to Arthur Gary dated January 29th, 2018. The first page bears Bates number DOJ 00002712.

I want to go through the individual

802

REDACTED

802

e-mails on here. Okay?

So the top e-mail, this is Arthur Gary e-mailing you, correct?

A. I don't believe so, actually.

Q. Oh, I'm sorry. The top is you e-mailing Arthur Gary, correct?

A. Appears to be, yes.

REDACTED

802

Q. Okay. I want to look at the first e-mail in time on this chain. It's on the last page, page 5, Bates number DOJ 2716.

This is an e-mail from Ron Jarmin to Arthur Gary, cc'ing Enrique Lamas of the Census Bureau. And it has the date December 22nd, 2017, right?

A. Yes, that's correct.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Okay. So just to clarify, your understanding is that, in this e-mail, the acting director of the Census Bureau is expressing -- is stating that Census Bureau staff have briefed him and sug -- and -- on their findings which suggest that the best way to provide block-level CVAP data is not to add a citizenship question to the

REDACTED

decennial census questionnaire, correct?

A. I think that's right. This e-mail speaks for itself, and obviously I didn't write it and it wasn't addressed to me.

Q. Your understanding is that the Census Bureau director is -- or acting Census Bureau director is stating that Census Bureau staff have conducted an analysis and briefed him on their findings which suggest that the best way to provide block-level CVAP data for DOJ's needs is through a linked file of administrative and survey data that the Census Bureau already possesses, correct?

A. That's my understanding of what this says. Yeah.

Q. And your understanding is that the Census Bureau director is -- acting Census Bureau director is writing and stating that his staff -- that Census Bureau staff have analyzed this issue and briefed him on their findings that the linked file of administrative and survey data would result in higher quality data produced at lower

REDACTED

cost than including a citizenship question on the census questionnaire, correct?

A. I understand that he is communicating that the findings of the staff suggest that. Yes.

Q. Okay. No meeting between the technical experts at DOJ and the Census Bureau took place between the date of the December 12th Gary letter requesting a citizenship question and the Ross decision memo in March of 2018 directing the inclusion of a citizenship question, correct?

A. I am not aware of any such meeting.

Q. You're not aware of any such meeting of technical staff in the civil rights division, which you are the head of, and the Census Bureau's technical staff to discuss this proposal -- or these findings, rather, about a different way of generating block-level CVAP data referenced in this e-mail, correct?

A. I am not aware of any such meeting.

REDACTED

REDACTED

REDACTED

802

Q. Okay. On page 3, page DOJ 2714, on January 2nd, Arthur Gary writes to Ron Jarmin, "It should work fine. Let me get back to you. Best wishes to you for 2018 as well."

I read that correctly, right?

A. Yes, you did.

Q. That's in response to a meeting -- an e-mail on the following page which is from Ron Jarmin to Arthur Gary which reads, "Arthur, happy new year. Would the late next week work for a meeting?" Right?

A. Appears -- that appears correct.

Q. Okay. So at this point, it looked like Mr. Gary was planning on having a meeting or suggested that a meeting the following week with the Census Bureau would work fine, correct?

A. Again, these e-mails speak for

REDACTED

themselves. And I can't speak for Mr. Gary. But that seems about right.

REDACTED

REDACTED

REDACTED

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Q. Mr. Gary writes back to Ron Jarmin and offers a number of options for a meeting, including Friday, January 19th, at 11:00 a.m., right?

A. That appears to be correct.

Q. And in the next e-mail on the thread, Dr. Jarmin writes to Arthur Gary on January 10th, "Thanks, Gary. Let's do Friday at 11:00. We're fine meeting at main Justice." Right?

A. Right.

802

Q. The next e-mail, which is on the first page at the bottom, on January 16th, 2018, Arthur Gary writes to cancel the meeting with Ron Jarmin, correct?

A. Well, it looks like -- he says they're unable -- "We" -- I don't know who "we" are -- "will be able to meet on Friday or this week."

Q. Did you have any conversations with Mr. Gary about meeting with the Census Bureau between the date of Dr. Jarmin's e-mail on

REDACTED

December 22nd requesting a meeting between Census Bureau and DOJ staff and Arthur Gary's e-mail on January 16th stating, due to some scheduling conflicts, we will be unable to meet on Friday?

A. Yes.

REDACTED

Q. What was the content of that conversation?

A. I believe the content of that conversation related to this request that the Census Bureau and the Department of Justice hold a meeting.

Q. And what did Mr. Gary convey to you about the Census Bureau's request to have a meeting between DOJ and Census Bureau technical staff?

