

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK IMMIGRATION :
COALITION, et al., :

Plaintiffs, :

v. : Case No.

: 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT :
OF COMMERCE, et al., :

Defendants. :

- - - - -x

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

Videotaped Deposition of: [Global objection:](#)
[401; 403](#)

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

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7 Dan Reidy, Video Technician

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C O N T E N T S

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18 May 2018

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* (Exhibits attached to transcript.)

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

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

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

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

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

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

22 This deposition is being held at the law

1 offices of Covington & Burling, LLP, located at
2 850 Tenth Street, Northwest, Washington, D.C.
3 20001.

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

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

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

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

19 MR. TOPAZ: Jonathan Topaz for NYC
20 plaintiffs.

21 MS. HULETT: Denise Hulett for Lupe
22 plaintiffs.

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

3 MS. ANDRIOLA: Eri Andriola for the Lupe
4 plaintiffs.

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

7 MS. THOMAS: Tina Thomas for the Kravitz
8 plaintiffs.

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

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

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

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

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

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

22 MR. DOREY: David Dorey from the

1 Department of Commerce.

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

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

6 Whereupon,

7 JOHN GORE, **Global objection:**
401; 403
8 being first duly sworn or affirmed to testify to
9 the truth, the whole truth, and nothing but the
10 truth, was examined and testified as follows:

11 EXAMINATION BY COUNSEL FOR
12 THE NEW YORK IMMIGRATION COALITION
13 BY MR. HO:

14 Q. Mr. Gore, have you been deposed before?

15 A. No.

16 Q. But you have been in depositions before,
17 correct?

18 A. Yes.

19 Q. Roughly how many times have you attended
20 a deposition?

21 A. Ten.

22 Q. You understand that you're under oath

1 Dr. Lisa Handley and also one submitted by Pam
2 Karlan.

3 Q. Are you aware of topics that were covered
4 in any of the depositions in any of the litigation
5 over the citizenship question?

6 MR. GARDNER: Objection. Vague.

7 BY MR. HO:

8 Q. You can answer.

9 A. No, I don't believe so.

10 Q. Did you consult with any staff in the
11 civil rights division such as voting section chief
12 Chris Herren in preparation for your deposition?

13 A. Yes.

14 Q. Who did you consult with in the civil
15 rights division in preparation for your
16 deposition?

17 A. Chris Herren.

18 Q. Anyone else?

19 A. No.

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

22 A. Yes.

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

4 A. Yes.

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

8 A. Yes.

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

11 A. I am.

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

15 A. Yes.

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

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

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

6 A. That's correct.

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

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

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

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

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

6 Q. That's correct.

7 A. As a litigant or as attorney?

8 Q. As an attorney.

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

11 Q. Do you have any experience drawing
12 districts for purposes of complying with the first
13 Gingles precondition?

14 A. That's a -- that's a fair question. In
15 one of our cases, we did have a case that went to
16 a remedial phase. I wouldn't say I was involved
17 in drawing the district, but I was certainly
18 involved in reviewing various remedial proposals
19 and other proposals that were submitted to the
20 court in the course of litigation.

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

1 actually getting the census data, taking the

2 mapping software, and drawing a district.

3 You don't have any experience doing that,

4 correct?

5 A. That's correct. I've never sat in front

6 of a computer with Maptitude and drawn a district.

7 Q. Okay. You don't have any experience --

8 so that would mean you don't have any experience

9 drawing districts using ACS data, correct?

10 A. That's correct.

11 Q. And you don't have any experience taking

12 census block-group level data and performing an

13 estimation procedure to produce block-level data,

14 correct?

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

16 Q. You're currently acting assistant

17 attorney general for civil rights at the U.S.

18 Department of Justice, correct?

19 A. Correct.

20 Q. And when did you become the acting AAG

21 for civil rights?

22 A. July 28th, 2018.

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

3 A. Correct.

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

6 A. Correct.

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

10 A. Correct.

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

14 A. That's correct.

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

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

1 Q. You take your interactions with DOJ staff
2 from outside of the civil rights division
3 seriously, right?

4 MR. GARDNER: Objection. Vague.

5 THE WITNESS: I take all of my
6 interactions in a professional capacity
7 professionally and, hopefully, seriously as well.
8 BY MR. HO:

9 Q. When you interact with DOJ staff who are
10 not members of the civil rights division, you are
11 in some sense acting as a representative of the
12 civil rights division in those interactions with
13 non-civil rights division DOJ staff, correct?

14 A. Not necessarily. In certain cases that
15 would be true, but there are instances in which
16 that wouldn't necessarily be correct.

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

22 A. I have no basis to dispute the date

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

8 Q. There's no other reason besides Voting
9 Rights Act enforcement that formed the basis of
10 the Department of Justice's request that a
11 citizenship question be added to the 2020
12 decennial census questionnaire, correct?

13 MR. GARDNER: Objection to the extent it
14 calls for the disclosure of information subject to
15 the deliberative process privilege.

16 To the extent you can answer the question
17 without divulging such information, you may do so.
18 Otherwise, I instruct you not to answer.

19 THE WITNESS: I think the letter speaks
20 for itself. Again, I don't have it in front of
21 me.

22

1 BY MR. HO:

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

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

9 (Gore Deposition Exhibit 1 marked for
10 identification and attached to the
11 transcript.)

12 BY MR. HO:

13 Q. I'm going to show you something that's
14 been marked as Plaintiff's Exhibit -- as, sorry,
15 Exhibit 1.

16 A. Okay.

17 Q. This is an e-mail from you to Arthur Gary
18 dated December 18th, 2017, correct?

19 A. It appears to be. Yes.

20 Q. The subject line of this e-mail is
21 talking points, correct?

22 A. Correct.

1 Did I read that correctly?

2 A. Yes, you did.

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

7 A. Yes, that's correct.

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

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

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

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

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

15 Q. What are the other sources other than the
16 decennial census questionnaire that you're
17 referring to for the collection of citizenship
18 data?

19 A. We already have a citizenship question on
20 the ACS. And there may be other sources that I'm
21 not aware of, but that's the source that comes to
22 mind.

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

7 A. Not that I'm aware of.

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

13 A. Yes, I do.

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

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

19 BY MR. HO:

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

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1 Do you remember your testimony that day?

2 A. I do.

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

5 A. I was.

6 Q. And you testified truthfully that day,
7 correct?

8 A. I did.

9 Q. Now, although you testified before the
10 House Oversight Committee on May 21st, you were
11 previously called to testify before the committee
12 on -- I'm sorry; I may have said the wrong -- no,
13 I said the right date. Let me start that again.

14 A. Go ahead.

15 Q. Although you testified before the House
16 Oversight Committee on May 21st, you were
17 previously called to testify before the committee
18 on May 8th, 2018, correct?

19 A. That's actually not correct. I was never
20 called to testify before the committee. I was
21 invited to testify. The committee invited me to
22 testify on May 8th alongside witnesses from the

1 but you ended up not testifying on May 8th,
2 correct?

3 A. That's correct.

4 Q. And you're aware that when you didn't
5 testify on May 8th, the chairman of the oversight
6 committee, Representative Gowdy, stated that he
7 would ask you to appear by legal compulsory -- is
8 how he put it -- if necessary.

9 You're aware of that?

10 A. That sounds right. Yeah.

11 Q. And so when you did appear on May 21st,
12 you understood that it was an important hearing,
13 right?

14 A. I believe that -- I would hope that every
15 hearing before Congress is an important hearing.
16 Yeah.

17 Q. We would all hope.

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

20 A. Yes.

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

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

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

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

9 MR. GARDNER: Objection. Form.

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

15 BY MR. HO:

16 Q. You prepared for your testimony on May
17 21st. You didn't just show up without preparing,
18 right?

19 A. I prepared. Yeah.

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

22 A. That sounds right.

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1 Affairs. And I can't speak for who they did or
2 did not invite. I can remember some people who
3 were there, but I don't know who they all did or
4 did not invite.

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

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

9 Q. And no career voting section staff
10 attended your moot on -- to prepare for the May
11 21st hearing, correct?

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

14 Q. So I want to ask about your testimony.
15 If you could turn to page 20 of the Bloomberg
16 transcript, Exhibit 2.

17 A. Sure.

18 Q. So on the top of the page, I believe you
19 testified, "Let me just be clear, Congressman,
20 there's no dispute that the Department of Justice
21 needs citizenship voting population data to
22 enforce Section 2 or that it needs that data at

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1 the block level."

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

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

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

11 A. That is correct.

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

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

1 like the ACS, correct?

2 A. That's correct.

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

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

13 Q. How about -- turn to page 27 of the
14 transcript. In the first full paragraph on page
15 27, you testified, "And having more -- having it
16 on the census would make it easier for us to use
17 and it would also make it more accurate, or at
18 least that's the judgment of the Census Bureau."

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

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

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

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

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

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

1 Q. May 8th -- the May 8th hearing?

2 A. The May 8th hearing, yeah.

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

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

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

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

22 And it was my understanding, from

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

6 Q. And just so we're clear on your
7 understanding, your understanding is that, in the
8 judgment of the Census Bureau, it would be more
9 accurate to have CVAP data collected through the
10 decennial enumeration than the existing ACS data
11 for two reasons: One, the decennial enumeration
12 data is a hard count and not an estimate; and,
13 two, the decennial enumeration data is available
14 at the census block level, and so you wouldn't
15 have to perform an estimation procedure the same
16 way that you do with the ACS; is that right?

17 MR. GARDNER: Objection. Compound.

18 THE WITNESS: As I understand your
19 question, I believe that was Secretary Ross'
20 judgment on behalf of the Department of Commerce,
21 of which the Census Bureau is part. I don't have
22 his memo right in front of me, so I can't -- I'm

1 going off of my memory rather than a document
2 that's in front of me. But my recollection of
3 that is that he analyzed a number of different
4 options and concluded that reinstating the
5 question on the census questionnaire, in addition
6 to other data, would provide the most accurate and
7 complete picture of data for the Department of
8 Justice's purposes.

9 BY MR. HO:

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

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

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

22 A. The Department of Justice.

1 Q. Who's we at the Department of Justice who
2 is in a position to make an assessment as to
3 whether or not CVAP data is more accurate than the
4 Census Bureau?

5 A. I don't know. I can't point to any
6 individual person. But, of course, we're
7 constantly reviewing the data, the various data
8 sources, the academic literature. We send people
9 to conferences so that we can understand the
10 latest about data in this area and other
11 demographic areas.

12 But I don't believe there's any dispute
13 at this point about what would be more accurate.
14 And the Census Bureau is charged to make that
15 judgment, as I understand it, as a matter of law.

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

20 A. Me personally?

21 MR. GARDNER: Objection to form.

22 THE WITNESS: Me personally?

1 BY MR. HO:

2 Q. Yes.

3 A. No, I don't.

4 Q. Let's look at page 2 of your testimony.
5 Oh, I'm sorry --

6 A. It appears to be a list of the committee
7 members' names.

8 Q. Yeah.

9 A. I'm happy to review that.

10 Q. We'll come back to that.

11 Let's look at page 37 of your testimony.

12 So the second-to-last question here is from
13 Representative Krishnamoorthi. And he asks you,
14 "Let me shift to another issue, which is, is the
15 DOJ aware of any study, analysis, or projection of
16 how the inclusion of the citizenship question will
17 affect the response rate for the census?"

18 Your response was, "That's a great
19 question, Congressman. I don't know the
20 Department of Justice is aware of that. That's
21 really a question for the Department of Commerce
22 and the Census Bureau, since it is the Secretary

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1 of Commerce's province to decide which questions
2 get included or are not within the bounds set by
3 law."

4 When Representative Krishnamoorthi used
5 the term --

6 A. Can you read the rest of my answer for
7 completeness?

8 Q. "My understanding is that, from Secretary
9 Ross' memo, that he took a hard look at that issue
10 and didn't find empirical evidence to suggest that
11 the question would lead to a reduction in response
12 rates. That's based on the memo of decision that
13 he issued. I obviously can't speak on his
14 behalf."

15 Did I read that right?

16 A. Thank you. Yes.

17 Q. When the representative uses the term
18 "response rates," what did you understand him to
19 mean?

20 A. I understood him to be suggesting that
21 adding a question and, in particular, reinstating
22 a citizenship question might cause people not --

1 some incremental number of people not to answer
2 the -- that question or fill out the census form.

3 Q. And your testimony was, on May 21st, that
4 DOJ was not aware of any analysis indicating that
5 the inclusion of the citizenship question will
6 affect response rates to the census?

7 MR. GARDNER: Objection.
8 Mischaracterizes the document.

9 THE WITNESS: I think what I've testified
10 to is -- is what is here in the record, and that
11 answer speaks for itself.

12 BY MR. HO:

13 Q. Well, what did you mean by that? Were
14 you aware of any analysis as to whether or not
15 including the citizenship question on the census
16 could affect the rate at which the people respond
17 to the census?

18 A. As I said then, and as I sit here today,
19 no, I'm not aware of any -- any data on that
20 issue. And as I further explained, Secretary Ross
21 in his memo explains that he took a hard look at
22 that issue and found no empirical evidence to

1 support the conclusion that there be a reduction
2 in response rates from reinstatement of the
3 citizenship question on the census questionnaire.

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

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

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

22 A. I am not a counsel of record in that

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

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

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

16 MR. GARDNER: Objection. Vague.

17 THE WITNESS: No.

18 BY MR. HO:

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

21 A. No.

22 Q. And neither the civil rights division nor

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

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

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

12 A. No.

13 Q. Mr. Gore, you sometimes use personal
14 e-mail, text messages or private messaging apps to
15 communicate about DOJ work, correct?

16 A. I believe I may have done that. Yeah.

17 Q. Which of those things have you used for
18 DOJ work before?

19 A. Well, actually, I don't think I have used
20 it for DOJ work, now that I think about it.

21 Q. You've sometimes sent e-mails between
22 your personal gmail account and your DOJ account,

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

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

6 BY MR. HO:

7 Q. This bears the Bates number 000311. It's
8 a letter dated November 4th, 2016, from Arthur
9 Gary to then Census Bureau Director John Thompson.
10 We discussed Mr. Gary before. You sent
11 him those talking points in December of 2017,
12 right?

13 A. I did. Yes.

14 Q. And Mr. Gary is the general counsel of
15 the justice management division, or JMD, at the
16 Department of Justice, correct?

17 A. That's correct.

18 Q. And JMD is the principal organizational
19 unit responsible for management and administrative
20 support of the Department of Justice, correct?

21 A. I trust you took that off of a website,
22 because that was pretty fancy. That sounds right

1 to me. It's my understanding.

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

9 Did I read that right?

10 A. Yes.

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

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

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

22 That's certainly what that sentence says,

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

3 BY MR. HO:

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

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

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

11 BY MR. HO:

12 Q. This letter on November 4th, 2016,
13 formally requested that the Census Bureau include
14 a new topic in the ACS relating to LGBT
15 populations, correct?

16 A. Let me read this.

17 Q. Sure.

18 A. Okay. Can you repeat your question?

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

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

3 THE WITNESS: It appears to. Yeah.

4 BY MR. HO:

5 Q. This letter on November 4th, 2016, makes
6 no other requests for changes to the 2020 census
7 questionnaire or the ACS, correct?

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

10 THE WITNESS: Again, it doesn't -- what
11 I've read so far doesn't mention any other
12 request.

13 BY MR. HO:

14 Q. When you say what you've read so far,
15 have you read the complete letter?

16 A. I've read the complete letter. There's a
17 reference to an attached spreadsheet in the letter
18 that's not attached here, so I haven't looked at
19 that just now.

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

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1 other than a request about LGBT populations for
2 the ACS, correct?

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

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

7 BY MR. HO:

8 Q. This letter does not make any mention of
9 a request for citizenship data, correct?

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10 MR. GARDNER: Same objection.

11 THE WITNESS: It does not on its face.

12 BY MR. HO:

13 Q. This letter does not make any request for
14 the inclusion of a citizenship question on the
15 census questionnaire, correct?

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16 MR. GARDNER: Same objection.

17 THE WITNESS: It does not appear to.

18 BY MR. HO:

19 Q. You're not aware of any changes in
20 circumstances since the date of this letter,
21 November 4th, 2016, that would require a change to
22 the Department of Justice's view that, as of the

1 MR. GARDNER: Objection. Form.

2 Objection. Lack of foundation.

3 THE WITNESS: What -- I'm still not
4 following the circumstances.

5 BY MR. HO:

6 Q. Let me -- let me try again.

7 A. Can you specify?

8 Q. Are you aware of any changes in law since
9 November 4th, 2016, with respect to requirements
10 for enforcing Section 2 of the federal Voting
11 Rights Act?

