UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al., Plaintiffs, v. UNITED STATES DEPARTMENT OF COMMERCE, et al., Defendants.	18-CV-2921 (JMF)

NOTICE OF FILING OF DEPOSITION DESIGNATIONS FOR KAREN DUNN KELLEY

Plaintiffs hereby file with the Court the synopsis of deposition excerpts for Karen Dunn Kelley (Exhibit 1), and the deposition excerpts for Karen Dunn Kelley that will be offered as substantive evidence (Exhibit 2) (Plaintiffs' designations are indicated in yellow, and Defendants' counter-designations are indicated in blue).

Respectfully submitted,

BARBARA D. UNDERWOOD
Attorney General of the State of New York

By: */s/ Matthew Colangelo*
Matthew Colangelo, *Executive Deputy Attorney General*
Elena Goldstein, *Senior Trial Counsel*
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6057
matthew.colangelo@ag.ny.gov

Attorneys for the *State of New York* Plaintiffs

AMERICAN CIVIL LIBERTIES UNION
ARNOLD & PORTER KAYE SCHOLER LLP

By: */s/ Dale Ho*

Dale Ho
American Civil Liberties Union Foundation
125 Broad St.
New York, NY 10004
(212) 549-2693
dho@aclu.org

Andrew Bauer
Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 10019-9710
(212) 836-7669
Andrew.Bauer@arnoldporter.com

Sarah Brannon*
American Civil Liberties Union Foundation
915 15th Street, NW
Washington, DC 20005-2313
202-675-2337
sbrannon@aclu.org
** Not admitted in the District of Columbia; practice limited pursuant to D.C. App. R. 49(c)(3).*

John A. Freedman
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, N.W.
Washington, DC 20001-3743
(202) 942-5000
John.Freedman@arnoldporter.com

Perry M. Grossman
New York Civil Liberties Union Foundation
125 Broad St.
New York, NY 10004
(212) 607-3300 601
pgrossman@nyclu.org

Attorneys for the *NYIC* Plaintiffs

Exhibit 1

Summary: Karen Dunn Kelley (August 28, 2018)

Karen Dunn Kelley testified regarding her background and history working with Secretary Ross. Tr. 13-14, 16-17. In her role at the Commerce Department she supervises the Census Bureau. Tr. 25-26. In spring or summer 2017, she learned that one of the Secretary's priorities was adding the citizenship question to the 2020 Census. Tr. 38-42. As of late July 2017, she had a specific interest in how a question would be added to the census. Tr. 29. Ms. Dunn Kelley was aware that Commerce and DOJ were having discussions about the citizenship question, but that she was not involved. Tr. 126-127.

After receiving DOJ's request, she made a plan for how the Census Bureau would review it. Tr. 99-101, 103. She understood that when a new question was being considered, there was a need to determine if the question was statutorily mandated or appropriate. She testified that a technical review by the Census Bureau was being conducted. Tr. 136, 138, 140, 144-145. This review normally included a meeting with DOJ to discuss the requested information. Tr. 187. In this case, the Bureau identified an alternative way of satisfying DOJ's request, but DOJ refused to meet regarding the citizenship question. Tr. 187, 189-193.

Ms. Dunn Kelley is not aware of anything that Commerce or Census did to validate the DOJ's stated rationale, that the current data collected under the ACS are insufficient to meet its purpose under the VRA. Tr. 285. To her knowledge, DOJ never identified any number of cases that they would have litigated, but for the absence of block-level citizenship data. Tr. 287. Ms. Dunn Kelley is unaware of any research about how the citizenship question will perform in the decennial census environment. Tr. 283. To her knowledge, no one at Commerce saw the results of the testing that had been performed on the citizenship question in the context of the ACS. Tr. 284.

Ms. Dunn Kelley confirmed that the Census Bureau experts never changed their views that adding the citizenship question would involve additional cost. Tr. 167-168. The Bureau concluded that Alternative B (the citizenship question) would result in lower quality enumeration data and fewer correct enumerations. To her knowledge, Census Bureau has not changed their assessment of Alternatives A, B, and C. Tr. 172-179. The Census Bureau has not changed its view as to the downsides of asking the citizenship question or their recommendation as to how to respond to the DOJ request. Tr. 203-204, 206-213. Ms. Dunn Kelley testified about the process of analyzing Alternative D and acknowledged it was not preferable to C and had all of the problems of B as set forth in the Abowd memo. Tr. 251-258.

Many stakeholders were opposed to adding the question, so Acting Director Ron Jarmin sought to find someone to speak in favor of the citizenship question. Tr. 233-246.

Ms. Dunn Kelley acknowledged that testing the citizenship question could determine whether response rates would decline materially; an end-to-end test could show how effective non-response follow up (NRFU) is in the context of the citizenship question. Tr. 293. She has not seen any data contradicting the Census Bureau's analysis regarding the decline in self-response rates or any scientific studies or data contradicting the Abowd memo. Tr. 300-303. Commerce did not ask the Census Bureau to test the citizenship question or study how it might perform in the current political climate. Tr. 313-317.

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

vs. Case No. 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,

Defendants.

Washington, D.C.
Tuesday, August 28, 2018

Deposition of:

KAREN DUNN KELLEY

called for oral examination by counsel for Plaintiffs, pursuant to notice, at the office of Arnold & Porter, 601 Massachusetts Avenue NW, Washington, D.C., before KAREN LYNN JORGENSON, RPR, CSR, CCR of Capital Reporting Company, beginning at 9:04 a.m., when were present on behalf of the respective parties:

Veritext Legal Solutions
Mid-Atlantic Region
1250 Eye Street NW - Suite 350
Washington, D.C. 20005

CONTENT

	PAGE
KAREN DUNN KELLEY	9
Examination by Mr. Grossi	9
Examination by Ms. Goldstein	269
Examination by Ms. Boutin	323
Examination by Ms. Shah	339
Examination by Mr. Adams	349

KAREN DUNN KELLEY DEPOSITION EXHIBITS

EXHIBIT NUMBER		PAGE
Plaintiffs' Exhibit 1	Statement	33
Plaintiffs' Exhibit 2	Email chain	47
Plaintiffs' Exhibit 3	Email chain	52
Plaintiffs' Exhibit 4	Supplemental memorandum	65
Plaintiffs' Exhibit 5	Defendants' objections	65
Plaintiffs' Exhibit 6	Email train	78
Plaintiffs' Exhibit 7	Emails	84
Plaintiffs' Exhibit 8	Email	90
Plaintiffs' Exhibit 9	Email	105
Plaintiffs' Exhibit 10	Email	107
Plaintiffs' Exhibit 11	Email	119
Plaintiffs' Exhibit 12	Declaration	119
Plaintiffs' Exhibit 13	Email	135
Plaintiffs' Exhibit 14	Email	145
Plaintiffs' Exhibit 15	Email	156
Plaintiffs' Exhibit 16	January 3, 2018 memorandum	159
Plaintiffs' Exhibit 17	Email	183
Plaintiffs' Exhibit 18	Email	186
Plaintiffs' Exhibit 19	Email	194
Plaintiffs' Exhibit 20	Email	195
Plaintiffs' Exhibit 21	January 9, 2018 memorandum	203
Plaintiffs' Exhibit 22	Email	219
Plaintiffs' Exhibit 23	Email	235
Plaintiffs' Exhibit 24	Email	242

Plaintiffs' Exhibit 25	Email	243
Plaintiffs' Exhibit 26	Questions	249
Plaintiffs' Exhibit 27	March 1, 2018 memorandum	252
Plaintiffs' Exhibit 28	Final decision	258
Plaintiffs' Exhibit 29	September 20, 2017 memorandum	355

(Exhibits attached to transcript.)

A P P E A R A N C E S

On behalf of New York Immigration Coalition, CASA De Maryland, American-Arab Anti-Discrimination Committee, ADC Research Institute and Make the Road New York:

David Gersch, Esquire
Peter Grossi, Esquire
John Freedman, Esquire
Caroline Kelly, Esquire
ARNOLD & PORTER
601 Massachusettes Avenue, NW
Washington, D.C. 20001
(202) 942-5316
david.gersch@arnoldporter.com
peter.grossi@arnoldporter.com
john.freedman@arnoldporter.com
caroline.kelly@arnoldporter.com
Perry Grossman, Esquire
New York Civil Liberties Union
125 Broad Street
New York, New York 1004
(202) 607-3300
pgrossman@nyclu.org

On behalf of Kravitz Plaintiffs:

Daniel Grant, Esquire
COVINGTON & BURLINGTON
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-5458
dgrant@cov.com

On behalf of Los Angeles Unified School District:

Keith Yeomans, Esquire (Telephonically)
DANIELS WOLIVER KELLEY
115 Pine Avenue
Suite 500
Long Beach, California 90802
(562) 366-8500
kyeomans@dwkesq.com

On behalf of County of Los Angeles:
David I. Holtzman, Esquire
HOLLAND & KNIGHT
50 California Street
Suite 2800
San Francisco, California 94111
(415) 743-6909
david.holtzman@hklaw.com

On behalf of Lupe Plaintiffs:
Andrea Senteno, Esquire (Telephonically)
MALDEF
1016 16th Street, NW
Suite 100
Washington, D.C. 20036
(202) 293-2828
asenteno@maldef.org
Niyati Shah, Esquire
ASIAN AMERICANS ADVANCING JUSTICE
1620 L Street, NW
Suite 1050
Washington, D.C. 20036
(202) 296-2300
nshah@advancingjustice-aajc.org

On behalf of City of San Jose & Black Alliance for Just Immigration:
Rory Adams, Esquire
MANATT, PHELPS & PHILLIPS
7 Times Square
New York, New York 10036
(212) 790-4501
radams@manatt.com

Ezra Rosenberg, Esquire
Dorian Spence, Esquire
LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Avenue, NW
Suite 400
Washington, D.C. 20005
(202) 662-8345
erosenberg@lawyerscommittee.org
dspence@lawyerscommittee.org

On behalf of State of California:
Gabrielle Boutin, Esquire
R. Matthew Wise, Esquire (Telephonically)
DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL
1300 I Street
P.O. Box 944255
Sacramento, California 94244
(916) 210-6053
gabrielle.boutin@doj.ca.gov
matthew.wise@doj.ca.gov

On behalf of State of New York:
Elena Goldstein, Esquire
Matthew Colangelo, Esquire
Alex Finkelstein, Esquire
ASSISTANT ATTORNEY GENERAL, ENVIRONMENTAL PROTECTION BUREAU
28 Liberty Street
New York, New York 10005
(212) 416-8441
elena.goldstein@ag.ny.gov
matthew.colangelo@ag.ny.gov
alex.finkelstein@ag.ny.gov

On behalf of Defendants:
Kate Bailey, Esquire
Joshua Gardner, Esquire
U.S. DEPARTMENT OF JUSTICE
20 Massachusetts Avenue
Washington, D.C. 20530
(202) 305-9802
kate.bailey@usdoj.gov
joshua.gardner@usdoj.gov

Michael Cannon, Esquire
David M.S. Dewhirst,Esquire
U.S. DEPARTMENT OF COMMERCE, OFFICE OF THE ASSISTANT GENERAL COUNSEL FOR FINANCE & LITIGATION
1401 Constitution Avenue, NW
Room 5890
Washington, D.C. 20230
(202) 482-5395
mcannon@doc.gov
ddewhirst@doc.gov
Michael Walsh, Jr., Esquire
DEPUTY GENERAL COUNSEL
1401 Constitution Avenue, NW
Washington, D.C. 20230
(202) 482-4772
mwalsh@doc.gov

VIDEOGRAPHER: Dan Reidy

P R O C E E D I N G S

WHEREUPON,

VIDEOGRAPHER: Good morning. We are going on the record at 9:04 a.m. on Tuesday, August 28, 2018. Please note that the microphones are sensitive and may pick up whispering, private conversations and cellular interference. Please turn off all cell phones and 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 deposition of Karen Dunn Kelley taken by counsel for the plaintiff in the matter of New York Immigration Coalition, et al., versus U.S. Department of Commerce, et al. This case is filed in the U.S. District Court for Southern District of New York. This deposition is held at the law offices of Arnold & Porter located at 601 Massachusetts Avenue 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 Karen Jorgenson 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. Also, counsels' appearances will be noted on the stenographic record rather than orally at this time.

Will the court reporter please swear in the witness?

Global Objection 402/403

KAREN DUNN KELLEY, called as a witness, and having been first duly sworn, was examined and testified as follows:

THE WITNESS: Yes, I do.

EXAMINATION BY MR. GROSSI:

Q Good morning, Secretary Kelley. We met briefly in the hall. But for the record, my name is Peter Grossi, and I'm an attorney here with Arnold & Porter. And I'm going to be leading off this morning. We represent the plaintiffs, the

just said?

You're good. And I just would like to say good morning. I think I said good morning to each of you, but I did miss one or two as I came -- as you came in. So if I missed you, I apologize and good morning.

BY MR. GROSSI:

Q That's okay. Lots a people.

A Yes. A lot of people.

Q So let's begin a little bit with your background, for the record.

A Yes.

Q So I understand you graduated with a BS degree from the College of Commerce and Finance at Villanova University?

A Yes, I did.

Q And you then pretty much started in the investment business in 1982 with Drexel Burnham?

A Yes, sir.

Q And then you joined a different firm, Federated Investors in 1986; is that right?

A Yes.

Q Then in 1989, you joined a firm known as Invesco, correct?

A Not -- no.

Q Okay. Clarify, please.

A I joined a legacy firm called AIM Management, which, through a series of mergers and acquisitions became Invesco when I left. But when I started in 1986, it was AIM Management.

Q Okay. Thank you for the clarification.

You then worked at either AIM or Invesco itself until fairly recently, 2017?

A Yes. I -- from the time I started AIM through its legacy companies until I left last summer.

Q Okay. You initially started as a money market portfolio manager?

A Yes. Money market and government portfolio.

Q But by the end, you hold -- held various positions and, ultimately, were in senior management of Invesco; is that correct?

A That is correct.

have you ever had training and experience in conducting surveys --

A No.

Q -- of the public?

Let me finish.

Okay. Let me ask now a little bit about your early --

A So excuse me. Could you please then repeat that whole question so I --

Q Sure.

A -- I did not interrupt you. That was rude. I apologize.

Q No. Not at all.

Did you ever have any training or experience in conducting surveys of the public?

A No.

Q Okay. Now, let me ask about your relationship with now Secretary Ross. Originally, it was Mr. Ross when you met him, right?

A Yes.

Q Okay. And did you first meet him in about 2006 when his company was folded in or

became part of Invesco?

A Yes.

Q You didn't know him before then?

A I might have met him or been at a panel with him or an event with him, but I did not know him.

Q Okay. And his company was an investment company that became part of Invesco?

A Yes.

Q And you worked with him while you were at Invesco, correct?

A Yes. I would -- I would like you to clarify the word "with."

Q Okay. Specifically around 2008, 2009 in the financial crisis, did you do a great deal of work with him in various deals?

A Yes. I did not work within his silo or his company, but we actually did partner on certain aspects in particular during the financial crisis, yes.

Q Okay. Good.

You attended meetings, I guess, when he

Q Absolutely.

A -- once we discussed it.

Q And do you remember before you were even nominated, discussing with Secretary Ross the specific responsibilities or jurisdiction of the Under Secretary For Economic Affairs?

A I don't recall.

Q Okay. When do you think it was the first time that you found out that one of the three branches that the Under Secretary supervises is the Census Bureau?

A Early on, early on.

Q Sure. I mean, one of -- there are just three major branches, right, that the Under Secretary For Economic Affairs supervises?

A Yes. Yes.

Q All right.

A Well, it's really -- it supervisors ESA, and ESA supervises two branches.

Q Fair enough.

A So I don't want to -- a little bit of semantics, but there is a nuance difference, and

so I don't want to misrepresent.

Q Okay. I appreciate that. When do you think it first occurred to you that this would be an important job, in part, because Census Bureau was going to do the 2020 census and fairly soon you'd be involved in that process?

A Oh, absolutely understood. It was a huge program, and it was a management responsibility.

