

EXHIBIT A

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.

Wednesday, August 29, 2018

Deposition of:

DR. JOHN ABOWD

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 JORGENSEN,
RPR, CSR, CCR of Capital Reporting Company,
beginning at 9:06 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

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(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:

John Freedman, Esquire
Caroline Kelley, Esquire
ARNOLD & PORTER

On behalf of New York Immigration Coalition:

Dale Ho, Esquire
Sarah Brannon, Esquire
AMERICAN CIVIL LIBERTIES UNION

On behalf of Kravitz Plaintiffs:

Karun Tilak, Esquire
COVINGTON & BURLINGTON

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 LUPE Plaintiffs:

Denise Hulett, Esquire (Telephonically)

MALDEF

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Niyati Shah, Esquire

ASIAN AMERICANS ADVANCING JUSTICE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On behalf of City of San Jose & Black Alliance for
Just Immigration:

Rory Adams, Esquire

MANATT, PHELPS & PHILLIPS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ezra Rosenberg, Esquire

Dorian Spence, Esquire

LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 On behalf of State of California:

Gabrielle Boutin, Esquire

2 R. Matthew Wise

DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY
3 GENERAL

1300 I Street

4 P.O. Box 944255

Sacramento, California 94244

5 (916) 210-6053

gabrielle.boutin@doj.ca.gov

6 matthew.wise@doj.ca.gov

7 On behalf of State of New York:

Danielle Fidler, Esquire

8 Elena Goldstein, Esquire

Matthew Colangelo, Esquire

9 Alex Finkelstein, Esquire

ASSISTANT ATTORNEY GENERAL, ENVIRONMENTAL
10 PROTECTION BUREAU

[REDACTED]

11 [REDACTED]

[REDACTED]

12 [REDACTED]

[REDACTED]

13 [REDACTED]

[REDACTED]

14 On behalf of Defendants:

15 Stephen Ehrlich, Esquire

Carlotta Wells, Esquire

16 U.S. DEPARTMENT OF JUSTICE

20 Massachusetts Avenue

17 Washington, D.C. 20530

(202) 305-9802

18 stephen.ehrlich@usdoj.gov

carlotta.wells@usdoj.gov

19

20

21

22

Page 7

1 Michael Cannon, Esquire
2 U.S. DEPARTMENT OF COMMERCE, OFFICE OF THE
3 ASSISTANT GENERAL COUNSEL FOR FINANCE &
4 LITIGATION
5 1401 Constitution Avenue, NW
6 Room 5890
7 Washington, D.C. 20230
8 (202) 482-5395
9 mcannon@doc.gov
10
11
12
13
14
15
16
17
18
19
20
21
22

VIDEOGRAPHER: Dan Reidy

1 P R O C E E D I N G S

2 WHEREUPON,

3
4 VIDEOGRAPHER: Good morning. We're going
5 on the record at 9:06 a.m. on Wednesday August 29,
6 2018. Please note that the microphones are
7 sensitive and may pick up whispering and private
8 conversations. Please turn off all cell phones
9 and place them away from the microphones, as they
10 can interfere with the deposition audio. Audio
11 and video recording will continue to take place
12 unless all parties agree to go off the record.

13 This is Media Unit 1 of the video
14 recorded deposition of Dr. John Abowd taken by
15 counsel for the plaintiff in the matter of the
16 New York Immigration Coalition, et al., v.
17 United States Department of Commerce, et al. This
18 case is filed in the U.S. District Court of the
19 Southern District of New York. This deposition is
20 being held at the law offices of Arnold & Porter
21 located at 601 Massachusetts Avenue Northwest,
22 Washington, D.C. 20001.

1 My name is Dan Reidy from the firm
2 Veritext Legal Solutions, and I'm the
3 videographer. The court reporter is
4 Karen Jorgenson from the firm Veritext Legal
5 Solutions.

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

10 Also, counsels' appearances will be noted
11 on the stenographic record rather than orally at
12 this time.

13 Will the court reporter please swear in
14 the witness?

15 DR. JOHN ABOWD,
16 called as a witness, and having been first duly
17 sworn, was examined and testified as follows:

18 THE WITNESS: I do.

19 EXAMINATION BY MR. HO:

20 Q Dr. Abowd, before we get started, I just
21 want to confirm something on the record with your
22 counsel.

1 A Yes.

2 Q And any time you want to take a break is
3 okay. The only exception to that is if I posed a
4 question to, or if anyone else has, to answer that
5 question before your break; is that okay?

6 A Yes.

7 Q Great. You understand that you're
8 testifying today as a representative of the
9 Census Bureau, right?

10 A I do, yes.

11 Q As a representative of the Census Bureau,
12 you'd agree that question sequencing can affect
13 the response rate to a survey, right?

14 A Yes.

15 Q So, in other words, you would agree that
16 if you preface one question, another question or
17 questions, that would affect the survey response
18 rate, right?

19 A Yes.

20 Q And as representative of the
21 Census Bureau, you'd agree that question
22 sequencing can affect the accuracy of responses to

1 that question survey, right?

2 MR. EHRLICH: Objection. Form.

3 THE WITNESS: I understood your question
4 to be that the sequence of questions on a
5 questionnaire can affect the data quality produced
6 by that questionnaire. If that's what your
7 question was, my answer is yes.

8 BY MR. HO:

9 Q Great. So you'd agree that if you
10 preface one question with another particular
11 question or questions, that that could affect the
12 data quality in terms of the accuracy of the
13 response to the question, right?

14 A Yes.

15 Q You'd agree that question sequencing can
16 affect the response rates to a survey in ways that
17 you wouldn't necessarily anticipate at the
18 question drafting stage, right?

19 A Yes.

20 Q And one way you would know that -- sorry.
21 Let me start that again.

22 One way that you would know whether

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1 question sequencing affected response rates would
2 be to test a question in the sequence that it's
3 going to be asked, right?

4 A Yes.

5 Q I want to show you a document, we'll mark
6 it as Exhibit 1.

7 (Plaintiffs' Exhibit 1, Questionnaire for
8 the American Community Survey, was marked.)

9 BY MR. HO:

10 Q Dr. Abowd, this is the questionnaire for
11 the American Community Survey downloaded from the
12 Census Bureau website. Does that look correct to
13 you?

14 A The document I see is the current paper
15 form of the American Community Survey.

16 Q Okay. Could we turn to Page 8 of the ACS
17 survey? And in the left-hand column, Question
18 Number 8 is a question about citizenship; is that
19 right?

20 A Yes. That's correct.

21 Q Now, Question Number 7, the question that
22 immediately precedes the question -- the

1 citizenship question, is a question about where
2 the person was born; is that right?

3 A Yes. That's correct.

4 Q Now, you said this is the print version
5 of the ACS survey questionnaire, right?

6 A Yes. That's correct.

7 Q There's also an Internet version of the
8 ACS questionnaire, right?

9 A Yes.

10 Q Now, if someone answers
11 Question Number 7, the question about where a
12 person was born and says that the person was born
13 in the United States, while taking the Internet
14 ACS survey questionnaire, does that person then
15 see Question Number 8, the question about whether
16 or not the person is a citizen?

17 A No.

18 Q So if someone says --

19 A Excuse me for a second.

20 THE WITNESS: I'm trying to speak up. If
21 you can't hear me, let me know. When my voice
22 fades -- I noted it just fade- -- I have to think

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1 place of birth, right?

2 A It's in the next column. The 1950
3 questionnaire was filled out by an enumerator, not
4 by the householder. So the exact order in which
5 the enumerator filled it out isn't controlled by
6 the way you see the questions.

7 Q So looking at the 1950 census
8 questionnaire, we don't know how -- what sequence
9 an enumerator asked the questions in; is that
10 right?

11 A Well, we would know from the field
12 training instructions, but I was not able to
13 locate them.

14 Q But if you just look at the questionnaire
15 itself --

16 A I agree, they're sequential.

17 Sorry. I should have let you finish.

18 Q Is it fair to say the questions about
19 citizenship on the ACS, the 2000 long form and in
20 the 1950 census questionnaire, are preceded by a
21 question about place of birth?

22 A Yes.

1 Q Now, as planned, the question about
2 citizenship on the 2020 decennial questionnaire,
3 that's the same citizenship question as
4 Question Number 8 on the ACS; is that right?

5 A I'm only verifying the question numbers,
6 because I don't have it memorized.

7 Q Sure. It's on Page 8.

8 A Yes. That's correct.

9 Q At present, there are no plans to add a
10 place of birth question to the decennial census
11 questionnaire, right?

12 A That's correct.

13 Q There has been no cognitive testing of
14 this citizenship question without a question about
15 place of birth; is that right?

16 MR. EHRLICH: Objection. Form.

17 THE WITNESS: I'm not prepared to answer
18 whether there has been no cognitive testing of
19 this question without being preceded by what we
20 would call a nativity question. In the
21 experiments and the evaluations that the
22 Census Bureau has been able to locate, the survey

1 testing has not been conducted without a nativity
2 question preceding the citizenship question.

3 BY MR. HO:

4 Q So you're not aware of any testing -- any
5 cognitive testing of the citizenship question
6 without a preceding question about nativity; is
7 that right, Dr. --

8 A I'm not aware of -- sorry. I'm not aware
9 of any, no.

10 Q Are you aware of any prior census in
11 which cognitive testing of the full short form
12 questionnaire had not been conducted before using
13 that questionnaire for the actual census?

14 A I am not aware of any -- well, let me be
15 careful.

16 Many censuses were conducted without
17 cognitive testing, the equivalence of cognitive
18 testing existed for much of the 20th century. In
19 preparing for this deposition, I reviewed the
20 generic answer to the question, how was this
21 tested, and in some cases, that question elicited
22 some cognitive testing, for example, the

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1 Current Population Survey, and the
2 American Community Survey. In other cases,
3 historical censuses back in the '80s, '70s and
4 '60s, no one could produce cognitive testing.

5 Q So --

6 A I didn't specifically ask -- I asked, any
7 testing? And what I got was the sort of standard
8 protocol testing.

9 Q So you're not aware of any
10 circumstance -- any previous decennial
11 census -- excuse me. Let me start that again.
12 Since there's been cognitive testing of
13 the decennial short form questionnaire, you're not
14 aware of any time in which a full short form
15 questionnaire has been deployed without
16 cognitively testing that full short form
17 questionnaire, are you, Dr. Abowd?

18 A I need to answer that question in a more
19 nuanced form.

20 I am not certain that the full
21 questionnaire was cognitively tested for the
22 period in which the question appeared on the long

1 form. I am certain that the questions for the
2 American Community Survey and the 2010 census were
3 put through the full battery of the tests.

4 If you would like, during the break, I
5 will call and ask for cognitive testing of the
6 censuses prior to the 2010.

7 Q Well, so just stick with the 2010. The
8 full short form census enumeration questionnaire
9 was cognitively tested before being deployed for
10 the actual 2010 census, correct?

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11 A That is my understanding. But it may
12 have been question by question. I will -- I will
13 actually, during a break, ask a more specific
14 question about the form of the testing.

15 Q Dr. Abowd, has there been any field
16 testing of the citizenship question that's going
17 to be used on the 2020 census without a prefatory
18 question about nativity?

19 A No.

20 Q And there's been no field testing of the
21 full 2020 census questionnaire, including the
22 citizenship question, correct?

1 A That's correct.

2 Q And before the 2010 census, as far as you
3 know, there was field testing of the full short
4 form census questionnaire, right?

5 A Yes.

6 Q At present, there are no plans for field
7 testing of the full 2020 census questionnaire,
8 including the citizenship question; is that right?

9 A That's correct.

10 Q Why not?

11 A In May of 2016 the -- Enrique Lamas, the
12 associate director for demographic programs, who
13 is performing the nonexclusive functions and
14 duties of the deputy director -- and I'm going to
15 call him the acting deputy director from now on --
16 the acting deputy director asked Victoria Velkoff,
17 the chief of the American Community Survey Office,
18 to design a field experiment for the census
19 questions in the exact ACS form and without a
20 lead-in nativity question using the experimental
21 components of the American Community Survey, which
22 allow us to deploy test instruments without

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1 that there is no longer a valid use case for
2 producing an information product based on the
3 answer to that question.

4 Another reason might be because there's
5 an alternative way of developing as good or better
6 quality information product without asking the
7 question on the survey. I anticipate -- but this
8 is a predetermining decision-making process that
9 hasn't happened -- that there would be a
10 continuing valid-use case for citizenship data.
11 So even if we took it off the American Community
12 Survey, we would not stop producing statistical
13 information products that contain citizenship
14 data.

15 BY MR. HO:

16 Q Let's talk about some of those
17 information products. Now, the Census Bureau
18 produces various data files for redistricting
19 purposes, right, Dr. Abowd?

20 A Yes.

21 Q And one of those redistricting data
22 products by the Census Bureau is the P.L. 94-171

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1 data file, right?

2 A Yes.

3 Q The Department of Justice uses the
4 P.L. 94-171 data file; is that your understanding?

5 A Yes.

6 Q And the P.L. 94-171 data file is also
7 available to the public, right?

8 A Yes.

9 Q The P.L. 94-171 data file has information
10 in it concerning the population and
11 characteristics of people at various levels of
12 census geography, including census blocks, right?

13 A Correct.

14 Q And the PL 94-171 data file is based on
15 responses to the decennial enumeration, correct?

16 A Correct.

17 Q The P.L. 94-171 data file is considered
18 reliable, correct?

19 MR. EHRLICH: Objection. Form.

20 THE WITNESS: The P.L. 94-171
21 redistricting data are produced under the law of
22 the same name by negotiation between the

1 Census Bureau redistricting office and 51 state
2 and the Washington, D.C. redistricting offices to
3 meet the requirements of redistricting legislative
4 districts in the states. The Census Bureau
5 provides data to the states and District of
6 Columbia in the support of redrawing every
7 legislative district in the country.

8 BY MR. HO:

9 Q Dr. Abowd, the Census Bureau doesn't
10 consider the P.L. 94-171 data file unreliable,
11 does it?

12 A No. I was trying to state the use case
13 for which reliable is defined, but I forgot to
14 finish my answer.

15 We believe that the P.L. 94-171 data are
16 reliable for redistricting and reliable for their
17 Department of Justice Voting Rights Act
18 enforcement uses.

19 Q The P.L.94-171 data file has never had
20 citizenship data in it; is that correct?

21 A That is correct.

22 Q Now, another redistricting product

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1 produced by the Census Bureau is the special
2 tabulation of CVAP and other ACS data; is that
3 right?

4 A So that's not technically right.

5 Q Okay.

6 A The redistricting office initially
7 request -- initially assisted the
8 Department of Justice in the design and production
9 of a special tabulation of Citizen Voting Age
10 Population by Race and Ethnicity and at the block
11 group level. I'm just going to say CVAP from now
12 on.

13 CVAP, because of a use case that the
14 Department of Justice had, it was subsequently put
15 into regular production, so it's produced
16 regularly. And its timing is now such that it can
17 be used in conjunction with the P.L. 94-171 data,
18 but no statute obligates the production of CVAP
19 and no statute obligates the negotiation with part
20 of government on to its form and content.

21 Q That special tabulation of CVAP data
22 is available to the public, right, Dr. Abowd?

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1 A So I just corrected your word of special
2 tabulation. It's a regular tabulation now.

3 Q Sorry. Thank you.

4 A And yes. It and all tabulations released
5 for any purpose are released to everyone.

6 Q The tabulation of CVAP data, it's
7 considered reliable by the Census Bureau, right?

8 MR. EHRLICH: Objection. Form.

9 THE WITNESS: The Census Bureau -- the
10 CVAP table, as produced from the American
11 Community Survey, is tabulated at the block group
12 level with margins of error. And so it is
13 incumbent upon the user of the CVAP table to
14 understand the limitations of data that are
15 produced with margins of error and to use them in
16 a manner that they're fit for.

17 BY MR. HO:

18 Q The estimates and margins of error in the
19 tabulation of CVAP data produced by the
20 Census Bureau are considered accurate by the
21 Census Bureau, right, Dr. Abowd?

22 MR. EHRLICH: Objection. Form.

1 THE WITNESS: The estimates in the CVAP
2 table are considered correct by the Census Bureau.
3 Meaning, that they were processed from the
4 American Community Survey according to a survey
5 design that was properly executed, and the steps
6 that were taken in the post processing of those
7 results are also according to the survey design.
8 So that when they are estimated, that is the
9 proper design estimate, and when this margin of
10 error is released, that is the number that we
11 believe is an appropriate indication of the
12 90 percent confidence interval.

13 BY MR. HO:

14 Q Now, the data in that tabulation, that's
15 based on five-year pooled ACS data; is that
16 correct?

17 A The CVAP is produced from what we call
18 the five-year ACS data, which is a rolling
19 five-year window on the American Community Survey.

20 Q The tabulation of CVAP data is not based
21 on a single year of ACS respondents, correct?

22 A That's correct.

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1 Q Why is the tabulation based on five-year
2 ACS pooled estimates instead of single-year
3 estimates?

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4 A In the design of the American Community
5 Survey tabulations that are produced using a
6 single year of data, we only believe sufficiently
7 reliable for communities that are at least 65,000
8 population.

