August 30, 2018

The Honorable Jesse M. Furman
United States District Court for the Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

RE: Plaintiffs' letter motion for leave to conduct discovery and depose non-party Kris Kobach in *New York Immigration Coalition, et al. v. U.S. Dep't of Commerce, et al.*, 18-CV-5025 (JMF), and *State of New York, et al. v. U.S. Dep't of Commerce, et al.*, 18-CV-2921 (JMF).

Dear Judge Furman,

Plaintiffs write to seek leave to conduct limited document discovery and a deposition of non-party Kris Kobach, as contemplated by Local Civil Rule 37.2 and Rule 2(C) of this Court's Individual Rules and Practices. Defendants do not consent to Plaintiffs' request.

In the initial order regarding discovery, the Court initially limited third-party discovery to the Department of Justice based on the premise that, "to the extent that third parties may have influenced Secretary Ross's decision, one would assume that influence would be evidenced in Commerce Department materials and witnesses themselves." July 3, 2018 Hearing Tr. at 86.[1] The Court invited Plaintiffs to show "with specificity . . . why additional depositions would be needed" at a later time. *Id.* at 90. Plaintiffs have reached that moment with Mr. Kobach.

The Administrative Record reflects that Mr. Kobach was a leading, early proponent of adding the citizenship question and lobbied Secretary Ross in 2017 after a previous conversation with Steve Bannon. AR 763–64, 2561.[2] The language in these communications is consistent with the conclusion that this question was motivated by impermissible reasons (including improper political influence and discriminatory animus against immigrant communities of color) and that the later-articulated rationale for the question is pretext.

The record indicates that Secretary Ross spoke to Mr. Kobach about the citizenship question in both April 2017 and July 2017. AR 763-64, 2561. The individual at Commerce who facilitated the July conversation was Secretary Ross's Chief of Staff, Wendy Teramoto. The record reflects Ms. Teramoto—without the participation of any other officials from the Department of Commerce—had at least one email exchange and one direct conversation with Mr. Kobach, also in July 2017. AR 763-64. At her deposition, however, Ms. Teramoto testified she had no recollection about these interactions, and she expressly disclaimed knowing who Mr. Kobach is, despite being confronted with emails between her and Mr. Kobach. (Teramoto Dep. at 39:4–45:17.)[3] The only other person who possesses information about these interactions is Mr. Kobach himself, and obtaining his testimony and documents is necessary to understand why Secretary Ross decided to add a citizenship question.

[1] Excerpts of the July 3, 2018 hearing transcript are attached as Exhibit A.
[2] Attached as Ex. B.
[3] Excerpts of the Aug. 24, 2018 Wendy Teramoto Deposition Transcript are attached as Exhibit C.

1. *Targeted Extra-record Discovery is Appropriate When Connected to the Decisionmaker's Bad Faith or as Necessary to Explain Agency Action.* Under Rule 26(b)(1), a party may take discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." This Court has already explained (and allowed in limited fashion) that in a challenge to agency action, where—as here[4]—the party seeking discovery has made a prima facie showing of bad faith, extra-record discovery targeted to the intention of the decision-maker is appropriate. *See, e.g., Nat'l Audubon Society v. Hoffman*, 132 F.3d 7, 14 (2d Cir. 1997); *Tummino v. von Eschenbach*, 427 F. Supp. 2d 212, 233 (E.D.N.Y. 2006). The same is true where the discovery is "necessary to explain agency action." *Pub. Power Council v. Johnson*, 674 F.2d 791, 794 (9th Cir. 1982); *see also Exxon Corp. v. Dept. of Energy*, 91 F.R.D. 26, 32–33 (N.D. Tex. 1981) ("the 'whole record'" is more than just the "documents that the agency has compiled and submitted" but includes "all the evidence that was before the decision-making body").