Q And you understood that even before you were officially nominated?

Go ahead. You have to answer.

A Yes, sir. But allow me to say, as I have learned more, it has certainly -- the gravity of the position has -- you know, I always recognized the importance.

Q Sure. Okay. So it's fair to say that by the spring of 2017, you knew you were going to be nominated for a position which would have, among other things, significant responsibility for the 2020 census?

A Yes, sir.

Q Now, when do you think you first talked

priorities, you were talking about the president, right?

A So if I can back up, I need to clarify my last answer. Because we -- you said that I went and spoke specifically of the census throughout the rest of the document, and that is not correct. Because I also indicate economical statistical programs, which have -- would have included BEA programs, such as GDP and recreational numbers and things like that. So I have to clarify my original answer that I said it was only specific to census. That is not true.

Q Let's go back to that phrase about, "one of his priorities is effective and meaningful management and oversight of the 2020 census."

The context there was one of the President's priorities, right?

A Yes. The --

Q How did you learn the President's priorities with respect to the census?

A When I interviewed with the White House under PPO, during the process -- and we knew what

the role was at that point, had been clarified. The census was one of the portfolio responsibilities of that role, and they said that was an important -- that was -- that it was important. As well as the Secretary reiterated that that was a priority of the Department, and it was priority.

Q And, specifically, it was a priority of the President, it was one of his priorities was managing the 2020 census, right?

A Yes.

Q Okay. What specifically did you understand the President's priorities to be with respect to the 2020 census?

A Complete and accurate count.

Q As complete and as accurate as it could be?

A Complete and accurate.

Q And you always understood sometime in that spring or summer, that one of the priorities of the White House was adding a citizenship question, correct?

MR. GARDNER: Objection. Lack of 602 foundation.

THE WITNESS: I said that I learned it was a priority of the Secretary's.

BY MR. GROSSI:

Q Okay. Did you -- did the Secretary tell you that he was interested in it, in part, because it was also one of the President's priorities or perhaps he used the phrase the White House's priorities?

A No.

Q He never, ever has told you that one of his reasons for wanting the census question added was because the White House staff thought that was a good idea?

A No.

Q Never?

A Not to my recollection, no.

Q Do you think it's possible and you just don't recall at this moment?

MR. GARDNER: Objection. Form.

THE WITNESS: No, not -- not to my

recollection.

BY MR. GROSSI:

Q You talked to the Secretary quite a bit about the census -- citizenship question over the year, right?

MR. GARDNER: Objection. Lack of foundation.

BY MR. GROSSI:

Q Well, you have talked to the Secretary about adding the citizenship question, correct?

A Yes. Correct.

Q How often would you say?

A In May -- and I apologize if this is a little long-winded.

In May, after the GAO report, and I came in August, the immediate -- my immediate responsibilities were to address the issues in that GAO report, which talked about the budget, the leadership and the operational readiness and those things. And there -- we were also at that same time preparing for the 2018 end-to-end test, which started this past April 1st.

So as I came in, those were the priorities we -- we spent time on and that I operationally spent time on as we went through when I started my work.

So I would suggest to you between August and beginning of November, we spent time on the lifecycle cost, the lifecycle budget, the budgetary issues.

We also spent a tremendous amount of time in the October, beginning of November -- November time frame, on the management of the census, because we were moving from research and development to actual execution, if you will. And so we spent time on the leadership and what was happening there.

And then, thirdly, we spent time throughout that entire process on operational readiness, systems readiness, responding to the GAO report, making sure we were prepared, making sure we had everything in line to start the test and there were other decisions that needed to be made. So at -- I did know the citizenship

question was going to be on there, but that was an issue that I didn't need to deal with until later on, because they -- in a time frame, other issues needed to get addressed immediately --

Q Okay.

A -- from an operational perspective.

Q So your recollection is as early as May, you had heard about the citizenship question, but it was only one feature of an overall review of the census that kept you busy?

A And --

MR. GARDNER: Objection. Mischaracterizes the witness's testimony.

BY MR. GROSSI:

Q Correct?

A No. It was not part of the review I was doing on the census at that time.

Q But you knew that adding a citizenship question was something that Secretary Ross wanted to do, right?

A At -- yes.

Q Okay?

various responsibilities, that adding a citizenship question was a topic under discussion, correct?

A I'm sorry. Please repeat the question.

Q As of July 2017, when you testified to Congress, you knew that the potential of adding a citizenship question to the 2020 decennial census was under consideration by Secretary Ross, correct?

A I do not know exactly when I learned that. It is very plausible I did know it by that time.

Q Okay. Who was responsible for helping you prepare for this testimony in your nomination process at Commerce?

A The Legislative Affairs department is responsible for helping the process. And so in that process, I was assigned three individuals to help me go through the process. And those three individuals I worked -- I worked -- let's say four individuals, one was the senior, but assigned the three, four, and then that was who I was assigned.

A They were all public documents. They have a quarterly review, a PMR they call it, for the census. On a quarterly basis, they would -- provided me all those public documents so I could review them, ask questions, and then they provided me the websites for the 2020 census. Census has a very large website, and so they provided me all the website information, and so we looked at that. I was only provided public information.

Q Okay. Let me have this exhibit marked as Exhibit 2.

(Plaintiffs' Exhibit 2, Email chain, was marked.)

BY MR. GROSSI:

Q Okay. Secretary Kelley, this is an email chain, Exhibit 2, begins with the Bates 1404 and runs to 1406, and like all of those email chains I think we'll be doing today, it goes in reverse order. As you know, they keep piling on top.

So I'm going to go to the end first, and ask you if it refreshes your recollection that on or about July 24, 2017 you had communicated in

some fashion with Mr. Willard, asking for a review of the process of how questions are created and chosen for the ACS. Do you remember making that type of inquiry through Mr. Willard?

A Yes.

Q Okay. And then he enlisted the help of a Victoria Velkoff. You know her? Or at least you know her now?

A I know her now, Tori.

Q Right.

A She goes by Tori, yes.

Q Tori. And she works at Census?

A And, in fact, I'm sort of amazed -- I'm saying, oh, there's -- that -- I didn't know that was Tori.

THE WITNESS: Does everybody have this paper in the room?

BY MR. GROSSI:

Q Anybody who has it, needs it.

And then Mr. Willard refined his request above and said, "What we would primarily like to discuss with you today, is the" -- "is how the

process works to when questions are discussed and are approved to be used on the ACS and also those on the census questionnaire."

Does that refresh your recollection, that one of the things that you discussed with Ms. Velkoff, perhaps, and Mr. Willard, in July 2017, was specifically how questions are added to a decennial census questionnaire?

A Yes.

Q Okay. So we're clear, that as of late July 2017, you had a specific interest in how a question would be added to the decennial census, correct?

A As it applied to a particular topic that was being discussed.

Q And what topic was that?

A The SOGI topic.

Q Just the SOGI topic?

A Yes.

Q You didn't know that they were also dealing at that same time with a citizenship question?

A I --

MR. GARDNER: Objection to form.

THE WITNESS: I was --

BY MR. GROSSI:

Q Is that your testimony?

A I was dealing -- this has to do with the SOGI question.

And would you like me to explain?

Q I don't need to know about that. I just need to make it clear that your conversation was also at a time when you knew they were thinking about adding a citizenship question, as well.

MR. GARDNER: Objection. Mischaracterizes the witness's prior testimony.

BY MR. GROSSI:

Q I mean, it can be both, Sec- --

Ms. Madam Secretary?

MR. GARDNER: Objection. Form.

THE WITNESS: Sir, you're going to have to go back. Because you're starting to tie things together with ends and -- you know, ands and buts that I'm not following.

This topic, let me be very clear, had to do with the SOGI issue. I was going to be -- I was going to be asked a SOGI question on the -- at the testimony. There was a -- the topics -- and I'm sorry if I'm boring you and you all know this -- the topics for inclusion in the census need to be given the March prior, so not March of '18 but March of --

Q '19?

A -- '17.

BY MR. GROSSI:

Q '17, right.

A And there was an issue whether there would be a SOGI question or not. And when I was told I was going to be asked about that, I said I would like to know the process. Topics go on. I did not know the details to know how the topics get put on it, and then it's a year later, the questions get put on it, and how does that work? And I asked for that information in regard to the SOGI question.

Q Were you also advised that at that point

in time, Mr. Ross -- Secretary Ross was being approached by various people to put a citizenship question on --

A No.

Q -- the 2020 census?

You're very confident that he never told you that?

A I don't know. And I've repeated that. I don't know when I learned that information. And I'm very sorry I don't, but I don't.

Q Okay. Let's see if we can maybe do a little refreshing.

I'm marking as Exhibit 3, Bates Number 0763-64, which is an email chain, again, that runs from July 14, 2017 to July 24, 2017.

(Plaintiffs' Exhibit 3, Email chain, was marked.)

BY MR. GROSSI:

Q Before we begin this, just one quick follow-up question on the last bit of testimony. Was that --

A May I finish reading this?
Q Oh. I'm sorry. Go ahead.
A Yes, sir.
Q Before we turn to the exhibit, I just want to follow up on one thing.
The SOGI topic that you mentioned a moment ago, was that topic being considered and included in the ACS or also in the decennial census?
MR. GARDNER: Objection. Form.
THE WITNESS: I was not there at the time, but there was a discussion at the time that the information was going on the topics as to whether or not that would be a topic back in March of '17 that would be put forth when the topics are put forth.
BY MR. GROSSI:
Q For the -- for the ACS study?
A I don't know which -- which, but that was pulled as a topic being discussed.
Q Okay.
A And, therefore, there was a discussion

about the SOGI issue and how it would -- why it was pulled, why it was not pulled, why it was on there. There was a whole myriad of discussion around it. Of course, I knew nothing about that topic. So I, just for an educational purpose, said if I'm going to ask, I wanted to learn how this works. Going from a topic to inclusion on any or either, it didn't matter to me. How does this happen?

Q But you're not testifying that you were ever told that the SOGI topic would be included on the decennial census, correct?

A I am not testifying to that.

Q And so when Mr. Willard said you were interested in how citizenship -- how questions were added to the decennial census, that was somewhat broader than the SOGI topic, correct?

A No. It was written in regards to the SOGI topic.

Q Okay. Let's take a look at what's been written in regard to Exhibit 3.

A Yes.

BY MR. GROSSI:

Q Okay. Let me actually turn to that.

MR. GARDNER: Tell you what, Counsel, before we go to the next document, take a break?

MR. GROSSI: Sure.

MR. GARDNER: We've been going about an hour.

VIDEOGRAPHER: This concludes Media Unit Number 1. The time on the record is 10:06 a.m. We are off the record.

(Off the record.)

VIDEOGRAPHER: This begins Media Unit Number 2. The time on the video is 10:18 a.m. We are on the record.

(Plaintiffs' Exhibit 4, Supplemental memorandum, was marked. Plaintiffs' Exhibit 5, Defendants' objections, was marked.)

BY MR. GROSSI:

Q Secretary Kelley, I'd like to hand you two exhibits. The first is Exhibit 4, which is supplemental memorandum by Secretary of Commerce Wilbur Ross, has Bates number 1321. And I will

Pl. Objection: No testimony of the witness has been designated.

also give you a copy as Exhibit 5 of the defendants' objections and responses to plaintiffs' first set of requests of interrogatories. And I've tabbed Page 14, and I'll let you know that that's the only page I'll be asking you about.

MR. GARDNER: Peter, you said 14?

BY MR. GROSSI:

Q Okay.

A No. Where on --

Q Just on the bottom --

A Where on Page 14 do you want me to --

Q The list of names at the bottom, and I'll direct your attention to it and give you plenty of time.

A The list of names at the bottom?

Q Yeah.

A Okay. And then -- yes, sir.

Q Okay. Do you see in Exhibit 4, this is a supplemental memorandum? Have you seen this document before?

A One other time.

Q When was that?
A Yesterday.
Q Okay. Not before it was issued?
A No. I was not part of the issuing of this.
THE WITNESS: I'm sorry. Did you not hear me? I -- did you hear me? I apologize. Speak up?
MS. BOUTIN: Just a little bit.
THE WITNESS: I'm sorry. And usually I'm very loud, so I apologize. I -- I --
BY MR. GROSSI:
Q Do you know why this supplemental memorandum was added to the record so late as June of this year?
MR. GARDNER: Objection. Lack of foundation.
THE WITNESS: To supplement the information is my assumption.
BY MR. GROSSI:
Q The information that Congress was concerned about after they learned that people,

other Census and Commerce Department officials, had talked about the citizenship question, correct?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: To supplement the memorandum of the Secretary regarding the administrative record.

BY MR. GROSSI:

Q You were involved in that original memorandum, correct, March 26th?

A Which memorandum are you speaking, sir?

Q The March 26, 2018 memorandum of decision.

A The decision memorandum to me.

Q Okay. Right. But you were also involved -- you were actually involved in its preparation, correct?

A I was involved in the proofing, not the preparation.

Q Okay. You didn't actually draft any portions of it?

A No.
Q You weren't asked for your input before it was essentially put in the final form?
A I -- I looked at it over the few days before it was released, in proofing it.
Q What changes did you make?
A I don't remember. Minor changes. I don't remember anything substantive.
Q How about any other people in the Census Bureau, did they make any changes?
A The Census Bureau?
Q Yes.
A The Census Bureau made a few -- a few changes, but, again, nothing substantial.
Q They had not been involved in drafting it, correct?
A Could --
MR. GARDNER: Objection to form.
THE WITNESS: Could you define the word drafting? To me, anything up to a final form is still in draft. So you're -- I don't want to get balled up with your nomenclature. To me, anything

A In preparation for my -- my hearing.

Q Okay. And you -- did you communicate with any of those people by email?

A No. They were communicated by -- with the people at -- the four people that worked with me. I didn't have an email at Commerce at that time.

Q I understand. You had an email at Invesco or your personal email account?

A Right. And we did not -- we did not email.

Q But we haven't checked that out yet, right?

A Right.

Q Okay. Well, let me just ask about Exhibit 7, in the hopes it might refresh your recollection about other things.

Do you recall hearing, perhaps when you came in in late August, that Secretary Ross was attempting to get the Department of Justice to request that the citizenship question be added? And maybe it's August, maybe it's September of

2017, when you first came on board.

A No. I was not aware of that.

Q You didn't know that he was attempting to get people at the Department of Justice to say they wanted a citizenship question?

A I knew he was in conversation with people, but you said that he was trying to get them to do something. I have no -- what the Secretary tried to get people to do or try to do.

Q Is that another question that we could ask Secretary Ross --

MR. GARDNER: Objection. Form.

BY MR. GROSSI:

Q -- best?

MR. GARDNER: Calls for speculation.

BY MR. GROSSI:

Q Would Secretary Ross be the best person to ask about what Secretary Ross was doing with the Department of Justice on this issue?

A I would always say that -- best to ask the person that you're speaking about questioning. I don't exactly know how to answer that. I mean,

just as we asked Karen what I said, which was on the record.

Q Let me have marked the next exhibit.

(Plaintiffs' Exhibit 8, Email, was marked.)

BY MR. GROSSI:

Q We're marking as Exhibit 8 a memorandum -- I'm sorry -- an email. The top one of which is dated August 16, 2017.

Now, this email indicates that Mr. Earl Comstock wrote to Secretary Ross on August 11th and he stated, quote, per your request, here is a draft memo on the citizenship question that James Uthmeier in the Office of General Counsel prepared and I reviewed. Once you have had a chance to review, we should discuss so we can refine the memo to better address any issues.

And it appears that Ms. Teramoto then followed up on that by saying that Peter Davidson and Karen Dunn Kelley will both be here Monday. Let's spend 15 minutes together and sort this out.

And then Mr. Comstock responded to Ms. Teramoto and to Secretary Ross by copy saying, "Thanks, Wendy, that works for me."

Now, Wednesday was August 16th, and I'll represent that the Monday was August 20th. Is that consistent with your recollection that you came in on August 20th and had a discussion about various things?

MR. GARDNER: I think your math is wrong.

THE WITNESS: Sir, I think it was the 21st.

MR. GARDNER: The 21st.