12 MR. GARDNER: Objection. Form.

13 Objection. Lack of foundation.

14 THE WITNESS: I do believe -- since
15 November of 2016, I can think of at least one
16 Supreme Court case dealing with Section 2 of the
17 Voting Rights Act. I'm not sure this is what
18 you're asking, but I am aware of court cases that
19 have been decided since November of 2016 on that
20 issue.

21 BY MR. HO:

22 Q. Are you aware of any changes in law since

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

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

7 Q. Are you aware of any changes to the forms
8 of data available to plaintiffs bringing voting
9 rights challenges since November 4th of 2016?

10 MR. GARDNER: Objection to form.

11 THE WITNESS: I do believe, at least in
12 one case, the Department of Justice has advocated
13 a new form of data for conducting a racially
14 polarized voting analysis in the Eastpointe case,
15 United States versus Eastpointe, Michigan, which
16 at least the United States had not previously
17 advocated. That's the analysis conducted at
18 steps 2 and 3 of the Gingles analysis.

19 BY MR. HO:

20 Q. My question is just about the first
21 Gingles precondition.

22 A. Okay.

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

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

10 Q. That's not my question.

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

17 Q. I understand what your position is on why
18 you've requested the data. That's not my
19 question. My question is --

20 A. Okay.

21 Q. -- just about any changes since
22 November 4th of 2016 outside of the Department of

1 Justice.

2 And my question is, are you aware of any
3 changes in the forms of citizenship data that are
4 available for establishing the first precondition
5 for Gingles -- the first Gingles precondition for
6 Section 2 liability since November 4th, 2016?

7 A. Let me give you this answer. As I
8 understand what people were using in Section 2
9 cases in November of 2016 for citizenship
10 purposes, it was ACS data. And I understand that
11 litigants are still using ACS data today.

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

16 MR. GARDNER: Objection. Form.

17 THE WITNESS: Which community?

18 BY MR. HO:

19 Q. The social scientific community.

20 A. Okay.

21 MR. GARDNER: Same objection.

22 THE WITNESS: I'm not aware of any

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

5 (Gore Deposition Exhibit 4 marked for
6 identification and attached to the
7 transcript.)

8 BY MR. HO:

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

16 Do you know Mr. Comstock?

17 A. No, I don't, actually.

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

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

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

13 A. Yes.

14 Q. What were you aware of with respect to
15 conversations between Department of Commerce
16 officials and the Department of Justice officials
17 prior to September 8th, 2017, with respect to the
18 issue of a citizenship question on the census?

19 MR. GARDNER: Objection to the extent
20 that you're asking for information subject to the
21 deliberative process privilege.

22 To the extent you can answer without

1 think -- I think so, but I'm not certain on --
2 with respect to the involvement of the people
3 mentioned in this particular paragraph.

4 Q. So your answer is, yes, you think that
5 you were aware of communications between the
6 Department of Justice and the Department of
7 Commerce prior to September 8th, 2017 -- you think
8 you were aware of those conversations before the
9 request letter went out from the Department of
10 Justice to the Census Bureau?

11 A. I'm sorry. Could we try that again?

12 Q. Sure. The conversations --

13 A. You're dealing with two different
14 timelines.

15 Q. Sure.

16 A. Okay.

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

21 A. Yes.

22 Q. -- you were aware of those conversations

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

4 A. Yes.

5 Q. Okay. What were you aware of before that
6 letter went out?

7 MR. GARDNER: Same objection.

8 To the extent you can answer the question
9 without divulging information subject to the
10 deliberative process privilege, you may answer.
11 To the extent you can't, I'd instruct the witness
12 not to answer.

13 MR. HO: Josh, let me finish the question
14 before your objection --

15 MR. GARDNER: I thought you were done.

16 MR. HO: -- if that's okay.

17 MR. GARDNER: I apologize. I didn't mean
18 to interrupt you.

19 BY MR. HO:

20 Q. When you say that you were aware of
21 pre-September 8th conversations between Commerce
22 and Justice about the citizenship question before

1 your letter from Justice to the Census Bureau went
2 out requesting a citizenship question, what were
3 you aware of with respect to the nature of those
4 pre-September 8th conversations?

5 MR. GARDNER: Same objection. Same
6 instruction.

7 THE WITNESS: I can tell you that I was
8 aware of the fact that conversations had occurred.
9 And beyond that, I don't believe I can give an
10 answer in light of the instruction I've just
11 received.

12 BY MR. HO:

13 Q. When you say that you were aware of the
14 fact that conversations occurred, what do you mean
15 by conversations?

16 A. I mean -- a conversation is a
17 communication between two or more people, and I
18 was aware that two or more people had talked to
19 each other.

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

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

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

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

11 Q. James McHenry is the director of the
12 Executive Office for Immigration Review within
13 DOJ, correct?

14 A. He is now, although at that time he
15 wasn't. At that time, he was on detail to the
16 Office of the Associate Attorney General. And he
17 had come from somewhere else. I can't remember.
18 I think it was OCAHO, which is -- since we're in
19 D.C. and talking about government things, it's an
20 acronym that -- I don't know what it stands for.
21 But Mr. McHenry has been involved -- has been an
22 employee of the department for some time, but in

1 early 2017, was on detail to the Office of the
2 Associate Attorney General.

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

5 A. That's correct.

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

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

15 Q. Do you know of any reasons why
16 Mr. McHenry could address the issue of including a
17 citizenship question on the census?

18 MR. GARDNER: Objection. Calls for
19 speculation.

20 THE WITNESS: Yeah, I'd be speculating.
21 I don't know.

22

1 BY MR. HO:

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

5 MR. GARDNER: Same objection.

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

8 BY MR. HO:

9 Q. When you say you're aware that
10 conversations took place between Commerce
11 officials and Mary Blanche Hankey and James
12 McHenry, what were you aware of with respect to
13 the content of those conversations prior to --
14 those conversations that took place prior to
15 September 8th, 2017?

16 MR. GARDNER: Objection.

17 To the extent that you can answer that
18 question without divulging information subject to
19 deliberative process privilege, you may do so.
20 Otherwise, I instruct you not to answer.

21 THE WITNESS: As I testified before, I
22 understood that those conversations related to the

1 issue of reinstating a citizenship question on the
2 census questionnaire. Beyond that, I can't
3 answer.

4 BY MR. HO:

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

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

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

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

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

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

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

6 BY MR. HO:

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

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

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

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

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1 BY MR. HO:

2 Q. Okay. When did you become aware -- so --
3 I'm sorry. Let me start that question.

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

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

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

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

21 Q. How did you become aware of the fact
22 that, as of September 8th, 2017, the Department of

1 BY MR. HO:

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

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

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

10 A. Well, I think it was either a day or two
11 before Labor Day in 20 -- the Labor Day weekend in
12 2017 which I think that year may have fallen in
13 late August.

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

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

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

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

7 Q. How did you become involved in
8 deliberations over whether or not to request the a
9 citizenship question be included on the
10 2020 census questionnaire?

11 MR. GARDNER: Objection.

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

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

21 BY MR. HO:

22 Q. Which two individuals at the Department

1 of Justice?

2 A. The attorney general and Mary Blanche
3 Hankey.

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

7 MR. GARDNER: Objection. Compound.

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

15 BY MR. HO:

16 Q. What was communicated to you during that
17 conversation with Attorney General Sessions?

18 MR. GARDNER: Objection. Calls for
19 information subject to deliberative process
20 privilege.

21 I instruct you not to answer.

22 THE WITNESS: Consistent with that

1 ask the question when was the decision made, I can
2 let him answer that question. I'm not trying to
3 be difficult. I just need to be careful here.

4 BY MR. HO:

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

9 A. The decision was made when the letter was
10 sent in December of 2017.

11 Q. As of the date of Mr. Comstock's memo,
12 September 8th, 2017, did you already have a view
13 as to whether or not CVAP data based on
14 statistical estimates were problematic in any way
15 for purposes of VRA enforcement?

16 A. I was generally aware of issues related
17 to ACS data from my prior work on cases involving
18 Section 2 of the Voting Rights Act and cases
19 involving gerrymandering claims under Shaw versus
20 Reno. And I was aware that there were some
21 limitations on the ACS data from that prior work.

22 Q. As of the date of your first conversation

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

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

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

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

12 Q. Yes.

13 A. Sometime before the letter was sent.

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

16 A. Probably not.

17 Q. How did you arrive at the view that
18 hard count citizenship data collected through the
19 decennial census would better suit DOJ's
20 enforcement needs than ACS estimates?

21 MR. GARDNER: Objection. Calls for
22 information subject to deliberative process

1 privilege. I instruct the witness not to answer.

2 BY MR. HO:

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

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

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

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

17 Q. Let me show you a document. We'll mark
18 this as Exhibit 5.

19 (Gore Deposition Exhibit 5 marked for
20 identification and attached to the
21 transcript.)
22

1 right. I could be off by a week or two. So it
2 may have happened later. So I don't know exactly
3 how that would align in time with this
4 September 11th communication.

5 But I would say that it was -- so I stand
6 on that answer.

7 Q. So that communication between the
8 Secretary of Commerce and the attorney general,
9 that was initiated by the Secretary of Commerce,
10 correct?

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

13 THE WITNESS: I don't know. I wasn't a
14 party to that conversation.

15 BY MR. HO:

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

22 A. That's been my working understanding.

1 Yes.

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

6 A. That's correct.

7 Q. You responded to Mr. Gary's e-mail by
8 asking him to give you a call. Did you have a
9 conversation with Mr. Gary?

10 A. I don't know. I don't know if I had a
11 conversation with him with specific reference to
12 this e-mail. I can't -- I don't recall that.

13 Q. After receiving this e-mail, did you
14 learn more from Mr. Gary about what he was
15 referring to when he talked about concerns that
16 the Commerce Secretary had?

17 A. I don't recall -- as I said, I don't
18 recall discussing this with Mr. Gary. Obviously,
19 we had some short e-mail correspondence, as this
20 document lays out, but that's all I recall about
21 it at this time.

22 Q. Mr. Gary said in this e-mail that he

1 BY MR. HO:

2 Q. Anyone who works in the front office of
3 the Department of Commerce. Were you ever
4 consulted by front office Department of Commerce
5 employees -- that's what I mean by Secretary Ross'
6 staff --

7 A. Okay.

8 Q. -- regarding whether the Department of
9 Justice would support or request the inclusion of
10 a citizenship question on the census?

11 MR. GARDNER: Same objection.

12 THE WITNESS: I guess I'm still not clear
13 on what you mean by the front office of the
14 Department of Commerce. I can recall speaking to,
15 I believe, three individuals at the Department of
16 Commerce about this issue.

17 BY MR. HO:

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

20 A. Sure.

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

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

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

7 Q. When was the first occasion on which you
8 consulted with one of those three individuals
9 about the inclusion of a citizenship question on
10 the census?

11 A. I'm not sure I would describe it as a
12 consultation as much as I would describe it as a
13 conversation about various issues related to the
14 reinstatement of a citizenship question on the
15 census questionnaire. I can recall having
16 conversations starting sometime around this
17 September 2017 time frame.

18 Q. Who was the first of those three
19 individuals that you had a conversation with about
20 the inclusion of a citizenship question on the
21 2020 census?

22 A. Peter Davidson.

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

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

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

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

22 Q. Roughly when was your first conversation

1 with Mr. Uthmeier about the citizenship question?

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

4 MR. HO: We've been going for a little
5 over an hour, about an hour-ten. Would now be an
6 okay time for a first break?

7 MR. GARDNER: That's fine with me, yeah.

8 MR. HO: Great.

9 VIDEO TECHNICIAN: This concludes media
10 unit number 1. The time on the video is
11 10:19 a.m. And we are off the record.

12 (A recess was taken.)

13 VIDEO TECHNICIAN: This begins media unit
14 number 2. The time on the video is 10:37 a.m. We
15 are on the record.

16 BY MR. HO:

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

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

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

5 A. Correct.

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

9 A. That's correct.

10 (Gore Deposition Exhibit 6 marked for
11 identification and attached to the
12 transcript.)

13 BY MR. HO:

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

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

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

1 Thank you for clarifying, Josh.

2 MR. GARDNER: Sure.

3 BY MR. HO:

4 Q. The first e-mail on this thread is on the
5 second page -- first in time, I mean. It's from
6 you to Wendy Teramoto on Wednesday,
7 September 13th, 2017, correct?

8 A. It appears to be. Yes.

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

12 A. Correct.

13 Q. And at the time that you sent this
14 e-mail, you knew that Ms. Teramoto was the chief
15 of staff to Commerce Secretary Ross, correct?

16 A. Correct.

17 Q. In the second sentence of your e-mail to
18 Ms. Teramoto, you write, "I would like to talk to
19 you about a DOJ-DOC issue," correct?

20 A. Correct.

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

1 correct?

2 A. Correct.

3 Q. What prompted you to reach out to

4 Ms. Teramoto to talk to her about the citizenship

5 question?

6 MR. GARDNER: Objection.

7 To the extent that that answer calls for

8 the divulsion of information subject to

9 deliberative process privilege, I instruct you not

10 to answer. To the extent you can answer that

11 question without divulging such information, you

12 may do so.

13 THE WITNESS: It was a conversation I had

14 with Peter Davidson.

15 BY MR. HO:

16 Q. When was that conversation with

17 Mr. Davidson?

18 A. I don't recall exactly.

19 Q. And what is Mr. Davidson's role at

20 Commerce?

21 A. I don't know what his current role is.

22 At the time, I understood him to be the general

1 counsel of the Department of Commerce.

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

3 A. He called me.

4 Q. Did you know Mr. Davidson prior to that
5 call?

6 A. No.

7 Q. Roughly when did that conversation with
8 Mr. Davidson take place?

9 A. As I mentioned before, I had several
10 conversations with Mr. Davidson over time. I
11 don't know when exactly any of those conversations
12 took place, and I don't know when this particular
13 conversation took place.

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

16 A. Yes, he did.

17 Q. Why did he ask you to reach out to
18 Ms. Teramoto?

19 MR. GARDNER: Objection. To the extent
20 that that answer calls for disclosing information
21 subject to deliberative process privilege, I
22 instruct the witness not to answer.

1 was to be about the citizenship question, correct?

2 A. That, I don't know.

3 Q. Well, the scheduling of that conversation
4 that you were supposed to take part of [sic] came
5 out of your e-mail to Ms. Teramoto about the
6 citizenship question, correct?

7 A. I was not to take part in that
8 conversation. I never did take part in that
9 conversation, so I don't know.

10 Q. I meant the conversation between you and
11 Ms. Teramoto to schedule a meeting between the
12 attorney general and the Commerce Secretary, that
13 conversation that you had with Ms. Teramoto arose
14 out of your e-mail to Ms. Teramoto concerning the
15 citizenship question, correct?

16 A. That sounds right. I can't remember
17 whether we discussed exactly what the call between
18 the attorney general and the Secretary would be
19 about, is what I'm trying to convey.

20 (Gore Deposition Exhibit 7 marked for
21 identification and attached to the
22 transcript.)

1 BY MR. HO:

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

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

14 A. Correct.

15 Q. And these -- the top e-mails took place
16 after your conversation with Ms. Teramoto,
17 correct?

18 A. Correct.

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

22 A. That's correct.

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

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

5 Q. Prior to when Attorney General Sessions
6 became attorney general, Ms. Cutrona worked for
7 him previously in the Senate as his counsel on the
8 judiciary committee, correct?

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

11 THE WITNESS: I do know that she worked
12 for him. I don't know what her title was.

13 BY MR. HO:

14 Q. And Ms. Cutrona also served on the Trump
15 transition team in charge of immigration reform and
16 building the wall, correct?

17 MR. GARDNER: Same objections. Same
18 objection.

19 THE WITNESS: I actually don't know.

20 BY MR. HO:

21 Q. To your knowledge, Ms. Cutrona has no
22 experience with enforcing Section 2 of the Voting

1 Rights Act, correct?

2 A. I don't know one way or the other.

3 Q. You're not aware of any experience that

4 Ms. Cutrona has with respect to enforcing

5 Section 2 of the Voting Rights Act, correct?

6 A. That's correct.

7 Q. Did Ms. Teramoto and Ms. Cutrona connect

8 after this e-mail exchange?

9 A. I believe that they did.

10 Q. How do you know that?

11 A. Because I believe that Danielle let me

12 know that they had.

13 Q. What knowledge do you have of what they
14 discussed?

15 MR. GARDNER: Objection.

16 To the extent you can answer that
17 question without divulging information subject to
18 deliberative process privilege, you may do so.
19 Otherwise, I instruct you not to answer.

20 THE WITNESS: Consistent with that
21 instruction, I can't answer.

22

1 BY MR. HO:

2 Q. I'm going to show you another document.

3 We'll mark this as Exhibit 8.

4 (Gore Deposition Exhibit 8 marked for
5 identification and attached to the
6 transcript.)

7 BY MR. HO:

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

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

1 assist."

