1   UNITED STATES DISTRICT COURT

               SOUTHERN DISTRICT OF NEW YORK

2

- - - - - - - - - - - - - - - -x

3   NEW YORK IMMIGRATION   :

    COALITION, et al.,   :

4   :

      Plaintiffs,   :

5   : Case No.

      v.   :

6   : 1:18-CF-05025-JMF

    UNITED STATES DEPARTMENT :

7   OF COMMERCE, et al.,   :

                           :

8   Defendants.   :

- - - - - - - - - - - - - - - -x

9   Friday, October 16, 2018

                          Washington, D.C.

10

11

12 Videotaped Deposition of:

13   JOHN GORE,

14 called for oral examination by counsel for the

15 Plaintiffs, pursuant to notice, at the law offices of

16 Covington & Burling, LLP, One City Center, 850 Tenth

17 Street, Northwest, Washington, D.C. 20001-4956,

18 before Christina S. Hotsko, RPR, CRR, of Veritext

19 Legal Solutions, a Notary Public in and for the

20 District of Columbia, beginning at 9:05 a.m., when

21 were present on behalf of the respective parties:

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 1                  A P P E A R A N C E S
 2   On behalf of New York Immigration Coalition:
         DALE HO, ESQUIRE
 3       JONATHAN TOPAZ, ESQUIRE
         American Civil Liberties Union Foundation
 4       915 15th Street, Northwest
         Washington, D.C. 20005
 5       (202) 675-2337
         dale.ho@aclu.org
 6
 7   On behalf of Lupe Plaintiffs:
         DENISE HULETT, ESQUIRE
 8       MALDEF
         1512 14th Street
 9       Sacramento, California 95814
         (916) 642-6352
10       dhulett@maldef.org
11       ERI ANDRIOLA, ESQUIRE
         Asian Americans Advancing Justice
12       1620 L Street, Northwest, Suite 1050
         Washington, D.C. 20036
13       (202) 296-2300
14
     On behalf of City of San Jose and Black Alliance for
15   Just Immigration:
         JON M. GREENBAUM, ESQUIRE
16       DORIAN L. SPENCE, ESQUIRE
         Lawyers Committee for Civil Rights Under Law
17       1401 New York Avenue, Northwest, Suite 400
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20
21
22
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 1        A P P E A R A N C E S   C O N T I N U E D
 2

   On behalf of Kravitz Plaintiffs:
 3     TINA M. THOMAS, ESQUIRE
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       850 Tenth Street, Northwest
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 7

   On behalf of the State of California:
 8     GABRIELLE D. BOUTIN, ESQUIRE (Via Telephone)
       California Department of Justice
 9     Office of the Attorney General
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10     P.O. Box 944255
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12