2. *Mr. Kobach May Have Relevant Information Related to His Role in Influencing Secretary Ross's Decision*: The NYIC Plaintiffs' complaint sets out some of Mr. Kobach's involvement in Secretary Ross' citizenship-question decision. (18-CV-5025, ECF No. 1.) According to Mr. Kobach, he proposed to President Trump that he add the citizenship question "shortly after he was inaugurated" in January 2017, and reported that the President "absolutely was interested in this." (Compl. ¶ 101.) Mr. Kobach made his reasons for wanting Ross to add the citizenship question plain: he wanted to strip political representation from immigrant communities by providing a way to allow states and/or the federal government to omit non-citizens from apportionment calculations. (*Id.* ¶ 102.)

Mr. Kobach's role did not end with his early meeting with President Trump. Documents produced in the Administrative Record reveal that Mr. Kobach had a phone conversation with Secretary Ross in late winter or early spring of 2017 about adding a citizenship question in part because of the "problem that aliens who do not actually 'reside' in the United States are still counted for congressional apportionment purposes." (AR 763.) In July 2017, Kobach followed up from the conversation with a discussion with Wendy Teramoto, referencing the original conversation he had with Ross "at the direction of Steve Bannon." (*Id.*) Ms. Teramoto planned a call with Kobach that day and set up a call including Secretary Ross for the following day. (*Id.*)

Despite these emails and calls between Teramoto and Kobach, Ms. Teramoto has no recollection of these events. She testified that she does not remember emailing or speaking with Mr. Kobach, setting up a meeting for him with Secretary Ross, the purpose of his conversation with her or Secretary Ross, or anything else about the series of events. (Teramoto Dep. at 40:8–45:17.)[5] Ms. Teramoto testified that she did not and does not know who Mr. Kobach is. (*Id.* at 39:4–40:6, 42:19–21.) Nor did Commerce Under Secretary for Economic Affairs Karen Dunn Kelley and Director of the Office of Policy and Strategic Planning Earl Comstock, when asked at their depositions, have any knowledge of conversations between Mr. Kobach and Commerce officials.

[4] *See* July 3, 2018 Hearing Tr. at 82–85.
[5] Excerpts of the Aug. 24, 2018 Wendy Teramoto Deposition Transcript are attached as Exhibit C.

Ms. Teramoto is the only individual who knows about the content of her conversations with Mr. Kobach other than Mr. Kobach himself. Through her deposition testimony, she has rebutted any inference that Commerce personnel are able to testify about important interactions with non-parties such as Kobach or Bannon. Without Mr. Kobach's testimony, the substance of this critical series of interactions will be lost.

3. *Information About Mr. Kobach's Communications with Secretary Ross is Necessary and Relevant to the APA and Equal Protection Claims:* Mr. Kobach's public statements and the Administrative Record reflect that Mr. Kobach proposed the citizenship question to President Trump "shortly after he was inaugurated," discussed the issue with Secretary Ross in early 2017 at the direction of Steve Bannon, and communicated with Secretary Ross and Wendy Teramoto in July 2017 about this subject.

These conversations directly relate to *why* Secretary Ross decided to add the citizenship question. Mr. Kobach is a critical witness to whether the decision to add the question was the result of political pressure. And because Mr. Kobach wanted Secretary Ross to add the question not for Voting Rights Act enforcement purposes but to dilute the political power of immigrant communities of color, his influence relates to whether the rationale offered by Secretary Ross was a pretext and whether the decision was motivated by discriminatory animus. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–68 (1977) (discussing the relevance of "contemporary statements by" the decisionmakers and the historical background of the decision to discriminatory intent analysis); *New York v. U.S. Dep't of Commerce*, 315 F. Supp. 3d 766 n.24 (S.D.N.Y. 2018) (noting that "evidence of pretext alone . . . may well suffice to prove a violation of the APA — as Defendants themselves conceded"); *see also Long Island Head Start Child Dev. Servs. v. N.L.R.B.*, 460 F.3d 254, 259 (2d Cir. 2006) (holding that an agency may not advance a "new rationale" for a decision "for the first time on judicial review").

Because Mr. Kobach's involvement in the process of adding the citizenship question relates to the central legal issues in this case, and because Ms. Teramoto's deposition proved that no other source besides Mr. Kobach can complete the record, the Court should authorize Plaintiffs to seek a Rule 45 deposition of and limited document discovery from Mr. Kobach.