2 So you had a conversation with

3 Ms. Cutrona, correct?

4 A. Yes.

5 Q. And when Ms. Cutrona in this e-mail
6 writes, "from what John told me," what is she
7 referring to? What did you tell Ms. Cutrona?

8 MR. GARDNER: Objection. To the extent
9 that information would be subject to deliberative
10 process privilege, I instruct the witness not to
11 answer.

12 To the extent you can answer that without
13 divulging such privileged information, you may do
14 so.

15 THE WITNESS: Consistent with that
16 instruction, I can't do so.

17 MR. HO: I just want to understand the
18 position here. The conversation and -- the
19 content of the conversation is referenced in the
20 administrative record. The court has granted our
21 motion to compel Mr. Gore's testimony based on his
22 role in the request to include a citizenship

1 BY MR. HO:

2 Q. When Ms. Cutrona writes, "We are eager to
3 assist," what did you understand her to mean by
4 "assist"?

5 MR. GARDNER: Same objection. Same
6 instruction.

7 THE WITNESS: Consistent with that
8 instruction, I can't answer.

9 BY MR. HO:

10 Q. What was your reaction to receiving this
11 e-mail?

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

14 THE WITNESS: I'm not sure I ever did
15 receive this e-mail. I'm not copied on this
16 e-mail between Wendy and Danielle.

17 BY MR. HO:

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

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

1 BY MR. HO:

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

9 A. That seems to be correct. Yes.

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

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

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

18 Q. Secretary Ross, right?

19 A. Secretary Ross. Yes.

20 Q. Okay. What did you understand that they
21 had spoken about?

22 MR. GARDNER: Objection. Calls for

1 information subject to deliberative process
2 privilege. I instruct the witness not to answer.

3 THE WITNESS: Consistent with that
4 instruction, I can't answer.

5 BY MR. HO:

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

10 A. Yes, that would be my understanding.

11 Q. What significance, if any, did you take
12 from the fact that the attorney general and the
13 Secretary of Commerce had spoken about the
14 citizenship question?

15 MR. GARDNER: Objection. Vague.

16 THE WITNESS: I'm not sure I assigned any
17 significance to it. I understood from this e-mail
18 chain that the Secretary was interested in
19 speaking to the attorney general.

20 BY MR. HO:

21 Q. What reaction, if any, did you have to
22 the fact that the attorney general and

1 Secretary Ross and the Attorney General spoke?

2 A. Are you referring to the conversation
3 between the attorney general and the Secretary
4 that's documented here on September 18th?

5 Q. Yes. Ms. Teramoto, after telling you
6 that the Attorney General and the --
7 Secretary Ross spoke, says -- or writes, please --
8 let me know when you have a minute."

9 Did you follow up with Ms. Teramoto to
10 have a conversation with her --

11 A. I see.

12 Q. -- after this e-mail?

13 A. I don't recall.

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

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

19 BY MR. HO:

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

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

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

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

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

9 A. Correct.

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

13 A. That's correct.

14 Q. Okay. Prior to this e-mail, September
15 22nd, 2017, had you spoken with Mr. Uthmeier about
16 the citizenship question?

17 A. I don't recall.

18 Q. You and Mr. Uthmeier had been colleagues
19 at Jones Day, correct?

20 A. Correct.

21 Q. You knew each other from your time there,
22 correct?

1 A. Yes.

2 Q. Since -- did you socialize with
3 Mr. Uthmeier?

4 A. Not regularly, no.

5 Q. But at some point, if not regularly, you
6 socialized with him?

7 A. I might have spent time with him at
8 events sponsored by the law firm.

9 Q. Between the time that you became a DOJ
10 employee and the date that you received this
11 e-mail, September 22nd, 2017, did you have any
12 other conversations with Mr. Uthmeier?

13 A. Not that I can recall.

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

18 A. That's correct.

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

22 A. Correct.

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

4 A. That is correct as well. Yeah.

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

6 A. Yes. I believe I did.

7 Q. Roughly when?

8 A. Sometime around when I received this
9 message. I can't remember if it was that day or
10 the following week.

11 Q. Roughly how long did you speak with
12 Mr. Uthmeier?

13 A. Not particularly long. Maybe 15 or
14 20 minutes.

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

17 A. Yes, among other things.

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

21 A. That's correct.

22 Q. Was the note handwritten?

1 A. Yes, it was.

2 Q. How was the note transmitted to you?

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

5 Q. When did you receive the note and memo?

6 A. I don't recall exactly.

7 Q. Was it after receiving this phone call to
8 your office from Mr. Uthmeier on September 22nd,
9 2017?

10 A. I believe so, yes.

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

15 A. Yes.

16 Q. You showed that note to other people,
17 right?

18 A. Yes.

19 Q. Who did you show that note to?

20 A. I showed it to -- I know I've shown it to
21 Kathleen Toomey in the civil rights division as
22 part of the document collection. And I understand

1 that it was shown to a couple of other people in
2 the civil division who are responsible for
3 litigating this case on behalf of the United
4 States.

5 I don't recall showing it to anyone else.

6 Q. Do you know if anyone to whom you showed
7 the note showed it to anyone else?

8 A. I don't.

9 Q. Did you ever have any discussions with
10 anyone about the note?

11 A. No, I don't believe so.

12 Q. You just showed it to some people, but
13 you never discussed it?

14 A. Well, I showed it to them after receiving
15 a document request in this litigation and I gave
16 it to them as part of the collection of documents
17 responsive to that -- potentially responsive to
18 that request.

19 I may have had a question with Ben
20 Aguinaga about it, but I don't recall.

21 Q. Did the note solicit legal advice from
22 you?

1 A. No.

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

4 A. I believe I may have, actually.

5 Q. You testified earlier you weren't
6 providing legal advice in connection to the
7 citizenship question, I thought.

8 MR. GARDNER: Objection.
9 Mischaracterizes the witness' prior testimony.

10 THE WITNESS: I don't believe that was my
11 testimony.

12 BY MR. HO:

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

15 A. Now you've changed the question.

16 Q. Yeah.

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

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

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

1 mention it, I did discuss the note with

2 Mr. Uthmeier and Mr. Davidson.

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

6 A. Yes.

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

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

11 Q. At this point --

12 A. Right.

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

17 A. Absolutely.

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

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

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1 BY MR. HO:

2 Q. If you know.

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

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

7 A. I don't recall that it did.

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

11 A. Yes, it did.

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

14 A. Yes.

15 Q. Did you -- let me start this again.

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

20 MR. GARDNER: Objection. Vague.

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

1 considered by the Department of Justice in
2 drafting its request.

3 BY MR. HO:

4 Q. Does inform -- did -- does any
5 information contained on that note appear in the
6 Department of Justice's letter to the Department
7 of -- to the Census Bureau requesting a
8 citizenship question on the 2020 census?

9 MR. GARDNER: Objection to the extent
10 that that calls for the disclosure of information
11 that may be subject to deliberative process
12 privilege.

13 To the extent you can answer that
14 question without divulging that, you may.
15 Otherwise, I instruct you not to answer.

16 THE WITNESS: Consistent with that
17 instruction, I can't answer that question.

18 MR. HO: Just so I understand the
19 position, even if information from that was on
20 that letter that became public, your position is
21 that's protected from my question about whether or
22 not --

1 MR. GARDNER: Your question wasn't
2 whether it was expressly incorporated by reference
3 in the letter, at which point I would agree with
4 you that that would waive the privilege. You just
5 asked if information in that letter was somehow
6 used in forming the letter. That is classic
7 deliberative process protection.

8 MR. HO: I don't think that was my
9 question, but I'll ask a question that --

10 MR. GARDNER: Ask it again.

11 BY MR. HO:

12 Q. Does information on the handwritten note
13 from Mr. Uthmeier appear in the Department of
14 Justice's letter requesting a citizenship question
15 on the 2020 census questionnaire?

16 MR. GARDNER: Same objection. Same
17 instruction.

18 THE WITNESS: Consistent with that
19 instruction, I can't answer.

20 (Gore Deposition Exhibit 11 marked for
21 identification and attached to the
22 transcript.)

1 BY MR. HO:

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

6 A. That is correct.

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

9 A. Yes. And a great lawyer.

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

12 A. That's correct.

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

15 A. Correct.

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

18 A. Yes, I did.

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

1 the 2020 census questionnaire, correct?

2 A. Correct.

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

8 A. Is that a question? I'm sorry. That
9 sounded like a statement.

10 Q. No. It was a question.

11 A. Okay.

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

17 A. Yes.

18 Q. You write in this e-mail that you
19 discussed the draft letter with Mr. Herren
20 yesterday.

21 Would that have been your first
22 conversation with Mr. Herren about the citizenship

1 question on the census?

2 A. I don't recall.

3 Q. When was your first conversation, if you
4 recall, with Mr. Herren about the citizenship
5 question on the census?

6 A. I don't recall.

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

10 A. Yes.

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

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

16 Q. More than one?

17 A. Yes.

18 Q. Days before you sent him the letter?
19 Weeks before? Months before? Do you have a
20 recollection about approximate time?

21 A. I don't have an exact recollection. I
22 would say in the days before I sent him the

1 letter.

2 Q. Were those conversations in person or by
3 phone?

4 A. I can recall conversations by phone. And
5 there may have been conversations in person. I
6 can't recall.

7 Q. Did you have more than five conversations
8 with Mr. Herren about the citizenship question?

9 A. At what time?

10 Q. Before you sent him the draft letter.

11 A. Probably not.

12 Q. So more than one but fewer than five
13 conversations about the citizenship question
14 before you sent him the draft letter?

15 A. Sounds about right.

16 Q. You describe this as confidential and
17 closehold.

18 What do you mean by confidential and
19 closehold?

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

1 take a look at it.

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

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

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

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

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

17 A. I can't recall.

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

20 A. I don't.

21 Q. Do you know if Mr. Herren discussed the
22 issues in the draft letter with anyone?

1 A. Whether he discussed the issues in the
2 draft letter? At what time?

3 Q. Around the time that you sent the copy of
4 the draft letter to him.

5 A. Well, I know he discussed them with me.
6 Other than that, I don't know.

7 Q. Do you know if Mr. Herren discussed the
8 issues raised in the draft letter with any voting
9 section personnel?

10 A. I don't.

11 Q. Why did you consider this letter to be
12 confidential and closehold?

13 A. I considered it to be confidential and
14 closehold because it was a draft and related to an
15 issue that was important to people in the
16 department.

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

22 MR. GARDNER: Objection to form.

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

7 BY MR. HO:

8 Q. I didn't ask if you wanted the draft to
9 not become public. I just asked if you wanted the
10 fact that the Department of Justice was drafting a
11 letter to request a citizenship question on the
12 2020 census questionnaire, if you wanted that fact
13 to remain non-public at this time.

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

18 (Gore Deposition Exhibit 12 marked for
19 identification and attached to the
20 transcript.)

21 BY MR. HO:

22 Q. I'm going to show you a document. We've

1 marked this as Exhibit 12. This has Bates number
2 DOJ 00003740. It was produced to us in discovery.
3 The top e-mail is from Ben Aguinaga on November
4 3rd to Bethany Pickett.

5 Here, Mr. Aguinaga is forwarding the
6 e-mail that you sent to Mr. Herren with the draft
7 letter to Bethany Pickett, correct?

8 A. That appears to be correct, yes.

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

12 A. Yes.

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

16 A. That's correct.

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

19 A. Correct.

20 Q. And you hired both Mr. Aguinaga and
21 Ms. Pickett, correct?

22 A. No, I did not.

1 Q. Who hired Mr. Aguinaga and Ms. Pickett?

2 A. I believe it was my predecessor, Tom
3 Wheeler.

4 Q. Both of them had been law clerks for
5 Judge Edith Jones on the Fifth Circuit, correct?

6 A. That's correct.

7 Q. Just like Mr. Shumate, correct?

8 A. I don't know.

9 Q. Both of them graduated from law school in
10 2015 or more recently, correct?

11 A. Sounds about right.

12 Q. Before coming to the civil rights
13 division, neither Mr. Aguinaga nor Ms. Pickett had
14 any experience as counsel in cases under the
15 Voting Rights Act, correct?

16 MR. GARDNER: Object to lack of
17 foundation.

18 THE WITNESS: I don't know.

19 BY MR. HO:

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

1 the civil rights division, correct?

2 A. That's correct.

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

7 A. That's correct.

8 (Gore Deposition Exhibit 13 marked for
9 identification and attached to the
10 transcript.)

11 BY MR. HO:

12 Q. I'll give you a document marked as
13 Exhibit 13. This is an e-mail from Ms. Pickett to
14 you also on November 3rd, 2017, correct?

15 A. Appears to be, yes.

16 Q. Ms. Pickett writes to you, "I have
17 attached the letter that we discussed yesterday.
18 I would be happy to discuss this further. Please
19 let me know if you have any questions regarding
20 any comments and edits."

21 It's accurate to say that Ms. Pickett
22 offered comments and edits to the draft of the

1 letter requesting a citizenship question on the
2 census that you had previously sent to Mr. Herren,
3 correct?

4 A. Correct.

5 Q. What were the substance of the
6 conversations that you had had with Ms. Pickett
7 about that letter?

8 MR. GARDNER: Objection. Calls for
9 information subject to deliberative process
10 privilege. I instruct the witness not to answer.

11 THE WITNESS: Consistent with that
12 instruction, I can't answer.

13 BY MR. HO:

14 Q. What were the substance of her edits to
15 the draft of the letter?

16 MR. GARDNER: Same objection. Same
17 instruction.

18 THE WITNESS: Consistent with that
19 instruction, I can't answer.

20 BY MR. HO:

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

1 letter from anyone else within the civil rights
2 division?

3 A. Not that I can recall.

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

8 A. Not that I can recall.

9 Q. Sometime after you wrote the first draft
10 of this e-mail, you had a conversation with Peter
11 Davidson at the Department of Commerce, correct?

12 A. Yes. That would be correct.

13 Q. So sometime in November of 2017, you had
14 conversation -- you had a conversation with
15 Mr. Davidson about the citizenship question,
16 correct?

17 A. Yes. At some point I would have.

18 Q. How many conversations did you have with
19 Mr. Davidson in November of 2017 about the
20 citizenship question?

21 A. I don't recall exactly how many.

22 Q. What, if anything, did you communicate to

1 Mr. Davidson about the Department of Justice's
2 process for requesting a citizenship question on
3 the census during November of 2017?

4 MR. GARDNER: Objection. Vague. Also
5 objection -- to the extent it calls for
6 information subject to deliberative process
7 privilege, I instruct you not to answer. To the
8 extent you can answer that without divulging such
9 information, you may answer.

10 THE WITNESS: Consistent with that
11 instruction, I can't answer.

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

15 BY MR. HO:

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

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

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

3 It we look at the bottom of this page,
4 the first e-mail on this thread is from you to
5 Ms. Tucker and Mr. Troester on November 27th,
6 2017, correct?

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

9 Q. Troester. Thank you.

10 You had a conversation on this day, the
11 same day, with Mr. Davidson, correct?

12 A. On November 27th?

13 Q. 2017. Correct?

14 A. I don't recall that specifically, but
15 it's certainly possible.

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

19 A. That's correct.

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

22 A. That's my understanding, yes.

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

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

6 Q. What about Ms. Tucker?

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

9 Q. Thank you.

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

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

17 A. Correct.

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

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

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

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

10 So you had discussed the citizenship
11 issue with Ms. Tucker and Mr. Troester a few weeks
12 before the date of this e-mail, November 27th,
13 2017, correct?

14 A. Correct.

15 Q. When were your first conversations with
16 either Ms. Tucker or Mr. Troester about the
17 citizenship question?

18 A. I don't recall specifically when they
19 were. Probably in September of 2017 or early
20 October. And I had a handful to several
21 conversations with each of them about that issue.

22 At the time, Ms. Tucker was responsible

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

8 Q. You described the draft of the letter as
9 a near final draft, correct?

10 A. Correct.

11 Q. So fair to say that on November 27th,
12 2017, a decision had already been made to request
13 a citizenship question on the census?

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

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

17 A. I believe that's correct.

18 (Gore Deposition Exhibit 15 marked for
19 identification and attached to the
20 transcript.)

21 BY MR. HO:

22 Q. This is a document marked as Exhibit 15.

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

4 BY MR. HO:

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

11 A. Appears to be right, yeah.

12 Q. When you say leadership's final changes
13 in this e-mail in the second line -- you write,
14 "Attached is a red-line of a letter with
15 leadership's final changes" -- you're referring to
16 additional edits that you received from Ms. Tucker
17 and Mr. Troester, correct?

18 A. Possibly. I don't know exactly which
19 edits I'm referring to here.

20 Q. Well, what were the final edits from
21 leadership? I mean, who was leadership? When you
22 wrote "leadership" here, who were you referring

1 to?