9 Q Now, unlike the P.L. 94-171 file, the
10 tabulation of CVAP data obviously includes
11 citizenship information, right, Dr. Abowd?

12 A Yes.

13 Q Now, prior to the December 2017 letter
14 from Arthur Gary at the Department of Justice, had
15 you ever heard any suggestion that the citizenship
16 data contained in the tabulation of CVAP was
17 insufficient for the purposes of DOJ's
18 Voting Rights Act enforcement?

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19 A From the Department of Justice, no.

20 Q Had you heard that the -- let me start
21 again.

22 Prior to the 2017 Gary letter, had you

1 of them. I recall talking to Professor Gary King
2 at Harvard. Professor Mike -- I believe his last
3 name is McMahn, at the University of Florida.

4 Q Could it be Mike McDonald at Florida?

5 A That's it.

6 And the chief of the bipartisan
7 commission at -- in California. I remember her
8 title but not her name. And I don't have notes.

9 And I may have talked to some others, but
10 it was those three primarily, especially the
11 California one. She was able to give me very
12 detailed use cases. Not actual code, but
13 precisely how they combined various things.

14 Q Let's talk about you mentioned disclosure
15 avoidance. I want to ask you a couple questions
16 about that.

17 The citizenship data in the CVAP
18 tabulation, I believe you said before, those are
19 estimates at the block group level, correct?

20 A That's correct. Technically, so are the
21 P.L. 94-171, but they're official estimates.

22 Q Now -- but the difference is, the P.L. 94

1 data, that data doesn't have error margins
2 associated with it in the way that the CVAP
3 tabulation, which is based on a survey sample does
4 have error margins, correct?

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5 A The P.L. 94-171 data are not sample
6 based. They do have margins of error. We don't
7 discuss it very much, but they're not -- they're
8 not because of the sample. They're because of the
9 statistical methods that intervene in converting
10 the responses to tabular data, including
11 disclosure avoidance. The CVAP table is based on
12 a multistage probability sample, and so it has a
13 design that implies that it has a sampling error.
14 And it is the sampling error that we tabulate in
15 our margins of error.

16 Q Okay. So just to be clear about the
17 different data forms. The P.L. data, that has
18 some errors associated with it, right?

19 A Yes.

20 Q It doesn't have the kind of standard
21 error associated with an estimate based on a
22 statistical sample, right?

1 A It doesn't have sampling error.

2 Q Thank you.

3 The tabulation of CVAP data does have
4 sampling error associated with it, correct?

5 A Yes.

6 Q So when you publish the CVAP tabulation,
7 you're not publishing any particular person's
8 responses to the ACS citizenship question in a way
9 that would enable you to identify that person's
10 responses, correct?

11 A If we did not apply disclosure avoidance
12 prior to the tabulation, then the CVAP table, as
13 well as the P.L. 94 tables, would be subject to
14 reidentification risks.

15 Q So what are the disclosure avoidance
16 steps that are used for the tabulation of CVAP
17 data?

18 A The CVAP data are tabulated from the
19 production of the American Community Survey Office
20 tabulation system. The exact specification for
21 the disclosure avoidance that has been applied to
22 them is confidential and I can't give you those

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1 specifications. What we say in our technical
2 documents is that we apply household-level
3 swapping and some synthetic data noise infusion.

4 Q Let's talk about those two things.
5 What's household-level swapping?

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6 A Household-level swapping means that the
7 certain variables on the household record, not the
8 person record, certain variables on the household
9 record are matched to variables on a household
10 record in a different geographic area. And if the
11 household is selected for swapping, and when the
12 match is found, essentially all the values are
13 swapped, except the address ID. So it looks as if
14 the data from a different address lived at the
15 address of the original and vice versa.

16 Q So when you're building the CVAP
17 tabulation, in some cases, it's based on data
18 that's been swapped between two households where
19 the ACS citizenship response for one household has
20 been swapped with another; is that right?

21 A I am only allowed to tell you the
22 variables that are used in the swap that are in

1 public documents. And I told you what was in the
2 public documents.

3 Q Okay.

4 A So the swap controls for family size, for
5 the number of persons in -- not family size. That
6 was not a correct technical term.

7 Q Household?

8 A Household size. Thank you.

9 And the number of members of the
10 household above voting age -- voting age or above.

11 Q When households are swapped, at what
12 level of geography are they swapped?

13 A I'm only allowed to say that the search
14 is over nearby geographic regions.

15 Q So you're not swapping someone from Maine
16 with someone in Arizona?

17 A I'm also allowed to say that the swap
18 never crosses state lines.

19 Q Does the swap ever cross county lines?

20 A If you can produce a technical document
21 that says it does or doesn't, I can confirm it. I
22 can't remember ever reading that, one way or

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1 another.

2 Q And can you say, one way or another,
3 whether or not the swap ever occurs across census
4 block group lines?

5 A I have read a lot of the public
6 documents. I have also read a lot of the
7 confidential documents. I do not recall any
8 public document explicitly saying anything other
9 than we don't swap across state boundaries.

10 Q And do -- so that would -- okay.
11 Thank you.

12 Well, does swapping ever occur between
13 census blocks?

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: Of course swapping occurs
16 across census blocks, because there would be no
17 point in it otherwise.

18 BY MR. HO:

19 Q You mentioned synthetic data noise
20 infusion for disclosure avoidance. Can you
21 describe what you mean by that?

22 A There are two methods of doing that. The

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1 one that is used in the American Community Survey
2 is to develop a model for when a particular record
3 or item on a record is sensitive. The models are
4 more precise, but, again, their parameters are not
5 confidential. Basically, you think of extreme
6 values as sensitive.

7 And then the statistical model replaces
8 the sensitive value with a value that's sampled
9 from the model and from the error distribution of
10 the model.

11 Q The plan after collecting the citizenship
12 responses from the enumeration is to deliver
13 block-level citizenship data to the
14 Department of Justice for the purposes of VRA
15 enforcement, right, Dr. Abowd?

16 A Yes.

17 Q The block-level citizenship data that the
18 Census Bureau is going to deliver to the
19 Department of Justice, will that be based
20 primarily to the citizenship question on the
21 decennial enumeration questionnaire?

22 A The internal expert panel has been

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1 charged explicitly with determining both the
2 processing of the answers to the citizenship
3 question in the internal files and the formulation
4 for the CVAP table at the block level.

5 Q So as of right now, a decision has not
6 been made yet as to whether or not the CVAP
7 table -- table that is produced to the
8 Department of Justice is going to be based
9 primarily on responses to the citizenship question
10 on the decennial enumeration or on a different
11 source; is that right, Dr. Abowd?

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12 A With one correction. We are not
13 producing a CVAP for the Department of Justice.
14 We are producing a CVAP table at the block level
15 as a public use product.

16 Q But otherwise, the answer to my question
17 is yes?

18 A We have not made a decision on the way in
19 which we will aggregate the data to the block
20 level.

21 Q Other than responses to the citizenship
22 question on the decennial questionnaire, what

1 other data sources might you use in the production
2 of the block-level CVAP table?

3 A We have said that we will use
4 the -- what's called the census NUMIDENT data. In
5 addition, we are negotiating with the
6 U.S. CIS -- Customs and Immigration Service, did I
7 expand it right -- U.S. CIS and with the
8 State Department to acquire additional citizenship
9 data and data on visas that have been issued to
10 legal visitors to the United States.

11 Q Is it fair to say that it has not yet
12 been decided precisely how the block-level CVAP
13 table will be assembled?

14 A That's correct.

15 Q Has it been decided whether or not the
16 block-level CVAP data will be included in the
17 P.L. 94-171 data file?

18 A It has not.

19 Q Let me show you a document. We'll mark
20 this as Exhibit 4.

21 (Plaintiffs' Exhibit 4, Federal Register
22 notice, was marked.)

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1 BY MR. HO:

2 Q This is a Federal Register notice. This
3 is a Federal Register notice from the
4 Department of Commerce on proposed information
5 collection and a comment request and the 2020
6 census.

7 Have you seen this document before?

8 A Yes, I have.

9 Q I want to turn to the second page of the
10 document -- oh, sorry, just for the record, it's
11 dated June 8, 2018, and the first page on it is
12 26643.

13 I'd like to turn to the second page of
14 the document, that's Page 26644. And the middle
15 column, the second paragraph, about halfway down
16 there is a sentence that starts with "If
17 stakeholders."

18 Do you see that?

19 A Yes.

20 Q The sentence reads, "If stakeholders such
21 as the National Conference of State Legislatures
22 elect to receive tabulations of citizenship data,

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1 the Census Bureau will make/require" -- I think
2 that's a typo -- "a change" -- "a design change to
3 include citizenship as part of the Public Law
4 94-171 redistricting data file."

5 So I want to ask you a question about
6 that sentence. If stakeholders do elect to
7 receive citizenship data, what kind of design
8 change can be made to the P.L. 94-171 file to
9 include citizenship information at the census
10 block level?

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11 A So I was, of course, aware of that
12 sentence. The way that redistricting office
13 interacts with the National Conference of
14 State Legislatures, as is described in the
15 statute, as I understand it, is to attempt to meet
16 their data needs, and their data needs are
17 specifically what's required to redraw legislative
18 districts. So that's why the redistricting office
19 worked with the American Community Survey office
20 to get the CVAP tabulation to be released in a
21 timely manner with respect to redistricting in the
22 first place.

1 My understanding -- careful. I was told
2 very carefully -- the Census Bureau's
3 understanding is that if the partners, the
4 National Conference of State Legislatures, wish to
5 receive the CVAP table at the block level,
6 simultaneous with the P.L. 94-171 tabulation --
7 that we announced the design of a previous
8 Federal Register notice, but I don't know the
9 notice number -- that we would facilitate that.

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10 Since the tabulations are all done using
11 census geography, there are a number of relatively
12 straightforward ways to facilitate simultaneous
13 release and use of a CVAP block-level table and
14 the P.L. 94-171 table that we've prespecified in a
15 previous Federal Register notice.

16 Q Have there been any conversations with
17 the Department of Justice about the format in
18 which the Census Bureau will deliver block-level
19 citizenship data?

20 A I believe the answer to that question is
21 no. There have been meetings with the
22 Department of Justice, and they have been about

1 the form of the CVAP and P.L. 94 data, but I don't
2 believe we've had any specific discussion about
3 the format. I believe that we presume that our
4 data production systems, when we say we're going
5 to deliver data at the block level, we'll deliver
6 data at the block level in a way that the
7 receiving users already understand how to use. So
8 we're planning to disseminate the products in
9 CEDSCI system at the block level and that's the --
10 that is the distribution medium that we would be
11 working towards using. No one has mentioned that
12 that's problematic.

13 Q I'm sorry. I think I probably asked the
14 wrong question.

15 A That's possible.

16 Q So --

17 A I hope I answered the right one.

18 Q We talked earlier about how the
19 Census Bureau has not yet determined how it's
20 going to assemble the CVAP tables, whether it will
21 be based on the census enumeration questionnaire
22 responses, some other data source, what mix of

1 those things.

2 Do you remember that, Dr. Abowd?

3 A Yes.

4 Q Have there been conversations with the
5 Department of Justice about how the
6 Department -- sorry -- how the Census Bureau is
7 going to assemble that block-level CVAP data, that
8 is, whether it will be based on the enumeration
9 questionnaire responses or the administrative data
10 or something else?

11 A There have been conversations with the
12 voting rights division or branch -- I'm not sure
13 which -- the voting rights section of the
14 Department of Justice about the consequences of
15 the disclosure modernization on the tabular data.
16 And so we were trying to educate them on that.
17 That doesn't affect how the census responses and
18 the administrative data might be combined to
19 produce those tabular data. There's a variety of
20 ways in which they can be combined that are going
21 to result in tabular data with the same
22 statistical properties.

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1 Q So just to be clear, there have been no
2 conversations with the Department of Justice about
3 how the different forms of citizenship data are
4 going to be combined for purposes of assembling
5 the CVAP table?

6 A None that I'm aware of, and during a
7 break, I'll ask to make sure there aren't some
8 that I wasn't aware of.

9 Q Now, you did mention some conversations
10 between the Census Bureau and the voting section
11 at DOJ. Who were those conversations between,
12 both on the DOJ and the census side?

13 A So the meeting was arranged by
14 James Whitehorne, who is the chief of the
15 redistricting office. On the Census Bureau side,
16 a number of experts were present, primarily
17 disclosure avoidance experts, but there were also
18 subject matter experts present. On the DOJ side,
19 the chief of the section was present and staff
20 familiar with the Voting Rights Act.

21 Q Was Mr. Whitehorne present at that
22 meeting?

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1 A I believe the answer to that is no,
2 because James has been inviting me to those, but I
3 will also check to make sure.

4 Q Roughly, how long did the meeting last?

5 A About an hour.

6 Q Where was it?

7 A DOJ.

8 Q Just backing up for a moment, a census
9 block is the lowest level of census geographic,
10 correct?

11 A Correct. Tabular geographic.

12 Q Census block could have as few as ten
13 people in it, right, Dr. Abowd?

14 A A census block can have no people in it.

15 Q And a census block could have one person
16 in it, right?

17 A That's also correct.

18 Q I want to show you a document -- let's
19 mark this as Exhibit 5.

20 (Plandiffs' Exhibit 5, Map, was marked.)

21 BY MR. HO:

22 Q I will represent to you this is a map

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1 derived from census data on the Census website.
2 It was produced by adjoining tiger files with the
3 P.L. 94 data file after the 2010 census, and it's
4 a map of an area in Fort Myers, Florida.

5 So you recognize the rectangles and other
6 shapes on this map as census blocks, right,
7 Dr. Abowd?

8 A Well, I can't independently verify that,
9 but certainly looks like it's right.

10 Q And some of these census blocks have no
11 people in them, some of them have just a single
12 person on it, right?

13 A Are you asking me to say that the number
14 that's sitting in the middle there is a population
15 count?

16 Q I'll represent to you that that's -- that
17 the numbers are population counts, and assuming
18 that that's correct, some of the census blocks
19 represented on this map have only one person on
20 them, right, Dr. Abowd?

21 A Yes. I found a singleton.

22 Q Let's talk about that singleton. Now,

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1 you'd agree with me, Dr. Abowd, that if you
2 publish citizenship information at the block level
3 based on the responses to the decennial
4 enumeration solely -- so ignore the administrative
5 data for a second -- then any singleton, any
6 person who is the one individual on a census
7 block, you would be publicizing that person's
8 response to the citizenship question, correct?

9 A No.

10 MR. EHRLICH: Objection. Form.

11 THE WITNESS: No.

12 BY MR. HO:

13 Q Why not?

14 A Hasn't been correct since 1990.

15 Q Please explain to me why that's the case.

16 A Even before we considered the citizenship
17 variable, that one person, that household that has
18 only one person in it, had other characteristics,
19 and the goal of our disclosure avoidance system
20 has been to inhibit a user's ability to say that
21 the person identified as that one count here has
22 these characteristics.

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1 In 2000 and 2010, that was accomplished
2 by swapping, primarily. In 2020, that's going to
3 be accomplished by what's called differential
4 privacy. They amount to similar goals. One is a
5 more hardened technique.

6 Q Uh-huh.

7 A But, basically, if you do it properly,
8 then everything is an estimate and nothing is an
9 exact tabulation of what happened there.

10 Q Okay. So for these singletons, when you
11 publish block-level CVAP data, a census block with
12 one person on it and you publish data that shows
13 whether or not that person is a citizen, you're
14 telling me that's not going to disclose that
15 person's actual citizen status?

16 A It's not even going to be that person's
17 actual citizenship value for any person.

18 Q So the -- just to be clear -- I just want
19 to be clear about this. The CVAP block-level data
20 that gets produced by the Census Bureau, in some
21 cases, the block-level citizenship values that are
22 reported on that table are not going to be the

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1 actual citizen statuses of the person or persons

2 on that census block; is that right?

3 A No, not in some cases. In all cases.

4 Q Okay.

5 A There won't be a single block in which

6 the citizenship variables or the race and

7 ethnicity variables are the values reported by the

8 people who live there.

9 Q So I'm new to this, so I just -- forgive

10 me.

11 A You're not the only one.

12 Q I want to come back to that.

13 But just explain this to me like a fifth

14 grader, okay? When you publish -- after the 2020

15 enumeration, when you publish block-level

16 citizenship data and you say X number of people on

17 a particular census block, whether it's one out of

18 one people, eight of ten people, whatever the

19 number is, are citizens, according to the table,

20 that table will not accurately reflect the

21 citizenship status of the people enumerated in

22 those citizen blocks; is that right, Dr. Abowd?

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1 A No. But I'm actually going to treat you
2 like a college-aged person and not a fifth grader.

3 Q Let me just get a clarity on what the no
4 was, no. No, I was not right or no --

5 A That's correct. No, you were not right.

6 Q Please explain to me.

7 A The use case for block-level data is not
8 that when I take a microscope to the census and I
9 look at a block, the answers I get there are right
10 for that block. That would be enormously
11 disclosive and would be almost impossible to
12 prevent reidentification of the confidential Title
13 13 data, and we haven't done that -- we didn't do
14 it in 2010. We didn't do it in 2000.