THE WITNESS: August 21st. Or I said the wrong date before, as well, so we have to correct Monday -- Monday was the 21st.

BY MR. GROSSI:

Q You're right. Absolutely right.

So Monday was the 21st, and that's the day you came in and assumed your position, okay.

And so you discussed with them on August the 21st, among other things, I'm sure, the draft memo on the citizenship question that had

been prepared for Secretary Ross, correct?

A I do not recall any conversations like that.

Q Do you think that might have been the first time you really got into the details of adding it?

A I don't recall a conversation about it.

Q Okay. But you wouldn't deny that as of August 21st, you had been briefed on the citizenship issue?

MR. GARDNER: Objection. Mischaracterize the witness's testimony.

THE WITNESS: As I said, I do not, unfortunately, remember when I first learned about it. It is possible. I'm not denying it. I'm not confirming it. I just don't know. I wish I could -- I wish I could tell you. I just don't know.

BY MR. GROSSI:

Q Did you receive memoranda about the citizenship question, and that's a shorthand of, obviously, adding a citizenship question to the

BY MR. GROSSI:

Q Were you relying on the experts in the Census Bureau?

A I was not relying on anything, but I rely heavily on the experts at the Census Department for many things. But in terms of your question, was I relying on it for the citizenship question? That preassumes that I'm answering the question -- I'm making the decision, and I was not making the decision.

Q Other than Secretary Ross, as the Secretary, and the people in the Census Bureau, as the experts, who else decided who else made recommendations concerning whether or not there should be a citizenship question?

A In October -- in December, when this came, that the question needed to be evaluated and a discussion about whether the question would be on the 2020 -- 2020 form of questions going to Congress in March of '18, I spoke to the senior people at the Census, the senior team. And I said, we have this letter. We need to now give

the Secretary all the information. He needs to make this decision. And there are pieces of it, and what is your recommendation? And when we spoke to them, we said at the top of the house, there needed to be a legal review. There needed to be a technical/operational review and a policy position. Those were the three major things that needed to take place.

Obviously, the legal review being done by the legal department. The Census handling the technical and operational -- technical or operational, whatever term you prefer, review, and the combination of those plus auxiliary information that would be provided would create the ability for the Secretary to make a policy position on that.

Q And that was something you did in December of 2017, after you received a letter from the Department of Justice; is that right?

A All of those things?

Q Yes.

A What we did in December and at -- what we

did in December is came up with a strategy on how to -- how to work through this process, working very much with Census, because I went to them and said, have we done this before -- you know, you always go back, have we done this before, how do you do it, what do we think about it? And, of course, the answer is no, this really -- there was not precedence on it.

And that's where we said, okay, at the top of the house has to have a legal review, a technical/operational review and then that leads to a policy decision or policy review.

And so we then said okay, if, in fact, the question needs to be to Congress, by law, on March 31st, which -- and not that I want you to think I'm a walking calendar, because I've already made mistakes -- but March 31st was the date that it has to legally be there, that happened to be Good Friday. So for courtesy, you would bring it to them on the Thursday. So we sort of walked back and said, what are we going to do over the next months?

Q Or did you?
A I don't recall.
Q Do you think you might have discussed with it Mr. Jarmin?
A We certainly laid out what events had to take place through next March, and we sort of looked at that big timeline of what had to happen. And when the conversations of the questions needed to get to Congress by the 31st, I can't recall if there was a discussion on that.
Q Let me be very clear. You testified a moment ago, I thought, that it was the Department of Justice letter in December that prompted you to call in Mr. Jarmin and others in the Census Bureau and ask for their input on the citizenship question, correct?
A It was that letter that -- that we then sat with the people from the Census Bureau to say, it's coming up in March now. We've got this letter. We need to address how do we do this, what is the process that would take place and the strategy around how to make this happen.

exhibit.

(Plaintiffs' Exhibit 9, Email, was marked.)

BY MR. GROSSI:

Q Exhibit 9.

Exhibit 9 is an email chain that begins on August 29th where Mr. Davidson wrote to Mr. Hernandez, Comstock, Uthmeier and other names that have been blocked out, as well as a copy to Ms. Teramoto.

A Excuse me. Are they other names or are they just simply the email addresses?

Q I'm not sure. I really don't know.

It says, "The Secretary asked to set up briefing" -- "a briefing on some key legal issues he is concerned about." And the overall subject line is census. "Can we get something on the books for next week when Izzy returns. I can't find Karen in the directory, but she should be included, as well." And then there is additional information about scheduling leading to an email from a Chelsey Neuhart -- haus to various people

indicating that she wanted to confirm that the attendees at the next census briefing regarding legal questions should be Ms. Teramoto, Mr. Hernandez, Mr. Comstock, Mr. Uthmeier, Mr. Davidson and you, Ms. -- Secretary Kelley.

Now, we have not been provided with any information about what the subject matter was, other than it has been produced in the case. And what I want to ask you is: Do you recall in late August 2017, attending a meeting where legal issues involving the census were discussed?

A No. I do not recall that.

Q Do you think it's possible --

A I do not remember is what I said. I apologize.

Q Is it possible that one of those legal issues was this question you mentioned about the legal implications of adding a citizenship question to the census?

MR. GARDNER: Objection. Form.

THE WITNESS: Sir, I don't remember the meeting. I don't know that the meeting got

cancelled, took place, whether I could be there or not be there. So for me to speculate, at all, as to what was discussed or not discussed would be an erroneous things. I just have no recollection of this whatsoever. And even if there was a meeting, did I get called to something -- I just don't know. I would be speculating if I said anything to this.

BY MR. GROSSI:

Q And you don't recall specifically on the last page, what legal issues -- key legal issues Secretary Ross was interested in pertaining to the census at about this time? Doesn't refresh your recollection?

A No, it does not, sir. It does not. I'm sorry. It does not.

Q Let's take the next one.

(Plaintiffs' Exhibit 10, Email, was marked.)

BY MR. GROSSI:

Q I marked as Exhibit 10, 9799 and 9800. It's an email sent to Karen Kelley on

December 5, 2017 from Mr. Willard. The subject is items to cover with Izzy. I'm just going to refer you to one portion of it. It says, "Karen, please find below and attached a list of items to cover with Izzy today."

And I'm going to direct your attention to the 11th numbered item on the second page, which I will read that says, Higgins amendment: House Rules committee considering today, at 4:00 p.m., an amendment that would block all fiscal 2018 funding for the 2020 decennial census unless the survey includes questions about residence, citizenship and immigration status. The amendment comes amid concerns that the 2020 census is already in danger of being underfunded, unquote.

Do you recall attending a meeting and discussing with Mr. Hernandez and others the issue of adding a census question to the 2020 census, either in context of the Higgins amendment or anything else in September 2017?

A Allow me to take a look at this email, please.

BY MR. GROSSI:

Q Sure. My question, again, is: Whether this refreshes your recollection that on or about September 5th, you were meeting with various people at the Commerce Department to talk about, among other things, an amendment that would block fiscal funding unless a citizenship question was added to the 2020 census?

A I do not recall this document, at all, but at the beginning, we were meeting with several people. And, in fact, you can see in here it says, "Izzy also confirmed that there is a 3:30 p.m. with the Secretary to discuss the budget," which I said has -- a big topic and one I was spending a lot of time on.

I -- I will tell you that there were a lot of topics on this discussion -- on this agenda, and I cannot confirm or deny that they took place. The meeting was scheduled once and then rescheduled, so I couldn't even tell you that this meeting actually took place, to my recollection. But I'm not saying to you these

would not have been topics we would have discussed.

Q You might have been discussing adding a citizenship question as of September of 2017?

A Well, if we went through this agenda and actually got through it all, we would certainly have been discussing the Higgins amendment, which would have made sense, because you would have been discussing topical news on the -- on the census.

Q And that would have a big impact on the census, right, in terms of its funding? That's what the message says.

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: Sir, I -- the last thing I want to do is be, at all, argumentative with you. But it says, "The amendment comes amid concerns that the 2020 census is already in danger of being underfunded."

So it sort of dissects those and says there is already a concern here and now this has come up.

BY MR. GROSSI:

Q Because the amendment would have not funded the census, at all, if it didn't have this question?

A It certainly would be a problem, wouldn't it?

Q Right. And do you remember discussing that issue?

A No. I do not. Do not.

Q Is there anybody on this email that you can identify as a member of the Census Bureau? Just a minute.

A Repeat your question, sir.

Q It's simply, are there any of the names on this as people who were aware of this meeting or attended this meeting who were members of the Census Bureau?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: The memo came to two people, myself and Aaron Willard.

BY MR. GROSSI:

saying I wasn't there. I'm not denying it. I'm not confirming it. I'm saying I wasn't there, so I, therefore, cannot answer who was at the meeting.

BY MR. GROSSI:

Q Do you recall, at all, telling people such as Mr. Hernandez or Mr. Willard that if they were considering matters of great importance to the census, they should consult with Mr. Jarmin and other people at the Census Bureau?

A That question is out of context of this memo, but from August 21st when I showed up, we consulted and had communication and conversation all the time with the senior officials at the Census, Dr. Jarmin included. We were -- I said and we lived by we were going to live under the -- we were going to be very communicative and talk with them.

So your question was: Did I tell people of anything of importance with the census -- to talk with them? The answer is: We would have had that conversation.

Q I'm sure. That's all I was trying to establish. That, as a general rule, a general policy, when issues of importance to the Census were developed by people of Commerce -- I'm distinguishing the superiors at Commerce -- your role was to tell those people to discuss it with the people at the Census Bureau, correct?

A That would have been my policy.

Q Yes. Right. But your best recollection, and from all that we can tell and from what Mr. Jarmin told us, you did not discuss adding a citizenship question with Mr. Jarmin and other people at the Census Bureau prior to December 2017; is that also your best recollection?

MR. GARDNER: Objection. Form.

THE WITNESS: My best recollection, which I've told you, is that I don't remember when I discussed that for the first time with the people at Census. You then indicated that Dr. Jarmin said -- you asked if I would say he was lying, I said absolutely not. I would not say that. But

though, is, simply, he's saying he's going to drop off some review materials, conveying that they were physical. Do you remember him doing that?

A No. I do not.

Q Can't help us, at all, about whether you ever saw a legal memorandum from him?

A I cannot help you, at all.

Q Now, before the break, we were talking about some documents that showed that Mr. Comstock was working with Mr. Ross to determine if the Department of Justice had any interest in adding a citizenship question. And what I'd like to determine is whether, in fact, you knew anything about that effort prior to the time that the letter came over from Justice in December of 2017.

MR. GARDNER: Objection. Form.

BY MR. GROSSI:

Q So my question is: Did you know anything about an effort to get the Department of Justice to send such a letter?

A I knew there were conversations between Commerce and Justice.

Q And did you know the substance of those conversations, even in summary form?

A That it was about the citizenship question, yes.

Q Okay. And that Secretary Ross was hoping to get the Department of Justice to support a request for such information, correct?

A And that's where you're taking it to I -- those are details that I do not know.

Q You just know he was discussing it with the Department of Justice?

A Yes.

Q And you didn't have anything to do with any of those discussions; is that right?

MR. GARDNER: Objection. Form.

THE WITNESS: No.

Are you asking me if I participated in any of those discussions? The answer is: Absolutely not.

BY MR. GROSSI:

Q And he didn't brief you of any of those discussions in the fall of 2017?

been a cursory conversation with the Census Bureau. I do not recall. I know when it was -- when we were clear there was going to be a letter, that I spoke with Dr. Jarmin and others at the Census.

Q What about at the Department of Homeland Security, do you recall being told that Secretary Ross and Mr. Comstock and others were attempting to elicit their support for a question -- citizenship question?

A No. I do not know anything about that.

Q Did anybody --

A I'm not aware of that.

Q Nobody ever told you of an interest in the Department of Homeland Security about having Census include a citizenship question; is that right?

A Not to my recollection, no.

Q Okay. And you don't recall hearing, around Thanksgiving, around the end of November, that Secretary Ross had finally lost patience with the Department of Justice and needed to get

something from them to justify a citizenship question? Does that ring a bell with you?

A No.

Q You never talked with Secretary Ross in November about his frustrations with the Department of Justice; is that right? Or is it possible?

MR. GARDNER: Objection. Form.

THE WITNESS: Sir, you are -- I could have been briefed. I could have been told that there was frustration. We don't know if we're getting a letter, but it was not -- it was not at the top -- if I can use the -- you know, the old -- front -- front burner, it was not a front-burner issue. We had front-burner issues to get ready for the '18 end-to-end test. We, at that point, had a -- were in a situation where AT&T protested the group that was using the handhelds. So if we didn't get through the protest, we wouldn't have handhelds for the '18 end-to-end test. So I apologize, but those were top-of-the-house issues to me. That -- we were

dealing with those. We had so many fires to be putting out on those kinds of issues that were happening and the time frame prep -- getting ready for the end-to-end test in April, those were the topics we were -- I was spending my time on. So if somebody over here said we're working on the citizenship question and the Secretary is frustrated, I would not know it. It would not be top of my mind.

BY MR. GROSSI:

Q Were you surprised, though, they wanted to add a question with all the rest of what was going on and the need to test that question ahead of time?

A Sir, you already asked me earlier. This question was not for the end-to-end test.

Q Okay.

A We were prepping up for the end-to-end test, which would then be, obviously, into the 2020 census.

Q But you said earlier you were concerned or it was a difficult thing, because when you

Q What I've marked as Exhibit 13 is an email from Mr. Jarmin to various people identified by email addresses at the Census saying, as of Friday, December 15, 2017 that he needed to huddle with that staff and propose a time of 8:30 the following morning -- the following Monday, which would have been December 18th.

Do you recall Mr. Jarmin -- Dr. Jarmin telling you that he would want to involve a number of technical experts in evaluating the request to add a citizenship question to the 2020 census?

A Yes.

Q What did he tell you?

A He told me he was going to get the team together and come up with it.

Q Did he express surprise at that point because he had not heard previously that this was a possibility? What do you remember about that meeting or phone call?

Pl. Objection: Fed R. Evid. 403

A Prior to -- so if you go down to this December 15th bottom email, if you --

THE WITNESS: Does everybody have this

paper?

Okay. If you go down to that December 15th, what had happened was the Department of Justice said they were sending a letter, a letter was forthcoming. And I -- I called -- I told the Census that a letter was forthcoming, but they did not get it because they sent it to the Department -- excuse me -- the Census Bureau, not the Department -- they sent it to the Census Bureau with a stamp, in the mail, in the postal. Somebody, as a courtesy, legal to legal, or whatever, as a courtesy, sent a copy to the Department. So I asked that it got sent to Dr. Jarmin and Enrique Lamas, who is also a doctor. I don't want to be rude there.

So I asked that that be sent to them. So they -- before -- you said were they surprised, so before that, they knew something was coming. This was what was sent with the -- with the note.

I -- I -- I'm -- I'm just reading it. I'm like a little confused because it says, "I understand the Department of Justice sent the

attached letter." But there's no attachment, and this is a blank page, so maybe there's a --

Q Well, I can give you the letter --

A No. No. No. But I -- it was attached --

Q Right.

A It was attached to this.

Q Right.

A And it's just not on here --

Q So the situation was --

A So I then sent them -- I had asked Mr. Uthmeier to send them the letter, so they then had the first chance to read it. But they knew it was coming, so there was no shock in law [sic] in that conversation.

He said -- we talked. He said, fine. Let me get a group together. Let us think about it. And we said at that point -- we had a conversation between Ron Jarmin, Enrique Lamas and myself -- and I don't want to tie it to any time or date on this letter -- but at the time, I said what -- I said, tell me historically what happens,

what do we do here? You're the technical experts. Well, really, a question hadn't been added, but they said the fundamental things that need to take place is there needs to be a legal review, a technical operational review and a policy decision review from that. And that's the guiding principles in how we had to work on it.

And so I said, fine, let's get thinking about this, and we need -- you need to do your thing as the experts at the Census. And from my position, as a convener, if you will, having that we need to put a -- a strategy, as I said earlier, in place, so that we can back up to the date of the 31st of March, which was very much what we did on many things.