2 A. I would have been referring to the
3 leadership offices at the Department of Justice,
4 which may have included the Office of Attorney
5 General, the Office of Deputy Attorney General,
6 and the Office of Associate Attorney General.

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

11 A. Not that I can specifically recall.

12 Q. So fair to say, when you're referring to
13 leadership's final changes, you're referring to,
14 to the best of your recollection, some edits from
15 Ms. Tucker and Mr. Troester, correct?

16 MR. GARDNER: Objection.
17 Mischaracterizes the witness' prior testimony.

18 THE WITNESS: Yeah, I don't recall
19 whether they came from Ms. Tucker, Mr. Troester,
20 or somebody else.

21 BY MR. HO:

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

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

2 Did I read that correctly?

3 A. That's correct.

4 Q. Okay. When you say, "authorized to
5 send," who provided authorization to send the
6 letter with those changes?

7 A. I don't recall specifically who
8 communicated that. It would have come from
9 someone in the leadership office.

10 Q. Was it Ms. Tucker or Mr. Troester?

11 A. Again, I don't recall specifically who it
12 was.

13 Q. Was it Attorney General Sessions who gave
14 your authorization to send the letter with these
15 edits?

16 MR. GARDNER: Objection. Asked and
17 answered.

18 THE WITNESS: Again, I don't recall
19 exactly who it was.

20 BY MR. HO:

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

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

5 A. No, I don't think that's correct.

6 Q. You wrote, "With these changes, we are
7 authorized to send."

8 A. That's correct.

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

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

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

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

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

1 after you made these changes, did you?

2 MR. GARDNER: Objection.

3 Mischaracterizes the document.

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

6 BY MR. HO:

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

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

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

18 A. That's correct.

19 Q. And you wrote that sending on Monday,
20 which would have been December 11th, would be
21 fine, correct?

22 A. Correct. And what I was -- I believe I

1 was conveying there is that Mr. Gary didn't need
2 to work late on a Friday night during the holiday
3 season to send the letter out.

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

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

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

13 A. Correct.

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

17 A. Correct.

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

20 A. That's my working understanding.

21 Q. Around the time that you wrote the first
22 draft of this letter, you received input from

1 three individuals: Mr. Herren, Ms. Pickett, and
2 Mr. Gary, correct?

3 A. Yes. And I may have received input from
4 others as well.

5 Q. Around the time of the first draft of the
6 letter in early November of 2017, who else did you
7 receive input from other than Mr. Herren,
8 Ms. Pickett, and Mr. Gary?

9 A. Mr. Aguinaga would have provided -- may
10 have provided some input. I would have had
11 discussions on -- regarding the letter generally
12 with Patrick Hovakimian, who at the time was
13 detailed to the Office of Associate Attorney
14 General, and with Jesse Panuccio in the Office of
15 the Associate Attorney General.

16 And I had various conversations with
17 others at various times throughout this process.
18 But I don't recall who else I would have spoken to
19 at that particular moment in time, around
20 November 1st of 2017.

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

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

3 A. That's correct.

4 Q. After that period of early November
5 of 2017 when you had drafted the initial draft of
6 that letter, Mr. Herren gave you some edits,
7 correct?

8 A. That's correct.

9 Q. After that time, did you receive any
10 further edits from Mr. Herren to the draft letter?

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

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

18 A. I believe that's correct. Yeah.

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

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

3 MR. GARDNER: Objection. Compound.

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

6 BY MR. HO:

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

11 A. Yes.

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

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

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

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

6 Q. The letter was ultimately sent on
7 December 12th, 2017 --

8 A. Correct.

9 Q. -- correct?

10 A. Correct.

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

13 MR. GARDNER: Objection. Asked and
14 answered.

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

17 BY MR. HO:

18 Q. Was it you?

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

1 understand your question.

2 Q. Yes, that's my question.

3 A. I don't know.

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

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

6 somebody else.

7 Q. All right.

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

9 (Gore Deposition Exhibit 17 marked for
10 identification and attached to the
11 transcript.)

12 BY MR. HO:

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

20 A. Yes. It appears to be.

21 Q. And this is the letter we've been talking
22 about in which the Department of Justice

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

2 A. Correct.

3 Q. And your recollection is you received
4 final authorization to send that letter either on
5 Monday, December 11th or on Tuesday, December
6 12th, correct?

7 A. That's my best recollection -- well,
8 although I may be wrong about that, now that I
9 think about that. I can't remember the date the
10 letter was sent. And I don't believe -- so it
11 could have been a couple of days later. I don't
12 remember exactly.

13 Q. Well, the letter is stamped
14 December 12th, 2017.

15 A. Okay.

16 Q. That's a Tuesday.

17 A. Okay.

18 Q. You said that you -- you testified that
19 you had spoken with either Ms. Tucker or
20 Mr. Troester on either Monday or Tuesday, December
21 11th or December 12th.

22 So it was when you had a conversation

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

4 A. I believe that's correct.

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

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

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

16 MR. GARDNER: Objection. Vague.

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

19 BY MR. HO:

20 Q. Okay. Let's talk about Exhibit 17, the
21 December 12th, 2017, letter that's in front of
22 you.

1 A. I'm just going to finish reading it.

2 Q. Well, you've looked at the first page of
3 this letter, right, Mr. Gore?

4 A. Yes. Ever. Yes.

5 Q. From looking at the first page of this
6 letter, does it refresh your recollection that
7 this is the letter that the Department of Justice
8 sent to the Census Bureau to request a citizenship
9 question on the 2020 census?

10 A. Again, if I can finish reading the
11 letter, I can verify whether I believe it's the
12 same letter.

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

16 A. It appears to be the letter.

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

22 A. Yes.

1 Q. And this letter represents the views of
2 the Department of Justice, correct?

3 A. Correct.

4 Q. And Attorney General Sessions agrees with
5 the views expressed in this letter, correct?

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

8 THE WITNESS: I can't speak for what
9 Attorney General Sessions believes or does not
10 believe.

11 BY MR. HO:

12 Q. You believe that the attorney general
13 agrees with the views expressed in this letter,
14 correct?

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

17 THE WITNESS: I would be speculating. I
18 don't think I can answer that question.

19 BY MR. HO:

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

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1 A. Uh-huh.

2 Q. Please turn to page 23.

3 A. Sure.

4 Q. Sorry. I think I meant page 24. Oh, no,
5 no. I'm sorry. I had it right. Page 23.

6 The fourth paragraph down here, there's a
7 question from Member Lynch: "This is Attorney
8 General Sessions you're talking about."

9 Your answer is, "It represents the view
10 of the department, so I believe the attorney
11 general agrees with that view. Yes."

12 That was your testimony in Congress,
13 correct?

14 A. Yes.

15 Q. And you gave truthful testimony that day,
16 correct?

17 A. I did.

18 Q. Are there any reasons that the Department
19 of Justice has for wanting a citizenship question
20 on the census that were communicated to the
21 Department of Commerce but are not contained in
22 this letter?

1 MR. GARDNER: To the extent you're asking
2 for a yes or no, you may answer that question.

3 THE WITNESS: I don't know.

4 BY MR. HO:

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

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

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

14 A. Yes, it is.

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

17 A. That's my understanding. Yes.

18 Q. Why is the letter addressed to him?

19 A. Because he is the acting director of the
20 Census Bureau.

21 Q. Why isn't it addressed to someone from
22 the Department of Commerce?

1 A. I believe that you showed me a letter
2 earlier that was sent from the Department of
3 Justice to then Acting Director Thompson. And so
4 I understand it to be the practice, when the
5 Department of Justice wants additional questions
6 or information collected by the Census Bureau,
7 either through the census or the ACS or some other
8 instrument, to address that request to the head or
9 acting head of the Census Bureau.

10 Q. You're aware that Dr. Jarmin has worked
11 at the Census Bureau for 25 years?

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

13 Q. Okay. You're aware that Dr. Jarmin has a
14 Ph.D. in economics?

15 A. I take from his title that he has a Ph.D.
16 in something. I don't know what it's in.

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

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

22 THE WITNESS: I have no idea.

1 BY MR. HO:

2 Q. You have no idea whether or not the
3 director of the Census Bureau knows more about the
4 accuracy of various forms of CVAP data than you
5 do?

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

8 THE WITNESS: Again, I don't know
9 anything about Mr. Jarmin -- Dr. Jarmin's
10 background or the work he's done at the Census
11 Bureau. So I have no basis to answer that
12 question.

13 BY MR. HO:

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

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

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

22

1 BY MR. HO:

2 Q. If the professionals of the Census Bureau
3 told you that a particular form of CVAP data were
4 the most accurate form of CVAP data at the census
5 block level, would you trust their judgment?

6 MR. GARDNER: Objection. Calls for a
7 hypothetical.

8 THE WITNESS: Again, that calls for a
9 hypothetical, and I would want to know more
10 information about why they reached that decision
11 or that judgment and what other information were
12 available in making that judgment.

13 BY MR. HO:

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

16 A. No.

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

19 A. No.

20 Q. Any experience collecting survey data?

21 A. I think I did a survey collection in
22 college. But other than that, no.

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

3 A. No.

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

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

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

17 A. I would certainly hope so.

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

20 A. That's correct.

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

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

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

7 THE WITNESS: That is correct. To my
8 knowledge.

9 BY MR. HO:

10 Q. The first page of this letter, in the
11 first paragraph, the second-to-last sentence
12 reads, "To fully enforce those requirements, the
13 department needs a reliable calculation of citizen
14 voting age population in localities where voting
15 rights violations are alleged or suspected. As
16 demonstrated below, the decennial census
17 questionnaire is the most appropriate vehicle for
18 collecting that data and reinstating a question on
19 citizenship will best enable the department to
20 protect all American citizens' voting rights under
21 Section 2."

22 It's the position of the Department of

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

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

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

10 A. Correct.

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

16 A. I believe I did. Yes.

17 Q. Let's look at page 2 of the Gary letter.
18 That's what I'm going to refer to as shorthand,
19 this request, Exhibit 17.

20 A. Okay.

21 Q. So the second paragraph on page 2, the
22 second sentence reads -- it's about four lines

1 down -- "From 1970 through the 2000 census, the
2 Census Bureau collected citizen" -- I'm sorry.

3 "From 1970 to 2000, the Census Bureau
4 included a citizenship question on the so-called
5 long-form questionnaire that it sent to
6 approximately one in every six households during
7 each decennial census."

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

12 A. That's my understanding.

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

15 A. That's my understanding.

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

18 A. That appears to be correct.

19 Q. And because the long form was sent only
20 to a sample of households, the citizenship data
21 that the Census Bureau published based on
22 long-form responses were statistical estimates,

1 way?

2 A. No. That's fine.

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

8 A. Sure.

9 Q. Okay. So you understand that citizenship
10 data derived from the long form was a statistical
11 estimate, right, Mr. Gore?

12 A. What I'm trying to convey to you -- let
13 me go straight to the heart of the matter. I'm
14 not sure how the Census Bureau reported this
15 citizenship data in these years. I haven't seen
16 it, so I don't know.

17 Q. My question wasn't about the how the
18 Census Bureau reported it. My question was --

19 A. I think that was your question. Your
20 question was the Census Bureau reported it in a
21 particular way. And I don't know that.

22 Q. My question was, you understand that

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

3 A. I believe that to be correct.

4 Q. Okay. The last sentence in the second
5 paragraph reads, "For years, the department used
6 the data collected in response to that question in
7 assessing compliance with Section 2 and in
8 litigation to enforce Section 2's protections
9 against racial discrimination in voting."

10 Where the letter says, "that question,"
11 it's referring to the citizenship question on the
12 long form, correct?

13 A. Yes. That appears to be correct.

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

18 A. That's my understanding. Yes.

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

1 A. Correct.

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

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

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

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

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

20 BY MR. HO:

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

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1 count citizenship data for purposes of VRA

2 enforcement, are you, Mr. Gore?

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

4 Q. Now, you're aware the ACS is sent to
5 about 2 percent of households in the United States
6 every year, right?

7 A. Sounds about right.

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

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

14 Q. The three-year ACS estimates have been
15 discontinued, right, Mr. Gore?

16 A. That could be. I don't know.

17 Q. You don't know one way or the other if --

18 A. I don't --

19 Q. -- the three-year estimates still exist?

20 A. I'm aware that they existed at one time.

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

1 responses, correct?

2 A. That's my understanding.

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

7 A. It's my understanding. Yes.

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

11 A. Yes.

12 Q. ACS one-year estimates are intended for
13 use -- let me start that again.

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

17 A. I think that's right.

18 Q. Okay. Let me show you a document. This
19 is a screenshot from the Census Bureau website.
20 We'll mark it as Exhibit 18.

21

22

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

4 BY MR. HO:

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

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

13 A. I do, yes.

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

16 A. Correct.

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

22 A. Yes, I see that.

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

5 A. Yes, that's correct.

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

10 A. Yes.

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

14 A. Yes, I do.

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

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

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

21 A. No.

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

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

3 A. Yeah, I do see that.

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

9 A. Yes.

10 Q. All right. Let's talk about the Gary
11 letter a little bit more. Back to page 2. The
12 second-to-last paragraph, the last sentence reads,
13 "The ACS, however, does not yield the ideal data
14 for such purposes for several reasons."

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

18 A. It refers to that and other purposes.

19 Q. Okay. What other purposes?

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

22 Q. Redistricting plans for purposes of

1 compliance with the Voting Rights Act, correct?

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

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

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

21 Q. You're not aware of jurisdictions using
22 ACS data for purposes of complying with legal

1 requirements other than Section 2 of the Voting
2 Rights Act, right, Mr. Gore?

3 A. That is correct.

4 Q. Okay.

5 A. Yeah.

6 Q. So when you say that -- sorry.

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

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

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

17 A. That is correct.

18 Q. Okay. I want to ask you about each of
19 these bullets.

20 Let's start with the first bullet which
21 reads, "Jurisdictions conducting redistricting and
22 the department, in enforcing Section 2, already

1 use the total population data from the census to
2 determine compliance with the Constitution's
3 one-person/one-vote requirement (see *Evenwel v.*
4 *Abbott*, 136 S.Ct. 1120, April 4th, 2016). As a
5 result, using the ACS citizenship estimates means
6 relying on two different data sets, the scope and
7 level of detail of which vary quite
8 significantly."

9 Did I read that right?

10 A. Yes, you did.

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

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

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

1 described it strike you as incorrect?

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

3 Q. Okay. The total population data from the
4 decennial census used for redistricting purposes
5 is part of what the Census Bureau calls the
6 PL94-171 data file, right?

7 A. That's right.

8 Q. Okay. And currently, the citizenship
9 data from the ACS is produced as part of a
10 different data set, the CVAP table from ACS data
11 produced by the Census Bureau, correct?

12 A. That's my understanding, yes.

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

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

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

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

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

20 MR. GARDNER: Objection. Calls for a
21 hypothetical.

22 THE WITNESS: Yeah, again, that's

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

5 BY MR. HO:

6 Q. But if the Census Bureau came to you and
7 said, Mr. Gore, you've requested -- or the
8 department has requested a citizenship question on
9 the census; one of the reasons why is because the
10 citizenship data we're currently giving you is in
11 a different data set, but we've got a solution for
12 you; we're going to put it all in one data set,
13 and we've got a way of doing that without
14 including a citizenship question on the census,
15 would that resolve the bullet -- the concerns
16 expressed in this bullet?

17 MR. GARDNER: Objection. Calls for a
18 hypothetical. Also, objection, form.

19 THE WITNESS: Again, I can't engage in a
20 hypothetical on that.

21 BY MR. HO:

22 Q. Would you be interested in learning from

1 the Census Bureau if the Census Bureau came to you
2 with that suggestion?

3 MR. GARDNER: Objection. Hypothetical.

4 THE WITNESS: Again, that's a
5 hypothetical. I can't engage in a hypothetical.

6 BY MR. HO:

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

12 MR. GARDNER: Same objection.

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

18 BY MR. HO:

19 Q. Has anyone with technical knowledge of --
20 strike that. Never mind.

21 Prior to the Department of Justice's
22 reliance on the ACS, the citizenship data from the

1 Census Bureau that DOJ used, we established
2 earlier, that came from the census long form,
3 correct?

4 A. Correct.

5 Q. And the census long form citizenship data
6 was not produced as part of the PL data file,
7 correct?

8 A. I don't know the answer to that question.

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

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

15 Q. Okay. So the bullet in this letter is
16 not expressing a preference for a return to a
17 prior point in time when DOJ had total population
18 data and citizenship data in a single data set,
19 correct?

20 A. Again, I don't know the answer to that
21 question because I don't know what occurred at a
22 prior point in time, as I've just testified.

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

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

8 Q. Okay. Are you aware of a case where the
9 Department of Justice was unable to succeed on a
10 VRA claim because citizenship data and total
11 population data were in two different data sets?