Respectfully submitted,

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Attorneys for NYIC Plaintiffs

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

STATE OF NEW YORK, et al.,

Plaintiffs,

v. 18 Civ. 2921 (JMF)

UNITED STATES DEPARTMENT OF COMMERCE, et al.,

Argument

Defendants.

----------x

NEW YORK IMMIGRATION COALITION,et al.,

Plaintiffs,

v. 18 Civ. 5025 (JMF)

UNITED STATES DEPARTMENT OF COMMERCE, et al.,

Argument

Defendants.

----------x

New York, N.Y.
July 3, 2018
9:30 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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LAW OFFICE OF ROLANDO L. RIOS
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DEPARTMENT OF LABOR
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United States Department of Justice
Civil Division, Federal Programs Branch
Attorneys for Defendants
BY: BRETT SHUMATE
KATE BAILEY
JEANNETTE VARGAS
STEPHEN EHRLICH

full scope of such materials. Accordingly, plaintiffs' request for an order directing defendants to complete the Administrative Record is well founded.

Finally, I agree with the plaintiffs that there is a solid basis to permit discovery of extra-record evidence in this case. To the extent relevant here, a court may allow discovery beyond the record where "there has been a strong showing in support of a claim of bad faith or improper behavior on the part of agency decision-makers." National Audubon Society v. Hoffman, 132 F.3d 7, 14 (2d Cir. 1997). Without intimating any view on the ultimate issues in this case, I conclude that plaintiffs have made such a showing here for several reasons.

First, Secretary Ross's supplemental memorandum of June 21, which I've already discussed, could be read to suggest that the Secretary had already decided to add the citizenship question before he reached out to the Justice Department; that is, that the decision preceded the stated rationale. See, for example, Tummino v. von Eschenbach, 427 F.Supp. 2d 212, 233 (E.D.N.Y. 2006) authorizing extra-record discovery where there was evidence that the agency decision-makers had made a decision and, only thereafter took steps "to find acceptable rationales for the decision." Second, the Administrative Record reveals that Secretary Ross overruled senior Census Bureau career staff, who had concluded -- and this is at page

1277 of the record -- that reinstating the citizenship question would be "very costly" and "harm the quality of the census count." Once again, see Tummino, 427 F.Supp. 2d at 231-32, holding that the plaintiffs had made a sufficient showing of bad faith where "senior level personnel overruled the professional staff." Third, plaintiffs' allegations suggest that defendants deviated significantly from standard operating procedures in adding the citizenship question. Specifically, plaintiffs allege that, before adopting changes to the questionnaire, the Census Bureau typically spends considerable resources and time -- in some instances up to ten years -- testing the proposed changes. See the amended complaint which is docket no. 85 in the states' case at paragraph 59. Here, by defendants' own admission -- see the amended complaint at paragraph 62 and page 1313 of the Administrative Record -- defendants added an entirely new question after substantially less consideration and without any testing at all. Yet again Tummino is instructive. See 427 F.Supp. 2d at 233, citing an "unusual" decision-making process as a basis for extra-record discovery.

Finally, plaintiffs have made at least a prima facie showing that Secretary Ross's stated justification for reinstating the citizenship question -- namely, that it is necessary to enforce Section 2 of the Voting Rights Act -- was pretextual. To my knowledge, the Department of Justice and

civil rights groups have never, in 53 years of enforcing Section 2, suggested that citizenship data collected as part of the decennial census, data that is by definition quickly out of date, would be helpful let alone necessary to litigating such claims. See the states case docket no. 187-1 at 14; see also paragraph 97 of the amended complaint. On top of that, plaintiffs' allegations that the current Department of Justice has shown little interest in enforcing the Voting Rights Act casts further doubt on the stated rationale. See paragraph 184 of the complaint which is docket no. 1 in the Immigration Coalition case. Defendants may well be right that those allegations are "meaningless absent a comparison of the frequency with which past actions have been brought or data on the number of investigations currently being undertaken," and that plaintiffs may fail "to recognize the possibility that the DOJ's voting-rights investigations might be hindered by a lack of citizenship data." That is page 5 of the government's letter which is docket no. 194 in the states case. But those arguments merely point to and underscore the need to look beyond the Administrative Record.