There were other decisions that the Census had to make by certain dates, such as race and ethnicity, and other decisions that needed to be done, such as where to count certain -- certain groups, and all of those things would have a date they need to be done by here, how do you back up so we can get all the information? So this took

on the similar process.

Q And who --

A Does that help answer your question?

Q Yes. Thank you.

And who was it that said there should be a legal review?

A I asked the Census, and it was a conversation I had with the Census. So I don't remember exactly who at the table said this is what needs to happen, and that's when I said, okay, so that's the guiding principles that we should work from.

Q And I want to flesh that out. What sort of legal review do you recall them discussing? What needed to be reviewed? What aspects of legalities?

A The rule of thumb on -- at the census -- and, again, I'm not giving you -- I'm -- I'm not a Census employee for 30 years, and I'm not a technical expert on these things, and I am not a lawyer, okay.

So in a very layman's terms, the rule of

thumb when we looked at legal reviews was two things. Number 1, is there a statutory reason or a program-added reason that this question that this -- that this should happen? And that was some of the things we talked about. Whether -- and I am not a lawyer, so handing it to legal guys -- if there was further review they wanted to do, but that was two things that was -- that were always important.

Q And who made that legal review at Census or for Census?

A That was done by the legal team, and I know there were a number of lawyers on it. I can't speak to all of them.

Q Who? Give us the name of the people you recall.

A I just said there was a number of people involved, and I can't speak to all of them.

Q But do you know any of them?

A Sure. Some of them would have included Barry Robinson, who was with Census. Melissa Creech -- Creech, I think is how you

A They were absolutely involved. To my knowledge sound -- absolutely sounds --

Q And you saw copies of those memorandum?

A No. I did not. Well, I did -- I saw some documents. So I -- but I -- I was not an expert on those documents.

Q Okay. Now, we're going to go right now, in a few minutes, into the technical aspects that were mentioned, and I think you're going to hear -- see a number of memoranda in January and February of 2018.

With that as background, do you remember when you saw or knew about the legal reviews? Was it before, in the same time frame or after you knew about the technical reviews?

A I would -- I would want to leave the group with the understanding that there were paths -- two simultaneous paths going on. There was a legal review happening. There was a technical review happening. And that was informing the policy review.

Q And you had understood determining

whether it was statutorily mandated or appropriate was something that was normally done when a new census -- citizenship question was asked -- I'm sorry -- when a new census question was asked?

A That was my understanding from the technical experts at the Census.

The -- it was also my understanding that the Census lawyers and the Department lawyers worked together.

Q I'm going to mark as Exhibit 14 another email from the same day, the same time.

(Plaintiffs' Exhibit 14, Email, was marked.)

BY MR. GROSSI:

Q And this is from Enrique Lamas. He is the assistant director of the Census, correct?

A He is the acting assistant director, sir, to be technical.

Q And it's to, again, Mr. Willard, that we've talked about, but also cc's to Mr. Jarmin, and he's responding to an earlier email from 12:01 from Mr. Willard saying, "Hey, guys. Karen got a

call from the Secretary and has an update for all of you. If you can step away from the FESAC" -- F-E-S-A-C -- "it is regarding a letter from the Department of Justice," unquote.

Do you recall getting a call from Secretary Ross presumably either on or shortly before December 15th?

A I don't recall what this is about. I don't recall what this is about, but --

Q Well, it says it is regarding a letter from DOJ.

Do you see that?

A And if you see the page before, which your handed me, and the bottom, which I articulated to you that I asked James Uthmeier that -- and I told you -- it doesn't say it here -- but that James sent them the letter that afternoon, the -- the problem with making assumptions or speculating is that I could be totally wrong. So I am -- I -- I don't necessarily want to do that.

But if I were to be making an educated

guess, would you tolerate an educated guess --

Q Yes, please.

A -- that could be wrong?

I learned we had the letter. I said let's get those guys, but they're in the FESAC meeting, which is federal economic statistical committee, so it's an important committee, so I didn't want to -- if they could come out, and that we would -- we got the letter, we will send it to them.

That would be me taking a -- seeing these things and saying -- but do I specifically remember this? No, I can't tell you I do.

Q Okay. That was helpful. So what you're saying is you do -- do you remember calling them out of a meeting that was important?

A No. That's -- that -- that says if you can step away the FESAC. That means if there's a break or whatever. I am extremely respectful of these guys, and I think you've met Dr. Jarmin and you've met Dr. Abowd. These guys are brilliant. They are hard working. They are incredible. I

don't call them out of anything. I say when you can speak to me, I appreciate. No. No. No. I would never call anybody out of anything, sir.

Q So this was a relatively unusual thing, for you to be pressing on their time in this way, right?

A Yes.

Q What was it that Secretary Ross told you was so important?

A As I said, sir, I don't remember -- and, also, I didn't write this. So people love to use the Secretary's name in the vernacular of, the Secretary called. It could have been the Secretary's office. It could have been somebody in connection. So people love to use that, Number 1. Whether the Secretary called or not, I can't speak to that, okay.

And all I'm trying to do is say from this document, because I generically remember what happened, that we got the letter. They did not get the letter until later, because it came with a post stamp on it, and I felt very strongly as soon

A I do not recall.

Q Okay. But what you did was you turned to your experts in the Census Bureau, correct?

A That is correct. Because what I felt was -- you are characterizing this as the Secretary put pressure on me to make this a priority at the Census. Once I told the Census this letter was somewhere in the works and they hadn't got it yet, it was priority for them to get it, and it was priority to service the Census Bureau and --

Q And that's --

A -- the executives.

Q And that's what, then, you did?

A That's what I did.

Q And in January, February, March, you worked with the Census Bureau people to prepare drafts and respond to various questions of Secretary Ross concerning the addition of the citizenship question, correct?

A Correct.

Q Now, I want to --

A I want to be sort of -- yes. But as in my role, what I did is I sort of was the convener, and I got a group together to say, Census said these are the three aspects we need to deal with. So we know we've got legal people. We know we've got Census people, and we know we've got policy people so that we can go down this path. It becomes very iterative and evolutionary at that point. So we put a team together that could look at these things.

Q And as the Under Secretary responsible for the Census Bureau, and someone who had told Congress that you wanted to make a complete and accurate 2020 census a high priority, are you saying that you did not feel it was your place to make a recommendation or conclusion about whether the citizenship question should be added?

A That decision was a decision that the Secretary makes. It was absolutely my job to make sure he got a full breadth of information and opinions. There were certain decisions that the director made. And so we'd have meetings, and I

would not give Ron Jarmin -- excuse me -- Dr. Jarmin my opinion on what he should do. It was his decision to make. It was my position to help and facilitate.

Q Right.

A So there was all kinds of decisions that needed to be made by all kinds of people, and I can promise you I didn't tell you -- the technology people how to do their jobs either.

Q Okay. Let me go through some documents that I think I saw you were involved in. I just want to get your recollection of how that process proceeded.

A Great.

Q We're marking as Exhibit 15 a one-page email Bates number 9679.

(Plaintiffs' Exhibit 15, Email, was marked.)

THE WITNESS: I'm sorry.

BY MR. GROSSI:

Q Now, this is an email chain, on the bottom, Mr. Jarmin wrote to Karen, "Happy New

Year. I'd like to discuss the following with you as soon you have a chance." And the third item mentioned is strategy to the Department -- to the DOJ letter on citizenship. And then that is followed by an email from the name is blacked out, however, the initials KDK are at the bottom of that email, saying, "Perfect. Let's discuss tomorrow." Which I guess would have been the 3rd of 2018 -- 3rd of January 2018.

Despite the fact that someone has blacked out the name, can you confirm that is your email?

A Again, can I confirm that I wrote this email on January 2nd of 2018, that many months ago? The answer is no, I can't confirm that. Somebody could have written this. But would I suspect and would I -- would I say yes, most likely, that is mine, that --

Q Right.

A And I do sign things by KDK, which are my initials. So I have no problem going forward. But I cannot promise you absolutely, categorically that I wrote this email.

That's what the memo says right here.
BY MR. GROSSI:
Q But you remember this information being conveyed to you, correct?
A Sir, are what you asking me, do I remember me getting a memo where these alternatives were in here and these numbers were herein?
Q That's one question, yes. Do you remember that?
A Yes. I remember that.
Q And do you remember discussing it with them?
A We discussed it on multiple -- multiple occasions.
Q Okay. Let me ask this: In all the time -- and now I'm taking it all the way through the March 26th final decision -- did the Census experts ever conclude that there would not be additional costs to adding -- as a result of adding the question on citizenship?
A The discussions we had went not only with

a complete, accurate and the cost, and yes, we did say that there would be an additional cost.

Q And they always maintained that view, to this day, as far as you?

A As far as I know.

Q Okay. That's what I'm looking for. I'm looking for them ever coming to you and saying, you know, Under Secretary, we were wrong?

A But they didn't know it. They didn't know it. It was what they thought. They did not know what would happen. We won't know the answer to that until 2020.

Q And you knew that the Census people were providing you with their best estimate, correct?

A They were certainly doing -- coming up with their conclusion.

Q We don't know how bad it might be; is that right?

A We -- we cannot -- you and I cannot speculate on the future.

Q But the Census experts can give you and Secretary Ross their best estimates?

A I'm sorry?

Q You have to -- you have to say yes for the record.

MR. GARDNER: She's asking you to repeat the question.

THE WITNESS: Sorry. Could you repeat the question? I'm sorry.

BY MR. GROSSI:

Q Oh. I'm sorry.

Dr. Jarmin asked these various people to be involved, to prepare a memorandum for him on this issue?

A That is my assumption.

Q And Dr. Jarmin understood that he should enlist the best people at the Census Bureau?

MR. GARDNER: Objection. Calls for speculation.

THE WITNESS: I can't --

MR. GARDNER: No foundation.

THE WITNESS: I can't tell you what Dr. Jarmin was thinking.

BY MR. GROSSI:

Q Did you ever say to Dr. Jarmin, why didn't you include, Mr. X, Ms. X?

MR. GARDNER: Objection. Form.

THE WITNESS: Dr. Jarmin is an -- is the direct- -- is the acting director of the Census. I did not question him. I asked him if he would put together the team he wanted to put together.

BY MR. GROSSI:

Q Okay. Let me ask you this: Are you satisfied that he did a good job selecting the right people and coming up with a competent assessment, or not?

A The Census did the very best job they could on this.

Q Now, it goes on on the next page, 5474, again, to say with respect to Alternative B, quote, it would lower -- I'm sorry -- it would result in lower quality enumeration date, unquote.

Do you remember that being the view of the Census experts as of early January 2018?

A At this point in the decision, that was their assessment.

Q Did they ever change that assessment, which is specifically that adding the citizenship question would result in lower quality enumeration data?

A I do not believe so.

Q And then it goes on to say, that they also estimate that asking the citizenship question, quote, would result in 154,000 fewer -- and they emphasize that word -- enumerations. This is also a lower bound estimate on the loss of accuracy, unquote.

Let's take them in pieces. Did -- have the Census Bureau experts ever changed their opinion that asking the citizenship question would result in 154,000 fewer correct enumerations?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: Conceptually, I -- they have not, but this has evolved, and the numbers have evolved. And I don't want to get caught saying absolutely that number did not change over three months and a whole lot of work, so please

don't put me in that box.
BY MR. GROSSI:
Q Okay. We'll look at this. I don't mean to do that. We'll look at the subsequent ones.
Do you also remember that when they made these estimates, they were emphasizing that this was the lower bound, which is to say it could have been worse?
A It says it right there. This is the lower bound estimate.
Q And they've never changed their view about that, have they?
MR. GARDNER: Objection. Lack of foundation.
BY MR. GROSSI:
Q To your knowledge, as the person who supervised their work, they never changed that to you, correct?
A Not to my knowledge.
Q Okay. Now, let's go to the last page, two points here. At the very beginning, it says, "Alternative C delivers higher quality data for

Alternative B for DOJ's stated uses," unquote.

Now, let's just change the nomenclature. Alternative C was a program of using administrative data and not asking the citizenship question, correct?

A Correct.

Q Alternative B --

THE WITNESS: Correct. I said correct, everybody.

BY MR. GROSSI:

Q Alternative B was asking the citizenship question, correct?

A Correct.

Q So it was the view of the Census experts that as between the two, using this administrative data without a citizenship question or asking the citizenship question, it would be preferable in terms of getting quality data for DOJ's stated uses to go with the administrative data, correct?

MR. GARDNER: Objection. Mischaracterizes the document.

BY MR. GROSSI:

Q That's how you understood it, right?
A Please repeat your question, sir.
Q Yeah.
A You -- you -- you --
Q Fair enough.
A You're jumbling it. And I will accept this document as it is written here.
Q Okay. I just want to be clear, because we're getting Alternative C and B here.
What they were telling you --
A And A.
Q And A, too.
But what they were telling you here was that as between --
A At this junction in time --
Q Right.
A -- when they wrote this memo --
Q They thought it would be better to use administrative data and not ask the citizenship question from the standpoint of the Department of Justice quality data, correct?
A It says right here, "Alternative C even

better meets DOJ's stated use."

Q Than Alternative B, right?

And they've never changed their view on that either, have they?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: Not to my knowledge.

BY MR. GROSSI:

Q Okay. And then it comes down to the recommendation, and they say Alternative A isn't costly and doesn't harm the count, but then referring specifically to the idea of adding or not, it says, "Alternative B better addresses the DOJ's stated uses. However, it is very costly and does harm the quality of the census count by increasing erroneous enumerations," and then as you just said a moment ago, they also said, "Alternative C even better meets DOJ's stated uses."

Let me take each little piece, all right. As the Census -- have the Census experts ever changed their view that Alternative B is very

costly?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: Not to my knowledge.

BY MR. GROSSI:

Q Have they ever changed their view that Alternative B, adding the question, harms the quality of the census count by increasing erroneous enumerations?

MR. GARDNER: Same objection.

THE WITNESS: Not to my knowledge.

BY MR. GROSSI:

Q Have they ever changed their view that Alternative C, using administrative data without a question, even better meets DOJ's stated uses?

MR. GARDNER: Same objection.

THE WITNESS: Not to my knowledge.

BY MR. GROSSI:

Q Have they ever changed their view that Alternative C, administrative data, is comparatively far less costly than Alternative B?

MR. GARDNER: Same objection.

THE WITNESS: Not to my knowledge.

BY MR. GROSSI:

Q And then they say, "For these reasons, we recommend Alternative C, using administrative records without the citizenship question for meeting the Department of Justice's data request."

Have they ever changed their final recommendation to use administrative data without a citizenship question additional rather than adding such a question? Have they ever changed their recommendation in that respect?

MR. GARDNER: No objection.

THE WITNESS: Not to my knowledge.

BY MR. GROSSI:

Q Okay.

MR. GARDNER: Tell you what, we've been going a long time. Why don't we go off the record and grab lunch?

MR. GROSSI: I think this is a good time. I agree.

VIDEOGRAPHER: This concludes Media Unit Number 3. Time on the video is 12:34 p.m. We are

not give an opinion on C or A or B. I did not do that. It is a misrepresentation of what I said. It could be a confusion or it's a game of telephone tag, because it went from me to somebody else. I can't speak to it.

Q Okay. Is that because you never took any position on how the citizenship issue should be handled?

A I never took a position on how the citizenship issue should be handled.

Q So if Dr. Jarmin testified, as he did, that you never disagreed with the recommendations of the experts at the Census Bureau to use administrative records rather than a citizenship question, you're not contradicting that testimony in any way?

A I didn't take a stance. So I didn't agree or disagree.

Q Okay. Fair enough.

Now I'd like to talk about a little bit of a different topic. Let's mark -- I'm marking as Exhibit 18 some emails where the Bates number

begins 5489 and runs to 5491. The top email being an email from Dr. Jarmin 1/3/2018 at 6:55 p.m.

(Plaintiffs' Exhibit 18, Email, was marked.)

BY MR. GROSSI:

Q Okay. Now, Secretary Kelley, I think you testified in words or substance before the break that you viewed your job primarily as facilitating and making sure that the best possible people at Census focus on this particular issue of adding the citizenship question; is that right?

