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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 STATES OF NEW YORK, COLORADO,
5 CONNECTICUT, DELAWARE, ILLINOIS,
6 IOWA, MARYLAND, MINNESOTA,
7 NEW JERSEY, NEW MEXICO,
8 NORTH CAROLINA, OREGON,
9 RHODE ISLAND, VERMONT,
10 and WASHINGTON, *et al.*,

11 Plaintiffs,

12 v.

18 Civ. 2921 (JMF)

13 UNITED STATES DEPARTMENT OF
14 COMMERCE, *et al.*,

Trial

15 Defendants.

16 -----x
17 NEW YORK IMMIGRATION
18 COALITION, *et al.*,

19 Consolidated Plaintiffs,

20 v.

18 Civ. 5025 (JMF)

21 UNITED STATES DEPARTMENT OF
22 COMMERCE, *et al.*,

23 Defendants.

24 New York, N.Y.
25 November 13, 2018
9:00 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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APPEARANCES

BARBARA D. UNDERWOOD

Acting Attorney General of the State of New York
Attorney for Plaintiff State of New York

BY: MATTHEW COLANGELO

ELENA S. GOLDSTEIN

DANIELLE FIDLER

SANIA W. KAHN

ELIZABETH MORGAN

AJAY P. SAINI

LAURA J. WOOD

DAVID E. NACHMAN

Assistants Attorney General

ARNOLD & PORTER KAYE SCHOLER LLP

Attorneys for Consolidated Plaintiffs NYIC

BY: DAVID P. GERSCH

JOHN A. FREEDMAN

ADA AÑON

- and -

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

BY: DALE E. HO

DAVIN ROSBOROUGH

SARAH E. BRANNON

GURBIR S. GREWAL

Attorney General of the State of New Jersey

Attorney for Plaintiff State of New Jersey

BY: MELISSA MEDOWAY

Assistant Attorney General

THOMAS J. DONOVAN, JR.

Attorney General of the State of Vermont

Attorney for Plaintiff State of Vermont

BY: JULIO A. THOMPSON

Assistant Attorney General

ROBERT W. FERGUSON

Attorney General of the State of Washington

Attorney for Plaintiff State of Washington

BY: LAURA K. CLINTON

Assistant Attorney General

IbdWnys3

Abowd - Direct

1 (In open court)

2 JOHN MARON ABOWD,

3 called as a witness by the plaintiffs,

4 having been duly sworn, testified as follows:

5 THE COURT: You may proceed, Mr. Ho.

6 DIRECT EXAMINATION

7 BY MR. HO:

8 Q. Dr. Abowd, you're the chief scientist at the United States
9 Census Bureau, correct?

10 A. Yes, sir.

11 Q. You're also associate director for research and methodology
12 at the United States Census Bureau, correct?

13 A. That's correct.

14 Q. And in that role, you lead a directorate of research
15 centers across all statistical programs of the Census Bureau,
16 correct?

17 A. That's correct.

18 Q. You're one of the senior executives at the Census Bureau,
19 correct?

20 A. That's correct.

21 Q. And you testified on behalf of the Census Bureau at a
22 30(b)(6) deposition, correct?

23 A. Yes, sir.

24 Q. You assumed your current role at the Census Bureau on June
25 1, 2016, correct?

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Abowd - Direct

1 A. Yes.

2 Q. You had previously been a part-time employee at the Census
3 Bureau dating back to 1998, correct?

4 A. Yes.

5 MR. HO: I'd like to bring up Plaintiffs' Exhibit 26.

6 For the record, your Honor, this has been admitted in
7 evidence, and it is part of the administrative record.

8 Q. Dr. Abowd you recognize this as Secretary Ross's decision
9 memo, dated March 26, 2018, directing the inclusion of a
10 citizenship question on the 2020 census questionnaire, correct?

11 A. Yes.

12 MR. HO: I'd like to highlight on the first page the
13 second paragraph.

14 Q. Dr. Abowd, when this memo was issued, it was your
15 understanding that Secretary Ross set out to take a hard look
16 following receipt of a December 2017 request from the
17 Department of Justice for census block-level citizen voting-age
18 population data for purposes of enforcing the Voting Rights
19 Act, correct?

20 A. Yes.

21 MR. HO: Let's turn to page 8 of this letter, please,
22 and let's look at the first paragraph.

23 Q. Dr. Abowd, you understand that Secretary Ross wrote that a
24 citizenship question on the decennial census is necessary to
25 provide complete and accurate data in response to the DOJ

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Abowd - Direct

1 request, correct?

2 A. Correct.

3 Q. And with that conclusion, Secretary Ross ordered the
4 inclusion of a citizenship question on the 2020 census,
5 correct?

6 A. That's correct.

7 Q. And Secretary Ross ordered the bureau to combine data
8 collected through a citizenship question on the 2020 census
9 with the use of administrative records for developing
10 block-level CVAP, or citizenship voting-age population, for the
11 Department of Justice, correct?

12 A. He instructed us to use both the citizenship responses on
13 the 2020 census and administrative data and to produce a
14 citizen voting-age population by race and ethnicity table as we
15 deemed best.

16 Q. And Secretary Ross refers to that as option D in his memo,
17 is that correct?

18 A. That's correct.

19 Q. Dr. Abowd, as the chief scientist at the Census Bureau, you
20 do not think that adding a citizenship question to the 2020
21 census is a good idea, correct?

22 A. Correct.

23 Q. And Dr. Abowd, the leadership of the Census Bureau does not
24 think that adding a citizenship question to the 2020 census is
25 a good idea, correct?

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Abowd - Direct

1 A. Correct.

2 Q. And Dr. Abowd, your consistent recommendation has been not
3 to include a citizenship question on the 2020 census, correct?

4 A. Correct.

5 Q. And Dr. Abowd, the consistent recommendation from the
6 leadership of the Census Bureau has been not to include a
7 citizenship question on the 2020 census, correct?

8 A. Correct.

9 Q. Let's back up for a moment, Dr. Abowd. I want to talk
10 about how you arrived at those recommendations. Now, you first
11 learned about the Department of Justice's December 12, 2017,
12 request to add a citizenship question to the 2020 decennial
13 census from Acting Census Bureau Director Ron Jarmin, correct?

14 A. That's correct.

15 Q. And you learned about that via email on December 15, 2017,
16 correct?

17 A. That's correct.

18 Q. And your understanding is that the reason for the request
19 was that the Department of Justice wants block-level citizen
20 voting-age population data, which I'll sometimes call CVAP, for
21 purposes of enforcing the Voting Rights Act of 1965, correct?

22 A. That's correct.

23 Q. Now, Acting Director Jarmin asked you to assemble a team of
24 experts to begin discussing how the Census Bureau might respond
25 to the DOJ request, correct?

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Abowd - Direct

1 A. He asked me to assemble a team of technical experts, that's
2 correct.

3 Q. And you refer to that team of technical experts as your
4 SWAT team, right?

5 A. That's correct.

6 Q. And over the course of discussions with Dr. Jarmin, it
7 became clear to you that he wanted a technical report as to how
8 the Census Bureau could respond to the DOJ request, correct?

9 A. That's correct.

10 Q. And so you asked the SWAT team to write a white paper to
11 summarize what they could learn about citizenship data that
12 might be used to satisfy the DOJ request, correct?

13 A. That's correct.

14 Q. And you eventually wrote a memo addressed to Secretary Ross
15 summarizing the work of the SWAT team, correct?

16 A. Summarizing the opinions of the senior executive staff that
17 were based on that work and other research done by other
18 persons in the Census Bureau.

19 MR. HO: Let's look at Plaintiffs' Exhibit 26, the
20 Ross decision memo again. Let's look at page 4, the first
21 paragraph on the page, the last sentence.

22 Q. Secretary Ross writes: "So while there is widespread
23 belief among many parties that adding a citizenship question
24 could reduce response rates, the Census Bureau's analysis did
25 not provide definitive, empirical support for that belief." Do

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Abowd - Direct

1 you see that, Dr. Abowd?

2 A. Yes, I do.

3 MR. HO: We can take that down.

4 Q. Dr. Abowd, the memo that you wrote to Secretary Ross, in
5 your opinion, that memo memorialized the Census Bureau's
6 credible, quantitative evidence that the addition of a
7 citizenship question to the 2020 census could be expected to
8 lower the self-response rate in households that may contain
9 noncitizens, correct?

10 A. Yes, that's correct.

11 Q. And you would describe noncitizens as an identifiable and
12 large subpopulation, correct?

13 A. We identified households that either contained a noncitizen
14 or might contain a noncitizen or a person of unknown
15 citizenship status as a large subpopulation, yes.

16 Q. And that opinion is based upon the work of the SWAT team
17 that was conducted under your direction, correct?

18 A. That's correct.

19 Q. And Dr. Abowd, you agree that the balance of evidence
20 available suggests that adding a citizenship question to the
21 2020 census would lead to a lower self-response rate in
22 households that potentially contain a noncitizen, correct?

23 A. Yes, I agree with that conclusion.

24 Q. And the Census Bureau agrees with that conclusion, right,
25 Dr. Abowd?

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Abowd - Direct

1 A. Yes, they do.

2 Q. And reducing the self-response rate in that way, that's a
3 bad thing, right, Dr. Abowd?

4 A. I have consistently characterized data produced by lower
5 self-response rates as being less accurate.

6 Q. OK. I want to talk about your memo, Plaintiffs' Exhibit
7 22.

8 MR. HO: For the record, this has been admitted into
9 evidence and is in the administrative record.

10 Q. Dr. Abowd, this is a memo that was prepared under your
11 supervision, correct?

12 A. I'd like to clarify that the memo that I'm familiar with
13 contains a watermark with a version number on it, and this
14 doesn't.

15 Q. I think it may just be a function of it being on the
16 screen. Do you see at the bottom of the page, Dr. Abowd, on
17 the right-hand side, it has a Bates number, 1277?

18 A. Yes, I see that.

19 Q. Is your understanding that that number reflects the fact
20 that this memo was part of the administrative record in this
21 case?

22 A. Yes, Bates 1277 is definitely my memo.

23 Q. OK. Great.

24 So this is a memo that was prepared under your supervision,
25 correct?

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Abowd - Direct

1 A. Yes.

2 Q. And the views are expressed in this memo are the views of
3 the technical team, the SWAT team that assisted you, correct?

4 A. The views in this memo are a summary of the technical work
5 that that SWAT team did and the contributions made by other
6 senior executives at the Census Bureau.

7 Q. You agree with the conclusions in this memo, right,
8 Dr. Abowd?

9 A. Yes, I do.

10 Q. And Acting Census Bureau Director Ron Jarmin reviewed and
11 approved this memo, correct?

12 A. Yes, he did.

13 Q. And this is the last version of this memo, correct?

14 A. Yes, it is.

15 Q. This memo was routed to the secretary of commerce, correct?

16 A. Yes, that's correct.

17 Q. And you eventually had a meeting to discuss this memo with
18 Secretary Ross on February 12, 2018, correct?

19 A. Yes, that's correct.

20 Q. Now, before your meeting with Secretary Ross that day, you
21 had a premeeting on the same day with Undersecretary Karen Dunn
22 Kelley in the Department of Commerce, correct?

23 A. Yes, that's correct.

24 Q. And during that premeeting with the undersecretary, you
25 discussed this memo, correct?

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Abowd - Direct

1 A. We all discussed it, yes.

2 Q. And when you met with Undersecretary Kelley, she did not
3 express any disagreements with the analysis in this memo,
4 correct?

5 A. That's my recollection from the meeting, yes.

6 Q. And during the meeting that you had with Secretary Ross
7 later that day, he asked you questions that indicated to you
8 that he had a thorough understanding of the issues in this
9 memo, correct?

10 A. Yes, that's correct.

11 Q. And that was the only meeting that you had with Secretary
12 Ross to discuss the citizenship question before Secretary Ross
13 issued his March 26 decision memo, correct?

14 A. Yes, that's correct.

15 Q. So let's be clear. Secretary Ross had only one meeting
16 with the chief scientist at the Census Bureau about the
17 citizenship question before he issued his decision memo,
18 correct?

19 A. Yes, that's correct.

20 Q. Now, your memo here, it addresses -- I'm sorry.

21 MR. HO: Let's bring up your memo, Plaintiffs' Exhibit
22 22.

23 Q. It addresses three alternatives in response to the
24 Department of Justice request, correct?

25 A. Yes, that's correct.

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Abowd - Direct

1 Q. And those alternatives are, A, make no change in data
2 collection; B, add a citizenship question to the 2020 census;
3 and, C, obtain citizenship status from administrative records,
4 correct?

5 A. You didn't finish the sentence, but yes, that's correct.

6 Q. You don't disagree with how I characterized it, do you,
7 Dr. Abowd?

8 A. I do not.

9 MR. HO: Let's look at the last paragraph on the page
10 and highlight it.

11 Q. Dr. Abowd, you did not recommend alternative B, which was
12 adding a citizenship question, correct?

13 A. The memo does not recommend it, and I supervised the
14 preparation of the memo, that's correct.

15 Q. So you did not recommend alternative B, correct?

16 A. That's correct.

17 Q. In fact, you described alternative B in the memo as "very
18 costly, harms the quality of the census count and would use
19 substantially less accurate citizenship status data that are
20 available from administrative sources," correct?

21 A. Yes, that's correct.

22 Q. That's adding a citizenship question, correct?

23 A. Alternate B is the addition of the citizenship question to
24 the 2020 census, yes.

25 Q. OK. So instead of alternative B, you recommended either

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Abowd - Direct

1 alternative A, no change, or alternative C, using
2 administrative records, correct?

3 A. Yes, that's correct.

4 Q. And your memo's conclusion was that using administrative
5 records instead of asking the citizenship question -- that is,
6 alternative C -- would best meet DOJ's stated uses, correct?

7 A. Yes, that's correct.

8 Q. And your memo concluded that that using administrative
9 records instead of asking a citizenship question "is
10 comparatively far less costly than alternative B, does not
11 increase response burden and does not harm the quality of the
12 census count," correct?

13 A. That's correct.

14 MR. HO: Let's talk about the analysis of alternative
15 B in your memo, and I want to look at page 4 of PX-22. I'm
16 looking at the header under -- I'm looking at the header in
17 Section B2, self-response rate analysis, and I want to ask you
18 about the first paragraph here.

19 Q. This paragraph is describing an analysis of unit
20 nonresponse rates to the 2000 census questionnaire as compared
21 to the 2000 long form, right, Dr. Abowd?

22 A. Yes, that's correct.

23 Q. And by unit nonresponse, we mean the rate at which people
24 fail to respond to a survey, correct?

25 A. Fail to self-respond, correct.

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Abowd - Direct

1 Q. The 2000 short-form census questionnaire did not have a
2 citizenship question on it, correct?

3 A. Yes, that's correct.

4 Q. But the 2000 census long form did have a citizenship
5 question on it, correct?

6 A. Yes, that's correct.

7 Q. And so what you did here is you compared unit self-response
8 rates on these two questionnaires between noncitizens, on the
9 one hand, and citizen households, on the other, correct?

10 A. That's not all we did, but you got the first step right,
11 yes. Correct.

12 Q. OK. Let's just talk about the long-form analysis. We'll
13 talk about the ACS analysis in a second.

14 A. Well, I meant that you hadn't completely characterized how
15 we did the short and long-form analysis in 2000.

16 Q. You compared the decline in self-response on the census
17 long form as compared to the census short form for households
18 that contain a noncitizen to that same decline for households
19 that were all citizens, correct?

20 A. Yes, that's correct.

21 Q. OK. And when you conducted this analysis, you found that
22 for both citizen households and households that had one
23 noncitizen, the response rate on the long form was lower than
24 on the short form?

25 A. The self-response rates on the long form were lower than

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Abowd - Direct

1 those on the short form, that's correct.

2 Q. But for households that had one or more noncitizen in them,
3 the decline in the self-response rate between the long form and
4 the short form was 3.3 percentage points more than it was for
5 all citizen households, correct?

6 A. Yes, that's correct.

7 Q. And you considered that decline to be evidence that a
8 citizenship question causes households containing a noncitizen
9 to self-respond to a survey at lower rates, correct?

10 A. We considered that credible, quantitative evidence that
11 such a question might cause a decline on the magnitude of 3.3
12 percent in 2000.

13 Q. OK. Now, you also conducted similar analyses for the
14 American Community Survey, correct?

15 A. That's correct.

16 Q. And that analysis in your memo -- and that analysis is
17 reflected in your memo here, correct?

18 A. As it existed as of January 19, that's correct.

19 Q. OK. We'll get to the later analysis. Let's just stick to
20 the January 19 for now. Is that all right?

21 A. Yes, sir.

22 Q. OK. Now, just to pause for a moment here, Dr. Abowd, I
23 want to just make sure the record's clear here. Your analysis
24 of unit nonresponse rates here applies not just to alternative
25 B but also to option D, the choice that the secretary of

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Abowd - Direct

1 commerce ultimately made, correct?

2 A. It would apply to any alternative in which the citizenship
3 question was asked on the short form.

4 Q. And that includes option D, what Secretary Ross ultimately
5 ordered, correct?

6 A. Yes, that's correct.

7 Q. Now, before we talk about your analysis of ACS data, I just
8 want to back up and ask a few questions about the ACS.

9 The ACS is an ongoing sample survey, correct?

10 A. Yes, that's correct.

11 Q. Sent to a little more than 2 percent of the population
12 annually, correct?

13 A. It's sent to a larger percentage than that, but the
14 responses come from between two and two and a half percent of
15 the population annually.

16 Q. Responses to the ACS are required by law, correct?

17 A. That's correct, but the nonresponse follow-up is a sample,
18 not universally selected households.

19 Q. We'll talk about the nonresponse follow-up to the ACS in a
20 second. I just want to make clear that just like responses to
21 the decennial enumeration questionnaire are required by law,
22 responses to the ACS are also required by law, correct?

23 A. Yes, that's correct.

24 Q. Now, the ACS contains dozens of questions, correct?

25 A. Yes, at least dozens.

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Abowd - Direct

1 Q. And one of the questions on the ACS is a question about
2 citizenship status?

3 A. Yes, that's correct.

4 Q. Now, your memo here has three different kinds of analyses
5 of American Community Survey, or ACS, data that bear upon the
6 potential adverse impact of a citizenship question on the 2020
7 census, correct?

8 A. I think you're referring to the Section B1, 2 and 3 in the
9 memo?

10 Q. I'm referring to your analysis of unit nonresponse rates,
11 item nonresponse rates and breakoff rates.

12 A. Yes, that's correct.

13 Q. OK. All three of those analyses bear upon the potential
14 effect of a citizenship question on the 2020 census, correct?

15 A. Yes, that's correct.

16 Q. And it's the opinion of the executive staff of the Census
17 Bureau that all three analyses were appropriate in support of
18 your conclusion that using administrative records would be a
19 better option for producing block-level CVAP data for VRA
20 enforcement purposes than adding a citizenship question to the
21 census, correct?

22 A. Yes, that's correct.

23 Q. And this memo included that all three analyses support the
24 conclusion of an adverse impact on self-response and as a
25 result on the accuracy and quality of the 2020 census, correct?

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Abowd - Direct

1 A. I don't remember it using adverse impact, but they support
2 the conclusion that there would be a lower self-response rate
3 and the consequences of that lower self-response rate, yes.

4 MR. HO: OK. Let's just look at the bottom of -- I'm
5 sorry. At page 4 in your memo, the first two sentences there
6 at the top. I'm sorry. Not the bottom but just the top,
7 "before these reasons" sentence, the top paragraph on the page.

8 Q. You used the term "adverse impact" to describe the effect
9 of the citizenship question on self-response rates, right,
10 Dr. Abowd?

11 A. Thank you for refreshing my memory. Yes, I did.

12 MR. HO: OK. Let's talk about your analysis of unit
13 self-response rates, and let's stay on page 4 and let's look at
14 the bottom paragraph, starting with "we compared."

15 Q. Now, Dr. Abowd, in this paragraph, you're describing an
16 analysis comparing response rates on the 2010 census to the
17 2010 American Community Survey, correct?

18 A. That's correct.

19 Q. And the 2010 census, let's just be clear, that
20 questionnaire did not have a citizenship question on it, right?

21 A. That's correct.

22 Q. But the 2010 ACS did have a citizenship question, right?

23 A. Yes, that's correct.

24 Q. And when you conducted this analysis, you found that
25 self-response rates to the 2010 ACS declined more for

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Abowd - Direct

1 households that had one or more noncitizens in comparison to
2 the 2010 census, on the one hand, as in comparison to
3 households that consisted solely of citizens, correct?

4 A. Yes, you've got the contrast correct.

5 Q. OK. And the magnitude of that difference was 5.1
6 percentage points, correct?

7 A. Yes, that's correct.

8 MR. HO: Let's bring up page 5 of your memo, and I
9 want to ask about the first paragraph, last sentence.

10 Q. You wrote that, "It is therefore a reasonable inference
11 that a question on citizenship would lead to some decline in
12 overall self-response because it would make the 2020 census
13 modestly more burdensome in the direct sense and potentially
14 much more burdensome in the indirect sense that it would lead
15 to a larger decline in self-response for noncitizen
16 households." Did I read that right?

17 A. Yes, you did.

18 Q. And when you say noncitizen households, you mean a
19 household, for purposes of this analysis, that has one or more
20 noncitizens in it, correct?

21 A. Yes, that's correct.

22 Q. Now, it's fair to say that this 5.1 percentage point
23 estimate at the time, that you considered that a conservative
24 estimate of the differential impact of a citizenship question
25 on the self-response rates of noncitizens as compared to

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Abowd - Direct

1 citizens if you were to place such a question on the 2020
2 census, correct?

3 A. Yes, I believe I have characterized that estimate as
4 conservative, but we haven't discussed exactly what a
5 statistician might mean by conservative. What I mean in this
6 context is that it is performed in the context of a natural
7 experiment, although you haven't used those words yet.

8 THE WITNESS: Your Honor, "natural experiment" is the
9 technical name for the way this analysis was conducted. Happy
10 to elaborate if you have questions.

11 BY MR. HO:

12 Q. I'll have plenty of questions unpacking what you mean by
13 conservative, and we're going to spend some talking about what
14 a natural experiment means too, Dr. Abowd. Don't worry. But
15 let's just stick with my questions for now, and my question is
16 at the time that you wrote this memo, 5.1 percentage points was
17 your best conservative estimate of the effect of adding a
18 citizenship question in terms of the differential impact of
19 self-responses of noncitizen households as compared to citizen
20 households if you were to put that question on the 2020 census.
21 Correct?

22 A. Yes, that's correct.

23 MR. HO: Let's turn to page 6 of your memo. I want to
24 ask you about the middle paragraph, the last sentence. I'm
25 sorry. Not the last sentence, just the middle paragraph here.

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Abowd - Direct

1 Q. Now, in this memo, for purposes of calculating some of your
2 estimates, you expect there are about 126 million occupied
3 households to be enumerated in the 2020 census, is that right?

4 A. Yes, that's correct.

5 Q. And you estimate that 9.8 percent of households contained
6 at least one noncitizen, correct?

7 A. Yes, that's correct.

8 Q. And so a reduction of 5.1 percentage points in the
9 self-response of those households would translate to about
10 630,000 households, correct?

11 A. 630,000 households in NRFU that would not otherwise have
12 been there, yes.

13 Q. OK. And that likely translates into millions of people,
14 right, Dr. Abowd?

15 A. At average household sizes, it's more than a million
16 people, yes.

17 Q. Now, today, the Census Bureau's best conservative estimate
18 of the differential effect of adding a citizenship question to
19 the census in terms of self-responses of all citizen households
20 to other households is not 5.1 percentage points, right,
21 Dr. Abowd?

22 A. Yes, that's correct.

23 Q. Today, the best conservative estimate of the Census Bureau
24 for that differential effect in self-response is 5.8 percentage
25 points, correct?

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Abowd - Direct

1 A. Best estimate we have at the moment is 5.8 percentage
2 points.

3 MR. HO: OK. Let's bring up Plaintiffs' Exhibit 162,
4 which is also Defendants' Exhibit 2. For the record, it's been
5 admitted.