To be clear, I am not today making a finding that Secretary Ross's stated rationale was pretextual -- whether it was or wasn't is a question that I may have to answer if or when I reach the ultimate merits of the issues in these cases. Instead, the question at this stage is merely whether --

assuming the truth of the allegations in their complaints -- plaintiffs have made a strong preliminary or prima facie showing that they will find material beyond the Administrative Record indicative of bad faith. See, for example, Ali v. Pompeo, 2018 WL 2058152 at page 4 (E.D.N.Y. May 2, 2018). For the reasons I've just summarized, I conclude that the plaintiffs have done so.

That brings me to the question of scope. On that score, I am mindful that discovery in an APA action, when permitted, "should not transform the litigation into one involving all the liberal discovery available under the federal rules. Rather, the Court must permit only that discovery necessary to effectuate the Court's judicial review; i.e., review the decision of the agency under Section 706." That is from Ali v. Pompeo at page 4, citing cases. I recognize, of course, that plaintiffs argue that they are independently entitled to discovery in connection with their constitutional claims. I'm inclined to disagree given that the APA itself provides for judicial review of agency action that is "contrary to" the Constitution. See, for example, Chang v. USCIS, 254 F.Supp. 3d 160 at 161-62 (D.D.C. 2017). But, even if plaintiffs are correct on that score, it is well within my authority under Rule 26 to limit the scope of discovery.

Mindful of those admonitions, not to mention the separation of powers principles at stake here, I am not

inclined to allows as much or as broad discovery as the plaintiffs seek, at least in the first instance. First, absent agreement of defendants or leave of Court, of me, I will limit plaintiffs to ten fact depositions. To the extent that plaintiffs seek to take more than that, they will have to make a detailed showing in the form of a letter motion, after conferring with defendants, that the additional deposition or depositions are necessary. Second, again absent agreement of the defendants or leave of Court, I will limit discovery to the Departments of Commerce and Justice. As defendants' own arguments make clear, materials from the Department of Justice are likely to shed light on the motivations for Secretary Ross's decision -- and were arguably constructively considered by him insofar as he has cited the December 2017 letter as the basis for his decision. At this stage, however, I am not persuaded that discovery from other third parties would be necessary or appropriate; to the extent that third parties may have influenced Secretary Ross's decision, one would assume that that influence would be evidenced in Commerce Department materials and witnesses themselves. Further, to the extent that plaintiffs would seek discovery from the White House, including from current and former White House officials, it would create "possible separation of powers issues." That is from page 4 of the slip opinion in the Nielsen order. Third, although I suspect there will be a strong case for allowing a

deposition of Secretary Ross himself, I will defer that question to another day. For one thing, I think it should be the subject of briefing in and of itself. It raises a number of thorny issues. For another, I'm inclined to think that plaintiffs should take other depositions before deciding whether they need or want to go down that road and bite off that issue recognizing, among other things, that defendants have raised the specter of appellate review in the event that I did allow it. At the same time, I want to make sure that I have enough time to decide the issue and to allow for the possibility of appellate review without interfering with an expeditious schedule. So on that issue I'd like you to meet and confer with one another and discuss a timeline and a way of raising the issue, that is to say, when it is both ripe but also timely and would allow for an orderly resolution.

So with those limitations, I will allow plaintiffs to engage in discovery beyond the record. Further, I will allow for expert discovery. Expert testimony would seem to be commonplace in cases of this sort. See, for example, Cuomo v. Baldrige, 674 F.Supp. 1089 (S.D.N.Y. 1987). And as I indicated in my colloquy with Ms. Vargas, I do not read Sierra v. United States Army Corps of Engineers, 772 F.2d 1043 (2d Cir. 1985), to "prohibit" expert discovery as defendants suggestion. That case, in my view, speaks the deference that a court ultimately owes the agency's own expert analyses, but it does not speak to

the propriety of expert discovery, let alone clearly prohibit such discovery, let alone do so in a case where, as I have just done so, a finding of bad faith and a rebuttal of the presumption of regularity are at issue.