A I -- I said that I felt it was my job to convene and organize and work with Census to put a strategy in place for the overall timeline, as well as provide the Secretary with the best information for him to make a decision.

Q Okay. And this was specifically in the context of a request that was received in December from the Department of Justice about their needs for certain data, correct?

A Correct.

Q Okay. Did you also feel that as part of

your job, it was important to make sure that your folks in the Census Department were talking productively with the appropriate people in the Department of Justice about what they needed and how they could best -- how Census could best serve their needs?

A Quite frankly, the suggestion of a meeting between Census and DOJ came from Census. In one of our conversations, as we were going through strategies and timelines, we talked about what would you normally do when this comes up, how would you normally handle it? And they said they would try to set up a meeting with the agency or department or whatever it may be that wanted the information and see -- you know, fine tune and discuss and those kinds of things, and I said super.

Q Good. I mean, and someone is asking you --

A I don't know if I actually said super. I want to be really clear.

Q That's okay.

happening. I'm talking to the Census. We're saying what do we do, what's the strategy? They say we're going to call -- and I support that decision, if that's what they want to do and have that meeting.

BY MR. GROSSI:

Q Okay.

A But I'm not hoping and -- you know --

Q Poor choice of words. I'm sorry.

Let's go over the particulars here.

Let's go to the last page -- actually, take a look at the bottom of 5490.

A Got it.

Q And it indicates that Director Jarmin, on Friday the 22nd of December, is sending an email to Arthur Gary, who is later identified as someone at the Department of Justice, and the subject is the request to reinstate the citizenship question on the 2020 census. Dr. Jarmin writes -- first, he thanks him for the letter of December 12th about the request by the Department of Justice, and then says the Bureau is fully supportive of

working with Justice.

And then says, quote, to that end, I directed staff to review all possible ways to address the needs expressed in the letter. They have now briefed me, and their findings suggest that the best way to provide P.L. 94 block-level data, with Citizen Voting Population By Race and Ethnicity would be through utilization of a linked file of administrative and survey data the Census Bureau already possessed. This would result in higher quality data produced at lower costs.

Do you see that?

A I see.

Q And that's what we had referred to in the Abowd memo that refers to as Alternative C, correct?

MR. GARDNER: Objection. Lack of foundation.

THE WITNESS: It would appear that way.

BY MR. GROSSI:

Q Okay. And then to follow the train,

working backwards, very quickly, on the afternoon of December 22nd, Mr. Gary, who's identified as the general counsel of the justice management division of the Department of Justice, writes back to Dr. Jarmin saying, "Thank you. We look forward to meeting you and your team in early January," since now we're pretty much into the Christmas season.

And then there is that break, and on January 2nd, Dr. Jarmin writes back to Mr. Gary and asks him if late the following week would work for a meeting. And then Mr. Gary quickly responds back and says, "It should work fine. Let me get back to you."

And then on the very top, on January 3rd, Dr. Jarmin writes to Mr. Gary and says, quote, I'm bringing technical, program and legal folks. It would be good if some technical folks on the DOJ side were there so we can ensure we understand and can meet your requirements, unquote. And then he suggests a couple different days.

Were you aware at about this time that

Dr. Jarmin was trying to set up a meeting with the Department of Justice including their technical and program people?

A As I indicated before, I knew he was setting up a meeting. The full compliment of staff he was bringing, I would not have questioned, and I'm not sure I knew or did not know, but --

Q Now, in fact, the meeting never took place, right?

A No. The meeting did not take place.

Q Why?

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

BY MR. GROSSI:

Q Well, you would know why, wouldn't you? You were involved in hoping that -- or planning that Dr. Jarmin would set it up, right?

MR. GARDNER: Objection. Form. Objection. Mischaracterizes witness's prior testimony.

THE WITNESS: Again, Dr. Jarmin told me

he was going to set up the meeting. I did not get involved in helping him plan to do that. I just -- he said he was going to set up the meeting, I said good. I support that. That makes sense. Great. So that is that issue.

Do I know that the meeting did not take place? Yes, I do know the meeting did not take place.

BY MR. GROSSI:

Q And do you know why? 802

A It was under -- my understanding that the Justice came back and said we really don't need to meet. We do not need to meet. Our request is what we've got in the letter, is the written request.

Q Basically, they didn't even want to discuss the use of administrative data?

A That's exactly right. And we had seen that before in a couple other examples. Where we wanted to meet with OMB on a topic, and they said, no, what we've given you is what we've got, so we don't need to meet. I've seen that happen before.

that I would -- I can't personally say I remember this agenda on January 11th. I don't really even know if I remember January 11th, but this would be a typical agenda of the topics that now are topical that we need to discuss.

Q I take it you don't remember anybody saying that the citizenship question should be added at this meeting?

A I do not remember that, but I do not remember.

Q Okay. Let's go on, now, to the next one.

(Plaintiffs' Exhibit 21, January 9, 2018 memorandum, was marked.)

BY MR. GROSSI:

Q All right. I'm marking as Exhibit 21 a memorandum and the Bates number is 1277 to 1285, and it indicates it's dated January 9, 2018. It states to be a memorandum for Secretary Ross that has been transmitted from Dr. Abowd through Enrique Lamas, the acting deputy director, and then Dr. Jarmin, the acting director -- or the director, and then you, now performing the duties

of deputy secretary.

Before we start, let me just ask you: You assumed acting deputy secretary role in November of 2017?

A Yes. I just want to clarify one thing, and for those that do know this or don't know this, there is in government -- and I'm new to government -- a distinct difference between the acting and the person who is performing the nonexclusive functions and duties. I just want to be very clear that in any colloquialism, if somebody calls me the acting, I am not the acting deputy secretary. I am performing the nonexclusive functions and duties of the deputy secretary.

Q And so for a single salary, you're doing two jobs. You are performing the nonexclusive duties of secretary and you're also the Under Secretary; is that right?

A Yes, I am.

Q Well, I think that you should get a raise.

A I am not an expert and technical genius on this -- what is the actual technical, but this goes through our exec seg process and all the people that should know and this is the process.

Q As a practical matter?

A As a practical matter, yes.

Q Fair enough.

A Yes.

Q And you sent this to Secretary Ross?

A Yes.

Q Now, I want to discuss this document in some detail, and you can read the whole thing or I'm going to direct your attention to specific questions, and I think they'll be in fair context.

A Okay. May I just say that this memo was from Dr. Abowd and it came through myself, Dr. Jarmin and Dr. Lamas. So you said you sent this. This actually was sent through the three of us, okay.

Q And all of you concurred it ought to go up to Secretary Ross?

A Indeed.

Q Just to get the nomenclature correct again, on the first page, the memo states, as we've previously discussed, that the Census experts had discussed three alternatives --

A Excuse me, sir. If you would not mind, we've said prior to this that there have been many iterations, many versions, many everything. If you wouldn't mind, I would like to take a minute to look at this, as we are going to go through this document.

Q Sure.

A Thank you.

Q Ready to go. Okay. Secretary Kelley, in this memo that we've marked as Exhibit 19 --

A 21.

MR. GARDNER: 21.

BY MR. GROSSI:

Q Oh, I'm sorry. 21. Thank you.

The first page is sort of a summary of the recommendations, and I want to ask you about a couple of them. The Census experts begin by saying that the Department of Justice has

requested block-level citizen voting age population estimates.

Do you see that?

A Yes.

Q That's what we've been referring to as the DOJ request, correct?

A Correct.

Q And then they say, as they did in the earlier versions, the prior memos, that they considered three alternatives, A, no change in data collection. That is no additional citizenship question, correct?

A Correct.

Q And B would be adding the question to the 2020 census, correct?

A Correct.

Q And C would be obtaining the citizenship data and status from administrative records for all of the census --

A Right.

Q -- population?

And then the Census experts in the memo

that you forwarded to Secretary Ross states, quote, we recommend either Alternative A or Alternative C, correct?

A Says right there in the memo.

Q So they were not recommending adding a question?

A They were recommending A or C.

Q Correct. Neither of which added the citizenship question, correct?

A Correct.

Q And they then go on to explain that in their view, quote, Alternative C best meets DOJ's stated uses, is comparatively far less costly than Alternative B, does not increase response burden, and does not harm the quality of the census count.

Do you see that?

A Yes, I do.

Q At no time have the experts in the Census recanted or changed their view on any of those four propositions with respect to Alternative C, correct?

MR. GARDNER: Objection. Lack of

foundation. Calls for speculation.

THE WITNESS: I can't speak to what all the people of the Census who participated in putting this memo together, I can't speak to that. I can agree with what you're saying on the page.

BY MR. GROSSI:

Q What I'm asking you is: You're not aware of anybody -- anybody at the Census Bureau coming to you or writing you and saying I disagree with any of those four facts, correct?

A Correct. And your four facts are --

Q We can take them one at a time. C best meets the DOJ's stated uses: That was their position then and it's their position now, correct?

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

BY MR. GROSSI:

Q I mean, in terms of lack of foundation, these people do work under your supervision, correct?

A That is what they wrote in the letter. I

don't know every single person at the Census -- I don't want to get caught up in that situation.

Q But they --

A But they have written that here in this memo, and I agree that that's what they wrote here.

Q And you also agree that from your own knowledge of dealing with these people on this issue and otherwise, you've never heard anybody from Census saying that it was wrong that Alternative C best meets DOJ's stated uses?

A Not to my knowledge.

Q And the same with no one ever said to you that it was wrong that Alternative C is comparatively far less costly than Alternative B?

A Not to my knowledge.

Q And Alternative C does increase the response burden: They never changed their mind about that as far as you know, correct?

A Not to my knowledge.

Q And Alternative C does not harm the quality of the census count: You have no reason

to think that's not their view today, correct?

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

THE WITNESS: Not to my -- not to my knowledge.

BY MR. GROSSI:

Q Now, let's talk about Alternative B, which is adding the question. And the Census experts said that, in their view, Alternative B is very costly.

Are you aware of anybody at the Census Bureau who has said that that is not true in their view?

A It is costly if they are -- their conclusions are correct.

Q Okay.

A It is more costly if their conclusions are correct.

Q And they've never suggested, as best they understand it and believe, that their conclusions in this memo are incorrect, they've never said that?

A Not to my knowledge.
Q They've also said that adding the question would harm the quality of the census count, correct --
A That is what they said.
Q -- they said that?
And you're not aware of any place where they've changed their minds since this memo was written?
A Not to my knowledge.
Q And then they finish off Alternative B by saying that it would use substantially less accurate citizenship status data that are available from the administrative sources.
Do you see that?
A I do.
Q And you understood that was their view.
And as far as you know, that's still their view today?
A Not to my knowledge. It did not change.
Q Now, I'm going to go into the specifics on the next page a little bit more, but let me

are off the record.

(Off the record.)

VIDEOGRAPHER: This begins Media Unit Number 5. The time on the video is 2:35 p.m. We are on the record.

(Plaintiffs' Exhibit 22, Email, was marked.)

BY MR. GROSSI:

Q Secretary Kelley, I'm going to give you a document -- and I'm going to tell you right now, I'm going to ask you about the front page and not the attachment. I'm going to show you a later version of the questions, and we'll get into it then. If you want to just look at the first page, I just want to get context of when you began to be aware, again, of these questions that were being floated. And I'll just read in for the record, and tell you why I'm interested, the top page, 2292, on Exhibit 22 is an email to Mr. Comstock from Burt Reist, and it talks about the citizenship questions complete set as of that date, February 2nd, and then there is a set of the

questions and answers.

A We're not looking at those?

Q Right. And all I'm asking you is: Was it about the first week in February when you returned that you learned that these questions and answers were being circulated and being addressed by the Census experts?

A To back up, the day that we had the meeting, there were questions being thrown out by a lot of people. Again, I want you to understand. This process was iterative. It was collaborative. We were sitting around, people were asking questions. I was jotting down questions. Other people were jotting down questions. We were sort of compiling questions. Then people had the ability to come back later on and say, I just thought of this. There's another question. So we were sort of keeping a pile of the questions.

I was the keeper of the questions. They weren't all my questions, but they would refer to them as Karen's questions or Karen's list or Karen's whatever, just because I had them. When I

did leave, I handed that document, that list of questions to somebody else so that they would have it so the work could continue, they knew where it was. And so when I returned, I knew the questions were in process -- or some had been answered, some had been processing, and I just needed to get caught up on where they stood.

Q Good. Thank you.

Let me ask you a little bit more about this meeting. Whenever the date actually was, who was present, the best you can remember?

A There were -- certainly, Enrique Lamas, Dr. Abowd, Dr. Jarmin -- I should say Dr. Lamas. We had people from legal -- legal there. We had people from policy there. Earl was there. Comstock was there. I believe both James and Peter were there, but I -- I don't know exactly.

Q Peter Davidson?

A Yeah. But, again, I'm not exactly 100 percent sure. But it was a compliment of the entire group of the three groups that I talked about being involved.

Q It was all Commerce and/or Census people, correct?

A Oh, yes. As opposed to who?

Q As opposed to the Department of Justice?

A Oh. No. No. No. It was just Commerce people, yes.

Q And Secretary Ross was not there?

A No. He was there.

Q Oh. He was there?

A He was there. Absolutely.

Q And he had, by this time, received and digested the memo --

A The memo, not the -- the question --

Q -- we talked about earlier, the January 19th memo?

A Yes.

Q Did he express his view that he thought the citizenship question should be added?

A No. He asked questions. It was really a very open dialog with a lot of questions going back and forth and clarification and can we find this out, which led to many of the questions.

Q Did Secretary Ross know at that time that Justice had declined to meet about this --

MR. GARDNER: Objection. Calls for speculation.

BY MR. GROSSI:

Q -- something had happened a couple weeks earlier?

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

THE WITNESS: I don't know the answer to that.

BY MR. GROSSI:

Q Did Secretary Ross express to you that it would be important for the Justice people to meet with the Census people so that they could understand the technical aspects of why Census was saying that administrative records would be better than adding a citizenship question?

A I -- I don't recall the dialog around that.

Q You don't recall anybody expressing the view that they should meet with Justice to explain

to them why the Census solution was better than adding a question? You don't remember that coming up?

A No. In regard to my conversation with Ron and the notes that you told me that I knew the meeting wasn't happening, I mean, I knew all that. You were speaking specifically in reference to the Secretary, and I don't recall the conversations around that with the Secretary.

Q All right. Okay. I want to switch topics slightly, and we're going to come back to the questions in chronological order.

A And are these the questions we're using, or are you giving me --

Q I'll give you a later version.

A Because, like the letter, there were lots of versions of the questions.

Q Right. As you look at that, as best you can, do you think that it refreshes your recollection that by about February 2nd you were back focusing in on this issue?

A That would have been the Friday after

I -- if I were back that day -- and I believe I was -- I was just sort of cleaning up and prepping up.

Q That was the transitional time. Okay. Fair enough.

A And, in fact, I'm not even on this email that went to Earl.

Q Right. I noted that. I just wanted to see if, perhaps, they gave you a copy as soon as you got back.

Do you remember a meeting with the Secretary -- a further meeting with the Secretary around February 12th?

A Again, I don't remember the dates, but there was a second -- secondary meeting that --

Q Who was present at that meeting?

A So I want to be very clear that at the time that this was going on, this became an iterative process. It was evolutionary. People were working collaboratively together. It wasn't a work, stop, hand all the documents. It was answering questions. It was dialog. And so there

were other questions -- there were other meetings. If there was an oversight meeting or steering committee meeting, a group may have joined at the end of it to discuss this. So there were lots of dialog and conversation going on.

Q And Secretary Ross attended that meeting?

A Not all, but many of them.

Q He attended that meeting -- if it might be the first week or second week in February.

A I believe that sounds reasonable.

Q And it was, otherwise, all Commerce and Census people, correct?

A Yes.

Q No Justice people?

A No Justice people.

Q And is it essentially the same group you think you had before, Mr. Comstock?

A We had, clearly, representation from legal, policy, Census.

Q Okay.

A Because you wouldn't want to have the meeting unless you had representation from all

three of these groups we were using as guiding principle as we looked at this.