15 What has happened between 2010 and 2020
16 is that we now actually know how to produce
17 block-level data that are suitable for their use
18 without having to put the exact -- what you call
19 accurate, but I think you really mean exact
20 tabulation in that block. It's too dangerous in
21 terms of the confidentiality of the underlying
22 records to put the exact tabulation there. So you

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1 have to introduce randomness, and what -- we
2 introduced that randomness through a swapping
3 system in 2010 and in 2000. We're replacing that
4 swapping system with a system that introduces the
5 randomness in a much more controlled way for 2020.
6 Such that, as you take those blocks -- even though
7 the block number is going to be noisy and we're
8 going to tell you how noisy it is -- when you add
9 them up to voting districts, the more people that
10 are in that voting district, the more accurate
11 estimate you get of all of the things you're
12 trying to tabulate. Not just citizenship,
13 race/ethnicity.

14 Q Just to clarify my understanding again,
15 my question wasn't about fitness of use. My
16 question was just about exact measurement.

17 And is it correct that after you received
18 the decennial enumeration questionnaire responses
19 and you tabulate CVAP data at the block level,
20 that the numbers that you produce for CVAP at
21 particular census blocks will not reflect the
22 exact actual values of the number of citizen of

1 voting age at each of those census blocks?

2 A Could you read his question back to me?

3 (Thereupon, the reporter read the record
4 as requested.)

5 THE WITNESS: As read to me, that
6 statement is correct.

7 BY MR. HO:

8 Q Another way to put it is, after you
9 tabulate the CVAP data at the block level, those
10 CVAP numbers at the block level will have error
11 margins associated with them, right, Dr. Abowd?

12 A That's correct.

13 Q Now, in your previous deposition, I
14 remember reading that you discussed that there is
15 sometimes disagreement between a person's
16 citizenship status as reflected in the NUMIDENT
17 data and the person's response to the citizenship
18 question on the ACS; is that right?

19 A That's correct.

20 Q I want to show you a document. We'll
21 mark this as Exhibit 6.

22 (Plaintiffs' Exhibit 6, Email thread, was

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1 Q Do you know anything about their
2 reputation as political scientists or -- social
3 scientists? I'm sorry.

4 A I remember looking at the article and
5 noting where it was published, but I did not look
6 at the research activities of the authors.

7 Q Let me show you another document. We'll
8 mark this as Exhibit -- this is going to get a
9 little confusing now. I'm going to mark this as
10 Exhibit 7. This was Exhibit 6 in your previous
11 deposition. This was your January 19, 2018 memo.
12 (Plaintiffs' Exhibit 7, January 19, 2018
13 memo, was admitted into evidence.)

14 THE WITNESS: Yes, it is.

15 BY MR. HO:

16 Q Okay. I want to ask you about Page 7 of
17 the document, which is AR1282. You know, I'm
18 sorry, I think I have the wrong page number here.

19 It's Page 12 -- AR1283. It should be the
20 second paragraph after the Header C1, quality of
21 administrative record versus self-report
22 citizenship status.

1 A The paragraph that begins "For all of
2 these analyses"?

3 Q Yes.

4 A Okay.

5 Q Now, the second sentence here reads, "The
6 NUMIDENT data contained information on every
7 person who has ever been issued a Social Security
8 number or an individual taxpayer identification
9 number. Since 1972, SSA has required proof of
10 citizenship or legal resident alien status from
11 applicants. We use this verified citizenship
12 status as our administrative citizenship
13 variable."

14 I want to ask you about what you wrote
15 there. You described citizenship status in the
16 NUMIDENT data as verified, right, Dr. Abowd?

17 A Yes.

18 Q And you described citizenship status as
19 reported in the NUMIDENT as verified, because
20 everyone who obtains an SSN or an ITIN has had to
21 show a document concerning their citizenship or
22 legal noncitizenship status, correct?

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1 A Correct.

2 Q So if someone shows up in the NUMIDENT as
3 a noncitizen, just to put this in plain language,
4 that's because the Social Security Administration
5 records reflect that a document has been shown
6 identifying that person as a noncitizen, right?

7 MR. EHRLICH: Objection to form.

8 THE WITNESS: No. It's the citizenship
9 status that's been documented or if you add an
10 ITN, the eligibility for an ITIN.

11 BY MR. HO:

12 Q And the eligibility for an ITIN, if that
13 record in the NUMIDENT indicates that a person is
14 a noncitizen, it's because they've submitted a
15 document that indicates that they're a noncitizen,
16 right?

17 A Correct.

18 Q Now, in your view, if someone is
19 identified as a noncitizen in the NUMIDENT, that
20 reflects that person's current noncitizenship
21 status except for where there's a lag time between
22 when a noncitizen naturalizes and when the SSA

1 updates the person's record to reflect that change
2 in status, correct?

3 A Approximately correct. Not everyone is
4 obligated to notify SSA of a change in their
5 status. So the things you said, plus the
6 possibility that it never gets updated.

7 Q Generally speaking, you would agree that
8 if someone is denoted in the NUMIDENT as a
9 noncitizen, that that person is likely to be a
10 noncitizen, subject to a few exceptions?

11 A I won't agree with the last statement.
12 Subject to a few exceptions, we would intend to
13 quantify that, but subject to the exceptions in
14 whatever quantity they are.

15 Q Generally speaking, if someone is -- let
16 me just try this again.

17 Generally speaking, if someone is
18 identified in the NUMIDENT as a noncitizen, you
19 think it's reasonable to conclude that that person
20 is likely a noncitizen at present, correct,
21 Dr. Abowd?

22 A If the person is actually coded as a

1 noncitizen, then I believe it is reasonable that
2 they were issued an SSN with SSA believing that
3 they were not a citizen. If it's missing, that's
4 a different matter.

5 Q Now, if someone is identified through ACS
6 questionnaire as a noncitizen, that's based
7 exclusively on a survey self-response that is not
8 verified by an actual document regarding the
9 person's legal status, right?

10 A In the case of the respondent, that's
11 correct. In the case of the other members of the
12 household, it's based on the information provided
13 by the respondent about those other members of the
14 household.

15 Q So for anyone on the ACS who is
16 designated as a noncitizen, it's based on a survey
17 response, not an actual document about the
18 person's noncitizen status, correct?

19 A That's correct.

20 Q Let me show you another document. We can
21 mark this as Exhibit 8. It's another email thread
22 you're on. The top email is from Paul Beatty.

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

3 BY MR. HO:

4 Q It is from Paul Beatty to you, dated
5 January 2, 2018, and the Bates number of the first
6 page of this thread is AR6629.

7 Now, the third email in the chain is an
8 email that you write to -- it's on the first page,
9 Dr. Abowd. It on an email that you write to
10 Mr. Beatty and John Elting --

11 A Elting.

12 Q Elting, E-L-T-I-N-G-E [sic] -- dated
13 January 2, 2018, 9:35 a.m.

14 Do you see that email?

15 A Yes, I do.

16 Q Okay. You wrote, "I spent the entire
17 week of December 18 through 22 working on the
18 response to this for Ron. He sent it to DOJ on
19 Friday afternoon, December 22. We proposed adding
20 citizenship to the P.L. 94-171 to the
21 administrative records, not a new question on the
22 2020 census. This proposal had the backing of the

1 redistricting office."

2 You wrote that, right?

3 A Yes.

4 Q And the redistricting office is the
5 redistricting office at the Census Bureau run by
6 James Whitehorne, right?

7 A Yes.

8 Q Now, when you -- what do you mean when
9 you say that the option of using administrative
10 records to generate citizenship information for
11 the P.L. 94 file had the backing of the
12 redistricting?

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13 A Okay. I was writing an email and I
14 didn't take my assistant director's advice as
15 seriously as I should have, to reread every
16 sentence before you click send. I meant that I
17 had discussed it with James Whitehorne. I meant
18 that we would produce a CVAP table in support of
19 P.L. 94-171.

20 Q Okay. Fair enough.

21 So you're referring to, in this email,
22 the production of a CVAP table with block-level

1 CVAP data, right?

2 A Yes.

3 Q Okay. And when you say that that
4 proposal -- the proposal to generate that table
5 using administrative records had the backing of
6 the redistricting office led by Mr. Whitehorne,
7 what did you mean by that?

8 A It meant that I had previously discussed
9 with him whether this was a -- a tabulation that
10 we could make that would be considered politically
11 neutral and appropriate in support of state
12 redistricting efforts.

13 Q Was one of the reasons why the proposal
14 to use administrative records to generate
15 block-level CVAP data have the support of the
16 redistricting office, the fact that administrative
17 records are based on verified information about a
18 person's citizenship status instead of a
19 self-report on a survey?

20 A Not precisely. What it was based on was
21 our ability to produce fit-for-use statistics that
22 we could document the quality of. The fact that

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1 citizenship status is verified, at least for
2 people since 1972 in the NUMIDENT, is evidence
3 that the quality of the administrative record has
4 already received some scrutiny.

5 Q So you would agree with the statement
6 that you -- I'm sorry. Let me just -- let
7 me -- start that question again.

8 You described citizenship data from the
9 NUMIDENT as verified, because it's based on the
10 receipt of an actual legal document; is that
11 right, Dr. Abowd?

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12 A Yes.

13 Q Okay. And you would describe responses
14 to a citizenship question as unverified, right,
15 Dr. Abowd?

16 A Yes.

17 Q Let me show you another email. We'll
18 mark this as Exhibit 9.

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

21 BY MR. HO:

22 Q This is an email from Ron Jarmin to a

1 Q Okay. Mr. -- Dr. Jarmin writes, "They
2 have now briefed me, and their findings suggest
3 that the best way to provide P.L. 94 block-level
4 data with Citizen Voting Age Population by Race
5 and Ethnicity would be through utilizing a linked
6 file of administrative and survey data the
7 Census Bureau already possesses."

8 When Dr. Jarmin refers to a linked file
9 of administrative and survey data, that's a
10 reference to what you were describing earlier in
11 your email to Mr. Beatty about adding citizenship
12 or -- creating a citizenship table via
13 administrative records, correct?

14 A Yes. That's a shorthand way of
15 expressing that.

16 Q And when Dr. Jarmin writes using this
17 administrative record would result in higher
18 quality data, do you understand that to be a
19 reference, in part, to the fact that information
20 about citizenship status in the administrative
21 record is based, in part, on legal documents about
22 a person's citizenship status as opposed to a

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1 BY MR. HO:

2 Q Is the linkage performed by the
3 Census Bureau between ACS survey respondents and
4 the NUMIDENT data what you would describe as high
5 quality?

6 A Sometimes, yes, and sometimes, no.
7 Generally, yes.

8 Q For purposes of the analysis that you
9 conducted referenced in your January 19th memo,
10 was the linkage between the ACS respondents and
11 the NUMIDENT data about citizenship status, was
12 that a high-quality match?

13 A So the average statistic for that match
14 was that it was a high-quality match, but not all
15 of the records matched with high quality.

16 Q Okay.

17 A And some didn't match, at all.

18 Q Generally speaking, when there was
19 disagreement -- in the analysis that you performed
20 in your January 19th memo between the
21 administrative record and a person's survey
22 response about citizenship data, is it reasonable

1 to conclude that the administrative record is more
2 likely to be correct about the person's
3 citizenship status than the response to the ACS
4 question?

5 A When the administrative record says you
6 are a citizenship and when the linkage of high
7 quality, as it generally is for people whom the
8 administrative record says you're a citizen, then,
9 yes. When the administrative record says that
10 you're not a citizen and the linkage is of high
11 quality, then subject to the caveats I have
12 already expressed, I would also say yes. But as
13 the linkage quality deteriorates, then you're not
14 sure you're looking at the same person and you're
15 also not confident of the -- either the survey
16 responses or the administrative record.

17 Q So let's just talk about the
18 noncitizens --

19 A Okay.

20 Q -- in the NUMIDENT data. When you have a
21 non- -- someone who is identified as a noncitizen
22 in the NUMIDENT data and you link that person to

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1 an ACS response and there's disagreement, that is,
2 the person who is identified in the NUMIDENT as a
3 noncitizen, but their ACS response is citizen,
4 when you conducted that analysis for purposes of
5 your January 19th memo, do you have confidence
6 that person is likely a citizen -- sorry -- likely
7 a noncitizen and that the response to the ACS
8 question was incorrect?

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9 MR. EHRLICH: Objection. Form.

10 THE WITNESS: We believe that the most
11 likely conclusion is that the administrative
12 record is correct and the survey response is not.

13 BY MR. HO:

14 Q And I believe in your January memo, you
15 conclude that about 30 percent of ACS respondents
16 who are identified as noncitizens in the NUMIDENT,
17 respond to the ACS citizen question by stating
18 they are citizens, right, Dr. Abowd?

19 A We agreed to use 30 percent as the
20 summary for a range, but yes, I think that's a
21 representative statistic.

22 Q So based on your previous responses

1 today, you think it's likely that 30 percent of
2 noncitizens who responded to the ACS citizenship
3 question responded incorrectly about their
4 citizenship status to the ACS question, right,
5 Dr. Abowd?

6 A I -- the correct statement is that the
7 data provided for 30 percent of the survey
8 respondents who indicated citizens, that wasn't
9 necessarily provided by that person -- that's what
10 I'm trying to correct -- is likely incorrect, yes.

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11 Q Do you have any empirical basis to expect
12 that noncitizens who respond to a citizenship
13 question on the 2020 decennial enumeration
14 questionnaire will respond more accurately than
15 noncitizens who have responded to the citizenship
16 question on the ACS?

17 A No.

18 Q Is there any reason to think that
19 noncitizens who respond to the citizenship
20 question on the 2020 enumeration will respond less
21 accurately than noncitizens who respond to the
22 citizenship question on the ACS?

1 A We have identified an upward trend in the
2 disagreement between the survey responses and the
3 administrative record. It's not precise enough
4 for us to label as a definitive upward trend, but
5 it -- there are definitely indications in the data
6 that the willingness to respond accurately to that
7 question is declining.

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8 Q Would you expect noncitizens responding
9 to the citizenship question on the 2020 decennial
10 enumeration questionnaire to respond inaccurately
11 at a higher rate than the inaccuracies you
12 documented among noncitizens responding to the
13 citizenship question on the ACS?

14 A I don't have a well-formed opinion on
15 that. I have told you that there's a -- the
16 appearance of a trend that we have not determined
17 has the statistical quality to say is a trend, but
18 is -- so in the absence of that, I would have to
19 say my expectation is the same as the most recent
20 data, which would be the 2016 ACS. That's where
21 the 30 percent number comes from.

22 Q For producing the block-level CVAP data,

1 there are, at present, no plans in place to
2 address situations where a person's self-report in
3 response to the citizenship question on the 2020
4 enumeration questionnaire disagrees with that
5 person's citizenship status as noted in the
6 NUMIDENT data file; is that right, Dr. Abowd?

7 THE WITNESS: I'm sorry. Could you read
8 the first part of his question back to me?

9 (Thereupon, the reporter read the record
10 as requested.)

11 THE WITNESS: I think you're asking me
12 about the processing decisions for the 2020 census
13 and the subsequent production decisions for the
14 CVAP tabulation; is that right?

15 BY MR. HO:

16 Q Right.

17 A There are no current decisions about how
18 that's going to be done.

19 Q There are no current decisions about how
20 you're going to reconcile differences between the
21 responses to the citizenship question and a
22 person's citizenship status as defined in the

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1 NUMIDENT?

2 A That's correct.

3 Q The last sentence of Exhibit 9,
4 Dr. Jarmin's email says, "I suggest we schedule a
5 meeting of Census and DOJ technical experts to
6 discuss the details of this proposal."

7 That meeting did not take place, did it,
8 Dr. Abowd?

9 A That's correct.

10 Q You anticipated having such a meeting in
11 January of 2018, right?

12 A I wouldn't say that the Census Bureau
13 anticipated having such a meeting. I would say
14 that we offered DOJ the opportunity to meet with
15 us and hoped that they would.

16 Q I'm going to show you a document. We'll
17 mark it as 10.

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

20 BY MR. HO:

21 Q This is an email thread, the top email is
22 from Misty Heggeness to you dated January 2, 2018

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1 Q When you say the meeting would be mostly
2 about messaging, what did you mean by that?

3 A To be honest, I'm not sure. I believe
4 that on the 2nd of January, we were discussing the
5 wording of a short summary memorandum that I was
6 working on for the acting director, summarizing
7 the state of the research through the end of
8 December.

9 Q You testified a moment ago that DOJ
10 declined to take the meeting that was referenced
11 in Dr. Abowd -- Dr. Jarmin's email; is that right?

12 A That's correct.

13 Q Do you know why?

14 A I believe it's in the administrative
15 record, the reply to this email. I'll summarize.
16 Again, if you say this is the author of the
17 letter, I believe you, but names haven't stuck.

18 Said that the basis for our request is
19 adequately documented in the letter and we decline
20 to further meet.

21 Q In your experience, is it unusual to
22 receive a data request from an agency to the

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1 Census Bureau and then for the agency to refuse to
2 meet to discuss the technical aspect of that data
3 request?

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4 A My experience in my current position is
5 only two years old. I will answer on behalf of
6 the agency. Yes.