A. He conveyed to me that the request had been made.

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REDACTED

REDACTED

REDACTED

Q. And what was your response to receiving that information?

A. I listened to what Mr. Gary had to say and told him that I would think about the issue and discuss it further with others.

802

REDACTED

REDACTED

REDACTED

Q. What, if anything, did you do with the information that the Census Bureau had an alternative means for providing DOJ with block-level CVAP data?

A. I discussed that with various people at the Department of Justice.

Q. And who did you discuss that with?

A. I discussed it with Rachael Tucker, Pat Hovakimian. I may have discussed it with Danielle Cutrona. I'm not sure. And I eventually discussed it with the attorney general.

REDACTED

REDACTED

Q. You mentioned that you discussed it with the attorney general. When did you discuss the fact that the Census Bureau had an alternative means of producing block-level CVAP data with the attorney general?

A. It would have been at some point after I spoke to Art Gary. I don't remember the exact date.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. You didn't ask Arthur Gary to get more information about the specifics of the proposal from the Census Bureau to get higher quality CVAP data at lower cost?

A. I don't recall asking him that and I don't recall him conveying that to me that that was a representation that the Census Bureau had made.

Q. Okay. You at some point had a conversation with the Attorney General about this. Was that in person or by phone?

REDACTED

A. In person.

Q. And it was in January of 2018?

A. Probably. Yeah.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. That's fine.

The decision was made not to pursue the Census Bureau's alternative proposal for producing

REDACTED

block-level CVAP data for purposes of VRA enforcement through a means other than including a citizenship question on the census, correct?

A. That is correct.

Q. Who made that decision?

A. The attorney general.

Q. When was that decision made?

A. Around this time. I don't know exactly when it was made. I can't remember the specific date.

Q. When you say "around this time," you mean around January of 2018, correct?

A. That is correct.

Q. Are the reasons for that decision memorialized anywhere?

A. Not to my knowledge.

Q. Were those reasons ever communicated to you?

A. Yes.

REDACTED

REDACTED

REDACTED

Q. Who informed Art Gary of the decision not to meet with the Census Bureau to discuss their alternative proposal for producing block-level CVAP data?

A. I did.

Q. When did you inform Mr. Gary of that

REDACTED

decision?

A. It would have been around this January 29th date, I believe. But I don't recall specifically.

Q. And who informed you that the Department of Justice should not meet with the Census Bureau to discuss the Census Bureau's alternative proposal for producing block-level CVAP data?

A. The attorney general.

Q. You received this e-mail thread from Arthur Gary, which includes the initial e-mail from Dr. Jarmin describing the alternative proposal for collecting CVAP data at higher quality produced at lower cost on January 29th, 2018, correct?

A. On this e-mail chain, that's correct. I don't know whether I received it before then or not. But yes, this e-mail -- the e-mail dated January 29th, 2018, at 2:33 p.m., is the first e-mail in this chain where Mr. Gary sent me that information.

REDACTED

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REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Do you have any reason to think that Secretary Ross knows more about the accuracy of various forms of CVAP data than the career professionals at the Census Bureau?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: I have no basis to answer that question.

601

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REDACTED

Just here today, you know that Dr. Jarmin wrote to Arthur Gary and said Census Bureau staff have looked at this issue, and their analysis suggests that there's a way to get CVAP data for DOJ that would produce higher quality data at lower cost, and wanted to meet with DOJ about that. You understand that, right?

REDACTED

A. Yes, I believe I've testified that I understand that.

Q. Okay. And when you told Congress that the best vehicle -- or the most appropriate vehicle for obtaining CVAP data was through the decennial census questionnaire, you didn't mention Dr. Jarmin's proposal, right?

MR. GARDNER: Objection. Asked and answered.

THE WITNESS: Again, I don't remember exactly everything that I testified to on May 21st. I'm happy to read that testimony now and answer your question and verify -- or give you the verification or confirmation that you seem to be asking me for.

But no, I didn't mention this. I didn't mention everything about the decision or the issue in that testimony to Congress. I was asked specific questions by congresspeople and gave answers to the best of my ability and recollection within the constraints that the Department of Justice places on witnesses who testify before

REDACTED

Congress.

Moreover, all it says here is that there were some career staff who made findings that suggested a particular thing, not that they had firmly reached that conclusion. And of course, as I mentioned before, it's up to Secretary Ross to make that determination as a matter of law, or at least that's my understanding.

BY MR. HO:

Q. I mean, this isn't an e-mail from just a random Census Bureau staffer. This is an e-mail from the acting director of the Census Bureau, correct?

MR. GARDNER: Objection. Argumentative.