6 Q. Dr. Abowd, we talked about a white paper earlier and how
7 you were charged with putting a white paper together. Do you
8 remember that?

9 A. Yes, I do.

10 Q. Is this the white paper?

11 A. This is the most recent version of the technical report
12 performed under my supervision, yes.

13 Q. And you've been sitting through trial for the last week or
14 so; sometimes people have referred to this as the Brown memo
15 during their testimony, right?

16 A. Yes, I believe that's right.

17 Q. OK, so white paper, Brown memo, different colors, different
18 names, but the same document, right?

19 A. Yes, in deference to the authors, I usually call it Brown
20 *et al.*

21 Q. OK. The analysis in Brown *et al.*, or the white paper, that
22 was begun in response to the Department of Justice's request
23 for block-level CVAP data, correct?

24 A. Yes, that's correct.

25 Q. And the authors of this paper, they're a subset of the SWAT

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Abowd - Direct

1 team that you assembled, right?

2 A. Yes, that's correct.

3 Q. And you chose the best people at the Census Bureau for
4 conducting the analysis that's reflected in the Brown memo,
5 correct?

6 A. Yes, I did.

7 Q. And this white paper, this version here, dated August 6,
8 2016, you've described this as an extended and more up-to-date
9 version of the analysis that you relied on when you prepared
10 your January memo to Secretary Ross, Plaintiffs' Exhibit 22,
11 right?

12 A. Yes, I did.

13 Q. Now, this is the most recent version of the white paper
14 available, correct?

15 A. Yes, it is.

16 MR. HO: Just as a brief aside, I want to bring up
17 Plaintiffs' Exhibit 4, and I want to look at page AR-11634,
18 which should be about page 8,000-something in here. Sorry.

19 Q. While he's bringing this on the screen, I just want to ask
20 you, Dr. Abowd, your understanding is that there's an earlier
21 draft of the Brown *et al.* paper, the white memo that is
22 contained in the administrative record in this case, right?

23 A. It's my understanding that an earlier draft was produced in
24 discovery, yes.

25 Q. And is part of the administrative record in this case,

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Abowd - Direct

1 correct?

2 A. I believe there's some discussion on the record of finding
3 the Bates number for it, but that is my understanding, yes.

4 Q. OK. We'll come back to this and identify it at a later
5 time, but I just want to ask you, Dr. Abowd, you believe that
6 the analysis reflected in the Brown *et al.* memo was
7 methodologically appropriate, right?

8 A. Yes, I do.

9 Q. And you believe that the Brown memo constitutes the best
10 analysis that the Census Bureau can do of the consequences of
11 adding the citizenship question to the 2020 census, right?

12 A. With the available data, correct.

13 Q. And there are no conclusions in the Brown memo that the
14 Census Bureau disagrees with, correct?

15 A. That's correct.

16 Q. OK. The analysis that produced the 5.8 percentage point
17 estimate, the best conservative estimate of the differential
18 effect of the citizenship question on self-responses, that's
19 contained in the Brown memo, right?

20 A. Yes, it is.

21 MR. HO: Let's turn to page 39 of the Brown memo.

22 Q. And looking at table 9, the second panel here on table 9,
23 on the bottom half of the table, with the minus 5.8 percentage
24 point figure there, that's the, where the .58 percentage point
25 estimate is found in this paper, correct?

IbdWnys3

Abowd - Direct

1 A. Yes, that's correct.

2 Q. Now, several factors account for the difference between
3 your current best estimate of 5.8 percentage points and your
4 older estimate of 5.1 percentage points, correct?

5 A. Yes, that's correct.

6 Q. OK. I want to talk through some of these. One difference,
7 one factor that accounts for the difference is you compared
8 different households at this time, right?

9 A. The comparison households are constructed differently,
10 that's correct.

11 Q. Right, so for the 5.1 percentage point estimate, you
12 compared households that were all citizen, as identified in the
13 administrative records, to households that had one or more
14 noncitizens, as identified in the administrative records,
15 right?

16 A. That's correct.

17 Q. And for the 5.8 percent comparison, you compared households
18 for which their ACS response was "all members of the household
19 are citizens" and the administrative records indicate that
20 they're all citizens, on the one hand, and all the other
21 households, on the other hand, correct?

22 A. Yes, that's correct.

23 Q. Another difference is that the 5.8 percentage point
24 estimate is based on more recent ACS data, correct?

25 A. It's based on the 2016 ACS data, that's correct.

IbdWnys3

Abowd - Direct

1 Q. Right, so the 5.1 percentage point estimate, that's based
2 on a comparison of 2010 decennial census response rates and
3 2010 ACS response rates whereas the 5.8 percentage point
4 estimate, that's based on a comparison of 2010 decennial
5 response rates to 2016 ACS response rates, correct?

6 A. Yes, that's correct.

7 (Continued on next page)

IBDsNYS4

Abowd - Direct

1 BY MR. HO:

2 Q. And the reason you like the 5.8 percentage point estimate
3 better is because you think that when you're trying to assess
4 the impact of a citizenship question today, it is more reliable
5 to use more recent ACS data, correct?

6 A. You wanted more currency, that's correct.

7 Q. And you view this five point -- I'm sorry. Let me start
8 that question again.

9 When you look at that 5.8 percentage point estimate and you
10 view it in light of the 3.3 percentage point estimate from the
11 2000 short form and long form comparison and the 5.1 percentage
12 point estimate from the 2010 census and ACS 2010 ACS
13 comparison, you agree that this 5.8 percentage point figure is
14 an indicator that nonresponse rates to surveys with a
15 citizenship question are increasing for households that might
16 have a noncitizen, right?

17 A. I think we discussed this before. I've said that I am
18 reluctant as a statistician to fit a trim line to those three
19 numbers, but I did say that 5.8 is bigger than 5.1 and 5.1 is
20 bigger than 3.3.

21 Q. Dr. Abowd, the 5.8 percentage point estimate, that is a
22 conservative estimate, right?

23 A. We still haven't discussed what a statistician would mean
24 by conservative, but assuming we are using that as an undefined
25 term for the moment, yes.

IBDsNYS4

Abowd - Direct

1 Q. Lets define it.

2 One of the reasons why you consider the 5.8 percentage
3 point estimate conservative is that it is based on ACS data,
4 right, but the citizenship question could have more prominence
5 on the decennial census questionnaire, correct?

6 A. The reason that I have characterized the 5.8 percentage
7 point estimate as conservative is because it was translated
8 into what I believe, and others at the Census Bureau believe,
9 is a conservative estimate of the cost implications of that
10 self-response.

11 As a point estimate itself, it is what it is. It
12 is the best available point estimate of the decline in
13 self-response that the data could produce. So it was used in a
14 conservative way in the sense that it produced a conservative
15 cost estimate. A point estimate has a standard error band
16 around it, and in that sense, it is as good as the analysis
17 that led up to it can be for the purposes of estimating the
18 decline in self-response rates.

19 Q. Dr. Abowd, I didn't ask you about all the different reasons
20 why you would describe it as a conservative estimate. My
21 question was much simpler than that. It was simply this.

22 One reason why the 5.8 percentage point estimate is
23 conservative is because it is based on a comparison of
24 self-response rates on the ACS, but a citizenship question on
25 the decennial census questionnaire, which is much shorter,

IBDsNYS4

Abowd - Direct

1 could have much more prominence.

2 You agree with that, right, Dr. Abowd?

3 A. I didn't think I heard the "could" the first time, but yes,
4 I do agree with that statement.

5 Q. Now, the greater prominence of a citizenship question on
6 the decennial census questionnaire means that it could have a
7 larger effect in terms of depressing self-response rates to the
8 questionnaire than a citizenship question would have when
9 placed among the dozens of questions on the ACS, correct?

10 A. That's what could have a greater impact means, yes.

11 Q. Now, another issue is that the 5.8 percentage point
12 estimate as we discussed earlier, that is based on 2016 data,
13 which is more recent than 2010 data, right?

14 A. Yes, that's correct.

15 Q. And, Dr. Abowd, you agree that a question that was already
16 sensitive at one point could become more sensitive at a later
17 time due to a change in the political environment, right?

18 A. Yes, it could.

19 Q. And it is safe to say that if something happened after 2016
20 that might have made citizenship a more salient issue, that
21 that would not be reflected in your 5.8 percentage point
22 estimate, correct?

23 A. Anything that happened after 2016 would not be reflected in
24 that estimate, correct.

25 Q. OK. We'll come back to that later.

IBDsNYS4

Abowd - Direct

1 But just to round out the issues, Dr. Abowd, one other
2 issue is that the 5.8 percentage point estimate, that's only an
3 estimate about the reduction in self-response for households
4 where everyone has not been confirmed to be a citizen, correct?

5 A. That's correct.

6 Q. So it doesn't take into account any reduction in
7 self-response rates from all citizen households, correct?

8 A. That's correct.

9 Q. You would agree that the assumption that a citizenship
10 question on the census in 2020 will have no effect on all
11 citizen households, that that assumption is probably wrong,
12 right, Dr. Abowd?

13 A. That is an assumption and there is no evidence in the data
14 to say whether it is right or wrong.

15 Q. But you think, Dr. Abowd, that to assume that a citizenship
16 question would have no effect on all citizen households, that
17 to make that assumption, that would probably be wrong, right
18 Dr. Abowd?

19 A. It would be better to have information about how all
20 citizen households actually responded to a citizenship question
21 on the census.

22 Q. Dr. Abowd, do you remember giving a deposition in this case
23 on October 12, 2018?

24 A. There were so many. Yes, I do.

25 Q. I believe it was your fourth deposition in the case.

IBDsNYS4

Abowd - Direct

1 A. Yes, it was.

2 Q. OK. Can we bring up that deposition transcript and page
3 198, starting at line 7, please.

4 Dr. Abowd, you were under oath that day, correct?

5 A. Yes, I was.

6 Q. And you told the truth that day, correct?

7 A. Yes, I did.

8 Q. All right.

9 "Q. And what's your basis for saying it would fall in that
10 part of the range?

11 "A. The -- the recent data that we analyzed underlies the 5.8
12 percent and 28.6 percent that's in column two, give you -- on
13 this estimate, 82.5 million and, in the working paper, 91.2
14 million. No significance should be attributed to that
15 difference in the estimate. It has to do with the base that
16 was used in calculating them.

17 We said in our advice to the secretary, and I continue to
18 believe in my expert opinion, that that's a lower bound, a
19 cautious estimate, and that the hypothesis underlying that
20 estimate that there won't be any effect in the households that
21 have citizens is probably wrong. It's only maintained in order
22 to be able to say something about the target population, which
23 is the ones that might have a noncitizen or that definitely
24 have a noncitizen.

25 Q. Was that the question that was posed to you that day and

IBDsNYS4

Abowd - Direct

1 your answer to it?

2 A. Yes, they were.

3 Q. Dr. Abowd, to the best of your knowledge, no one at the
4 Census Bureau has conducted any statistical analysis
5 specifically addressing the question of whether even among
6 households that are all citizens, the inclusion of a
7 citizenship question could have some effect on their response
8 rates, correct?

9 A. That's correct.

10 Q. I want to talk about a different analysis in your January
11 memo, Plaintiffs' Exhibit 22, about the effect of the
12 citizenship question that's not exclusively about noncitizen
13 households. And lets turn to page four in your memory and the
14 header B1, quality of citizenship responses.

15 Now, in this section of your memo, Dr. Abowd, you discuss
16 item nonresponse rates for the citizenship question on the
17 American Community Survey, correct?

18 A. Yes, that's correct.

19 Q. And item nonresponse is different from unit nonresponse,
20 right?

21 A. Yes, that's correct.

22 Q. Item nonresponse is when someone returns a survey, but they
23 don't answer a particular question on that survey, correct?

24 A. That's correct.

25 Q. OK. I want to focus on the second paragraph under this

IBDsNYS4

Abowd - Direct

1 header. Starting with in the period.

2 Now, in this paragraph, you're describing an analysis of
3 item nonresponse rates to the citizenship question on the
4 American Community Survey, right?

5 A. Yes, that's correct.

6 Q. And you're looking at item nonresponse rates on the
7 American Community Survey from 2013 to 2016, right?

8 A. Yes, that's correct.

9 Q. And in that analysis, you're comparing racial and ethnic
10 subgroups, correct?

11 A. Yes.

12 Q. And you found that the item nonresponse rate to the
13 citizenship question for the mail in ACS for non-Hispanic
14 whites during this period ranged from 6 to 6.3 percent, correct?

15 A. Yes.

16 Q. And you also found that during the same period, the item
17 nonresponse on the citizenship question for the mail in ACS for
18 non-Hispanic blacks ranged from 12 percent to 12.6 percent,
19 correct?

20 A. Correct.

21 Q. So that is twice as high as the item nonresponse rate
22 during this period on the ACS citizenship question for blacks
23 as compared to non-Hispanic whites, correct?

24 A. Correct.

25 Q. You also found during this period that the item nonresponse

IBDsNYS4

Abowd - Direct

1 rate on the citizenship question for the mail-in ACS for
2 Hispanics ranged from 11.6 percent to 12.3 percent, correct?

3 A. Correct.

4 Q. And you also looked at the ISR instrument.

5 That's the Internet version of the ACS, correct?

6 A. Yes, that's correct.

7 Q. So in 2016, the Internet ACS item nonresponse rates for the
8 citizenship question for non-Hispanic whites was 6.2 percent,
9 correct?

10 A. Yes.

11 Q. But for Hispanics, the item nonresponse rate to the
12 citizenship question on the Internet version of the ACS was
13 more than twice as high, it was 15.5 percent, correct?

14 A. I am pausing because you highlighted the 2013 answer first,
15 and then the 2016 answer, I think. Unless I'm just confused
16 reading the text.

17 Q. I think you're right. But the numbers for item nonresponse
18 on the 2013 and 2016 ISR for non-Hispanic whites were the same,
19 right, Dr. Abowd, 6.2 percent?

20 A. Yes. OK. All right.

21 Q. If we compare the 2016 ACS item nonresponse for
22 non-Hispanic whites to Hispanics, it is 6.2 percent for
23 non-Hispanic whites, 15.5 percent for Hispanic whites?

24 A. That's correct.

25 Q. More than twice as high for Hispanics, correct?

IBDsNYS4

Abowd - Direct

1 A. Correct.

2 Q. You would characterize the item nonresponse rate for
3 Hispanics on the 2016 ACS Internet version for the citizenship
4 question as much higher than they are for non-Hispanic whites,
5 right?

6 A. I believe that is what I said, yes.

7 THE COURT: Can I interrupt for one moment?

8 Can you tell me what the Internet version of the ACS
9 is, who does that, and how it differs?

10 THE WITNESS: Yes, your Honor.

11 American Community Survey has a fixed set of
12 questions, but they are delivered in two formats. One is a
13 paper questionnaire that you fill out with pencil and mail
14 back, but you can also elect to do it online. And you go to
15 our website and you bring up the questionnaire and put in your
16 invitation to respond, and then you're asked the questions in
17 an online instrument. You are still self-administering. You
18 take the ACS in an Internet instrument, which we call an
19 Internet self-response instrument.

20 THE COURT: All right. When you say invited to, is
21 that you received the form in the mail and it instructs you
22 that you can either fill it out and mail it back, or
23 alternatively, you can go online and do it online?

24 THE WITNESS: That's correct.

25 THE COURT: What proportion of the people who respond

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Abowd - Direct

1 use the Internet version versus the paper version?

2 THE WITNESS: Oh, I have memorized so many numbers
3 for this trial. I don't have that one memorized.

4 It is a substantially higher proportion use the
5 Internet self-response instrument than the mail-back
6 instrument, but I don't recall the exact proportions, your
7 Honor.

8 THE COURT: Do you know or do you have an opinion why
9 the rates would differ on the Internet version versus the paper
10 version?

11 Is there some difference that you know of or
12 understand with respect to the population that does it on the
13 internet versus mailing it in?

14 THE WITNESS: Generically, the reason why the item
15 nonresponse rates differ on an Internet self-response
16 instrument is because we sometimes prompt and we sometimes let
17 the items go through without prompting. We generally prompt on
18 demographic items, including items, like, race and ethnicity.

19 THE COURT: When you say prompt, what do you mean?

20 THE WITNESS: Make sure that the respondent didn't
21 want to respond to that question.

22 THE COURT: So in other words, you would say are you
23 sure you didn't want to respond to the previous question or
24 something of that nature?

25 THE WITNESS: Yes, something like that.

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Abowd - Direct

1 THE COURT: And obviously you can't do that on the
2 paper form?

3 THE WITNESS: That's correct.

4 THE COURT: Mr. Ho.

5 MR. HO: Thank you, your Honor.

6 BY MR. HO:

7 Q. Dr. Abowd, you included this analysis of item nonresponse
8 to the citizenship question on the American Community Survey
9 because it suggests or, I'm sorry, because it is suggestive
10 statistical evidence that a citizenship question on the census
11 could see higher nonresponse rates from Hispanics as compared
12 to non-Hispanic whites, correct?

13 A. Yes.

14 Q. I just want to talk about change over time here.

15 According to your memo for non-Hispanic whites, the item
16 nonresponse rate to the citizenship question on the ACS between
17 2013 and 2016 either didn't change at all on the Internet or
18 didn't change much for the mail-in version, right?

19 A. For which group?

20 Q. Non-Hispanic whites.

21 A. Correct.

22 Q. But item nonresponse to the citizenship question on the ACS
23 increased for Hispanics during the same period of time,
24 correct?

25 A. Yes, it did. I think it is called out on the paragraph

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Abowd - Direct

1 there.

2 Q. OK. Lets look at how you analyzed this in the Brown,
3 et al. memo, Plaintiffs' Exhibit 162. I want to look at page
4 nine, figure two.

5 THE COURT: While we're doing that, let me go back to
6 what I asked before.

7 I would think, just intuitively, that the prompt would
8 actually increase the response rate because it would catch some
9 people who might not have meant to skip it.

10 Why would you point to that as a reason that it would
11 actually be higher?

12 THE WITNESS: I apologize, your Honor. I gave you the
13 explanation for why we generally get low nonresponse rates on
14 self-response than on paper.

15 In this case, it is probably a difference in the
16 proportion of people from the different sub populations who
17 respond in the two modes.

18 THE COURT: Meaning?

19 THE WITNESS: I don't have any specific data with me.

20 THE COURT: So your opinion or speculation is that
21 when you say difference just in terms of the kinds of the
22 people who elect to respond online versus on paper, that there
23 is some difference in that population?

24 THE WITNESS: Yes. Yes, that's right.

25 THE COURT: All right.

IBDsNYS4

Abowd - Direct

1 You may proceed, Mr. Ho.

2 MR. HO: Thank you, your Honor.

3 BY MR. HO:

4 Q. Now, during this same period that we have been discussing,
5 2013 to 2016, item nonresponse for Hispanic to the question
6 about sex, that is, are you male or female on the American
7 Community Survey declined, correct?

8 A. So that is the blue checkered or dotted bars, and they are
9 all below the zero line. So yes, correct.

10 Q. Just so the record is clear, between 2013 and 2016, item
11 nonresponse for Hispanic on the citizenship question increased
12 but item nonresponse on the question about sex decreased,
13 correct?

14 A. Yes.

15 Q. So, Dr. Abowd, it is correct to say that the increase in
16 item nonresponse to the citizenship question on the ACS among
17 Hispanic does not reflect a trend of item nonresponse to all
18 questions increasing during that same period, correct?

19 A. Yes, that would be a correct conclusion.

20 Q. I want to talk about the third analysis in your January
21 memo, the one related to breakoff rates.

22 Lets turn back to Plaintiffs' Exhibit 22.

23 THE COURT: Before we do that, this chart is for
24 Hispanic respondents?

25 THE WITNESS: Your Honor, the chart has three

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Abowd - Direct

1 different questions on it. The item nonresponse rate for sex,
2 which is the blue bar; for age, which is the -- I think that is
3 orange, might be red hashed bar; and for citizenship, which is
4 the gray bar.

5 Then the first set of three bars is for all
6 respondents. The next set is non-Hispanic white.

7 THE COURT: I missed the bottom labels. Sorry about
8 that. Thank you.

9 THE WITNESS: No problem.

10 MR. HO: I'm sorry. I should have pointed that out,
11 your Honor.

12 BY MR. HO:

13 Q. Can we now turn to the breakoff rate analysis, the third
14 analysis in your January memo, page five of Plaintiffs'
15 Exhibit 22. I want to look under header B3, breakoff rate
16 analysis.

17 This is the part of your memo where you describe the
18 analysis of breakoff data for the 2016 ACS, correct?

19 A. Yes, it is.

20 Q. Just to define it, a breakoff rate is the rate at which,
21 when people are responding to the ACS questionnaire online,
22 they stop answering the survey upon encountering a screen with
23 a particular question, correct?

24 A. Yes, that is how it is defined.

25 Q. In 2016, breakoff rates on the citizenship question on the

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Abowd - Direct

1 ACS for Hispanic were much higher than they were for
2 non-Hispanic whites, correct?

3 A. I think you're summarizing the second sentence in the
4 second paragraph, and that's correct.

5 Q. As the data is presented in this memo, the breakoff rate on
6 the citizenship question on the 2016 ACS for Hispanic was eight
7 times what it was for non-Hispanic whites, correct?

8 A. Yes, that's correct.

9 Q. This breakoff rate analysis indicates that the citizenship
10 question is more sensitive for Hispanic than for non-Hispanic
11 whites, correct?

12 A. That is what we concluded, correct.

13 Q. Now, it is also correct, Dr. Abowd, that the difference in
14 breakoff rates for Hispanic as compared to non-Hispanic whites
15 is much higher for questions concerning year of entry and
16 citizenship than for any other of the questions on the ACS with
17 the exception of English proficiency, correct?

18 A. So I'm happy to go over those data with you if you bring up
19 the chart, but I don't have them memorized. It is one of the
20 high breakoff rates. I am willing to say that without seeing
21 the table.

22 Q. OK. Lets bring up the white paper, Plaintiffs' Exhibit
23 162, and page ten. Lets look at the last paragraph here.

24 Starting with the second to last sentence, citizenship
25 related questions. Why don't you go ahead and read that to

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Abowd - Direct

1 yourself, Dr. Abowd, and let me know when you're ready.

2 (Pause)

3 A. Yes, I've read it.

4 Q. So it is correct, right, Dr. Abowd, that breakoff rates for
5 the citizenship question on the ACS for Hispanics are much
6 higher than for non-Hispanic whites generally, first of all,
7 that's correct, right?

8 A. That's correct.

9 Q. And that the difference between those breakoff rates is
10 higher for questions concerning year of entry and citizenship
11 than for any other question on the ACS, with the exception of
12 English language proficiency, correct?

13 A. Yes, that's correct.

14 Q. Now, your January memo presents only 2016 ACS breakoff
15 data, correct?

16 A. That's correct.

17 Q. But the Brown memo here also has 20 -- I'm sorry. Strike
18 that.

19 The reason why your memo to Secretary Ross only has 2016
20 breakoff data in it is because the 2017 ACS breakoff data was
21 incomplete as of that time, correct?

22 A. That's correct.

23 Q. But the swat team has looked at 2017 ACS breakoff data,
24 right?

25 A. Yes, they are.

IBDsNYS4

Abowd - Direct

1 Q. And the Census Bureau has now made the 2017 ACS breakoff
2 data available as part of this litigation, correct?

3 A. We released it as a public document, yes.

4 Q. OK. Lets turn to Plaintiffs' Exhibit 9. This has been
5 admitted.

6 Dr. Abowd, this is a table summarizing the rate at which
7 different groups break off on the ACS on different questions,
8 correct?

9 A. Yes. That's correct.

10 Q. If we go down to citizenship, the left-hand column, the
11 breakoff rate for non-Hispanic whites on the citizenship
12 question in the 2017 ACS is .03489, correct?

13 A. Yes, I see it. Yes, that's correct.

14 Q. OK. The citizenship question breakoff rate on the 2017 ACS
15 for Hispanic is .4343, correct?

16 A. The highlighting just disappeared.

17 Yes, that's correct.

18 Q. OK. So just to summarize this, it is correct to say that
19 the citizenship question breakoff rate on the 2017 ACS for
20 Hispanic is more than 12 times what it is for non-Hispanic
21 whites, correct?