7 MR. HO: We've been going for about an
8 hour 50, 55 or so. Would now be an okay time for
9 a bathroom break?

10 MR. EHRLICH: It's okay with me.

11 VIDEOGRAPHER: This concludes Media Unit
12 Number 1. The time on the video is 10:55 a.m. We
13 are off the record.

14 (Off the record.)

15 VIDEOGRAPHER: This begins Media Unit
16 Number 2. The time on the video is 11:19 a.m. We
17 are on the record.

18 MR. EHRLICH: Just to clarify something
19 we were discussing earlier on the record when we
20 were talking about you had received documents
21 yesterday evening that you wanted to talk to
22 Dr. Abowd about. We wanted to clarify that you

1 get seven hours for the 30(b)(6). If you want to
2 reserve time at the end of today in order to
3 review those documents and ask him more questions,
4 we can produce him again for you.

5 MR. HO: Thanks for that offer. I'll
6 confer with co-counsel and counsel for the other
7 plaintiffs --

8 MR. EHRLICH: Okay.

9 MR. HO: -- and we'll talk.

10 MR. EHRLICH: Thank you.

11 BY MR. HO:

12 Q Dr. Abowd, before moving on to another
13 topic, I just want to ask a few questions about
14 some things we discussed earlier.

15 You testified that when the
16 Census Bureau, after the 2020 decennial census,
17 produces the block-level CVAP data, that there
18 will be error margins associated with that
19 block-level CVAP data. Do you remember that?

20 A Yes.

21 Q Okay. Today, does the Census Bureau know
22 whether or not the error margins associated with

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1 that block-level CVAP data will be larger or
2 smaller than the error margins associated with the
3 block-level CVAP data that DOJ currently uses,
4 based on ACS estimates?

5 A I have to give a nuanced answer to that
6 question. We don't know, because we haven't set
7 the parameters of the disclosure avoidance system
8 yet. That's somewhat new territory for my
9 colleagues, and I am certain that one of the
10 things we will be discussing is whether the error
11 margins associated with both the P.L. 94 and the
12 CVAP table at the block level still allow
13 redistricting offices and the
14 Department of Justice to use the data effectively.
15 That is the use case for those data.

16 Q Would you agree -- never mind. That's
17 fine.

18 You testified a little bit about a
19 possible RCT of the citizenship question and
20 request from, I believe it was Enrique Lamas, to
21 get a proposal for doing an RCT of the citizenship
22 question without the prefatory nativity question

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1 responsibility, in conjunction with the acting
2 director, for giving me the no-go, but he didn't
3 tell me whether he discussed with anyone else
4 outside the Bureau.

5 Q So you're aware that Dr. Jarmin and -- I
6 don't know if it's Dr. or Mr. Lamas?

7 A It's doctor. It's Dr. Velkoff, too.

8 Q Okay. You don't know if anyone other
9 than Dr. Jarmin and Dr. Lamas were involved in
10 this -- the decision not to do the RCT of the
11 citizenship question?

12 A I do not know.

13 Q You testified at one point whether or
14 not -- excuse me -- you testified at one point
15 that there are indicators in that -- let me try
16 again.)

17 I think you testified earlier that there
18 are indicators suggesting that nonresponse rates
19 to a citizenship question among noncitizens are
20 increasing; is that right?

21 A Yes.

22 Q What are those indicators that you were

1 referring to?

2 A In our technical research, we've
3 conducted statistical experiments that attempt to
4 estimate the extent to which certain categories of
5 households that either include a noncitizen or
6 include someone for whom we don't know the
7 citizenship status might not respond to
8 questionnaires that include a citizenship
9 question. In the analysis for the 2000 census,
10 that number was around 3 percentage points. In
11 the analysis circa 2010, it was closer to 5
12 point -- 5 percentage points. And the most recent
13 analyses we have produced, it's closer to five and
14 a half percent -- 5.8 percentage points and
15 applies to a bigger subpopulation of households
16 than our previous analyses.

17 Q Any other analyses suggesting that there
18 are indications of greater nonresponse over time
19 from noncitizens to a citizenship question other
20 than the ones you've just described?

21 A If you look at the item nonresponse rates
22 and the break-off rates, the reason I said that

1 they didn't meet statistical standards for saying
2 we think there's a trend is because they're short
3 and there have been some procedural changes that
4 materially affect the year-to-year comparisons,
5 but they are higher now than they were earlier in
6 the decade.

7 Q So we have increasing unit nonresponse,
8 increasing item nonresponse and increasing
9 break-off rates, all suggesting that noncitizens'
10 sensitivity to a citizenship question have been
11 increasing over time; is that right, Dr. Abowd?

12 A You have to permit the caveat that I
13 didn't say increasing. I said they're going up,
14 but that, specifically, I don't have sufficient
15 statistical evidence to conclude there's an
16 increase in trend.

17 In the case of the -- of the item
18 nonresponse rates, it's because of the change in
19 design that occurred in 2013. In the case of the
20 break-off rates, it's because we haven't been able
21 to analyze full 2017 data, and we only had 2016
22 data. So we don't -- I don't, really, even have

1 two points for the break-off rates.

2 But at the time we prepared our technical
3 report for the Secretary, we had the 2000 and the
4 2010, and those two numbers are statistically
5 different from each other, and the one in 2010 is
6 larger.

7 Q But you would agree that the item
8 nonresponse and the break-off rate analysis that
9 you've done, they're both consistent with the
10 notion that noncitizens' sensitivity to a
11 citizenship question and unwillingness to respond
12 to such a question, have increased over time?

13 MR. EHRLICH: Objection. Form.

14 THE WITNESS: I will agree to the
15 statement, consistent with the -- with the
16 increase over time, yes.

17 BY MR. HO:

18 Q Other than the three things we've
19 discussed, unit nonresponse, item nonresponse and
20 break-off rates, are there any other indicators
21 suggesting that noncitizens' sensitivity to a
22 citizenship question has been increasing over

1 time?

2 A There are survey indicators from the
3 Census Barriers, Attitudes and Motivators Survey
4 and qualitative analysis from focus groups that
5 also suggest it.

6 Q Other than the CBAMS and the focus
7 groups, any other indicators that you're aware of
8 suggesting that noncitizens sensitive to a
9 citizenship question has been increasing?

10 A None that I can recall at this moment.

11 Q Okay. You said something about the 5.8
12 percentage point reduction in response rates among
13 noncitizens to a citizenship question -- because
14 of the presence of a citizenship question; is that
15 right, Dr. Abowd?

16 A I can restate the question so it's right.

17 Q Please.

18 A We did analyses -- we did analyses that
19 compared different categories of households that
20 included citizens with categories of households
21 that either didn't or may not include citizens.
22 And the most reset of them -- which is in the

1 to the Department of Commerce in response to a
2 discovery request we were processing.

3 Q Do you know when the August 6th version
4 of that paper was produced from the Census Bureau
5 to the Department of Commerce?

6 A I do not.

7 Q Was it yesterday?

8 A I don't think so -- no. It definitely
9 wasn't yesterday. It -- because I asked for a
10 copy at the Department of Commerce on Monday, and
11 I was given a copy with the August 6th date. I
12 was expecting to see a copy with a July date.
13 There's no difference between them, other than
14 some grammar mistakes that have been corrected.

15 Q I want to show you a document that you
16 talked about at your last deposition. This was a
17 short version, I think, of the analysis we were
18 just talking about. It was the first Abowd
19 Deposition Exhibit 4, marking it as Exhibit 11 for
20 this deposition.

21 (Plaintiffs' Exhibit 11, Analysis, was
22 marked.)

1 A In this case, yes. That's right.

2 Q Now, the first sentence in the paragraph
3 above Table 6 reads: Other proxy measures for
4 understanding response sensitivity to questions of
5 citizenship can be examined with longitudinal
6 data.

7 What does that sentence mean?

8 A It's a -- it's terse technical writing
9 for it, and now we're going to do things similar
10 to what we just did for cross-sectional studies
11 with some longitudinal data.

12 Q And the premise here is that a
13 longitudinal analysis could shed some light on the
14 sensitivity of citizen- -- or the question on
15 citizenship, right, Dr. Abowd?

16 A Yes.

17 Q The SIPP, S-I-P-P, that's a longitudinal
18 survey featuring a citizenship question, correct?

19 A That's correct. It's the Survey of
20 Income and Program Participation.

21 Q And who is it conducted by?

22 A The Census Bureau.

1 Q According to the table, in Wave 1 of the
2 SIPP, noncitizens were 6.1 of respondents but by
3 Wave 2, they were only 5.7 percent of SIPP
4 respondents, correct?

5 A That's correct.

6 Q So just to explain what that means,
7 noncitizens shrank as a share of respondents to
8 this longitudinal survey because they dropped out
9 of responding to the survey at a higher rate than
10 did citizens, correct, Dr. Abowd?

11 A So the two point estimates, 6.1
12 percentage point and 5.7 percentage point -- the
13 5.7 is less than the 6.1. I think I asked the
14 authors to ensure that the standard error of the
15 difference was -- which is negative -- was also
16 sufficiently precise. On the hypothesis that
17 that's the case -- I don't have the standard or
18 the difference here -- then, yes, that's the
19 correct conclusion.

20 Q So the idea that the white paper's
21 authors are operating under here is that if
22 noncitizens dropped out of a longitudinal survey

1 featuring a citizenship question at a higher rate
2 than did citizens, then that suggests that
3 noncitizens are more sensitive to a citizenship
4 question and might fail to respond to a survey
5 with a citizenship question at a higher rate than
6 citizens; is that right?

7 A So the nuanced answer to your question is
8 that it is suggestive of that. In these kinds of
9 survey situations, we can't design the gold
10 standard randomized controlled trial for which the
11 precise hypothesis that you stated would be the
12 one you could precisely test. So the
13 questionnaire does include a citizenship question.
14 It includes lots of other questions, as well. And
15 subject to that caveat, the conclusions that you
16 drew about the difference between Wave 1 and
17 Wave 2 participation -- sorry, response rates --
18 is correct.

19 BY MR. HO:

20 Q And the Census Bureau agrees with the
21 authors of the white paper that this longitudinal
22 analysis is suggestive of the notion that

1 noncitizens are more sensitive to a question about
2 citizenship and less likely to respond to a survey
3 featuring a citizenship question, correct?

4 MR. EHRLICH: Objection. Form.

5 THE WITNESS: The Census Bureau considers
6 the evidence from the SIPP to be consistent with
7 the other evidence that we have examined
8 suggesting that households that either contain a
9 noncitizen or contain at least one person for whom
10 we do not know the citizenship status are more
11 sensitive to questionnaires that include questions
12 about citizenship status.

13 BY MR. HO:

14 Q There are other longitudinal studies
15 conducted by the Census Bureau featuring a
16 question on citizenship, right, Dr. Abowd?

17 A Yes.

18 Q For example, the Current Population
19 Survey, CPS, is a longitudinal survey conducted by
20 the Census Bureau featuring a citizenship
21 question, correct?

22 A So that's not technically correct. The

1 A It's a housing unit --

2 Q I think I understand.

3 A You don't know who is in the housing unit
4 when you go the second month and second sample.
5 That's the point I'm trying to make.

6 Q I think I understand.

7 A Okay.

8 Q All right. Let me try this again.

9 Time 1, right, we have a group of CPS
10 respondents. Some housing units have a
11 noncitizen, some housing units do not have a
12 noncitizen. Time 2, the share of respondents to
13 the CPS from the housing units that at Time 1 had
14 a noncitizen has shrunk. Would that be suggestive
15 of the notion that noncitizens are more sensitive
16 to a citizenship question than are U.S. citizens?

17 MR. EHRLICH: Objection. Form.

18 THE WITNESS: Replace Time 1 and Time 2
19 with Month and Sample 1 and Month and Sample 2.
20 If you look at statistics for Month and Sample 2
21 for households for Month and Sample 1 that
22 identified as citizen versus for households for

1 Month and Sample 1 that identified as noncitizen
2 and you found differences in the Month and
3 Sample 2 statistics, that would be as similar as
4 you could construct to the hypothetical in Table 6
5 of the working paper we're talking about.

6 BY MR. HO:

7 Q And would that analysis -- if I showed
8 that Month and Sample 1 housing units that
9 featured a noncitizen responded at a lower rate at
10 Month and Sample 2 than the households that at
11 Month and Sample 1 were all citizen households,
12 would that be suggestive of greater sensitivity of
13 noncitizens to a citizenship survey question?

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: That would have an
16 interpretation similar to Table 6 in the working
17 paper, yes.

18 BY MR. HO:

19 Q Now, during your last deposition, do you
20 remember talking about the acronym C-A-P-I or
21 CAPI?

22 A Computer-assisted personal interview,

1 yes.

2 (Conference call interruption.)

3 BY MR. HO:

4 Q CAPI is, basically, a nonresponse
5 follow-up for the ACS; is that right?

6 A As of right now, that is correct.

7 Q Okay. And what --

8 A That is the field technical technique
9 used for nonresponse follow-up in the ACS.

10 Q Okay. And what it means is you send,
11 basically, a census employee out with some kind of
12 personal handheld computer device to try to get an
13 answer to the ACS from a household that didn't
14 respond; is that right?

15 A That's correct.

16 Q Okay. Now, the SWAT team that did the
17 white paper that we talked about earlier,
18 conducted a stratified analysis of the CAPI
19 response rates breaking census tracts into deciles
20 from those with the -- the lowest percentage of
21 household with the noncitizen to those with the
22 most; is that right?

1 A If you're going to ask me about one of
2 the analyses that's in this early draft, I need to
3 know which one.

4 Q Sure.

5 A If you're going to ask me about something
6 else, I need to have my memory refreshed as to
7 what you're asking me about.

8 Q I understand. I don't think it made its
9 way into that version of the white paper.

10 A Okay.

11 Q But my understanding is that at some
12 point, the SWAT team looked at CAPI response rates
13 and they compared census tracts to a stratified
14 analysis, deciles -- percentage -- a household --
15 census tracts with the lowest percentage of
16 households with a noncitizen and -- you know, from
17 1 to 10, those with the greatest percentage of
18 households with a noncitizen, and compared the
19 CAPI response rates. Does that help refresh your
20 memory?

21 A You've refreshed my memory to the point
22 that I acknowledge that an analysis was done in

1 which tracts were stratified by decile. But I
2 would like to review what it is you're asking me
3 about, because I don't remember specifically what
4 the stratifier was and what the response was.
5 I've had to look at a lot of documents over the
6 last several weeks. I simply am not sure what the
7 exact analysis is you're asking me about.

8 (Plaintiffs' Exhibit 12, Tables, was
9 marked.)

10 Q Okay. Let me show you a document. It's
11 been marked as Exhibit 12. It's a series of
12 tables. The first page on the document is
13 AR10408.

14 And I'm looking at the third table, the
15 CAPI response rate. Now, this table shows an
16 analysis of census tracts broken into deciles from
17 least to most percentage of households with a
18 noncitizen comparing CAPI response rates; is that
19 right, Dr. Abowd?

20 A Yes. I don't recall exactly how the
21 tract deciles were determined, but they are from
22 least to most noncitizen. That's right.

1 Q So one is the decile of census tracts
2 with the lowest percentage of households with a
3 noncitizen. Ten is the decile of census tracts
4 with the largest percentage with households with a
5 noncitizen, correct?

6 A That's correct.

7 Q And, basically, what that means is, as
8 you go from 1 to 10, the percentage of households
9 in a census tract increases, correct?

10 A Percentage of households with a
11 noncitizen.

12 Q Noncitizen, sorry.

13 And when we look at -- just to take one
14 number from the table -- for the 10th decile, year
15 2016, the CAPI response rate is 87.4, bottom right
16 corner of the table. What does that mean for the
17 CAPI response rate to be 87.4 for that decile
18 census tract?

19 A I'm going to check with the author of
20 this table on the next break to make certain that
21 the CAPI here means only the nonresponse follow-up
22 that was followed up by computer-assisted personal

1 interview. We sometimes lump Internet
2 self-response in, but I don't think that was done
3 here, because Internet self-response is by itself
4 separately, and it didn't start until 2013.

5 Q Uh-huh.

6 A And up until 2016, you could also be
7 followed up with CATI, computer-assisted telephone
8 interview. So I think I've told you correctly,
9 that this is nonresponse follow-up
10 computer-assisted personal interview.

11 In that case, it means that the subsample
12 of nonrespondents that was selected for
13 nonresponse follow-up in the ACS were successfully
14 followed up with the percentages indicated in the
15 table.

16 Q So just to be clear, the subset of
17 non- -- of households chosen for nonresponse
18 follow-up on the ACS for the tenth decile in 2016,
19 nonresponse follow-up on the ACS was successful
20 87.4 percentage of the time?

21 A That's correct.

22 Q Now, if we look at this table, correct,

1 that the Bureau found that nonresponse follow-up
2 for the ACS has declined each year for each
3 decile; is that correct?

4 A That -- that seems to be correct.

5 Q Okay. And is that consistent with the
6 notion that citizenship has become a more
7 sensitive question on surveys since the year 2010?

8 A One of the reasons that this particular
9 analysis doesn't appear in some of the technical
10 papers that were relied upon by the larger group
11 of senior executives at the Census Bureau in
12 drawing their conclusions, is that the internal
13 peer review of this particular analysis suggested
14 that there were enough qualifications to that
15 conclusion that many of them were unwilling to
16 make it.