12 MR. GARDNER: I'm going to object to the
13 extent that that calls for the disclosure of
14 information subject to law enforcement privilege.

15 You can answer that question to the
16 extent you can do that without disclosing
17 privileged information.

18 THE WITNESS: I'm not aware of any such
19 publicly disclosed case.

20 BY MR. HO:

21 Q. Okay.

22 MR. HO: So I'm going to sometimes ask

1 questions about whether or not DOJ has been able
2 to succeed on cases. I'm going to make clear that
3 those questions with limited to cases that have
4 been filed -- right?

5 MR. GARDNER: Okay.

6 THE WITNESS: Okay.

7 MR. HO: And litigated in court.

8 MR. GARDNER: That's fair enough.

9 THE WITNESS: Thank you.

10 BY MR. HO:

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

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

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

1 were in two different data sets, correct?

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

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

12 MR. GARDNER: Objection to form.

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

15 BY MR. HO:

16 Q. The second bullet here, which is on page
17 3, top of page 3, reads, "Because the ACS
18 estimates are rolling and aggregated into
19 one-year, three-year, and five-year estimates,
20 they do not align in time with the decennial
21 census data. Citizenship data from the decennial
22 census, by contrast, would align in time with the

1 total and voting age population data from the
2 census that jurisdictions already use in
3 redistricting."

4 Did I read that right?

5 A. Yes, you did.

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

12 A. That's correct.

13 Q. What do you mean when you say that ACS
14 citizenship data do not align in time with the
15 decennial census?

16 A. What do I mean or what does the
17 department mean?

18 Q. What does the department mean?

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

22 So the ACS data are -- at least for the

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

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

15 Q. So is it your understanding that when
16 experts give testimony in VRA cases using
17 five-year ACS estimates for CVAP, that they are
18 unable to give testimony about CVAP rates that
19 align in time with the decennial census?

20 A. My understanding is that they may or may
21 not be testifying as to CVAP levels that align
22 with the census. It might be possible that they

1 do that in some cases; in other cases, they might
2 be looking to data that predates the census or
3 post-dates the census, again, because it's a
4 five-year window as opposed to the same snapshot
5 in time as the decennial census.

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

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

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

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

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

1 privileged.

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

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

11 Q. Okay. Third bullet, which is the second
12 on this page, reads, "The ACS estimates are
13 reported at a 90 percent confidence interval, and
14 the margin of error increases as the sample size
15 and, thus, the geographic area decreases. See
16 U.S. Census Bureau glossary, confidence interval
17 (American Community Survey), available at" -- and
18 then there's a website. I'm not going to read the
19 URL.

20 After the URL, it says, "By contrast,
21 decennial census is a full count of the
22 population."

1 Did I read that right --

2 A. Yes.

3 Q. -- other than the URL?

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

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

14 Q. Okay. So something like, you know,
15 91 percent -- this is just an example; I just want
16 to see if we understand margin of error the same
17 way -- 91 percent of the voting age people in this
18 area are citizens plus or minus 2 percentage
19 points?

20 A. I believe the plus or minus is my
21 understanding of what the margin of error is.

22 Q. Means it could be -- if the point

1 estimate is 91 percent, it could be 89 -- and it's
2 plus or minus 2 points, it could be 89, it could be
3 93; somewhere in that range?

4 A. That's my understanding.

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

9 A. Yes.

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

16 A. That's correct.

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

21 A. That's correct.

22 Q. You're aware that decennial census data

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

4 A. I'm aware of that. Yes.

5 Q. You were aware -- so -- I'm sorry.

6 As of the date of the Gary letter, were
7 you already aware that the decennial enumeration
8 data contained margins of error?

9 A. I was aware generally that there were
10 margin of errors that the Census Bureau imputed to
11 that data. I don't know what those margins were.

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

16 A. Yes.

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

20 A. It doesn't appear to, no.

21 Q. Okay. So just so I'm clear here, the
22 Gary letter contrasts full count decennial census

1 quote, full count of the population, correct?

2 A. No, that's incorrect.

3 Q. The letter reads --

4 A. It's not a confidence interval or a
5 margin of error. It's a confidence interval and a
6 margin of error.

7 Q. Okay. So let's try this again.

8 A. Please.

9 Q. The ACS data is criticized in this bullet
10 as having a margin of error, correct?

11 A. I don't believe it's criticized. I
12 believe it's described as having a margin of
13 error.

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

17 A. That's correct.

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

21 A. That's correct.

22 Q. And the bullet does not mention that

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

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

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

9 A. I would imagine that's correct.

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

15 A. That's my understanding.

16 Q. Okay. This letter doesn't mention the
17 fact that citizenship data collected from the
18 census long form were, like the ACS, also
19 statistical estimates with a margin of error
20 associated with them, correct?

21 A. I'm sorry, can you repeat the question?

22 Q. Sure.

1 This letter, the Gary letter, it doesn't
2 mention the fact that citizenship data collected
3 from the long form were statistical estimates with
4 a margin of error associated with them, just like
5 the ACS, correct?

6 A. If I can just say, I think what you mean
7 is citizenship data reported from the long form
8 questionnaire, not collected by the long form
9 questionnaire.

10 But my understanding is that, yes,
11 citizenship data reported from the long form
12 questionnaire were estimates.

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

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

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

4 Q. Thank you.

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

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

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

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

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

1 correct?

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

3 Q. Okay. You're not aware of any case where
4 plaintiffs, other than DOJ, declined to bring a
5 VRA case -- let me start that question again.

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

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

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

17 A. That is correct.

18 Q. We'll talk about that in a bit, but I
19 want to talk about something else first.

20 (Gore Deposition Exhibit 19 marked for
21 identification and attached to the
22 transcript.)

1 BY MR. HO:

2 Q. I'm going to show you a document that's
3 marked as Exhibit 19.

4 MR. HO: You guys have seen this on your
5 side. It was used in the Abowd 30(b)(6)
6 deposition.

7 BY MR. HO:

8 Q. I'm going to represent to you that this
9 is a map derived from census data from the Census
10 Bureau website. And it was joined with Tiger
11 files to show census blocks in the Fort Myers,
12 Florida, area with total population numbers for
13 each census block.

14 So the lines represent the borders of
15 census blocks. The numbers represent the total
16 population in each census block. Okay?
17 Everything I say make sense to you?

18 A. I accept your representation.

19 Q. Thank you. Okay.

20 So I just want to try to understand DOJ's
21 position here about why you need CVAP data at the
22 block level.

1 Is it correct that the Department of
2 Justice, when you look at a map like this and you
3 want to bring a Section 2 case, and you see these
4 population numbers here, you want to know how many
5 of the people in each of these blocks with hard
6 count numbers are voting age citizens as opposed
7 to simply having a statistical estimate of the
8 voting age citizens in each block, correct?

9 MR. GARDNER: Objection to the extent
10 that that calls for information that is subject to
11 deliberative process privilege.

12 To the extent you can answer that
13 question without divulging that information, you
14 may do so.

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

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

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

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

12 So, for example, on this map you've
13 handed me, a map drawer might draw various lines
14 through this area. And understanding what
15 population is moving between those areas and what
16 the citizenship composition and the racial
17 composition of those areas is is essential to
18 identifying potential Section 2 violations.

19 BY MR. HO:

20 Q. Okay. So let's look at the middle of the
21 map. Do you see where it says Lee?

22 A. Yes.

1 This is one point of data that we would want to
2 use, and we're using other data as well to
3 identify potential Section 2 investigations and
4 enforcement actions.

5 BY MR. HO:

6 Q. So the way things work right now is, you
7 take an ACS estimate of the percentage of voting
8 age people in a census block who are citizens, and
9 then you look at the census blocks within that --
10 sorry. You look at the individual census blocks
11 within that census block group, and then you
12 estimate how many of the people in that census
13 block are actually citizens of voting age based on
14 the ACS estimate, right?

15 A. I think that's right to the extent I
16 understood your question. I believe what you're
17 saying is the ACS data is reported at the census
18 block group level, and then estimates can be
19 derived for individual census blocks based on that
20 data at the group level.

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

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

8 MR. GARDNER: Objection. Form.
9 Objection. Hypothetical.

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

13 BY MR. HO:

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

22 MR. GARDNER: Objection. Form.

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

5 BY MR. HO:

6 Q. Okay. Now, you know that the only data
7 the Census Bureau makes available to DOJ is
8 aggregate statistical data over a geographical
9 area and not individual census responses, right?

10 A. That's correct.

11 Q. And your understanding is that individual
12 responses to the census questionnaire by law have
13 to stay with the Census Bureau and can't be shared
14 with the Department of Justice or the public,
15 correct?

16 A. That is my understanding. Correct.

17 Q. And the reason why the Census Bureau can
18 only give you that aggregate statistical
19 information covering a geographical area rather
20 than an individual response is because title 13
21 prohibits disclosure of individual responses to
22 the census, correct?

1 THE WITNESS: I haven't studies title 13,
2 so I don't know the exact parameters of it.

3 BY MR. HO:

4 Q. Well, you just told me before that
5 individual census responses are prohibited from
6 disclosure. You understand that, right?

7 A. I do.

8 Q. Okay.

9 A. What I don't know is what exceptions, if
10 any, apply to that particular prohibition. As a
11 general matter, I understand that that's a
12 prohibition. I've not studied the issue, and so
13 I'm not in a position to give a legal opinion on
14 it one way or the other. But that's my -- what I
15 testified to before was my general understanding
16 of title 13.

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

1 A. Yes.

2 Q. Okay. How can the Census Bureau give you
3 block-by-block information based on responses to
4 the census questionnaire for this block with one
5 person on it without telling you how that person
6 responded to the citizenship question on the
7 census questionnaire?

8 MR. GARDNER: Objection. Calls for a
9 legal conclusion. Lack of foundation.

10 THE WITNESS: Again, I haven't studied
11 the question as a legal matter. I would not
12 anticipate, in any event, that the Census Bureau
13 would provide an individual's actual questionnaire
14 to the Department of Justice in connection with
15 our request.

16 BY MR. HO:

17 Q. That wasn't my question about whether or
18 not they were going to give you a questionnaire.

19 You want individual block-level data
20 derived from the census questionnaire --

21 A. I actually think it was your question.
22 Because, as I understand title 13, it's a

1 prohibition on providing the individual
2 questionnaire.

3 Q. So your understanding is that when the
4 Census Bureau includes a citizenship question on
5 the 2020 census questionnaire, collects it,
6 aggregates it block by block, that for this census
7 block with one person on it, what they tell you is
8 going to reflect that one person's answer to the
9 citizenship question?

10 MR. GARDNER: Objection.
11 Mischaracterizes the witness' prior testimony.

12 THE WITNESS: I don't believe that's what
13 I testified to.

14 BY MR. HO:

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

20 MR. GARDNER: Objection. Calls for a
21 hypothetical.

22 THE WITNESS: I have no understanding of

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

4 BY MR. HO:

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

14 MR. GARDNER: Objection. Form.
15 Objection. Hypothetical.

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

20 BY MR. HO:

21 Q. So you don't know one way or the other
22 whether or not the data that you've requested

1 that's reported from the Census Bureau is going
2 to, in fact, be derived from responses to the
3 citizenship question on the census questionnaire,
4 correct?

5 A. That's not what I said. What I said was
6 I don't know the form that the reporting is going
7 to take. I don't know what information the Census
8 Bureau -- what form they're going to provide the
9 information to us in.

10 Q. Well, that wasn't my question about the
11 form. I'm just talking about a census block with
12 one person on it.

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

16 A. That is correct.

17 Q. Okay. So when you get block-by-block
18 level -- block-by-block CVAP data from the Census
19 Bureau derived from responses to the citizenship
20 questionnaire, you don't know whether or not, when
21 you get data back from the Census Bureau about a
22 block that has one person on it, whether or not

1 data, like if it's in an Excel spreadsheet
2 or something like that, and I'm not --

3 A. No, of course you are.

4 Q. -- asking about -- and I'm not asking
5 about whether or not you plan on violating title
6 13. I'm asking a much simpler question than that.

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

16 MR. GARDNER: Same objections.

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

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1 BY MR. HO:

2 Q. Okay.

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

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

10 A. That's correct.

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

14 A. That is correct.

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

19 A. That would be my expectation. Yes.

20 Q. Okay. But my question for you is -- and
21 if you don't know the answer, just say you don't
22 know; that's okay --

1 A. I've said now five or six times that I
2 don't know, because you're asking me a
3 hypothetical question.

4 Q. I haven't asked the question yet.

5 A. You've asked it now six or eight times
6 and --

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

10 A. I do understand that. Yes.

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

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

21 MR. GARDNER: I don't want to interrupt
22 you line of questions, but it's about a quarter to

1 1:00. Do you want to break for lunch soon?

2 MR. HO: In a minute.

3 BY MR. HO:

4 Q. Is it your understanding that, when the
5 Census Bureau reports citizenship data after the
6 2020 census about a block that has one person on
7 it, that that citizenship data reported by the
8 Census Bureau will indicate whether or not that
9 person responded to the citizenship question on
10 the census by stating whether he or she is a
11 citizen?

12 A. I'm sorry, can you try that again? I
13 didn't follow that.

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

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: My understanding is that

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

5 BY MR. HO:

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

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

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

15 BY MR. HO:

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

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

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

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

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

7 Q. You're aware that, because of disclosure
8 avoidance procedures, that when CVAP data is
9 reported by the Census Bureau after the
10 2020 census, that even with a citizenship question
11 on the 2020 census, that that CVAP data at the
12 block level will have error margins associated
13 with it, correct?

14 A. I believe -- I'm sorry, can you repeat
15 the question?

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

1 correct?

2 A. I'm not aware of that because I don't
3 understand the causal relationship between those
4 masking techniques and any margin of error.
5 Moreover, I don't know what techniques the Census
6 Bureau plans to use or how it plans to deploy
7 those with respect to responses to the
8 2020 census.

9 Q. Okay. So before you requested -- I'm
10 sorry. Let me start that again.

11 Before the Department of Justice
12 requested a citizenship question be added to the
13 2020 census questionnaire, you didn't attempt to
14 ascertain whether or not the data derived from the
15 question would produce error margins or not,
16 correct?

17 A. I believe what I said was I was aware
18 that there are margins of error that can be
19 associated with the census data. I don't know how
20 the Census Bureau plans to ask this question or
21 what it plans to do with respect to data collected
22 in response to that question.

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

8 MR. GARDNER: Objection.

9 BY MR. HO:

10 Q. Right?

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

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

15 BY MR. HO:

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

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

4 Q. The Department of Justice.

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

7 Q. When did you become aware of the fact
8 that, due to disclosure avoidance techniques, CVAP
9 data derived from responses to the citizenship
10 questionnaire would have margins of error
11 associated with it?

12 A. Again, I have testified that I'm not
13 aware of the causal relationship that you're
14 talking about, so I'm not sure I ever have become
15 aware of that because I don't know what those
16 techniques are, I don't know how they relate to
17 the citizenship question, and I don't know how the
18 Census Bureau plans to deploy them and -- with
19 respect to the 2020 census.

20 Q. So you've -- and when I say "you," the
21 Department of Justice -- hasn't reached out to the
22 Census Bureau to try to understand the causal

1 relationship, as you put it, between disclosure
2 avoidance and margins of error associated with
3 CVAP data collected from the 2020 census
4 questionnaire, correct?

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

7 THE WITNESS: I'm not aware of what
8 everyone in the Department of Justice may or may
9 not have done.

10 BY MR. HO:

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

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

21 Q. Okay. The Gary letter, when it describes
22 decennial census data as a full count of a

1 population, it doesn't mention the fact that
2 citizenship data based on responses to the
3 decennial census questionnaire would also have
4 margins of error associated with it, correct?

5 MR. GARDNER: Objection. Asked and
6 answered.

7 THE WITNESS: And again, I think your
8 question assumes that there are going to be these
9 margins of error tied to these disclosure masking
10 techniques, and I'm not sure whether that --
11 whether or not that's correct. I don't know one
12 way or the other.

13 BY MR. HO:

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

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

1 I don't know one way or the other.

2 Q. If the Census Bureau could produce full
3 count CVAP data at the block level without margins
4 of error and without including a citizenship
5 question on the census, would that alleviate the
6 concerns expressed in this bullet?

7 MR. GARDNER: Objection. Hypothetical.
8 Also, objection, compound.

9 THE WITNESS: And we're so far removed
10 from the Gary letter at this point, I don't know
11 which bullet you're referring to.

12 BY MR. HO:

13 Q. I'm referring to the third bullet, the
14 same one we've been talking about this entire
15 time.

16 A. You just put another exhibit in front of
17 me, so --

18 Q. It's on page 3, the second bullet on that
19 page about the ACS estimates being reported at a
20 90 percent confidence interval, and the letter
21 which contrasts that to decennial census data,
22 which is a full count of the population.