Q Now, Secretary Ross by this point had heard from the Census experts that they recommended against adding this -- the citizenship question, correct?

A Right. He asked many questions of them, and he said they are valid questions, and we will get back to you. So it was a dialog going on.

Q And they had, in fact, prepared a set of those questions to provide to him?

MR. GARDNER: Objection. Form.

BY MR. GROSSI:

Q That was -- part of the process on February 12th was to receive, either in written form or in oral form, the answers to his questions?

A I don't want to get hung up on the date of the meeting, but, yes, there was a later meeting for him to get the answers to the questions.

Q Actually, I think now that we know that

this may be a more important document, let's go through it. I just want to point out the answers to three questions, okay?

A In this document that we weren't going to use?

Q Right. The one we have the attachment on.

A Which we don't know if this was a draft or final copy, do we?

Q It is not the final copy, but it is the copy closest to the mid-February meeting. That's why I'm going to ask you about it.

A I said I don't know if there was meet- -- when the date was of that mid-February meeting was.

Q Okay.

A So I don't want to --

Q Well, we have had testimony that there was a big meeting with Secretary Ross on February 12th.

Does that refresh your recollection?

A I know there was a meeting around that

time, so I'm not disputing that. If my colleagues said it was on February 12th, I wouldn't disagree with them. I'm just saying I don't specifically remember.

Q Okay. Just take a look --

MR. GARDNER: Exhibit 23.

BY MR. GROSSI:

Q So 22.

A I have one big packet of stuff here and it --

Q Right. And it should have the questions attached.

MR. GARDNER: No.

MS. KELLY: It's --

MR. GARDNER: You intended it to be a single exhibit?

BY MR. GROSSI:

Q Okay. So we're -- and to be very precise, in Exhibit 22 on Page 2294, it begins the questions and answers to the questions that were asked about the January 19th draft.

Do you see that?

A Yes.

Q Okay. I want to just ask you about three, all right.

The first one is Question Number 10. Someone was interested and asked the question, "The NRFU numbers are comparatively small. Approximately one additional house for NFRU [sic] percent enumerator. Is this really a significant source of concern?"

Let me just ask: Do you recall who posed that question initially?

A No, I don't.

Q Okay. The answer of Census experts is, quote, yes, this is a significant concern. First, it gives rise to incremental NRFU costs of at least 27.5 million. This is a lower bound because it assumes the households do not self-respond because we added a question on citizenship, have the same follow-up costs as an average U.S. household. They won't, because they -- these households overwhelmingly contain at least one noncitizen, and that is one of our acknowledged

hard-to-count subpopulations.

Do you remember that the Census Bureau responded to the question by saying that it really was a significant concern in their minds that adding the citizenship question would increase the nonresponse rate?

A So my vernacular here will be NRFU, that's what they call it, N-R-F-U is called NRFU. And there was a discussion about this, and there was a discussion about the fact that one percentage point out there is -- there's $15.6 billion lifecycle cost estimate to get this, and -- to do this census and, quite frankly, as we're going through this and there were many new -- new ways the census was being taken by Internet self-response and telephone and there were other things, there was -- at least the 27.5 million, which is in this.

This -- because of the conversation around the fact that it would be a noncitizen who would not answer this, in their opinion, this is their conclusion of the data, they looked at it.

It would be those households, you know, at least one noncitizen are the hard-to-count population, and that is absolutely right. We consider that the hard-to-count population, and we spend a tremendous amount of time on how to count the hard-to-count population.

The Census Bureau, if you ever have been with the Census, you can do all the technology you want in the background and we can provide everything. It's the people -- feet on the ground, those people that are out there enumerating, doing the job, which the Secretary did when he was himself in college. So he is very familiar with that exercise -- they do this and they did -- they did state this concern.

We also talked about mitigation to this concern, and we talked about the fact that we were, in this census, increasing the number of partnership programs that we were having. We were rethinking the way things were being done, so we were already talking about if -- not on this date -- but what our mitigation strategies were if

this were to be the case.

Q But Census never changed its view and never changed their answer to this question, correct?

A No, they did not, as far as I know.

Q Let me ask you about another one that's --

(Conference call interrupted.)

BY MR. GROSSI:

Q Okay. Let me state it again.

Directing your attention to Page 2299, the Question 13 and answer -- excuse me -- the question is, quote, if Census is confident that administrative data will be available to be used to determine citizenship for all persons, e.g., not all citizens have Social Security numbers, unquote.

I think you alluded to this a moment ago when you talked about having MOUs in place to have the right administrative data. Do you remember that?

A Yes, I did.

Q But the answer of the Census experts was, quote, we are confident that Alternative C is viable, and that we already have invested enough high quality citizen administrative data from SSA and IRS, unquote, and then it goes on to elaborate a little bit.

I'll represent to you that this answer was never changed in any subsequent draft of these Q&As. Is that also your recollection, that the Census experts believed they had the data in place to make administrative data use viable?

A They answered the Question Number 13, to say yes. But also in the original document, which has the three alternatives, they do say that they would want to put a memorandum of understanding in place so they would have higher quality data in order to do that. But it is not my understanding that they have changed that answer to that question.

Q So they thought it was viable six months ago and they think it's viable now, right, Alternative C?

A They've not -- to my knowledge, they have not changed that.

Q All right. Let's leave that, and I just want to ask about a couple more things.

A Are we leaving this?

Q Yes. We may be returning to it, but for right now, we're leaving it.

I'm marking as Exhibit 23 an email that begins on Bates number 4853.

(Plaintiffs' Exhibit 23, Email, was marked.)

BY MR. GROSSI:

Q Now, this is an email chain on February 13th, which if Dr. Jarmin's recollection is correct, was the day after the meeting with Secretary Ross. And if you go to the first item, which is the last on the chain, we find Mr. Jarmin writing to a Michael Strain, and he says, "We are trying to set up some meetings for Secretary Ross to discuss the proposed citizenship question on the 2020 census with interested stakeholders. Most stakeholders will speak against the proposal.

We're looking to find someone thoughtful who can speak to the pros of adding such a question or perhaps addressing the fundamental need, some other" -- I'm sorry -- "the fundamental data need some other way (e.g., admin records.) Do you know of anyone at AIE or elsewhere that could do this sometime over the next couple weeks?"

And Michael responds by saying, "None of my colleagues at AIE would speak favorably about the proposal. It is -- is it important that the person actually be in favor of how -- the proposal?"

You were involved in efforts to discuss the possibility of adding a citizenship question with what has been referred to as stakeholders?

A Uh-huh.

Q Correct?

A Yes. I'm sorry.

THE WITNESS: Yes, Karen.

BY MR. GROSSI:

Q You attended some meetings with some of those people?

A I attended some meetings. Did not attend all the meetings.

Q Did you also, on one occasion, listen in by telephone, because maybe you were in a different location?

A Yes. Yes.

Q AIE is the American Enterprise Institute in this context, correct?

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

THE WITNESS: I honestly am not 100 percent sure, but I believe so. I do not know Michael Strain, at all. So I have no basis --

BY MR. GROSSI:

Q Dr. Jarmin was tasked with trying to find someone who would speak in favor of adding the citizenship question, correct?

A I'm going to say that is incorrect. What we sat in the meeting and discussed with the people from the Census, the entire group that were there, we said that the Secretary wanted to get opinions of stakeholders. We then wrote those

stakeholders, and it was a group effort and group discussion to say we want pros, we want cons, we want him to hear from federal, local businesses, businesses, special interest groups, so on and so forth, former directors, so that he could get an academic, intellectual -- he could get a full look at the -- at people who wanted to comment on it. And we wanted to get -- a combination of views, because we wanted it to be very objective.

Q And what Mr. Jarmin -- Dr. Jarmin responded to Mr. Strain, as indicated on the first page, 4853, is, "We are trying to find someone who can give us a professional expression of support for the proposal in contrast to the many folks we can find to give professional statements against the proposal," unquote.

So bottom line was you had plenty of people who were against adding the question, so Dr. Jarmin was trying to balance that out with someone who would speak in favor of the proposal; isn't that right?

MR. GARDNER: Objection. Lack of

foundation. Calls for speculation.

THE WITNESS: Yeah. I wouldn't say that as much as I would say that what we did is we had -- we were trying to make the list, we were trying to make it very fair, very balanced, and we were looking at it. And I don't know where it was in the process of discussing this. But, for example, I don't know a lot of people in this town. I wouldn't -- I wasn't involved in making many calls, but one person I did know, a gentleman named Arturo Vargas, who I had met with before, who I knew was against this. I said, let's make sure he's on the question -- on the list, because he had been vocal, and he came to meet with me on other topics well before the question. I said, let's make sure we get his opinions on this. So we were getting opinions. We were filling out the list. So I can't tell you at this point how they were filling out the list.

BY MR. GROSSI:

Q Okay. In any event, he told you at the top in an email to you that, "It appears that no

one at AIE willing to speak in favor of putting question on the 2020," unquote, correct?

A Yeah. That's exactly what it says. He wrote to me.

Q And did Dr. Jarmin keep looking for people who would speak in favor of putting the question on the proposal?

A I believe as we sat in that meeting, we had a list of groups and/or people that would make sense to talk to. And so -- I don't know where he was on the list. If he was at the beginning, the end, where he was exhausted on the list, but there would be other people on the list that he could call and not call. And we actually felt very important, that we had the Census input on who they wanted us to speak to.

Q You figured the Census people would be the best judges of who would be an effective person, one way or the other?

A Well, they would certainly know experts in the field.

Q Right.

A They would certainly know -- and we had the business liaison talk to us about which business people we should put on, and, you know, that kind of thing.

Q Sure.

A But very much with a view we wanted the Secretary to have not only geographic, demographically, but across multiple -- multiple groups.

Q One group that you were particularly interested in were the prior Census directors, correct?

A Yes, we did. We put that as one of our categories.

Q And did Mr. Jarmin provide -- Dr. Jarmin -- I'm sorry -- provide you with the input of Census directors?

A No. The Secretary had calls with them.

Q The Secretary directly called up prior Census directors?

A So let me be very clear on this. We put together -- from the lists that we produced from

these meetings and the work people did, we produced a list and then worked with his scheduling to have meetings so he could hear what these people said. I would say to you that the Secretary has schedulers and other people that probably made the phone calls for him. Very specific to your question, did he make phone calls, but he did have -- he participated in phone calls.

Q And did you participate in any of those calls by listening in?

A I participated in some, not all.

Q Let me mark two related documents as Exhibit 24, 8554, an email from John Thompson to Ron Jarmin dated January 29, 2018, and sequentially, 8555, which is Exhibit 25, which is a letter to Secretary Ross.

MR. DEWHIRST: Is this two exhibits or one?

MR. GARDNER: Two exhibits.

MR. GROSSI: Two.

(Plaintiffs' Exhibit 24, Email, was

marked. Plaintiffs' Exhibit 25, Email, was marked.)

BY MR. GROSSI:

Q Okay. Have you seen copies of this document before?

A Yes.

Q Did you see it at about the time that, I guess, Dr. Thompson sent it to Dr. Jarmin in either late January or more likely, in your case, early February 2018?

A I would -- I would have probably seen it, yes. I would probably have seen it in February.

Q And, for the record, what Exhibit 25 is, is a letter that was addressed to Secretary Ross on January 26th by six different former Census directors, correct?

A Yes.

Q And it's fair to sum this up by saying that they were against adding the citizenship question, correct?

A They suggest to not put the question on the census because of the testing.

Q Uh-huh.
A They don't bring up, to my knowledge, or to my quick review here, they don't bring up other reasons for not putting it on, but that it has not been well tested.
The question had been on the ACS since -- for many years and had been many -- had been tested over and over with that wording. So there was a discussion about whether or not the testing was tested.
Q You think maybe those former Census directors didn't know about the question on the ACS?
MR. GARDNER: Objection. Calls for speculation.
THE WITNESS: I --
BY MR. GROSSI:
Q Because that is what was suggested?
MR. GARDNER: Objection. Argumentative.
THE WITNESS: I'm not commenting on that. I'm just saying this was a letter that talked about the testing. We then had a full discussion

with the Census Bureau on the testing of the question on the ACS, and if they thought that that was acceptable amount of testing and that the testing was sufficient, and that that is what I am suggesting. I am not suggesting and would not suggest making any comments about what these individuals were thinking.

BY MR. GROSSI:

Q So when they state on the first page, quote, we strongly believe adding an untested question on the citizenship status at this late date in the decennial planning progress would put the accuracy of the enumeration and success of the census in all communities at grave risk. That is what they told Secretary Ross, correct?

A That is what is written here.

Q And was there anyone among your Census experts who said, you know, these guys are wrong about that, I disagree with them?

A Our Census experts talked to us about the testing that had taken place under the ACS and the fact that that was adequate testing.

Q Did they say they disagreed with the conclusions of the former Census directors?

A I do not believe we ever asked the question in relation to. But when we read this letter, said we need to discuss with Census whether they think the testing is correct. But we did not -- you're making it did we put this letter down, and, therefore, they answered these questions. Once this letter was read, we said we've got to discuss testing with the Census Bureau, who said that they believed adequate testing had been done --

Q Okay.

A -- over the years of the ACS.

Q Now I'd like you to go back to those questions and answers from the prior draft, and I want you to turn in Exhibit 22 to Page 2303 and, specifically, Question 31 in the answer.

A I'm on the wrong page. Excuse me.

Q You see that? And it has to do with this issue of process. And it says, what was the process that was used in the past to get questions

added to decennial census, or do we have something similar where a precedent was established?

And then in a very long answer, it says that the Census Bureau follows a well-established process that involves extensive testing, review and evaluation. And then specifically on the next page, outlines six steps that are taken.

Do you remember that?

A I see this, yes.

Q Okay. In this case, had the federal agencies evaluated their needs and proposed additions through the OMB?

A So let me be really clear on this. Wh we started down the process of putting this question on, we said to Census, how do we go about -- what is it that we need to come up with -- what do we need to do in order to put this question on? And the answer was, at the top of the house, the guiding principles were we needed to have a legal review, an operational/technical review, and we needed to have a policy decision made.

Pl. Objection: Testimony is misleading without designation of the question at 246:15-247:12.

We then said, have you had any other likewise times where this has happened? And they said, well, it's kind of complicated, because before, for 2000 -- in 2000, we had the long form, we had the short form, so we really didn't -- we really didn't change much there. And then we went to the ACS, and we think about how we put the question on the ACS, and sort of talked about all of these things down -- down the path, and I have seen this written -- this same language -- this same dialog written in about four, five, six different ways. And so what I would always go back to with Ron, Enrique and others was, what is it that we need? We need a legal review. We need a technical policy review -- excuse me -- technical/operational view, scientific review, and we need a -- a policy decision made.

So I will tell you the way this question Number 31 is written here, there had been other iterations of this same thing written by different people, but there was no hard fast guideline in terms of this is a statutory requirement or this

is a requirement that has been passed down.

Q This question was assigned to Victoria Velkoff to answer initially?

A I don't know the answer --

MR. GARDNER: Objection. Foundation.

THE WITNESS: I don't know the answer to that.

BY MR. GROSSI:

Q The answer that appears on 2302, 3 and 4 that we just referred to, that's the answer of the Census Bureau; isn't it?

A Yes. I believe so.

Q Okay.

A But the Census Bureau has answered that same question several different ways in other discussions.

Q Okay. That's what I want to try to understand. I'm going to mark as Exhibit 26 a later version.

(Plaintiffs' Exhibit 26, Questions, was marked.)

BY MR. GROSSI:

Q Now, on Page 1296 of Exhibit 26, there's the same question about what process has been used, but a very different answer, a much shorter answer that doesn't mention all the steps that have typically been taken. All I want to know is: Who wrote that?

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

THE WITNESS: I don't know who wrote that.

BY MR. GROSSI:

Q Do you think it was anybody in the Census or do you think it was someone else not in the Census Bureau?

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

THE WITNESS: Oh, no. I will tell you I truly believe that any answers that were written were viewed and looked at across the groups.