17 You correctly characterized the trend
18 lines, that there were changes to the design of
19 the survey that occurred here and there were also
20 potential other differences that -- that many of
21 the people who looked at this found qualifications
22 that -- so that's the right conclusion. But it

1 isn't a conclusion that the Census Bureau,
2 speaking collectively for the people who peer
3 reviewed this analysis, would have jointly made.

4 Q I understand there are caveats, but
5 notwithstanding those caveats, is the decline in
6 successful nonresponse follow-up for the ACS since
7 2010 suggestive of the notion that citizenship
8 questions on surveys have become more sensitive
9 since 2010?

10 A It's consistent with that interpretation,
11 yes.

12 Q It also appears that in each year, as a
13 census tract has greater percentage of households
14 with a noncitizen, that nonresponse follow-up,
15 generally, is less successful. Would you agree
16 with that?

17 A Yes. It's consistent with that
18 interpretation, as well.

19 Q Okay. So is it consistent -- is that
20 data consistent with the notion that noncitizen
21 households are less likely to cooperate with
22 nonresponse follow-up to the ACS?

1 A So we didn't -- well, if we did a
2 difference-and-difference analysis of this table,
3 I don't remember it. And I flipped and it doesn't
4 seem to be in here. So without a
5 difference-and-difference analysis, I'm not able
6 to draw a conclusion like the one you just
7 suggested.

8 Q But as a census tract gets a greater
9 percentage of households with a noncitizen,
10 generally speaking, nonresponse follow-up in that
11 census tract is less successful, correct,
12 Dr. Abowd?

13 A Is less successful than?

14 Q Than it is for a census tract with a
15 lower percentage of households with a noncitizen?

16 A You're asking me do the numbers go down
17 when the deciles go up, and that's correct, yes.

18 Q Now, I believe when you testified at your
19 last deposition, when you were talking about the
20 CAPI analysis, you described something like a
21 spreadsheet that had all the tables that you
22 looked at which had been cleared for release by

1 Q Has the Census Bureau, in response to
2 this analysis or for any reason, taken any
3 measures specifically to address the lower success
4 rate of nonresponse follow-up in census tracts
5 with higher percentages of noncitizen households?

6 MR. EHRLICH: Objection. Form.

7 THE WITNESS: I don't believe that you
8 could point to any specific activity that would
9 have been explicitly stratified by this decile
10 analysis. The declining response rate is a
11 general problem, and we attempt to manage field
12 operations in a manner that is consistent with
13 keeping those response rates up. In fact, one of
14 the reasons we switched to Internet self-response
15 in the ACS was in an effort to increase the
16 voluntary response rate. So -- so, generically,
17 we're, of course, interested in keeping the
18 response rate high. It's a mandatory survey, but
19 voluntary or self-response is a critical cost
20 control factor.

21 That said, the budget for the
22 American Community Survey has not been increased

1 in proportion to the cost of living, so we don't
2 have the same resources to do nonresponse
3 follow-up. So we focus on -- we focus on those
4 things that are going to get the total nonresponse
5 follow-up on the --

6 BY MR. HO:

7 Q But has -- sorry.

8 Has the Census Bureau done anything to
9 try to address the lower rates of nonresponse
10 follow-up success in areas that have higher
11 percentages of noncitizen households?

12 A I believe I just said that I'm not aware
13 of any activity specifically correlated with --
14 explicitly correlated with these indicators.

15 Q Thank you. Sorry.

16 Just a few other quick questions. You're
17 familiar the acronym of C-S-A-C or CSAC?

18 A Yes.

19 Q And that stands for Census Scientific
20 Advisory Committee?

21 A Yes.

22 Q And the members of CSAC advised the

1 my rank, but some will send a specialist. And
2 then the director conveys to the Department of
3 Commerce a set of recommendations to fill a
4 vacancy. It's the Department of Commerce then
5 decides to whom to extend that invitation.

6 Q Is it fair to say that, generally
7 speaking, CSAC members are highly regarded as
8 social scientists by the Census Bureau?

9 A Yes.

10 Q You're familiar with former Census Bureau
11 director John Thompson?

12 A I have met Dr. Thompson. Mr. Thompson,
13 excuse me.

14 Q Fair to say that the Census Bureau has a
15 high opinion of Dr. Thompson as a scientist?

16 A It is Mr., and yes.

17 Q Fair to say the Census Bureau considers
18 him well versed in standard Census Bureau testing
19 practices?

20 A Yes.

21 Q Has the Census Bureau contracted with any
22 private companies or PR firms to conduct research

1 citizenship question?

2 Reingold spelled R-E-I-N-G-O-L-D.

3 A I do not know whether Reingold is a
4 subcontractor in the integrated communication
5 contract. If they are, then the answer could be
6 yes. I'm not aware of another contract, but I
7 will check during a break.

8 Q Okay. Does the Census Bureau think that
9 adding a citizenship question to the 2020
10 enumeration questionnaire is a good idea?

11 A No.

12 MR. HO: Can we go off the record for a
13 second?

14 VIDEOGRAPHER: We're going off the
15 record. The time on the video is 12:07 p.m.

16 (Off the record.)

17 VIDEOGRAPHER: This begins Media Unit
18 Number 3. The time on the video is 1:03 p.m. We
19 are on the record.

20 BY MR. HO:

21 Q Dr. Abowd, I don't have any other
22 questions for you at this time, but I know you

1 field period.

2 BY MR. HO:

3 Q Thank you. And this would have been the
4 only testing of the 2020 decennial questionnaire
5 with a citizenship question in it, correct?

6 A This is the only field testing with and
7 without citizenship question, directly analyzing
8 the citizenship question that we have considered
9 at the Census Bureau.

10 I also verified that the 2010 census
11 questionnaire had full cognitive and field
12 testing. That the 2020 questionnaire without the
13 citizenship question had -- so I asked him the
14 same way you asked me, was adequately, cognitively
15 tested; yes.

16 Q I'm sorry. Who did you ask whether or
17 not?

18 A I asked my staff -- the same group that I
19 had been asking generally about the testing, I
20 specifically asked about the cognitive testing for
21 the 2020 questionnaire, with and without the
22 citizenship question, and their answer was that it

1 was adequately tested with the citizen- -- without
2 the citizenship question, but not adequately
3 tested with the citizenship question, cognitive
4 testing.

5 Q Thank you.

6 A Okay.

7 And, thirdly, in this table, Exhibit 12,
8 the third panel, the CAPI response rate, I
9 confirmed, so I can now say the way the tract was
10 put into deciles was based on the five-year
11 American Community Survey for the middle five
12 years of the table, so 2011 through 2015. That
13 the CAPI response rate is just the CAPI response
14 rate in the nonresponse follow-up system, okay.

15 I think those were all the things we had
16 unresolved. If you think there were others -- we
17 went over our notes, but I think I've answered the
18 questions that that were unresolved.

19 MR. HO: I don't have any others right
20 now, so I'm going to pass you along to one of the
21 other lawyers for one of the other plaintiff
22 groups, subject, of course, to the issue that I've

1 enumeration, but it is part of census. And so the
2 process that we had in place for evaluating which
3 questions would be on the long form dates from the
4 creation of the long form. And it was inherited
5 by the American Community Survey and modernized
6 for the American Community Survey, and the way in
7 which these bullets on this page -- page AR4804
8 describe the process as adaptation of the process
9 that is in place and is used for questions on the
10 American Community Survey.

11 Q But to go back to my question,
12 this -- this process that we've just talked about,
13 the three reviews that are on this page, 4804, if
14 any one of those reviews advises against the
15 addition of a question, does the question get
16 added?

17 A So it would be more iterative than that.
18 If a technical review revealed that it was going
19 to be difficult to ask the question for some
20 reason -- let's speak hypothetically -- then we
21 would probably not prepare a clearance package
22 supported by a technical analysis that says this

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1 is not likely to work very well. The
2 Census Bureau would re-examine the use case for
3 the particular request. If it's a -- if it's a
4 specific agency of the executive branch, one of
5 our principal statistical clients, we would work
6 with that agency to refine the request. What we
7 were attempting to determine is the least
8 burdensome way of delivering statistics that are
9 suitable for the purpose that we're being asked to
10 produce them.

11 So in that iterative process, would
12 attempt to identify a technically better way of
13 addressing the data need. And, generally
14 speaking, that -- in that iterative process, both
15 the Census Bureau and the principal client -- all
16 these data are going to be released for public
17 use, so the principal client is acting as the
18 agent of the general public in design of a
19 product. If there was an agreement that this
20 particular technical solution will work and it
21 will meet the needs, then we would -- and then it
22 would involve a modification or a question -- a

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1 new question on the survey, then we would move
2 forward with the questionnaire design and the
3 testing that we would normally do, and we would
4 eventually get to the point where a clearance
5 package would be sent forward.

6 There might be some other regulatory
7 barriers. There are lots of -- I shouldn't say
8 lots of. There are several very specific
9 categories of data that statistical agencies and
10 other agencies of the federal government collect
11 that are governed by regulations of OMB. And so
12 if the request involved something that inherently
13 meant you had to modify or update one of those
14 standards, then that would also come into play.
15 And those standards are regularly modified and
16 updated, and there, the Office of the Chief
17 Statistician takes charge of creating the relevant
18 working group, preparing the modification, doing
19 the Federal Register notices on the modifications.
20 So if you have to modify the standards before you
21 can produce a survey instrument, then that process
22 would happen.

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1 This would all basically go on
2 simultaneously, but no OMB clearance package would
3 be sent to the Office of the Statistician prior to
4 doing the ground work that the chief statistician
5 is known to require before she, in this case,
6 would approve the clearance request.

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7 Q So did I understand you correctly that
8 the clearance package has not yet been submitted
9 to OMB with regard to the citizenship question?

10 A The clearance package for the specific
11 forms for the 2020 census has not yet been
12 submitted to OMB.

13 BY MS. SHAH:

14 Q I'm going to hand you what's Exhibit 14,
15 and I only have two copies, because they're very
16 large. I'm going to have this marked as
17 Exhibit 14, which is statistical quality standards
18 from the Census Bureau.

19 (Plaintiffs' Exhibit 14, Census Bureau
20 statistical quality standards, was marked.)

21 BY MS. SHAH:

22 Q Are you familiar with this document?

1 A So the guidelines are Census Bureau
2 guidelines, and the employee, in the conduct of
3 his or her job, when preparing an information
4 product covered by the standards, that's what I
5 just explained, would be expected to abide by
6 standards, yes.

7 Q And what about the Secretary?

8 A The Secretary is not bound by the
9 standards.

10 Q And we talked about some of the products
11 that this applies to. Does it apply to the
12 decennial census questionnaire?

13 A Yes.

14 Q And, more specifically, the citizenship
15 question, as well?

16 A Yes.

17 Q So is it fair to say that the
18 Census Bureau has to follow these standards when
19 they develop and design survey questionnaires?

20 A It is fair to say that every information
21 product and statistical program within the
22 Census Bureau is expected to follow these

1 standards? Yes.

2 Q And if you can turn to Page 5 of this
3 document -- and it's a large one, so, you
4 know -- when we're talking about Requirement A16,
5 which says that, "Quality control checks must be
6 performed to ensure the accuracy and completeness
7 of the program plans including, among other
8 things, survey designs."

9 Does this requirement apply to the
10 decennial census questionnaire?

11 A Yes.

12 Q And what does it mean, survey design?

13 A In this -- on Page 5, it has a very broad
14 interpretation. We might sometimes call it the
15 lifecycle design, all of the components that go
16 into executing a -- an information product,
17 including, to be frank, a case where there's no
18 actual survey --

19 Q Uh-huh.

20 A -- but it's the design of an information
21 product.

22 Q And has this quality check been done for

1 Q So was a waiver for a quality check
2 obtained in the question -- in this instance?
3 Sorry.

4 A So the answer to the question whether a
5 waiver was obtained for any part of the end-to-end
6 operation is no.

7 The question that I heard was, should a
8 waiver have been obtained because of the quality
9 variation over the -- over the life of the -- of
10 the survey? Let me also say that these are
11 quality standards that bind the agency, but a
12 sitting director and a sitting acting director can
13 instruct the staff to do something and they're
14 expected to do something. And while we would
15 expect a sitting director or acting director to
16 check whether there was a standard, there was a
17 lot of urgency here. So the next methods and
18 standards meeting would have been after the whole
19 decision process was made.

20 But the quality of the process by which
21 we conducted the end-to-end test was extensively
22 peer reviewed inside the Census Bureau by the

1 Census Bureau conducts testing throughout the
2 decade preceding the decennial census?

3 A Yes.

4 Q Would such testing reveal
5 whether -- would that be considered pretesting?

6 A Yes.

7 Q And would such testing reveal whether a
8 question is unduly sensitive?

9 A Yes.

10 Q And if so, responses collected from a
11 survey or testing aren't used for data production,
12 would you say that that question can be construed
13 as unduly burdensome?

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: I think you just asked me
16 if you collect an item and then you don't use it
17 to tabulate anything, is that undue burdensome?
18 Yes.

19 BY MS. SHAH:

20 Q And would the Census Bureau run --
21 typically run pretesting to identify issues with
22 order, context or formatting?

1 A Yes.

2 Q And did it do so with -- in the context
3 of order, context and formatting to the
4 citizenship question?

5 MR. EHRLICH: Objection. Form.

6 THE WITNESS: If you're asking
7 specifically with respect to the questionnaire for
8 the 2020 census, no.

9 BY MS. SHAH:

10 Q And if we can go, actually, back a page,
11 to Page 7, and look at Requirement A2-2, it's at
12 the top of the page. It begins that -- a plan
13 must be produced that addresses four different
14 requirements, and I want to go through each
15 requirement separately.

16 If -- "The plan must address program
17 requirements for the data collection instrument
18 and the graphical user interface or GUI, if
19 applicable."

20 Does this requirement apply to the 2020
21 census paper questionnaire?

22 A Yes.

1 the 2015 National Content Tests. There were
2 separate evaluations of all of those materials.

3 Q And can supporting materials include
4 things like questionnaire instructions?

5 A Yes.

6 Q What about language-assistance materials?

7 A Yes.

8 Q And promotions or advertising materials?

9 A Most of our data collection programs
10 don't have communication campaigns associated with
11 them -- special communications. We have an
12 ongoing one that's the whole Bureau. The 2020
13 census does have a special communication campaign.
14 So specifically for 2020, there would be a special
15 communication campaign being developed.

16 Q And then we've talked a little bit about
17 this already, but it also has to address the
18 pretesting of the data collection instrument and
19 supporting materials.

20 Has that been done here for the 2020
21 census?

22 A Within the time constraints of the

1 Secretary's decision, the different components of
2 the 2020 questionnaire have been pretested. They
3 will get their first test in their presumed form
4 some time after those forms are ready. It won't
5 be an extensive field test. We have neither
6 budget or time for that. The last chance for that
7 was probably before March of 2018.

8 Q So for the full 2020 census
9 questionnaire, which would include the citizenship
10 question, has there been a waiver requested for
11 this requirement?

12 A So -- we don't think we need a waiver.

13 Q Okay.

14 A And this is not a piece of legislation.
15 It's operating principles for the agency. So an
16 example for a census that would request a waiver
17 is the economic census in 2012. The economic
18 census is a survey-based instrument. It's not an
19 enumeration.

20 So the standards say that when you
21 release the data from an economic census, since it
22 was a survey, all the data items have to be

1 accompanied by a margin of error. They weren't.
2 So the 2012 economic census did request a waiver
3 for that because that's a clear indication from
4 the Census Bureau that a piece of quality
5 information that we expect to be produced couldn't
6 be produced.

7 In this operational context, our
8 standards allow us to ask the professionals at
9 Census Bureau in a consensus form, do you believe
10 this has been adequately tested, given the time
11 and operational and financial constraints? Our
12 conclusion is that the citizenship question has
13 been sufficiently tested to not require a waiver.

14 Q Okay.

15 A The Office of Management and Budget can
16 disagree, and it can refuse the clearance package
17 without further testing of the specific form that
18 we intend to go to field with. That is within
19 their authority. And were they to do that, we
20 would, obviously, have to do something in order to
21 come into compliance. But at the moment, we do
22 not feel that question needs a waiver for testing

1 reasons.

2 Q So let me ask you a separate question.
3 Secretary Ross, in his supplemental memorandum,
4 stated that he began considering the citizenship
5 question when he first started, and I'm
6 paraphrasing here. If you had known that, then at
7 that time, could the citizenship question have
8 been added to the end-to-end testing?

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9 MR. EHRLICH: Objection. Form.

10 THE WITNESS: If the Secretary had asked
11 us to test the citizenship question in -- after
12 his arrival in the Department of Commerce, we
13 could have engineered one into the end-to-end
14 test, yes.

15 BY MS. SHAH:

16 Q All right. I think we're done with this
17 document for the moment.

18 We talked a little bit earlier
19 about -- or you had talked earlier a little bit
20 about the race and ethnicity question. And is it
21 correct that the race and Hispanic origin or
22 ethnicity question for the 2000 census short form

1 before the last one ends, yes.