22 A. Yes, that's correct.

23 Q. OK. So just to summarize, in 2016, the Hispanic breakoff
24 rate was eight times what it was for whites, in 2017, it was
25 12 times what it was for whites, correct?

IBDsNYS4

Abowd - Direct

1 MR. EHRLICH: Objection, asked and answered.

2 THE COURT: Overruled.

3 A. Yes, it's correct.

4 Q. It is fair to say that in your January memo to Secretary
5 Ross, you concluded that adding a citizenship question would be
6 a sensitive question for Hispanics, correct?

7 A. I believe we did, yes.

8 Q. You believe, Dr. Abowd, that Hispanic are more sensitive to
9 survey questions about citizenship than they were a few years
10 ago, correct?

11 A. Yes, that is what's the data appear to show.

12 Q. That increased sensitivity, you would agree, is reflected
13 in the 2017 ACS data, correct?

14 A. Increased sensitivity is reflected in the 2017 data, yes.

15 Q. That postdates your 5.8 percentage point estimate, which
16 was based only on data through the 2016 ACS, correct?

17 A. That's correct.

18 Q. Non-Hispanic whites by contrast, Dr. Abowd, are not more
19 sensitive to survey questions about citizenship than they were
20 a few years ago, correct?

21 A. I think, are you characterizing all the evidence?

22 In which case I think that is probably right.

23 Q. Yes.

24 A. OK.

25 Q. I am characterizing all of the evidence.

IBDsNYS4

Abowd - Direct

1 Is that correct?

2 A. Yes.

3 Q. Dr. Abowd, the Census Bureau believes that Hispanics will
4 respond to the citizenship question on the 2020 census at lower
5 rates than non-Hispanic whites, correct?

6 A. To the extent that Hispanicity is related -- to ethnic
7 origin Hispanic is related to a household that potentially
8 contains at least one noncitizen, we have credible quantitative
9 evidence that there could be a lower self-response rate, yes.

10 Q. Dr. Abowd, it is fair to say that you believe that unit
11 self-response rates, that is, refusing to self-respond to the
12 2020 census questionnaire at all, that that will happen at a
13 higher rate for Hispanics than non-Hispanic whites as a result
14 of the citizenship question, correct?

15 A. So what I think I've said consistently is the Hispanic
16 origin, Hispanic ethnicity, is highly correlated with being in
17 what we would call the treatment group from that natural
18 experiment. To the extent that that correlation is true. The
19 conclusions of the natural experiment hold.

20 Q. The answer to my question is yes, Dr. Abowd?

21 A. I am trying to qualify that we didn't specifically analyze
22 it for Hispanics, because that is not the question that the
23 data analysis addressed.

24 But I concur that they are highly correlated with the
25 households that may include a noncitizen or person of unknown

IBDsNYS4

Abowd - Direct

1 citizenship status.

2 To that extent, the conclusion is correct.

3 Q. Dr. Abowd, you agree, do you not, that the analysis of item
4 nonresponse on the ACS and breakoff rates to the ACS for
5 Hispanics suggests that response rates to the 2020 census will
6 fall more for Hispanics than for non-Hispanic whites as a
7 result of the citizenship question, correct?

8 A. Item response rates on the citizenship question, that's
9 what that shows.

10 Q. That's not my question, Dr. Abowd.

11 A. That is why I answered what I did.

12 Q. OK. But my question, Dr. Abowd, is this: You agree, do
13 you not, that the item nonresponse rate analysis that you
14 conducted for the ACS and the breakoff rate analysis that you
15 conducted for the ACS, suggest that unit nonresponse on the
16 2020 census will decline more for Hispanics than for
17 non-Hispanic whites as a result of the citizenship question,
18 correct?

19 MR. EHRLICH: Objection.

20 THE COURT: Basis?

21 MR. EHRLICH: Asked and answered several times, your
22 Honor.

23 THE COURT: I don't think it has been answered.

24 Overruled.

25 A. I imagine you're going to show me in the record why you

IBDsNYS4

Abowd - Direct

1 think I've already said that.

2 All I want to say is that, to the extent that Hispanic
3 and being in the treatment group for the natural experiment are
4 highly correlated, that would justify that conclusion.

5 The breakoff analysis and the item analysis justify
6 the conclusion that the citizenship question itself won't be
7 responded to as at higher rate by Hispanics.

8 THE COURT: Is there a high correlation between the
9 treatment group and Hispanic origin?

10 THE WITNESS: Yes, your Honor, there is.

11 MR. HO: Thank you, your Honor.

12 BY MR. HO:

13 Q. You used the phrase natural experiment or the term natural
14 experiment before.

15 Do you remember that, Dr. Abowd?

16 A. Yes, I do.

17 Q. Would you agree that a natural experiment is an
18 observational study in which one group of individuals has been
19 exposed to control conditions while another group has been
20 exposed to treatment conditions, such that a change in outcome
21 between the two groups could plausibly be ascribed to the
22 treatment?

23 A. I agree with everything that you said and would add that
24 the definitions that put you into either the treatment or the
25 control group have to contain some element of natural

IBDsNYS4

Abowd - Direct

1 randomization.

2 Q. Here, the control is for purpose -- when we talk about the
3 natural experiments that you conducted here, the control is the
4 2010 decennial census questionnaire without a citizenship
5 question, and the treatment is the 2010 ACS or the 2016 ACS,
6 which has a citizenship question, correct?

7 A. Technically, the treatment is the change, but yes, that's
8 basically right.

9 Q. The premise then behind this natural experiment is that it
10 is reasonable to infer that a differential lower self-response
11 on the ACS questionnaire for households that have a noncitizen
12 or a person of unknown citizenship status is due to the
13 citizenship question on the ACS, which is sensitive for that
14 population, correct?

15 A. So the goal of the natural experiment is to do that
16 difference indifference with the plausible, the actual
17 randomization, which in this case is who got the ACS -- that's
18 a random subset of the population -- and then to explore the
19 answer you get to make sure that there aren't confounders that
20 could have explained that difference in the case of the
21 comparison of the ACS to the 2010 census. There are potential
22 confounders. So the initial analysis did not make any effort
23 to control for those confounders and the subsequent analyses
24 did.

25 Q. Dr. Abowd, you would characterize the analysis that is

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Abowd - Direct

1 reflected in your January memo as a well-designed natural
2 experiment, correct?

3 A. Yes.

4 Q. Dr. Abowd, notwithstanding what Secretary Ross says in his
5 memo about evidence of an effect of a citizenship question on
6 self-response rates, you believe that the Census Bureau did
7 provide empirical support for its belief that adding a
8 citizenship question will reduce response rates to the 2020
9 census, correct?

10 A. Self-response rates, correct.

11 Q. And, in fact, Dr. Abowd, when you met with Secretary Ross
12 on February 12, you told him that the Census Bureau thought
13 that the difference in self-response rates on the ACS and the
14 census, when comparing citizen and noncitizen households, was
15 probably related to the citizenship question on the ACS,
16 correct?

17 A. That's my recollection, yes.

18 Q. Dr. Abowd, I want to bring up again your January memo,
19 Plaintiffs' Exhibit 22, page five. I want to look at the last
20 sentence.

21 I'm sorry. We want Dr. Abowd's January memo, which I
22 believe is Plaintiffs' Exhibit 22. Maybe I have that number
23 wrong.

24 THE COURT: I believe that is right.

25 MR. HO: It is 22, page five. I want to look at the

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Abowd - Direct

1 last sentence.

2 Sorry. The last sentence of the first paragraph.

3 Excuse me.

4 Sorry. I guess I have this wrong again. The top
5 paragraph, last sentence.

6 Thanks.

7 BY MR. HO:

8 Q. You wrote in your memo: It is therefore a reasonable
9 inference that a question on citizenship would lead to some
10 decline in overall self-response because it would make the
11 2020 census modestly more burdensome in the direct sense and
12 potentially much more burdensome in the indirect sense that it
13 would lead to a larger decline in self-response for noncitizen
14 households, correct?

15 A. That is what it says, yes.

16 Q. And here, that is consistent with what your opinion is
17 about having produced credible qualitative evidence of the
18 effect of the citizenship question on self-response rates,
19 correct?

20 A. Yes, that's correct.

21 Q. Now, this opinion, which is based on a natural experiment,
22 Dr. Abowd, that is not the same as a randomized control test or
23 RCT, correct?

24 A. That's correct.

25 Q. If you had done an RCT, that would have been if you had

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Abowd - Direct

1 conducted a new randomized experiment with control and
2 treatment groups instead of trying to observe something that
3 had already occurred, correct?

4 A. There is more to it than that, but that is -- all that you
5 said is correct.

6 Q. OK. An RCT, that would provide what you would describe
7 as gold standard evidence for assessing the effect of a
8 citizenship question on response rates, correct?

9 A. Yes, that's correct.

10 Q. OK. If the Census Bureau had conducted an RCT, it would
11 have had quantitative data that could isolate the effect of a
12 citizenship question in terms of how that would perform in the
13 context of the decennial census enumeration questionnaire,
14 correct?

15 A. If there had been an RCT available, we would have been able
16 to make an internally valid comparison of a questionnaire with
17 and without a citizenship question as to its effect on
18 self-response rates for the whole population.

19 Q. Do you remember in Secretary Ross' memo where he uses the
20 word isolate and he said that the Census Bureau could not
21 isolate the percentage in the self-response decline that could
22 be attributable to the citizenship question?

23 Does that ring a bell?

24 A. A sentence like that rings a bell, yes.

25 Q. If you had conducted an RCT, you could have isolated the

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Abowd - Direct

1 effect of the citizenship question on self-response rates in
2 the way that Secretary Ross described, correct?

3 A. I think I've said consistently that I am very reluctant to
4 interpret what the Secretary meant by sentences in his memo.
5 If we had run a randomized control trial on self-response
6 rates, we would have been able to say, without qualification,
7 that the difference between the self-response rate with and
8 without a citizenship question was X.

9 THE COURT: And putting aside what the Secretary may
10 or may not have meant, I take it an RCT would allow you to
11 isolate the effect of a particular question on response rates?

12 THE WITNESS: Yes, it would, your Honor.

13 Q. Dr. Abowd, there has been no RCT of the census enumeration
14 questionnaire with the citizenship question, correct?

15 A. That's correct.

16 Q. A group of decision-makers, including Commerce Under
17 Secretary Karen Dunn Kelley decided not to conduct an RCT of
18 the citizenship question, correct?

19 A. A group of decision-makers at the Census Bureau with
20 collaboration of the Under Secretary decided not to conduct a
21 randomized controlled trial of the content of the citizenship
22 question.

23 Q. But if you had conducted that RCT, you would have had the
24 data that would have allowed you to isolate the effect of a
25 citizenship question in the context of the decennial census

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Abowd - Direct

1 enumeration questionnaire, correct?

2 A. So you haven't shown me the RCT we're talking about, but
3 I'll assume it is the one we've talked about several other
4 occasions.

5 That RCT did have a treatment and control that would have
6 isolated the effect of the citizenship question by itself on
7 self-response, yes.

8 Q. We'll get back to that in a minute, Dr. Abowd.

9 I just want to ask you, even in response of that RCT, you
10 agree that the Census Bureau can use the results of its
11 analysis of the natural experiment to draw conclusions about
12 the effect of a citizenship question on the 2020 census,
13 correct?

14 A. You're using the results of the natural experiment to do
15 planning for the 2020 census based on its quantitative
16 implications, yes.

17 Q. You believe that the results from your natural experiment
18 are sufficiently reliable for the census Bureau to make
19 decisions planning for the 2020 census, correct?

20 A. We believe they are the best available data, correct.

21 Q. Dr. Abowd, you agree that the macro environment can affect
22 response rates?

23 A. Yes.

24 Q. Part of the macro environment is the political context,
25 right?

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Abowd - Direct

1 A. Yes, it is.

2 Q. So the political context can affect response rates,
3 correct?

4 A. Yes, it can.

5 Q. You agree that the political environment around immigration
6 could amplify the effect of a citizenship question on response
7 rates in comparison to, say, 2010, correct?

8 A. Yes, it could.

9 Q. And it could do that in comparison to, say, 2016, correct?

10 A. Yes, it could.

11 Q. You know, the last time there was an inquiry of the
12 citizenship status of every member of every household in the
13 United States was 1950, correct?

14 A. Yes, that's correct.

15 Q. You would agree that the macro environment is a little
16 different now, right, Dr. Abowd?

17 A. Well, I'm not a macro economist, but I think it is, yes.

18 Q. I want to ask you about CBAMs research, Dr. Abowd.

19 CBAMs stands for census barriers, attitudes, and
20 Motivator studies, correct?

21 A. Excuse me. Yes, it is.

22 Q. The CBAMs research, that tells you a little something about
23 the macro environment, right?

24 A. That is what it was designed to do, yes.

25 Q. OK. CBAMs consists of a survey of 50,000 households in a

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Abowd - Direct

1 series of more than 40 focus groups, correct?

2 A. 42 focus groups.

3 Q. The primary reason for conducting CBAMs is to inform the
4 integrated partnership and communication program for the 2020
5 census, correct?

6 A. Yes, that's correct.

7 Q. The Census Bureau finds that the CBAMs research that you do
8 is sufficiently reliable as to provide actionable information
9 that informs the communication and partnership campaigns
10 conducted by the Census Bureau predicting, correct?

11 A. Yes, that's correct.

12 Q. Lets look at Plaintiffs' Exhibit 163. I believe this has
13 been admitted into the record.

14 Dr. Abowd, this is a PowerPoint summarizing rising
15 information from the 2018 CBAMs focus groups, correct?

16 A. I am only pausing because I am not sure it is exclusively
17 the focus groups, but it is about the CBAMs research.

18 Q. This PowerPoint was created by Young & Rubicam at the
19 direction of the Census Bureau, correct?

20 A. Young & Rubicam is the prime contractor on the integrated
21 communication contract. It is working with a team of internal
22 Census Bureau specialists. They jointly prepared this
23 PowerPoint labeled with both logos, I believe.

24 Q. This PowerPoint was presented to Under Secretary Kelley and
25 to Secretary Ross, correct?

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Abowd - Direct

1 A. I believe I testified at deposition that I believe that is
2 correct, but I wasn't at either of those -- I wasn't at the
3 presentation of the Under Secretary, so I'm not sure whether
4 this is exactly the same one that she saw and the Secretary
5 saw. I believe the content was very similar, but that is what
6 I know.

7 Q. You were in the room when this was presented to Secretary
8 Ross?

9 A. I was in the room when a similar presentation was made to
10 Secretary Ross that had a different date on it.

11 Q. But it was materially identical to the PowerPoint here
12 before you, correct?

13 A. Yes, that's right.

14 Q. You're not aware of any revised or more recent versions of
15 this PowerPoint?

16 A. No, I'm not.

17 Q. Lets turn --

18 A. Actually, excuse me, I haven't compared this PowerPoint to
19 the recent presentation to the National Advisory Committee, so
20 I think, absent that comparison, I didn't notice any big
21 differences. They give a more comprehensive version than what
22 I remember being presented to the Secretary, but I don't think
23 that the general conclusions or even a lot of the specific
24 conclusions are very different.

25 Q. We'll go over that PowerPoint too, Dr. Abowd.

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Abowd - Direct

1 Lets stick with this one for now.

2 A. All right.

3 Q. And look at page five, which I believe is page six of the
4 PDF. So the next page. Thank you.

5 The title of this slide is Distrust in Census and
6 Government May Complicate Outreach to Some Communities,
7 correct?

8 A. Yes, it is.

9 Q. OK. The second bullet from the bottom reads: A number of
10 focus group participants responded negatively to adding the
11 citizenship question, most notably Spanish (U.S. mainland) as
12 well as Vietnamese, Chinese, NHPI, and members of the female
13 MENA group.

14 Did I read that right?

15 A. Yes, you did.

16 Q. Now, most of these focus groups were conducted after the
17 announcement of a citizenship question to be included in the
18 census, correct?

19 A. 30 of 42, yes.

20 Q. And people recruited into the focus groups referenced in
21 that bullet that we just discussed, they mentioned the
22 citizenship question as a barrier to census participation,
23 correct?

24 A. Yes, that's correct.

25 Q. This bullet in this PowerPoint was included to draw the

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Abowd - Direct

1 attention of the people for whom the PowerPoint was intended,
2 correct?

3 A. Would you mind restating that question? I couldn't unpack
4 it.

5 Q. Sure.

6 This bullet, starting with the number of focus group
7 participants, that was included in this PowerPoint in order to
8 draw the attention of the people for whom the PowerPoint is
9 intended, right, Dr. Abowd?

10 MR. EHRLICH: Objection.

11 THE COURT: Sustained.

12 Q. Dr. Abowd, why was this bullet included in the PowerPoint?

13 A. The PowerPoint was prepared, as I understand it, to inform
14 the Under Secretary.

15 Q. But why was this particular bullet included in the
16 PowerPoint?

17 A. It summarizes one of the conclusions of the CBAMs focus
18 group studies.

19 Q. Dr. Abowd, do you remember your third deposition in this
20 case which occurred on October 5, 2018?

21 A. Yes.

22 Q. You were under oath that day, right?

23 A. Yes, I was.

24 Q. And you told the truth that day, right?

25 A. Yes, I did.

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Abowd - Direct

1 Q. OK. Lets bring that up and look at page four 43, starting
2 with line five.

3 "Q. And why was this bullet included in the PowerPoint?

4 "A. I believe to draw the attention of people who are using
5 this to -- that finding of the focus groups.

6 Q. Was that my question -- was that the question that was
7 posed to you and your answer that day, Dr. Abowd?

8 A. Yes, it was.

9 Q. OK. And during the presentation of this PowerPoint to
10 Secretary Ross, it was acknowledged that the citizenship
11 question would be a challenge in conducting the 2020 census,
12 correct?

13 A. Yes, it was.

14 Q. OK. Lets bring up Plaintiffs' Exhibit 152 now. This has
15 also been admitted into the trial record.

16 Dr. Abowd, this is the 2020 CBAMs focus group audience
17 summary reports, correct?

18 A. Yes, that's what they are.

19 Q. You've seen this document before, right?

20 A. Yes, I have.

21 Q. Lets go to page 22 of this document, which is Bates number
22 13046.

23 This is part of the summary for focus groups
24 consisting of participants who are U.S. mainland residents who
25 speak Spanish, correct?

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Abowd - Direct

1 I believe that is at the top of the page.

2 A. This is the top of the page you said who speaks Spanish. I
3 know there was both a Spanish-speaking Spanish and an
4 English-speaking Spanish, so I'm not sure whether this
5 particular page is both or one.

6 Q. When you say Spanish U.S. mainland, what does that refer
7 to?

8 A. It means that the people recruited for this focus group
9 were Hispanic origin and living in the U.S. mainland.

10 Q. Lets look at the third bolded paragraph on this summary.

11 The title or the first sentence is the citizenship question
12 is a determining factor for participation, correct?

13 A. Yes.

14 Q. It reads: All four Spanish, U.S. mainland focus groups
15 took place after the March 27, 2018, announcement that the 2020
16 census will include a question on citizenship, correct?

17 A. Yes.

18 Q. And Spanish means Hispanic, Dr. Abowd, in that sentence?

19 A. I believe so, yes.

20 Q. OK. It goes on to read: Participants in all locations
21 mentioned the citizenship question before the moderator asked
22 about it, except for Houston group one participants, correct?

23 A. Yes.

24 Q. And it goes on to read: Most participants said that though
25 they personally are citizens or legal residents and are not

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Abowd - Direct

1 afraid to answer the citizenship question, they know many
2 others who will not fill out the question or the form
3 altogether out of fear. While all participants expressed the
4 desire to be counted, fear of deportation outweighs any
5 benefit.

6 Did I read that right?

7 A. Yes, you did.

8 Q. Dr. Abowd, you agree that this focus group result is an
9 indication from a hard-to-count population that the citizenship
10 question viewed as extremely problematic for that population,
11 correct?

12 A. It is an indicator of that, yes.

13 Q. And you acknowledge that with the citizenship question on
14 the census, people who are afraid of deportation will be an
15 extremely difficult group to count, correct?

16 A. They will be a very difficult group to count.

17 Q. Extremely, right, Dr. Abowd?

18 A. So I suppose we can discuss what the difference between
19 "very" and 'extremely' is.

20 Q. In your words, Dr. Abowd, you would describe people, who
21 are fearing deportation, as extremely hard to count in the 2020
22 census, when you put a citizenship question on it, correct?

23 A. So very hard to get to self-respond. Whether they are hard
24 to count or not depends on other operations in the 2020 census.

25 Q. All right. Dr. Abowd, lets go back to your October 5, 2018

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Abowd - Direct

1 deposition, page 451, line three.

2 MR. EHRLICH: Your Honor, I would note that the
3 deposition testimony we're using here is his 30(b)(6) testimony
4 in his capacity as a representative of the Census Bureau, and
5 would object on that basis, to the extent it is asking him for
6 personal knowledge that he may have.

7 THE COURT: Mr. Ho, that seems well founded.

8 MR. HO: I mean, he is testifying as a representative
9 of the Census Bureau under the 30(b)(6), but, I mean, he uses
10 the first person quite frequently in the deposition and
11 expresses his understanding of events in his capacity as the
12 chief scientist of the Census Bureau. I don't think there is
13 any reason that I can't use his deposition testimony to impeach
14 him on that basis.

15 MR. EHRLICH: His first person use was for ease of
16 reference during the deposition, your Honor. You can't draw
17 from this personal knowledge of what he may or may not know
18 based on what the agency knows and what he testified on behalf
19 of the agency.

20 THE COURT: All right. Tell you what. You'll have an
21 opportunity to conduct cross-examination.

22 I think in that context, you can elicit from him the
23 extent to which this testimony, if it is being offered as an
24 inconsistent statement, is actually not his personal statement
25 as opposed to his representative statement.

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Abowd - Direct

1 With that, you may proceed, Mr. Ho.

2 MR. HO: Thank you, your Honor.

3 BY MR. HO:

4 Q. Page 451, line three.

5 "Q. And aren't people afraid of deportation the least likely
6 to participate at all in the census or to be swayed by NRFU
7 efforts?

8 "A. I'm not prepared to say the least likely to participate at
9 all. I'm tried to acknowledge that they're an extremely
10 difficult group to count.

11 Q. Was that the question posed to you and was that your
12 answer?

13 A. Yes, it was.

14 Q. Now, going back to the focus group summary, page 22 of it.
15 It indicated here that Hispanic focus group members, that
16 members of their community care about participation in the
17 census, correct?

18 A. Yes.

19 Q. They express that they understood the benefits to their
20 community of participating in the census, correct?

21 A. Yes, they did.

22 Q. And, Dr. Abowd, it is reasonable to conclude that they
23 would like to participate in the census, correct?

24 A. That seems reasonable, yes.

25 Q. And what you get from this focus group is an indication

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Abowd - Direct

1 that members of this group would be more likely to self-respond
2 if there was not a citizenship question on the 2020 census,
3 correct?

4 A. Yes.

5 Q. I'm sorry?

6 A. Yes.

7 Sorry. Am I fading?

8 Q. Thank you.

9 This also indicates that if there is a citizenship question
10 on the census, that trusted partners who try to carry forth the
11 Census Bureau's message are going to have additional challenges
12 in convincing members of this community to participate,
13 correct?

14 A. I don't think you called out those sentences, but I assume
15 they're in there.

16 Q. But you agree with that, right, Dr. Abowd, that given the
17 results of this focus group, that you would conclude that the
18 trusted partners that the Census Bureau relies on to carry
19 forth the message that it is important to participate in the
20 census, that they are going to have additional challenges
21 carrying that message out than if there were no citizenship
22 question on the census, correct?

23 A. Yes.

24 Q. I want to ask about a different document now, a different
25 PowerPoint I think you referred to earlier why.

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1 This is Plaintiffs' Exhibit 662, entitled 2020 Census
2 Barriers, Attitudes, and Motivators study (CBAMs) Survey and
3 Focus Groups: Key Findings for Creative Strategy. October 31,
4 2018.

5 For the record, it has been admitted.

6 This is the PowerPoint that you were talking about earlier
7 which includes both CBAMs survey results and focus group
8 information, right, Dr. Abowd?