1 A. I understand that the Census Bureau --

2 Q. I haven't posed a question yet.

3 A. Oh, I'm sorry. I thought you posed a
4 question and then pointed me back to it.

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

13 MR. GARDNER: Objection. Calls for
14 hypothetical.

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

17 BY MR. HO:

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

19 MR. GARDNER: Objection. Calls for
20 hypothetical.

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

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1 BY MR. HO:

2 Q. The fourth bullet here --

3 A. Before moving on to a new bullet, can we
4 take a break for lunch?

5 MR. GARDNER: Yeah. It's 12:55. We've
6 been going over an hour now.

7 MR. HO: Okay. Sure.

8 THE WITNESS: Thank you.

9 VIDEO TECHNICIAN: This concludes media
10 unit number 3. The time on the video is
11 12:55 p.m. We are off the record.

12 (A recess was taken.)

13 VIDEO TECHNICIAN: This begins media unit
14 number 4. The time on the video is 2:05 p.m. We
15 are on the record.

16 BY MR. HO:

17 Q. Mr. Gore, before the break do you
18 remember talking about margins of error?

19 A. Yes.

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

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

3 A. Yes.

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

10 A. I'm not sure I have a view on that one
11 way or the other, since I don't know what the
12 margin of error is that the Census Bureau will
13 assign to census responses and, particularly, the
14 citizenship question should it be asked on the
15 2020 census.

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

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

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

3 Q. I want to turn back to the Gary letter.
4 And the last bullet, which is the fourth bullet
5 overall, it's the third bullet on page 3 of the
6 letter, it reads, "Census data is reported to the
7 census block level, while the smallest unit
8 reported in the ACS estimates is the census block
9 group. See American Community Survey data 3, 5,
10 10. Accordingly, redistricting jurisdictions and
11 the department are required to perform further
12 estimates and to interject further uncertainty in
13 order to approximate citizen voting age population
14 at the level of a census block, which is the
15 fundamental building block of a redistricting
16 plan. Having all of the relevant population
17 citizenship data available in one data set at the
18 census block level would greatly assist the
19 redistricting process."

20 Did I read that correctly?

21 A. Yes, you did.

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

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

8 A. Correct.

9 Q. Historically, CVAP data broken down by
10 race and ethnicity derived from the census long
11 form was not published at the census block level,
12 correct?

13 A. I don't know the answer to that.

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

18 A. I am not aware of that.

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

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

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

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

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

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

19 MR. GARDNER: Objection. Form.

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

21 BY MR. HO:

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

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

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

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

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

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

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

1 witness not to answer.

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

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

8 BY MR. HO:

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

16 MR. GARDNER: Objection. Calls for a
17 hypothetical.

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

20 MR. HO: You're not instructing -- Josh,
21 you're not instructing him not to answer the
22 question, right? You're just lodging an

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1 BY MR. HO:

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

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

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

11 A. Not that I'm aware of.

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

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

17 BY MR. HO:

18 Q. This is a printout from the Department of
19 Justice website listing cases brought by the
20 voting section. The URL for this is on the bottom
21 left-hand corner of the first page. The first
22 page, the cases -- under the first header, Cases

1 foundation.

2 THE WITNESS: I'm not aware of any such
3 case. I will note that some of these cases are
4 not redistricting cases, and so would not have
5 implicated that issue.

6 BY MR. HO:

7 Q. Okay. The issue of CVAP, your testimony
8 is it's only relevant in Section 2 redistricting
9 cases, but not other kinds of Section 2 cases?

10 A. There may be other kinds of Section 2
11 cases where it's also relevant, but I believe that
12 at least a couple of these cases were cases where
13 it would not have been relevant.

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

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

19 THE WITNESS: I am not aware.

20 BY MR. HO:

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

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1 A. Yes.

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

4 A. Yes.

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

6 A. That is correct.

7 Q. Okay. That's the only case in which you
8 are aware that the plaintiff's claim failed in
9 part due to reliance on ACS data, correct?

10 A. No, I don't think that's correct. I
11 think it's the only case of which I'm aware where
12 the plaintiff's case failed in part because of
13 reliance on ACS CVAP data. I believe there's
14 another case out there where plaintiff may have
15 tried to use ACS total population data, and that
16 was not upheld by the court.

17 Q. Okay. That case that you're referring
18 to, that doesn't really have any bearing on the
19 issue of the quality of citizenship data from the
20 ACS, right?

21 A. That's correct. I'm just trying to be
22 responsive to your question.

1 Q. No, I appreciate that.

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

6 A. Correct.

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

10 A. Correct.

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

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

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

19 A. That is my recollection. Correct.

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

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

3 A. Correct.

4 Q. Okay. We established earlier that your
5 understanding is that the Census Bureau publishes
6 the five-year ACS estimates as reliable for any
7 geographic area regardless of population size,
8 correct?

9 A. I believe you showed me a page on the
10 website that says that. I don't know what the
11 Census Bureau means by that or what purposes it
12 intends the ACS data to be used for. But that is
13 the statement that you showed me earlier.

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

17 A. That's correct.

18 Q. And you --

19 A. That's my recollection.

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

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

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

4 A. I believe I mentioned it. Yes.

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

9 A. I believe that's correct.

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

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

19 Q. You don't recall making clear to Congress
20 that there are five-year ACS estimates, as
21 distinct from the one-year ACS estimates relied on
22 by the plaintiffs in Benavidez, that are

1 considered by the Census Bureau to be reliable for
2 any geographic area, correct?

3 A. I do not recall every word that I said in
4 my testimony to Congress.

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

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

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

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

15 Q. And you didn't mention that the Census
16 Bureau publishes ACS estimates that it considers
17 reliable for any geographic area during your
18 testimony in Congress, correct?

19 A. I don't recall whether I did or I didn't.
20 And as I said before, I don't know what the Census
21 Bureau means by that or the uses to which it
22 intends the ACS can be put.

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

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

11 Q. Can you think of any reason why you
12 wouldn't mention the fact that the Census Bureau
13 produces estimates that have greater reliability
14 at smaller geographic areas than the one-year ACS
15 estimates that you did discuss during your
16 congressional testimony?

17 A. Again, I'm happy to comment on my
18 testimony if you want to point me to a specific
19 page of it, and I can try to reconstruct why I did
20 or did not give a particular piece of information.
21 It may not have been responsive or relevant to the
22 question.

1 Q. You don't think Congress would have
2 wanted to know that there are ACS estimates that
3 are more reliable than the one-year ACS estimates
4 that the plaintiffs relied on in the Benavidez
5 case?

6 MR. GARDNER: Objection. Calls for
7 speculation.

8 THE WITNESS: These days, I have no idea
9 what Congress wants.

10 BY MR. HO:

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

13 A. Exhibit 20?

14 Q. Yes.

15 A. Okay.

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

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

21 A. That is correct.

22 Q. In fact, none of the Section 2 cases

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

3 A. That is correct.

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

10 A. That's correct.

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

14 MR. GARDNER: Objection to form.

15 THE WITNESS: That's correct.

16 BY MR. HO:

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

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

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

7 Q. Okay. If you look at the previous
8 administration, 2009 through the beginning of
9 2017, it looks like the Department of Justice
10 filed five Section 2 cases during that period.

11 A. I believe that's correct.

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

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

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

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

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

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

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

12 Q. You're not saying that reliance on ACS
13 CVAP data is the reason why the Department of
14 Justice has failed to file a Section 2 case since
15 the start of the Trump administration, right?

16 A. Again, I didn't think we were going to
17 talk about cases that hadn't been filed. And I
18 believe that's covered by law enforcement
19 privilege and I can't talk about why or why not --
20 why certain cases were or were not filed.

21 Q. Well, your counsel didn't object to my
22 question.

1 Otherwise, I instruct you not to answer.

2 THE WITNESS: Consistent with that
3 instruction, I can't answer.

4 BY MR. HO:

5 Q. Okay. You're not saying that if you had
6 different CVAP data at your disposal, you would
7 have filed some additional Section 2 cases, right?

8 MR. GARDNER: Same objection. Same
9 instruction.

10 THE WITNESS: Consistent with that
11 instruction, I can't answer.

12 MR. HO: We'll mark this as Exhibit 21.
13 (Gore Deposition Exhibit 21 marked for
14 identification and attached to the
15 transcript.)

16 BY MR. HO:

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

22 I want to go through the individual

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1 e-mails on here. Okay?

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

4 A. I don't believe so, actually.

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

7 A. Appears to be, yes.

8 Q. Okay. And the second e-mail, the second
9 to most recent one on the first page here, Arthur
10 Gary is forwarding to you an e-mail chain between
11 him and Ron Jarmin, the acting director of the
12 Census Bureau, correct?

13 A. That appears to be correct.

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

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

21 A. Yes, that's correct.

22 Q. Okay. The e-mail from Acting Director

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1 expressing the view that the best way to provide
2 block-level CVAP data for purposes of VRA
3 enforcement is not to add a citizenship question
4 to the census?

5 A. No, that's not what I understand.

6 Q. What do you understand the Census Bureau
7 director to be saying?

8 A. I believe he is saying that he's had
9 staff review the question, and the staff had
10 briefed him, and their findings suggest that the
11 best way to provide that data would be through the
12 linked file of administrative and survey data.

13 Q. Okay.

14 A. And then requesting to set up a meeting
15 about that issue.

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

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1 decennial census questionnaire, correct?

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

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

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

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

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

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

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

11 A. I am not aware of any such meeting.

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

19 A. I am not aware of any such meeting.

20 Q. The next e-mail on this chain is on
21 December 22nd, 2017. It's on page 4. Arthur Gary
22 writes to Dr. Jarmin, "Dr. Jarmin, thank you for

1 your response. We look forward to meeting with
2 you and your team in early January. Best
3 regards."

4 Did I read that right?

5 A. Looks right, yeah.

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

10 I read that correctly, right?

11 A. Yes, you did.

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

17 A. Appears -- that appears correct.

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

22 A. Again, these e-mails speak for

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

3 Q. Okay. One week later -- I'm on page 3 --
4 Ron Jarmin writes to Arthur Gary on January 9th,
5 2018, "Gary, any updates? We have a pretty short
6 clock to resolve the request. Would be good to
7 meet with your team as soon as possible. Thanks."

8 Do you see that?

9 A. I do.

10 Q. Okay. In the next e-mail, also on
11 January 9th, 2018, Arthur Gary writes back to Ron
12 Jarmin and suggests a number of times, including
13 Friday, January 19th, at 11:00 a.m., correct?

14 A. I'm sorry, which page are you on?

15 Q. Page 2.

16 A. I don't see any e-mail from January 13th.

17 Q. January 9th, 2018.

18 A. Okay. Which e-mail are we talking about?

19 I'm sorry.

20 Q. From Arthur Gary to Ron Jarmin --

21 A. At the bottom of the page?

22 Q. At the bottom of the page.

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1 A. Okay.

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

6 A. That appears to be correct.

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

11 A. Right.

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

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

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

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

5 A. Yes.

6 Q. When did those conversations take place?

7 A. I don't remember the specific dates.

8 Q. What was the content of that
9 conversation?

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

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

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

19 Q. What did he -- did he convey to you
20 anything other than the fact that a request had
21 been made?

22 A. I believe he mentioned that they had

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1 offered certain dates for that meeting, but
2 that -- I don't recall the specifics of that
3 conversation beyond that.

4 Q. Did Mr. Gary tell you that, in
5 Dr. Jarmin's e-mail, he had written that Census
6 Bureau staff had briefed him on their analysis
7 which suggested that there was a way to produce
8 higher quality CVAP data at lower cost for the
9 Department of Justice through a means other than
10 including a question about citizenship on the
11 2020 census questionnaire?

12 A. I don't believe he conveyed that. I
13 believe what he conveyed was that the Census
14 Bureau thought there might be another way to get
15 the data to the Department of Justice.

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

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

21 Q. Did you instruct Mr. Gary not to hold the
22 meeting with the Census Bureau that was scheduled

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1 for Friday, January 19th?

2 A. I don't believe so, no.

3 Q. Do you know why that meeting did not
4 occur?

5 A. I believe that -- I believe at the time
6 we were trying to gather more information within
7 the department about this meeting and whether it
8 was consistent with our -- with what we wanted to
9 do. And I believe that -- if I recall correctly,
10 this was a request for more time from the Census
11 Bureau that Mr. Gary submitted.

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

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

18 Q. And who did you discuss that with?

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

1 Q. You didn't discuss the fact that the
2 Census Bureau had an alternative idea for
3 producing block-level CVAP data for purposes of
4 VRA enforcement with voting section employees?

5 A. I may have discussed it -- I think I
6 probably did discuss it with Chris Herren as well.
7 I may have discussed it with him. I don't recall
8 specifically.

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

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

17 Q. Roughly when did you speak to Art Gary?

18 A. Again, I don't remember the exact date of
19 that either. It would have been before this
20 January 16th e-mail.

21 Q. So sometime after this conversation -- so
22 let me just back up here.

1 Q. And at some point after that, you had a
2 conversation about this proposal with the attorney
3 general, correct?

4 A. I don't know if it was so much about the
5 proposal, because I wasn't up on what the
6 specifics of the proposal were. I think we had
7 a -- we may have had a conversation related to
8 this issue of Census Bureau wanting to meet.

9 Q. You didn't ask Arthur Gary for the
10 specifics of the proposal from the Census Bureau?

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

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

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

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

1 A. In person.

2 Q. And it was in January of 2018?

3 A. Probably. Yeah.

4 Q. What was discussed with respect to the
5 Census Bureau's alternative proposal for producing
6 block-level CVAP data?

7 MR. GARDNER: Objection. Calls for
8 information that's subject to deliberative process
9 privilege. I instruct the witness not to answer.

10 MR. HO: Can I just ask you what decision
11 this deliberation went to, given that the
12 department had already at this point --

13 MR. GARDNER: Sure.

14 MR. HO: -- made the request?

15 MR. GARDNER: It's embedded in your
16 actual question about the consideration of
17 alternatives.

18 Remember, the deliberative process
19 privilege can apply even if no final decision is
20 made.

21 MR. HO: So this is not about the
22 decision to request the citizenship question.

1 that --

2 MR. GARDNER: Decision as to whether to
3 pursue that proposal.

4 MR. HO: Okay. That's what I just wanted
5 to clarify because --

6 MR. GARDNER: Yeah. Okay.

7 MR. HO: -- it wasn't clear to me.

8 MR. GARDNER: Sorry. I thought that was
9 clear. I apologize. Yeah, that's the decision.

10 BY MR. HO:

11 Q. Okay. So the conversation with the
12 attorney general included a discussion about
13 whether or not to pursue the Census Bureau's
14 proposal to produce block-level CVAP data for DOJ
15 for VRA enforcement purposes without including a
16 citizenship question, correct?

17 A. That is correct. And just to clarify, I
18 wasn't familiar with all the particulars of their
19 proposal.

20 Q. That's fine.

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

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

4 A. That is correct.

5 Q. Who made that decision?

6 A. The attorney general.

7 Q. When was that decision made?

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

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

13 A. That is correct.

14 Q. Are the reasons for that decision
15 memorialized anywhere?

16 A. Not to my knowledge.

17 Q. Were those reasons ever communicated to
18 you?

19 A. Yes.

20 Q. What were those reasons?

21 MR. GARDNER: Objection. Calls for
22 information subject to deliberative process

1 privilege. I instruct the witness not to answer.

2 THE WITNESS: Consistent with that
3 instruction, I can't answer. But I do admire your
4 tenacity.

5 BY MR. HO:

6 Q. On the first page, the second e-mail
7 listed here is from Ron Jarmin to Art Gary on
8 January 26th, 2018 and reads, "Art, any chance of
9 meeting late next week? Thanks. Ron."

10 As of this date, it had not yet been
11 communicated to the Census Bureau that the --
12 whether or not the Department of Justice would
13 meet to discuss the Census Bureau's other proposal
14 for producing block-level CVAP data, correct?

15 A. I'm not sure I know the answer to that
16 question.

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

21 A. I did.

22 Q. When did you inform Mr. Gary of that

1 decision?

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

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

9 A. The attorney general.

10 Q. You received this e-mail thread from
11 Arthur Gary, which includes the initial e-mail
12 from Dr. Jarmin describing the alternative
13 proposal for collecting CVAP data at higher
14 quality produced at lower cost on January 29th,
15 2018, correct?

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

22 Q. When you told Congress on May 21st, 2018,

1 Q. Your understanding is that Secretary Ross
2 speaks for the Census Bureau?

3 A. Yes. On this -- at least on this issue.
4 I understand that -- and again, I've not studied
5 the legal questions in this case, but it's my
6 understanding that the Secretary of Commerce has
7 the authority to determine which questions will
8 and will not be asked on the census questionnaire.