2 Q And over the course of that time, the
3 Census Bureau administers a series of tests to
4 prepare for the decennial census, correct?

5 A In modern history, that's correct.

6 Q Let me clarify. I'm speaking
7 specifically about the 2020 census as it
8 administers a series of tests in order to prepare
9 for the 2020 census.

10 A All right. I thought, initially, you
11 asked me about the 2010 census. Was that question
12 also about the 2020?

13 Q About 2020, correct.

14 A The 2020 had an associate director about
15 the same time as the 2010 census was in the field
16 and the office was put in place in 2012.

17 Q And now -- approximately how many tests
18 has the Census Bureau run in order to prepare for
19 the 2020 census?

20 A '12, '13, '14, '15, '16 and '18, six.

21 Q And some of those years, have there been
22 multiple tests?

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1 A We often lump them together, but yes.

2 Q And did -- was 2017 a year where testing
3 was conducted?

4 A Yes.

5 Q So, basically, every year since 2012?

6 A Yes. -- wrong -- not 2019. There's no
7 operational plan test. There will be testing.
8 There's -- testing is continuous. We're talking,
9 really, about these formal designed tests that
10 usually have an RCT component to them, but not
11 always.

12 Q And why does the Census Bureau run this
13 series of tests to prepare for 2020?

14 A In a modern business, when you develop a
15 tool that you're going to use for your flagship
16 product, you're usually going to use it
17 continuously. So in a modern business, there's a
18 continual improvement and implement phase.

19 For the census of population, that tool
20 is going to be used exactly once. So you can't
21 guess how you're going to do it. You have to take
22 the accumulated knowledge from the last times you

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1 decennial census environment might be like,
2 correct?

3 A They help you predict the quality of the
4 instrument and the cost of the operations to
5 implement it and collect and process the data.

6 Q And would you agree trying to count more
7 than 300 million people across the country is a
8 fairly complex undertaking?

9 A Yes.

10 Q So the Census goes through these multiple
11 years of tests in order to make sure it get things
12 right for the 2020 census, correct?

13 A Actually, we hold ourselves to a higher
14 standard. We like to do them better than we did
15 them last time.

16 Q Because the decennial census is a
17 once-in-a-decade event?

18 A It is authorized in the Constitution.

19 Q And we discussed testing, at length,
20 earlier. Is one of the purposes that testing is
21 used for to develop predictions about field
22 operations?

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1 A Yes.

2 Q And particularly options for --
3 operations for nonresponse follow-up?

4 A Among other operations, yes.

5 Q And is it okay if I refer to nonresponse
6 follow-up as NRFU going forward?

7 A I'll recognize it if you call it NRFU.

8 Q Okay. Are the tests used to help
9 project, for example, staffing levels for NRFU
10 operations?

11 A They're used to help refine the
12 projections. They're usually our early on
13 projections that are based on the most recent
14 census and then they're refined.

15 Q How are they refined?

16 A So the relevant history is the post-war
17 history of the census, and that is the era in
18 which we moved from the primary operational mode
19 is you send an enumerator into a space that is
20 defined by a physical area, and you ask that
21 enumerator to find every domicile or other place
22 where people can live, and then after finding

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1 those domiciles, to count the number of people
2 that are there and to collect other information
3 about them.

4 We moved from that mode to asking the
5 residents of the United States to supply that
6 information for themselves in a manner that would
7 allow us to control whether we had received
8 information about a particular physical address.
9 So the field operators are different in those two.
10 There really -- it wasn't really NRFU before there
11 was NR to follow up.

12 Q So just talking about the 2020 census,
13 have these tests been used to project the number
14 of NRFU enumerators that the Census Bureau may
15 need to hire?

16 A Yes. They have been used along with
17 other data to do that projection.

18 Q What is the other data that's been used?

19 A Historical practice, feedback from the
20 field office and tests for the various forms of
21 the operational control systems.

22 Q And when were those tests for the

1 operations control systems performed?

2 A So every time we do a test, there's an
3 operational control system. So it's a component
4 of the data that we gather in order to revise our
5 estimates of how much effort is going to be needed
6 at each phase of the census.

7 Q And have these tests over the last
8 several years also been used to project the number
9 of census offices that the Census Bureau will need
10 to open up for the 2020 census?

11 A They have been used to revise the area
12 census office plan, yes.

13 Q Have these tests been used to test the
14 adequacy or the amount of training that
15 enumerators will receive?

16 A Yes.

17 Q And have these tests been used to test
18 NRFU -- methods of NRFU contact with households?

19 A If I rephrase your question, have they
20 been used to test a variety of NRFU protocols and
21 modes, yes.

22 Q Have these tests been used to -- in

1 relation to the census questionnaire assistance
2 telephone service?

3 A Yes. Not all of them, but some of them.

4 Q Which tests have been used for that
5 purpose?

6 A So I will have to review which of the
7 tests included a CQA. That's what we call it,
8 census questionnaire -- census questionnaire
9 assistance, which is the telephone component. The
10 end-to-end test did. The 2015 National Content
11 Test did. I can't remember whether the 2017 test
12 did or not.

13 In the next break -- I have notes on
14 this. I'll just -- fleshed short-term memory, so
15 I'm not sure. Some of them did and some of them
16 didn't.

17 Q And is it accurate that the census
18 questionnaire assistance service is there for
19 people to ask questions that they might have about
20 the 2020 census questionnaire?

21 A So the goal of the CQA is to get to the
22 point where during what we call peak operations,

1 once we mail out the invitation to take the
2 census, that we would be able to take a call load
3 that would support a large proportion of the
4 population making inquiry, expect to actually
5 enumerate a nontrivial fraction of the household
6 directly on the CQA.

7 Q By enumerate, you mean get people to
8 respond to the census over the phone?

9 A The training for the CQA operators is to
10 ask early on in the contact, would you like us to
11 just do it right now, and then begin the
12 telephone-administered instrument.

13 Q And has the testing program for the 2020
14 census been used to project the call load that
15 might be expected for that peak operations period?

16 A It has. And so has the question -- the
17 equivalent operation for the economic census,
18 which is a field mode.

19 Q Has the testing program since -- the
20 testing program for the 2020 census been used to
21 test the role of administrative records in
22 reducing the NRFU workload?

1 A Yes.

2 Q Now, for -- have any of the tests to date
3 in the 2020 census testing program, have any of
4 them included a citizenship question?

5 A No.

6 Q And so none of these tests, to the extent
7 that they were used to project staffing levels or
8 to refine the projections, would have accounted
9 for the citizenship question?

10 A Directly, no.

11 Q Would they have done so indirectly?

12 A Well, we used -- we didn't use evidence
13 from a test, but we used evidence similar to the
14 evidence generated in the test to make indirect
15 inferences. But directly, no.

16 Q What was -- what were the sources you
17 used for the indirect inferences?

18 A These are the experiments that I
19 described -- the natural experiments that I
20 described in my fact witness testimony.

21 Do you want to go through them again?

22 Q Are those the ones discussed in your

1 January 19th memo?

2 A The ones that existed at that point in
3 time are discussed in the memo, yes.

4 Q And since then, are there any other ones
5 that have been done?

6 A There are more extensive ones that have
7 been done in the full version of the technical
8 paper that was developed after the memo was
9 written.

10 Q Is that the document that was just
11 produced to us yesterday?

12 A Yes.

13 Q And besides those two sources, are there
14 any other -- let me rephrase.

15 Besides the sources discussed in those
16 two documents, are there any other sources that
17 you used to develop indirect inferences?

18 A They haven't been used yet, but we intend
19 to examine the field operation data from the
20 end-to-end test, because it occurred as the
21 information about the citizenship question was
22 becoming public. It's not clear how useful it

1 would be, but that would be another form of
2 indirect inference. There was no citizenship
3 question, but there were environmental factors
4 that intervene.

5 Q Besides that, are there any other
6 sources?

7 A None that I'm aware of.

8 Sorry. From our test operations.

9 Q And so to the extent that any tests
10 conducted to date have been used to project the
11 number of offices that the Census Bureau will open
12 in 2020, those projections would not have
13 accounted from the citizenship question, correct?

14 A In general, that's correct, yes.

15 Q And to the extent the tests were used to
16 test the adequacy or amount of enumerator
17 training, they would not have accounted for the
18 citizenship question, correct?

19 A That's correct.

20 Q And the same question with respect to the
21 testing of NRFU protocols. To the extent that
22 testing has been used to test the adequacy of

1 those protocols, they would not have accounted for
2 the citizenship question, correct?

3 A That's correct.

4 Q And the same question with respect to the
5 census questionnaire assistance. To the extent
6 the testing was used to develop a projection about
7 call loads for peak operations, those projections
8 would not account for the citizenship question,
9 correct?

10 A That's correct.

11 Q In light of the Secretary's decision to
12 add the citizenship question, will the
13 Census Bureau conduct any testing on the impact of
14 that question on staffing levels?

15 MR. EHRLICH: Objection. Form.

16 THE WITNESS: It's hard to imagine what
17 kind of testing we might do, other than on a
18 relatively small scale. However, we are working
19 closely with the integrated communication
20 campaign, which the Secretary has recommended
21 increasing the budget to 500 million. They are
22 developing messaging and other tools that we fully

1 randomization something -- randomization is
2 surprisingly more expense than you realize,
3 including me when I first got into a position
4 where I could randomize.

5 Q Besides CBAMS, is there a specific test
6 for which the form has been decided that the
7 Census Bureau will undertake related to the
8 citizenship question?

9 A Not that I'm aware of.

10 Q And when does the Census Bureau intend to
11 make a decision about the form of these tests?

12 A So what has happened is the different
13 components of the Census Bureau with expertise in
14 this, have been consulting with the operational
15 program attempting to provide them with feedback
16 on how this kind of -- this kind of testing can be
17 done without disrupting the timeline. That's a
18 good question to pose at a quarterly program
19 management review. Because when you do, then from
20 out of the woodwork come the different ways in
21 which that has happened. I'm not aware of any
22 specific way in which that has happened

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1 research, yes.

2 Q And those would be resources you would
3 have to ask the Secretary for under the
4 contingency program you described?

5 A Under the current management of the
6 contingency funds for the 2020 census, the
7 Secretary has the authority to release them.

8 Q Does the Census Bureau have any plans to
9 increase the number of census offices it will open
10 in 2020 in light of the citizenship question?

11 A The area census office plan has not been
12 revised.

13 Q Are there plans to revise it?

14 A Not that I'm aware of. The agency's
15 answer to that question is no.

16 Q Is there a final date by which the 2020
17 census questionnaire has to be finalized?

18 A The agency's answer to that question is
19 we expect to finalize the questionnaire by June of
20 2019, the paper form. That's the -- in current
21 operational plan, that is the due date -- the due
22 month for the final artwork.

1 Q And is that the date on which printing of
2 the questionnaire will begin?

3 A When you deliver the final artwork, then
4 the printer starts to implement it.

5 Q And is that also the same month in which
6 you would have to finalize the Internet
7 self-response instrument?

8 A There is more flexibility for the
9 Internet self-response instrument. So we
10 don't -- sorry. I'm blanking. There's an
11 industry term for the software development system
12 that we're using for the software components of
13 the 2020 census, and it will come into short-term
14 memory, but it probably will by the time I finish
15 this answer.

16 In that timeline, what would happen if
17 we -- in that timeline, the instrument will be in
18 the form where we expect to be able to scale it
19 after the sprint that ends in the middle of
20 September. So that means that the software is in
21 its -- in the form in which you then move into
22 test readiness and then production. So -- but it

1 system, in the middle of next month.

2 Q Going back to the paper questionnaire,
3 under the current budget, if there are changes to
4 the paper questionnaire after June of 2019, would
5 that impair the Census Bureau's ability to timely
6 administer the 2020 census?

7 A Without appropriate funding adjustments?

8 Q Under the current cost estimates and
9 budget?

10 A Under the cost estimates and budget, yes.

11 Q Has the Bureau developed an estimate for
12 how much additional funding it would need to
13 timely administer the 2020 census if the
14 questionnaire is modified after June of 2019?

15 A We do not have well-articulated lifecycle
16 cost estimates for such a contingency.

17 Q And for the Internet self-response
18 instrument, is there a drop-dead date by which it
19 has to be finalized in order to timely administer
20 the 2020 census under current cost estimates and
21 budget?

22 A Under current cost estimates, it should

1 citizenship question may make modifications.

2 Those modifications will have to be made
3 relatively soon. The field operations actually
4 start with address canvass and address canvases
5 start next summer. So we don't have a lot of
6 time. But the final forms of the training
7 materials and the final onboarding of those
8 activities hasn't happened. So we do have the
9 scope to make modifications, and we are intending
10 to analyze the data from the end-to-end test and
11 other data as they became available to us in order
12 to optimize that.

13 Q And the end-to-end didn't test
14 citizenship, right?

15 A There was no citizenship question on the
16 form.

17 Q And these additional data you mentioned
18 with respect to citizenship, those are possible
19 small scale tests that the Census might do, right?

20 A What I said was that the focus groups
21 from CBAMS were small scale tests and the in place
22 testing of instruments would necessarily be small

1 can be used to enumerate a household after just
2 one household visit?

3 A Yes. There are multiple cutoff criteria
4 that have been honed over the course of the decade
5 and will probably be honed again from the
6 end-to-end test.

7 Q And none of those tests have been used to
8 hone these quality requirements, including the
9 citizenship question, correct?

10 A That's correct.

11 Q What proportion of the NRFU population do
12 you expect can be enumerated through
13 administrative records?

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: In the current lifecycle
16 cost estimate -- I'm going to check this on the
17 break, because I actually know this is true for
18 Version 2 but I'm not sure it's true for Version 3
19 -- that was 6 million households we expected to be
20 able to enumerate with ad recs.

21 BY MR. TILAK:

22 Q Has any research been done on the

1 differential availability or quality of these
2 records for households with noncitizens compared
3 to the U.S. population generally?

4 A The research that has been done is
5 germane to that question, not necessarily because
6 it's specifically looking at a citizenship
7 variable, but one of the things that matter is
8 quality of the personal identifying information in
9 the ad recs. And people who file income tax
10 returns on time, in particular, are much more
11 likely to have useable PII. And that PII is the
12 language we were talking about in the early part
13 of this deposition verified -- it's audited by the
14 Internal Revenue Service. So we know the
15 characteristics of that subpopulation are much
16 more likely to be citizens, but that's not
17 specifically using the citizenship variable. It's
18 just announcing that a characteristic of the way
19 we created the administrative record eligible
20 enumerations is going to favor citizens.

21 Q So these indicative --

22 A I didn't mean favor. I'm very

1 sensitive -- is going to more likely select
2 citizens.

3 Q So is that indicative that administrative
4 records meeting the Census Bureau's quality
5 requirements are more likely to exist for citizens
6 than for noncitizen households?

7 A They are more likely to exist for persons
8 who file -- persons and households that file an
9 income tax return, and that is more likely to be
10 the case for higher income people who are more
11 likely to be citizens.

12 Q How about for racial and ethnic
13 minorities, for example, Hispanics?

14 A So this is the reason why we use Medicare
15 records, because that -- that is nearly exhaustive
16 for the population over age 65. But, again, it's
17 only if you have a Social Security number that
18 you're going to be eligible. So you have to be
19 eligible for social benefits in the United States,
20 and some noncitizens are and they're going to be
21 in those records. They're also often eligible for
22 State programs. And we did a plan to assemble

1 State records, but that's what's been evaluated
2 before we finalize which kinds of records we're
3 going to use.

4 We're making a push to require SNAP
5 records, Supplemental Nutrition Assistance Program
6 records, and we don't have them for every state,
7 and we need to make a decision about whether --
8 sufficiently complete that we will go forward.
9 That decision hasn't been made.

10 Q Returning, briefly, to proxy enumeration.
11 Will the default of three visits before proxy
12 eligibility apply across the country?

13 A It -- well, the answer is in the current
14 design, yes. But then I will say, again, that
15 field staff have the authority from the very first
16 visit to pile on, so they -- they can redeploy
17 enumerators if they -- for example, if they
18 deployed one early on in the process and our
19 quality evaluation of that enumerator's work is
20 going to cause that enumerator not to get any more
21 work, the field staff can redo some of that.

22 And we do continuous quality control on a

1 sample, so that's going to involve additional
2 visits, as well.

3 The six visits is the operational
4 guideline and the training and the expectation,
5 but the discretion of the field staff and the
6 discretion of the operational staff back at the
7 census headquarters can modify that, even if the
8 protocol was not officially modified.

9 Q And to date, are there any guidelines for
10 varying the number of visits before proxy
11 eligibility?

12 A I believe that there are not, but I
13 believe that will be part of the end-to-end test
14 evaluation, whether we should modify that.

15 Q And, again, end-to-end did not include
16 the citizenship question, correct?

17 A That's correct.

18 Q Dr. Abowd, in the memos that you wrote --
19 is that correct?

20 A That I supervised the preparation of.

21 Q That you supervised the preparation of,
22 is it accurate that you found evidence of a lower

1 alternative estimates of the total population.
2 One is developed by what's called demographic
3 analysis and we only do that at a national level,
4 although we do have some subnational controls in
5 the demographic analysis, and the other is done by
6 the dual-system estimation and we -- in the
7 1990s -- for the 1990 census and for the 2000
8 census, we did attempt to implement a dual-system
9 estimation that would be capable of doing accurate
10 dual-system estimation below the state level. But
11 our current dual-system estimator is only accurate
12 at the national. The state level estimates for
13 the dual-system estimator are what statisticians
14 call synthetic, what econometricians call
15 estimated.