BY MR. GROSSI:

Q That wasn't my question, ma'am. My

question was: Do you know who wrote the answer --

A And I told you I don't know. I don't know. And then you ask me a subsequent question --

Q And you're not prepared to say that you swear that it was written by somebody in the Census Bureau, correct? You don't know?

A I don't. I -- I would assume so, but I can't assume --

Q I would not want you to assume here.

A But everybody proofed the questions. Everybody had a look at the questions. So everybody looked at these questions.

Q All right. I have just a couple more exhibits. Okay. I'm marking as Exhibit 27 a document that begins with Bates number 9812. It's dated March 1, 2008 [sic]. It does have a list of those questions, but I'm not going to ask you anything about them. My questions are going to be entirely about the first three pages of the document.

(Plaintiffs' Exhibit 27, March 1, 2018 memorandum, was marked.)

BY MR. GROSSI:

Q I'm sorry. Five pages before the questions begin, up through 9816.

Okay. Okay. On this exhibit, is it the same type of format at the beginning that shows that the views of Dr. Abowd and then Director Jarmin, Assistant Director Lamas, and then you, you were sending this up to Secretary Ross, correct?

MR. GARDNER: Objection. Mischaracterizes the document.

BY MR. GROSSI:

Q Let me ask, you sent this document to Secretary Ross, correct?

A It went from -- through Dr. Abowd, Dr. Lamas, Dr. Jarmin to the Secretary.

Q And according to Dr. Jarmin, you had reviewed this memorandum before it was sent to Secretary Ross. Is that your recollection, also?

A Yes.

Q And what's going on here on March 1, 2018 is that by now, someone has come up with the idea of an Alternative D, which would, in a sense, combine the old Alternatives B and C, in that a census -- the census would contain a citizenship question, but in addition, they would use the administrative data to link up to answer needs of Department of Justice and other people, correct?

A Correct.

Q Who came up with that Alternative D first?

A I honestly do not remember. I'll tell you we were in a meeting. We were talking about all the different facts. And, again, it was an iterative, evolving process, as I said. The questions were being reviewed. We were talk- -- and -- and somebody said, why don't we look at the combination of B and C and see what that would do.

Because one of the things that we determined as we looked at it, that there was no baseline. So you really didn't have a baseline.

So if you did this, you would create that baseline and then the administrative records, which -- which we are going to be using much more in the census than in other censuses prior, we could then have a baseline in to which use -- use that going forward.

Q D wasn't proposed by anybody at the Census Bureau, correct? It was someone else, right?

MR. GARDNER: Objection to form.

THE WITNESS: I -- yeah. You're asking me who proposed the question. I don't remember who was sitting around -- we were sitting around a table, in a group. I remember discussing the baseline, and the Census Bureau clearly agreed that there was a lack of issue -- there was a lack of a baseline, and that this would -- that that was, as well as others, a -- a flaw, if you will, in Option C. And I don't know who said it.

It was one of those things where -- and, again, I don't want to sound simpleton, but, you know, when a whole group of people are sitting in

a room and trying to work through a problem the best they can, and these people are throwing out suggestions, what about this, what about this, what about this question and then it came up.

BY MR. GROSSI:

Q Then it was decided that the experts in the Census Bureau would analyze that in detail, correct?

A Absolutely. Yes.

Q And that's the product --

A The product that --

Q -- that's here?

A That product --

Q And what they concluded on Page 9816 -- and I'm not going to go through all the reasons they set forth -- is they say in their last paragraph, "In sum, Alternative D would result in poor quality citizenship data than does Alternative C" -- the old Alternative C. They concluded that, correct?

A Yes. It says that right on Page 9816.

Q And they've never taken that back,

correct?

MR. GARDNER: Objection. No foundation. Calls for speculation.

THE WITNESS: I -- not that I -- not that I know of.

BY MR. GROSSI:

Q They further say that, "Alternative D would have all the negative cost and quality implications of Alternative B outlined in the draft January 19th memo to the Department of Commerce."

Correct?

A Correct.

Q So Alternative D was not going to solve any of those problems in adding the census -- citizenship question, correct, according to the experts at the Census?

A Certainly from Dr. Abowd's comments here. But it -- it did not still -- and we discussed it at length, addressed the baseline situation.

Q There were no subsequent memoranda like this from the Census Bureau up the chain to

Secretary Ross concerning this issue of whether or not to add a citizenship question, correct?

MR. GARDNER: Objection. Form.

THE WITNESS: Okay. And I want to be very clear on this, and I want people to understand what I'm saying.

When we discussed this memo -- and I think many people, not all, would say this is reasonably complicated -- we tried to look at what was a schematic that we could make this easier to understand, and, therefore, later, a schematic was produced that was -- I don't want to say added to this -- but complimented this. So I don't want to say nothing -- you're saying to me, was anything created from this document? I don't want to play -- I don't want to get in a nomenclature issue with you. I want to be very honest with this group that, yes, there was a schematic that was produced to help understand what this looked like.

BY MR. GROSSI:

Q And I appreciate the answer.

The schematic addition or iteration did not change the conclusion that we just talked about of the Census Bureau, that Alternative D was not preferable to C, and, in fact, had all of the problems of B adding to the question, correct?

A In Dr. Abowd's memo, yes. That is correct.

Q And there is no subsequent Census-authored memorandum?

A Not that I am aware of.

Q On this issue?

A Not that I'm aware of.

Q And I'm going to ask in a moment, but I want to clarify one thing.

(Plaintiffs' Exhibit 28, Final decision, was marked.)

BY MR. GROSSI:

Q Exhibit 28 is what I believe you've referred to as the final decision of Secretary Ross. Can you confirm that that's what you had in mind when we talked about it?

A Yes. Yes.

Now, I know that you testified earlier that funding was one of your big priorities when you first became Under Secretary; is that fair?

A Yes.

Q So is the census still in danger of being underfunded?

A No.

Q Can you explain?

A Yes. I'd be happy to. And I don't have all the numbers in front of me, so we will -- if we will directionally correct.

When the GAO put our their report in May and the Secretary articulated about that report, he said he would look at the lifecycle cost estimate and the budget for the census. And so for those who would obviously assume -- that, again, remember the Census has the economic, demographic, so they have a baseline budget that keeps going. But once the decennial gets into play, the decennial budget goes up expeditiously, expeditiously and then it comes back down, and so you get the big hump.

So what our job was to do was really look at what should the lifecycle cost be in terms of the -- in terms of this -- there were already projects and programs -- and, again, I was not there at the time -- that were going over budget. So you really needed to look at this and say, what is the reality of doing the budget? So what we did is we went through the entire budget. We got certified independent cost estimators to come in and work with us. So there was a co-project between the Department of Commerce and Census Bureau that would look at these two budgets. And then when I got -- by the time I got there, again, August -- not July -- August 21st, the first meeting, big meeting with all the groups to review this budget was taking place within two days. So that is one of the first things we did.

Once we identified that budget and made adjustments to that budget and everybody agreed to the budget -- because we didn't want -- very important part of -- if you will, not to deviate, part of the governance I talked about before, that

steering committee, we didn't want the Census running a budget and the Department of Commerce running a budget, and then all of a sudden, a year later, oh, my goodness gracious. We wanted them on a periodic basis to get together, meet, make sure we were all agreeing on the numbers. So that was part of that steering committee's reason for kind of putting those kind of governance structures in place.

So what we did is we worked on those -- we also invited -- and when I say "we," I want it to be colloquial we. I was not there when all this work was done. They also invited people from OMB to participate in the project with the independent cost estimators, because OMB has been looking at the census for so long.

So at the end of this analysis, we determined -- we being -- the large we being inclusive of Census and the Department of Commerce -- that there needed to be a new lifecycle cost estimate. That we needed to go back to Congress, which the Secretary had said he

would do. We were then prepped up, prepared, went to some briefing meetings, so on and so forth, and went to Congress at the end of October, beginning of November, if my time frame is correct, and we talked about the funding, the change of the funding, the estimate, so on and so forth.

And, actually, the Congress has been extremely, extremely responsive to our needs, and we have the funding we want. And they actually -- if I may compliment them -- did something that we very rarely see before, and they said that we could actually -- because at the time, if you remember, one of the other things in the GAO report was how are the systems going, scalability, all these kinds of issues. And they actually said that even though this was earmarked -- this is an example, '19 money, if you are ready to use it in '18 and you document why and you bring it to OMB and it is approved, we will let you use '19 money in '18. So, actually, that has been a very, very, very successful collaborative process.

I've answered enough of your questions.

Q You have. Let me just make sure I understand a couple smaller pieces of it.

Around October or November, you folks at Commerce finalized a lifecycle estimate; is that right?

A Yes.

Q And you brought that to Congress?

A Yes.

Q And Congress approved the budget that you were requesting?

A For '18 -- '19, now we're working on the '20 budget right now. But we have no reason to believe that they would not.

Q Has the funding request that you've made changed since the citizenship question determination in March of 2018?

A No. It has not.

Q Now, let's turn back to Exhibit 28, which is that decision memo.

Do you know who primarily wrote this document?

A No, I don't know who primarily wrote the

make sure the process was working. We wanted to see what was the U.N. recommendations, what did other developed countries do, those kind of things. But I was not -- those assignments were given to the most appropriate people to do.

Q Okay. So let's start from the second paragraph and Secretary Ross writes -- or let's say that he writes, because this is his memo, he signed it. "I had set out to take a hard look at the request and ensure that I considered all the facts and data relevant to the question so I could make an informed decision on how to respond."

Now, it's my understanding that you testified that Secretary Ross saw those memos that Census prepared, correct?

A Correct.

Q And you testified that he spoke to a number of stakeholders about this?

A Correct.

Q Are you aware of any other information or facts or data relevant to this question that Secretary Ross reviewed, other than those sources?

A Well, as I said, there were legal documentation produced, right.
Q Okay.
A There was information about what do other developed countries do. There was information on what the UN sources do.
Q Uh-huh. Anything else that you can think of?
A Not off the top of my head.
Q Anything you can think of that would refresh your recollection?
A No.
Q Now, you reported directly to Secretary Ross, correct?
A Yes, ma'am.
Q And Census was within your purview?
A Yes.
Q So did you have access to all of the information that Secretary Ross looked at in considering whether or not to add the question?
MR. GARDNER: Objection. Form.
THE WITNESS: I do not have access to all

of the Secretary's files, information, and over a time span, I just would not have it. So I would have to answer that question as I do not believe I do -- I do not.

BY MS. GOLDSTEIN:

Q So Secretary Ross had some meetings with stakeholders that you did not attend, correct?

A Correct.

Q And he may have reviewed documents germane to this question that you are unaware of, correct?

Pl. Objection: Fed R. Evid. 403

A Over the course of time or in reading public documents or in whatever, I can't speak to what the Secretary did in full.

Q Okay. So let's go down this document. If you go to the last paragraph on this page, three lines down, it says that, "I also met with Census Bureau leadership on multiple occasions."

Now, you've testified already about a couple of those meetings that Secretary Ross had with Census Bureau leadership. Are there any other meetings that Secretary Ross held with

testified to earlier and the meeting on the timeline and the meeting on the forms, do you recall any other meetings that you attended with Secretary Ross and Census Bureau leadership?

A I cannot recall, but he had access to anybody he wanted to along this process.

Q Do you know if he spoke to the Census Bureau leadership without you present?

A I don't know the answer to that.

Q So let's turn the page. And if you go to the second full paragraph, the last --

A Can I -- he says here that he has been monitoring press coverage. So when you talk about things he was looking at, I'm sure that -- he says right there that was also there. I failed to remember to say that.

Q Terrific. And if you remember other things as we go on, just go ahead and tell me.

A I read that.

Q So the last sentence of that second full paragraph, it says that "Following the 2020" -- "the 2000 census, decennial census -- "the long

form sample was replaced by the American Community Survey, ACS, which has included a citizenship question since 2005. Therefore, the citizenship question has been well tested."

Now, are you aware of whether the Census Bureau performed any research on how the citizenship question will perform specifically in the decennial census environment?

A The Census Bureau told us that they felt that it was well tested to be on the form.

Q Are you aware of any research that has been done with respect to how the citizenship question will perform on the decennial census environment?

A Not that I'm aware of. I am not aware.

Q And did you or anyone at Commerce ask the Census Bureau to research that question?

A We asked them if they felt that the question had been tested sufficiently enough to be on the -- on the form. We did not dictate research or tell them not to do research. We asked them for their opinion and gave them free

Pl. Objection: Testimony is misleading without designation of the question at 282:20-283:8

reign to do what they wanted to give us that opinion.

Q Within the time constraints that you were working, correct?

A Correct.

Q Do you know when the citizenship question was last tested in the context of the ACS or long form?

A No, I'm not -- I do not.

Q Was Census asked that question?

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

BY MS. GOLDSTEIN:

Q To your knowledge.

A To my knowledge, I'm not sure.

Q Did you or, to your knowledge, anyone else at Commerce see the results of the testing that had been performed on the citizenship question in the context of the ACS?

A No, not to my knowledge.

Q So let's go down to the next paragraph, and I'm just going to start in the middle of the

sentence, because it's a long one. "DOJ states that the current data collected under the ACS are insufficient in scope, detail and certainty to meet its purpose under the VRA."

Do you see that?

A And DOJ states current data collected under -- yes.

Q What, if anything, did Commerce do to validate that rationale, to your knowledge?

A I'm not aware. I'm not aware of anything.

Q And, to your knowledge, what, if anything, did the Census Bureau do to validate that rationale?

A You have to ask Census that question.

Q You're not aware of anything, correct?

A Correct.

Q To your knowledge, did the --

A I know that they have fully researched and they fully understand -- they've been doing this for a long time, but you need to get into details with them on that.

Q And who is they?
A The Census Bureau.
Q And the Census Bureau, to be clear, asked to meet the Department of Justice's technical experts, correct?
A I believe the note said that they sent it to Art Gary, and they said they were bringing their technical so they knew who to bring.
Q You understand that the Census Bureau asked to meet with the technical experts at DOJ, correct?
I don't want you to look at the documents, Secretary Kelley.
You understand that, right?
A There's a nomenclature issue here. They sent the letter to Art Gary, they said we're going to bring our technical people. Right. So the answer is, they did not -- I don't know if they reached out to the technical guys. I know they reached out to Art Gary from this, but I know they wanted to meet with him.
Q So Census asked Art Gary to set up a

meeting, yes?

A Yes. Absolutely. Yes.

Q And ultimately -- and that meeting was going to involve experts, correct?

A Yes.

Q And that meeting didn't happen, correct?

A Correct. Yes.

Q Okay.

A Well, what I don't know is who the DOJ was going to bring to the meeting. I do know who Census was going to bring to the meeting.

Q Who was Census going to bring to the meeting?

A Well, they said they were going to bring some technical people --

Q Oh, the categories?

A Yes.

Q To your knowledge, did the Department of Justice ever identify a number of cases that they would have brought, but for the absence of block-level citizenship data?

A And I'm not aware of that.

You can look at me.

A Describe what you mean by that.

Q What do you think I mean? What does empirical data mean to you?

A Is this data that Census Bureau produced? Absolutely. They produced this on a factual basis. Is that where you're going?

Q I just want to make sure -- so if you look at the last line of that paragraph that we were just looking at in the decision memo?

A Okay.

Q "No empirical data existed on the impact of a citizenship question on responses."

You see that?

A So --

Q Did I read it right?

A No. You read it -- that's Nielsen, senior vice-president, from the Nielsen Group who said that.

Q Okay. So -- I see your point.

A That's the opinion of the --

Q Okay. So let's go back to the sentence

we were reading a moment ago, that neither the Census Bureau or the concerned stakeholders could document that the response rate would, in fact, decline materially.

Is that whether testing a question is for -- or one thing that testing can be for, to determine if response rates will decline materially?

A Yes.

Q And, for example, an end-to-end test that -- could test whether or not a question causes response rates to decline, correct?

A Yes. But an end-to-end test does a whole lot more than that.

Q Of course. But that's one thing it could do, right?

A It's one thing it could do.

Q And another thing that an end-to-end test can do is test whether or not NRFU -- or how effective NRFU is in the context of a citizenship question, correct?

A Correct.