9 A. That's correct.

10 Q. Lets go to page 16 of the PowerPoint. It is page 16 of the
11 PowerPoint, but 17 of the PDF.

12 This slide has some results of the CBAMs survey, correct?

13 A. Yes, it does.

14 Q. The fifth line here indicates that: 10 percent of
15 respondents to the CBAMs survey think that the census is used
16 to locate people living in the country without documentation,
17 right?

18 A. Yes.

19 Q. And 37 percent aren't sure one way or the other whether or
20 not that is the case, correct?

21 A. That's correct.

22 Q. All right. Lets turn to page 19 of the PowerPoint, which
23 is page 20 of the PDF.

24 Dr. Abowd, this slide indicates that 19 percent of Asian
25 and black CBAMs survey respondents think that the census is

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Abowd - Direct

1 used to locate people without documentation, correct?

2 A. Yes.

3 Q. Lets turn to the next page of the PowerPoint.

4 This slide summarizes some comments from Hispanic CBAMs
5 focus group participants, correct?

6 A. Yes.

7 Q. And one Hispanic focus group participant said, I feel that
8 it does go to the immigration agency, in regard to census
9 responses, correct?

10 A. I think you're calling out the first quote there?

11 Yes.

12 Q. Yes.

13 Another Hispanic focus group participant said that
14 they would not participate in the census because they --
15 meaning immigration -- will know where we are and what our
16 names are and where we live, correct?

17 A. That's what the quote says, yes.

18 Q. And another Hispanic focus group participant stated, I
19 feel -- I'm sorry -- stated a concern that immigration
20 enforcement, quote, will know where we are and what our names
21 are and where we live, correct?

22 I'm sorry. I already did that one.

23 Lets look at page 29 of the PowerPoint, slide 30.

24 This has results from the CBAMs survey, correct?

25 A. Yes.

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Abowd - Direct

1 Q. The title of the slide is Respondents Worry About
2 Confidentiality, correct?

3 A. That's correct.

4 Q. Specifically, 41 percent of Asians CBAMs survey respondents
5 expressed worry about confidentiality, correct?

6 A. Yes, that is correct.

7 Q. And so did 41 percent of low English proficiency CBAMs
8 survey respondents, correct?

9 A. Yes.

10 Q. Great. Lets turn to page 31 of the PowerPoint.

11 This had some results about concerns about data sharing of
12 census responses, correct?

13 A. Yes.

14 Q. 37 percent of low English proficiency CBAMs respondents
15 expressed concern about data sharing, right?

16 A. Yes.

17 Q. 36 percent of CBAMs respondents who responded in Spanish
18 did too, correct?

19 A. Yes.

20 Q. And 32 percent of CBAMS respondents born outside of the
21 United States did as well, correct?

22 A. Yes.

23 Q. And 32 percent of Hispanics overall believe that the census
24 shares data with other agencies, correct?

25 A. Concerned about the census sharing data, correct.

IBDsNYS4

Abowd - Direct

1 Q. Thank you.

2 Can we turn to page 35. According to this slide, one in
3 four CBAMS survey respondents fear that their answers to the
4 2020 census will be used against them, correct?

5 A. Yes.

6 Q. And that's true for 41 percent of Asian CBAMs respondents,
7 correct?

8 A. Yes.

9 Q. And true of 39 percent of CBAMs respondents born outside of
10 the United States, correct?

11 A. Yes.

12 Q. And 34 percent of CBAMs respondents who responded in
13 Spanish, correct?

14 A. Yes.

15 Q. Lets turn to page 42 of the PowerPoint. Page 43 of the
16 PDF.

17 The title of this slide is The Citizenship Question
18 May Be a Major Barrier, correct?

19 A. Yes, that is the title.

20 Q. And focus group participants expressed concern that the
21 purpose of the question is to find undocumented immigrants,
22 correct?

23 A. The call-outs in red up at the top?

24 Q. Yes.

25 A. Yes, that's correct.

IBDsNYS4

Abowd - Direct

1 Q. And there also was an indication from focus group
2 participants that there is a concern due to the political
3 discourse that we currently have, correct?

4 A. Yes, that is what it says.

5 Q. OK. In the bottom left-hand corner, there is a Hispanic
6 focus group participant who stated, A lot of people are afraid.
7 It doesn't matter if they ask you whether or not you're a
8 citizen. The first question they ask you, are you Hispanic or
9 Latino? And that's enough. That's all they need and people
10 are scared.

11 Do you see that?

12 A. Yes, I do.

13 Q. Do you see the one on the right that reads: Latinos will
14 not participate out of fear. There was practically a hunt for
15 us. Latinos are going to be afraid to be counted because of
16 the retaliation that could happen. It's like giving the
17 government information saying, oh, there are more here.

18 Correct?

19 A. That is what the quote says, correct.

20 Q. Lets turn to page 57 of the PowerPoint. Page 58 of the
21 PDF.

22 This is a summary of Hispanics participating in the
23 CBAMS research, correct?

24 A. Yes.

25 Q. So among Hispanics, 10 percent believe that the census is

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Abowd - Direct

1 used to locate people living in the country without
2 documentation, correct?

3 A. That's not on this slide, I don't think, but you already
4 showed it to me. That -- there it is. Yes, correct.

5 Q. And 34 percent express concern about the confidentiality of
6 their answers, correct?

7 A. Correct.

8 Q. 32 percent express concern that their answers will be
9 shared with other government agency, correct?

10 A. Correct.

11 Q. 33 percent express fear of repercussions from their census
12 answers, correct?

13 A. Correct.

14 Q. The bullet under other considerations reads, focus group
15 participants expressed intense fear that information will be
16 shared with other government agency to help them find
17 undocumented immigrants. Participants worried that their
18 participation in the census could harm them personally or
19 others in their communities/households they care about,
20 correct?

21 A. Yes, that is what it says.

22 Q. That is Hispanic focus group participants, correct?

23 A. Correct.

24 Q. Now, Dr. Abowd, overall, you would describe this focus
25 group research as qualitative research, correct?

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Abowd - Direct

1 A. That's correct.

2 Q. And all of the CBAMS focus group research that we have
3 discussed happened in 2017 and '18, correct?

4 A. I think it all happened in 2018.

5 Q. All happened in 2018?

6 A. Yes.

7 Q. OK. You agree, Dr. Abowd, that the CBAMS focus group
8 research conducted by the Census Bureau suggests a greater
9 sensitivity to a citizenship question today than there was a
10 few years ago, correct?

11 A. The CBAMS research, both the focus group and the survey,
12 have alerted us to what we consider a major difficulty in
13 fielding the 2020 census to regain the trust of the Hispanic
14 community, yes.

15 Q. The research suggests that the macro environment today,
16 which affects the sensitivity of citizenship questions on
17 Census Bureau surveys, is different than it was a few years
18 ago, correct, Dr. Abowd?

19 A. So the research that you just showed me doesn't support an
20 inference of change, so I won't make one.

21 But it does support that it is a major concern now, whether
22 it is greater or less than it was for the 2010 census. It
23 wasn't supported by what you said, but it does support that it
24 is a major concern now.

25 Q. Dr. Abowd, the sensitivity to a citizenship question that's

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Abowd - Direct

1 reflected in the 2018 CBAMS research, that degree of
2 sensitivity would not be captured in the 5.8 percentage point
3 estimate that is based on data only up through 2016, correct?

4 A. It is -- yes, that is right.

5 Q. Dr. Abowd, you're aware that there are recent news reports
6 that President Trump is contemplating an executive order that
7 provide that citizenship will no longer be conferred on all
8 persons born on United States soil?

9 A. I have read the news reports, yes.

10 Q. Dr. Abowd, you would agree that that is something that
11 could affect the macro environment around the census, correct?

12 A. Yes.

13 Q. You're aware that on November 2 of this year, the Census
14 Bureau's National Advisory Committee on racial, ethnic, and
15 other populations, recommended that the Census Bureau evaluate
16 and report on the potential effects of such an order on census
17 operations for 2020, correct?

18 A. So I was called to litigation on the day the
19 recommendations were read out loud. I assume you're quoting
20 them right, but I wasn't there, and they haven't been delivered
21 to my inbox yet.

22 Q. But you're aware of that recommendation, right, Dr. Abowd?

23 A. You just made me aware of it, yes.

24 Q. The Census Bureau has not conducted any analysis that
25 you're aware of about how the macro environment may have

IBDsNYS4

Abowd - Direct

1 changed in light of that announcement of the executive order
2 that President Trump is contemplating, correct?

3 A. That's correct.

4 THE COURT: Mr. Ho, would this be a good time to take
5 our lunch break?

6 MR. HO: Sure.

7 THE COURT: All right. Question. We're technically
8 on direct, but in some respects, this is more properly viewed
9 as cross.

10 Does anyone have a view on whether Dr. Abowd should be
11 permitted to speak with defense counsel during the break?

12 MR. HO: Our view, your Honor, is that he should not
13 be permitted to because it is like a cross. It is an adverse
14 direct like a cross-examination, so we think he should be
15 sequestered from speaking about the substantive subject of the
16 litigation while he remains on the stand.

17 THE COURT: Mr. Ehrlich, any objection to my so
18 instructing Dr. Abowd?

19 MR. EHRLICH: No objection, your Honor.

20 THE COURT: Dr. Abowd, because you're on what is
21 functional equivalent of cross-examination, the rules dictate
22 that you shouldn't speak with defense counsel concerning the
23 substance of your testimony.

24 If you have logistical conversation with them or the
25 like, that is fine, but please don't speak about the substance

IBDsNYS4

Abowd - Direct

1 of your testimony. And if it would be easier not to speak with
2 them at all, don't speak with them at all.

3 It is 1:01. We'll pick up again at 2:00 p.m.

4 Enjoy your break. Thank you.

5 (Luncheon recess)

IbdWnys5

Abowd - Direct

AFTERNOON SESSION

2:00 p.m.

THE COURT: You may be seated.

Apologies for a slightly late start. Something came up that I needed to deal with.

We will continue with the direct examination.

Dr. Abowd, I remind you that you are under oath.

Mr. Ho, you may proceed.

MR. HO: Thank you, your Honor.

Q. Dr. Abowd, I just wanted to go back to a couple of exhibits that we talked about before the lunch break briefly before we move on.

MR. HO: I'd like to go back to Plaintiffs' Exhibit 4, which is a portion of the administrative record in this case. This is page 7,913 of this exhibit, AR No. 11634. This is a document in the administrative record that's been admitted into evidence.

Q. Dr. Abowd, is this an earlier draft version of the Brown et al. memo that we were discussing earlier?

A. Yes, it is.

Q. It's dated December 22, 2017?

A. Yes, it is.

Q. And it's in the administrative record in this case?

A. Yes, it is.

Q. And this draft contains earlier versions of the same

IbdWnys5

Abowd - Direct

1 analyses of ACS data, unit nonresponse, item nonresponse, etc.,
2 that we discussed earlier?

3 A. Contains many of the analyses we discussed earlier, yes.

4 Q. Thank you.

5 I want to talk about, briefly, Plaintiffs' Exhibit 448.
6 This is a different PowerPoint, one given to the national
7 advisory committee on racial, ethnic and other populations. Do
8 you see that, Dr. Abowd?

9 A. Yes, I do.

10 MR. HO: This has been admitted into the record. I'd
11 like you to look at page 13 of this document, and the third
12 bullet.

13 Q. That's a quote from an interviewer from the CBAMS work,
14 right?

15 A. It's a quote from an interviewer during field studies that
16 the center for survey methods -- survey measurement was
17 conducting before this report was written.

18 Q. Sorry. My apologies. Thank you for that correction,
19 Dr. Abowd.

20 The interviewer from the Census Bureau stated: "Three
21 years ago was so much easier to get respondents compared to now
22 because of the government changes and trust factors. Three
23 years ago I didn't have problems with the immigration
24 questions." Did I read that correctly?

25 A. Yes, you did.

IbdWnys5

Abowd - Direct

1 Q. And that's some qualitative evidence suggesting that
2 questions related to immigration status asked by the Census
3 Bureau have a greater sensitivity today than they did a few
4 years ago, correct?

5 A. Yes, it is.

6 MR. HO: Dr. Abowd, I want to go back to your January
7 memo to Secretary Ross, Plaintiffs' Exhibit 22, and I want to
8 ask you about a passage on page 5 under the header B4, cost
9 estimates.

10 Q. Dr. Abowd, the lower self-response rates resulting from the
11 addition of a citizenship question to the 2020 census, you
12 would expect would increase the cost of conducting the 2020
13 census, correct?

14 A. That's correct.

15 Q. And the reason why that is is that when you have lower
16 self-response rates, you have to try to enumerate more people
17 through nonresponse follow-up efforts, or NRFU, correct?

18 A. That's correct.

19 Q. And NRFU costs money, right?

20 A. Yes, it does.

21 Q. Part of the NRFU process includes sending Census Bureau
22 enumerators in person to nonresponding households, correct?

23 A. That's correct.

24 MR. HO: Let's turn to page 6 of your memo and the
25 second-to-last paragraph, if we could blow it up.

IbdWnys5

Abowd - Direct

1 Q. This paragraph describes the cost estimates that you
2 presented in this memo for the estimated cost of including the
3 citizenship question on the 2020 census, correct?

4 A. That's correct.

5 Q. And in this memo, you estimated that the inclusion of the
6 question could increase NRFU costs by at least \$27.5 million,
7 correct?

8 A. Yes, that's correct.

9 MR. HO: And if we could blow up the last paragraph on
10 this page.

11 Q. Dr. Abowd, as you presented your findings in this memo, you
12 describe the \$27.5 million estimate as a conservative estimate,
13 is that correct?

14 A. That's correct.

15 Q. And one reason why it's a conservative estimate is because
16 the differences in self-response rates to the 2020 census
17 between citizen and noncitizen households may be even greater
18 than estimated in this memo, correct?

19 A. That's correct.

20 Q. And so, the memo describes the \$27.5 million cost as a
21 lower-bound estimate, correct?

22 A. Yes, that's correct.

23 Q. Now, one reason why you describe it as a lower-bound
24 estimate in your memo is that the estimate assumes that --
25 well, strike that.

IbdWnys5

Abowd - Direct

1 MR. HO: Let me try that again.

2 Q. One reason why you describe this as a lower-bound estimate
3 in your memo is that it may take more NRFU visits to enumerate
4 households that don't respond to the citizenship question than
5 you assumed in generating the \$27.5 million estimate, correct?

6 A. That's one of the reasons, yes.

7 Q. And another reason is that this lower-bound cost estimate
8 does not incorporate any estimate about the effect of a
9 citizenship question on reducing self-response rates from all
10 citizen households, correct?

11 A. That's correct.

12 Q. And another reason why this estimate is conservative and a
13 lower-bound estimate is that it does not capture increased
14 communication campaign costs that may be needed as a result of
15 the citizenship question, correct?

16 A. That's correct.

17 MR. HO: I want to bring us back to page 1 of the
18 memo, and I just want to look at the last sentence on page 1.

19 Q. Given everything that we've described, Dr. Abowd, your memo
20 describes adding a citizenship question to the 2020 census as
21 very costly, correct?

22 A. Correct.

23 Q. Now, the lower self-response rates resulting from the
24 addition of the citizenship question will also reduce the
25 quality of the data resulting from the 2020 census, correct?

IbdWnys5

Abowd - Direct

1 A. That's correct.

2 Q. And one reason for that is that when you get lower
3 self-response rates, you have to try to enumerate people
4 through NRFU efforts like proxies, correct?

5 A. That's correct.

6 Q. And generally speaking, when you do nonresponse follow-up,
7 you don't get answers that are as reliable as when you get
8 self-responses, correct?

9 A. By the coverage error measures that we use, that's correct,
10 yes.

11 Q. Your memo, in this same last sentence on the first page,
12 concludes that adding a citizenship question to the census
13 would harm the quality of the census count, correct?

14 A. That's correct.

15 Q. And that applies to both alternatives B and option D, which
16 Secretary Ross ultimately chose, correct?

17 A. That's correct.

18 Q. Dr. Abowd, harming the quality of the census data, that's a
19 bad thing, right?

20 A. Something we try to avoid, yes.

21 Q. I'd like to ask you about different data quality issue with
22 respect to the citizenship question. Dr. Abowd, you agree --
23 I'm sorry.

24 MR. HO: Let me start that again.

25 Q. Dr. Abowd, sometimes it happens that there's disagreement

IbdWnys5

Abowd - Direct

1 between a person's citizenship status as reflected in
2 administrative records and what that person reports or what's
3 reported for that person in response to the citizenship
4 question on the American Community Survey, correct?

5 A. That's correct.

6 Q. So sometimes administrative records indicate that someone
7 is a noncitizen but the ACS response indicates that that
8 person's a citizen, right?

9 A. Yes, that's correct.

10 Q. And in your memo, Plaintiffs' Exhibit 22, you describe
11 citizenship status as reflected in the administrative records
12 as "verified," correct; that's the term you use?

13 A. Yes, that's the term we use.

14 Q. And the reason you use the term "verified" is because the
15 person's citizenship status as reflected in administrative
16 records is based upon a legal document indicating that person's
17 citizenship status, correct?

18 A. That's correct.

19 Q. Now, by contrast, someone's citizenship status as reported
20 in response to the ACS citizenship question is based on a
21 survey response, not a legal document, correct?

22 A. That's correct.

23 Q. And so, you would describe that person's citizenship status
24 as referred to -- as reported, I'm sorry, in the ACS as
25 unverified, correct?

IbdWnys5

Abowd - Direct

1 A. Or a survey response, yes.

2 Q. Now, you agree, Dr. Abowd, that if someone is coded in
3 administrative records as a noncitizen, then it's reasonable to
4 conclude that that person is, in fact, a noncitizen, correct?

5 A. At the time at which the coding was done, yes.

6 Q. And you believe that when someone's ACS response says that
7 they are a citizen but the administrative records says that
8 they're not a citizen, then the most likely conclusion is that
9 the person is, in fact, a noncitizen, correct?

10 A. The survey response was citizen and the administrative
11 record response was noncitizen?

12 Q. Yes.

13 A. Correct, insofar as the administrative record is
14 contemporaneous with the survey response, yes.

15 Q. If all you have is an administrative record and all you
16 have is a survey response, the administrative record says
17 noncitizen, survey response says citizen, then you'd agree that
18 it's more likely than not that that person's a noncitizen,
19 right?

20 A. That's correct.

21 Q. So, Dr. Abowd, is it correct to say that citizenship status
22 is one characteristic where you believe that administrative
23 records tend to be more accurate than survey responses?

24 A. Yes, that's correct.

25 MR. HO: Let's bring back up Plaintiffs' Exhibit 22,

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Abowd - Direct

1 your January memo, page 8. I want to look at the second full
2 paragraph.

3 Q. Now, according to your memo, in the 2016 ACS, individuals
4 whom the administrative records indicate are noncitizens
5 responded "citizen" 34.7 percent of the time on the ACS
6 citizenship question, correct?

7 A. Did you say 2016; that's the number you read?

8 Q. Yes.

9 A. Yes.

10 Q. And overall, in the Census Bureau's research on this issue,
11 you've determined that for people for whom the administrative
12 records indicate that they're noncitizens, there's disagreement
13 between the administrative record and the ACS survey response
14 between 30 to 37 percent of the time, correct?

15 A. That's correct.

16 Q. And you'd agree, then, given what we discussed earlier,
17 that it's likely that for more than 30 percent of noncitizens
18 who provide a response to the ACS citizenship question, the
19 response is incorrect, right?

20 A. Response is in disagreement with the administrative record
21 and probably incorrect.

22 Q. Now, the Census Bureau has no empirical basis to believe
23 that noncitizens for whom a response is provided to a
24 citizenship question on the census will have more accurate
25 responses than they do to the citizenship question on the ACS,

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Abowd - Direct

1 correct?

2 A. That's correct.

3 Q. And in fact, Dr. Abowd, the Census Bureau believes that
4 there are definitely indications that responses by noncitizens
5 to a citizenship question on the 2020 census will be even less
6 accurate than they have historically been on the ACS, correct?

7 A. That's correct.

8 Q. The Census Bureau still hasn't made any determination about
9 how it will address disagreement between survey responses and
10 the administrative records when producing block-level CVAP data
11 for the Department of Justice after the 2020 census, correct?

12 A. For a public-use tabulation that will be used by the
13 Department of Justice, that's correct.

14 Q. Now, alternative C, Dr. Abowd, is to use administrative
15 data and no citizenship question to collect citizenship data
16 and then to rely principally on that administrative data to
17 produce block-level CVAP data for the Department of Justice,
18 correct?

19 A. That's correct.

20 Q. And under alternative C, you would take responses to the
21 census questionnaire and then link those responses to
22 administrative data with citizenship information in it,
23 correct?

24 A. That's correct.

25 Q. And the particular administrative records that you would

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Abowd - Direct

1 use under alternative C are the social security numerical
2 identification system, or NumIdent, data, correct?

3 A. I've never heard the acronym expanded, but yes, NumIdent is
4 the correct file.

5 MR. HO: Let's bring your memo back up, Plaintiffs'
6 Exhibit 22. I want to look at the first page, the last
7 paragraph, second sentence.

8 Q. Dr. Abowd, the conclusion that you reached in your memo is
9 that unlike including a citizenship question, using
10 administrative records to provide DOJ with block-level CVAP
11 data would not harm the quality of the census count, correct?

12 A. As long as it's done without simultaneously asking the
13 question on the census, yes.

14 Q. And if you just used the administrative records, you didn't
15 ask the citizenship question, under alternative C, you would
16 have to deal with a problem of survey responses and
17 administrative records that disagree, correct?

18 A. Correct.

19 Q. And so, the Census Bureau concluded that using
20 administrative records would deliver higher quality block-level
21 CVAP data by race and ethnicity than including a citizenship
22 question on the census, correct?

23 A. Yes.

24 Q. The Census Bureau's proposal to generate such block-level
25 CVAP data using administrative records rather than a

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Abowd - Direct

1 citizenship question had the backing of the Census Bureau's
2 redistricting office, correct?

3 A. Yes, it did.

4 Q. Now, this memo also concludes that using administrative
5 records would be far less costly than including a citizenship
6 question on the 2020 census, correct?

7 A. That's correct.

8 Q. And part of the reason is that if you use administrative
9 records but you don't include a citizenship question on the
10 census, you don't have increased NRFU costs, correct?

11 A. That's correct.

12 Q. And the conclusion of the Census Bureau that was reached in
13 this memo is that using administrative records and not
14 including a citizenship question on the census would best meet
15 DOJ's stated uses, correct?

16 A. That's correct.

17 Q. And you communicated that conclusion to Secretary Ross
18 during your meeting with him on February 12, 2018, correct?

19 A. Yes, we did.

20 Q. Now, the Census Bureau, during this period of time, also
21 offered to meet with the Department of Justice to discuss its
22 recommendations, correct?

23 A. That's correct.

24 Q. The analyses that we've been discussing, those began after
25 Arthur Gary -- or after a letter signed by Arthur Gary from the

IbdWnys5

Abowd - Direct

1 Department of Justice was sent to the Census Bureau requesting
2 a citizenship question on December 12, correct?

3 A. We got it on December 15, but that's correct, yes.

4 Q. And you're aware that Acting Census Bureau Director Ron
5 Jarmin subsequently wrote an email to Arthur Gary, correct?

6 A. Yes, I'm aware of that email.

7 MR. HO: OK. Let's bring up Plaintiffs' Exhibit 109.
8 This is in the administrative record and has been admitted into
9 evidence.

10 Q. Dr. Abowd, this is the email that we discussed from Acting
11 Census Bureau Director Ron Jarmin to Arthur Gary at the
12 Department of Justice, correct?

13 A. That's correct.

14 Q. And the top email on this thread is Acting Director Jarmin
15 forwarding to you and someone else the email that he had
16 written to Arthur Gary, correct?