That leaves only the question of timing. I recognize that you proposed schedules without knowing the scope of discovery that I would permit. I would like to set a schedule today. In that regard, would briefly hear from both sides with respect to the schedule. Alternatively, I could allow you to meet and confer and propose a schedule in writing if you think that that would be more helpful. Let me facilitate the discussion by throwing out a proposed schedule which is based in part on your letters and modifications that I've made to the scope of discovery.

First, by July 16, I think defendants should produce the complete record as well as a privilege log and initial disclosures. I recognize that Rule 26(a)(1)(B)(i) exempts from initial disclosure "an action for review on an administrative record" but in light of my decision allowing extra-record discovery I do not read that exception to apply.

Then I would propose that by September 7, plaintiffs will disclose their expert reports.

By September 21, defendants will disclose their expert reports, if any.

By October 1, plaintiffs will disclose any rebuttal

expert reports.

And fact an expert discovery would close by October 12, 2018.

Plaintiffs also propose that the parties would then be ready for trial on October 31. My view is it's premature to talk about having a trial. For one thing, it may well end up making sense to proceed by way of summary judgment rather than trial. For another thing, I don't know if we need to build in time for Daubert motions or other pretrial motions that would require more than 19 days to brief and for me to decide. I would be inclined, instead, to schedule a status conference for sometime in September to check in on where things stand, making sure that things are proceeding apace and get a sense of what is coming down the pike and decide how best to proceed. Having said that, I think it would make sense for you guys to block time in late October and November in the event that I do decide a trial is warranted. Again, I am mindful that my word is not likely to be the final one here and I want to make sure that all sides have an adequate opportunity to seek whatever review they would need to seek after a final decision.

So that's my ruling. You can respond to my proposed schedule. I'd be inclined to set it today but if you think you need additional time.

MR. FREEDMAN: Your Honor, John Freedman. Just one clarification. I think it was clear from what you said but in

terms of the number of depositions you meant ten collectively between the two cases, not ten per case?

THE COURT: Correct. And they would be cross-designated or cross-referenced in both cases. Correct.

MR. FREEDMAN: Understood, your Honor.

THE COURT: And, again, I don't mean to suggest that you will get more, but that's not -- I did invite you to make a showing with specificity for why additional depositions would be needed. If it turns out that it is warranted, I'm prepared to allow it but, mindful of the various principles at stake and the limited scope of review under the APA, I think that it makes sense to rein discovery in in a way that it wouldn't be a standard civil action.

So, thoughts?

MR. COLANGELO: Your Honor, for the state and local government plaintiffs, we have no concerns at all.

THE COURT: Microphone, please.

MR. COLANGELO: For the state and local government plaintiffs, we have no concerns at all with the various deadlines that the Court has set out. Thank you.

MR. FREEDMAN: Your Honor, for the NYIC plaintiffs we concur. We think that it sets an appropriately expedited schedule that will resolve the issues in time and we appreciate the expedited consideration.

THE COURT: All right. Defendants.

EXHIBIT B

From: Kris Kobach [mailto[redacted]
Sent: Monday, July 24, 2017 2:43 PM
To: Teramoto, Wendy (Federal) <[redacted]
Cc: Alexander, Brooke (Federal) <[redacted]; Hernandez, Israel (Federal) <[redacted]
Subject: Re: Follow up on our phone call

Yes.