13 On behalf of Defendants:
       JOSH GARDNER, ESQUIRE
14     REBECCA KOPPLIN, ESQUIRE
       ALICE LACOUR, ESQUIRE
15     BRETT SHUMATE, ESQUIRE
       U.S. Department of Justice, Civil Division
16     20 Massachusetts Avenue, Northwest
       Washington, D.C. 20530
17     (202) 514-4522
18     VALERIE M. NANNERY, ESQUIRE
       ANDREW SAINDOM, ESQUIRE
19     Office of the Attorney General for D.C.
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22
```

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 1        A P P E A R A N C E S   C O N T I N U E D
 2    On behalf of Defendants:
          DAVID DOREY, ESQUIRE
 3        DAVID DEWHIRST, ESQUIRE
          U.S. Department of Commerce
 4        1401 Constitution Avenue Northwest
          Washington, D.C. 20230
 5        (202) 482-2000
 6
      Also Present:
 7        Dan Reidy, Video Technician
 8
 9
10
11
12
13
14
15
16
17
18                    Veritext Legal Solutions
                         Mid-Atlantic Region
                       1250 Eye Street NW - Suite 350
19                    Washington, D.C.  20005
20
21
22
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1   C O N T E N T S

          *   (Exhibits attached to transcript.)

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

2   VIDEO TECHNICIAN: Good morning. We are

3   going on the record at 9:05 a.m. on Friday,

4   October 26th, 2018.

5   Please note that the microphones are

6   sensitive and may pick up whispering, private

7   conversations, and cellular interference. Please

8   turn off all cell phones or place them away from

9   the microphones, as they can interfere with the

10   deposition audio.

11   Audio and video recording will continue

12   to take place unless all parties agree to go off

13   the record.

14   This is media unit 1 of the

15   video-recorded deposition of John Gore, taken by

16   counsel for the plaintiff in the matter of the

17   New York Immigration Coalition, et al. versus the

18   United States Department of Commerce, et al.

19   This case is filed in the United States

20   District Court for the Southern District of New

21   York.

22   This deposition is being held at the law

 1 offices of Covington & Burling, LLP, located at

 2 850 Tenth Street, Northwest, Washington, D.C.

 3 20001.

 4   My name is Dan Reidy from the firm

 5 Veritext Legal Solutions, and I'm the

 6 videographer. The court reporter is Christina

 7 Hotsko from the firm Veritext Legal Solutions.

 8   I am not authorized to administer an

 9 oath, I am not related to any party in this

10 action, nor am I financially interested in the

11 outcome.

12   Counsel and all present in the room will

13 now state their appearances and affiliations for

14 the record. If there are any objections to

15 proceeding, please state them at the time of your

16 appearance, beginning with the noticing attorney.

17   MR. HO: Detail Ho for the New York

18 Immigration Coalition plaintiffs.

19   MR. TOPAZ: Jonathan Topaz for NYC

20 plaintiffs.

21   MS. HULETT: Denise Hulett for Lupe

22 plaintiffs.

1   MR. SPENCE: Dorian Spence for BAJI and

2   the City of San Jose.

3   MS. ANDRIOLA: Eri Andriola for the Lupe

4   plaintiffs.

5   MR. GREENBAUM: John Greenbaum from the

6   City of San Jose and BAJI.

7   MS. THOMAS: Tina Thomas for the Kravitz

8   plaintiffs.

9   MS. KOPPLIN: Rebecca Kopplin from the

10   Department of Justice.

11   MS. LACOUR: Alice Lacour from the

12   Department of Justice.

13   MR. SHUMATE: Brett Shumate from the

14   Department of Justice.

15   MR. GARDNER: Josh Gardner for the

16   Department of Justice on behalf of the defendants.

17   MR. SAINDOM: Andrew Saindom on behalf of

18   the District of Columbia.

19   MS. NANNERY: And Valerie Nannery from

20   the District of Columbia attorney general's

21   office.

22   MR. DOREY: David Dorey from the

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 1   Department of Commerce.

 2           MR. DEWHIRST:  David Dewhirst from the

 3   Department of Commerce.

 4           VIDEO TECHNICIAN:  Will the court

 5   reporter please swear in the witness.

 6   Whereupon,
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Global Objection
401/403
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 7                     JOHN GORE,

 8   being first duly sworn or affirmed to testify to

 9   the truth, the whole truth, and nothing but the

10   truth, was examined and testified as follows:

11              EXAMINATION BY COUNSEL FOR

12            THE NEW YORK IMMIGRATION COALITION

13   BY MR. HO:

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

15       A.  No.

16       Q.  But you have been in depositions before,

17   correct?

18       A.  Yes.

19       Q.  Roughly how many times have you attended

20   a deposition?

21       A.  Ten.

22       Q.  You understand that you're under oath
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1 under penalty of perjury today?

2   A. Yes, I do.

3   Q. Is there any reason you can't testify

4 truthfully today?

5   A. No.

6   Q. I'm just going to go over a few ground

7 rules. Is that okay?

8   A. Sure.

9   Q. So the first one is, please respond

10 verbally when I ask you a question, because the

11 court reporter can't record things like gestures

12 or grunts or uh-huhs. Is that okay?

13   A. Yes.

14   Q. So the court reporter can take everything

15 down. I'm just going to ask that you wait until I

16 finish asking a question before you start

17 answering, and I'll do the same and try not to cut

18 you off. Okay?

19   A. Okay.

20   Q. If you ever want to take a break, that's

21 okay. The one exception to that is if I've posed

22 a question to you, I'd ask that you answer that

 1   question before we take the break. Is that okay?

 2   A.   Okay.

 3   Q.   What did you do to prepare for your

 4   deposition?

 5   A.   I met with various lawyers of the

 6   Department of Justice and reviewed some documents

 7   that I understand to have been produced in the

 8   litigation.

 9   Q.   What documents did you review?

10   MR. GARDNER: Objection. Calls for the

11   disclosure of information subject to the work

12   product protection. I instruct the witness not to

13   answer.

14   BY MR. HO:

15   Q.   Have you reviewed any deposition

16   transcripts in this case?

17   A.   No.

18   Q.   Have you reviewed any expert reports in

19   this case?

20   A.   Yes.

21   Q.   Which expert reports have you reviewed?

22   A.   I reviewed an expert report submitted by

1   Dr. Lisa Handley and also one submitted by Pam

2   Karlan.

3   Q.   Are you aware of topics that were covered

4   in any of the depositions in any of the litigation

5   over the citizenship question?

6   MR. GARDNER: Objection.   Vague.

7   BY MR. HO:

8   Q.   You can answer.

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

10   Q.   Did you consult with any staff in the

11   civil rights division such as voting section chief

12   Chris Herren in preparation for your deposition?

13   A.   Yes.

14   Q.   Who did you consult with in the civil

15   rights division in preparation for your

16   deposition?

17   A.   Chris Herren.

18   Q.   Anyone else?

19   A.   No.

20   Q.   Before you began working at DOJ, you were

21   an attorney in private practice, correct?

22   A.   Yes.

1   Q.   And as an attorney in private practice,

2   you litigated some cases involving claims under

3   Section 2 of the Voting Rights Act, correct?

4   A.   Yes.

5   Q.   You're familiar with the term citizen

6   voting age population, the acronym C-V-A-P, or

7   what I'll refer to as CVAP today?

8   A.   Yes.

9   Q.   And you're familiar with the term ACS for

10   American Community Survey?

11   A.   I am.

12   Q.   You're familiar with the first

13   precondition for Section 2 liability under

14   Thornburg versus Gingles?

15   A.   Yes.

16   Q.   And one way of describing the first

17   Gingles precondition for Section 2 liability under

18   the Voting Rights Act is that plaintiffs must

19   demonstrate that racial minorities are

20   sufficiently numerous so as to form a majority of

21   a compact single-member district. Is that your

22   understanding?

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

2   Q.   Prior to coming to the Department of

3   Justice, with respect to all of the cases that you

4   litigated under Section 2 of the Voting Rights

5   Act, you represented defendants, correct?

6   A.   That's correct.

7   Q.   In all of your experience representing

8   defendants in cases under Section 2 of the Voting

9   Rights Act, you never took the position that the

10   plaintiffs block-level CVAP data was insufficient

11   to establish the first Gingles precondition

12   because it was a statistical estimate, correct?

13   A.   When I was in private practice, I was

14   representing a client, so my clients took various

15   positions.   And as a lawyer, I pursued those

16   positions on behalf of clients in court.   I can't

17   recall an instance where a client of mine took

18   that position.

19   Q.   And in all of your experience litigating

20   cases under Section 2 of the Voting Rights Act,

21   you're not aware of, in any of your cases, a

22   situation where a court held that block-level CVAP

401

1 data was insufficient to satisfy the first Gingles

2 precondition because it was a statistical

3 estimate, correct?

4   A.   You're talking about cases I actually was

5 involved in?

6   Q.   That's correct.

7   A.   As a litigant or as attorney?

8   Q.   As an attorney.

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

10 such case.

11   Q.   Do you have any experience drawing

12 districts for purposes of complying with the first

13 Gingles precondition?

14   A.   That's a -- that's a fair question. In

15 one of our cases, we did have a case that went to

16 a remedial phase. I wouldn't say I was involved

17 in drawing the district, but I was certainly

18 involved in reviewing various remedial proposals

19 and other proposals that were submitted to the

20 court in the course of litigation.

21   Q.   So let me clarify my question. My

22 question is about the technical aspects of

401

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1   actually getting the census data, taking the

2   mapping software, and drawing a district.

3   You don't have any experience doing that,

4   correct?

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

6   of a computer with Maptitude and drawn a district.

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

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

9   drawing districts using ACS data, correct?

10   A.   That's correct.

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

12   census block-group level data and performing an

13   estimation procedure to produce block-level data,

14   correct?

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

16   Q.   You're currently acting assistant

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

18   Department of Justice, correct?

19   A.   Correct.

20   Q.   And when did you become the acting AAG

21   for civil rights?

22   A.   July 28th, 2018.

1   Q. In that position, you are the head of the

2 civil rights division, correct?

3   A. Correct.

4   Q. And you're a political appointee; you're

5 not career civil rights division staff, correct?

6   A. Correct.

7   Q. One of the sections under your purview

8 within the civil rights division is the voting

9 section, correct?

10   A. Correct.

11   Q. And one of the duties of the voting

12 section is to enforce Section 2 of the federal

13 Voting Rights Act of 1965, correct?

14   A. That's correct.

15   Q. Is it fair to say that, as acting AAG for

16 civil rights, you are authorized to speak on

17 behalf of the civil rights division?

18   A. I think with respect to matters that fall

19 within the purview of the civil rights division

20 and the Office of the Assistant Attorney General

21 for the civil rights division, that's correct, as

22 a general matter.

1   Q.   You take your interactions with DOJ staff

2 from outside of the civil rights division

3 seriously, right?

4   MR. GARDNER: Objection. Vague.

5   THE WITNESS: I take all of my

6 interactions in a professional capacity

7 professionally and, hopefully, seriously as well.

8 BY MR. HO:

9   Q.   When you interact with DOJ staff who are

10 not members of the civil rights division, you are

11 in some sense acting as a representative of the

12 civil rights division in those interactions with

13 non-civil rights division DOJ staff, correct?

14   A.   Not necessarily. In certain cases that

15 would be true, but there are instances in which

16 that wouldn't necessarily be correct.

17   Q.   The Department of Justice sent a letter

18 to the Census Bureau on December 12th, 2017,

19 requesting that a citizenship question be included

20 on the 2020 decennial census questionnaire,

21 correct?

22   A.   I have no basis to dispute the date

1 there. Yes, the department did send a letter.

2 Whether it was December 12th -- I believe that's

3 correct, but I don't have the letter in front of

4 me, so I can't testify to that date necessarily.

5 But yes, there was a letter that was sent in that

6 time frame from the Department of Justice to the

7 Census Bureau.

8   Q. There's no other reason besides Voting

9 Rights Act enforcement that formed the basis of

10 the Department of Justice's request that a

11 citizenship question be added to the 2020

12 decennial census questionnaire, correct?

13   MR. GARDNER: Objection to the extent it

14 calls for the disclosure of information subject to

15 the deliberative process privilege.

16   To the extent you can answer the question

17 without divulging such information, you may do so.

18 Otherwise, I instruct you not to answer.

19   THE WITNESS: I think the letter speaks

20 for itself. Again, I don't have it in front of

21 me.

22

1   BY MR. HO:

2   Q. The letter does not express any reason

3   for requesting a citizenship question be added to

4   the 2020 decennial census questionnaire besides

5   Voting Rights Act enforcement, correct?

6   A. Again, I think the letter speaks for

7   itself. And I don't have a copy of it in front of

8   me, so I can't say what it does or doesn't say.

9   (Gore Deposition Exhibit 1 marked for

10   identification and attached to the

11   transcript.)

12 BY MR. HO:

13   Q. I'm going to show you something that's

14 been marked as Plaintiff's Exhibit -- as, sorry,

15 Exhibit 1.

16   A. Okay.

17   Q. This is an e-mail from you to Arthur Gary

18 dated December 18th, 2017, correct?

19   A. It appears to be. Yes.

20   Q. The subject line of this e-mail is

21 talking points, correct?

22   A. Correct.

1   Q. And these are talking points that you

2 e-mailed to Mr. Gary concerning the Department of

3 Justice's request to include a citizenship

4 question on the decennial census questionnaire,

5 correct?

6   A. I'm sorry. Can you repeat that question?

7   Q. Sure. These are talking points that you

8 e-mailed to Mr. Gary concerning the Department of

9 Justice's request to include a citizenship

10 question on the decennial census questionnaire,

11 correct?

12   A. Correct.

13   Q. The fourth bullet here reads, "The

14 Department of Justice is not seeking any

15 information about any individual citizenship

16 status from the Census Bureau. Rather, the

17 department is seeking the most complete and

18 accurate data regarding total citizenship rates in

19 voting districts that the Census Bureau can

20 provide. The data will allow the department to

21 fulfill its commitment of fully and robustly

22 enforcing the Voting Rights Act."

1   Did I read that correctly?

2   A.   Yes, you did.

3   Q.   You agree that the department is seeking

4 the most complete and accurate data regarding

5 total citizenship rates in voting districts that

6 the Census Bureau can provide, correct?

7   A.   Yes, that's correct.

8   Q.   And do you believe that the letter from

9 the Department of Justice to the Census Bureau

10 requesting the inclusion of a citizenship question

11 is consistent with the department's goal of

12 seeking the most complete and accurate data

13 regarding total citizenship rates that the Census

14 Bureau can provide?

15   A.   I think it's consistent with that

16 objective, but is not the full picture of the data

17 that the Department of Justice would use and would

18 want to have at its disposal.

19   Q.   When you say that it is not the full

20 picture of the data that the Department of Justice

21 would use and want to have, what did you mean by

22 that?

1   A. Well, what I mean is there are various

2 sources of data on citizenship. And in the modern

3 world, we live in a data-driven world. And the

4 Department of Justice is always trying to find the

5 best possible data, whether it's from one source

6 or multiple sources, to analyze jurisdictions for

7 potential Section 2 violations and to bring

8 appropriate Section 2 enforcement actions.

9   And the letter lays out reasons why -- is

10 my recollection -- reasons why collecting data

11 from the census questionnaire, in addition to

12 other sources, would be an appropriate means for

13 the Department of Justice to collect the best

14 possible total data that it could collect.

15   Q. What are the other sources other than the

16 decennial census questionnaire that you're

17 referring to for the collection of citizenship

18 data?

19   A. We already have a citizenship question on

20 the ACS. And there may be other sources that I'm

21 not aware of, but that's the source that comes to

22 mind.

1   Q.   Okay. Decennial census questionnaire,

2 American Community Survey. Besides those two

3 sources, are there other sources of citizenship

4 data that you're aware of that the Department of

5 Justice could rely on for purposes of Section 2

6 enforcement?

7   A.   Not that I'm aware of.

8   Q.   You agree that having the most complete

9 and accurate data regarding citizenship rates that

10 the Census Bureau could provide would allow the

11 department to fulfill its commitment to robustly

12 enforcing the Voting Rights Act?

13   A.   Yes, I do.

14   Q.   I want to show you another document.

15 It's been pre-marked as Exhibit 2.

16   (Gore Deposition Exhibit 2 marked for

17   identification and attached to the

18   transcript.)

19 BY MR. HO:

20   Q.   This is a Bloomberg transcript of your

21 testimony on May 21, 2018, before the House   401

22 Oversight Committee.

401

1   Do you remember your testimony that day?

2   A.   I do.

3   Q.   You were under oath that day under

4   penalty of perjury, correct?

5   A.   I was.

6   Q.   And you testified truthfully that day,

7   correct?

8   A.   I did.

9   Q.   Now, although you testified before the

10   House Oversight Committee on May 21st, you were