THE WITNESS: I understand that Dr. Jarmin was the acting director of the Census Bureau, yes.

REDACTED

REDACTED

Q. Okay. Are you satisfied that your testimony to Congress, which omitted Dr. Jarmin's proposal to meet with the DOJ to discuss the Census Bureau's findings that there was a way to produce higher quality data at lower cost aside from the census [sic] question -- are you satisfied that that was complete testimony to Congress?

A. Absolutely. I -- I testified completely and honestly to Congress on the matters that I was in a position to testify on.

Q. Your goal is to get the most complete and accurate CVAP data from the Census Bureau, right?

A. That would be the Department of Justice's goal. Yes.

Q. And despite having that goal, you did not -- and when I say "you," the Department of Justice did not have a meeting of its technical staff with the Census Bureau to discuss the Census Bureau's proposal to get higher quality CVAP data at lower cost, correct?

MR. GARDNER: Objection. Asked and

REDACTED

answered.

THE WITNESS: I believe that's correct.

BY MR. HO:

Q. Are you aware of any other circumstance where the Department of Justice asked the Census Bureau to collect data but then refused to have a technical meeting to discuss that data request?

A. I'm not aware of that, nor am I aware of any instance where the Census Bureau has offered that kind of meeting.

REDACTED

Q. This is marked as Exhibit 22. It's an e-mail from Ron Jarmin to Census Bureau personnel in the administrative record with Bates number 9074.

In this e-mail, Dr. Jarmin is forwarding to Census Bureau personnel an e-mail that he had previously written on February 6th, 2018, to

REDACTED

Enrique Lamas and, it appears, Karen Dunn Kelley.

Do you see that?

A. I do see that.

Q. Dr. Jarmin writes to Ms. Kelley, "Karen, I spoke with Jarmin is Gary. He has spoken with DOJ leadership. They believe the letter requesting citizenship be added to the 2020 census fully describes their request. They do not want to meet. Thanks, Ron."

Did I read that right?

A. Yes, you did.

REDACTED

REDACTED

REDACTED

Q. Dr. Jarmin was correct that DOJ leadership did not want to have a technical meeting to discuss DOJ's request for block-level CVAP data, correct?

A. I believe that's correct.

REDACTED

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REDACTED

Q. Mr. Gore, as the head of the civil rights division, you want the civil rights division to have access to the most accurate CVAP data for purposes of VRA enforcement, right?

A. Right.

REDACTED

REDACTED

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REDACTED

REDACTED

Q. Well, before Secretary Ross' decision memo -- that decision memo was in March of 2018, correct?

A. Sounds right.

Q. Okay. So before Secretary Ross' memo, you didn't know what the Census Bureau's views were about the most accurate form of CVAP data, correct?

A. That's probably correct. Yeah.

Q. Okay. So before March of 2018, as someone who wants the Department of Justice to have the most accurate CVAP data for VRA enforcement, you wanted to be able to have a meeting of DOJ technical staff with the Census Bureau to learn about the Census Bureau's views about the most accurate CVAP data, correct?

MR. GARDNER: Objection. Hypothetical.

THE WITNESS: That's a hypothetical.

REDACTED

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Q. Okay. So it's correct that you received a draft of Commerce's decision memo before the final memo became public, correct?

REDACTED

A. That appears to be correct. Yes.

REDACTED

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Q. Okay. So is it correct, as this comment notes, that the December 12 letter requesting a citizenship question be added to the census did not say that it was necessary to collect CVAP data through the census questionnaire for VRA enforcement?

A. That is correct.

REDACTED

Q. And you -- my question was, you, yourself, have specifically noted that the

REDACTED

December 12 letter, the Gary letter, did not use the word "necessary" with respect to the inclusion of a citizenship question on the 2020 census, correct?

A. Yes, I have just noted that in my testimony. I will say I don't know -- I have no recollection of what this comment is referring to.

Q. You agree, right, Mr. Gore, that CVAP data collected through the census questionnaire is not necessary for DOJ's VRA enforcement efforts?

A. I do agree with that. Yes.

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The chief scientist of the Census Bureau, I'm representing to you, has given deposition testimony in this litigation stating that the analysis conducted by the Census Bureau indicates that the best quantitative evidence that's available to the Census Bureau at present suggests to the Census Bureau and leads the Census Bureau to conclude that the inclusion of a citizenship question is likely to reduce self-response rates to the census questionnaire.

Do you understand the representation that I've just made to you?

A. I do. I can't verify whether it's accurate, since I'm not familiar with that deposition testimony.

REDACTED

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Q. Are there any planned meetings between the civil rights division and the Census Bureau about the effect that the citizenship question on the 2020 census is going to have on the accuracy of census data?

