

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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March 29, 2019

The Honorable Wilbur L. Ross, Jr.
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Ross:

This letter responds to the March 26, 2019, letter from Ross Branson at the Department of Commerce. Because no officials from the Department were able to attend a meeting we requested this week to discuss these issues, they are described in detail below.

For more than two months, the Department has withheld key documents requested by the Committee regarding your decision to add a citizenship question to the 2020 Census. The Department has continued to withhold these documents despite repeated follow-up requests from the Committee and despite accommodations we have made to extend deadlines and allow the Department to prioritize certain documents.

During your testimony before the Committee on March 14, you refused to commit to providing the documents requested by the Committee, and you also refused to answer critical questions from Committee Members regarding the addition of the citizenship question.

Just yesterday, we received another document production from the Department, but you again failed to produce unredacted copies of any of the key documents we have requested.

Mr. Branson's March 26 letter set forth "some clarifying questions that must be answered before we can respond."¹ This letter addresses those questions and several inaccuracies in Mr. Branson's letter.

First, Mr. Branson's letter asserts that four of the 11 documents that my staff identified as priorities (Priority Documents 2, 3, 5, and 6) have already been produced in unredacted form. This claim is inaccurate.

¹ Letter from Ross Branson, Deputy Assistant Secretary, Legislative and Intergovernmental Affairs, Department of Commerce, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 26, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DOC.032619.%20Response%20to.pdf>).

My staff's request stated: "For all responsive emails, the entire unredacted email chain and all attachments should be produced." Although the top emails in Priority Documents 2, 3, and 5 have been produced without redactions, all three documents contain redactions of key emails lower in the email chain. For example:

- Priority Document 2 includes an email that was sent from you to Earl Comstock and Ellen Herbst at 10:04 a.m. on May 2, 2017, that is entirely redacted except for the following excerpt:

Worst of all they emphasize that they have settled with congress on the questions to be asked. I am mystified why nothing have been done in response to my months old request that we include the citizenship question. Why not?

- Priority Document 3 contains a redacted email sent from Wendy Teramoto to you at 7:17 a.m. on May 2, 2017. The unredacted portion describes Ms. Teramoto's interactions with former Trump transition official Mark Neuman and asks: "Do you want me to set up another meeting?" This document also contains the redacted email described above that was sent at 10:04 a.m. on May 2, 2017.
- Priority Document 5 contains a redacted email from you to Earl Comstock at 1:20 p.m. on August 8, 2017. In the unredacted portion of that email, you wrote:

Were you on the call this morning about Census? They seem dig in [*sic*] about not sling [*sic*] the citizenship question and that raises the question of where is the DoJ in their analysis? If they still have not come to a conclusion please let me know your contact person and I will call the AG.

The Department also withheld a critical attachment from Priority Document 6. The August 11, 2017, email sent from Earl Comstock to you describes the attachment, stating in part: "Per your request, here is a draft memo on the citizenship question that James Uthmeier in the Office of General Counsel prepared and I reviewed."

Second, Mr. Branson's letter asserts that certain priority documents have been redacted for reasons "wholly unrelated" to the Committee's investigation. However, because the Department failed to follow Committee guidelines for producing documents with Bates stamps and a clear privilege log, the bases for these redactions is unclear:

- Priority Document 4 includes the same redacted email from you to Mr. Comstock that is included in Priority Document 5, described above. In addition, Priority Document 4 includes a response from Mr. Comstock to you on August 8, 2017, at 7:44 p.m. with a large block of redacted text. This specific timestamp does not appear to match any entries on your privilege log.
- Priority Documents 7 and 8 contain heavily redacted email exchanges between you, Mr. Comstock, and Ms. Teramoto from August 30, 2017, through September

1, 2017. Again, the specific timestamps on these emails do not appear to match any entries in your privilege log.

In light of these discrepancies and the inaccuracies of other statements in the letter, the Committee cannot rely on your statement at this time to release our request for the production of these documents in unredacted form. As an accommodation to the Department, the Committee will agree to review these three documents in unredacted form *in camera* on Monday, April 1, and if we can confirm that the information in the emails is “wholly unrelated” to the Committee’s investigation, we will drop our request for you produce those documents to the Committee in unredacted form.

As for Priority Documents 1, 9, 10, and 11, and the attachment to Priority Document 6, Mr. Branson’s letter asserts “various bases” for redactions, including the “confidentiality of attorney-client communications.”² As you know, however, the attorney-client privilege is not a valid basis to withhold information from Congress. That is especially true here, where the withheld information is central to the Committee’s investigation.

Mr. Branson’s letter asks for the Committee to explain our “particularized information needs” to receive these documents. The letter also asks for the Committee to identify our “particularized needs” to conduct transcribed interviews with Peter Davidson and James Uthmeier and asks for “further justification” for our request to conduct a transcribed interview with Earl Comstock.³

Our need for these documents and interviews is clear. The Committee is seeking to understand the real reason that you added a citizenship question to the 2020 Census. You have testified that you added the question “solely” in response to a December 2017 request from the Department of Justice, but the record contradicts your claim, showing that you began orchestrating a campaign to add the citizenship question just days after taking office at the Department of Commerce and more than nine months before DOJ sent its request.

The requested documents and interviews may provide contemporaneous evidence of the real reason that you added the citizenship question and the process you followed. For example, they may provide insight into:

- Your apparent interest in adding a citizenship question beginning in early 2017 and your instructions to your staff on this issue;
- Your communications on the citizenship question with senior Trump Administration officials and others;
- Your efforts over the course of several months to find another agency to request the addition of the citizenship question to the Census;

² *Id.*

³ *Id.*

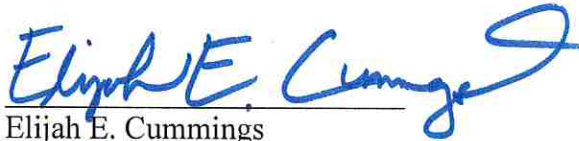
- The Department of Commerce's communications with DOJ before and after DOJ's December 2017 request letter;
- The role of the White House in coordinating the addition of the citizenship question; and
- Your deliberations leading to the issuance of the pretextual decision memorandum in March 2018.

The Committee's need for these documents and interviews has been heightened by your refusal to answer key questions during the Committee's March 14 hearing based on vague and meritless claims of "confidentiality."

As a further accommodation, we will give the Department until Monday, April 1, 2019, to inform the Committee whether you will agree to produce all priority documents the Committee has previously identified without redactions and whether you will make Mr. Davidson, Mr. Uthmeier, and Mr. Comstock available for transcribed interviews. If you do not agree, the Committee will consider compulsory process to obtain the documents at our next business meeting on April 2, 2019.

Thank you for your attention to this matter.

Sincerely,



Elijah E. Cummings
Chairman

cc: The Honorable Jim Jordan, Ranking Member