11   previously called to testify before the committee

12   on -- I'm sorry; I may have said the wrong -- no,

13   I said the right date. Let me start that again.

14   A.   Go ahead.

15   Q.   Although you testified before the House

16   Oversight Committee on May 21st, you were

17   previously called to testify before the committee

18   on May 8th, 2018, correct?

19   A.   That's actually not correct. I was never

20   called to testify before the committee. I was

21   invited to testify. The committee invited me to

22   testify on May 8th alongside witnesses from the

1 Census Bureau. And at the last minute, the

2 minority members of the committee added a

3 non-government witness to that witness panel that

4 day. It's longstanding policy and practice of the

5 Department of Justice not to provide a witness

6 where a non-government witness is also testifying,

7 both as a matter of professional courtesy and

8 because certain privileges and policies of the

9 Department of Justice can limit the testimony of a

10 Department of Justice witness before Congress.

11   And so the department made the decision

12 that I would not appear that day on May 8th as

13 part a panel of five witnesses. Instead, I got to

14 go on May 21st as the only witness and be

15 questioned by the committee for the full time of

16 the hearing.

17   Q. That must have been a lot of fun to be

18 the only witness that day.

19   A. I enjoyed the experience.

20   Q. So I'm not -- my question wasn't so much

21 about the reasons. It was just about the

22 timeline. You were invited to testify on May 8th,

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

2   correct?

3   A.   That's correct.

4   Q.   And you're aware that when you didn't

5   testify on May 8th, the chairman of the oversight

6   committee, Representative Gowdy, stated that he

7   would ask you to appear by legal compulsory -- is

8   how he put it -- if necessary.

9   You're aware of that?

10   A.   That sounds right. Yeah.

11   Q.   And so when you did appear on May 21st,

12 you understood that it was an important hearing,

13 right?

14   A.   I believe that -- I would hope that every

15 hearing before Congress is an important hearing.

16 Yeah.

17   Q.   We would all hope.

18   You wanted to make sure that your   401

19 testimony on May 21st was accurate, right?

20   A.   Yes.

21   Q.   And you wanted to make sure that -- to

22 the extent you could discuss the issues that were

1 raised that day, you wanted to make sure that your   401

2 testimony was complete, right?

3   A.   Yes, to the extent I was able to testify

4 about matters consistent with Department of

5 Justice policy and privileges.

6   Q.   And you didn't want to leave anything

7 important out of your testimony on May 21st,

8 correct?

9   MR. GARDNER: Objection.   Form.

10   THE WITNESS: I think that's largely

11 correct, although again, there were strict limits

12 on the testimony that I could give, the topics

13 that I was authorized to discuss, and how I could

14 go about answering questions.

15 BY MR. HO:

16   Q.   You prepared for your testimony on May

17 21st. You didn't just show up without preparing,

18 right?

19   A.   I prepared. Yeah.

20   Q.   And you held a moot to prepare for your   401

21 testimony on May 21st, right?

22   A.   That sounds right.

 1   Q.   And among the people you invited to the

 2   moot was Ben Aguinaga, right?

 3   A.   That's correct.

 4   Q.   Mr. Aguinaga wrote the first draft of

 5   your written statement for the hearing, correct?

 6   A.   I don't have any document in front of me

 7   to confirm that. That's certainly possible.

 8   Mr. Aguinaga at the time was serving as my chief

 9   of staff.

10   Q.   Among the people you invited to your moot

11   also was Mr. Brett Shumate, who's with us today,

12   correct?

13   A.   Yeah, I believe Brett was there.

14   Q.   And Mr. Shumate, he's the deputy

15   assistant attorney general in the federal programs

16   branch of the civil division at DOJ, correct?

17   A.   That's correct.

18   Q.   You didn't invite any career voting

19   section staff to your moot, correct?

20   A.   I actually don't know that I had the

21   power to invite people. The invitations would

22   have gone out from the Office of Legislative

1   Affairs. And I can't speak for who they did or

2   did not invite. I can remember some people who

3   were there, but I don't know who they all did or

4   did not invite.

5   Q. You're not aware of any voting section   401

6   staff being invited to participate in your moot to

7   prepare for the May 21st hearing, correct?

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

9   Q. And no career voting section staff

10 attended your moot on -- to prepare for the May

11 21st hearing, correct?

12   A. That's correct, although voting section

13 staff did help me prepare for the hearing.

14   Q. So I want to ask about your testimony.

15 If you could turn to page 20 of the Bloomberg

16 transcript, Exhibit 2.

17   A. Sure.

18   Q. So on the top of the page, I believe you

19 testified, "Let me just be clear, Congressman,

20 there's no dispute that the Department of Justice

21 needs citizenship voting population data to

22 enforce Section 2 or that it needs that data at

1   the block level."

2   It's still your view that the Department

3   of Justice needs citizen voting age population

4   data at the census block level to enforce

5   Section 2 of the Voting Rights Act, correct?

6   A.   Yes, in some form or another.   The

7   citizenship data at the block level is necessary

8   to bring Section 2 cases.

9   Q.   And the census block is the smallest unit

10   of census geography, right?

11   A.   That is correct.

12   Q.   The next sentence of your testimony

13   reads, "And our letter explains why hard count

14   census data would be better suited for that

15   purpose than the ACS.   It's easier to use because

16   it's already available at the block level and more

17   accurate because it's hard count and not a" -- and

18   then you were interrupted.

19   When you say hard count census data,

20   you're drawing a distinction between an actual

21   count, like the decennial census enumeration, and

22   statistical estimates based on a sample survey

1   like the ACS, correct?

2   A.   That's correct.

3   Q.   Okay.   And your testimony is that hard

4   count data is preferable to available statistical

5   estimates, like the ACS, for purposes of VRA

6   enforcement, correct?

7   A.   Yes.   And I think what I was testifying

8   to here is what's in the letter, which again, is

9   not in front of me.   But my recollection of the

10   letter is that it laid out reasons why that hard

11   count data would be more appropriate than an ACS

12   estimate for that purpose.

13   Q.   How about -- turn to page 27 of the

14   transcript.   In the first full paragraph on page

15   27, you testified, "And having more -- having it

16   on the census would make it easier for us to use

17   and it would also make it more accurate, or at

18   least that's the judgment of the Census Bureau."

19   When you referred to the judgment of the

20   Census Bureau, what were you referring to?

21   A.   I think I was referring to two things.

22   First of all, I was -- I only know anything about

1 the judgment of the Census Bureau from publicly

2 available information. Secretary Ross issued a

3 memo of decision with respect to the letter that

4 the Department of Justice submitted in which he

5 decided, among other things, to order

6 reinstatement of the citizenship question on the

7 census questionnaire.

8   I also had watched at least portions of

9 the May 8th hearing before the committee that you

10 referenced earlier, and understood from testimony

11 at that hearing that that was the position of the

12 Census Bureau.

13   Q. So when you say the judgment of the

14 Census Bureau, whose judgment, if you could

15 identify individuals, are you referring to?

16   A. Secretary Ross would be one. And the

17 other would be -- I can't remember who it was who

18 testified at the hearing, but it was whoever

19 testified at the hearing about the accuracy of a

20 hard count versus an estimate. It may have been

21 Ron Jarmin or somebody else. I just can't

22 remember.

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

2   A.   The May 8th hearing, yeah.

3   Q.   And when you say Ron Jarmin, you're

4 referring to the acting director of the Census

5 Bureau?

6   A.   That's who I understand he is. I've

7 never met him.

8   Q.   When you testified that it was the

9 judgment of the Census Bureau that CVAP data

10 collected through the decennial enumeration would

11 be more accurate, what did you mean by more

12 accurate?

13   A.   As I understand the judgment of the

14 Census Bureau, it's that the hard count would be

15 more accurate than an ACS estimate because an ACS

16 estimate has a margin of error associated with it

17 and also requires an extrapolation because, as

18 you're no doubt aware, the ACS estimates are only

19 released at the block group level, and so further

20 extrapolation is required to estimate CVAP levels

21 at the block level.

22   And it was my understanding, from

1 Secretary Ross' memo and the testimony that I

2 believe I heard on May 8th, that the Census Bureau

3 believed that a hard count would be more accurate

4 than estimates of an extrapolation with an

5 associated margin of error.

6   Q. And just so we're clear on your

7 understanding, your understanding is that, in the

8 judgment of the Census Bureau, it would be more

9 accurate to have CVAP data collected through the

10 decennial enumeration than the existing ACS data

11 for two reasons: One, the decennial enumeration

12 data is a hard count and not an estimate; and,

13 two, the decennial enumeration data is available

14 at the census block level, and so you wouldn't

15 have to perform an estimation procedure the same

16 way that you do with the ACS; is that right?

17   MR. GARDNER: Objection. Compound.

18   THE WITNESS: As I understand your

19 question, I believe that was Secretary Ross'

20 judgment on behalf of the Department of Commerce,

21 of which the Census Bureau is part. I don't have

22 his memo right in front of me, so I can't -- I'm

1   going off of my memory rather than a document

2   that's in front of me. But my recollection of

3   that is that he analyzed a number of different

4   options and concluded that reinstating the

5   question on the census questionnaire, in addition

6   to other data, would provide the most accurate and

7   complete picture of data for the Department of

8   Justice's purposes.

9   BY MR. HO:

10   Q.   Now, all things being equal, the

11   Department of Justice would want to use the CVAP

12   data that was, in the Census Bureau's view, the

13   more accurate data available, correct?

14   A.   I think that's probably correct. I guess

15   I could imagine a scenario, which I don't know is

16   present here or not, where we would make a

17   different judgment as to what was more accurate

18   than the Census Bureau might. But that's correct.

19   Q.   When you say we would make a different

20   judgment as to what is more accurate than the

21   Census Bureau might, who's we?

22   A.   The Department of Justice.

1   Q. Who's we at the Department of Justice who

2   is in a position to make an assessment as to

3   whether or not CVAP data is more accurate than the

4   Census Bureau?

5   A. I don't know. I can't point to any

6   individual person. But, of course, we're

7   constantly reviewing the data, the various data

8   sources, the academic literature. We send people

9   to conferences so that we can understand the

10   latest about data in this area and other

11   demographic areas.

12   But I don't believe there's any dispute

13   at this point about what would be more accurate.

14   And the Census Bureau is charged to make that

15   judgment, as I understand it, as a matter of law.

16   Q. Do you think you're better situated than

17   career Census Bureau professionals to make an

18   assessment as to the accuracy of various forms of

19   CVAP data?

20   A. Me personally?

21   MR. GARDNER: Objection to form.

22   THE WITNESS: Me personally?

1   BY MR. HO:

2   Q.   Yes.

3   A.   No, I don't.

4   Q.   Let's look at page 2 of your testimony.

5   Oh, I'm sorry --

6   A.   It appears to be a list of the committee

7   members' names.

8   Q.   Yeah.

9   A.   I'm happy to review that.

10   Q.   We'll come back to that.

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

12   So the second-to-last question here is from

13   Representative Krishnamoorthi. And he asks you,

14   "Let me shift to another issue, which is, is the

15   DOJ aware of any study, analysis, or projection of

16   how the inclusion of the citizenship question will

17   affect the response rate for the census?"

18   Your response was, "That's a great

19   question, Congressman. I don't know the

20   Department of Justice is aware of that. That's

21   really a question for the Department of Commerce

22   and the Census Bureau, since it is the Secretary

1   of Commerce's province to decide which questions

2   get included or are not within the bounds set by

3   law."

4   When Representative Krishnamoorthi used

5   the term --

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

7   completeness?

8   Q.   "My understanding is that, from Secretary

9   Ross' memo, that he took a hard look at that issue

10 and didn't find empirical evidence to suggest that

11 the question would lead to a reduction in response

12 rates. That's based on the memo of decision that

13 he issued. I obviously can't speak on his

14 behalf."

15   Did I read that right?

16   A.   Thank you. Yes.

17   Q.   When the representative uses the term

18 "response rates," what did you understand him to

19 mean?

20   A.   I understood him to be suggesting that

21 adding a question and, in particular, reinstating

22 a citizenship question might cause people not --

1   some incremental number of people not to answer

2   the -- that question or fill out the census form.

3   Q.   And your testimony was, on May 21st, that

4   DOJ was not aware of any analysis indicating that

5   the inclusion of the citizenship question will

6   affect response rates to the census?

7   MR. GARDNER: Objection.

8   Mischaracterizes the document.

9   THE WITNESS: I think what I've testified

10 to is -- is what is here in the record, and that

11 answer speaks for itself.

12 BY MR. HO:

13   Q.   Well, what did you mean by that? Were

14 you aware of any analysis as to whether or not

15 including the citizenship question on the census

16 could affect the rate at which the people respond

17 to the census?

18   A.   As I said then, and as I sit here today,

19 no, I'm not aware of any -- any data on that

20 issue. And as I further explained, Secretary Ross

21 in his memo explains that he took a hard look at

22 that issue and found no empirical evidence to

1   support the conclusion that there be a reduction

2   in response rates from reinstatement of the

3   citizenship question on the census questionnaire.

4   Q.   One more question about your testimony   401

5   for now.   On page 27, the last question on the

6   page from Representative Gowdy: "So if

7   Secretary Ross wanted to include a question,

8   what's your favorite movie, how would a court

9   determine whether or not that was an appropriate

10   question?   I mean, I guess what I'm getting at is,

11   what is the standard by which you judge the

12   legitimacy of the inclusion or exclusion of a

13   question on the census form?"

14   Your response: "I think that is a very

15   good question.   It's probably better directed to

16   the commerce department.   I'm not involved in the

17   litigation.   That's being handled out" -- and then

18   you got cut off.

19   What do you mean when you testified on

20   May 21st that you're not involved in the

21   litigation over the citizenship question?

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

1 case. I have not been involved in litigating that   401

2 case on behalf of the United States. I have not

3 written any of the briefs, filed any of the

4 pleadings, or done anything like that. I am a

5 witness in the case, obviously here -- sitting

6 here today, and was involved in the decision that

7 was made by the Department of Justice.

8   But under Department of Justice

9 regulations, this is defensive litigation that's

10 being handled by the civil division, and the

11 counsel of record is in the civil division, not

12 the civil rights division.

13   Q. When you say that you're not counsel of

14 record, are you counsel in some other capacity in

15 this litigation?

16   MR. GARDNER: Objection. Vague.

17   THE WITNESS: No.

18 BY MR. HO:

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

20 right?

21   A. No.

22   Q. And neither the civil rights division nor

 1 the Department of Justice itself is a party in

 2 this case, correct?

 3   A.   That's my understanding. I believe the

 4 case was brought against the Department of

 5 Commerce, but I've not studied the pleadings

 6 closely enough to know whether or not the

 7 Department of Justice is a party, but I believe

 8 it's not.

 9   Q.   And you wouldn't describe yourself as a

10 consultant giving legal advice to counsel of

11 record in this case, would you?

12   A.   No.

13   Q.   Mr. Gore, you sometimes use personal

14 e-mail, text messages or private messaging apps to

15 communicate about DOJ work, correct?

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

17   Q.   Which of those things have you used for

18 DOJ work before?

19   A.   Well, actually, I don't think I have used

20 it for DOJ work, now that I think about it.

21   Q.   You've sometimes sent e-mails between

22 your personal gmail account and your DOJ account,

1 correct?

2 A. I have done that, yes.

3 Q. Okay. Under what circumstances have you

4 done that?

5 A. So I had -- there was FOIA request that

6 came in to the Department of Justice related to

7 communications with a member of the Election

8 Assistance Commission. I had had some e-mails

9 with that person that I viewed having occurred in

10 my personal capacity and not in my DOJ capacity.

11 But for the sake of completeness, I forwarded

12 those e-mails to my DOJ account so they could be

13 produced in response to a FOIA request.

14 Q. Under no other circumstances have you

15 forwarded e-mails back and forth between your

16 Department of Justice account and your gmail

17 account?

18 A. That's correct.

19 Q. You've never used your gmail account for

20 anything related to the citizenship question on

21 the census?

22 A. Absolutely not.

802