Sent from my iPhone

On Jul 24, 2017, at 1:39 PM, Teramoto, Wendy (Federal) <[redacted]> wrote:

> Kris- can you do a call with the Secretary and Izzy tomorrow at 11 am? Thanks. Wendy
>
> **From:**Kris Kobach [mailto:[redacted]
> **Sent:** Monday, July 24, 2017 12:02 PM
> **To:** Teramoto, Wendy (Federal) <[redacted]
> **Subject:** Re: Follow up on our phone call
>
> That works for me. What number should I call? Or would you like to call me?
>
> On Mon, Jul 24, 2017 at 9:12 AM, Teramoto, Wendy (Federal) <[redacted]> wrote:
>
> We can speak today at 230. Please let me know if that works. W
>
> Sent from my iPhone
>
> On Jul 21, 2017, at 4:34 PM, Kris Kobach <[redacted]> wrote:
>
> Wendy,
>
> Nice meeting you on the phone this afternoon. Below is the email that I sent to Secretary Ross. He and I had spoken briefly on the phone about this issue, at the direction of Steve Bannon, a few months earlier.
>
> Let me know what time would work for you on Monday, if you would like to schedule a short call. The issue is pretty straightforward, and the text of the question to be added is in the email below.

Thanks.

Kris Kobach

[redacted]

---------- Forwarded message ----------
From: **Kris Kobach** <[redacted]>
Date: Fri, Jul 14, 2017 at 9:12 AM
Subject: Follow up on our phone call
To: [redacted]

Secretary Ross,

Kansas Secretary of State Kris Kobach here. I'm following up on our telephone discussion from a few months ago. As you may recall, we talked about the fact that the US census does not currently ask respondents their citizenship. This lack of information impairs the federal government's ability to do a number of things accurately. It also leads to the problem that aliens who do not actually "reside" in the United States are still counted for congressional apportionment purposes.

It is essential that one simple question be added to the upcoming 2020 census. That question already appears on the American Community Survey that is conducted by the Census Burear (question #8). A slight variation of that question needs to be added to the census. It should read as follows:

Is this person a citizen of the United States?

□Yes, born in the United States

□Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas

□Yes, born abroad of U.S. citizen parent or parents

□Yes, U.S. citizen by naturalization – Print year of naturalization _____

□No, not a U.S. citizen – this person is a lawful permanent resident (green card holder)

□No, not a U.S. citizen – this person citizen of another country who is not a green card holder (for example holds a temporary visa or falls into another category of non-citizens)

Please let me know if there is any assistance that I can provide to accomplish the addition of this question. You may reach me at this email address or on my cell phone at [redacted]

Yours,

Kris Kobach

To: hilary geary[redacted]
From: Alexander, Brooke (Federal)
Sent: Wed 4/5/2017 4:24:19 PM
Importance: Normal
Subject: tonight
Received: Wed 4/5/2017 4:24:00 PM

Mrs. Ross,

Do you have plans following the Newseum? I'm asking because Steve Bannon has asked that the Secretary talk to someone about the Census and around 7-7:30 pm is the available time. He could do it from the car on the way to a dinner …

Brooke V Alexander

Executive Assistant to the Secretary

The U.S. Department of Commerce

Washington, D.C. 20230

balexander@doc.gov

202-482-[redacted] office

[redacted] cell

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 1:18-CF-05025-JMF
----------x
NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

- against -

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,

Defendants.
----------x

August 24, 2018
9:07 a.m.

Videotaped Deposition of WENDY TERAMOTO, taken by Plaintiffs, pursuant to Notice, held at the offices of Arnold & Porter Kaye Scholer LLP, 250 West 55th Street, New York, New York, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New York.

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A P P E A R A N C E S: (Continued)

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ALSO PRESENT:
CARLOS KING, Videographer

I N D E X

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which at the top says from Kris Kobach to Wendy Teramoto, CC Brooke Alexander, Israel Hernandez, date is July 24th, 2017.

And my first question is, who is Kris Kobach?

A. I would like to read the document, sir.

Q. I will withdraw the question. Let me ask you a different question. If you need to read the document to answer that question, it is fine with me.

He was vice chair of the Presidential Advisory Committee on Election Integrity and Secretary of State of Kansas; isn't that right?

A. I have no idea.

Q. All right.

A. He was vice what?

Q. Vice chair of the Presidential Advisory Commission on Election Integrity.

A. Okay.

Q. Is this the first you're hearing that?

A. Yes, sir.

Q. If I tell you he was Secretary

of State of Kansas, have you heard that before?