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

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

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

17 BY MR. HO:

18 Q. You don't know one way or the other
19 whether or not Secretary Ross knows more about the
20 accuracy of various forms of CVAP data than the
21 career professionals who work with statistical
22 research and survey data at the Census Bureau?

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1 MR. GARDNER: Same objection.

2 THE WITNESS: I don't know one way or the
3 other, and I don't know what Census Bureau staff
4 ultimately concluded since the e-mail said there
5 were suggestions made by particular findings.

6 It's my understanding that Secretary Ross
7 has the legal right and the legal authority to
8 make that determination on behalf of the Commerce
9 Department and the Census Bureau under the
10 relevant statutes that Congress has enacted.

11 BY MR. HO:

12 Q. So let's leave aside legal right and
13 legal authority and let's just talk about the
14 Census Bureau and what Dr. Jarmin represented in
15 this e-mail.

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

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

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

8 MR. GARDNER: Objection. Asked and
9 answered.

10 THE WITNESS: Again, I don't remember
11 exactly everything that I testified to on May
12 21st. I'm happy to read that testimony now and
13 answer your question and verify -- or give you the
14 verification or confirmation that you seem to be
15 asking me for.

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

1 Congress.

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

9 BY MR. HO:

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

14 MR. GARDNER: Objection. Argumentative.

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

18 BY MR. HO:

19 Q. He is the acting director of the Census
20 Bureau today, right?

21 A. That, I don't know. But sure, he could
22 be.

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

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

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

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

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

22 MR. GARDNER: Objection. Asked and

1 answered.

2 THE WITNESS: I believe that's correct.

3 BY MR. HO:

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

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

11 Q. All right.

12 (Gore Deposition Exhibit 22 marked for
13 identification and attached to the
14 transcript.)

15 BY MR. HO:

16 Q. This is marked as Exhibit 22. It's an
17 e-mail from Ron Jarmin to Census Bureau personnel
18 in the administrative record with Bates number
19 9074.

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

1 Enrique Lamas and, it appears, Karen Dunn Kelley.

2 Do you see that?

3 A. I do see that.

4 Q. Dr. Jarmin writes to Ms. Kelley, "Karen,

5 I spoke with Jarmin is Gary. He has spoken with

6 DOJ leadership. They believe the letter

7 requesting citizenship be added to the 2020 census

8 fully describes their request. They do not want

9 to meet. Thanks, Ron."

10 Did I read that right?

11 A. Yes, you did.

12 Q. You're part of the DOJ leadership to whom

13 Art -- Arthur Gary spoke about a possible meeting

14 between the Census Bureau and DOJ, correct?

15 MR. GARDNER: Objection. Calls for

16 speculation. Lack of foundation.

17 THE WITNESS: I don't know who Jarmin is

18 Gary spoke to or who he was referring to. As I

19 testified previously, I did talk to him about this

20 issue.

21 BY MR. HO:

22 Q. Are you aware of anyone else speaking

1 with Arthur Gary about the decision over whether
2 or not to meet with Census Bureau personnel to
3 discuss their proposal to produce block-level CVAP
4 data without a citizenship question?

5 A. I have no awareness on that one way or
6 the other.

7 Q. Dr. Jarmin is correct that DOJ leadership
8 did not want to meet to discuss the technical
9 aspects of the citizenship question request,
10 correct?

11 A. I'm sorry, can you repeat that question?

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

16 A. I believe that's correct.

17 Q. The reason you didn't want to have that
18 meeting is because it was more important to the
19 Department of Justice to get a citizenship
20 question on the 2020 census questionnaire than to
21 get accurate block-level CVAP data, correct?

22 MR. GARDNER: Objection. Calls for

1 record.

2 MR. GARDNER: Whatever you wish.

3 VIDEO TECHNICIAN: This concludes media
4 unit number 4. The time on the video is 2:55 p.m.
5 We are off the record.

6 (A recess was taken.)

7 VIDEO TECHNICIAN: This begins media unit
8 number 5. The time on the video is 3:16 p.m. We
9 are on the record.

10 BY MR. HO:

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

15 A. Right.

16 Q. You would like it if technical staff from
17 the civil rights division could meet with the
18 Census Bureau to discuss what the Census Bureau
19 believes is the most accurate CVAP data for
20 purposes of VRA enforcement, right?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: Again, I think you're

1 Congress on May 8th.

2 BY MR. HO:

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

6 A. Sounds right.

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

11 A. That's probably correct. Yeah.

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

19 MR. GARDNER: Objection. Hypothetical.

20 THE WITNESS: That's a hypothetical.

21 MR. HO: It's not a hypothetical.

22

1 entry number 694. It refers to a document with
2 the Bates number DOJ 30395.

3 Do you see that?

4 A. I do.

5 Q. The description of this document is that
6 it is an e-mail from Brett Shumate to you dated
7 March 25th, 2018, correct?

8 A. Yes.

9 Q. And the description of this document
10 reads, "E-mail among DOJ attorneys discussed and
11 providing legal advice on a draft of Commerce's
12 decision memo concerning the reinstatement of a
13 citizenship question on the census. The e-mail
14 includes attorneys' thoughts and mental
15 impressions concerning anticipated litigation and
16 would reveal deliberative material that pre-dates
17 Commerce's final decision memo."

18 Did I read that right?

19 A. Yes.

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

1 A. That appears to be correct. Yes.

2 Q. You don't remember receiving a draft of
3 Secretary Ross' decision memo directing the
4 inclusion of a citizenship question from
5 Mr. Shumate?

6 A. No, I do recall that. I was saying it
7 appears to be correct based on the information you
8 just read.

9 Q. Okay. Did you discuss or provide to
10 Mr. Shumate legal advice on a draft of Commerce's
11 decision memo concerning a citizenship question on
12 the census?

13 A. Yes.

14 Q. Did Mr. Shumate share with you his
15 thoughts or mental impressions concerning
16 anticipated litigation over the citizenship
17 question?

18 A. Yes, I believe he did.

19 Q. Did you share with Mr. Shumate any
20 thoughts or mental impressions concerning
21 anticipated litigation over the citizenship
22 question?

1 BY MR. HO:

2 Q. This is Exhibit 24. The document and the
3 attachment.

4 MR. GARDNER: Which one do you want to be
5 24 and which do you want to be 25?

6 MR. HO: We'll make the e-mail 24 and the
7 attached draft letter 25.

8 (Gore Deposition Exhibit 25 marked for
9 identification and attached to the
10 transcript.)

11 BY MR. HO:

12 Q. So 24 is an e-mail from Mr. Aguinaga to
13 you dated June 13th, 2018, correct?

14 A. Yes.

15 Q. And it makes reference to attachments of
16 draft responses to members of Congress, correct?

17 A. I believe that's correct.

18 Q. Okay. Exhibit 25 is a draft letter to
19 Congresswoman Carolyn Maloney. Do you see that?

20 A. Yes.

21 Q. Okay. And I want to ask you about the
22 draft letter, specifically, the second paragraph,

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1 the second sentence.

2 Before the red-line, that sentence
3 appears to read, "As you noted, the department
4 sent a letter to the Census Bureau asking that the
5 Census Bureau reinstate a question regarding
6 citizenship on the 2020 census questionnaire in an
7 effort to obtain accurate data needed to protect
8 against racial discrimination in voting."

9 Does that appear correct to you?

10 A. That appears to be correct, yes.

11 Q. It was revised to read, "As you noted,
12 the department sent a letter to the Census Bureau
13 asking the Census Bureau -- asking that the Census
14 Bureau reinstate a question regarding citizenship
15 on the 2020 census questionnaire in an effort to
16 obtain the most accurate data to protect against
17 racial discrimination in voting" with the
18 word "needed" struck out, correct?

19 A. That appears to be correct.

20 Q. Okay. The comment bubble reads, "This
21 edit is designed conform to the original JMD
22 letter, which did not say the data was necessary,

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1 but did indicate it would assist our enforcement
2 efforts. John's note to CIV specifically noted
3 that the letter did not say the data
4 was 'necessary,' and I think we should avoid that
5 term."

6 Did I read that right?

7 A. Yes, you did.

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

14 A. That is correct.

15 Q. And as the comment bubble indicates, you,
16 Mr. Gore, have at some point specifically noted
17 that the letter did not use the word "necessary"
18 with respect to collecting CVAP data through the
19 census questionnaire, correct?

20 A. That is what the comment says. Correct.

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

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

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

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

11 A. I do agree with that. Yes.

12 Q. I'm going to show you another document.
13 We'll mark this as 26 and 27.

14 (Gore Deposition Exhibits 26 and 27
15 marked for identification and attached to
16 the transcript.)

17 BY MR. HO:

18 Q. 26 is an e-mail from Mr. Aguinaga to you
19 dated June 12th, 2018, correct?

20 A. Yes, it is.

21 Q. And the subject is, QFR responses,
22 correct?

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1 A. That is correct.

2 Q. And there's an attachment of 2020 census
3 hearing Gore QFRs CRT draft, correct?

4 A. Correct.

5 Q. Exhibit 27 has draft responses from you
6 to questions posed by Congressman Jimmy Gomez,
7 correct?

8 A. Yes, that's correct.

9 Q. The second answer on Exhibit 27 -- or the
10 second question and answer on Exhibit 27 read, "To
11 Mr. Gore: Is the DOJ and Attorney
12 General Sessions still in agreement with that
13 opinion? Is there any provision of any law that
14 may compel census to disclose confidential census
15 data for law enforcement or national security
16 purposes?"

17 And the response, as drafted, reads, "No
18 one should have to fear responding to the census
19 questionnaire or to a citizenship question if, in
20 fact, it is included. To that end, the department
21 is committed to abiding by all laws protecting the
22 confidentiality and non-disclosure of such

1 responses."

2 Did I read that right?

3 A. Yes.

4 Q. If we look back at Exhibit 26,
5 Mr. Aguinaga's e-mail to you, the fourth sentence
6 in his e-mail, beginning with the second draft
7 answer at the end of the second line, it reads,
8 "The second draft answer does not directly address
9 the question because the question asks whether the
10 department agrees with the 2010 OLC opinion and
11 whether any law compels the disclosure of
12 confidential questionnaire responses. I don't
13 think we want to say too much there in case the
14 issues addressed in the OLC opinion or related
15 issues come up later for renewed debate."

16 Did I read Mr. Aguinaga's words
17 correctly?

18 A. Yes.

19 Q. Okay. I'm going to show you a document
20 which we'll mark as Exhibit 28.

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1 A. Yes, I do.

2 Q. Okay. This is a document from the
3 administrative record. The first page is Bates
4 number 1277.

5 You're familiar with this document?

6 A. No, I'm not.

7 Q. You've never seen this document before?

8 A. No, I don't believe I have.

9 Q. The fifth page of this document, Bates
10 number 1281, the first paragraph, last sentence,
11 about four lines from the bottom, reads, "It is,
12 therefore, a reasonable inference that a question
13 on citizenship would lead to some decline in
14 overall self-response because it would make the
15 2020 census modestly more burdensome in the direct
16 sense, and potentially much more burdensome in the
17 indirect sense, that it would need to a larger
18 decline in self-response for non-citizen
19 households."

20 Did I read that right?

21 A. Yes, you did.

22 Q. Okay. So before I read that to you, you

1 were not aware that the chief scientist of the
2 Census Bureau had opined, based on an analysis of
3 ACS data, that the inclusion of a citizenship
4 question would lead to a larger decline in
5 self-response for non-citizen households?

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

8 THE WITNESS: That is -- I'm not sure
9 you've correctly characterized this statement.
10 But no, I was not aware of this statement until
11 just now.

12 BY MR. HO:

13 Q. Okay. So --

14 A. Or of the fact that Mr. -- I'm sorry. Is
15 it Dr. Abowd? Mr. Abowd. I'm not sure. I've
16 never met him.

17 Q. Abowd.

18 A. Abowd, thank you.

19 -- had espoused that view.

20 Q. So you're not aware that the Census
21 Bureau has conducted an analysis of ACS response
22 rates and, based on that analysis, has concluded

1 BY MR. HO:

2 Q. I'm not actually talking about
3 Exhibit 32.

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

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

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

19 Q. That's fine. But assuming that it is,
20 does that concern you about the inclusion of a
21 citizenship question on the census, given that the
22 department that you run relies upon accurate

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1 would expect --

2 Q. It's actually a question about your
3 current intentions.

4 A. My current intentions. I would expect
5 that conversations like that could occur. Sure.

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

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

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

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

1 no.

2 MR. HO: Can we go off the record?

3 VIDEO TECHNICIAN: We are going off the
4 record. The time on the video is 3:57 p.m.

5 (A recess was taken.)

6 VIDEO TECHNICIAN: This begins media unit
7 number 6. The time on the video is 4:15 p.m. We
8 are on the record.

9 BY MR. HO:

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

18 A. That is correct.

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

1 between Census Bureau and technical staff,

2 correct?

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

4 Yes.

5 Q. Okay.

6 (Gore Deposition Exhibits 33 and 34

7 marked for identification and attached to

8 the transcript.)

9 BY MR. HO:

10 Q. I just want to show you two more
11 documents that have been marked as Exhibits 33 and
12 34.

13 33 is an e-mail from Ben Aguinaga to you
14 and Prim Escalona dated April 6th, 2018, correct?

15 A. Are you referring to the e-mail at the
16 top of the page?

17 Q. Correct.

18 A. Yes, that's correct.

19 Q. It's a thread, but the top e-mail is from
20 Ben Aguinaga to you and someone else dated
21 April 6th, 2018, correct?

22 A. That is correct.

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1 Q. Okay. And there are various attachments
2 to this e-mail, one of which is census citizenship
3 question briefing paper, correct?

4 A. That is correct.

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

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

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

11 Q. Does it appear to be?

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

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

16 A. That is correct.

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

20 A. That is correct.

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

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

5 Is that statement accurate, as far as you
6 know?

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

9 THE WITNESS: As far as I know, yes.

10 BY MR. HO:

11 Q. And when in 2017, if you know, did
12 Secretary of Commerce Wilbur Ross request that the
13 Justice Department send a letter requesting the
14 addition of a citizenship question?

15 A. I don't know.

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

22 MR. GARDNER: Objection. Lack of

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1 foundation.

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

5 BY MR. HO:

6 Q. And it's also correct that, as of
7 April 6th, 2018, the Department of Justice was
8 attempting to maintain the fact that
9 Secretary Ross had requested that the Justice
10 Department send a letter requesting the addition
11 of a citizenship question -- that the Justice
12 Department was attempting to maintain the fact
13 that that information was not public, correct?

14 A. I'm not sure whether that's correct or
15 not.

16 Q. Were you authorized, as of April 6th,
17 2018, to publicly discuss the fact that the
18 Secretary of Commerce had requested that the
19 Justice Department send a letter requesting the
20 addition of a citizenship question?

21 MR. GARDNER: Objection. Vague.

22 THE WITNESS: Yeah, I don't know what you

1 mean by that, but I don't know that I was
2 authorized or not authorized to do so.

3 BY MR. HO:

4 Q. As far as you know, it had not yet been
5 made public as of April 6th, 2018, that Secretary
6 of Commerce Ross had requested the Justice
7 Department send a letter requesting the addition
8 of a citizenship question, correct?

9 A. As far as I know and can recall, that's
10 correct.

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

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

17 THE WITNESS: I don't know.

18 BY MR. HO:

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

20 A. I don't know one way or the other.

21 MR. HO: Okay. We can go off the record.
22 I think those are all the questions --

1 BY MS. HULETT:

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

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

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

14 BY MS. HULETT:

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

20 A. That is correct.

21 Q. Okay. Have you had any conversations
22 with anyone else about whether apportionment or

1 well. But I'm familiar that its current practice
2 is to use the ACS data.

3 And the decennial census data obviously
4 is only available every ten years, not every five
5 years.

6 Q. I'd like to draw your attention back to
7 this Exhibit 17, which is the December 12th,
8 2017 -- I think we've been referring to it as the
9 Gary letter.

10 A. Yes. Bear with me one moment. My
11 exhibits are not in order.

12 Q. Okay.

13 A. Let me see if I can find it. Got it.
14 Thank you.

15 Q. When you were -- do you see that you've
16 cited several cases in this letter?

17 A. I see that the department has cited
18 several cases in the letter. Yes.

19 Q. You drafted -- did the initial draft of
20 this letter, correct?

21 A. That is correct.

22 Q. And when you were drafting the letter,

1 did you, personally, do the research that resulted
2 in the citation to these particular cases or did
3 someone else do it for you and send them to you?

4 MR. GARDNER: Objection. Calls for
5 information subject to deliberative process
6 privilege. I instruct the witness not to answer.