1   Q.   I want to show you a document which we'll

2   mark as Exhibit 3.

3   (Gore Deposition Exhibit 3 marked for

4   identification and attached to the

5   transcript.)

6   BY MR. HO:

7   Q.   This bears the Bates number 000311. It's

8   a letter dated November 4th, 2016, from Arthur

9   Gary to then Census Bureau Director John Thompson.

10   We discussed Mr. Gary before. You sent

11 him those talking points in December of 2017,

12 right?

13   A.   I did. Yes.

14   Q.   And Mr. Gary is the general counsel of

15 the justice management division, or JMD, at the

16 Department of Justice, correct?

17   A.   That's correct.

18   Q.   And JMD is the principal organizational

19 unit responsible for management and administrative

20 support of the Department of Justice, correct?

21   A.   I trust you took that off of a website,

22 because that was pretty fancy. That sounds right

1   to me. It's my understanding.

2   Q. In his first sentence, Mr. Gary writes to

3   Mr. Thompson, "This letter supplements my letter

4   of July 1st, 2016, in which I advised that, at

5   that time, the Department of Justice had no needs

6   to amend the current content or uses or to request

7   new content in the American Community Survey (ACS)

8   for the 2020 census."

9   Did I read that right?

10   A. Yes.

11   Q. On July 1, 2016, DOJ sent a letter to the

12   Census Bureau indicating that it had no need to

13   amend the current content or to request new

14   content in the ACS for the 2020 census, correct?

15   MR. GARDNER: Objection. Lack of

16   foundation.

17   THE WITNESS: I have no basis to answer

18   that question. I wasn't employed at the

19   department on July 1, 2016. And I don't believe

20   I've ever seen a July 1, 2016, letter from the

21   department to the Census Bureau.

22   That's certainly what that sentence says,

601/
802

1   but I can't verify or testify to that. I have no

2   firsthand knowledge on that topic.

3   BY MR. HO:

4   Q. You're not aware of the Department of

5   Justice, on July 1st, 2016, requesting new content

6   for the American Community Survey or the 2020

7   decennial census, are you, Mr. Gore?

8   MR. GARDNER: Objection. Lack of

9   foundation.

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

11   BY MR. HO:

12   Q. This letter on November 4th, 2016,

13   formally requested that the Census Bureau include

14   a new topic in the ACS relating to LGBT

15   populations, correct?

16   A. Let me read this.

17   Q. Sure.

18   A. Okay. Can you repeat your question?

19   Q. Sure. This November 4th, 2016, letter

20   formally requested that the Census Bureau include

21   a topic on the ACS relating to LGBT populations,

22   correct?

601/
802

1   MR. GARDNER: Objection. Lack of

2   foundation.

3   THE WITNESS: It appears to. Yeah.

4   BY MR. HO:

5   Q. This letter on November 4th, 2016, makes

6   no other requests for changes to the 2020 census

7   questionnaire or the ACS, correct?

8   MR. GARDNER: Objection. Lack of

9   foundation.

10   THE WITNESS: Again, it doesn't -- what

11 I've read so far doesn't mention any other

12 request.

13 BY MR. HO:

14   Q. When you say what you've read so far,

15 have you read the complete letter?

16   A. I've read the complete letter. There's a

17 reference to an attached spreadsheet in the letter

18 that's not attached here, so I haven't looked at

19 that just now.

20   Q. Okay. But the face of this letter does   601/

21 not make requests for any additional information   802

22 on either the ACS or the 2020 census questionnaire

1   other than a request about LGBT populations for   601/
                                                         802
2   the ACS, correct?

3   MR. GARDNER: Objection. Lack of

4   foundation.

5   THE WITNESS: That appears to be correct

6   on the face of the letter.

7   BY MR. HO:

8   Q. This letter does not make any mention of   601/
                                                          802
9   a request for citizenship data, correct?

10   MR. GARDNER: Same objection.

11   THE WITNESS: It does not on its face.

12   BY MR. HO:

13   Q. This letter does not make any request for   601/
                                                           802
14   the inclusion of a citizenship question on the

15   census questionnaire, correct?

16   MR. GARDNER: Same objection.

17   THE WITNESS: It does not appear to.

18   BY MR. HO:

19   Q. You're not aware of any changes in

20   circumstances since the date of this letter,

21   November 4th, 2016, that would require a change to

22   the Department of Justice's view that, as of the

1 date of this letter, DOJ had no other needs to

2 amend the current content or to request new

3 content for the 2020 census, correct?

4   MR. GARDNER: Objection. Form.

5   THE WITNESS: I have to admit, I couldn't

6 follow your question. Can you try again?

7 BY MR. HO:

8   Q. Sure. You're not aware of any changes of

9 circumstances since the date of this letter,

10 November 4th, 2016, that would change the

11 Department of Justice's view that there are no --

12 there is no need to amend the current content or

13 request new content for the 2020 census, correct?

14   MR. GARDNER: Same objection.

15   THE WITNESS: Again, to the extent I can

16 follow your question, I don't know since I was not

17 employed at the Department of Justice in

18 November of 2016. I don't know whether anyone at

19 the Department of Justice had even looked into

20 this question of whether a citizenship question

21 should be reinstated on the census questionnaire.

22 So I don't know what thinking went into this

1 letter or didn't go into this letter. And so I

2 can't speak to any changes of circumstances from

3 then.

4   What I can tell you is the Department of

5 Justice made the determination that it made and

6 submitted its request to the Census Bureau for the

7 reasons that are laid out in the Gary letter.

8 BY MR. HO:

9   Q. So my question isn't about the Department

10 of Justice's thinking or anything that may have

11 changed with respect to the Department of

12 Justice's thinking. It's a question about --

13   A. Okay.

14   Q. -- changes in circumstances outside of

15 the Department of Justice --

16   A. Can you specify what those circumstances

17 are? That's what I don't understand from your

18 question.

19   Q. Sure. Are there any changes in law that

20 you're aware of since November 4th, 2016, that

21 would require a change to the citizenship -- to

22 the census questionnaire?

1   MR. GARDNER: Objection. Form.

2   Objection. Lack of foundation.

3   THE WITNESS: What -- I'm still not

4   following the circumstances.

5   BY MR. HO:

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

7   A. Can you specify?

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

9   November 4th, 2016, with respect to requirements

10   for enforcing Section 2 of the federal Voting

11   Rights Act?

12   MR. GARDNER: Objection. Form.

13   Objection. Lack of foundation.

14   THE WITNESS: I do believe -- since

15   November of 2016, I can think of at least one

16   Supreme Court case dealing with Section 2 of the

17   Voting Rights Act. I'm not sure this is what

18   you're asking, but I am aware of court cases that

19   have been decided since November of 2016 on that

20   issue.

21   BY MR. HO:

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

1 November 4th, 2016, with respect to the data that

2 plaintiffs can rely on to establish the first

3 Gingles precondition for Section 2 liability under

4 the Voting Rights Act?

5   A.   I'm not aware of any changes in law on

6 that point, I don't believe.

7   Q.   Are you aware of any changes to the forms

8 of data available to plaintiffs bringing voting

9 rights challenges since November 4th of 2016?

10   MR. GARDNER: Objection to form.

11   THE WITNESS: I do believe, at least in

12 one case, the Department of Justice has advocated

13 a new form of data for conducting a racially

14 polarized voting analysis in the Eastpointe case,

15 United States versus Eastpointe, Michigan, which

16 at least the United States had not previously

17 advocated.   That's the analysis conducted at

18 steps 2 and 3 of the Gingles analysis.

19 BY MR. HO:

20   Q.   My question is just about the first

21 Gingles precondition.

22   A.   Okay.

1   Q.   Are you aware of any changes to the forms

2   of citizenship data available to plaintiffs

3   bringing Voting Rights Act claims in order to

4   satisfy the first Gingles precondition?

5   A.   I'm not aware of any changes in the forms

6   of data.   I guess what I'm struggling with on your

7   question is I don't think that that forecloses a

8   request to reinstate the citizenship question on

9   the census questionnaire.

10   Q.   That's not my question.

11   A.   So what the department is looking for is

12   the most complete and accurate data it can

13   possibly have to perform it function, and this is

14   one more source of data that would allow the

15   Department of Justice to carry out its enforcement

16   mission.

17   Q.   I understand what your position is on why

18   you've requested the data. That's not my

19   question. My question is --

20   A.   Okay.

21   Q.   -- just about any changes since

22   November 4th of 2016 outside of the Department of

Non-Responsive

1   Justice.

2   And my question is, are you aware of any

3   changes in the forms of citizenship data that are

4   available for establishing the first precondition

5   for Gingles -- the first Gingles precondition for

6   Section 2 liability since November 4th, 2016?

7   A. Let me give you this answer. As I

8   understand what people were using in Section 2

9   cases in November of 2016 for citizenship

10   purposes, it was ACS data. And I understand that

11   litigants are still using ACS data today.

12   Q. Are you aware of any changes in the   601

13   social sciences about the assessment in that

14   community of the accuracy of citizenship estimates

15   based on ACS data since November 4th, 2016?

16   MR. GARDNER: Objection. Form.

17   THE WITNESS: Which community?

18   BY MR. HO:

19   Q. The social scientific community.

20   A. Okay.

21   MR. GARDNER: Same objection.

22   THE WITNESS: I'm not aware of any

601

1   changes. I am aware that there are questions that

2   have been raised in the social science community

3   about the accuracy of the estimates and

4   extrapolations that are derived from the ACS data.

5   (Gore Deposition Exhibit 4 marked for

6   identification and attached to the

7   transcript.)

8   BY MR. HO:

9   Q. I'm going to show you a document,

10 Exhibit 4. This is a memo data November --

11 September 8th, 2017, from Earl Comstock to

12 Commerce Secretary Wilbur Ross. It's in the

13 administrative record in this case. Although this

14 printout doesn't bear the number, I believe it is

15 AR12756.

16   Do you know Mr. Comstock?

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

18   Q. The first paragraph of Mr. Comstock's

19 memo reads, "In early May, Eric Branstad put me in

20 touch with Mary Blanche Hankey as the White House

21 liaison in the Department of Justice. Mary

22 Blanche worked for AG Sessions in his senate

1   office and came with him to the Department of

2   Justice. We met in person to discuss the

3   citizenship question. She said she would locate

4   someone at the department who could address the

5   issue. A few days later, she directed me to James

6   McHenry in the Department of Justice."

7   Now, before I read that, were you aware

8   that sometime prior to September 8th, 2017,

9   officials from the Department of Commerce had

10   spoken with officials within the Department of

11   Justice regarding the issue of a citizenship

12   question on the census?

13   A.   Yes.

14   Q.   What were you aware of with respect to

15   conversations between Department of Commerce

16   officials and the Department of Justice officials

17   prior to September 8th, 2017, with respect to the

18   issue of a citizenship question on the census?

19   MR. GARDNER: Objection to the extent

20   that you're asking for information subject to the

21   deliberative process privilege.

22   To the extent you can answer without

1 divulging information subject to the privilege,

2 you may do so. Otherwise, I instruct you not to

3 answer.

4   THE WITNESS: Can I ask for a

5 clarification? What's the timeline of my

6 awareness? Are you asking me as I sit here -- you

7 asked me before I read this memo today, and my

8 answer was yes.

9 BY MR. HO:

10   Q. Uh-huh.

11   A. And as I sit here today, yes, I was aware

12 that there -- that what's described in this

13 paragraph had occurred.

14   Q. Okay. When did you become aware of what

15 is described in that paragraph?

16   A. I'm trying to remember. It would have

17 been after the date of this September 8th memo.

18   Q. Would it have been before the date of the

19 Department of Justice's request to include a

20 citizenship question on the census in December of

21 2017?

22   A. I don't recall that. I -- yes, I

1   think -- I think so, but I'm not certain on --

2   with respect to the involvement of the people

3   mentioned in this particular paragraph.

4   Q.   So your answer is, yes, you think that

5   you were aware of communications between the

6   Department of Justice and the Department of

7   Commerce prior to September 8th, 2017 -- you think

8   you were aware of those conversations before the

9   request letter went out from the Department of

10   Justice to the Census Bureau?

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

12   Q.   Sure. The conversations --

13   A.   You're dealing with two different

14   timelines.

15   Q.   Sure.

16   A.   Okay.

17   Q.   The conversations that occurred that are

18   referenced in this paragraph that happened between

19   Commerce and Justice officials before

20   September 8th, 2017 --

21   A.   Yes.

22   Q.   -- you were aware of those conversations

1   prior to the date when the Department of Justice's

2   letter went to the Census Bureau to request a

3   citizenship question in December of 2017, correct?

4   A.   Yes.

5   Q.   Okay. What were you aware of before that

6   letter went out?

7   MR. GARDNER: Same objection.

8   To the extent you can answer the question

9   without divulging information subject to the

10   deliberative process privilege, you may answer.

11   To the extent you can't, I'd instruct the witness

12   not to answer.

13   MR. HO: Josh, let me finish the question

14   before your objection --

15   MR. GARDNER: I thought you were done.

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

17   MR. GARDNER: I apologize. I didn't mean

18   to interrupt you.

19   BY MR. HO:

20   Q.   When you say that you were aware of

21   pre-September 8th conversations between Commerce

22   and Justice about the citizenship question before

1   your letter from Justice to the Census Bureau went

2   out requesting a citizenship question, what were

3   you aware of with respect to the nature of those

4   pre-September 8th conversations?

5   MR. GARDNER: Same objection. Same

6   instruction.

7   THE WITNESS: I can tell you that I was

8   aware of the fact that conversations had occurred.

9   And beyond that, I don't believe I can give an

10   answer in light of the instruction I've just

11   received.

12   BY MR. HO:

13   Q. When you say that you were aware of the

14   fact that conversations occurred, what do you mean

15   by conversations?

16   A. I mean -- a conversation is a

17   communication between two or more people, and I

18   was aware that two or more people had talked to

19   each other.

20   Q. When you say that you were aware that two

21   or more people had talked to each other, which

22   people were you aware had talked to each other?

1   A.   It was my understanding that somebody

2   from Commerce had spoken to Mary Blanche Hankey,

3   that someone had spoken to James McHenry, and that

4   Secretary Ross had spoken to the attorney general.

5   Q.   And that all of those conversations were

6   about the inclusion of a citizenship question on

7   the census?

8   A.   I wasn't a party to those conversations,

9   but my understanding is that they would have

10   touched on that issue.

11   Q.   James McHenry is the director of the

12   Executive Office for Immigration Review within

13   DOJ, correct?

14   A.   He is now, although at that time he

15   wasn't. At that time, he was on detail to the

16   Office of the Associate Attorney General. And he

17   had come from somewhere else. I can't remember.

18   I think it was OCAHO, which is -- since we're in

19   D.C. and talking about government things, it's an

20   acronym that -- I don't know what it stands for.

21   But Mr. McHenry has been involved -- has been an

22   employee of the department for some time, but in

1   early 2017, was on detail to the Office of the

2   Associate Attorney General.

3   Q.   During this period, Mr. McHenry was not

4   staff in the civil rights division, correct?

5   A.   That's correct.

6   Q.   And Mr. McHenry did not have any formal

7   duties with respect to enforcement of the Voting

8   Rights Act during this period, correct?

9   A.   He had no formal duties.   As I recall, he

10   was for some period of time our point of contact

11   in the Office of the Associate Attorney General,

12   which is why I remember he was there.   But he did

13   not have formal duties with respect to

14   enforcement.

15   Q.   Do you know of any reasons why

16   Mr. McHenry could address the issue of including a

17   citizenship question on the census?

18   MR. GARDNER: Objection.   Calls for

19   speculation.

20   THE WITNESS: Yeah, I'd be speculating.

21   I don't know.

22

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 1   BY MR. HO:
 2        Q.   So you don't know of any reasons why
 3   Mr. McHenry could address the issue of including a
 4   citizenship question on the census?
 5             MR. GARDNER:   Same objection.
 6             THE WITNESS:   I -- I don't know one way
 7   or the other.
 8   BY MR. HO:
 9        Q.   When you say you're aware that
10   conversations took place between Commerce
11   officials and Mary Blanche Hankey and James
12   McHenry, what were you aware of with respect to
13   the content of those conversations prior to --
14   those conversations that took place prior to
15   September 8th, 2017?
16             MR. GARDNER:   Objection.
17             To the extent that you can answer that
18   question without divulging information subject to
19   deliberative process privilege, you may do so.
20   Otherwise, I instruct you not to answer.
21             THE WITNESS:   As I testified before, I
22   understood that those conversations related to the