17 A. That's correct.

18 MR. HO: Let's look at the email that Acting Director
19 Jarmin forwarded to you, the one that he wrote to Mr. Gary.
20 Acting Director Jarmin wrote to Mr. Gary on December 22:

21 "Thank you for your letter dated 12/12/2017 regarding
22 improving the quality of citizenship information for DOJ
23 enforcement of the Voting Rights Act. Let me start by saying
24 the bureau is fully supportive of providing DOJ with the
25 highest quality statistical information possible. To that end

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Abowd - Direct

1 I've directed staff to review all possible ways to address the
2 means expressed in the letter."

3 Q. Did I read that correctly?

4 A. Yes, you did.

5 Q. Dr. Abowd, when Acting Director Jarmin wrote this email,
6 you understand him to be making -- you understand him to be
7 referring to the analysis that you were working on with the
8 SWAT team, correct?

9 A. That's correct.

10 Q. This email, dated February 22, 2017, that's the same date
11 as the draft version of the Brown et al. memo in the
12 administrative record that we talked about, beginning after the
13 lunch break, correct?

14 A. That's correct.

15 MR. HO: Now, the next two sentences of Acting
16 Director Jarmin's email to Mr. Gary read:

17 "They have now briefed me and their findings suggest
18 that the best way to provide PL 94 block level data with
19 citizen voting population by race and ethnicity would be
20 through utilizing a linked file of administrative and survey
21 data the Census Bureau already possesses. This would result in
22 higher quality data produced at lower cost."

23 Q. Did I read that right?

24 A. Yes, you did.

25 Q. When Acting Director Jarmin referred to a linked file of

IbdWnys5

Abowd - Direct

1 administrative and survey data, your understanding is that's a
2 reference to alternative C in your memo, creating a citizenship
3 voting-age population table using administrative records,
4 right?

5 A. It is a reference to alternative C, but I believe he
6 intended to also discuss with them whether they would like us
7 to do it enhancing the American Community Survey or with some
8 other survey basis.

9 Q. And in his email to Mr. Gary, Acting Director Jarmin
10 referred to this as the "best way" to provide block-level CVAP
11 data to DOJ, correct?

12 A. That's correct.

13 Q. And Acting Director Jarmin, in his email to the Department
14 of Justice, referred to this option of using administrative
15 records as producing "higher quality data produced at lowest
16 cost," right?

17 A. That's correct.

18 Q. The last sentence of Acting Director Jarmin's email to Mr.
19 Gary at the Department of Justice says, "I suggest we schedule
20 a meeting of census and DOJ technical experts to discuss the
21 details of this proposal."

22 You're aware that a meeting was tentatively scheduled
23 between Mr. Gary and Acting Director Jarmin for mid-January,
24 right, Dr. Abowd?

25 A. I'm aware from the administrative record, yes.

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Abowd - Direct

1 Q. And you're aware that that meeting never took place,
2 correct?

3 A. That meeting never took place, that's correct.

4 Q. And in fact, Dr. Abowd, the Department of Justice refused
5 to take the meeting referenced here in this email for the
6 purpose of discussing the Census Bureau's proposal to produce
7 higher quality CVAP data at lower cost than adding a
8 citizenship question to the census, correct?

9 A. I don't know personally that the Department of Justice
10 refused. I've read in the administrative record the same
11 things that you have; it never happened.

12 Q. And the reason it never happened is because DOJ leadership
13 didn't want that meeting to take place, right, Dr. Abowd?

14 MR. EHRLICH: Objection.

15 THE COURT: Sustained.

16 Q. Your understanding is that DOJ leadership didn't want that
17 meeting to take place, right, Dr. Abowd?

18 A. That is my understanding, yes.

19 Q. Dr. Abowd, I'd like to show you some deposition testimony
20 that has been designated as evidence in this case and ask you
21 about your knowledge of it.

22 MR. HO: With the Court's permission, your Honor, we'd
23 like to play a very short clip of acting -- Assistant Attorney
24 General John Gore's deposition designations, which have been
25 filed with the Court, which have been lodged with the Court and

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Abowd - Direct

1 filed publicly.

2 THE COURT: Any objection?

3 MR. EHRLICH: We don't see any need to do that, your
4 Honor. He can ask Dr. Abowd his opinion and Dr. Abowd can give
5 his opinion. I'm not sure why we need to watch a video clip,
6 which your Honor said you would watch on your own time.

7 THE COURT: And I've already watched on my own time,
8 but that being said, I'll let Mr. Ho engage in his examination
9 the way he would like if there's no basis to object.

10 You may proceed.

11 MR. HO: Thank you, your Honor. The clip is very
12 short. It's from page 274 of Mr. Gore's deposition. The lines
13 have been designated lines 5 through 9, and we'll try to play
14 it now.

15 (Video played)

16 BY MR. HO:

17 Q. Dr. Abowd, at the time the bureau was informed that the
18 Department of Justice did not want to meet to discuss the
19 Census Bureau's proposal for higher quality CVAP data at the
20 lower cost, were you aware that the attorney general personally
21 made that decision?

22 A. I was not.

23 Q. When did you become aware of that?

24 A. When the administrative record revealed it.

25 Q. Have you ever heard of another circumstance in which the

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Abowd - Direct

1 attorney general personally directed staff at the Department of
2 Justice not to meet with the Census Bureau to discuss a
3 proposal for higher quality data that the Department of Justice
4 requested?

5 A. I have not, no.

6 Q. Are you aware of any other circumstance in which a cabinet
7 secretary personally directed agency staff not to meet with the
8 Census Bureau?

9 A. I'm not aware of any circumstances, no.

10 Q. Dr. Abowd, in your experience, is it unusual for the Census
11 Bureau to receive a data request from an agency and then for
12 that agency to refuse to meet with the Census Bureau to discuss
13 the technical aspects of that data request?

14 A. Yes, it is.

15 Q. Now, sometime, Dr. Abowd, after your meeting with Secretary
16 Ross on February 12, you were asked to consider a fourth
17 alternative, which we've been referring to as option D or
18 alternative D. Is that correct?

19 A. That's correct.

20 Q. Just so we're clear, alternative D combines both
21 alternatives B and C; that is, you both add a citizenship
22 question to the census and you look at administrative records
23 on citizenship under alternative D, correct?

24 A. That's correct.

25 Q. And your understanding was that after that February 12

IbdWnys5

Abowd - Direct

1 meeting, Secretary Ross and Undersecretary Kelley wanted you to
2 work on alternative D, correct?

3 A. To evaluate it, yes, that's correct.

4 Q. And Acting Director Jarmin told you that, right?

5 A. Yes, he did.

6 MR. HO: I want to look at Plaintiffs' Exhibit 25.
7 This is admitted into the trial record as a part of the
8 administrative record.

9 Q. Dr. Abowd, this is a memo under your name assessing
10 alternative D, correct?

11 A. That's correct.

12 I want to note the watermark isn't on this page again, but
13 it is the administrative record.

14 Q. I think it has something to do with the screen. I
15 apologize for that.

16 But this is the version, 1.0, of the draft memo that you
17 prepared at the request of Acting Director Jarmin on the
18 subject of alternative D, right, Dr. Abowd?

19 A. That's correct.

20 Q. And it was directed through Acting Director Jarmin to the
21 undersecretary and to the secretary of commerce, correct?

22 A. That's correct.

23 Q. And the views expressed in this memo are those of the
24 senior executive staff at the Census Bureau, correct?

25 A. That's correct.

IbdWnys5

Abowd - Direct

1 Q. And you're not aware of any subsequent versions of this
2 memo, correct?

3 A. I am not.

4 MR. HO: Let's turn to page 5 of this memo, which is
5 administrative record page 1312.

6 Q. The final paragraph sets forth the conclusion of the Census
7 Bureau about alternative D in comparison to alternative C,
8 correct?

9 A. Yes, it does.

10 Q. And you concluded that alternative D would result in poorer
11 quality citizenship data than alternative C; it would still
12 have all the negative cost and quality implications of
13 alternative B outlined in the draft January 19, 2018, memo to
14 the Department of Commerce, correct?

15 A. That's correct.

16 Q. And so, the Census Bureau did not recommend alternative D,
17 correct?

18 A. That was also correct.

19 Q. And the Census Bureau still does not recommend alternative
20 D, correct?

21 A. That's correct.

22 Q. But Secretary Ross selected alternative D anyway, correct?

23 A. The secretary instructed us to do alternative D, that's
24 correct.

25 MR. HO: Now, I want to ask you about overall census

IbdWnys5

Abowd - Direct

1 data quality under C and D. And let's look at page 4 of this
2 memo, the last full paragraph. I want to highlight the third
3 sentence, beginning with "however," about five lines down.

4 Q. Now, your March memo here notes that because alternative D
5 involves adding a citizenship question to the census, the
6 Census Bureau expects to see the same reduction in
7 self-response rates that you would see under alternative B,
8 correct?

9 A. That's correct.

10 MR. HO: I want to ask you about the next sentence,
11 starting with "not only."

12 Q. Your memo notes that the reduction in response rates, under
13 alternative D, would lead to more enumerations through the NRFU
14 process and more incorrect enumerations than you'd have under
15 alternative C, correct?

16 A. Yes.

17 MR. HO: And then let's highlight the next sentence,
18 starting with "in the 2010 decennial census."

19 Q. The memo notes that the increased number of enumerations
20 through the NRFU process under alternative D will produce lower
21 quality personal data on the census responses as compared to
22 alternative C, correct?

23 A. That's correct.

24 Q. So if your goal is to have an accurate census, then
25 alternative C is superior to alternative D, correct?

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Abowd - Direct

1 A. That's correct.

2 Q. Now, under alternative D, due to the lower quality personal
3 data on census responses from increased number of households
4 going through NRFU, there will also be a reduction in the
5 number of individuals whom the Census Bureau can link to
6 administrative records, correct?

7 A. Yes. I thought that's what we were talking about, but yes,
8 that's correct.

9 Q. OK. Well, if we look at this, here, if we look at the last
10 sentence here, for the 2010 census, you're able to link 93
11 percent of self-responses to administrative records, correct?

12 A. Yes.

13 Q. But for proxy responses obtained through the NRFU process,
14 you're only able to link 33.8 percent of such individuals
15 through administrative records, correct?

16 A. That's correct.

17 Q. So just to be clear, under alternative D, there are going
18 to be fewer people that you can link to administrative records
19 than if you had -- if the secretary had instead chosen
20 alternative C, correct?

21 A. That's correct.

22 I said yes. I must be getting -- I'm sorry. Yes, that's
23 correct.

24 Q. OK.

25 MR. HO: Now, let's turn back to Secretary Ross's

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Abowd - Direct

1 decision memo, Plaintiffs' Exhibit 26, and I want to look at
2 page 5 of the memo, the first paragraph on page 5.

3 Q. The secretary's discussing alternative D in this paragraph,
4 correct?

5 A. Yes, he is.

6 MR. HO: And I want to ask you about the third
7 sentence in this paragraph, starting with "this may eliminate."
8 I want to ask you about what Secretary Ross is referring to
9 here.

10 Q. One limitation of alternative C, using administrative
11 records, Dr. Abowd, is that not every person who is enumerated
12 in the census can be linked to administrative records, correct?

13 A. That's correct.

14 Q. So if you rely on administrative records -- excuse me,
15 under alternative C, to produce block-level CVAP data for DOJ,
16 there's a portion of the population for whom you're going to
17 have to impute, or model, their citizenship status, correct?

18 A. I prefer model, but yes, that's correct.

19 Q. The secretary's decision memo suggests that under
20 alternative D, that might eliminate the need for such modeling
21 of citizenship status for people who cannot be matched to
22 administrative records, right?

23 A. That's what he says, yes.

24 Q. Dr. Abowd, you analyzed the question of whether alternative
25 D could potentially address this gap in the administrative

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Abowd - Direct

1 records, right?

2 A. Yes, we did.

3 MR. HO: All right. Let's bring your memo back up,
4 from March, Plaintiffs' Exhibit 25. Let's look at page 4.

5 Q. And under the header "can survey data address the gaps in
6 alternative C," this is the section where you address this
7 issue that Secretary Ross is talking about in his memo that we
8 talked about a moment ago, whether or not alternative D can
9 effectively address that gap in the administrative records,
10 right?

11 A. There may have been other paragraphs, but it's certainly
12 discussed in this one as well.

13 Q. Now, under alternative D, if you get a survey response on
14 citizenship status for someone who can't be matched to the
15 administrative records, you're going to use that survey
16 response, right?

17 A. We're going to include that survey response in the record
18 of the 2020 census, yes.

19 Q. Right. I mean, you wouldn't, if you -- for this group of
20 people who can't be matched to administrative data but you get
21 a survey response, you wouldn't model their citizenship status;
22 you would take the survey response as to citizenship for that
23 person, right?

24 A. As I think I've explained in several depositions, we've
25 charged a high-level expert panel that I'm the chair of inside

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Abowd - Direct

1 the Census Bureau to develop a scientific answer to the
2 question you just asked. In the presence of a dual set of
3 records on citizenship status, it isn't obvious what the best
4 way to translate that into an estimate of citizen voting-age
5 population is.

6 Q. I apologize, Dr. Abowd. My question was probably
7 confusingly worded. I wasn't talking about people for 94 whom
8 there are dual records. I mean people who can't be linked to
9 the administrative record but for whom you do have a survey
10 response as to their citizenship status. You're going to use
11 the citizenship response for that person rather than
12 modeling -- you're going to use the survey response for that
13 person rather than modeling their citizenship status, correct?

14 A. I suspect that the internal expert panel will draw that
15 conclusion, but I want to say, once again, it is unusual to
16 dual source this, and it's not necessarily the best scientific
17 answer that you always use the survey if you don't have an
18 administrative record or that you always use the administrative
19 record when you don't have a survey. The modeled answer can be
20 defended on objective ground, but we haven't developed it yet.

21 Q. There's currently no objective grounds on which if all you
22 have about a person's citizenship status is their survey
23 response for you to reject the survey response, correct,
24 Dr. Abowd?

25 A. That's correct.

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Abowd - Direct

1 Q. Now, as we established earlier, though, Dr. Abowd, the
2 Census Bureau believes that noncitizens give an answer to the
3 citizenship question on the ACS that's probably wrong more than
4 30 percent of the time, right?

5 A. That disagrees with the administrative record more than 30
6 percent of the time, yes.

7 Q. And you noted in this March memo that a problem with
8 relying on the citizenship question to fill gaps in the
9 administrative record is that people who are not citizens have
10 a strong incentive to provide an incorrect answer to a
11 citizenship question if they answer at all, right?

12 A. That's correct.

13 Q. And the memo notes that even a large fraction of legal
14 permanent residents provide incorrect answer, survey responses
15 to the citizenship question on the ACS, correct?

16 A. That's correct.

17 Q. And so, a key difference between alternatives C and D is
18 for this population of people for whom you can't link to
19 administrative records, under alternative C, you model their
20 citizenship status and, under alternative D, if you get it, you
21 try to use the survey self-response, right?

22 A. I think that's a fair characterization, yes.

23 Q. But given the errors in survey responses to citizenship
24 questions that we discussed earlier, this memo, Dr. Abowd,
25 concludes that survey-collected citizenship data may not be

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Abowd - Direct

1 reliable for many of the people falling in the gaps in the
2 administrative record, correct?

3 A. Correct.

4 MR. HO: And let's look at page 4 of your memo.

5 Q. The second-to-last sentence in the last paragraph, starting
6 with "this suggests," that's where you made that conclusion in
7 this memo, right, Dr. Abowd?

8 A. That's correct.

9 MR. HO: Let's turn to page 5 of the memo and look at
10 the first sentence, full sentence, starting with "thus, not
11 only are citizenship data."

12 Q. Your March memo to Secretary Ross, Dr. Abowd, states that
13 citizenship survey data gathered under alternative D, it
14 describes such data as being of "suspect quality," correct?

15 A. Correct.

16 Q. But the memo --

17 MR. HO: Let's flip back to page 4 of the memo, and
18 the second paragraph, the first sentence.

19 Q. The memo describes the administrative data on citizenship
20 as "high quality," correct?

21 A. Correct.

22 Q. Dr. Abowd, there's no reason to think, for the group of
23 people that you can't match to administrative records, that on
24 average the survey responses under alternative D would be more
25 accurate than the modeling that you would conduct under

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Abowd - Direct

1 alternative C, right?

2 A. That's correct.

3 Q. And in fact, Dr. Abowd, for this group of people falling in
4 the gaps of the administrative records, your view is that the
5 modeled responses to citizenship status under alternative C
6 would be more likely to be accurate than the survey
7 self-responses to a citizenship question under alternative D,
8 correct?

9 A. That's correct.

10 Q. So, Dr. Abowd, for this group of people who can't be
11 matched to administrative records, the Census Bureau's view is
12 that the modeled responses to citizenship status under
13 alternative C would be more likely to be accurate than the
14 survey self-responses to a citizenship question under
15 alternative D, correct?

16 A. That's correct.

17 Q. And as we established earlier, Dr. Abowd, the number of
18 individuals you can't match at all to administrative records,
19 that's going to be higher under alternative D than under
20 alternative C, right?

21 A. Also correct.

22 Q. So for people who can't be linked to administrative
23 records, if you're attempting to determine their citizenship
24 status, Dr. Abowd, you would prefer modeling it to a survey
25 self-response, right?

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Abowd - Direct

1 A. A little too compound. Could you ask it --

2 Q. Sure.

3 A. -- straightforwardly.

4 Thank you.

5 Q. If you want to get accurate citizenship information about
6 people who fall in the gaps of the administrative records, Dr.
7 Abowd, your recommendation would be to model their citizenship
8 status rather than to try to collect it through a survey
9 self-response, correct?

10 A. That's correct.

11 Q. And Dr. Abowd, if the Department of Justice's goal is to
12 get accurate block-level CVAP data, then for this group of
13 people who fall in the gaps of the administrative records, the
14 best course of action is to use -- is to impute their
15 citizenship status rather than use a survey question, correct?

16 A. Most accurate data would come from modeling their
17 citizenship status, that's correct.

18 MR. HO: OK. Now let's turn back to Secretary Ross's
19 decision memo, page 5. I want to look at the first paragraph
20 and the last two sentences that start with "finally."

21 Q. I'd like you to read that to yourself and then, when you're
22 ready, let me know.

23 A. I'm ready.

24 Q. In these two sentences in this paragraph, Dr. Abowd, is it
25 your understanding that Secretary Ross is suggesting that

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Abowd - Direct

1 including a citizenship question on the 2020 census will enable
2 the Census Bureau to model citizenship status more accurately
3 by determining the accurate ratio of citizen to noncitizen
4 responses?

5 A. So, once again, the secretary did not discuss this with me
6 so I don't know exactly what nuances he meant. He appears to
7 believe that we would get more accurate CVAP data if we had
8 access to both the survey responses and the administrative
9 data, yes.

10 Q. And the assertions in this, these two sentences of this
11 paragraph, Dr. Abowd, the commerce department never discussed
12 this with the chief scientist at the Census Bureau, right?

13 A. It was not discussed with me, that's right.

14 Q. Dr. Abowd, the two sentences here, they make technical
15 presumptions that the Census Bureau does not currently endorse,
16 correct?

17 A. Once again, I'm not privy to the technical assumptions.
18 They appear to say that the secretary believes it would be more
19 accurate if we had access to both the survey responses and the
20 administrative data.

21 Q. That assertion, as you understand it, Dr. Abowd, makes
22 technical presumptions that the Census Bureau would not
23 currently endorse, correct?

24 A. That's correct.

25 Q. And as of March 26, 2018, when Secretary Ross issued this

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1 memo, the Census Bureau had not completed any analysis as to
2 whether or not the inclusion of a citizenship question would
3 better -- would enable the Census Bureau to more accurately
4 model citizenship status for people falling in the gaps of the
5 administrative records, correct?

6 A. We hadn't done any of that modeling at that time, that's
7 correct.

8 MR. HO: I want to ask you about another memo of yours
9 that's in the administrative record, Plaintiffs' Exhibit 24.
10 This is in the administrative record and has been admitted into
11 the trial record.

12 Q. You recognize this memo, right, Dr. Abowd?

13 A. Yes, I do.

14 Q. It's a memo that quantifies, under one set of assumptions,
15 some of the data quality differences between alternatives C and
16 D, right?

17 A. Yes.

18 MR. HO: Let's turn to page 3 of the memo and figure
19 1.

20 Q. Now, this is a breakdown of the Census Bureau's analysis of
21 data quality under alternative C, right?

22 A. Yes, it is.

23 Q. So at the time of this analysis, the bureau posited that
24 under alternative C, you could link 295 million out of the 330
25 million people whom you expect to enumerate during the 2020

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Abowd - Direct

1 census to administrative records containing citizenship, right?

2 A. Yes.

3 Q. That's about 89.4 percent of the population; sound right?

4 A. That does sound right, yes.

5 Q. According to this analysis, there's about 35 million people
6 whom you'd expect not to be able to link to administrative
7 records, right?

8 A. That's correct.

9 Q. That's about 10.6 percent of the population that would fall
10 into that gap of the administrative records that we've been
11 discussing, right?

12 A. That's correct.

13 Q. So under alternative C you would model citizenship status
14 for this about 10 percent of the population, right?

15 A. That's correct.

16 MR. HO: Let's turn to the next page, page 4 of the
17 memo, figure 2.

18 Q. Now, this is a breakdown of data quality under alternative
19 D, correct?

20 A. Yes, it is.

21 Q. Little more complicated than alternative C, right?

22 A. It has more boxes, yes.

23 MR. HO: All right. Let's walk through this.

24 Q. On the right side of this chart, the bureau posited that
25 there would be 35.4 million people for whom you would not get a

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Abowd - Direct

1 response to the citizenship question on the 2020 census, right?

2 A. Yes.

3 Q. And if we look at the far left-hand side of the chart, the
4 bureau posits that there are 263 million people who you would
5 get a response to the citizenship question and whom you could
6 link to administrative records, and the administrative record
7 and the citizenship response would be the same, right?

8 A. You're on the far left, right?

9 Q. Yes.

10 A. 263 million?

11 Q. Yes.

12 A. Yes, that's right.

13 Q. So if we add these two groups together, 263 million, where
14 the question response and the administrative records are the
15 same, and 35.4 million people for whom you don't get an answer
16 to the citizenship question at all, that group together,
17 collectively, putting a citizenship question on the census
18 doesn't give us any better information than if we had no
19 citizenship question on the census, right?

20 A. Yes, that's right.

21 Q. OK. So if we add them together, that's 298.4 million
22 people for whom the citizenship question doesn't give us better
23 information about their citizenship status?

24 A. That's correct.

25 Q. That's 90.4 percent of the population, right?

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Abowd - Direct

1 A. You've been doing well on the ratios, so I assume you did
2 that one right too. Thank you.

3 Q. OK. Now let's talk about the rest of the population. You
4 have, in the middle branch of this chart, 22.2 million people,
5 under alternative D, who you'd expect to give a response to the
6 citizenship question and who couldn't be linked to an
7 administrative record on citizenship, right?

8 A. That's correct.

9 Q. And you also have, on the far right-hand side here, 13.8
10 million people who have no response to a citizenship question
11 and no administrative record on citizenship, right?

12 A. That's correct.

13 Q. So you add those two numbers together, that's 36 million
14 people, under alternative D, who can't be linked to
15 administrative records on citizenship, right?

16 A. Yes.

17 Q. Now, that's more people who can't be linked to
18 administrative records than you had under alternative C, right?

19 A. That is correct.

20 Q. That's because of the reduction in data quality because of
21 more NRFU under alternative D, right?

22 A. That's correct.

23 Q. And that's one of the manifestations in which alternative D
24 produces worse data than alternative C, right?

25 A. Yes, that's right.

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Abowd - Direct

1 Q. OK. Let's look again at the chart and the sort of middle
2 subbranch of the left branch of the chart, the 9.5 million.

3 Under alternative D, the Census Bureau posited you'd have
4 9-1/2 million people for whom the survey self-response on
5 citizenship and the administrative record disagree, right?

6 A. That's right.

7 Q. And you don't have any plan for what you would do with
8 those people right now, right?

9 A. That we'd have to study, yes.

10 Q. And the traditional Census Bureau practice is that if you
11 have a survey response that conflicts with an administrative
12 record, you generally rely on the survey response, right?

13 A. So, I hope that I didn't say so unambiguously in any of the
14 depositions that there was a general practice here. I thought
15 I said that this was a pretty unusual situation and that's why
16 we are going to study it further. We don't generally put
17 ourselves in the situation where we have a disagreement and --
18 we try to address the disagreements in the design of the data
19 product.