A. I'm not aware of any such meetings, nor do I know whether any such meetings would be productive at this point, since the 2020 census hasn't yet been conducted and nobody knows what the effect of the citizenship question on that particular census will be.

Q. Mr. Gore, are you aware of any other circumstance in which the Department of Commerce has reached out to the Department of Justice to see if the Department of Justice would request data from the Census Bureau?

A. I'm not aware of any other such instance,

REDACTED

no.

REDACTED

Q. Mr. Gore, just to circle back on something we talked about earlier, when Attorney General Sessions made the decision for there not to be a meeting between DOJ technical staff and the Census Bureau, at that time, Secretary Ross had not yet issued his decision memo directing the inclusion of a citizenship question on the census, correct?

A. That is correct.

Q. So it's accurate to say, since that decision memo had not yet been issued, that that decision memo did not play any role in the decision that was made not to have a meeting

REDACTED

between Census Bureau and technical staff, correct?

A. That is -- I believe that's correct. Yes.

REDACTED

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REDACTED

802

Q. Okay. And if you look at Exhibit 34, it's a document titled, Census citizenship question.

This is the briefing paper that was attached to that e-mail, correct?

A. I can't verify that for sure, but --

Q. Does it appear to be?

A. It appears to be -- yes, it appears to be a briefing paper on that topic.

Q. Okay. And the subject is, AG prep for CJS Approps. hearing, correct?

A. That is correct.

Q. Okay. So this citizenship -- census citizenship question briefing paper, Exhibit 34, it's for the attorney general, correct?

A. That is correct.

Q. Okay. Exhibit 34, at the top, the first bullet under the section background reads, "Not

REDACTED

802

public. In 2017, Secretary of Commerce Wilbur Ross requested that the Justice Department send a letter requesting the addition of a citizenship question on the 2020 census."

802/601

Is that statement accurate, as far as you know?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: As far as I know, yes.

BY MR. HO:

REDACTED

Q. And it's correct that, as of the date of this e-mail, April 6th, 2018, the fact that Secretary of Commerce Ross requested that the Justice Department send a letter requesting the addition of a citizenship question was not public, correct?

MR. GARDNER: Objection. Lack of

REDACTED

foundation.

THE WITNESS: I believe that was -- I believe that's correct. I don't remember for sure.

REDACTED

REDACTED

REDACTED

Q. Why, if you know, was it not public by April 6th, 2018, that Secretary Ross had requested that the Justice Department send a letter requesting the addition of a citizenship question?

MR. GARDNER: Objection. Lack of foundation. Calls for speculation.

THE WITNESS: I don't know.

REDACTED

REDACTED

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REDACTED

Q. Okay. But just so I'm clear on it, you have had discussions with Attorney General Sessions on the topic of whether apportionment or redistricting should be conducted using total population or some other measure?

MR. GARDNER: Objection to the extent it mischaracterizes the witness' previous testimony.

THE WITNESS: I stand by my prior answer that I had a conversation with the attorney general about the question of the use of total population or some other measure for apportionment purposes.

BY MS. HULETT:

Q. And you can't disclose that conversation because it was during the pre-deliberative process leading to the decision as to whether to request that the Census Bureau include a citizenship question on the decennial census?

A. That is correct.

REDACTED

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Q. Well, to start with, I'm talking about Reyes versus City of Farmers Branch, Barnett versus City of Chicago, Negron versus City of Miami Beach, Romero versus City of Pomona, and LULAC versus Perry.

A. I read all of those cases before this letter was sent. And I may have read the LULAC versus Perry decision more recently than that.

Q. And before you list these cases, the sentence right before the cases in the second paragraph says, "Multiple federal courts of appeal have held that, where citizenship rates are at issue in a vote dilution case, citizen voting age population is the proper metric for determining whether a racial group could constitute a majority in a single-member district."

Did I read that correctly?

A. Yes, you did.

Q. These are all appellate court or Supreme Court cases. Did you read any of the lower court opinions in these cases?

A. I believe I did. Yes.

REDACTED

Q. And do any of these appellate court opinions that are cited in this paragraph hold that long-form data or ACS survey data is deficient or unsuitable for use in a Section 2 analysis?

MR. GARDNER: Objection. Compound.

THE WITNESS: I don't believe so.

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Q. Have you ever communicated with anyone at the White House about the citizenship question?