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1   issue of reinstating a citizenship question on the

2   census questionnaire. Beyond that, I can't

3   answer.

4   BY MR. HO:

5   Q.   What was your understanding of who

6   initiated those conversations?

7   A.   My understanding was that those

8   conversations were initiated by the Department of

9   Commerce.

10   Q.   Those initial conversations that are

11   referred to in this memo, your testimony is that,

12   to the best of your knowledge, those conversations

13   were not initiated by the Department of Justice,

14   correct?

15   A.   Again, I wasn't a party to those

16   conversations, but that's been my working

17   understanding.

18   Q.   And your working understanding is that

19   the Department of Justice did not reach out to the

20   Department of Commerce to initiate those

21   conversations for the purposes of obtaining better

22   data to enforce the Voting Rights Act, correct?

1   MR. GARDNER: Objection. Lack of

2   foundation.

3   THE WITNESS: Again, I wasn't a party to

4   those conversations, but that's been my working

5   understanding.

6   BY MR. HO:

7   Q.   The second paragraph in this memo reads,

8   "I spoke several times with James McHenry by phone

9   and, after considering the matter further, James

10   said that Justice staff did not want to raise the

11   question, given the difficulties Justice was

12   encountering in the press at the time, the whole

13   Comey matter. James directed me to Gene Hamilton

14   at the Department of Homeland Security."

15   So were you aware, before I read that,   601

16   that as of September 8th, 2017, Justice staff did

17   not want to raise the citizenship question?

18   MR. GARDNER: Objection. Lack of

19   foundation.

20   THE WITNESS: Before you read that, yes,

21   I was aware of that.

22

1   BY MR. HO:

2   Q.   Okay.   When did you become aware -- so --

3   I'm sorry.   Let me start that question.

4   So your understanding is that, as of

5   September 8th, 2017, Justice staff did not want to

6   raise the citizenship question, correct?

7   A.   Yes, that's my understanding, although it

8   wasn't my understanding on September 8th; it was

9   an understanding that I acquired later.

10   Q.   When did you acquire the understanding

11   that, as of September 8th, Justice staff did not

12   want to raise the issue of a citizenship question?

13   A.   Again, I think it was along the same

14   timeline that I learned that these conversations

15   had taken place, the conversations referenced in

16   the first paragraph and the second paragraph

17   involving Mr. McHenry.   And I believe I became

18   aware of those sometime after September 8th and

19   before the letter was sent from the Department of

20   Justice.

21   Q.   How did you become aware of the fact

22   that, as of September 8th, 2017, the Department of

1 Justice did not want to raise the issue of the

2 citizenship question?

3   MR. GARDNER: Objection to the extent

4 that that answer calls for the divulging of

5 information subject to deliberative process

6 privilege.

7   To the extent you can answer that

8 question without divulging such information, you

9 may do so. Otherwise, I instruct you not to

10 answer.

11   THE WITNESS: Consistent with that

12 instruction, I can't answer.

13 BY MR. HO:

14   Q. Obviously since September 8th, 2017, the

15 Department of Justice has decided to request a

16 citizenship question on the census, right?

17   A. That's correct.

18   Q. Okay. What changed between September

19 8th, 2017, and December 12th, 2017, to lead the

20 Department of Justice to change its view about

21 whether to request a citizenship question to be

22 included on the 2020 census questionnaire?

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 1          MR. GARDNER:  Objection.  Calls for

 2   information subject to deliberative process

 3   privilege.  I instruct the witness not to answer.

 4          THE WITNESS:  Consistent with that

 5   instruction, I can't answer.

 6   BY MR. HO:

 7      Q.  When did the Department of Justice begin

 8   deliberations over whether to request a

 9   citizenship question on the 2020 census?

10          MR. GARDNER:  Objection to the extent

11   that question calls for the disclosure of

12   information subject to deliberative process

13   privilege.

14          To the extent you can answer without

15   divulging such information, you may do so.

16   Otherwise, I instruct you not to answer.

17          THE WITNESS:  I think the most answer I

18   can give is that I don't know when certain

19   individuals of the Department of Justice may have

20   begun considering that issue.

21   BY MR. HO:

22      Q.  Okay.  When did you -- what's the
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1 earliest date that you're aware of of

2 deliberations within the Department of Justice

3 concerning whether to add a -- to request a

4 citizenship question be included on the

5 2020 census questionnaire?

6   MR. GARDNER: Same objection. And same

7 instruction.

8   To the extent you can answer without

9 divulging privileged information, you may do so.

10 Otherwise, I instruct you not to answer.

11   THE WITNESS: Okay. Consistent with that

12 instruction, I can't answer.

13   MR. HO: Is your position that the date

14 of when the consideration occurred is covered by

15 deliberative process privilege?

16   MR. GARDNER: My position is that you're

17 asking him to reveal the deliberative process that

18 led to the request, and so that would be

19 pre-decisionally deliberative. If you can ask the

20 question a different way, I'm happy to try to have

21 Mr. Gore answer. I'm not trying to be

22 obstructionist.

1   BY MR. HO:

2   Q.   When did you first become involved in

3   deliberations about whether or not to request a

4   citizenship question on the decennial census

5   questionnaire?

6   A.   I first became involved in either late

7   August or early September of 2017.

8   Q.   You can't get more precise than late

9   August or early September?

10   A.   Well, I think it was either a day or two

11   before Labor Day in 20 -- the Labor Day weekend in

12   2017 which I think that year may have fallen in

13   late August.

14   Q.   So as of September 8th, 2017, the date of

15   Mr. Comstock's memo, your best recollection is

16   that, as of that date, you were already involved

17   in deliberations over whether or not to include a

18   -- to request a citizenship question for the 2020

19   census questionnaire?

20   A.   That is correct.   And I don't know --

21   Mr. Comstock's memo is dated September 8th.   He

22   doesn't give any dates for any of these

1   conversations, so I don't know if this memo was

2   contemporaneous to conversations or related back

3   to prior conversations he'd had.

4   But yes, that's my recollection, that, as

5   of September 8th, I would have been involved in

6   those deliberations.

7   Q.   How did you become involved in

8   deliberations over whether or not to request the a

9   citizenship question be included on the

10 2020 census questionnaire?

11   MR. GARDNER: Objection.

12   To the extent that that answer would

13 cause you to reveal information subject to

14 deliberative process privilege, I instruct you not

15 to answer. To the extent you can answer that

16 question without divulging such information, you

17 may do so.

18   THE WITNESS: I became involved through a

19 conversation I had with two individuals at the

20 Department of Justice.

21 BY MR. HO:

22   Q.   Which two individuals at the Department

1   of Justice?

2   A.   The attorney general and Mary Blanche

3   Hankey.

4   Q.   Roughly when did your conversations with

5   Mary Blanche Hankey and the attorney general

6   occur?

7   MR. GARDNER: Objection.   Compound.

8   THE WITNESS: It was the day or two

9   before the Labor Day weekend.   The reason I

10   remember that is that the attorney general is a

11   college football fan, and he's a fan of the Auburn

12   Tigers, so I ended the call with the cry for War

13   Eagle, since the Auburn Tigers were playing their

14   first game of the season that weekend.

15   BY MR. HO:

16   Q.   What was communicated to you during that

17   conversation with Attorney General Sessions?

18   MR. GARDNER: Objection.   Calls for

19   information subject to deliberative process

20   privilege.

21   I instruct you not to answer.

22   THE WITNESS: Consistent with that

1   instruction, I can't answer.

2   BY MR. HO:

3   Q.   As of the date of that conversation with

4   Attorney General Sessions, a decision had already

5   been made to request a citizenship question on the

6   2020 census, correct?

7   MR. GARDNER: Objection.   Calls for

8   information subject to deliberative process

9   privilege.   I instruct the witness not to answer.

10   MR. HO: Josh, the deliberative process

11   privilege doesn't cover any post-decisional

12   communications, right?

13   MR. GARDNER: Yes.   I completely

14   understand.   And the decision is in the

15   December letter to DOJ, as we consistently say.

16   You're asking him about things that predated that.

17   MR. HO: I was just asking if the

18   decision had already been made.   I understand

19   that's the representation that you've [sic] been

20   made, but I think I can ask him if the decision

21   had already been made at that point.

22   MR. GARDNER: I'll tell you what.   If you

1 ask the question when was the decision made, I can

2 let him answer that question. I'm not trying to

3 be difficult. I just need to be careful here.

4 BY MR. HO:

5   Q.   Had the decision already been made as of

6 the date of your conversation with Attorney

7 General Sessions to request a citizenship question

8 be included on the 2020 census questionnaire?

9   A.   The decision was made when the letter was

10 sent in December of 2017.

11   Q.   As of the date of Mr. Comstock's memo,

12 September 8th, 2017, did you already have a view

13 as to whether or not CVAP data based on

14 statistical estimates were problematic in any way

15 for purposes of VRA enforcement?

16   A.   I was generally aware of issues related

17 to ACS data from my prior work on cases involving

18 Section 2 of the Voting Rights Act and cases

19 involving gerrymandering claims under Shaw versus

20 Reno. And I was aware that there were some

21 limitations on the ACS data from that prior work.

22   Q.   As of the date of your first conversation

1   with Attorney General Sessions, did you already

2   have a few that hard count CVAP data would better

3   suit DOJ's needs with respect to VRA enforcement

4   than ACS estimates?

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

6   Q.   When did you arrive at the view that

7   hard count decennial census data with respect to

8   citizenship would better suit DOJ's VRA

9   enforcement needs as compared to ACS citizenship

10   estimates?

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

12   Q.   Yes.

13   A.   Sometime before the letter was sent.

14   Q.   Can you give a more specific time frame

15   than that?

16   A.   Probably not.

17   Q.   How did you arrive at the view that

18   hard count citizenship data collected through the

19   decennial census would better suit DOJ's

20   enforcement needs than ACS estimates?

21   MR. GARDNER: Objection. Calls for

22   information subject to deliberative process

1   privilege. I instruct the witness not to answer.

2   BY MR. HO:

3   Q.   As of the date of your conversation with

4   Attorney General Sessions, did you already have

5   the view that the decennial census questionnaire

6   would be the best vehicle for collecting CVAP data

7   for purposes of VRA enforcement?

8   A.   I don't recall having a view on that one

9   way or the other as of that time.

10   Q.   As of the date of Mr. Comstock's memo

11   on September 8th, 2017, did you already have the

12   view that the decennial census would be the best

13   vehicle for collecting CVAP data for purposes of

14   VRA enforcement?

15   A.   I don't recall having a view on that

16   issue one way or the other.

17   Q.   Let me show you a document. We'll mark

18   this as Exhibit 5.

19   (Gore Deposition Exhibit 5 marked for

20   identification and attached to the

21   transcript.)

22

 1 BY MR. HO:

 2   Q. This is an e-mail thread. The top thread

 3 on the e-mail is from Arthur Gary to you dated

 4 Monday, September 11th, 2017. The first page

 5 bears the Bates number DOJ 000129985.

 6   The subject on this e-mail thread between

 7 you and Mr. Gary is 2020 census questions,

 8 correct?

 9   A. Can I read this --

10   Q. Sure.

11   A. -- document? Thank you.

12   Okay.

13   Q. The subject line of this e-mail is

14 2020 census questions, correct?

15   A. Correct.

16   Q. I want to ask you a question about an

17 e-mail on the bottom of page 2. This is an

18 e-mail -- looks like it's the first one on the

19 thread -- from Arthur Gary to you dated

20 September 11th, 2017, right?

21   A. Correct.

22   Q. Okay. Now, this is, just so the record

1 is clear, three days after the Comstock memo that

2 we looked at earlier, which was September 8th,

3 2017.

4   This was your first time corresponding

5 with Mr. Gary, correct?

6   A. It appears to be. Yes.

7   Q. The second paragraph after his

8 introduction to you in his e-mail reads, "I am the

9 GC for JMD. AAG/A Lee Loftus has asked me to

10 reach out to you to find out if you and/or CRT

11 have any background information regarding some

12 concerns raised that the Secretary of Commerce

13 raised last week with the AG relating to the

14 2020 census. I understand the concerns relate to

15 potential questions relating to citizenship in the

16 American Community Survey portion of the upcoming

17 2020 census."

18   When Mr. Gary references concerns raised

19 that the Secretary of Commerce raised last week,

20 "last week" would have been the week of Monday,

21 9/4/2017, right?

22   A. Sounds right.

1   Q.   That's Labor Day, which we were talking

2 about earlier, right?

3   A.   Sounds about right. Yeah.

4   Q.   And when Mr. Gary references concerns

5 raised that the Secretary of Commerce raised, what

6 did you understand him to mean by concerns?

7   MR. GARDNER: Objection. Calls for

8 information subject to deliberative process

9 privilege.

10   To the extent you can answer without

11 disclosing such information, you may; otherwise, I

12 instruct you not to answer.

13   THE WITNESS: Consistent with that

14 instruction, I can't answer.

15 BY MR. HO:

16   Q.   Before Mr. Gary's e-mail, you were aware

17 that the Secretary of Commerce and the attorney

18 general had had conversations about the

19 citizenship question, correct?

20   A.   I think that's right. I believe I said

21 that I spoke with the attorney general a day or

22 two before Labor Day weekend. I think that's

1 right. I could be off by a week or two. So it

2 may have happened later. So I don't know exactly

3 how that would align in time with this

4 September 11th communication.

5   But I would say that it was -- so I stand

6 on that answer.

7   Q. So that communication between the

8 Secretary of Commerce and the attorney general,

9 that was initiated by the Secretary of Commerce,

10 correct?

11   MR. GARDNER: Objection. Lack of

12 foundation.

13   THE WITNESS: I don't know. I wasn't a

14 party to that conversation.

15 BY MR. HO:

16   Q. You mentioned you had a conversation with

17 the attorney general around Labor Day. Did you

18 understand from that conversation that the

19 Secretary of Commerce initiated the conversation

20 between the Secretary of Commerce and the attorney

21 general? Correct?

22   A. That's been my working understanding.

1   Yes.

2   Q.   Your working understanding is not that

3   the attorney general initiated a conversation with

4   the Secretary of Commerce about the citizenship

5   question, correct?

6   A.   That's correct.

7   Q.   You responded to Mr. Gary's e-mail by

8   asking him to give you a call. Did you have a

9   conversation with Mr. Gary?

10   A.   I don't know. I don't know if I had a

11   conversation with him with specific reference to

12   this e-mail. I can't -- I don't recall that.

13   Q.   After receiving this e-mail, did you

14   learn more from Mr. Gary about what he was

15   referring to when he talked about concerns that

16   the Commerce Secretary had?

17   A.   I don't recall -- as I said, I don't

18   recall discussing this with Mr. Gary. Obviously,

19   we had some short e-mail correspondence, as this

20   document lays out, but that's all I recall about

21   it at this time.

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

 1 would ask a contact at census OGC to do a little

 2 quiet exploring.

 3   What did you understand him to mean by

 4 that?

 5   MR. GARDNER: Objection. Lack of

 6 foundation.

 7   THE WITNESS: I'm sorry, can you tell me

 8 where that is? I don't see that.

 9 BY MR. HO:

10   Q. Sure. The top e-mail on the second page,

11 Mr. Gary writes, "John, my contact at census OGC,

12 not at the department level, has heard nothing,

13 and is equally puzzled about the question. He

14 will do a little quiet exploring and get back to

15 me."

16   Do you see that?

17   A. Yes.

18   Q. What did you understand Mr. Gary to mean

19 by quiet exploring?

20   MR. GARDNER: Objection. Lack of

21 foundation. Calls for speculation.

22   THE WITNESS: I don't recall what I

 1 understood him to be meaning at that time.

 2 BY MR. HO:

 3   Q. As you look back at this and read it now,

 4 what do you understand him to be meaning?

 5   MR. GARDNER: Same objections.

 6   THE WITNESS: Well, I think when you

 7 first mentioned this, you said that Mr. Gary

 8 conveyed to me that he asked this contact to do

 9 quiet exploring. It says here that the contact

10 would do it. So I don't know that Mr. Gary asked

11 him to do it.

12   So with that point of clarification, I

13 understood this -- as I sit here today, I

14 understand that phrase to mean that whoever this

15 individual was at the Department of Commerce would

16 try to find more information about -- out about

17 this issue from the Department of Commerce and be

18 back in touch with Mr. Gary.

19 BY MR. HO:

20   Q. Why, if you know, would this exploring

21 have to be quiet?

22   MR. GARDNER: Objection. Lack of

1 foundation. Calls for speculation.

2   THE WITNESS: I have no idea.

3 BY MR. HO:

4   Q. On the first page, the top e-mail at

5 6:35 p.m. on September 11th, Mr. Gary writes to

6 you, "John, I got a call back from my contact at

7 the census. He now recalls questions about

8 citizenship information being raised by career

9 policy staff about a year and a half ago, but no

10 writing -- but not in writing and nothing came of