20 Q. Dr. Abowd, I want to bring you back to your October 5
21 deposition, your third deposition in this case.

22 A. OK.

23 Q. And specifically page 416, line 15:

24 "Q. Now, the traditional Census Bureau practice, in general,
25 is that if you have a survey response that conflicted with an

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Abowd - Direct

1 administrative record, you generally rely on the survey
2 response, correct?

3 "A. Correct."

4 Was that my question for you and your answer that day?
5 A. Yes, it was.

6 MR. HO: OK. Can we come back to the chart from the
7 memo, figure 2.

8 Q. Dr. Abowd, for that group of people, the 9-1/2 million
9 people for whom the survey response and the administrative
10 record conflict, if you use what you described in your 30(b)(6)
11 deposition as the traditional Census Bureau practice of relying
12 on the survey response instead of the administrative record,
13 you agree that that would probably be more accurate -- more
14 inaccurate, excuse me, than relying on the administrative
15 record, correct?

16 A. Yes, I do.

17 (Continued on next page)

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Abowd - Direct

1 BY MR. HO:

2 Q. But if you relied on the administrative record instead of
3 a survey response, there would have been no reason to ask a
4 survey question in the first place, right?

5 A. That's correct.

6 Q. Now, to be clear, this problem doesn't exist under the
7 alternative C, right?

8 A. Also correct.

9 Q. Lets come back to this chart.

10 Now I asked you a while ago about the 22.2 million people
11 who fall in that gap, can't be linked to administrative
12 records, but from whom you anticipate getting a response to the
13 citizenship question.

14 That's an accurate characterization of the 22.2, right?

15 A. Not linked?

16 Yes, that's correct.

17 Q. That is about 6.7 percent of the population that can't be
18 linked to administrative records, but under alternative D, you
19 have a survey response, right?

20 A. That's correct.

21 Q. Now, under alternative C, you would expect to be able to
22 link some of these people to administrative records, right,
23 Dr. Abowd?

24 A. Yes, that's correct.

25 Q. But leave that aside.

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Abowd - Direct

1 For this group of 22.2 million people under alternative D,
2 if you follow traditional Census Bureau practices, you would
3 use the survey response rather than modeling their citizenship
4 status, right?

5 A. That's correct.

6 Q. And in your opinion, that would be less accurate than if
7 you just went with modeling their citizenship status, right?

8 A. That's correct.

9 Q. Dr. Abowd, if someone argued that alternative D was
10 justified because alternative C requires modeling citizenship
11 status for people who can't be linked to administrative
12 records, you would disagree with that conclusion, right?

13 A. I would like you to ask it again. If you could just read
14 it back, if you want. I want to make sure I heard the
15 qualifying statements exactly.

16 Q. Dr. Abowd, if someone argued to you that alternative C
17 is -- excuse me -- I'll try that again.

18 Dr. Abowd, if someone argued to you that alternative D is
19 justified because under alternative C, you would have to model
20 the citizenship status for this pool of people who can't be
21 linked to administrative records, you would disagree with that
22 conclusion, right?

23 A. Yes, I would.

24 Q. And the Census Bureau would disagree with that argument,
25 right?

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Abowd - Direct

1 A. Yes.

2 Q. Now, this chart, Dr. Abowd, there is a version of this --
3 excuse me -- there are multiple versions of this in the Brown
4 memo, right?

5 A. That's correct.

6 Q. I just want to identify them so that the court is aware of
7 where they are.

8 If we can turn back to Plaintiffs' Exhibit 162, and
9 page 50 of the paper.

10 Starting on page 50 through pages 53, you go through four
11 possible scenarios for data quality under alternative D, is
12 that right?

13 And can we scroll through those, please.

14 A. Yes, that's correct.

15 Q. These scenarios all are constructed under different
16 assumptions, right, Dr. Abowd?

17 A. Yes, that's correct.

18 Q. And after conducting all of these scenarios, the conclusion
19 of the Census Bureau remains that alternative D produces worse
20 data quality than alternative C, correct?

21 A. That's correct.

22 THE COURT: Did you explain what AD REC means?

23 Did I miss that?

24 THE WITNESS: I did not, your Honor. It is a
25 shorthand for administrative record, ad. rec.

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Abowd - Direct

1 THE COURT: Thank you.

2 BY MR. HO:

3 Q. Lets go back to the Ross memo, Plaintiffs' Exhibit 26. I
4 want to look at page five.

5 I think that's the Brown memo. The Ross memo, Plaintiffs'
6 Exhibit 26.

7 The first three sentences of the first paragraph. I want
8 to compare this, if we can, to your March memo, Plaintiffs'
9 Exhibit 25, page five of your memo, the second to last
10 paragraph.

11 So Secretary Ross orders option D, but your conclusion
12 before he made that decision was that including a citizenship
13 question on the 2020 census does not solve the problem of
14 incomplete person linkages when producing citizenship
15 statistics after 2020, correct?

16 A. I confess that I've gotten the providence of boxes
17 confused.

18 Q. Sure.

19 The one on the bottom, that has your conclusion that
20 including a citizenship question in the 2020 census does not
21 solve the problem of incomplete citizenship linkages when
22 producing citizenship statistics?

23 A. From the March 1 memo?

24 Q. Yes.

25 A. OK. Yes.

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Abowd - Direct

1 Q. That's correct, Dr. Abowd?

2 A. Yes, that's correct.

3 Q. When Secretary Ross in his decision memo wrote that
4 alternative D may eliminate the need for the Census Bureau to
5 have to model citizenship status for millions of people, you
6 had already concluded, in fact, that alternative D did not
7 solve that problem, right?

8 A. That's correct.

9 Q. And you also concluded in this memo that alternative C is
10 cheaper than alternative D, right?

11 A. That's correct.

12 Q. And you also concluded that using administrative records
13 alone would be more accurate than attempting to combine
14 administrative records and survey responses under alternative
15 D, right?

16 A. That's correct.

17 Q. And you communicated all of that to Secretary Ross through
18 your memo before his decision memo was issued, correct?

19 A. That's correct.

20 Q. I want to bring up Plaintiffs' Exhibit 359. This has been
21 admitted into the trial record.

22 Dr. Abowd, you're familiar with this, right?

23 A. Yes. It's statistical policy directive number two.

24 Q. From the Office of Management and Budget, correct?

25 A. Yes.

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Abowd - Direct

1 Q. The Census Bureau is bound by OMB standards and guidelines,
2 correct?

3 A. The office of the chief statistician is charged with
4 supervising the activities of the statistical agencies of the
5 United States Government, yes.

6 Q. I want to turn to page 16 of the document, of the PDF which
7 is page 11 of the document for the record.

8 Standard 2.3 reads: Agencies must design and administer
9 their data collection instruments and methods in a manner that
10 achieves the best balance between maximizing data quality and
11 controlling measurement error while minimizing respondent
12 burden and cost.

13 I read that correctly, right?

14 A. Yes, you did.

15 Q. And the Census Bureau is bound by standard 2.3, correct?

16 A. The Census Bureau is required by the Office of Management
17 and Budget to justify its actions in light of standard 2.3.

18 Q. Dr. Abowd, within the meaning of standard 2.3, the
19 Secretary's chosen option, alternative D, results in lower data
20 quality than the Census Bureau's recommendation of
21 alternative C, correct?

22 A. That's correct.

23 Q. Dr. Abowd, within the meaning of standard 2.3, the
24 Secretary's chosen option of alternative D also has a higher
25 respondent burden than the Census Bureau's recommendation of

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Abowd - Direct

1 alternative C, correct?

2 A. That's correct.

3 Q. Dr. Abowd, within the meaning of standard 2.3, the
4 Secretary's chosen option of alternative D has a higher cost
5 than the Census Bureau's recommendation alternative C, correct?

6 A. That's correct.

7 Q. Guideline 2.3.1 reads: Design the data collection
8 instrument in a manner that minimizes respondent burden, while
9 maximizing data quality.

10 Did I read that right?

11 A. Yes, you did.

12 Q. Dr. Abowd, choosing alternative D over alternative C does
13 not comport with guideline 2.3.1, correct?

14 A. So the Census Bureau's obligation is not to determine how
15 OMB will interpret guideline 2.3.1 in terms of our actions.

16 I think I already said alternative D delivers higher
17 quality data at lower cost.

18 Q. And alternative C --

19 A. I'm sorry. I misspoke.

20 Q. Alternative C delivers high quality data at lower cost?

21 A. That's what I meant to say. Sorry.

22 Q. It does so with lower respondent burden, correct?

23 A. Yes, it does.

24 Q. All of that and choosing alternative C would be consistent
25 with guideline 2.3.1, correct?

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Abowd - Direct

1 A. Yes, it would.

2 Q. In the meetings that you had with Commerce Department
3 officials, you heard Commerce Department officials opine that
4 alternative D would be better than alternative C, right?

5 A. So in none of the meetings -- first of all, I only met with
6 the Secretary once on this subject. I believe with the Under
7 Secretary only once.

8 And I believe in those meetings, some staff members
9 may have opined there are reasons why they thought that certain
10 alternatives would be better. But, frankly, I don't remember
11 any such conversations. I remember being asked a lot of
12 questions and being asked questions that suggested that one or
13 another of the persons in the room thought one way of doing it
14 might be better than the other.

15 I'm sure I said this in my fact deposition. There was
16 a very open discussion with both the Under Secretary and the
17 Secretary in the only time I was in a meeting with them on this
18 subject. Subsequently, Dr. Lamas had additional discussions
19 with them, I think primarily Dr. Jarmin, and I won't
20 characterize those because I wasn't in those meetings.

21 Q. Dr. Abowd, you remember a meeting where a member of
22 Secretary Ross' staff, Earl Comstock, expressed the opinion
23 that alternative D would be superior to alternative C because
24 it would enable you to fill the gaps in the administrative
25 record?

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Abowd - Direct

1 A. So, frankly, I don't remember being in a meeting when
2 alternative D was already on the table. He was in the meeting
3 on February 12, but I don't believe we were discussing
4 alternative D at that time, except in the sense of comparing
5 B to C. I don't recall being in a meeting with him.

6 Q. Dr. Abowd, I'm going to bring up for you a section of your
7 deposition transcript on October 5, 2018, page 422, lines 3
8 through 11.

9 Go ahead and read that and see if it refreshes your
10 recollection.

11 A. OK. Out loud?

12 (Pause)

13 Q. Does that refresh your recollection, Dr. Abowd?

14 MR. EHRLICH: Your Honor, I would say, again, he is
15 testifying there as a 30(b)(6) witness for the Census Bureau.

16 THE COURT: I think the law is clear you can show a
17 witness absolutely anything to refresh his recollection, so
18 that is what is being done here.

19 The objection's overruled.

20 A. May I ask to see the question that preceded this?

21 Q. You could. Sure.

22 THE COURT: For the record, I recall a lecture for the
23 bar saying that you could refresh recollection with a bowl of
24 fettuccine alfredo. By that standard, this is certainly
25 proper.

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Abowd - Direct

1 Go ahead.

2 BY MR. HO:

3 Q. The previous question is on page 421, line 17. Feel free
4 to read that to yourself.

5 Just let me know when you're ready.

6 (Pause)

7 A. I would like to qualify that --

8 Q. I haven't put a question to you yet, Dr. Abowd.

9 A. OK. Go ahead.

10 Q. Could I?

11 A. Yes. Go ahead.

12 Q. Reading that, does that refresh your recollection about
13 whether or not you've ever heard Earl Comstock express the view
14 that alternative D is superior to alternative C because it
15 fills in the gaps in the administrative record?

16 A. So I understood my duty when I was testifying as the
17 agency's 30(b)(6) witness --

18 THE COURT: Hold on, Doctor. The answer to that
19 question is either yes or no. It either refreshes your
20 recollection --

21 THE WITNESS: Yes, it does refresh my recollection.

22 THE COURT: Now I'm sure Mr. Ho will ask you another
23 question.

24 BY MR. HO:

25 Q. You don't agree with Mr. Comstock's opinion, right,

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Abowd - Direct

1 Dr. Abowd?

2 A. That's correct.

3 Q. And the Census Bureau does not agree with Mr. Comstock's
4 opinion, right, Dr. Abowd?

5 A. That is correct.

6 Q. The Census Bureau communicated its disagreement with that
7 opinion to Mr. Comstock, right?

8 A. Yes, that is correct.

9 Q. And if Mr. Comstock testified in a deposition, Dr. Abowd,
10 that the Census Bureau never communicated its disagreement with
11 that opinion, Mr. Comstock would be wrong, right, Dr. Abowd?

12 A. I believe that's the case, yes.

13 Q. Secretary Ross didn't choose alternative C, he chose
14 alternative D anyway, right, Dr. Abowd?

15 A. That's correct.

16 Q. Now, I just want to back up and ask you a few questions
17 about how this process unfolded.

18 Dr. Abowd, you would agree that normally, the process of
19 testing content on the census, is a decade-long process
20 involving multiple tests and various randomized control tests,
21 correct?

22 A. Yes.

23 Q. Lets bring up Plaintiffs' Exhibit 271. This has been
24 admitted into the trial record. This is 2020 census program
25 memorandum series 2016.05, dated April 29, 2016, from Lisa

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Abowd - Direct

1 Blumerman.

2 A. Blumerman.

3 Q. Blumerman. Thank you, Dr. Abowd.

4 The subject of this memo is: Plan development and
5 submission of subjects planned for the 2020 census program and
6 questions planned for the 2020 census program.

7 Right, Dr. Abowd?

8 A. Yes.

9 Q. I'm going to refer to this document as the Blumerman memo.

10 OK?

11 A. Yes.

12 Q. Now, as of the date that she signed this memo, Lisa
13 Blumerman was an associate director for the 2020 census,
14 correct?

15 A. That's correct.

16 Q. Lets turn to page three. I want to look at the section
17 under the header Federal Agency Input.

18 The first paragraph, the last sentence reads: Federal
19 agencies with known uses of the 2020 census or ACS content, and
20 sector agencies, will receive a letter with instructions for
21 how federal data users may provide updates to the documentation
22 of data uses. Responses should be received before July 1,
23 2016. Census Bureau staff may follow up with federal users
24 directly if more clarification is required.

25 Dr. Abowd, do these sentence conform to your understanding

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Abowd - Direct

1 of how the content review was conducted and presented to
2 members of the 2020 census executive steering committee?

3 A. Yes.

4 Q. The Department of Justice's request to add a citizenship
5 question was not received by July 1, 2016, correct?

6 A. That's correct.

7 Q. To the best of your knowledge, the Department of Justice
8 did not previously write to the Census Bureau about adding a
9 citizenship question prior to December 2017, right?

10 A. That's correct.

11 Q. And prior to December 2017, in fact, the Census Bureau had
12 never heard from the Department of Justice that existing CVAP
13 data produced by the Census Bureau was not ideal for purposes
14 of DOJ's VRA enforcement work, correct?

15 A. I'll answer your question, but I want to just see if you
16 misspoke.

17 Did you mean prior to July 1, 2016? You said '17.

18 Q. I said December 2017. I think I meant December 2017.

19 Before the request, the Gary letter came into the Census
20 Bureau, the Department of Justice had never communicated to the
21 Census Bureau that ACS CVAP data was not ideal for DOJ's VRA
22 enforcement purposes, right, Dr. Abowd?

23 A. That's correct.

24 Q. Lets go back to the Blumerman memo, and I want to look at
25 page four of the memo.

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Abowd - Direct

1 There is a header that reads Content Determination, and the
2 second paragraph, last sentence reads: Final proposed
3 questions are based on the results of extensive cognitive
4 testing, field testing, other ongoing research, and input from
5 advisory committees.

6 That is your understanding of what the process for the 2020
7 census was presented to the Census Bureau's 2020 executive
8 steering committee, right?

9 A. The memo simultaneously describes ACS and 2020 census, but
10 I believe that sentence was intended to apply to both, yes.

11 Q. Now, your understanding is that the 2010 full census
12 questionnaire was subjective to cognitive testing, right,
13 Dr. Abowd?

14 A. Yes.

15 Q. There has been no cognitive testing, however, of the full
16 2020 census questionnaire, including a citizenship question,
17 correct?

18 A. That's correct.

19 Q. Now, lets talk about the second component here, the next
20 component after cognitive testing, field testing.

21 To the best of your knowledge, Dr. Abowd, the full 2010
22 decennial census questionnaire was field tested, correct?

23 A. That's correct.

24 Q. The full 2020 census questionnaire, including a citizenship
25 question, has not been field tested, correct?

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Abowd - Direct

1 A. That's correct.

2 Q. Now, there were, I believe, some recent trials that have
3 been described as the end-to-end test this year, Dr. Abowd?

4 A. So the 2018 end-to-end census test was conducted this year,
5 yes.

6 Q. And that is sort of like the last dress rehearsal for the
7 2020 census, right?

8 A. It's the last large scale test of the 2020 census, correct.

9 Q. The end-to-end test did not include a citizenship question,
10 correct?

11 A. That is correct.

12 Q. And as of the date of your last deposition in this case,
13 October 12, 2018, there were still no plans for field testing
14 of the full 2020 census questionnaire, including a citizenship
15 question, correct?

16 A. I don't know that you asked me the question in that form at
17 my October 12 deposition.

18 Q. I wasn't there, so I certainly couldn't have, but let me
19 put a different question to you, Dr. Abowd.

20 At the time that Secretary Ross made his decision to
21 include a citizenship question on the census, there were no
22 plans for field testing of the census questionnaire, including
23 a citizenship question, correct?

24 A. That's correct.

25 Q. Now, Dr. Abowd, after the 1990 census, the Census Bureau

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Abowd - Direct

1 investigated the possibility of adding a question concerning
2 respondents' Social Security numbers on the census short form,
3 correct?

4 A. Yes.

5 Q. And the Census Bureau conducted an RCT comparing a version
6 of the short form with and without a question asking for a
7 Social Security number, correct?

8 A. That's correct.

9 Q. And the RCT assessed the impact on self-response rates of a
10 Social Security number question, correct?

11 A. That's correct.

12 Q. And in the RCT, the self-response rate fell off in the
13 group that had the Social Security number question by 3.4
14 percent, correct?

15 A. That's correct.

16 Q. And the conclusion that was drawn from that RCT was that
17 asking for a Social Security number would be sensitive, right?

18 A. Yes.

19 Q. And today, the Census Bureau does not request for Social
20 Security numbers on the census questionnaire, right?

21 A. We never have.

22 Q. And one of the reasons for that is a concern about the
23 effect of that question on self-response rates, correct?

24 A. I believe that's correct, yes.

25 Q. And it is your opinion, Dr. Abowd, that for some sub

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Abowd - Direct

1 populations, asking about citizenship might be just as
2 sensitive as asking a question about Social Security numbers,
3 right?

4 A. Yes.

5 Q. In fact, it is your opinion that for some sub populations,
6 asking a question about citizenship would be more sensitive
7 than asking a question about Social Security numbers, correct?

8 A. I think I said could, but yes.

9 Q. The RCT to assess the effect of a Social Security number on
10 self-response rates to the census was conducted before any
11 decision was made about whether to include a Social Security
12 number question on the census, right?

13 A. Yes.

14 Q. And no similar RCT has taken place here along those lines
15 before a decision was made to include a citizenship question,
16 correct?

17 A. Yes.

18 Q. Lets bring up Plaintiffs' Exhibit 268.

19 THE COURT: Actually, lets take our break here instead
20 of doing that. It is 3:22. We'll start again at 3:32.

21 Because we're still in the direct examination,
22 Dr. Abowd, you should not communicate about the substance of
23 your testimony with defense counsel.

24 I'll see you in ten minutes. Thanks.

25 (Recess)

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Abowd - Direct

1 THE COURT: All right. Dr. Abowd, you're still under
2 oath.

3 Mr. Ho, you may continue.

4 MR. HO: Thank you, your Honor.

5 BY MR. HO:

6 Q. Dr. Abowd, I want to ask you about Plaintiffs' Exhibit 268,
7 which has been admitted into evidence.

8 Dr. Abowd, this is a proposed content test on a citizenship
9 question dated May 3, 2018, correct?

10 A. Yes.

11 Q. This is a proposal for an RCT for a citizenship question on
12 the census, correct?

13 A. It is an RCT for the content of alternative versions of the
14 citizenship question on the -- using the ACS, yes.

15 Q. This RCT proposal was created by Census Bureau staff,
16 correct?

17 A. Yes.

18 Q. And it was made in May of 2018?

19 A. That's correct.

20 Q. And the proposal was to initiate an RCT in either November
21 of 2018 or February of 2019, correct?

22 A. That's correct.

23 Q. The RCT, as proposed here, would have taken six weeks to
24 collect the data, correct?

25 A. Yes.

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Abowd - Direct

1 Q. Either if it had been in November of 2018 or February of
2 2019, either way the RCT could have been completed before
3 census forms are due to be printed, correct?

4 A. Yes.

5 Q. And the cost of this proposal ranges depending upon the
6 options you chose between \$2 million for one option to
7 \$4.1 million for another option, correct?

8 A. Yes.

9 Q. The Census Bureau has that money, right, Dr. Abowd?

10 A. Yes.

11 Q. This proposal was rejected by a group of decision-makers,
12 including Under Secretary Karen Dunn Kelley, correct?

13 A. As I testified in my 30(b)(6), the decision not to conduct
14 this RCT was made by -- excuse me -- Dr. Enrique Lamas'
15 consultation with the Under Secretary, yes.

16 Q. I would like to bring up Plaintiffs' Exhibit 271, the
17 Blumerman memo.

18 THE COURT: Who was the second person, Dr. Jarmin?

19 THE WITNESS: Deputy, Acting Deputy Director Enrique
20 Lamas. Dr. Lamas.

21 THE COURT: Thank you.

22 BY MR. HO:

23 Q. Back to page four of the Blumerman memo.

24 The page entitled Content Determination, and that last
25 sentence in the second paragraph.

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Abowd - Direct

1 We talked about cognitive testing, field testing, and RCT,
2 which I put in the category of ongoing research. Those are all
3 different things, right, Dr. Abowd; like doing an RCT and
4 conducting that, that doesn't take the place of cognitive
5 testing and field testing, right?

6 A. In some cases, they are intertwined, but they are
7 considered distinct activities, yes.

8 Q. Lets talk about -- I'm sorry. One other question.

9 If you do an RCT and the results come out suggesting that a
10 question could reduce response rates, do you just plow ahead
11 and do that, or would you conduct more analysis before using a
12 question that you had tested?

13 A. When we conduct an RCT, we expect it to produce actionable
14 data, and exactly what actions would be taken as a consequence
15 of those data depends on the structure of the RCT and the point
16 in the survey development cycle that it is conducted.

17 Q. Just to be clear, doing an RCT, it is not like a box that
18 you check, and regardless of what the results are, you just
19 say, Great, we've conducted an RCT, we can go ahead now?

20 You have to actually look at the results of the RCT
21 and incorporate that into your process, correct?

22 A. That is the justification for running an RCT, yes.

23 Q. OK. Lets talk about the next item here, input from
24 advisory committees.

25 Input was not solicited from the Census Bureau's advisory

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Abowd - Direct

1 committees before Secretary Ross made his decision to add a
2 citizenship question to the 2020 census, correct?

3 A. That's correct.

4 Q. If you had been given more advance notice, then the Census
5 Bureau could have consulted with, for example, CSAC, the Census
6 Scientific Advisory Committee, before a decision was made,
7 right?

8 A. Yes.

9 Q. And if you had been given more advance notice, you would
10 have convened a working group with the advisory committees to
11 study the citizenship question, right?

12 A. Probably.

13 Q. And you would have discussed that question actively with
14 the working groups, right?

15 A. Yes.

16 Q. But no such act of discussions with the advisory committees
17 happened before Secretary Ross made his decision, correct?

18 A. That's correct.

19 Q. Now, backing up to talk again a little bit more about the
20 process before Secretary Ross made his decision, Dr. Abowd,
21 after you communicated the Census Bureau's initial views in
22 your February 12 memo with Secretary Ross, the Commerce
23 Department sent a list of 35 followup questions to the Census
24 Bureau, correct?