16 Q And earlier you had said that the ability
17 to abate the undercount depends on the energy and
18 efficacy of nonresponse follow-up; is that right?

19 Has the Census Bureau developed a budget
20 of how much it would need to increase its
21 nonresponse follow-up to address any decline in
22 self-response as associated with the citizenship

1 question?

2 A So we have not yet formally modified any
3 budgets. The \$91.2 million estimate that I gave
4 you earlier is our current -- we should start
5 there, because that's a conservative estimate. It
6 assumes that households that are all citizens are
7 going to respond the same way they would have
8 responded in earlier surveys, and they may not be
9 true either.

10 Q Yeah. What is the basis for that
11 assumption, that households will respond in the
12 same way as before?

13 A In social science, that's called the
14 counterfactual. There's no basis for it. I state
15 it because that's a maintained hypothesis that the
16 other -- the hypothesis under test can be compared
17 to. So if you don't make an assumption about the
18 component of the hypothesis that you can't test,
19 you can't interpret the component of the
20 hypothesis you can accept in a randomized
21 controlled trial.

22 So in a natural experiment, you have to

1 accept which things you can estimate and which
2 things you have to make a hypothesis on. So
3 making the hypothesis that households that contain
4 all citizens won't change their response behavior,
5 it's not making the prediction that they won't
6 change their response behavior. It's allowing you
7 to interpret the 5.1 percentage points or now it's
8 5.8 percentage points, and apply to a larger base
9 in a proper manner. That's why I say it's
10 probably an underestimate, because it's probably
11 not a reasonable hypothesis that the households
12 that are all citizens won't change their behavior,
13 but we don't have any evidence.

14 Q So it's your view that that's not a
15 reasonable hypothesis but it's the assumption?

16 A It's not a reasonable projection, let me
17 say that.

18 Q But it's the assumption that you had?

19 A It's not a reasonable projection. It is
20 the assumption in that analysis for the purposes
21 of generating that budget number.

22 Q And if it's not a reasonable hypothesis,

1 is it a reasonable assumption?

2 A Sorry. You keep changing my words. I
3 keep changing them back. I said you have to make
4 a hypothesis, and it's the one we made. It's not
5 a reasonable projection. That is to say, if you
6 ask us collectively do we think that the
7 self-response of all citizen households is going
8 to stay changed in an environment where a
9 controversial citizen question is on the census,
10 we would say no, we expect that their cooperation
11 would be expected, too. But we don't have any
12 scientific evidence to do the sign or the
13 magnitude of that, and we can't rule out the
14 hypothesis that they would be more cooperative.

15 Q Is there any empirical evidence that they
16 would be more cooperative, that you're aware of?

17 A I'm not aware of any empirical evidence
18 for either side of it. I have consistently said
19 that it was maintained or a counterfactual
20 hypothesis for the purposes of interpreting the
21 coefficients that you can estimate, and I've now
22 said that it's not a reasonable projection, okay,

1 Q But no final decision has been made?

2 A No.

3 Q When does the Census Bureau expect to
4 make a final decision?

5 A A necessary condition for a final
6 decision is to have the processing software that
7 the various files must move through in order to
8 produce final estimates in place, and it's not.
9 It will be in place -- it's not off schedule. It
10 will be in place as the rest of the end-to-end
11 test is completed. And then when you have that in
12 place, you can actually start testing these things
13 in the operational environment. They're currently
14 being tested in a research environment, and that
15 research has been going on for more than a decade.

16 Q Has any of that research looked at the
17 accuracy of whole person substitutes for
18 noncitizen households versus the rest of the U.S.
19 population?

20 A No.

21 Q Has any of that research looked at the
22 accuracy of whole person substitutes for other

1 hard-to-count communities as compared to the U.S.
2 population?

3 A The research that was done with the 2010
4 Census Coverage Measurement studies included
5 analyses of the components of the year-end census
6 by characteristics like the ones you just recited.

7 Q And that's the G1 --

8 A That's the G series.

9 Q The G series may help us, okay.

10 Has the Census Bureau decided what
11 geographical unit will be used for whole person
12 substitutions?

13 A I'm not sure I know what the question
14 means.

15 Q In general, when imputation is done -- or
16 substitution is done, does that rely on records
17 from surrounding communities?

18 A The hot-deck imputation algorithms that
19 were in place for the 2000 and 2010 census did use
20 nearby records. Statistical imputation systems do
21 not have to.

22 Q Is that still the plan for 2020?

1 A There is no plan for 2020. That is among
2 the candidate algorithms.

3 Q So no final decision has been made?

4 A That's right.

5 MR. TALIK: If we could go off the record
6 and take a short break.

7 VIDEOGRAPHER: This is the end of
8 Media Unit Number 4. The time on 3:40 p.m. and we
9 are off the record.

10 (Off the record.)

11 VIDEOGRAPHER: This begins Media Unit
12 Number 5. The time on the video is 4:04 p.m. We
13 are on the record.

14 BY MR. TILAK:

15 Q Dr. Abowd, is there any empirical
16 evidence that someone who chooses not to respond
17 to this 2020 census because of the citizenship
18 question would respond in a face-to-face
19 interaction with a census enumerator?

20 MR. EHRLICH: Objection. Form.

21 THE WITNESS: Not that I'm aware of.

22 BY MR. TILAK:

1 Q And if that household doesn't respond,
2 census enumerator would then try to find a proxy,
3 correct?

4 A That's correct.

5 Q And is there any empirical evidence on
6 the accuracy of proxy enumerations for areas with
7 large noncitizen populations compared to the rest
8 of the United States?

9 A Only indirect.

10 Q And what is that indirect evidence?

11 A That evidence that's in the technical
12 reports that you've seen.

13 THE WITNESS: The evidence that's in the
14 technical reports that you have seen.

15 BY MR. TILAK:

16 Q And if a proxy is not found, the census
17 could then also use administrative records to
18 enumerate the household, correct?

19 A The census may use administrative records
20 whether or not a proxy respondent is found.

21 Q But based on your earlier testimony, the
22 characteristics of the administrative records are

1 such that there are more likely to be
2 administrative records for citizens compared to
3 noncitizens?

4 A I think that's a reasonable hypothesis.
5 I don't actually have any empirical data to
6 support it.

7 Q And this, finally, this whole person
8 imputation, is there any empirical evidence on the
9 accuracy of a whole person imputation for
10 noncitizen households versus the U.S. population?

11 A So whole person substitutions and whole
12 person imputations are not very accurate. We've
13 documented that for multiple censuses, but we
14 documented it most carefully for the 2010 census
15 where we explicitly looked at it. We know that.

16 Q And so you would agree that --

17 A We don't count them as correct
18 enumerations, because we require that the
19 characteristics be correct, not just the count.

20 Q So you would agree with all the censuses
21 procedures to try to enumerate a household, some
22 people are always missed in the decennial census?

1 A If the question to me is do we
2 acknowledge that some people are always missed in
3 a census, the answer is yes. Some people are also
4 counted twice.

5 Q And those would be erroneous
6 enumerations, correct?

7 A So one's omissions and the other is
8 erroneous enumerations, yes.

9 Q I'd like to have this marked as
10 Exhibit 17.

11 (Plaintiffs' Exhibit 17, G series
12 documents, was marked.)

13 BY MR. TALIK:

14 Q Dr. Abowd, do you recognize this
15 document?

16 A Yes. I was looking for the number, it's
17 G4.

18 Q Is this one of the G series documents we
19 spoke about earlier?

20 A Yes, it is.

21 Q If I could just refer you to Page 1 of
22 the executive summary, and the last full paragraph

1 don't know its order of magnitude.

2 Q Would you agree that the undercount is
3 differential between different subpopulations in
4 the United States?

5 A We have documented that the net
6 undercount is differential.

7 Q And are hard-to-count populations
8 specifically likely to be undercounted
9 differentially compared to the rest of U.S.
10 population?

11 A That's almost tautological. When we
12 label a subpopulation hard-to-count, one of the
13 indicators we use is its net undercount.

14 Q Let's next turn to Page 9, and the
15 last -- the paragraph, it says, "The black alone
16 or in combination and the Hispanic populations had
17 a larger percent omissions than the non-white
18 Hispanics" --

19 A Sorry. Sorry. You got there too fast.
20 Point.

21 Q It's the second paragraph.

22 A Got it. Okay.

1 Q "The black alone or in combination and
2 Hispanic populations have larger percent
3 omissions, 9.3 percent and 7.7 percent,
4 respectively, than the nonwhite -- non-Hispanics
5 white-alone population."

6 Is it accurate that the census's
7 enumeration procedures are more likely to the
8 Hispanics -- members of the Hispanic population
9 compared to the non-Hispanic white population?

10 A I think the answer to that question is
11 yes, but I would not use the information in this
12 table to answer that question. I would use the
13 information in the net undercount table, which
14 is -- it might not be in this report, but there's
15 a summary in G01.

16 Q Got it.

17 And then turning to Page 17, this refers
18 to -- refers to bilingual mailing areas. Are
19 bilingual mailing areas where the population is
20 likely to have limited English proficiency?

21 A So bilingual mailing areas for the 2010
22 census would have been predicted from the 2005 to

1 2009 language questions in the American Community
2 Survey. So they're indicators of households that
3 speak more than one language.

4 Q And, again, the omission percentage for
5 bilingual mailing areas in Table 9 is 7.3 percent
6 compared to 5.3 percent for the U.S. total. Is it
7 accurate that the census's enumeration procedures
8 are more likely to miss people living in bilingual
9 mailing areas compared to the U.S. population,
10 generally?

11 A I'll correct your question. If you mean
12 gross omissions, that's what the table describes.
13 If you meant net undercount, you can't get that
14 from this table.

15 Q What table would you refer to for that?

16 A If we have a net undercount estimate, it
17 would be in one that is labeled net undercount
18 as -- or percentage net undercount, one of those
19 two. I don't know -- I don't know the contents of
20 all of those G series reports. They're summarized
21 in G01.

22 Q If I can refer you to the column just to

1 the left of omissions percentage undercount, is
2 that the net undercount?

3 A Thank you. Thank you.

4 Q And is the Number .80 for bilingual
5 mailing areas?

6 A Yes.

7 Q And the asterisk indicates that it's
8 statistically significant, correct?

9 A At the 90 percent level, yes. That's
10 correct.

11 Q And so given that information, is it more
12 likely that the census's enumeration procedures
13 would miss people living in bilingual areas
14 compared to the U.S. population?

15 A Yes. That's what a positive differential
16 net undercount is.

17 Q And then going back to Page 9 on Table 2,
18 which we were at earlier.

19 A Was there one there, too, and I missed
20 it? Yes, there was. Okay.

21 Q If we look at the bottom of Table 2, the
22 net -- the percent undercount is 1.54 percent?

1 A Yes.

2 Q And that's statistically-significant --

3 A Yes.

4 Q -- compared to the U.S. population?

5 So with that information, is it more
6 likely that the census's enumeration procedures
7 will miss members of the Hispanic population
8 compared to population --

9 A There's a differential net undercount for
10 Hispanics, yes.

11 Q Now, this is all for the 2020 census.
12 Does the Census Bureau expect not to have a
13 differential undercount of Hispanics for the 2020
14 census?

15 MR. EHRLICH: Objection. Form.

16 THE WITNESS: The Census Bureau expects
17 to improve its net undercount performance every
18 census and targets the populations that had
19 previous net undercounts for special attention.
20 Sometimes with tests that have been demonstrated
21 to be more effective and sometimes with
22 advertising campaigns that have looser empirical

1 with the Voting Rights Act and to do the scrutiny
2 of that compliance.

3 Q So it has been required since 1965 when
4 the Voting Rights Act was passed?

5 A So this is why I say these are -- these
6 are fluid. It -- tabulations from the long form
7 were used when they started to be -- they weren't
8 available in the 1960s, because we didn't ask the
9 question in 1960 on the long form. So we did ask
10 it again on this long form in 1970s and
11 tabulations were produced of citizenship
12 population, I believe. I don't have specific
13 knowledge of how they were used in the '70s but I
14 believe used like the Citizen Voting Age
15 Population tabulations that we now produce.

16 Q And that the Census Bureau has been
17 producing for decades?

18 A When we collect data on citizenship, we
19 produce statistical products based on those data.

20 Q So you mentioned the advisory committees
21 just a moment ago. What is the role of the
22 advisory committees with respect to the decennial

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1 census?

2 A So the Census Bureau is an agency that
3 benefits from three advisory committees, the CSAC,
4 the Census Scientific Advisory Committee, the
5 National Advisory Committee on Race, Ethnicity and
6 Other Populations, and the Federal Economic
7 Statistics Advisory Committee, so they're usually
8 called CSAC, NAC and FESAC.

9 I'm going to do FESAC really quickly.
10 It's chartered in the Department of Commerce but
11 it advises the Census Bureau, the BLS, the Bureau
12 of Labor Statistic, and the Bureau of Economic
13 Analysis, BEA, primarily about economic products,
14 but the census of population would be a subject
15 that would be presented to them on which we might
16 ask their advice and they do get updates on it as
17 well as other products.

18 But they focus on economic products, and
19 although they're chartered in Commerce, the BLS is a
20 full partner.

21 The other two, CSAC and NAC, are
22 chartered in the Department of Commerce for the

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1 benefit of the Census Bureau, and they are
2 advisory committees under the Federal Advisory
3 Administrative Committee, FACA. So they operated
4 according to the FACA rules. The nomination
5 procedure has to be public. Because they're
6 chartered in Commerce, Commerce determines the
7 membership. The agenda has to be public. The
8 meetings have to be public. There has to be a
9 public comment period.

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10 But, generally, they are for our benefit
11 in the sense that we actively seek to put on those
12 advisory committees people and representatives or
13 organizations who can be helpful in the scientific
14 committee on many different technical issues in
15 the National Advisory Committee on the full gamut
16 of issues, in particular, for the census --

17 Q Sure.

18 A -- not just the one in 2020, that has
19 been a source of advice and outreach to many of
20 the populations that we -- that it's important to
21 have partnerships with when you collect the data.

22 Q So is it fair to say that the

1 Census Bureau typically consults with CSAC and the
2 NAC about significant changes to the decennial
3 census?

4 MR. EHRLICH: Objection. Form.

5 THE WITNESS: It is correct to say that
6 we regularly consult with CSAC and the NAC about
7 the ongoing operations of all our major
8 statistical programs and some of our not-so-major
9 statistical programs.

10 BY MS. GOLDSTEIN:

11 Q And that includes the census?

12 A That includes the census.

13 Q Do you know the dates of the NAC
14 committee -- withdrawn.

15 Was the NAC consulted about the
16 citizenship question prior to the March 26th
17 decision by Secretary Ross?

18 A With your permission -- are you going to
19 ask me the same question about CSAC?

20 Q I will.

21 A I'm sorry?

22 Q I will.

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1 A Can I do them at the same time? It will
2 be easier.

3 Q Please.

4 A So both NAC and CSAC meet twice a year on
5 an approximately September/March schedule. So
6 when they met for what they call the fall meeting
7 of 2017, there was nothing in the air. And when
8 they met for the spring meeting, in the case of
9 CSAC, the Secretary had just announced his
10 decision. And in the case of NAC, the Secretary's
11 decision had been out for, I believe, about a
12 month, but nothing in the administrative record
13 had been released yet. So for both of those
14 spring meetings, we had what I think we would all
15 characterize in the Census Bureau a very awkward
16 meeting.

17 Had the question been before us long
18 enough, we would certainly have consulted with
19 them. And because the entire decision-making
20 process was compressed into a few months, we did
21 not. And we did not have working groups in place
22 that we thought we could effectively use in

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1 preparing the materials that the Secretary relied
2 upon for his decision.

3 Q So I just want to make sure I understand,
4 that if the Census Bureau had had adequate time,
5 you would have consulted the NAC regarding the
6 citizenship question proposal?

7 A Yes.

8 Q And if the Census Bureau had had adequate
9 time, you would have consulted the --

10 A CSAC.

11 Q -- CSAC about the citizenship question?

12 A Yes.

13 Q And if the Census Bureau had had adequate
14 time, you would have convened working groups at
15 these advisory committees to study the citizenship
16 question?

17 A We might have, yes. It would have been
18 actively discussed.

19 Q Now, recognizing that these committees
20 did not have an opportunity to weigh in prior to
21 the Secretary's decision, following that decision,
22 did these committees at your awkward meetings

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1 to be marked as Plaintiffs' Exhibit 21.

2 (Plaintiffs' Exhibit 21, 2020 census
3 integrated communication plan, was marked.)

4 MS. GOLDSTEIN: And this is a 208-page
5 document, and so I only printed a couple copies.
6 My apologies to the world and counsel.

7 BY MS. GOLDSTEIN:

8 Q This is document entitled 2020 census
9 integrated communication plan. As I mentioned,
10 209-page [sic] version. This is version 1.1 dated
11 6/2/2017.