11 it. His trail has gone cold as well and doesn't

12 wish to elevate the question at the census."

13   Did you ever learn who Mr. Gary was

14 referring to when he referenced career policy

15 staff?

16   A. I don't believe so, no.

17   Q. Sitting here today, do you know what

18 Mr. Gary is referring to when he references career

19 policy staff?

20   A. No. Generally, yes. I don't know the

21 identity of the individuals he is referring to. I

22 understand what career policy staff is at a

 1 | government agency.

 2 | Q. Well, the career policy staff being

 3 | referred to -- which agency is Mr. Gary referring

 4 | to?

 5 | A. I take him here to be referring to career

 6 | policy staff from the Census Bureau.

 7 | Q. Why, if you know, did Mr. Gary's contact

 8 | not wish to elevate the question at the census?

 9 | MR. GARDNER: Objection. Lack of

10 | foundation. Calls for speculation.

11 | THE WITNESS: I'd be speculating. I have

12 | no idea.

13 | BY MR. HO:

14 | Q. To the best of your recollection, what

15 | was the next interaction after this e-mail

16 | exchange that you had about the issue of a

17 | citizenship question on the 2020 census?

18 | MR. GARDNER: And just for clarification,

19 | are you asking him for when or what?

20 | MR. HO: When.

21 | MR. GARDNER: Okay.

22 | THE WITNESS: I believe the next

1   conversation I had with Mr. Gary about this took

2   place around Halloween.

3   BY MR. HO:

4   Q.   My question wasn't about --

5   A.   2017.

6   Q.   My question wasn't about your next

7   interaction with Mr. Gary.

8   A.   Oh, I'm sorry.

9   Q.   It was just your next interaction about

10   the citizenship question on the decennial census.

11   A.   I see.

12   Q.   After this e-mail exchange with Mr. Gary,

13   when was the next interaction that you had about

14   the issue of a citizenship question on the

15   decennial census?

16   A.   That's a fair question. Around the -- I

17   don't know -- I guess I don't know which was the

18   next communication I had or who it was with.

19   Q.   Okay.

20   A.   I was communicating with various

21   individuals at that time about the issue.

22   Q.   Have you ever discussed the issue of the

1 citizenship question with Secretary Ross?

2   A. No.

3   Q. Prior to May 2017 -- so I'm changing the

4 time period here a little bit --

5   A. Sure.

6   Q. -- had you ever raised the issue of a

7 citizenship question on the decennial census

8 questionnaire?

9   A. No.

10   Q. Were you consulted by Secretary Ross

11 regarding whether the Department of Justice would

12 support or request the inclusion of a citizenship

13 question on the decennial census?

14   MR. GARDNER: Objection. Vague.

15   THE WITNESS: No.

16 BY MR. HO:

17   Q. Were you consulted by Secretary Ross'

18 staff regarding whether the Department of Justice

19 would support or request inclusion of a

20 citizenship question on the census?

21   MR. GARDNER: Same objection.

22   THE WITNESS: Who do you mean by staff?

1   BY MR. HO:

2   Q.   Anyone who works in the front office of

3   the Department of Commerce. Were you ever

4   consulted by front office Department of Commerce

5   employees -- that's what I mean by Secretary Ross'

6   staff --

7   A.   Okay.

8   Q.   -- regarding whether the Department of

9   Justice would support or request the inclusion of

10   a citizenship question on the census?

11   MR. GARDNER: Same objection.

12   THE WITNESS: I guess I'm still not clear

13   on what you mean by the front office of the

14   Department of Commerce. I can recall speaking to,

15   I believe, three individuals at the Department of

16   Commerce about this issue.

17   BY MR. HO:

18   Q.   Who are the three individuals at the

19   Department of Commerce --

20   A.   Sure.

21   Q.   -- that you spoke to about the

22   citizenship question on the census?

1   A.   I didn't mean to cut you off, and I

2   apologize, again, to the court reporter for being

3   a fast talker.

4   I recall speaking to Peter Davidson,

5   James Uthmeier, U-T-H-M-E-I-E-R -- and Wendy

6   Teramoto.

7   Q.   When was the first occasion on which you

8   consulted with one of those three individuals

9   about the inclusion of a citizenship question on

10   the census?

11   A.   I'm not sure I would describe it as a

12   consultation as much as I would describe it as a

13   conversation about various issues related to the

14   reinstatement of a citizenship question on the

15   census questionnaire. I can recall having

16   conversations starting sometime around this

17   September 2017 time frame.

18   Q.   Who was the first of those three

19   individuals that you had a conversation with about

20   the inclusion of a citizenship question on the

21   2020 census?

22   A.   Peter Davidson.

1   Q.   And roughly when was your first

2   conversation with Peter Davidson about including a

3   citizenship question on the 2020 census?

4   A.   I don't recall exactly, but I would say

5   it was probably around mid-September of 2017 or

6   somewhere in that time frame.

7   Q.   After you spoke to Mr. Davidson in

8   mid-September, what was the next conversation that

9   you had among those three individuals from

10   Commerce about the citizenship question?

11   A.   I don't recall exactly when it was. I

12   had several conversations with Peter Davidson

13   beginning in September and continuing through

14   December. I had a couple of conversations as well

15   with Mr. Uthmeier, including at least one between

16   just Mr. Uthmeier and me and one, and maybe two,

17   where Mr. Uthmeier and Peter Davidson were both

18   involved. Then I had a conversation at one point

19   with Wendy Teramoto about a scheduling issue that

20   I think took place in October of 2017, but I don't

21   recall exactly. Somewhere in that time frame.

22   Q.   Roughly when was your first conversation

1   with Mr. Uthmeier about the citizenship question?

2   A.   I think it would have been either late

3   September or sometime in October of 2017.

4   MR. HO: We've been going for a little

5   over an hour, about an hour-ten.   Would now be an

6   okay time for a first break?

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

8   MR. HO: Great.

9   VIDEO TECHNICIAN: This concludes media

10 unit number 1.   The time on the video is

11 10:19 a.m.   And we are off the record.

12   (A recess was taken.)

13   VIDEO TECHNICIAN: This begins media unit

14 number 2.   The time on the video is 10:37 a.m.   We

15 are on the record.

16 BY MR. HO:

17   Q.   Mr. Gore, I just want to follow up

18 on something from before the break.   The

19 communications between the Department of Justice

20 and the Department of Commerce about the

21 citizenship question, those communications were

22 not initiated by the voting section, correct?

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

2   Q.   And those communications were not

3 initiated by anyone else in the civil rights

4 division, correct?

5   A.   Correct.

6   Q.   And you did not initiate the

7 communications between Commerce and Justice about

8 the citizenship question, correct?

9   A.   That's correct.

10   (Gore Deposition Exhibit 6 marked for

11   identification and attached to the

12   transcript.)

13 BY MR. HO:

14   Q.   In front of you is a document that's been

15 marked as Exhibit 7.   It's an e-mail thread

16 between, among other people, you, Macie Leach, and

17 Wendy Teramoto.   The first page of the document is

18 Bates marked 0002628.   It's from the

19 administrative record.

20   MR. GARDNER: I think you may have said

21 Exhibit 7.   It's Exhibit 6.

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

1   Thank you for clarifying, Josh.

2   MR. GARDNER: Sure.

3   BY MR. HO:

4   Q. The first e-mail on this thread is on the

5   second page -- first in time, I mean. It's from

6   you to Wendy Teramoto on Wednesday,

7   September 13th, 2017, correct?

8   A. It appears to be. Yes.

9   Q. And that's two days after your exchange

10   with Mr. Gary regarding 2020 census questions,

11   correct?

12   A. Correct.

13   Q. And at the time that you sent this

14   e-mail, you knew that Ms. Teramoto was the chief

15   of staff to Commerce Secretary Ross, correct?

16   A. Correct.

17   Q. In the second sentence of your e-mail to

18   Ms. Teramoto, you write, "I would like to talk to

19   you about a DOJ-DOC issue," correct?

20   A. Correct.

21   Q. The DOJ-DOC issue that you're referring

22   to in this e-mail is the citizenship question,

1   correct?

2   A.   Correct.

3   Q.   What prompted you to reach out to

4   Ms. Teramoto to talk to her about the citizenship

5   question?

6   MR. GARDNER: Objection.

7   To the extent that that answer calls for

8   the divulsion of information subject to

9   deliberative process privilege, I instruct you not

10   to answer.   To the extent you can answer that

11   question without divulging such information, you

12   may do so.

13   THE WITNESS: It was a conversation I had

14   with Peter Davidson.

15   BY MR. HO:

16   Q.   When was that conversation with

17   Mr. Davidson?

18   A.   I don't recall exactly.

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

20   Commerce?

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

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

1   counsel of the Department of Commerce.

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

3   A.   He called me.

4   Q.   Did you know Mr. Davidson prior to that

5   call?

6   A.   No.

7   Q.   Roughly when did that conversation with

8   Mr. Davidson take place?

9   A.   As I mentioned before, I had several

10 conversations with Mr. Davidson over time. I

11 don't know when exactly any of those conversations

12 took place, and I don't know when this particular

13 conversation took place.

14   Q.   And Mr. Davidson asked you to reach out

15 to Ms. Teramoto?

16   A.   Yes, he did.

17   Q.   Why did he ask you to reach out to

18 Ms. Teramoto?

19   MR. GARDNER: Objection. To the extent

20 that that answer calls for disclosing information

21 subject to deliberative process privilege, I

22 instruct the witness not to answer.

 1   To the extent you can answer that

 2   question without divulging such information, you

 3   may do so.

 4   THE WITNESS: Consistent with that

 5   instruction, I can't answer.

 6   BY MR. HO:

 7   Q. You subsequently had a conversation with

 8   Ms. Teramoto after this e-mail?

 9   A. Correct.

10   Q. When did that conversation take place?

11   A. I don't recall exactly.

12   Q. What was discussed during that

13   conversation?

14   MR. GARDNER: To the extent you can

15   answer that question without divulging information

16   subject to deliberative process privilege, you may

17   do so. Otherwise, I instruct you not to answer.

18   THE WITNESS: Consistent with that

19   instruction, the only answer I can give is that

20   there was a discussion of scheduling some kind of

21   call between the attorney general and

22   Secretary Ross.

1 BY MR. HO:

2   Q. And the call to be scheduled between the

3 attorney general and Secretary Ross was about the

4 citizenship question, correct?

5   A. I actually don't know that, but it may

6 have been.

7   Q. Well, the DOJ-DOC issue that you reached

8 out to Ms. Teramoto, you testified earlier that

9 that issue was the citizenship question, correct?

10   A. That's correct.

11   Q. And then you spoke to Ms. Teramoto after

12 sending the e-mail about the citizenship question

13 to set up a conversation between Secretary Ross

14 and the attorney general, correct?

15   A. Correct. There was some confusion at the

16 Department of Commerce as to what my job was. And

17 so they had reached out to me and asked me to

18 broker some kind of scheduling, which is not part

19 of my job description. And I discovered that once

20 I spoke to Ms. Teramoto.

21   Q. But the conversation to take place

22 between the attorney general and Secretary Ross

1 was to be about the citizenship question, correct?

2   A. That, I don't know.

3   Q. Well, the scheduling of that conversation

4 that you were supposed to take part of [sic] came

5 out of your e-mail to Ms. Teramoto about the

6 citizenship question, correct?

7   A. I was not to take part in that

8 conversation. I never did take part in that

9 conversation, so I don't know.

10   Q. I meant the conversation between you and

11 Ms. Teramoto to schedule a meeting between the

12 attorney general and the Commerce Secretary, that

13 conversation that you had with Ms. Teramoto arose

14 out of your e-mail to Ms. Teramoto concerning the

15 citizenship question, correct?

16   A. That sounds right. I can't remember

17 whether we discussed exactly what the call between

18 the attorney general and the Secretary would be

19 about, is what I'm trying to convey.

20   (Gore Deposition Exhibit 7 marked for

21   identification and attached to the

22   transcript.)

 1   BY MR. HO:

 2   Q.   Okay.   I'm going to show you an e-mail

 3   that's been marked as Exhibit 7.   It's an e-mail

 4   exchange between, among other people, you and

 5   Ms. Teramoto.   The first page of it bears the

 6   Bates number 0002657.   The top e-mail on the chain

 7   is dated 9/16/2017 from Danielle Cutrona to you,

 8   Mr. Gore, with a cc to Ms. Teramoto.   It's part of

 9   the administrative record.

10   This e-mail thread -- or the top e-mails

11   on this thread, these are subsequent to the e-mail

12   that we talked about earlier between you and

13   Ms. Teramoto, correct?

14   A.   Correct.

15   Q.   And these -- the top e-mails took place

16   after your conversation with Ms. Teramoto,

17   correct?

18   A.   Correct.

19   Q.   And you, after speaking with

20   Ms. Teramoto, then introduced her to Danielle

21   Cutrona from the Department of Justice, correct?

22   A.   That's correct.

1   Q.   And Ms. Cutrona was a senior advisor to

2 the attorney general at this time, correct?

3   A.   That's probably a fair characterization,

4 yeah.

5   Q.   Prior to when Attorney General Sessions

6 became attorney general, Ms. Cutrona worked for

7 him previously in the Senate as his counsel on the

8 judiciary committee, correct?

9   MR. GARDNER: Objection.   Lack of

10 foundation.

11   THE WITNESS: I do know that she worked

12 for him.   I don't know what her title was.

13 BY MR. HO:

14   Q.   And Ms. Cutrona also served on the Trump

15 transition team in charge o immigration reform and

16 building the wall, correct?

17   MR. GARDNER: Same objections.   Same

18 objection.

19   THE WITNESS: I actually don't know.

20 BY MR. HO:

21   Q.   To your knowledge, Ms. Cutrona has no

22 experience with enforcing Section 2 of the Voting

1   Rights Act, correct?

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

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

4   Ms. Cutrona has with respect to enforcing

5   Section 2 of the Voting Rights Act, correct?

6   A. That's correct.

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

8   after this e-mail exchange?

9   A. I believe that they did.

10   Q. How do you know that?

11   A. Because I believe that Danielle let me

12 know that they had.

13   Q. What knowledge do you have of what they

14 discussed?

15   MR. GARDNER: Objection.

16   To the extent you can answer that

17 question without divulging information subject to

18 deliberative process privilege, you may do so.

19 Otherwise, I instruct you not to answer.

20   THE WITNESS: Consistent with that

21 instruction, I can't answer.

22

1   BY MR. HO:

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

3   We'll mark this as Exhibit 8.

4   (Gore Deposition Exhibit 8 marked for

5   identification and attached to the

6   transcript.)

7   BY MR. HO:

8   Q.   This is a continuation of the e-mail

9   chain between you and Ms. Cutrona and

10   Ms. Teramoto.   The first page of it has the Bates

11   number 0002653.   It's part of the administrative

12   record in this case.   And the e-mail at the top is

13   dated September 17th, 2017, from Ms. Cutrona to

14   Ms. Teramoto.

15   The e-mail from Ms. Cutrona to

16   Ms. Teramoto at the top reads, "Wendy, the

17   attorney general is available on his cell.   His

18   number is" -- and then the number is redacted.

19   "He is in Seattle, so he's three hours behind us.

20   From what John told me, it sounds like we can do

21   whatever you all need us to do and the delay was

22   due to a miscommunication.   The AG is eager to

1   assist."

2   So you had a conversation with

3   Ms. Cutrona, correct?

4   A.   Yes.

5   Q.   And when Ms. Cutrona in this e-mail

6   writes, "from what John told me," what is she

7   referring to? What did you tell Ms. Cutrona?

8   MR. GARDNER: Objection. To the extent

9   that information would be subject to deliberative

10   process privilege, I instruct the witness not to

11   answer.

12   To the extent you can answer that without

13   divulging such privileged information, you may do

14   so.

15   THE WITNESS: Consistent with that

16   instruction, I can't do so.

17   MR. HO: I just want to understand the

18   position here. The conversation and -- the

19   content of the conversation is referenced in the

20   administrative record. The court has granted our

21   motion to compel Mr. Gore's testimony based on his

22   role in the request to include a citizenship

1 question on the census and is, I think, permitting

2 us to inquire about his role in that. And the

3 position of the department is that we can't ask

4 about a reference to what Mr. Gore said that's

5 clearly in the administrative record?

6   MR. GARDNER: The content of those

7 conversations is not in the administrative record,

8 presumably, and that's why you're asking Mr. Gore.

9 The court expressly said that the Department of

10 Justice may invoke, you know, appropriate

11 privileges and, you know, we would do that on a

12 question-by-question basis rather than per se

13 precluding the deposition based on privilege.

14   MR. HO: Okay.

15   MR. GARDNER: You're asking about the

16 contents of a deliberative conversation that

17 predates a final decision. It is plainly

18 protected by the privilege.

19   MR. HO: Thank you for that

20 clarification.

21 BY MR. HO:

22   Q. When Ms. Cutrona writes, "It sounds like

1 we can do whatever you all need us to do," what

2 did you understand her as referring to as what

3 17th needed DOJ to do?

4   MR. GARDNER: Objection. To the extent

5 it calls for information subject to deliberative

6 process privilege, I instruct the witness not to

7 answer.

8   To the extent you can answer without

9 divulging privilege, you may do so.

10   THE WITNESS: Consistent with that

11 instruction, I can't answer.

12 BY MR. HO:

13   Q. When Ms. Cutrona refers to the delay,

14 what do you understand her to mean by that?