7 THE WITNESS: Consistent with that
8 instruction, I can't answer.

9 BY MS. HULETT:

10 Q. So you can't tell me whether you chose
11 these cases or whether someone else chose these
12 cases for inclusion in the letter because that's
13 deliberative process? I just want to make sure I
14 understand what you're refusing to answer.

15 A. Yes. That's on the instruction of
16 counsel.

17 Q. Okay. Did you read the opinions that are
18 cited in the letter?

19 A. Yes, I did.

20 Q. How recently have you read the opinions?

21 A. Well, let me look at which opinions we're
22 talking about.

1 Q. Well, to start with, I'm talking about
2 Reyes versus City of Farmers Branch, Barnett
3 versus City of Chicago, Negrón versus City of
4 Miami Beach, Romero versus City of Pomona, and
5 LULAC versus Perry.

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

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

17 Did I read that correctly?

18 A. Yes, you did.

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

22 A. I believe I did. Yes.

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

6 MR. GARDNER: Objection. Compound.

7 THE WITNESS: I don't believe so.

8 BY MS. HULETT:

9 Q. Would you agree that the Supreme Court
10 has not yet adopted a standard requiring proof of
11 citizen voting age majority to meet the prong 1
12 Gingles test?

13 A. I think you're asking me for a legal
14 conclusion, and I don't believe the Supreme Court
15 has addressed that question squarely. The LULAC
16 versus Perry decision does analyze vote dilution
17 claims by reference to citizen voting age
18 population. That's a case out of the State of
19 Texas. And that's my recollection of that case.

20 But to the extent you're asking me for a
21 legal opinion, I don't know that I can provide
22 one.

1 (Gore Deposition Exhibit 39 marked for
2 identification and attached to the
3 transcript.)

4 BY MS. HULETT:

5 Q. I'd like to show you Exhibit 39, which is
6 a series of January 2nd, 2018, e-mails between you
7 and Devin O'Malley regarding review of a statement
8 in response to citizenship question on census.

9 Who is Devin O'Malley?

10 A. Devin O'Malley at the time was employed
11 in the Department of Justice's Office of Public
12 Affairs.

13 Q. Is that a Ms. or a Mr.?

14 A. Mr.

15 Q. Do you recall this exchange, this e-mail
16 exchange?

17 A. Yes, I do.

18 Q. On page 2, Mr. O'Malley asks you at
19 4:28 -- it's right in the center of the page on
20 page 2 -- "There's no reason I can't point the
21 reporter to the Constitution on background and
22 make the point that there's somewhat of a

1 constitutional basis for using the census in this
2 process and not the ACS, right?"

3 And right above it is your response:
4 "It's a little bit of a stretch, but it's okay
5 with me."

6 How is there a constitutional basis for
7 using a census rather than the ACS to collect
8 citizenship data?

9 A. Unlike the ACS, the census is actually
10 mentioned in the Constitution. The Constitution
11 directs the federal government to conduct a census
12 every ten years. There's no mention of the ACS in
13 the Constitution.

14 Q. The ACS is run by the Census Bureau,
15 right -- conducted by the Census Bureau?

16 A. Yes.

17 Q. But you don't consider it to be part of
18 the census?

19 A. I consider -- I believe what Mr. O'Malley
20 is referring to here is a decennial census versus
21 the ACS. I understand the ACS is not part of the
22 decennial census.

1 Q. And what did you mean that it's a
2 stretch?

3 A. I believe what I meant was it's certainly
4 correct that the census is mentioned in the
5 Constitution and that the ACS isn't. But I
6 wasn't -- I don't believe that that was a reason
7 mentioned in the Gary letter for seeking
8 reinstatement of the citizenship question on the
9 census questionnaire.

10 Q. And you think the argument is a bit of a
11 stretch?

12 A. Which argument?

13 Q. The argument that the Constitution
14 supports -- that there's a constitutional basis
15 for using the decennial census instead of the ACS.

16 A. I -- yeah, I believe that's a little bit
17 of a stretch.

18 Q. On page 3, in another e-mail from you in
19 this exchange at 4:04, you say, "Unfortunately,
20 it's not accurate to blame the prior
21 administration for abandoning the citizenship
22 question on the census questionnaire. That move

1 BY MS. HULETT:

2 Q. Can you name any case in which a court
3 required for prong 1 purposes any level of
4 certainty about the margin of error in each and
5 every block of the district?

6 A. Again, I can't name such a case, as I sit
7 here today either way.

8 Q. So is the point that's being expressed in
9 this bullet is that citizenship data from the ACS
10 is not ideal for purposes of redistricting because
11 it's an estimate with a margin of error that
12 increases for smaller geographic areas?

13 A. I think the bullet speaks for itself. I
14 believe it does mention the margin of error and
15 the increase in that margin of error as the
16 geographic area decreases. It also mentions the
17 90 percent confidence interval associated with the
18 ACS.

19 Q. So when you're drawing a district and you
20 want to know what percent of adult citizens are of
21 a particular racial group, let's say, Latinos, and
22 when you look at the margin of error for the

1 increases; is that correct?

2 Q. Yes.

3 A. That's my understanding.

4 Q. So when you combine block groups into
5 census tracts and then combine the census tracts
6 into districts, the margin of error shrinks each
7 time as the level of geography grows?

8 A. I'm not sure what you mean by combining
9 all of that. I do believe the ACS estimates are
10 reported at certain levels and, at a larger
11 geographic area, there is a smaller margin of
12 error assigned to the ACS estimate than at a
13 smaller geographic area.

14 Q. All right. Say at the level of a typical
15 congressional district, you would expect the
16 margin of error on CVAP to be much smaller than
17 the margin of error in each block in that
18 district, correct?

19 A. I would -- with respect to ACS estimates?

20 Q. Yes.

21 A. Yes. And I would expect that with
22 respect to any statistical sampling or with

1 respect to hard count data.

2 Q. And by the time you get to the size of a
3 congressional district, the margin of error is
4 likely to be quite small; isn't that correct?

5 A. I don't know what you mean by quite
6 small. I mean, you could certainly conceive of
7 districts or hypothetical districts where the
8 margin of error would still matter at the size of
9 a congressional district or a state house or state
10 senate district. You might have a hypothetical
11 district that is close to the line of 50 percent,
12 but because of the margin of error associated with
13 the ACS data, you wouldn't know one way or the
14 other whether it's over 50 percent or slightly
15 under 50 percent.

16 And that's what we are trying to avoid.
17 We are trying to get the best possible, most
18 accurate, more reliable, most comprehensive and
19 complete data that we possibly can because --
20 there's been a lot of talk today about file cases.
21 We're trying to identify good cases for
22 investigation and filing.

1 prosecutions on that basis, at least at all
2 recently. And I think I might have read something
3 once that suggested there might have been one
4 decades ago, but I don't know that for sure.

5 Q. And just a few final questions. Have you
6 ever communicated in any way -- by phone, in
7 person, by e-mail, text -- have you ever
8 communicated about the citizenship question with
9 Kris Kobach?

10 A. No.

11 Q. Have you ever communicated in any of
12 those ways about the citizenship question with
13 Steve Bannon?

14 A. No.

15 Q. Have you ever communicated in any of
16 those ways about the citizenship question with
17 Stephen Miller?

18 A. No.

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

21 A. Yes.

22 Q. Who?

1 A. I communicated with John Zadrozny.

2 Q. And who is he?

3 A. Z-a-d-r-o-z-n-y, I believe, is how he
4 spells his last name. And at the time, he was
5 working, I believe, for the Domestic Policy
6 Council.

7 Q. And when did you communicate with him?

8 A. I believe it was sometime in October of
9 2017.

10 Q. Who initiated the contact?

11 A. I don't recall. What I recall about it
12 is that I participated in a conference call on the
13 issue on which Mr. Zadrozny -- in which
14 Mr. Zadrozny also participated.

15 Q. Conference call on the issue of adding
16 the citizenship question?

17 A. That's correct.

18 Q. In October of 2017?

19 A. I believe it was October of 2017.

20 Q. Who else was on that conference call?

21 A. I can recall that other people from the
22 Department of Justice were on the call. Rachael

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

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

8 A. Yes.

9 Q. -- discussed in the call?

10 A. Yes, it was.

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

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

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

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

20 Q. And who set up this conference call?

21 A. I don't recall who set it up. I know it
22 wasn't me.

1 Q. Do you know at whose request the
2 conference call happened?

3 A. I do not recall that.

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

6 A. Yes.

7 Q. And why were you invited?

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

10 Q. And did the -- John -- I'm sorry, how do
11 you say his name again?

12 A. I think it's Zadrozny, but I don't know
13 for sure.

14 Q. Zadrozny. Do you remember what he
15 contributed to that conference call?

16 MR. GARDNER: Objection. That question
17 calls for the disclosure of information subject to
18 executive privilege.

19 To the extent you can answer that
20 question without divulging such information, you
21 may. Otherwise, I instruct you not to answer.

22 THE WITNESS: Consistent with that

1 Gary letter, because that's not what it says.

2 Q. Does the Gary letter say that citizenship
3 data provided from decennial census questionnaires
4 is critical to Section 2 enforcement?

5 A. I think the Gary letter speaks for
6 itself, and I think there's no dispute that
7 citizenship data is crucial -- accurate
8 citizenship data is crucial to carrying out the
9 Department of Justice's Section 2 enforcement
10 mission.

11 Q. Do you -- are you of the view that that
12 citizenship data needs to be taken from decennial
13 census questionnaires?

14 A. And by "you," are you referring to the
15 Department of Justice or me personally?

16 Q. I'm referring to you, personally.

17 A. No.

18 Q. Okay. All right. And then is there
19 anything else in the Karlan report that you would
20 characterize as inaccurate?

21 A. There are a couple of things that come to
22 mind. Again, if I had time to read it all, I

1 Q. Going back to Exhibit 17 --

2 A. Yes.

3 Q. -- the Gary letter. In the Gary letter,
4 when talking about how the citizenship data is
5 critical to the department's enforcement of
6 Section 2 of the Voting Rights Act, was that only
7 with reference to Gingles 1 or was it reference to
8 any other aspect of Section 2 enforcement?

9 A. Well, I believe the letter speaks for
10 itself. Is there a particular sentence you're
11 referring to?

12 Q. Sure. I'm just -- I'm referring to -- in
13 the first paragraph --

14 A. Okay.

15 Q. -- at the end, it says that, "As
16 demonstrated below, the decennial census
17 questionnaire is the most appropriate vehicle for
18 collecting that data and reinstating a question on
19 citizenship will best enable the department to
20 protect all American citizens' voting rights under
21 Section 2."

22 A. Well, as I've just laid out, we do use

1 citizenship data at all three steps of the Gingles
2 analysis. The letter speaks for itself in terms
3 of what it talks about. And --

4 Q. Does the letter in any place mention any
5 other aspect of Section 2 enforcement other than
6 Gingles 1?

7 A. I don't believe that it does, but I don't
8 know -- again, I haven't gone back and reviewed
9 all these cases recently, so I don't know what
10 they do or do not say or may or may not say with
11 respect to the use of citizenship data, Gingles
12 steps 2 and 3.

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

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

19 Q. And isn't it the case that the
20 department, in making a request to the Census
21 Bureau about the need for -- the need for having a
22 citizenship question on the census and why it's

1 the term "jurisdictions"?

2 A. I am not familiar with any redistricting
3 plan that's ever been drawn by someone who wasn't
4 a map drawer, so yes.

5 Q. All right. Have you -- strike that.

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

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

14 MR. GREENBAUM: Can you read it back?
15 (The reporter read the record as
16 requested.)

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

1 BY MR. GREENBAUM:

2 Q. I mean you, John Gore.

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

5 Q. At the time that the Gary letter was
6 issued on December 12th, did you know what the
7 position of the Census Bureau was that --
8 regarding whether citizenship data would be more
9 accurate if there was a citizenship question on
10 the census?

11 MR. GARDNER: Objection. Assumes facts
12 not in evidence.

13 THE WITNESS: I'm not sure I have a basis
14 to answer that question.

15 BY MR. GREENBAUM:

16 Q. I'm asking you whether you knew, yes or
17 no.

18 A. Whether I knew what?

19 Q. Okay. I'll --

20 A. Sorry, can you just rephrase the
21 question?

22 Q. -- go back -- I will state the question

1 not have authority or standing to assert such
2 constitutional claims. The Department of Justice
3 has, in the past, gotten involved in racial
4 gerrymandering claims, either as an intervener or
5 as an amicus because frequently those claims
6 implicate districts that were drawn or preserved
7 to comply with Section 2 or Section 5 of the
8 Voting Rights Act, which the Department of Justice
9 does enforce.

10 Q. So a citizenship question would not help
11 DOJ bring racial or partisan gerrymandering claims
12 because DOJ doesn't have jurisdiction to bring
13 them in the first place, correct?

14 A. That's correct, although it would
15 facilitate DOJ's participation in such cases if it
16 chose to participate for -- because, again,
17 particularly, racial gerrymandering cases can
18 implicate Section 2 and Section 5 districts where
19 CVAP data is not necessary.

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

1 citizenship question on the census?

2 A. Yes.

3 Q. Who?

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

7 Q. Who is Mark Neuman?

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

14 Q. And what was the substance of your
15 conversation with Mr. Neuman?

16 MR. GARDNER: Objection. Calls for
17 information subject to deliberative process
18 privilege. I instruct the witness not to answer.

19 THE WITNESS: Consistent with that
20 instruction, I can't answer.

21

22 BY MR. GREENBAUM:

1 MR. GARDNER: Objection. Calls for
2 information subject to deliberative process
3 privilege. I instruct the witness not to answer.

4 THE WITNESS: Consistent with that
5 instruction, I can't answer.

6 BY MR. GREENBAUM:

7 Q. Okay. Mr. Ho earlier showed you a map
8 that had the number of people in particular census
9 blocks in it. Do you recall that?

10 A. I do recall that.

11 Q. And some of those blocks had one person
12 in the census block, correct?

13 A. That is correct.

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

20 MR. GARDNER: Objection. Calls for a
21 hypothetical.

22 THE WITNESS: Again, I believe I had this

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

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

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

14 BY MR. GREENBAUM:

15 Q. But if it were the case that the Census
16 Bureau was providing the block-specific --
17 accurate block-specific data for blocks that have
18 one person in it, that it would reveal the
19 citizenship status as reported by that person?

20 A. Again, I've answered this question. I
21 don't think I can add anything to my answer. It's
22 a hypothetical. I don't know, again, how that

1 data is going to be reported and whether your
2 definition of accurate includes any data masking
3 techniques that Mr. Ho referred to earlier.

4 To the extent it would reveal that
5 information, it would also reveal information
6 responsive to the other questions on the census,
7 which include questions about sex, race, Hispanic
8 origin, and sexual orientation. And if those
9 questions were all -- the results of those
10 questions were also divulged, that information, I
11 guess, would be available on parity with the
12 response to the citizenship question.

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

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

20 Q. Okay. And do you recall the date in
21 which the attorney general made that decision?

22 A. I don't know exactly when he, in his own

1 A. It appears to. And Ben Aguinaga is also
2 copied on some of those e-mails.

3 Q. And do the e-mails reflect that you asked
4 Mr. Herren for comments and edits to the draft
5 letter that was a -- that was the first draft that
6 you discussed this morning of what became the
7 December 12th letter?

8 A. The e-mail on the bottom of page 1,
9 carrying over to the top of page 2, appears to be
10 an e-mail that I've already discussed today. And
11 yes, it does appear to be an e-mail conveying a
12 draft to Chris Herren and asking for his comments
13 and edits regarding that particular draft.

14 Q. And did Mr. Herren provide comments and
15 edits on or about November 3rd?

16 A. Yes, he did.

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

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

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

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

2 MR. GREENBAUM: All right. I want to
3 mark as Exhibit 46 a series of e-mails. At the
4 top is an e-mail from John Gore to Chris Herren.
5 It's marked as DOJ 28354.

6 (Gore Deposition Exhibit 46 marked for
7 identification and attached to the
8 transcript.)

9 BY MR. GREENBAUM:

10 Q. Mr. Gore, do you recognize these e-mails?

11 A. I'm not sure whether I recognize these
12 e-mails, but I -- I believe I recall them.

13 Q. Okay. Do you recall responding to
14 questions from the civil division about the census
15 citizenship question litigation case?

16 A. Yes, I do.

17 Q. And do you recall seeking Mr. Herren's
18 comments?

19 A. Yes, I do.

20 MR. GREENBAUM: All right. I'm going to
21 mark as Exhibit 47 a document that you probably
22 recognize, but I want to make sure we've got it in

1 NEW YORK IMMIGRATION COALITION, et al., vs.

2 UNITED STATES DEPARTMENT OF COMMERCE, et al.

3 JOHN GORE

4
5 ACKNOWLEDGMENT OF DEPONENT

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

12
13
14 _____
15 DATE

14 _____
15 SIGNATURE

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22 PA 3072371