25 A. Yes.

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Abowd - Direct

1 Q. And some of those questions concerned testing, right?

2 A. Yes, they do.

3 Q. OK. Lets bring up Plaintiffs' Exhibit 140.

4 These are draft responses to those 35 questions from
5 the Commerce Department, right?

6 A. Draft responses from the Census Bureau to the Commerce
7 Department, yes.

8 Q. Thank you for that correction.

9 Just for the record, this document has been admitted into
10 the trial record, and it is part of the supplemental
11 administrative record in this case.

12 Dr. Abowd, it is your belief that Acting Director Jarmin
13 intended for you to take responsibility for making sure that
14 the answers to these questions were accurate, correct?

15 A. For the vast majority of them, yes. He asked me to track
16 that the person assigned to deliver an answer had done so, to
17 vet that answer, to communicate that answer to Burton Reist,
18 the chief of the decennial communications office, and then
19 Burton Reist was charged with delivering those answers to the
20 Commerce Department on a flow basis. They did go back and
21 forth before we determined that we adequately answered each of
22 the questions.

23 Q. It is your understanding that Acting Director Jarmin
24 intended you to be ultimately responsible for making sure that
25 the answers to these questions were accurate, correct?

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Abowd - Direct

1 A. Yes.

2 Q. Lets turn to page six in these draft responses, which is
3 administrative record page 10900.

4 I want to ask you about question 31. Question 31 asks:
5 What was the process that was used in the past to get questions
6 added to the decennial census, or do we have something similar
7 where a precedent was established.

8 Did I read that right?

9 A. Yes.

10 Q. The draft response reads: The Census Bureau follows a
11 well-established process when adding or changing content on the
12 census or ACS to ensure the data fulfill legal and regulatory
13 requirements established by congress. Adding a question or
14 making a change to the decennial census or the ACS involves
15 extensive testing, review, and evaluation. This process
16 ensures the change is necessary and will produce quality,
17 useful information for the nation.

18 Did I read that right?

19 A. Yes, you did.

20 Q. OK. The text here in this draft response, this was sent
21 from the Census Bureau to the Commerce Department, correct?

22 A. As I said before, several versions were sent, but I believe
23 this is one of them, yes.

24 Q. This is one of the versions of the draft response to
25 question 31 that the Census Bureau sent to the Commerce

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Abowd - Direct

1 Department?

2 A. Yes.

3 Q. And this states that, in this draft response, that adding
4 a question to the decennial census or ACS involves extensive
5 testing, review, and evaluation, correct?

6 A. Yes.

7 Q. And as of March 1, 2018, that was your understanding, that
8 adding a new question to the decennial census involves
9 extensive testing, review, and evaluation, correct?

10 A. Correct.

11 Q. I want to show you a different version of this document.

12 I'm sorry. Before we move on, could we bring that back up
13 just for a second. On the next page, I just want to look at
14 the bullets here.

15 I'm sorry. Can we get the text just above the bullets too.

16 This is part of the draft response to question 31, right,
17 Dr. Abowd?

18 A. Yes.

19 Q. It reads: The Census Bureau and the Office of Management
20 and Budget (OMB) have laid out a formal process for making
21 content changes.

22 Then there is a series of six bullets after that, right?

23 A. Correct.

24 Q. And is it an accurate summary to say that this formal
25 process, as described in these draft responses, includes

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Abowd - Direct

1 federal agencies evaluating their data needs, a proposal that
2 demonstrates a clear statutory regulatory need for the data,
3 final proposed questions resulting from extensive cognitive and
4 field testing, several opportunities for public comment, a
5 decision made in consultation with OMB, and then finally, if
6 approved, the Census Bureau implementing the change, is that
7 right?

8 A. Yes.

9 Q. OK. Now, I want to show you Plaintiffs' Exhibit 23.

10 Dr. Abowd, this has been admitted into evidence, and it is
11 in the initial administrative record in this case as the final
12 version of responses to the 35 questions.

13 Does that comport with your recollection?

14 A. May I see all the pages of the document, please?

15 Q. Sure. Maybe we could scroll through.

16 Does that look right to you, Dr. Abowd?

17 A. Yes.

18 Q. Just to be clear, this version of the document was produced
19 in the initial administrative record in this case, but the
20 draft responses that we were talking about earlier, those were
21 not in the initial administrative record in this case, is that
22 your recollection?

23 A. It's my recollection that this is the version that was in
24 the first 1300 or so pages of administrative record that were
25 these, yes.

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Abowd - Direct

1 Q. Lets look at page 11 and the response to question 31 that
2 is in the final version of these responses in the
3 administrative record.

4 Question 31 about the process used in the past for adding
5 questions to the decennial census, the final version of this
6 response reads: Because no new questions have been added to
7 the decennial census (for nearly 20 years), the Census Bureau
8 did not feel bound by past precedent when considering the
9 Department of Justice's request. Rather, the Census Bureau is
10 working with all relevant stakeholders to ensure that legal and
11 regulatory requirements are filled and that questions will
12 produce quality, useful information for the nation. As you are
13 aware, that process is ongoing at your direction.

14 Did I read that correctly?

15 A. Yes, you did.

16 Q. OK. So the final version of these responses, as found in
17 the initial administrative record in this case, makes no
18 reference to a well-established process for adding content to
19 the census, right?

20 A. That's correct.

21 Q. Instead, the final version in the administrative record
22 says that the Census Bureau did not feel bound by past
23 precedent, right?

24 A. That's what it says.

25 Q. And this final version here in the initial administrative

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Abowd - Direct

1 record in this case, it makes no reference to extensive
2 testing, review, and evaluation, correct?

3 A. That's correct.

4 Q. It also makes no reference to ensuring that a change to the
5 census is necessary, right?

6 A. It makes reference to consulting with stakeholders, but it
7 doesn't explicitly say the things that the original answer
8 said.

9 Q. It doesn't use the word necessary to ensure that a change
10 is necessary to the 2020 census, right, Dr. Abowd?

11 A. That's correct.

12 Q. Dr. Abowd, you didn't write this final version of the
13 response to question 31 that appear in the administrative
14 record, right?

15 A. That's correct.

16 Q. You're not sure who wrote it, right?

17 A. That's also correct.

18 Q. You don't know if someone at the census -- I mean, you're
19 not aware of someone at the Census Bureau having written this,
20 Dr. Abowd?

21 A. I had the control copy, and it is not in the last version
22 of the control copy in the folders that were searched for the
23 production of the administrative record.

24 Q. So this version, Dr. Abowd, that says that the Census
25 Bureau did not feel bound by past precedent, that phrase is not

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Abowd - Direct

1 in the last version of this document in the possession of the
2 Census Bureau, correct?

3 A. As far as I know, correct.

4 Q. This final version, Dr. Abowd, which makes representations
5 about what the Census Bureau felt bound by, was not written by
6 someone at the Census Bureau, right, Dr. Abowd?

7 A. Not to the best -- not to the best of my knowledge.

8 Q. Are you aware, Dr. Abowd, that this was written by someone
9 at the Commerce Department?

10 A. I don't know who wrote this.

11 THE COURT: Do you know if any of the other questions
12 changed between the final copy that you had on your computer
13 and this copy?

14 THE WITNESS: I do not believe any other answers are
15 changed.

16 BY MR. HO:

17 Q. Dr. Abowd, just to close the loop on something you
18 mentioned earlier. You made a reference to a control copy.

19 What did you mean by that?

20 A. I meant that because I was keeping track of who had been
21 assigned to answer the questions, and then when I got an answer
22 back from that person getting that answer vetted, and then
23 copying it into the control copy -- master copy, I think, is a
24 synonym -- that I understood to be the final versions of each
25 of those answers.

IBDsNYS6

Abowd - Direct

1 Q. So you maintain possession of the master version of
2 responses to these questions, right?

3 A. We had some custody issues. Burton Reist also had a
4 version that he exchanged without passing through the control
5 copy, but we did synchronize them.

6 Q. OK. And as far as you know, the final version of the
7 answer to question 31, a question that was posed by the
8 Commerce Department to the Census Bureau and which makes
9 representations about what the Census Bureau felt bound by,
10 was not written by someone at the Census Bureau, correct?

11 MR. EHRLICH: Objection.

12 THE COURT: Sustained.

13 Can you tell me what you did with the control copy as
14 you've described it?

15 In other words, where did it go between the time that
16 you considered it to be final and the creation of this
17 document; do you know?

18 THE WITNESS: So, I do, your Honor. I know that
19 Deputy Director, Acting Deputy Director Lamas asked Burton
20 Reist, who is the chief of the decennial communications office,
21 to communicate the answers back to Commerce on a flow basis.

22 So I was keeping a master copy, but Burton was sending
23 answers by e-mail as we made them and as they were vetted up to
24 Commerce. Several incomplete copies of the document were
25 exchanged back and forth, and eventually inside the Census

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Abowd - Direct

1 Bureau, around March -- 1, there is a date on the control copy,
2 I think it is March 1 -- we agreed that these were the final
3 answers.

4 That is the copy that I have sitting in my -- well,
5 there was an area of secured disk that we were using to store
6 the documents related to the citizenship question that is still
7 there.

8 THE COURT: What, if anything, did you do with it
9 after March 1, when, as far as you were concerned, it was the
10 final version?

11 THE WITNESS: I believe I was copied on an e-mail
12 where it was communicated back, then I just moved on.

13 THE COURT: Communicated back meaning sent?

14 THE WITNESS: Sent to Commerce.

15 THE COURT: By Commerce, you mean who at Commerce
16 would have received it?

17 THE WITNESS: So these e-mail threads tended to grow
18 organically. Burton Reist would initiate them, and then there
19 would be a back-and-forth exchange, and then someone like
20 Dr. Lamas would ask to put a consolidated set together and send
21 them up and say these are -- he would have called it the latest
22 version. There was a lot of back and forth because they asked
23 for a lot of clarifications as we were developing the answers.
24 And, in fact, the final version has a spreadsheet addendum that
25 I haven't been shown, but I think is the next thing in the

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Abowd - Direct

1 administrative record.

2 So around March 1, after we had all agreed that these
3 were the answers, and as we understood it, Commerce had agreed
4 that we had answered their questions, I marked the March 1 copy
5 that was sent, whatever date it was sent, I believe it was
6 March 1, I marked that copy in the secured folder the final
7 one.

8 THE COURT: All right. But do you, sitting here
9 today, do you know who that copy was sent to at Commerce?

10 THE WITNESS: I believe it is in the administrative
11 record, the e-mail that conveyed it, but I don't remember. I
12 believe at least the Under Secretary would have been on the
13 list.

14 THE COURT: The Under Secretary being Kelley?

15 THE WITNESS: Dunn Kelley.

16 THE COURT: Thank you.

17 BY MR. HO:

18 Q. The text written in this final version of the response to
19 question 31 posed by the Commerce Department to the Census
20 Bureau, Dr. Abowd, this is not the text in the final version
21 that the Census Bureau transmitted to the Commerce Department,
22 correct?

23 A. That's correct.

24 Q. Lets go back to Plaintiffs' Exhibit 26, Secretary Ross'
25 decision memo.

IBDsNYS6

Abowd - Direct

1 I want to look, again, at that second paragraph on the
2 first page, following receipt of the DOJ request. That
3 sentence.

4 Dr. Abowd, the analyses that we've been discussing that you
5 conducted of a possible effect of a citizenship question on the
6 census, you did all that on pretty short notice, right?

7 A. Relatively quickly, yes.

8 Q. I mean, you learned about it around December 15, 2017, and
9 you turned around a memo to the Commerce Secretary January 19,
10 right?

11 A. That's correct.

12 Q. A lot of analysis in a short period of time, right?

13 A. I have to say, that isn't particularly unusual, but it is
14 correct.

15 Q. It was over the holidays too, right?

16 A. That is also true.

17 Q. And you performed that work to the best of your ability,
18 right?

19 A. Yes.

20 Q. Do you think it was an impressive amount of work that the
21 swat team under your direction produced in that period of time,
22 Dr. Abowd?

23 A. My understanding is they didn't get a lot of sleep.

24 Q. I mean, you're submitting it for peer review for
25 publication, right?

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Abowd - Direct

1 A. So I'm not an author of the technical paper. It has not
2 yet been submitted for peer review, but we do expect to do
3 that. That is the reason it was released as a technical paper,
4 yes.

5 Q. The entire time you were conducting that analysis over the
6 holidays, you were operating under the impression that the
7 Secretary set out to take a hard look at this issue following
8 the Department of Justice's request, correct?

9 A. Yes.

10 Q. And you were under the impression that all that hard work
11 that you were doing might have some bearing on the Secretary's
12 ultimate decision, correct?

13 A. Yes.

14 Q. I want to bring up Plaintiffs' Exhibit 2. This is the
15 supplemental memorandum by Secretary of Commerce Ross in the
16 administrative record that's been admitted. I want to
17 highlight the first three sentences.

18 I want to talk about -- well, lets just talk about the
19 second sentence.

20 Soon after my appointment as Secretary of Commerce, I
21 began considering various fundamental issues regarding the
22 upcoming 2020 census, including funding and content.

23 The next sentence reads: Part of these considerations
24 included whether to reinstate a citizenship question, which
25 other senior administration officials had previously raised.

IBDsNYS6

Abowd - Direct

1 Dr. Abowd, now, you know that Secretary Ross, as stated in
2 his supplemental memo in the administrative record, began
3 considering this issue of a citizenship question soon after his
4 appointment as Commerce Secretary in early 2017, correct?

5 A. Yes.

6 Q. OK. But during that period, when you and the swat team
7 were working hard on your analysis between the middle of
8 December of 2017 and January of 2018, you were not aware that
9 Secretary Ross had begun considering a citizenship question in
10 early 2017, right?

11 A. That's correct.

12 Q. And at the meeting that you had with Secretary Ross on
13 February 12, when you presented your findings from all of that
14 analysis that you conducted, no one mentioned to you that
15 Secretary Ross had already begun considering this question in
16 early 2017, correct?

17 A. That's correct, but we did have a very open discussion.

18 Q. That open discussion didn't include the fact that Secretary
19 Ross had already begun considering this issue in early 2017,
20 right, Dr. Abowd?

21 A. That's correct.

22 Q. And as of the date of Secretary Ross' decision memo, you
23 were not aware that Steve Bannon and Secretary Ross had had
24 conversations about whether or not Secretary Ross would speak
25 to Kansas Secretary of State Kobach about Mr. Kobach's ideas

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Abowd - Direct

1 for a citizenship question on the census, correct?

2 A. That's correct.

3 Q. As of the date of Secretary Ross' decision memo, you were
4 not aware that Secretary Ross had a telephone conversation with
5 Mr. Kobach about Mr. Kobach's ideas for a citizenship question
6 on the census, right?

7 A. That's correct.

8 Q. And as of the date of Secretary Ross' decision memo, you
9 were not aware that in May of 2017, seven months before the
10 Department of Justice's request to the Census Bureau, Secretary
11 Ross wrote an e-mail to Earl Comstock stating that he was,
12 quote, mystified why nothing have been done in response to my
13 months' old request that we include a citizenship question,
14 correct?

15 A. I was not aware of that, correct.

16 Q. And as of the date of Secretary Ross' decision memo, you
17 were not aware that in response to that e-mail, Earl Comstock
18 wrote to Secretary Ross that, quote, on the citizenship
19 question, we will get that in place and, quote, and that it
20 would be necessary to, quote, work with justice to get them to
21 request that citizenship be added back to a census question,
22 correct?

23 A. I was not aware of that, correct.

24 Q. Dr. Abowd, I want to show you again some deposition
25 testimony that has been designated as evidence in this case.

IBDsNYS6

Abowd - Direct

1 For the record, your Honor, it is page 67, line five,
2 of Acting Attorney General John Gore's deposition through line
3 five of page 68.

4 I want to ask you some questions.

5 MR. EHRLICH: Your Honor, same objection as last time.

6 THE COURT: Same ruling.

7 (Videotape played)

8 BY MR. HO:

9 Q. Dr. Abowd, when you conducted all this work up through the
10 date of Secretary Ross' decision memo, you were not aware that
11 the Department of Commerce had initiated conversations with the
12 Justice Department about the citizenship question rather than
13 the other way around, correct?

14 A. That's correct.

15 Q. During your meeting with Secretary Ross on February 12, no
16 one told you that, right?

17 A. That's correct.

18 Q. You didn't learn that it was Department of Commerce
19 officials who had requested that a citizenship question be
20 added to the census, rather than the other way around, until
21 after this litigation was initiated, right, Dr. Abowd?

22 A. That's correct.

23 Q. And that was when the administrative record in this
24 litigation was lodged in June of this year, right, Dr. Abowd?

25 A. That's correct.

IBDsNYS6

Abowd - Direct

1 Q. Dr. Abowd, you were surprised, weren't you, when you
2 learned that it was Commerce officials who had requested that
3 the Department of Justice request a citizenship question on the
4 census, correct?

5 A. Yes.

6 Q. And among the senior executives at the Census Bureau,
7 everyone you know was also surprised to learn that the
8 Department of Commerce had initiated conversations with the
9 Department of Justice to convince the Department of Justice to
10 request that the citizenship question be added to the 2020
11 census, correct?

12 MR. EHRLICH: Objection, mischaracterizes the
13 evidence.

14 THE COURT: Overruled.

15 A. Could you restate the question, please?

16 Q. Sure.

17 Among the senior executives at the Census Bureau,
18 Dr. Abowd, everyone you know was also surprised to learn that
19 it was the Department of Commerce that reached out to the
20 Department of Justice to ask the Department of Justice to
21 request a citizenship question, correct?

22 A. Everyone I know at the Census Bureau, including all the
23 senior executives, were surprised by the portion of the
24 administrative record that predates December 12, 2017.

25 Q. Dr. Abowd, as recently as August of this year, Commerce

IBDsNYS6

Abowd - Direct

1 Department officials still hadn't spoken with you about the
2 fact that it was the Department of Commerce that had requested
3 the Department of Justice request that a citizenship question
4 be added to the 2020 census, correct?

5 A. That's correct.

6 Q. So to be clear, Dr. Abowd, that entire period of time from
7 December, the middle of December, when you began analyzing the
8 effect of the citizenship question, up through until June, when
9 the administrative record in this case was lodged, your
10 impression was that all that work that you were doing mattered,
11 that it might affect the secretary's decision-making, right?

12 MR. EHRLICH: Objection.

13 THE COURT: Overruled.

14 A. From the beginning of the time we spent working on our
15 technical response until today, I am discharging my obligations
16 as the chief scientist at the Census Bureau.

17 Q. Dr. Abowd, my question, though, was that entire period of
18 time from when you began conducting your analysis in the middle
19 of December of 2017 up until when you saw the administrative
20 record lodged in this case, you were under the impression that
21 all of that work that you had done analyzing the effect of a
22 citizenship question, that it mattered as far as the
23 Secretary's decision-making process, right?

24 A. I was under the impression that it mattered in the conduct
25 of the 2020 census, yes.

IBDsNYS6

Abowd - Direct

1 Q. And no one ever told you during that entire period of time
2 that Commerce Department officials had initiated this entire
3 process, correct?

4 A. No one told me that, but I am still under the impression it
5 matters for the 2020 census.

6 (Continued on next page)

IbdWnys7

Abowd - Direct

1 BY MR. HO:

2 Q. Dr. Abowd, the 2020 census questionnaire will be finalized
3 by June of 2019, correct?

4 A. That's when the final artwork is due at the printers, yes.

5 Q. With existing resources the Census Bureau can lock down the
6 content of the census questionnaire by June 30, 2019, correct?

7 A. That's correct.

8 Q. Under the current budget, if there are changes to the paper
9 questionnaire after June of 2019, that would impair the Census
10 Bureau's ability to timely administer the 2020 census, correct?

11 A. That is correct.

12 Q. With exceptional resources, the final date for locking down
13 the content of the census questionnaire is October 31, 2019,
14 correct?

15 A. That is correct.

16 Q. Changes after October 31, 2019, would require major
17 redesigns and might require congressional authorization, in
18 your understanding, right, Dr. Abowd?

19 A. That is correct.

20 MR. HO: I want to return again to the Ross decision
21 memo, Dr. Abowd, Plaintiffs' Exhibit 26. I want to look at the
22 final page, page 8, the top paragraph, here.

23 Q. The secretary concluded that a citizenship question on the
24 decennial census was necessary to provide a complete and
25 accurate response to the DOJ request, correct?

IbdWnys7

Abowd - Direct

1 A. Yes.

2 Q. I want to ask you about that and I want to -- before
3 getting too deep into that determination, I want to ask you
4 about the kinds of data that DOJ currently has available. The
5 Census Bureau produces various data files for redistricting
6 purposes, right, Dr. Abowd?

7 A. Yes.

8 Q. And one of those redistricting data products from the
9 Census Bureau is called the PL 94-171 data file, correct?

10 A. Yes.

11 Q. The PL 94-171 data file has information in it concerning
12 total population at various levels of census geography,
13 correct?

14 A. Yes, it does.

15 Q. And it has voting-age population at various levels of
16 census geography, correct?

17 A. Yes.

18 Q. And it has voting-age population broken down by race and
19 ethnicity at the census block level in it, correct?

20 A. Yes.

21 Q. But it does not have citizen voting-age population in it
22 broken down by race and ethnicity at the individual block
23 level, correct?

24 A. That's correct.

25 Q. The data in the PL 94-171 data file, that's based on

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Abowd - Direct

1 responses to the decennial enumeration, correct?

2 A. Yes.

3 Q. And the Department of Justice uses that data file, right?

4 A. That's my understanding, yes.

5 Q. Also available to the public?

6 A. Yes, it is.

7 Q. The PL 94-171 data file, that's never had citizen
8 voting-age population by race and ethnicity down to the block
9 level, correct?

10 A. The PL 94-171 data have never included citizenship, that's
11 correct.

12 Q. Never included citizenship data in it at any level of
13 geography, correct?

14 A. To the best of my knowledge, yes.

15 Q. So, for citizen voting-age population, the Department of
16 Justice, when it's doing its redistricting-related work, uses a
17 separate tabulation of data from the Census Bureau, correct?

18 A. That's correct.

19 Q. And that's what we could call the CVAP tabulation?

20 A. Yes, sir.

21 Q. That's publicly available not just for the Department of
22 Justice, right?

23 A. All such tabulations are publicly available, yes.

24 Q. Now, before the ACS -- I'm sorry.

25 And the CVAP tabulation, that's based on responses to the

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Abowd - Direct

1 American Community Survey, correct?

2 A. That's correct.

3 Q. Now, before the American Community Survey, the Census
4 Bureau produced CVAP data based on responses to the census long
5 form, right?

6 A. Yes.

7 Q. Census long form was not distributed to the entire
8 population, correct?

9 A. That's correct.

10 Q. So data derived from the long form, those were statistical
11 estimates based on a sample survey, right?

12 A. Yes.

13 Q. That's also true of the ACS; that citizenship data derived
14 from the ACS is also a statistical estimate based on a
15 statistical sample, correct?

16 A. Yes.

17 Q. So both the long-form CVAP data used in the past and the
18 ACS CVAP data used at present, both statistical estimates based
19 on survey samples, correct?

20 A. Yes.

21 Q. And they both had margins of error, correct?

22 A. Sampling error, yes.

23 Q. Now, the total population data in the PL 94-171 data file,
24 that's not sample-based, right?

25 A. That's correct.

IbdWnys7

Abowd - Direct

1 Q. But that data still does have some margins of error
2 associated with it, right?

3 A. It has a nonsampling error, is what we call it, yes.

4 Q. The citizenship question, the proposal to add a citizenship
5 question to the 2020 census is sometimes referred to as
6 "reinstating a citizenship question." Have you heard that
7 phrase, Dr. Abowd?

8 A. I believe that's the phrase the secretary used, yes.

9 Q. OK. And just to be clear, the 2000 census form sent to
10 every household in America, that didn't have a citizenship
11 question on it, right?

12 A. That's correct.

13 Q. And the citizenship data that DOJ currently uses based on
14 statistical -- based on survey sample, that's not different
15 from long-form citizenship data that the Department of Justice
16 used to rely on in the sense that both are statistical samples
17 with margins of error, right?