15   MR. GARDNER: Same objection. Same

16 instruction.

17   THE WITNESS: Consistent with that

18 instruction, I can't answer.

19 BY MR. HO:

20   Q. When Ms. Cutrona refers to the

21 miscommunication, what do you understand her to

22 mean by that?

 1   MR. GARDNER: Same objection. Same

 2   instruction.

 3   THE WITNESS: Consistent with that

 4   instruction, I can't answer.

 5   BY MR. HO:

 6   Q. When Ms. Cutrona writes, "The AG is eager

 7   to assist," what did you understand her to mean by

 8   that?

 9   MR. GARDNER: Same objection. Same

10   instruction.

11   THE WITNESS: Consistent with that

12   instruction, I can't answer.

13   BY MR. HO:

14   Q. When Ms. Cutrona writes, "The attorney

15   general is eager to assist," that is a statement

16   referencing the fact that the attorney general had

17   already made a decision to request a citizenship

18   question on the 2020 census, correct?

19   MR. GARDNER: Same objection. Same

20   instruction.

21   THE WITNESS: Consistent with that

22   instruction, I can't answer.

1 BY MR. HO:

2   Q.   When Ms. Cutrona writes, "We are eager to

3 assist," what did you understand her to mean by

4 "assist"?

5   MR. GARDNER: Same objection.   Same

6 instruction.

7   THE WITNESS: Consistent with that

8 instruction, I can't answer.

9 BY MR. HO:

10   Q.   What was your reaction to receiving this

11 e-mail?

12   MR. GARDNER: Objection.   Lack of

13 foundation.

14   THE WITNESS: I'm not sure I ever did

15 receive this e-mail.   I'm not copied on this

16 e-mail between Wendy and Danielle.

17 BY MR. HO:

18   Q.   Okay.   I'm going to show you another

19 document.   We'll mark this as Exhibit 9.

20   (Gore Deposition Exhibit 9 marked for

21   identification and attached to the

22   transcript.)

1   BY MR. HO:

2   Q.   This is another e-mail from the

3   administrative record, the first page of which --

4   the only page of which has Bates number 0002636.

5   The top e-mail is an e-mail to you dated

6   September 18th, 2017.   September 18th, 2017,

7   that's two days after you connected Ms. Teramoto

8   and Ms. Cutrona, correct?

9   A.   That seems to be correct.   Yes.

10   Q.   And the e-mail to you states, "Hi.   AG

11   and Sec spoke.   Please let me know when you have a

12   minute."

13   What did you understand that to mean, AG

14   and Sec spoke?

15   A.   I understood it to mean what it says it

16   means, that the attorney general and the Secretary

17   spoke.

18   Q.   Secretary Ross, right?

19   A.   Secretary Ross.   Yes.

20   Q.   Okay.   What did you understand that they

21   had spoken about?

22   MR. GARDNER: Objection.   Calls for

1   information subject to deliberative process

2   privilege. I instruct the witness not to answer.

3   THE WITNESS: Consistent with that

4   instruction, I can't answer.

5   BY MR. HO:

6   Q. I'm not asking for the content of the

7   conversation, just whether or not they spoke about

8   the citizenship question. Is that your

9   understanding?

10   A. Yes, that would be my understanding.

11   Q. What significance, if any, did you take

12   from the fact that the attorney general and the

13   Secretary of Commerce had spoken about the

14   citizenship question?

15   MR. GARDNER: Objection. Vague.

16   THE WITNESS: I'm not sure I assigned any

17   significance to it. I understood from this e-mail

18   chain that the Secretary was interested in

19   speaking to the attorney general.

20   BY MR. HO:

21   Q. What reaction, if any, did you have to

22   the fact that the attorney general and

1 Secretary Ross spoke about the citizenship

2 question on or around September 18th, 2017?

3   A. I don't recall having any reaction about

4 it.

5   Q. Did you understand from the fact that

6 they had spoken that you were to take any

7 particular course of action after their

8 conversation about the citizenship question?

9   MR. GARDNER: Objection to the extent

10 that that answer calls for disclosing information

11 subject to deliberative process privilege.

12   To the extent you can answer that

13 question without divulging such information, you

14 may. Otherwise, I instruct you not to answer.

15   THE WITNESS: Consistent with that

16 instruction, I can't answer.

17 BY MR. HO:

18   Q. Well, I didn't ask what specific action,

19 if any, you were supposed to take afterwards. I

20 was just asking if you understood that, by virtue

21 of the fact that the Secretary and the attorney

22 general had spoken about the citizenship question,

1   that meant that you were supposed to do

2   something -- I'm not asking you to name what that

3   thing was -- but that you were supposed to do

4   something after that.

5   A.   Again, I think you're asking about my

6   mental process and what went through my --

7   Q.   I don't think your counsel made an

8   objection.

9   MR. GARDNER: I think -- to the extent

10 you're asking for a yes or no answer, I think you

11 can answer that.

12   THE WITNESS: Can you repeat the

13 question?

14 BY MR. HO:

15   Q.   Sure. From the fact that was

16 communicated to you, that the attorney general and

17 the -- and Secretary Ross had spoken about the

18 citizenship question on or around September 18th,

19 2017, did you understand that you were supposed to

20 then take some action?

21   A.   No.

22   Q.   Did you speak to Ms. Teramoto after

1   Secretary Ross and the Attorney General spoke?

2   A.   Are you referring to the conversation

3   between the attorney general and the Secretary

4   that's documented here on September 18th?

5   Q.   Yes. Ms. Teramoto, after telling you

6   that the Attorney General and the --

7   Secretary Ross spoke, says -- or writes, please --

8   let me know when you have a minute."

9   Did you follow up with Ms. Teramoto to

10 have a conversation with her --

11   A.   I see.

12   Q.   -- after this e-mail?

13   A.   I don't recall.

14   Q.   Let me show you another document. We'll   802

15 mark this as Exhibit 10.

16   (Gore Deposition Exhibit 10 marked for

17   identification and attached to the

18   transcript.)

19 BY MR. HO:

20   Q.   This is an e-mail to you dated

21 September 22nd, 2017. Just so the record is

22 clear, this was produced to us in discovery. The

802

1 electronic version has a file name that's stamped

2 DOJ 30651, but the document itself does not bear a

3 Bates number.

4   Mr. Gosre, this is an e-mail to you from

5 Camille Legore-Traore, correct?

6   A. Legore-Traore is I believe how she says

7 it, but yes.

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

9   A. Correct.

10   Q. And this e-mail informs you that James

11 Uthmeier from the Department of Commerce called to

12 speak with you, correct?

13   A. That's correct.

14   Q. Okay. Prior to this e-mail, September

15 22nd, 2017, had you spoken with Mr. Uthmeier about

16 the citizenship question?

17   A. I don't recall.

18   Q. You and Mr. Uthmeier had been colleagues

19 at Jones Day, correct?

20   A. Correct.

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

22 correct?

           1   A.   Yes.

           2   Q.   Since -- did you socialize with

           3   Mr. Uthmeier?

           4   A.   Not regularly, no.

           5   Q.   But at some point, if not regularly, you

           6   socialized with him?

           7   A.   I might have spent time with him at

           8   events sponsored by the law firm.

           9   Q.   Between the time that you became a DOJ

          10   employee and the date that you received this

          11   e-mail, September 22nd, 2017, did you have any

          12   other conversations with Mr. Uthmeier?

          13   A.   Not that I can recall.

          14   Q.   And at the time Mr. Uthmeier -- of this

          15   e-mail -- at the time of this e-mail, Mr. Uthmeier

          16   worked in the general counsel's office in the

          17   Commerce Department, correct?

          18   A.   That's correct.

          19   Q.   To the best of your knowledge,

          20   Mr. Uthmeier does not have any Voting Rights Act

          21   enforcement responsibilities, correct?

          22   A.   Correct.

1   Q.   And to the best of your knowledge,

2 Mr. Uthmeier does not have any experience

3 enforcing the Voting Rights Act, correct?

4   A.   That is correct as well. Yeah.

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

6   A.   Yes. I believe I did.

7   Q.   Roughly when?

8   A.   Sometime around when I received this

9 message. I can't remember if it was that day or

10 the following week.

11   Q.   Roughly how long did you speak with

12 Mr. Uthmeier?

13   A.   Not particularly long. Maybe 15 or

14 20 minutes.

15   Q.   Did you talk to him about the citizenship

16 question?

17   A.   Yes, among other things.

18   Q.   At some point you received a note and a

19 memo from Mr. Uthmeier concerning the citizenship

20 question, correct?

21   A.   That's correct.

22   Q.   Was the note handwritten?

1   A.   Yes, it was.

2   Q.   How was the note transmitted to you?

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

4   my office.

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

6   A.   I don't recall exactly.

7   Q.   Was it after receiving this phone call to

8   your office from Mr. Uthmeier on September 22nd,

9   2017?

10   A.   I believe so, yes.

11   Q.   Was it before the Department of Justice

12   sent its letter to the Census Bureau on

13   December 12th, 2017, requesting the citizenship

14   question?

15   A.   Yes.

16   Q.   You showed that note to other people,

17   right?

18   A.   Yes.

19   Q.   Who did you show that note to?

20   A.   I showed it to -- I know I've shown it to

21   Kathleen Toomey in the civil rights division as

22   part of the document collection. And I understand

1   that it was shown to a couple of other people in

2   the civil division who are responsible for

3   litigating this case on behalf of the United

4   States.

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

6   Q. Do you know if anyone to whom you showed

7   the note showed it to anyone else?

8   A. I don't.

9   Q. Did you ever have any discussions with

10   anyone about the note?

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

12   Q. You just showed it to some people, but

13   you never discussed it?

14   A. Well, I showed it to them after receiving

15   a document request in this litigation and I gave

16   it to them as part of the collection of documents

17   responsive to that -- potentially responsive to

18   that request.

19   I may have had a question with Ben

20   Aguinaga about it, but I don't recall.

21   Q. Did the note solicit legal advice from

22   you?

1   A.   No.

2   Q.   And you didn't provide legal advice in

3 response to that note, correct?

4   A.   I believe I may have, actually.

5   Q.   You testified earlier you weren't

6 providing legal advice in connection to the

7 citizenship question, I thought.

8   MR. GARDNER: Objection.

9 Mischaracterizes the witness' prior testimony.

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

11 testimony.

12 BY MR. HO:

13   Q.   Okay.   So you think you did provide legal

14 advice to Mr. Uthmeier in response to the memo?

15   A.   Now you've changed the question.

16   Q.   Yeah.

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

18 Mr. Uthmeier.

19   Q.   Did you provide legal advice to the

20 Department of Commerce in response to the note

21 from Mr. Uthmeier?

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

1   mention it, I did discuss the note with

2   Mr. Uthmeier and Mr. Davidson.

3   Q.   Did you provide legal advice to the

4   Department of Commerce in connection with the note

5   from Mr. Uthmeier?

6   A.   Yes.

7   Q.   At this point were you anticipating

8   litigation over the possibility of including a

9   citizenship question in the census?

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

11   Q.   At this point --

12   A.   Right.

13   Q.   -- when you received the handwritten note

14   from Mr. Uthmeier, were you anticipating

15   litigation over the possibility of the inclusion

16   of the citizenship question on the census?

17   A.   Absolutely.

18   Q.   Did the -- was the note shared with you

19   in anticipation of litigation over the citizenship

20   question?

21   MR. GARDNER: Objection.   Lack of

22   foundation.   Calls for speculation.

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601

1   BY MR. HO:

2   Q.   If you know.

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

4   Q.   Did the note state one way or the other

5   whether or not it was prepared in anticipation of

6   litigation?

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

8   Q.   And did the note state one way or the

9   other whether or not it was requesting legal

10   advice from you?

11   A.   Yes, it did.

12   Q.   And your answer is it was requesting

13   legal advice, the note?

14   A.   Yes.

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

16   Did the Department of Justice rely on

17   that note in drafting its request to the Census

18   Bureau to include a citizenship question on the

19   census?

20   MR. GARDNER: Objection.   Vague.

21   THE WITNESS: The note contained

22   information regarding that issue that was

1 considered by the Department of Justice in

2 drafting its request.

3 BY MR. HO:

4   Q. Does inform -- did -- does any

5 information contained on that note appear in the

6 Department of Justice's letter to the Department

7 of -- to the Census Bureau requesting a

8 citizenship question on the 2020 census?

9   MR. GARDNER: Objection to the extent

10 that that calls for the disclosure of information

11 that may be subject to deliberative process

12 privilege.

13   To the extent you can answer that

14 question without divulging that, you may.

15 Otherwise, I instruct you not to answer.

16   THE WITNESS: Consistent with that

17 instruction, I can't answer that question.

18   MR. HO: Just so I understand the

19 position, even if information from that was on

20 that letter that became public, your position is

21 that's protected from my question about whether or

22 not --

1   MR. GARDNER: Your question wasn't

2   whether it was expressly incorporated by reference

3   in the letter, at which point I would agree with

4   you that that would waive the privilege. You just

5   asked if information in that letter was somehow

6   used in forming the letter. That is classic

7   deliberative process protection.

8   MR. HO: I don't think that was my

9   question, but I'll ask a question that --

10   MR. GARDNER: Ask it again.

11 BY MR. HO:

12   Q. Does information on the handwritten note

13 from Mr. Uthmeier appear in the Department of

14 Justice's letter requesting a citizenship question

15 on the 2020 census questionnaire?

16   MR. GARDNER: Same objection. Same

17 instruction.

18   THE WITNESS: Consistent with that

19 instruction, I can't answer.

20   (Gore Deposition Exhibit 11 marked for

21   identification and attached to the

22   transcript.)

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1   BY MR. HO:

2   Q.   This is marked as Exhibit 11.   This is an

3   e-mail to you -- from you to Mr. Herren -- Chris

4   Herren, sorry -- dated November 1st, 2017, with a

5   cc to Ben Aguinaga, correct?

6   A.   That is correct.

7   Q.   Chris Herren is the chief of the voting

8   section, correct?

9   A.   Yes.   And a great lawyer.

10   Q.   The subject line of your e-mail is,

11   Confidential and closehold draft letter, correct?

12   A.   That's correct.

13   Q.   And in your e-mail to Mr. Herren you say

14   that the draft letter is attached, correct?

15   A.   Correct.

16   Q.   Did you write the draft letter that is

17   attached to this e-mail?

18   A.   Yes, I did.

19   Q.   The draft letter that is attached to this

20   e-mail is an early draft of the December 12th

21   letter from the Department of Justice to the

22   Census Bureau requesting a citizenship question on

802

1   the 2020 census questionnaire, correct?

2   A.   Correct.

3   Q.   Is it fair to say that you wrote the

4   first draft of the letter from the Department of

5   Justice to the Census Bureau requesting a

6   citizenship question on the 2020 census

7   questionnaire?

8   A.   Is that a question? I'm sorry. That

9   sounded like a statement.

10   Q.   No. It was a question.

11   A.   Okay.

12   Q.   Is it fair to say that you wrote the

13   first draft of the letter from the Department of

14   Justice to the Census Bureau requesting a

15   citizenship question on the 2020 census

16   questionnaire?

17   A.   Yes.

18   Q.   You write in this e-mail that you

19   discussed the draft letter with Mr. Herren

20   yesterday.

21   Would that have been your first

22   conversation with Mr. Herren about the citizenship

1   question on the census?

2   A. I don't recall.

3   Q. When was your first conversation, if you

4   recall, with Mr. Herren about the citizenship

5   question on the census?

6   A. I don't recall.

7   Q. Did you have any conversations with

8   Mr. Herren about the citizenship question before

9   you sent this letter to him?

10   A. Yes.

11   Q. How many conversations did you have with

12   Mr. Herren before you sent the draft of the letter

13   to him?

14   A. I don't recall exactly. It would have

15   been a few.

16   Q. More than one?

17   A. Yes.

18   Q. Days before you sent him the letter?

19   Weeks before? Months before? Do you have a

20   recollection about approximate time?

21   A. I don't have an exact recollection. I

22   would say in the days before I sent him the

1   letter.

2   Q.   Were those conversations in person or by

3   phone?

4   A.   I can recall conversations by phone. And

5   there may have been conversations in person. I

6   can't recall.

7   Q.   Did you have more than five conversations

8   with Mr. Herren about the citizenship question?

9   A.   At what time?

10   Q.   Before you sent him the draft letter.

11   A.   Probably not.

12   Q.   So more than one but fewer than five

13 conversations about the citizenship question

14 before you sent him the draft letter?

15   A.   Sounds about right.

16   Q.   You describe this as confidential and

17 closehold.

18   What do you mean by confidential and

19 closehold?

20   A.   I meant that Mr. Herren should review the

21 letter and this was not for broad dissemination,

22 as it represented a draft. And I had asked him to

1   take a look at it.

2   Q.   When you say confidential and closehold,

3   does that mean that Mr. Herren was not permitted

4   to share the draft letter with anyone?

5   A.   No. It meant that if he was interested

6   in sharing the draft letter with someone, he could

7   ask me if he was allowed to do that.

8   Q.   So your understanding was that Mr. Herren