12 Do you recognize this document?

13 A Yes.

14 Q What is this?

15 A This is one of the many plans that the
16 2020 census releases periodically to supply
17 transparent detailed information about the
18 planning and operations of the 2020 census.

19 Q And is another version of this document
20 planned?

21 A So I've been asking about these
22 throughout the day but I didn't ask about this

1 to revise the plan as a consequence of what we
2 learned there.

3 Q Why did you not have a communications --

4 A Component.

5 Q -- component in the end-to-end test?

6 A It was not sufficient --

7 (Thereupon, the court reporter
8 clarified.)

9 THE WITNESS: There was not sufficient
10 budget.

11 BY MS. GOLDSTEIN:

12 Q So if you can turn to Page 7 of this
13 plan, and if you go down to Bullet Point 1,
14 "Detail the research and database approach: A
15 successful campaign must be based on a solid
16 foundation of research and have strong internal
17 systems for collecting and analyzing data to
18 optimize performance."

19 Do you agree with this statement?

20 A Yes.

21 Q And given the timing of when the
22 citizenship question was added, is there a solid

1 foundation of research that informs the
2 communication plan -- the communication planning
3 process about the citizenship question and its
4 implications?

5 A No.

6 Q And are there stronger internal systems
7 for collecting and analyzing data to optimize
8 performance, given the recent addition of the
9 citizenship question?

10 A So we have tried to optimize performance
11 by using the instruments that we have available to
12 us, and there are additional planned task orders
13 for this communication, the integrated
14 communication contract, that will involve
15 additional collection of data, realtime tracking
16 data, both survey-based and other ways. So there
17 are definitely plans to collect data, and they
18 will be checked with -- with the census design as
19 it exists today in mind. So they will be fully
20 cognizant of the citizenship question.

21 Q Is it fair to say that the late addition
22 of the citizenship question will make it harder to

1 that process a little bit more difficult --

2 A Yes.

3 Q -- fair to say?

4 A Yes.

5 Q Okay. So let's go to Page 37, and if you
6 go one, two, three, four, bullet points down,
7 "With young children having a highest net census
8 undercount rate than any other age group, Hispanic
9 children account for more than 36 percent of the
10 total net undercount for all children younger than
11 five."

12 Did I read that correctly?

13 A Yes.

14 Q So there is a -- prior to any addition of
15 the citizenship question, the Census Bureau has
16 recognized that there is a net undercount for
17 Hispanic children, correct?

18 A Yes.

19 Q Is it fair to say that the NRFU -- NRFU
20 efforts that the Census Bureau puts in place are
21 less effective with respect to this population?

22 MR. EHRLICH: Objection. Form.

1 THE WITNESS: So these are estimates
2 based on the 2010 census coverage measurement
3 program.

4 BY MS. GOLDSTEIN:

5 Q Sure.

6 A So they were in an environment -- a
7 different political environment and a
8 questionnaire without a citizenship question on
9 it. And this identification of children, age zero
10 to four, this is the first time that that had
11 popped out as such a large net undercount.

12 There's a couple of possible reasons for
13 that. Our demographic data -- so one of the
14 things we would measure against better now are for
15 that age group because of accuracy of birth
16 records. So we have, consistently, throughout
17 this decade, focused on ways in which we can
18 improve our undercount. The -- the end-to-end
19 test does have a coverage evaluation component,
20 but it wasn't structured to provide statistical
21 information. So we have only the direct analysis
22 of the test to see if we have improved it.

1 I don't want to say it's a crap shoot. I
2 think that there is solid evidence that design
3 changes that have been made, particularly queues
4 and reminders, and these are actually easier to do
5 on the Internet self-response instrument than on a
6 paper instrument, because you can blow by the
7 reminders and the queues on the paper one, but
8 it's harder to blow by the ones on the Internet
9 instrument, too, but it's harder to because of the
10 way it's structured. So we put some considerable
11 effort --

12 BY MS. GOLDSTEIN:

13 Q Sure.

14 A -- into trying to alert people who have
15 answered someplace else on the form, correlates to
16 there might be a young -- an uncounted person here
17 on this, but we don't have the statistical
18 evidence to back up a claim that that will reduce
19 the net undercount. We have the statistical
20 correlates to suggest it might.

21 Q Is it possible that the presence of the
22 citizenship question on the decennial census will

1 exacerbate this kind of net undercount of Hispanic
2 children?

3 A Yes. That is what we mean when we say
4 the quality of the census count will be harmed.

5 Q Let's go to Page 53. And I just want
6 to -- you got -- direct you to the very last
7 paragraph in bold. Leading up to the 2020 count,
8 all communication elements, including advertising,
9 earned media, collateral and other items designed
10 for public dissemination will be pretested and
11 refined.

12 Has that process happened yet?

13 A I'm sure that some parts of that process
14 have happened already. But a systemic part of it
15 would have been part of the 2018 end-to-end test
16 and so -- yeah, at the point at which this plan
17 was written, I believe -- I get my budget years
18 and my calendar years -- I believe -- we were
19 still in fiscal 2017. The full design for the
20 end-to-end test was still on the table. That was
21 the three site and it included a media campaign.
22 So those comment components were not done.

1 The other components that are part of the
2 integrated communication contract and the ongoing
3 activities of the decennial census were done.

4 Q Earlier you testified that the political
5 environment can affect response rates, correct?

6 A I know I just said political. I've been
7 trying very hard to say macroenvironment. If
8 you'll give me leave to say macroenvironment,
9 that's what I meant.

10 Q And one of the things that goes into
11 macroenvironment is the political context, fair to
12 say?

13 A That's fair to say. But another thing
14 that goes into it is the state of the economy.

15 Q Absolutely.

16 So let's say -- so would you -- you've
17 also testified that the macroenvironment can
18 affect the efficacy of NRFU, correct?

19 A Correct.

20 Q Is there -- is it possible that the
21 presence of a citizenship question will exacerbate
22 those effects?

1 A It's certainly possible, yes.

2 Q Does the Census Bureau believe that that
3 is likely?

4 A So what we believe is likely is that
5 we're going to need more intensive nonresponse
6 follow-up than the baseline lifecycle cost
7 estimate. One of our big concerns -- macro
8 concerns is when you ramp up the NRFU, you have to
9 hire the planned number of enumerators so that
10 they're available to deploy. If you discover one
11 week into NRFU that you're short of enumerators,
12 the six- to seven-week onboarding process defeats
13 you.

14 So let me just say there are many
15 professionals at the Census Bureau painfully aware
16 of the consequences of not being able to onboard
17 enough enumerators. As I understand it, we had to
18 ask for a budget supplement in 1990 because of
19 difficulties onboarding.

20 We had the best possible macroenvironment
21 for conducting a census in this regard in 2010,
22 for all the wrong reasons, but, nevertheless, it

1 was extraordinarily easy to onboard very good,
2 quality enumerators.

3 So in terms of macroenvironment,
4 we're -- the red lights are flashing around can
5 you hire enough enumerators? And the cost
6 estimate is designed -- assuming that we can, if
7 we can, then where the extra cost from the
8 nonresponse follow-up might be caused by the
9 citizenship question will come from having to
10 deploy them more intensively than we had planned.

11 Q And it's fair to say that there are
12 aspects of the macroenvironment currently that are
13 making it difficult to hire as many enumerators as
14 the Census Bureau needs?

15 A So I don't have to hypothesis, we had
16 difficulty hiring enumerators in Rhode Island for
17 the test.

18 Q And you expect that problem to be the
19 case for the -- as you attempt to onboard more
20 enumerators, correct?

21 A I would say we used that experience
22 to -- as an opportunity to revisit some components

1 of that recruitment plan.

2 Q But it's fair to say that the low levels
3 of unemployment right now will make it more
4 difficult to hire enumerators?

5 MR. EHRLICH: Objection. Form.

6 THE WITNESS: It's fair to say it will
7 make it more expensive to hire enumerators. And
8 if that's not acknowledged, then it will make it
9 more difficult to hire enumerators.

10 BY MS. GOLDSTEIN:

11 Q So, previously, you testified about the
12 work that Young & Rubicon was retained to do,
13 correct?

14 A So I testified about the work of the
15 integrated communication contract for which Y&R is
16 the lead contractor.

17 Q Have they done attitudinal studies on the
18 citizenship question as part of that contract?

19 A I do not know whether they have done
20 them. I do know that they are being actively
21 discussed.

22 Q And has Reingold performed attitudinal

1 from those studies.

2 MS. GOLDSTEIN: Can I have this marked,
3 please?

4 (Plaintiffs' Exhibit 22, OMB standards
5 and guidelines for statistical surveys, was
6 marked.)

7 BY MS. GOLDSTEIN:

8 Q Actually, before I get to this, you had
9 testified at your previous deposition regarding
10 Census's statutory charge to seek alternative
11 sources for information before asking a question
12 of the population.

13 Where does that statutory charge come
14 from?

15 A Yeah. In Title 13 -- I'm sorry, I can't
16 identify the clause -- we are instructed to use
17 administrative records and other sources of data
18 before attempting to gather the data by direct
19 instrument. That's a paraphrase, but that is
20 certainly the way we interpret that clause in the
21 Title 13.

22 Q And that is a well-established

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1 Census Bureau practice, correct?

2 A Correct.

3 Q I'm handing you what has been marked as
4 Plaintiffs' Exhibit 22. It is a copy of the
5 standards and guidelines for statistical surveys,
6 September 2006, from the Office of Management and
7 Budget.

8 Do you recognize this document?

9 A I think your handed me SPD2.

10 Q I think that's the shorter way to say it,
11 yes.

12 A Okay.

13 Yes. I do.

14 Q The Census Bureau is obligated to comply
15 with the standards set forth in this document,
16 correct?

17 A Yes. That's right.

18 Q I'm going to ask you to turn to Page 11
19 of this document, Standard 2.3. "Agencies must
20 design and administer their data collection
21 instruments and methods in a manner that achieves
22 the best balance benefit maximizing data quality

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1 and controlling measurement error" --

2 A I'm sorry. I started reading -- 2.3.

3 Q I'm sorry?

4 A I was down in the guidelines. Go ahead.

5 Yes, I've got it. Go ahead.

6 Q -- "controlling measurement error while
7 minimizing respondent burden and cost."

8 Now, at prior depositions, we have looked
9 at the many Census Bureau memoranda that your team
10 of experts put forth, and the Census Bureau has
11 concluded that Alternative D resulted in lower
12 quality data than Alternative C, correct?

13 A Yes.

14 Q And Alternative D has a higher respondent
15 burden than Alternative C, correct?

16 A Yes.

17 Q And Alternative D has a higher cost than
18 Alternative C, correct?

19 A Yes.

20 Q And I believe you've testified previously
21 that no decision has yet been made on whether or
22 not the Census Bureau will use the self-response

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1 data gathered pursuant to a citizenship question;
2 is that correct?

3 A I believe I said that no decision has
4 been made on how the Census Bureau will process
5 the respondent data into the final record of the
6 2020 census and use the respondent data and the
7 administrative data in producing a CVAP table.

8 Q And one possibility that you raised at
9 your deposition was to implement
10 Alternative D -- "One way to" -- I'm reading from
11 your deposition, "One way to implement
12 Alternative D is to conduct Alternative B, ignore
13 it and do Alternative C."

14 Correct?

15 A That is one way to implement
16 Alternative D, yes.

17 Q So one possibility that the team of
18 experts is considering is to conduct
19 Alternative B, ignore it and do Alternative C; is
20 that correct?

21 A It's more nuance than that. One
22 possibility they're considering is how to do a

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1 Q Lawyers have the same problem.

2 But it is still the case that today, no
3 conclusion has been reached, correct?

4 A That's correct. Yes.

5 Q If the Census Bureau does not make
6 use -- if the Census Bureau concludes that the
7 self-response data from the citizenship question
8 should be disregarded with respect to the ultimate
9 processing of the response data, would that use
10 minimize response -- respondent burden --

11 A No.

12 MR. EHRLICH: Objection. Form.

13 THE WITNESS: No.

14 BY MS. GOLDSTEIN:

15 Q Alternative D has a higher respondent
16 burden than Alternative C, correct?

17 A Yes.

18 MS. GOLDSTEIN: May I have one more
19 exhibit, please?

20 (Plaintiffs' Exhibit 23, Secretary Ross
21 decision memo, was marked.)

22 BY MR. HO:

1 Q I'm going to show you what has been
2 marked as Plaintiffs' Exhibit 23. This is the
3 decision memo from Secretary Ross dated
4 March 26, 2018 that begins at Bates stamp 1313,
5 and I'd like you to just turn to Page 1317.

6 So I'd like to direct you to the last
7 half of the top paragraph on this page. The
8 sentence that begins "Finally."

9 A Yes.

10 Q "Finally placing the question on the
11 decennial census and directing the Census Bureau
12 to determine the best means to compare the
13 decennial census responses with administrative
14 records will permit the Census Bureau to determine
15 the inaccurate response rate for citizens and
16 noncitizens alike using the entire population."

17 Has that statement been evaluated by the
18 Census Bureau?

19 A As a statement of fact, that statement is
20 correct.

21 Q Okay. "This will enable the
22 Census Bureau to establish, to the best of its

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1 ability, the accurate ratio of
2 citizen-to-noncitizen responses to impute for that
3 small percentage of cases where it is necessary to
4 do so."

5 How does adding a question -- a
6 citizenship question to the census and determining
7 the incorrect response rate for citizens and
8 noncitizens who respond help the Census Bureau
9 impute with respect to folks who do not respond at
10 all and who do not have administrative records?

11 A The Census Bureau did not write that
12 sentence, so I suggest you ask the Secretary what
13 he meant by it.

14 Q Well, let me back -- let me ask the
15 question a slightly different way.

16 Do you agree that this will enable the
17 Census Bureau to establish, to the best of its
18 ability, the accurate ratio of citizen to
19 noncitizen responses to impute for that small
20 percentage of cases where it is necessary to do
21 so?

22 A The Census Bureau does not yet have a

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1 responses to the Secretary, that indicated that
2 that is the methodology that we would use to
3 produce the CVAP table. We were, in fact, very
4 careful to say that we hadn't yet finalized a
5 methodology to do that, especially in the presence
6 of multiple responses for the same -- what we'd
7 call indicator.

8 Q So is it fair to say that at the very
9 least, it is premature to say that this ratio will
10 help the Census Bureau establish, to the best of
11 its ability, an accurate ratio that will help you
12 to impute for that small percentage -- for that
13 whatever it is percentage of cases where it is
14 necessary to do?

15 A Speaking on a purely statistical basis,
16 having population data of self-responses and
17 population data of administrative responses does
18 contribute to more accurate statistical analysis.

19 As to how they would be used to impute
20 the problematic cases in either direction, that is
21 not yet determined.

22 Q And this is complicated by the

1 significant inaccuracy issues that were
2 noticed -- that were noted in your technical
3 memos, correct?

4 MR. EHRLICH: Objection. Form.

5 THE WITNESS: This is complicated by the
6 need to resolve, with defensible evidence,
7 conclusions that you draw from those
8 inconsistencies, especially for the administrative
9 record noncitizens.

10 BY MS. GOLDSTEIN:

11 Q So the Census Bureau has not yet
12 completed its analysis that would support or not
13 support Secretary Ross's conclusion in that
14 sentence; is that fair to say?

15 A Yes.

16 MS. GOLDSTEIN: Let's take a short break
17 and see where we're at. Off the record.

18 VIDEOGRAPHER: Going off the record. The
19 time on the video is 5:59 p.m.

20 (Off the record.)

21 VIDEOGRAPHER: This begins Media Unit
22 Number 7. The time on the video is 6:09 p.m. We

1 are on the record.

2 BY MS. GOLDSTEIN:

3 Q Dr. Abowd, I think I have just one more
4 question.

5 If you will turn to the last page of the
6 exhibit in front of you Bates marked 1320.

7 A Okay.

8 Q In light of the Census Bureau's analysis
9 of Alternative C versus Alternative D, do you
10 agree that reinstatement of a citizenship
11 question on the 2020 decennial census is necessary
12 to provide complete and accurate data in response
13 to the DOJ request?

14 A No.

15 Q And that is the position of the
16 Census Bureau, correct?

17 A Yes.

18 MS. GOLDSTEIN:

19 Q Thank you, Dr. Abowd.

20 I just want the record to reflect and
21 that plaintiffs -- and I speak to all plaintiffs
22 with respect to this -- are leaving the record

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ACKNOWLEDGEMENT OF DEPONENT

I, DR. JOHN ABOWD, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes or corrections, if any, appear in the attached errata sheet signed by me.

Date_____
DR. JOHN ABOWD

Stephen Ehrlich, Esquire

U.S. DEPARTMENT OF JUSTICE

20 Massachusetts Avenue

Washington, D.C. 20530

IN RE: New York Immigration Coalition, et al., v.
United States Department of Commerce, et al.

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E R R A T A S H E E T

Case Name: New York Immigration Coalition, et
al., v. United States Department of Commerce, et
al.,

Witness Name: DR. JOHN ABOWD

Deposition Date: Wednesday, August 29, 2018

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Signature

Date