18 A. Both are samples with sampling error. Their designs are
19 very different, so I don't -- I'm not saying yes to them being
20 identical. They're both sample-based. The design of the
21 American Community Survey is very different from the design of
22 the old long-form sample.

23 Q. But it's not the case that one's a hard count and the other
24 is not; they were both statistical samples with margins of
25 error, right?

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Abowd - Direct

1 A. That's correct.

2 Q. That's never changed, as far as you know; the Department of
3 Justice, when it's needed CVAP data, it's always needed -- it's
4 always relied on statistical samples with margins of error,
5 right?

6 A. To the best of my knowledge, yes.

7 Q. Now, the ACS data are produced in both one-year and
8 five-year bases, correct?

9 A. Tabulations of at least, yes, one-year and five-year
10 summaries. Yes.

11 Q. One-year ACS estimates are produced from data collected in
12 a single calendar year, right?

13 A. Yes.

14 Q. And five-year ACS estimates are produced based on data
15 collected over a consecutive five-year period, correct?

16 A. That's correct.

17 Q. You'd agree that five-year ACS estimates have larger sample
18 sizes than one-year ACS estimates, right?

19 A. For the same geographic area, yes.

20 Q. And five-year ACS estimates in comparison to one-year ACS
21 estimates for the same geographic area would have smaller
22 margins of error, correct?

23 A. Yes.

24 Q. And that would mean they're more precise than one-year ACS
25 estimates, right?

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Abowd - Direct

1 A. As long as timeliness is not a salient feature, yes.

2 Q. The tabulation of CVAP data produced from the ACS is based
3 on five-year ACS estimates, not one-year ACS estimates,
4 correct?

5 A. Correct.

6 Q. And the reason for that is that one-year ACS estimates are
7 deemed sufficiently reliable only for areas that have a
8 population of more than 65,000 people, correct?

9 A. There are a few additional criteria, but that's basically
10 correct.

11 Q. By contrast, five-year ACS estimates are published by the
12 Census Bureau as being reliable for smaller -- geographic areas
13 with smaller populations, correct?

14 A. That's correct.

15 Q. As of today, it still hasn't been decided whether the PL
16 94-171 file with total population data will also include the
17 block-level CVAP data that the Census Bureau expects to
18 assemble after the 2020 census, correct?

19 A. That's correct.

20 Q. So even if a citizenship question is included on the census
21 questionnaire, as of now, we don't know whether or not there's
22 going to be a single data set that has both total population
23 and block-level CVAP data broken down by race or ethnicity,
24 correct?

25 A. We don't know there will be a single data set, but we did

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Abowd - Direct

1 commit to delivering block-level CVAP data in a timely fashion
2 consistent with the delivery date for the PL 94.

3 Q. The Census Bureau hasn't made a decision yet about how it
4 will process responses to the citizenship question alongside
5 the administrative citizenship data that you have, correct?

6 A. That's correct.

7 Q. Dr. Abowd, even if a citizenship question remains on the
8 2020 census questionnaire, the Census Bureau hasn't determined
9 whether the block-level CVAP data that it produces will, in
10 fact, be based primarily on responses to the citizenship
11 question, correct?

12 A. That is correct.

13 Q. Dr. Abowd, let's assume now that the citizenship question
14 stays on the 2020 census questionnaire and let's talk about
15 how, to the extent you know right now, that would play out in
16 practice in terms of producing a block-by-block-level-CVAP
17 data. Responses to the census questionnaire are prohibited
18 from disclosure under Title 13, correct?

19 A. Publications identifying a business or individual or
20 household specifically and providing identifiable data on that
21 entity are prohibited.

22 Q. And that prohibition on disclosure also applies, as far as
23 you know, on prohibiting the disclosure of that information to
24 the Department of Justice, correct?

25 A. That's correct.

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Abowd - Direct

1 Q. Now, census blocks vary significantly in terms of the size
2 of their populations, correct?

3 A. Yes, they do.

4 Q. Some census blocks have fewer than ten people on them,
5 right?

6 A. Yes.

7 Q. Some census blocks have one person on them, right?

8 A. That's correct.

9 MR. HO: I want to bring up Plaintiffs' Exhibit 513,
10 which we're using purely for demonstrative purposes. This is a
11 map of the Fort Myers area, census blocks in Fort Myers, and if
12 we could blow up kind of the middle of the map around where it
13 says Lee. This was built using data from the Census Bureau's
14 publicly available website of the total population on various
15 census blocks.

16 Q. Dr. Abowd, if we look at some of these squares right around
17 Lee, I mean, all of the census blocks right around where Lee is
18 written have fewer than ten people on them, right?

19 A. Yes.

20 Q. And several of them have only one person on them, right?

21 A. Yes.

22 Q. So, Dr. Abowd, you'd agree with me that with respect to a
23 census block that has only one person on it, when the Census
24 Bureau produces block-by-block citizenship data, the Census
25 Bureau was legally prohibited from producing data that would

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Abowd - Direct

1 accurately reflect what that one person said in response to a
2 citizenship question on the census, correct?

3 A. We interpret that provision of Title 13 as prohibiting us
4 from releasing data at the block level that would make it
5 possible to identify the person who supplied those data.

6 Q. So when you produce block-by-block CVAP data, for a block
7 with one person, you're not going to produce data that reveals
8 that person's response to the citizenship question, right?

9 A. We'll apply disclosure avoidance before tabulating that
10 block, yes.

11 Q. So if a person exists in a block with one person on it,
12 right where it says Lee, to the right, diagonally above it,
13 that person says "I'm not a citizen" in response to the
14 citizenship question, and you publish a total number of
15 noncitizens for that block, can you publish one?

16 A. If they said they're not a citizen?

17 Q. Yes. Can you publish one for there's one noncitizen on
18 this block?

19 A. So what we would do is we would add random noise to the
20 tabulation, reconstruct the microdata and then publish the
21 counts from the random noise. The random noise introduces
22 substantial uncertainty about the single person and less and
23 less uncertainty as the number of persons involved increases.

24 Q. And the reason why you do that, Dr. Abowd, is because if
25 you didn't do it, publishing the CVAP data at the block level

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Abowd - Direct

1 would create what you might call re-identification risks for
2 that person, right?

3 A. Yes.

4 Q. And just so we're all clear, re-identification is when
5 there's data that's anonymous but a third party can look at it
6 and then manage to discover the individual to which that data
7 belongs, right?

8 A. That's correct.

9 Q. And you apply data disclosure-avoidance techniques to
10 prevent that from happening, right?

11 A. That's correct.

12 Q. And you don't just do that for census blocks that have a
13 single person on them; you do that for every census block,
14 right?

15 A. That's right.

16 Q. So, Dr. Abowd, there won't be a single census block in
17 which the citizenship numbers, as reported by the census after
18 the 2020 census questionnaire, reflect the actual responses
19 reported by the people who live there in their responses to the
20 citizenship question on the 2020 census, correct?

21 A. Except randomly, correct.

22 THE COURT: Can I just ask a few questions about how
23 this works.

24 First of all, by way of background, how is it
25 determined what a census block is? Why do some have zero

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Abowd - Direct

1 people, some have one, some have hundreds?

2 THE WITNESS: So, your Honor, census blocks are used
3 for two basic purposes. One purpose is to organize the work
4 flow in collecting census, we generally call enumeration
5 blocks. And the other is for producing summaries later on. We
6 generally call them tabulation blocks. They're not exactly the
7 same, but they're very similar.

8 A tabulation block is the lowest level of geography,
9 smallest level of geography that we publish any data on, and we
10 publish it so that users of those data can assemble arbitrary
11 geographic areas, like school districts or voting districts,
12 with enough granularity so that they can meet the purpose of
13 making a school district or a voting district. And so the
14 granularity in the block definitions is determined over the
15 course of the decade by negotiation in many cases with
16 bipartisan redistricting offices to determine that the,
17 basically the pixel that you're going to build geographic units
18 from is sufficiently small that you can get the geographic
19 areas you're trying to draw accurate enough but not so small
20 that we're simply releasing one -- the contents of each address
21 in the MAF.

22 THE COURT: All right. Thank you. That's helpful.

23 And then could you just flesh out what the process
24 involves of introducing random noise, what that means in
25 practice. I don't know if it's helpful to use some of these

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Abowd - Direct

1 census blocks by way of example, but how would you mask, in
2 this Lee census block that has only one person in producing
3 that data to the Justice Department or whomever, how would you
4 mask that person's citizenship?

5 THE WITNESS: So, one of the things we're doing with
6 the 2020 census is we are moving from what is called
7 traditional statistical disclosure limitation to modern
8 disclosure limitation processes that were invented by
9 cryptographers, and the particular process that we're using is
10 called differential privacy. That's a system where you -- you
11 set up a mathematical guarantee about how much any user of the
12 data can learn about an individual who contributes to those
13 data, and that mathematical guarantee looks like, if I do the
14 tabulation with your data in or out of the overall database,
15 the statistics that I produce are only allowed to be different
16 by an amount epsilon. So basically, your -- the statistics
17 with or without your data are indistinguishable from the
18 statistics, the statistics with your data are indistinguishable
19 from the statistics without your data by an amount that
20 controls the randomness that we add.

21 We have developed a lot of public materials on this,
22 but we're not as practiced in talking about it as the
23 historical methods that we use, as you might have noticed from
24 the awkwardness of that answer, for which I apologize. So it
25 basically says you make the tabulation from the real data, you

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Abowd - Direct

1 add an amount of noise to each, in this case block, in the real
2 data that's been calibrated so that I can make that promise to
3 you that your data didn't affect this overall tabulation by any
4 more than epsilon, and then you take the noisy data and
5 re-create the microdata from the tabulated.

6 THE COURT: All right. Let me see if I can translate
7 this into more plain English. Would there be any way, for
8 example, to take the census block just above the E that has a
9 one in it -- right, that's one person in that census block?

10 THE WITNESS: Yes.

11 THE COURT: I presume there would be no way to
12 disclose the data for that particular person without, at the
13 census block level in an accurate way that wouldn't reveal
14 things that you're prohibited from revealing under Title 13, is
15 that correct?

16 THE WITNESS: That's our interpretation of the law,
17 yes, sir.

18 THE COURT: OK. So by introducing noise, I take it
19 you need to go out to a broader geographic range, and in
20 essence, you're sort of swapping people between the blocks?
21 How does it work?

22 THE WITNESS: We're not -- excuse me, your Honor. I
23 didn't mean to interrupt.

24 We're not swapping. We're basically replacing the
25 real microdata with microdata that tabulate up accurately as

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Abowd - Direct

1 the more -- as there are more and more people in the area that
2 you're looking at, but in the block that had one person on it,
3 basically every characteristic of that person has been infused
4 with noise, so changed, if you like.

5 THE COURT: So swapped.

6 THE WITNESS: Well, swap implies that it came from
7 someplace else. That's why --

8 THE COURT: But in other words, presumably any change
9 up on one dimension or characteristic would have to be matched
10 somewhere else by a change down.

11 THE WITNESS: The population totals are controlled to
12 the national level, that's right. And so are the tabulations
13 of the detailed variables, but even the national table has been
14 protected except for the population total.

15 THE COURT: In other words, if someone, I don't know
16 what this red box is, but if someone within this Lee area, the
17 local jurisdiction wanted to get accurate citizen voting-age
18 population for within that area, is that something that could
19 be done consistent with the disclosure restrictions in Title
20 13?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: And how would that be done?

23 THE WITNESS: Well, we actually had to work pretty
24 hard to do it. We had to design the algorithm so that it could
25 publish at the block level so you could build the arbitrary

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Abowd - Direct

1 geographic areas that you needed, and the statistics kept
2 getting more and more accurate as the number of people in that
3 geographic area increased. So there are --

4 Perhaps Mr. Ho knows the total of the number of people
5 in that red box, but looks like there's about 50 or 60. The
6 data will be quite accurate for such advocacy. That's enough
7 people so that the fact that we added noise to the individual
8 data doesn't affect the tabulations very much.

9 THE COURT: How many people would you need for it to
10 remain accurate but still allow you to mask in the way that
11 you're required to do?

12 THE WITNESS: So, your Honor, that's not a question
13 that can be answered in a vacuum. The way we are doing it is
14 when you add the noise this way, you can produce a drawing that
15 shows how the accuracy of various tabulations is affected by
16 the amount of noise that you've infused, and it gives you the
17 feasible levels. If you're going to protect the
18 confidentiality, then you have to choose a point on this graph.

19 What we have to do is we have to decide, based on the
20 use cases for the data, how to allocate that accuracy so that
21 it meets the client use cases. So we're evaluating the way we
22 will do this at the block level so that it would be useful for
23 redistricting and for Section 2 scrutiny under the Voting
24 Rights Act, and we have been given test cases from the
25 Department of Justice in order to facilitate this evaluation so

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Abowd - Direct

1 that we can show them that it's still fit for use.

2 We did not ever previously do this. Previously we
3 just added the noise and told the users that we weren't going
4 to tell them anything about it.

5 THE COURT: And maybe this is an unintelligible
6 question, but is there a census block size that is adequate
7 enough that you would not need to introduce noise in order for
8 the relevant data to be masked?

9 THE WITNESS: No. You have to introduce noise, your
10 Honor, to every block, to every tabulation, but you control the
11 amount of noise that you introduce so as to guarantee accuracy
12 along the dimensions that the use case requires.

13 THE COURT: All right.

14 Mr. Ho.

15 MR. HO: I may have some questions that might clarify
16 some of this, your Honor.

17 Q. Dr. Abowd, with respect to what the Census Bureau's done in
18 the past, the publicly available technical documents state that
19 in the past the Census Bureau has applied household-level
20 swapping and synthetic data noise infusion, correct?

21 A. That's correct.

22 Q. Let's talk about those two different things, and let's
23 start with household-level swapping.

24 Household-level swapping would be where you take certain
25 variables on one household's record and you match them up to

IbdWnys7

Abowd - Direct

1 the variables on another household's record, located in a
2 different geographic area, and then you swap those values
3 except the address so that it looks like essentially one
4 household lives at one location and the other household lives
5 in another location, right?

6 A. Yes, that's essentially correct.

7 Q. And when you do that, when you've done that in the past,
8 you would swap the households across census blocks, correct?

9 A. Yes, sir.

10 Q. And you do that because there would be no point in swapping
11 households within a census block, right?

12 A. That's right.

13 Q. Now, let's talk about synthetic data noise infusion.
14 That's a different technique, right?

15 A. That is correct.

16 Q. And that's what you were talking about with Judge Furman
17 earlier, right?

18 A. I was talking about a particular form of that, yes.

19 Q. Right, because there are multiple forms of synthetic data
20 noise infusion, correct?

21 A. They're multiple forms of noise infusion. They don't all
22 involve synthetic data.

23 Q. Thank you.

24 Now, one way of doing noise infusion is to develop a model
25 for when you have a particular item or variable on a

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Abowd - Direct

1 household's record that's sensitive and then replacing that
2 variable as reported by the household with synthetic,
3 essentially made-up data based on the model, is that right?

4 A. With a draw from the model's predictive distribution,
5 that's correct.

6 Q. And the idea is that at a high level of geography, like a
7 county, the overall aggregate numbers are going to remain
8 essentially the same, right, Dr. Abowd?

9 A. So, some disclosure-avoidance methods have that property
10 and some don't. Without getting into the deep weeds of ones
11 that you're talking about, the particular synthetic data
12 property that you just described won't have that feature unless
13 it is engineered into the synthesizer.

14 Q. For the use case that you have here -- right -- when you're
15 talking about higher levels of geographic units, like counties,
16 when you infuse the synthetic data, the idea is that the
17 aggregate numbers are going to be basically the same? Right?

18 A. The idea is not with respect to the geographic area but
19 with respect to the population within the geographic area.

20 Q. Thank you.

21 A. The denser the population the more accurate the statistics.

22 Q. OK. So, the larger the population size of the geographic
23 area the more accurate the data will remain even after
24 synthetic data noise infusion, correct?

25 A. After the disclosure-avoidance procedure we're implementing

IbdWnys7

Abowd - Direct

1 for the 2020 census, that's correct.

2 Q. But at the smaller levels of geographic specificity, like
3 the individual census block, the more noise there's going to
4 be -- I mean, in terms of the population --

5 MR. HO: Let me start that question again.

6 Q. Areas with smaller population sizes -- like census blocks
7 typically have smaller population sizes than counties --
8 there's going to be more noise at that level of geographic
9 specificity once you employ noise infusion, correct?

10 A. That's correct.

11 Q. So, leaving all the noise infusion and the CVAP data using
12 responses to the citizenship question, today, when we use ACS
13 CVAP data, generally speaking, we have more accuracy at
14 geographic levels of specificity that have larger populations
15 and more uncertainty at lower levels, correct?

16 A. That's correct.

17 Q. And that's also going to be true with CVAP data produced
18 based on responses to the decennial census question due to
19 noise infusion at higher levels of geography with more people,
20 more accuracy but greater uncertainty at smaller levels of
21 geography with smaller populations, correct?

22 A. It's the smaller populations that make the sentence
23 correct, and yes, it is, with that qualification.

24 Q. Now, the Census Bureau has not yet set the parameters for
25 disclosure avoidance for the CVAP table that will be created

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Abowd - Direct

1 after the 2020 census, correct?

2 A. That's correct.

3 Q. If you do data disclosure avoidance properly, then the
4 block-level CVAP data that you produce after the 2020 census
5 including a citizenship question, the block-level data is going
6 to be a series of estimates for each block rather than an exact
7 tabulation of census responses, correct?

8 A. I have difficulty answering that question because
9 "estimates" has a specific legal meaning that's not quite the
10 same as the generally understood statistical meaning. The data
11 produced for each block and for the entire country and for
12 every geographic area in between will be based on the entire
13 enumeration, so in that sense not an estimate.

14 In the sense that they have been infused with noise to
15 protect confidentiality and therefore have margins of error
16 that resemble the margins of error that you would get in
17 statistical processes that become more accurate as the number
18 of cases increases, then it is correct. So they are not
19 estimates in the sense that the law understands sample-based
20 estimates. They're based on the entire population.

21 Q. Well, let's not talk about the law for a moment. I just
22 want to -- and let's not worry about sample-based estimates, or
23 whatever.

24 Just in your words, Dr. Abowd, you would describe the
25 block-level CVAP data that's produced even after a citizenship

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Abowd - Direct

1 question is on the census as an estimate rather than a precise
2 tabulation, correct?

3 A. Yes.

4 Q. So the block-level CVAP tabulation produced by the Census
5 Bureau will not reflect the actual values of the number of
6 citizens of voting age in each of those census blocks after the
7 2020 census, correct?

8 A. It will not be exactly equal to that number. It will be
9 approximately equal to that number, with the approximation
10 improving as the population increases.

11 Q. And after the 2020 decennial census even if there is a
12 citizenship question, when the Census Bureau produces
13 block-level CVAP data, there will be error margins associated
14 with that data, correct?

15 A. Yes.

16 Q. And after the 2020 decennial census, when the Census Bureau
17 produces block-level CVAP data, even if there is a citizenship
18 question on the census, as of right now, the Census Bureau
19 doesn't know whether the margins of error associated with that
20 block-level CVAP data will be larger or smaller than the CVAP
21 data that DOJ currently uses, correct?

22 A. We don't know, but we are able to control the margin of
23 error in different ways, and so we intend to produce those
24 tables in a manner that is fit for use by the Department of
25 Justice.

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Abowd - Direct

1 Q. But you don't know right now whether or not the margins of
2 error associated with block-level CVAP data produced after the
3 2020 census, assuming that there's a citizenship question on
4 it, that those block-level estimates will have margins of error
5 that are any smaller than the block-level CVAP data that DOJ
6 currently relies on, correct?

7 A. I'd like to answer your question, Mr. Ho, but the DOJ
8 doesn't currently work with any block-level CVAP data, so --

9 Q. Well, the DOJ does translate ACS CVAP data at one level of
10 geographic specificity and combines it with decennial census
11 data to produce block-level CVAP estimates, correct?

12 A. That's not my understanding of how it's done. My
13 understanding of how it's done is that they combine block-level
14 CVAP data with block-level other data, PL 94 data, and they
15 estimate the citizen population in the voting districts that
16 they're trying to supply -- to do scrutiny of. Sometimes that
17 involves having to model down to the block level, but it
18 doesn't always.

19 Q. OK. Dr. Abowd, this is a very simple question. The CVAP
20 data that the Census Bureau's going to produce after the 2020
21 census, assuming that the 2020 census includes a citizenship
22 question, we don't know today whether or not that data will
23 have margins of error that are any more precise than the CVAP
24 data on which the Department of Justice currently relies,
25 correct?

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Abowd - Direct

1 A. Because the parameters have not been set, the answer to
2 that question has to be yes.

3 Q. Dr. Abowd, there were never any conversations between the
4 Department of Justice and the Census Bureau about this issue
5 prior to Secretary Ross's issuance of his decision memo
6 ordering the inclusion of the citizenship question on the
7 census, correct?

8 A. That's correct.

9 Q. DOJ refused to meet with you to discuss, right?

10 A. So, I don't know that DOJ would have refused to meet with
11 us to discuss disclosure avoidance on the PL 94 and CVAP table.
12 All I know is that they didn't meet with us to discuss the
13 specific request about adding a citizenship question to the
14 2020 census.

15 Q. During that whole process, between when you began your
16 analysis with the SWAT team and when Secretary Ross issued his
17 decision memo, there were never any conversations between
18 commerce and the Census Bureau about how disclosure avoidance
19 might affect the precision of the CVAP data that the Census
20 Bureau could produce after the 2020 census, correct?

21 A. Not entirely. I had already briefed Undersecretary Kelley
22 on the consequences of modernizing the disclosure-avoidance
23 system at the Census Bureau. I briefed her, I believe, in
24 November of 2017.

25 Q. That was before you began working on the citizenship

IbdWnys7

Abowd - Direct

1 question, right, Dr. Abowd?

2 A. That's correct.

3 Q. OK. My question was meant to be a little more precise, and
4 I apologize if I didn't word it correctly. But my question is
5 from the time that you started analyzing the citizenship
6 question request from the Department of Justice to when
7 Secretary Ross issued his decision memo, there were no
8 conversations between the Census Bureau and commerce department
9 officials about whether disclosure avoidance might affect the
10 precision of the block-by-block CVAP data that the Census
11 Bureau could produce based on responses to the citizenship
12 question on the census, correct?

13 A. Not quite. We did, both in discussing it with the
14 secretary and in discussing it with the undersecretary, remind
15 them both that we would be using disclosure-avoidance
16 procedures at the block level.

17 Q. And in spite of that reminder, the secretary forged ahead
18 and ordered a citizenship question anyway, right, Dr. Abowd?

19 A. The secretary was aware of our intention to use disclosure
20 avoidance --

21 Q. There are no documents in the administrative record that
22 you're aware of, Dr. Abowd, that reflect the way in which
23 disclosure avoidance might affect the precision of
24 block-by-block CVAP data that the Department of Justice was
25 requesting from the Census Bureau through a citizenship

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Abowd - Direct

1 question on the census, correct?

2 A. That's correct.

3 MR. HO: Let's go back to Secretary Ross's memo,
4 Plaintiffs' Exhibit 26. I want to go to page 8.

5 Q. Secretary Ross says that he has determined that
6 reinstatement of a citizenship question on the 2020 decennial
7 census is necessary to provide complete and accurate data in
8 response to the DOJ request. Do you see that?

9 A. Yes, I do.

10 Q. Dr. Abowd, you don't agree that a citizenship question on
11 the 2020 census is necessary to provide a complete and
12 accurate, to provide complete and accurate data in response to
13 the DOJ request, correct?

14 A. That's correct.

15 Q. And Dr. Abowd, the position of the Census Bureau is that a
16 citizenship question on the 2020 decennial census is not
17 necessary to provide complete and accurate data in response to
18 the DOJ request, correct?

19 A. That's correct.

20 MR. HO: Dr. Abowd, I don't have any other questions
21 for you right now, but your Honor, the plaintiffs, because we
22 still have a few exhibit issues to sort out, although my
23 questioning of Dr. Abowd is complete, we would not like to
24 close the record just yet.

25 THE COURT: All right. I also assume you want to