Q And that was not done with the citizenship question, correct?

A Correct. It was done with the ACS over the year's time frame that was shown at the percent numbers and the amount of people.

Q And it's my understanding that you have not seen that data with respect to the ACS testing, correct?

A You said the testing. I've seen the results on the ACS, how many -- how many ACSs are out there, how many times the question's been asked, which is what this paragraph refers to.

Q So then the paragraph goes on to talk about Secretary Ross's discussion with Nielsen. Were you part of that conversation?

A I don't remember, but I -- I don't remember if I was on that call or not.

Q Is there anything that would help you remember if you were on that call?

A I could reconstruct the day, I guess. I mean --

Q Okay. Have you -- so you see that

Nielsen is referencing that it had added questions on the ACS on sensitive topics to certain short survey forms without any appreciable decrease in response rates.

Did you ever see those surveys from Nielsen -- that are referenced from Nielsen in that sentence?

A No.

Q Do you know if anyone at Commerce did?

A I don't know.

Q I would have to ask other people at Commerce to find out, correct?

A Correct.

Q Including Secretary Ross, to find out if Secretary Ross saw those, correct?

A Correct.

Q So let's go -- let's go to the last paragraph here, and this states that, "The Census Bureau determined that for 2013 to 2016, ACS surveys nonresponses to the citizenship question for non-Hispanic whites ranged from 6.0 to 6.3, for non-Hispanic blacks ranged from 12.0

to 12.6 percent, and for Hispanics ranged from 11.6 to 12.3 percent. However, these rates were comparable to nonresponse rates for other questions on the 2013 and 2016 census."

And one of the examples that is giving --

MR. GARDNER: You misread. It's 2016 ACS.

MS. GOLDSTEIN: 2016, I apologize.

BY MS. GOLDSTEIN:

Q And one of the examples that they give, "The Census Bureau estimates" -- "Census Bureau estimates showed similar nonresponse rate ranges occurred for questions on the ACS asking the number of times the respondent was married, 4.7 to 6.9 percent."

Now, do you agree that the 4.7 to 6.9 percent nonresponse rate for the question, the number of times the respondent was married, is similar to the nonresponse rates to the citizenship question for non-Hispanic blacks and Hispanics that ranged from 11.6 to 12.6 percent?

MR. GARDNER: Objection. Lack of foundation. Objection.

(Thereupon, the court reporter clarified.)

MR. GARDNER: Objection. Form.

THE WITNESS: The way this reads --

BY MS. GOLDSTEIN:

Q I just want to know if you agree that 4.7 to 6.9 percent for the marriage rates, if you agree that is similar to the 11.6 to 12.6 rates for the citizenship question for non-Hispanic blacks and Hispanics?

MR. GARDNER: Same objections.

THE WITNESS: You are taking it out of context of how this was written, but you're asking me where it is comparing three sets of numbers with a group of numbers which I count down below. You're asking me to isolate two or three of those numbers and make a comparison, which is taking this paragraph out of context. So if you're asking me simply to say is that comparable, the answer would be, they are dissimilar.

rates for the citizenship question are much greater than comparable rates for other demographic variables like sex, birth date/age and race/ethnicity, data not shown."

Do you see that?

A I wasn't with you. Whether the response is by mail-in questionnaire or --

Q No. The very last line of the last paragraph in B1.

A Right. But there's a full sentence that starts with "whether."

Q Sure.

A "The response is by mail-in questionnaire or ISR instrument and item response -- nonresponse rates for citizenship question are much greater than the comparable rates for other demographic variables like sex, birth/age, race/ethnicity not" -- "data not shown."

Q Have you seen any empirical data that contradicts this analysis on Page 1280?

A No.

Q And, to your knowledge, has anyone in

Commerce seen any empirical data or studies that contradict the Census Bureau's analysis on Page 1280?

A Not that I'm aware of.

Q And that includes Section B2 on self-response rates, correct?

A Right. And it's interesting, because this talks about -- well, not being asked that question.

Q And that includes Section B2 on self-response rates?

A Well, we only looked at that one little part of -- if you want --

Q That one little part of that?

A -- me to take the --

Q That one little part of the sentence.

A What's the question? You'd rather me --

Q Sure. Let me rephrase it. Let me re-ask it then.

Have you seen any -- apart from the Census Bureau memos, have you seen any empirical data or studies that contradict the

Census Bureau's analysis of self-response rates with respect to the citizenship question?

A Not that I'm aware of.

Q And, to your knowledge, has anyone in Commerce seen any empirical data or studies that contradict the self-response rate analysis that the Census Bureau put forth in Section B2 on Page 1280?

Just asking what you know.

A I don't know.

Q And if you go to Page 1281, let me ask this more generally so we don't have to bother with the documents.

Have you seen -- other than the materials that the Census Bureau prepared for you, the Abowd memos that we've been talking about a lot today, have you seen any scientific studies or data that contradict those analyses?

Have you --

A These specific analyses, not that I'm aware of.

Q And, to your knowledge, has anyone in

Commerce?

A I don't know. I can't speak to anybody in Commerce -- everybody in Commerce.

Q I'd have to speak to the other people in Commerce who were involved, correct?

A Correct.

Q To see if they saw other science that you haven't seen?

MR. GARDNER: Objection to form.

THE WITNESS: Yes.

BY MS. GOLDSTEIN:

Q Okay. So let's go back to the decision memo, and let's go to -- you see where it says "Option C"?

A Yes, ma'am.

Q So in the middle of that paragraph, Secretary Ross writes, "That Census Bureau analysis showed that between 28 and 34 percent of citizenship for self-responses for persons that administrative records show are noncitizens are inaccurate."

Did I read that correctly?

Q Sure.
A -- and tie it back.
Q So let's step away from the document for a second. It sounds like you just testified -- I just want to make sure I understand -- that the Census wanted an accurate and complete count, correct?
A The Census wants?
Q Or I'm sorry. Commerce wants an accurate and complete count?
A A complete and accurate census, yes.
Q And that the Secretary's goal in choosing between these options, he wanted to pick an option that would provide a great amount of accuracy, correct?
A I can't speak for the -- now you're asking me to speak for the Secretary.
Q To your knowledge, you talked to the Secretary?
A Yes.
Q You know what the Secretary prioritized, correct?

A Correct.
Q Accuracy was important to the Secretary?
A Complete and accurate were important to the Secretary.
Q And the Census Bureau concluded that Option D was not the most accurate option, correct?
If you're not sure, you can tell me. We'll go back to the document.
You want to read my question one more time? Thanks.
(Thereupon, the reporter read the record as requested.)
THE WITNESS: But this -- okay.
BY MS. GOLDSTEIN:
Q Correct?
A In the opinion of the Census Bureau, this is opinion, it's not conclusive fact --
Q I'm not asking for conclusive fact. The Census Bureau --
A Their opinion was --
Q -- concluded that the most accurate

Q I'd have to ask him?
A Please.
Q And then it says, the next full sentence, "But no one provided evidence that reinstating a citizenship question on the decennial census would materially decrease response rates among those who generally distrusted government and government information collection efforts, dislike the current administration or fear of law enforcement."
Do you see that?
A Yes.
Q You didn't ask the Census Bureau to test that question, correct?
A The Census Bureau indicated that they felt the question had been tested.
Q Now, this says that no one provided evidence that reinstating the question -- I'm just going to paraphrase -- that reinstating the question in this climate with these people who generally distrusted government would decrease response rates, correct?

A That's what it says, which is paraphrased.

Q Yeah.

A You read it verbatim before.

Q But fair enough, right?

No one in Commerce asked the Census Bureau to provide that evidence through additional testing, correct?

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

BY MS. GOLDSTEIN:

Q To your knowledge?

A The Census Bureau -- excuse me -- Commerce asked the Census Bureau whether they felt the question was adequately tested.

Q And Secretary Ross felt that there was no evidence, at least with respect to this implication of the citizenship question, correct?

A I can't tell you what he felt or anything else.

Q That's just what he wrote --

A We know what he wrote.

Q Okay. And you never asked the Census Bureau to run tests on the impact of reinstating the citizenship question on this population described in that sentence we've just been reading, correct?

A We asked them if they felt that this question had been tested appropriately enough to be put on the 2020 decennial.

Q I'm just going to try my question one more time.

You didn't ask the Census Bureau to provide evidence that reinstating the citizenship question would impact or -- the response rates on the population that is referenced in that sentence we've just been reading, correct?

A So if --

Q I just want to know whether you asked for testing on that subject.

A If you are asking me if I asked the Census to provide testing on response rates of people who -- among those who generally distrust government and government information collected

efforts, dislike the current political climate, or fear law enforcement, I did not do that.

Q And, to your knowledge, did anyone at Commerce ask the Census Bureau to provide evidence of that?

A I do not know.

Q Okay. So let's go to the last sentence of that paragraph. "While it is possible that this belief is true, there is no information available to determine the number of people who would, in fact, not respond due to a citizenship question being added and no one has identified any mechanism for making such a determination."

Do you see that?

A I do.

Q Did you ask the Census Bureau if they could design a test to make this determination?

A No. I did not ask them to make -- to create a test.

Q And, to your knowledge --

A I --

Q I just have to ask it for the record.

-- did anyone at Commerce ask the Census Bureau to design a test to make this determination?

A Not that I know of.

But I repeat, we asked the Census Bureau if they felt that this question had been thoroughly tested on a number of occasions.

Q Okay. Let's go to the next page.

And I want to go to the middle of that first paragraph. The same former director noted -- do you see where I'm starting? "In the years preceding" --

A Yes.

Q -- "certain interest groups consistently attacked the census and discouraged participation."

Do you know what Secretary Ross is referring to here?

Just with respect to those interest groups, do you know what he's referring to?

MR. GARDNER: Objection. Calls for speculation.

"While the reinstatement of a citizenship question may be a data point on which these interest groups seize in 2019, past experience demonstrates that it is likely efforts to undermine the decennial census will occur -- will occur again, regardless of whether the decennial census includes a citizenship question."

Now, I only want to know, have you seen any empirical data that relates to that point?

A No.

Q And do you know if Secretary Ross has seen any empirical data --

MR. GARDNER: Objection.

BY MS. GOLDSTEIN:

Q -- relating to that point?

MR. GARDNER: Calls for speculation.

THE WITNESS: I'm not going to speak for Secretary Ross.

BY MS. GOLDSTEIN:

Q I need to speak to him --

MR. GARDNER: Objection

BY MS. GOLDSTEIN:

What time frame are we talking about? I'm not sure which communications you're referring to.

A I have no idea what you're -- you're asking me the questions, and you're asking me what time frame we're talking about. This has gotten off the rails a little.

Q It's late in the day.

A And I really want to be as helpful as possible, so, please.

Q Understood. Understood.

So let's say March 2018, so after the March 1st memo, before the March 26th decision, and from understanding of the documents, that's the time period when he was doing a lot of the discussions with stakeholders. So during that time period, did he have communications with DOJ about the citizenship question?

A I don't know the answer to that.

Q You don't know?

A I do not know the answer to that.

Q Okay. Do you know whether he had any

stakeholder conversations with any Voting Rights Act -- I should say organizations interested in Voting Rights Act enforcement, such as, for example, the ACLU, MALDEF, any other such groups that occasionally bring Section 2 enforcement actions?

MR. GARDNER: Objection. Form.

THE WITNESS: I would have to refer to the list of everybody and want you to ask the question.

BY MS. BOUTIN:

Q Okay. But do you recall any, offhand, as you sit here?

A No, I don't.

Q Did you ever suggest to Secretary Ross or Earl Comstock that they hold stakeholder conversations about the citizenship questions -- question -- excuse me -- with DOJ or any groups interested in Voting Rights Act enforcement?

MR. GARDNER: Objection. Form.

THE WITNESS: We certainly talked and

took great, earnest interest in making sure we had a broad -- a broad and comprehensive group for the Secretary to talk to.

BY MS. BOUTIN:

Q But you don't remember any suggestion, as far as stakeholders go, whose specific interests were Voting Rights Act enforcement?

A I can't speak to -- I don't know that somebody wasn't spoken to that are --

Q But you don't know of anyone?

A Not to my knowledge.

Q Earlier, you stated that there are other instances in which an agency has refused to meet, and you referred to as an example -- you referred to OMB as an example. What was that in reference to.

A The race and ethnicity question, which is a question that its form is dictated by a group called oh OIRA, which is part of OMB. And because the question needed to be -- the questions needed to be done by a certain point when we're talking about theses timelines, OIRA would have had to

change how it -- it mandated race and ethnicity to be viewed and how it would be broken out. And so we were getting towards -- closer to them, and we would call and say, do you have an update, do you want us to come meet? And they'd say no, we don't have an update. At that point, we're not --

Q Had there been previous meetings prior to their refusal to meet?

A They did not meet. I don't want to go all the way to they refused -- they refused to meet, but they did not meet. Do I know if there were any meetings before that?

Q About the race and ethnicity question?

A Not prior to my arrival, but prior to that, I don't -- not after my arrival. Prior to that, I don't know. I do know that over the years, there was communication and correspondence, that they worked closely together.

Q Okay.

A So I believe they did meet prior.

Q Okay. So did they -- and I'm sorry. You say OIRA is the name of --

Okay. Did -- what -- was the final result in that process such that OIRA got what they wanted? Did the race and -- let me rephrase.

Did the race and ethnicity question end up in the form that they had advocated?

A OIRA, yes.

Q Okay. This question was asked earlier, but I don't think -- I think things got sidetracked.

Were you surprised by Secretary Ross's decision to add the citizenship question against the recommendation of the Census Bureau?

A It wasn't my place to be surprised or not. It was my place to do --

Q But were you surprised?

A -- what the Secretary asked.

Q But were you surprised?

A I was not surprised or not surprised. I said, okay, that's the decision, now we need to say, how do we implement it? How do we go forward?

Q So I think without looking at them, I

Measurement?

A Not intimately.

Q Okay. I will represent to you that it is an office within Census, and I'd like to show you --

A Please show me.

Q -- a September 20, 2017 memorandum for Associate Director Research and Methodology, and I think it will be Exhibit 29.

(Plaintiffs' Exhibit 29, September 20, 2017 memorandum, was marked.)

THE WITNESS: I was afraid you were going to give me that without a number and I couldn't take it.

May I clarify, Rory, my last statement?

BY MR. ADAMS:

Q Yes.

A When you said the Center for Survey Measurement, I thought you were talking about an outside concern. As a group inside of the research and methodology, they have all kinds of teams.

BY MR. ADAMS:

Q Okay.

A So I -- I recognize they do all these things, but I -- I did not understand the context in which you were talking.

Q Okay.

A So I would not say to you I've never seen any work by CSM before, but there's lots of acronyms, as you can well imagine.

Q I can.

Are you familiar with this document?

A No. I am not familiar with this document.

Q I'd like to read a number of statements in the document and ask if you are familiar with -- in general, with the concerns that are expressed in the document. So beginning at the bottom of the first page, "FRs, field" -- sorry -- "field representatives, and FS is field supervisors, emphasized facing a, 'new phenomenon' in the field, and reported that respondent's fears, particularly among immigrant respondents,

have increased markedly this year. Respondents reported being told by community leaders not to open the door without a warrant signed by a judge, and CSM researchers observed respondents falsifying names, dates of birth and other information on household rosters."

Were you aware that these observations had been made in the field in the context of CSM's various research projects?

A I understood the concerns were made, but not under this particular research paper or other things, and I think we've seen today where -- but this is from the field itself. I have not seen this document, but we have talked about concerns.

Q Turning to the third page, which is Bates number 2448, the very top, "It should be noted that this level of deliberate falsification of the household roster and spontaneous mention of concerns regarding negative attitudes towards immigrants is largely unprecedented in the usability interviews that CSM has been conducting since 2014 in preparation for the 2020 census."

* * * * *

CERTIFICATE OF REPORTER

I, KAREN LYNN JORGENSON, RPR, CSR, CCR 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 stenotype and thereafter reduced to typewriting under my direction; that the said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition 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.

_____

KAREN LYNN JORGENSON, RPR, CCR, CSR

Dated this 31st day of August , 2018.