A. Well, I just read it right here.

Q. So you would have known that back in the day?

A. No.

Q. All right. So Kris Kobach writes an e-mail to you, if you look down that first page, July 21, 2017, he writes "Wendy, nice meeting you on the phone this afternoon. Below is the e-mail I sent to Secretary Ross" --

A. Sir, can I read the whole e-mail, please?

Q. Sure.

A. Thank you.

(Witness perusing document.)

A. Okay.

Q. All right. So there is an e-mail from Kris Kobach to you, July 21, in which he says -- he references meeting you on the phone this afternoon.

Do you recall speaking with Kris Kobach?

A. Not at all.
Q. You don't deny speaking with him?
A. I think you asked me if I remember. I don't remember talking to him.
Q. This is a different question.
You don't deny speaking with him?
A. Given this e-mail, I would assume that I spoke to him, but I don't remember ever speaking to him.
Q. All right. And he asks -- withdrawn.
He says that he had sent an e-mail to Secretary Ross and he attaches it here. You see that, correct?
A. Well, I see his e-mail to me says "Below is the e-mail that I sent to Secretary Ross."
Q. Okay.
A. So I assume however this is produced, it would have been this e-mail.
Q. All right. And one of the things that the e-mail that Kris Kobach forwards to you, one of the things in it is

the statement "It is essential that one simple question be added to the upcoming 2020 census," that's the first sentence of the second paragraph of this forwarded e-mail; do you see that?

A. The second -- the first sentence of the second paragraph that Kris Kobach sent to, I believe it is Secretary Ross, but I can't say his -- there is no e-mail address -- says "It is essential that one simple question be added to the upcoming 2020 census."

Q. All right. When you spoke with Kris Kobach, didn't he talk to you about adding a citizenship question to the census?

A. Again, I have no recollection ever speaking to him.

Q. Who did you understand Kris Kobach to be at the time?

A. I had no idea.

Q. Do you typically set up meetings with the Secretary or calls with the Secretary to people -- with people you have no idea who they are?

A. You asked me, sir, if at the time if I knew who Kris Kobach was, and I said I didn't.

Q. Correct. I have asked you a different question now.

A. Okay. Could you please repeat it?

Q. My question is, would you typically set up a call for the Secretary with somebody who you didn't know anything about who they were?

A. Well, no.

Q. Why did you do so on this occasion?

A. Here it looks as though he forwarded to me and told me who he was.

Q. Okay. And why did you set up a call with him with the Secretary?

A. At this point in time, I don't remember.

Q. It had to do with the citizenship question, didn't it?

A. He had sent an e-mail requesting a call, and I don't remember, well, it looks like I set it up, so, you

know --

Q. Ms. Teramoto, my question is simply, the call that you set up, that was for the purpose of discussing the citizenship question, correct?

A. It was -- I would have set up the call because somebody had asked for a call with the Secretary.

Q. Didn't you set it up for the Secretary in part because it was about the citizenship question?

A. I would have set up the call because somebody had asked for the call with the Secretary. It wouldn't be specifically because of a certain question.

Q. You wouldn't set up a call for anyone who asks for a call with the Secretary, would you?

A. If there is somebody who wants to speak to the Secretary and it seems like it is something that he would want to talk about, then I would set it up.

Q. So I take it he would, in your mind, he would have wanted to talk about the citizenship question?

A. I would have set up the call if somebody like this would have asked for a call with the Secretary, so if another Secretary of State had asked for some call with the Secretary, I would have tried to facilitate that.

Q. Wouldn't you have told the Secretary what the topic of the call was?

MS. WELLS: I object to the form.

A. It depends.

Q. Wouldn't you have told him what the topic of this call was?

MS. WELLS: I object to the form.

A. Somebody would have told him what the topic was.

Q. In this time period, July 2017, and earlier, hadn't you heard talk like this before that it is essential that the citizenship question be added to the census?

A. I don't remember anything specific.

Again, sir, I was not involved

CERTIFICATION

I, TODD DeSIMONE, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of August, 2018.

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TODD DESIMONE

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