A. Yes.

Q. Who?

REDACTED

A. I communicated with John Zadrozny.
Q. And who is he?
A. Z-a-d-r-o-z-n-y, I believe, is how he spells his last name. And at the time, he was working, I believe, for the Domestic Policy Council.
Q. And when did you communicate with him?
A. I believe it was sometime in October of 2017.
Q. Who initiated the contact?
A. I don't recall. What I recall about it is that I participated in a conference call on the issue on which Mr. Zadrozny -- in which Mr. Zadrozny also participated.
Q. Conference call on the issue of adding the citizenship question?
A. That's correct.
Q. In October of 2017?
A. I believe it was October of 2017.
Q. Who else was on that conference call?
A. I can recall that other people from the Department of Justice were on the call. Rachael

REDACTED

Tucker, who we've discussed previously, and Gene Hamilton I believe was on the call. And there may have been others, but I can't remember specifically who they were.

Q. Other than the addition of the citizenship question to the census, was that the only topic --

A. Yes.

Q. -- discussed in the call?

A. Yes, it was.

Q. And were there people from the Department of Commerce on that call?

A. No, there were not. Or at least not to my knowledge.

Q. So to your knowledge, it was one White House official, and the rest of you were all from the Department of Justice?

A. To the best of my knowledge and recollection, yes.

REDACTED

REDACTED

REDACTED

Q. And did you know before the call why you were invited?

A. Yes.

Q. And why were you invited?

A. Because I was involved in this issue on behalf of the Department of Justice.

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Q. You don't see anything in the letter, correct, that references any aspect of how this data is relevant to Section 2 enforcement other than with respect to Gingles 1, correct?

A. I don't see anything like that. That's correct.

REDACTED

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REDACTED

Has any map drawer, outside of somebody employed by the federal government, ever communicated to you that it would be better if the citizenship data were in the same data set as the total population data?

MR. GARDNER: Could you re-ask that question again? I'm sorry. I missed the first clause.

MR. GREENBAUM: Can you read it back?

(The reporter read the record as requested.)

THE WITNESS: I don't know who you mean by "you." If you mean the Department of Justice, I can't answer that question because I don't know what conversations have happened between map drawers outside of the federal government and members of the Department of Justice.

REDACTED

BY MR. GREENBAUM:

Q. I mean you, John Gore.

A. Me, personally? I don't believe I've ever had any such conversation that I can recall.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. Prior to December 12th, 2017, did you have any communication with anybody who was not a federal employee at the time about having a

REDACTED

citizenship question on the census?

A. Yes.

Q. Who?

A. I had a conversation with a gentleman named Mark Neuman, who I believe was not a federal employee at the time.

Q. Who is Mark Neuman?

A. I understand Mark Neuman to be a former employee of the Census Bureau or the Department of Commerce -- I'm not sure which one. And I understood that he was advising the Department of Commerce and the Census Bureau with respect to this issue.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. And if the Census Bureau were providing census data at the block level, isn't it true that, for those census blocks that have one person, that that person's answer to the census question regarding citizenship would be revealed in the data itself?

MR. GARDNER: Objection. Calls for a hypothetical.

THE WITNESS: Again, I believe I had this

REDACTED

discussion with Mr. Ho earlier. I don't know the answer to that question. It's a hypothetical question.

Mr. Ho also talked about data masking techniques that the Census Bureau might use. I don't know how those would implicate the answer to the question. I don't know how the Census Bureau is planning to report the results of this data or this question from the questionnaire to the Department of Justice.

There's a lot I don't know, so I can't take a view on that and I, unfortunately, can't answer your question.

REDACTED

REDACTED

REDACTED

Q. You may have answered this earlier, but I'm going to ask it again. Who decided that the Department of Justice would request that the Census Bureau add a citizenship question to the census?

A. I believe I've answered that earlier, and it was the attorney general.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Q. And do you recall sharing any subsequent drafts of what became the December 12th letter with Mr. Herren?

A. I don't recall one way or the other.

Q. Do you recall him giving you comments on any subsequent drafts?

REDACTED

A. I don't recall one way or the other.

REDACTED

REDACTED

REDACTED

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CERTIFICATE OF NOTARY PUBLIC

I, CHRISTINA S. HOTSKO, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said statement is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this statement was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

CHRISTINA S. HOTSKO
Notary Public in and for the
District of Columbia

My commission expires:
November 14, 2021

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NEW YORK IMMIGRATION COALITION, et al., vs.
UNITED STATES DEPARTMENT OF COMMERCE, et al.

JOHN GORE

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JOHN GORE

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NEW YORK IMMIGRATION COALITION, et al., vs.
UNITED STATES DEPARTMENT OF COMMERCE, et al.

JOHN GORE

ACKNOWLEDGMENT OF DEPONENT

I, _____, do hereby certify that I have read the foregoing pages and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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