9   should ask you before sharing any drafts of the

10   letter with anyone?

11   A.   I believe my understanding was that he

12   should communicate with me if he wanted to share

13   this particular draft with anyone.

14   Q.   Did Mr. Herren ever communicate with you

15   that he wanted to share the draft letter with

16   anyone?

17   A.   I can't recall.

18   Q.   Do you know whether or not Mr. Herren

19   shared this draft letter with anyone?

20   A.   I don't.

21   Q.   Do you know if Mr. Herren discussed the

22   issues in the draft letter with anyone?

1   A.   Whether he discussed the issues in the

2   draft letter? At what time?

3   Q.   Around the time that you sent the copy of

4   the draft letter to him.

5   A.   Well, I know he discussed them with me.

6   Other than that, I don't know.

7   Q.   Do you know if Mr. Herren discussed the

8   issues raised in the draft letter with any voting

9   section personnel?

10   A.   I don't.

11   Q.   Why did you consider this letter to be

12   confidential and closehold?

13   A.   I considered it to be confidential and

14   closehold because it was a draft and related to an

15   issue that was important to people in the

16   department.

17   Q.   Did you not want it to become public

18   information that the Department of Justice at this

19   point was drafting a letter to request a

20   citizenship question on the 2020 census

21   questionnaire?

22   MR. GARDNER: Objection to form.

1   THE WITNESS: I never want any of our

2   drafts to become public information unless

3   required by legal process because I believe that

4   the Department of Justice should facilitate robust

5   and open conversation and deliberations at all

6   level before a decision is made.

7   BY MR. HO:

8   Q.   I didn't ask if you wanted the draft to

9   not become public.   I just asked if you wanted the

10   fact that the Department of Justice was drafting a

11   letter to request a citizenship question on the

12   2020 census questionnaire, if you wanted that fact

13   to remain non-public at this time.

14   A.   I would have preferred that that fact

15   remain non-public because the final letter hadn't

16   been issued and no final decision had yet been

17   made about it.

18   (Gore Deposition Exhibit 12 marked for

19   identification and attached to the

20   transcript.)

21   BY MR. HO:

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

1   marked this as Exhibit 12. This has Bates number

2   DOJ 00003740. It was produced to us in discovery.

3   The top e-mail is from Ben Aguinaga on November

4   3rd to Bethany Pickett.

5   Here, Mr. Aguinaga is forwarding the

6   e-mail that you sent to Mr. Herren with the draft

7   letter to Bethany Pickett, correct?

8   A.   That appears to be correct, yes.

9   Q.   Did you authorize Mr. Aguinaga to send

10   the draft letter that you had sent to Mr. -Herren

11   to forward that to Bethany Pickett?

12   A.   Yes.

13   Q.   Now, at the time, Mr. Aguinaga and

14   Ms. Pickett both worked with you in the front

15   office of the civil rights division, correct?

16   A.   That's correct.

17   Q.   Both of them were political hires rather

18   than career staff, correct?

19   A.   Correct.

20   Q.   And you hired both Mr. Aguinaga and

21   Ms. Pickett, correct?

22   A.   No, I did not.

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

2   A. I believe it was my predecessor, Tom

3 Wheeler.

4   Q. Both of them had been law clerks for

5 Judge Edith Jones on the Fifth Circuit, correct?

6   A. That's correct.

7   Q. Just like Mr. Shumate, correct?

8   A. I don't know.

9   Q. Both of them graduated from law school in

10 2015 or more recently, correct?

11   A. Sounds about right.

12   Q. Before coming to the civil rights

13 division, neither Mr. Aguinaga nor Ms. Pickett had

14 any experience as counsel in cases under the

15 Voting Rights Act, correct?

16   MR. GARDNER: Object to lack of

17 foundation.

18   THE WITNESS: I don't know.

19 BY MR. HO:

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

21 Mr. Aguinaga or Ms. Pickett had as counsel in

22 Voting Rights Act cases prior to them coming to

1   the civil rights division, correct?

2   A.   That's correct.

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

4   either Mr. Aguinaga or Ms. Pickett had assessing

5   the reliability of CVAP data for purposes of VRA

6   enforcement, correct?

7   A.   That's correct.

8   (Gore Deposition Exhibit 13 marked for

9   identification and attached to the

10   transcript.)

11 BY MR. HO:

12   Q.   I'll give you a document marked as

13 Exhibit 13. This is an e-mail from Ms. Pickett to

14 you also on November 3rd, 2017, correct?

15   A.   Appears to be, yes.

16   Q.   Ms. Pickett writes to you, "I have

17 attached the letter that we discussed yesterday.

18 I would be happy to discuss this further. Please

19 let me know if you have any questions regarding

20 any comments and edits."

21   It's accurate to say that Ms. Pickett

22 offered comments and edits to the draft of the

1 letter requesting a citizenship question on the

2 census that you had previously sent to Mr. Herren,

3 correct?

4 　　A.　Correct.

5 　　Q.　What were the substance of the

6 conversations that you had had with Ms. Pickett

7 about that letter?

8 　　　　MR. GARDNER:　Objection.　Calls for

9 information subject to deliberative process

10 privilege.　I instruct the witness not to answer.

11 　　　　THE WITNESS:　Consistent with that

12 instruction, I can't answer.

13 BY MR. HO:

14 　　Q.　What were the substance of her edits to

15 the draft of the letter?

16 　　　　MR. GARDNER:　Same objection.　Same

17 instruction.

18 　　　　THE WITNESS:　Consistent with that

19 instruction, I can't answer.

20 BY MR. HO:

21 　　Q.　Other than Ms. Pickett, Mr. Aguinaga, and

22 Mr. Herren, did you solicit input on the draft

1   letter from anyone else within the civil rights

2   division?

3   A.   Not that I can recall.

4   Q.   Other than Ms. Pickett, Mr. Aguinaga, and

5   Mr. Herren, did you receive input on the draft

6   letter from anyone else within the civil rights

7   division?

8   A.   Not that I can recall.

9   Q.   Sometime after you wrote the first draft

10   of this e-mail, you had a conversation with Peter

11   Davidson at the Department of Commerce, correct?

12   A.   Yes. That would be correct.

13   Q.   So sometime in November of 2017, you had

14   conversation -- you had a conversation with

15   Mr. Davidson about the citizenship question,

16   correct?

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

18   Q.   How many conversations did you have with

19   Mr. Davidson in November of 2017 about the

20   citizenship question?

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

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

1 Mr. Davidson about the Department of Justice's

2 process for requesting a citizenship question on

3 the census during November of 2017?

4   MR. GARDNER: Objection. Vague. Also

5 objection -- to the extent it calls for

6 information subject to deliberative process

7 privilege, I instruct you not to answer. To the

8 extent you can answer that without divulging such

9 information, you may answer.

10   THE WITNESS: Consistent with that

11 instruction, I can't answer.

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12   (Gore Deposition Exhibit 14 marked for

13   identification and attached to the

14   transcript.)

15 BY MR. HO:

16   Q. I show you a document that's been marked

17 as Exhibit 14. It's an e-mail exchange between

18 you, Robert Troester, T-r-o-e-s-t-e-r, and

19 Rachael, spelled R-a-c-h-a-e-l, Tucker.

20   The top e-mail on the thread is

21 November 30th, 2017. This was produced to us in

22 discovery. The electronic version has DOJ 14798

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1 on it, although the hard copy doesn't have that

2 Bates number.

3   It we look at the bottom of this page,

4 the first e-mail on this thread is from you to

5 Ms. Tucker and Mr. Troester on November 27th,

6 2017, correct?

7   A. That's correct. Except that he

8 pronounces his last name Troester.

9   Q. Troester. Thank you.

10   You had a conversation on this day, the

11 same day, with Mr. Davidson, correct?

12   A. On November 27th?

13   Q. 2017. Correct?

14   A. I don't recall that specifically, but

15 it's certainly possible.

16   Q. Now, at this time, Ms. Tucker was counsel

17 in the front office of the attorney general,

18 correct?

19   A. That's correct.

20   Q. And Mr. Troester was associate deputy

21 attorney general, correct?

22   A. That's my understanding, yes.

1   Q.   Okay. Now, neither Ms. Tucker nor

2 Ms. [sic] Troester, as far as you're aware, had

3 any experience as counsel in Voting Rights Act

4 cases, correct?

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

6   Q.   What about Ms. Tucker?

7   A.   Also correct. You called him

8 Ms. Troester, so -- sorry.

9   Q.   Thank you.

10   A.   But, yes, I was not aware that either had

11 any enforcement responsibility or experience with

12 respect to the Voting Rights Act.

13   Q.   And as far as you're aware, neither of

14 them had any experience assessing the reliability

15 of CVAP data used in Voting Rights Act litigation,

16 correct?

17   A.   Correct.

18   Q.   Ms. Tucker and Mr. Troester were both

19 political appointees in the Department of Justice

20 at this time, correct?

21   A.   That's correct for Ms. Tucker. I believe

22 Mr. Troester was a career employee on detail to

1   the office of deputy attorney general and had

2   served a long career in the Department of Justice

3   as an assistant United States attorney, and maybe

4   even more than once as the acting United States

5   attorney in his home state of Oklahoma.

6   Q.   In your e-mail to them on November 27th,

7   you wrote, "Attached please find the near final

8   draft of the letter to census on the citizenship

9   issue we discussed a couple of weeks ago."

10   So you had discussed the citizenship

11 issue with Ms. Tucker and Mr. Troester a few weeks

12 before the date of this e-mail, November 27th,

13 2017, correct?

14   A.   Correct.

15   Q.   When were your first conversations with

16 either Ms. Tucker or Mr. Troester about the

17 citizenship question?

18   A.   I don't recall specifically when they

19 were. Probably in September of 2017 or early

20 October. And I had a handful to several

21 conversations with each of them about that issue.

22   At the time, Ms. Tucker was responsible

Non-Responsive

1 for the civil rights division portfolio in the

2 Office of Attorney General and Mr. Troester was

3 responsible for the civil rights division

4 portfolio in the Office of the Deputy Attorney

5 General. So I had many conversations with them

6 over time about issues related to the civil rights

7 division.

8   Q. You described the draft of the letter as

9 a near final draft, correct?

10   A. Correct.

11   Q. So fair to say that on November 27th,

12 2017, a decision had already been made to request

13 a citizenship question on the census?

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

15   Q. Okay. Ms. Tucker and Mr. Troester both

16 offered you edits to the letter, correct?

17   A. I believe that's correct.

18   (Gore Deposition Exhibit 15 marked for

19   identification and attached to the

20   transcript.)

21 BY MR. HO:

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

1   It's another e-mail chain between you and

2   Mr. Gary. The top e-mail is dated November 30th,

3   2017.

4   A.   Uh-huh.

5   Q.   This was also produced to us. And in the

6   e-mail at the top from you to Mr. Gary you write,

7   "Art, I have received some nits back from the

8   leadership offices which are reflected in the

9   attached red-line and clean versions. The

10   leadership offices have requested additional time

11   to review these through the weekend. I told them

12   that would be fine, so let's plan to be ready to

13   send this out on Monday."

14   Did I read this right?

15   A.   Yes, you did.

16   Q.   Okay. And the nits that you're referring

17   to from the leadership offices, those are the

18   edits from Ms. Tucker and Mr. Troester, correct?

19   A.   Yes, it would include those edits. And I

20   don't know -- I can't recall whether other edits

21   also would have been included.

22   Q.   You can't -- you're not aware of any

1   other edits that you were referring to beyond

2   Ms. Tucker's and Mr. Troester's when you refer to

3   nits back from the leadership offices?

4   A.   That's correct.

5   Q.   And your plan was to be -- this was

6   Thursday, November 30th. So your plan would

7   have -- was to be ready to send this out by

8   December 4th, Monday, correct?

9   A.   That sounds right.

10   Q.   So as of this point, November 30th, 2017,

11   a decision had already been made to request the

12   citizenship question, correct?

13   A.   No, not at all.

14   Q.   If a decision had not been made to

15   request a citizenship question, why did you tell

16   Mr. Gary to be ready to send the letter out on

17   Monday?

18   A.   I thought we needed to be ready in case a

19   decision were made by then.

20   Q.   All right.

21

22

802

1   (Gore Deposition Exhibit 16 marked for

2   identification and attached to the

3   transcript.)

4   BY MR. HO:

5   Q.   Exhibit 16 is what I'm handing to you

6   now.   Another e-mail chain between you and

7   Mr. Gary.   The top e-mail on the thread is dated

8   December 8th, 2017.   The subject line of this is,

9   Request for citizenship information.December 8

10   red-line edits, 002.   Is that right?

11   A.   Appears to be right, yeah.

12   Q.   When you say leadership's final changes

13   in this e-mail in the second line -- you write,

14   "Attached is a red-line of a letter with

15   leadership's final changes" -- you're referring to

16   additional edits that you received from Ms. Tucker

17   and Mr. Troester, correct?

18   A.   Possibly.   I don't know exactly which

19   edits I'm referring to here.

20   Q.   Well, what were the final edits from

21   leadership?   I mean, who was leadership?   When you

22   wrote "leadership" here, who were you referring

1 to?

2   A. I would have been referring to the

3 leadership offices at the Department of Justice,

4 which may have included the Office of Attorney

5 General, the Office of Deputy Attorney General,

6 and the Office of Associate Attorney General.

7   Q. Is there anyone that you can think of who

8 was giving you edits in the last few days before

9 this letter was sent from any of those offices

10 other than Ms. Tucker and Mr. Troester?

11   A. Not that I can specifically recall.

12   Q. So fair to say, when you're referring to

13 leadership's final changes, you're referring to,

14 to the best of your recollection, some edits from

15 Ms. Tucker and Mr. Troester, correct?

16   MR. GARDNER: Objection.

17 Mischaracterizes the witness' prior testimony.

18   THE WITNESS: Yeah, I don't recall

19 whether they came from Ms. Tucker, Mr. Troester,

20 or somebody else.

21 BY MR. HO:

22   Q. You write, "With these changes, we are   802

1 authorized to send. Sending on Monday is fine." 802

2   Did I read that correctly?

3   A. That's correct.

4   Q. Okay. When you say, "authorized to

5 send," who provided authorization to send the

6 letter with those changes?

7   A. I don't recall specifically who

8 communicated that. It would have come from

9 someone in the leadership office.

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

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

12 was.

13   Q. Was it Attorney General Sessions who gave

14 your authorization to send the letter with these

15 edits?

16   MR. GARDNER: Objection. Asked and

17 answered.

18   THE WITNESS: Again, I don't recall

19 exactly who it was.

20 BY MR. HO:

21   Q. When you say, "With these changes we are

22 authorized to send," on December 8th, 2017, when

1   you wrote that, a decision had been made as of

2   December 8th, 2017, to send the citizenship

3   question -- the request for the citizenship

4   question as long as it had these changes, correct?

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

6   Q.   You wrote, "With these changes, we are

7   authorized to send."

8   A.   That's correct.

9   Q.   So as soon as you made those changes to

10   that letter, you had authorization to send that

11   letter, correct?

12   A.   I believe we might have had authorization

13   to send, but it would have been my practice to

14   check in one last time before the letter was sent.

15   Q.   Okay.   You didn't have reason to believe

16   that you weren't authorized to send the letter

17   once you had made those changes as of

18   December 8th, 2017, right, Mr. Gore?

19   A.   I don't recall what I thought or didn't

20   think on December 8th of 2017.

21   Q.   Okay.   You didn't say in this e-mail to

22   Mr. Gary that you were going to check in again

1   after you made these changes, did you?

2   MR. GARDNER: Objection.

3   Mischaracterizes the document.

4   THE WITNESS: I did not use those words

5   in that e-mail.

6   BY MR. HO:

7   Q.   You didn't tell Mr. Gary in this e-mail

8   that, after these changes were made, you would

9   have to check in with leadership one more time

10   before sending it, right?

11   A.   Again, I did not use those words in that

12   e-mail, but that's standard practice, certainly my

13   standard practice, and I believe the standard

14   practice of others at the Department of Justice.

Non-Responsive; 602

15   Q.   You sent this e-mail on Friday,

16   December 8th, which means Monday would have been

17   Monday, December 11th, correct?

18   A.   That's correct.

19   Q.   And you wrote that sending on Monday,

20   which would have been December 11th, would be

21   fine, correct?

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

1   was conveying there is that Mr. Gary didn't need

2   to work late on a Friday night during the holiday

3   season to send the letter out.

4   Q.   So just so I understand the process here,

5   you had -- you first had communications about the

6   issue of a citizenship question sometime around

7   Labor Day of 2017, correct?

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

9   Q.   You drafted the initial draft of the

10 letter to request the citizenship question

11 sometime around the end of October or early

12 November of 2017, correct?

13   A.   Correct.

14   Q.   The conversations to add the citizenship

15 question with the Department of Commerce were not

16 initiated by the civil rights division, correct?

17   A.   Correct.

18   Q.   And they were not initiated by the

19 Department of Justice, correct?

20   A.   That's my working understanding.

21   Q.   Around the time that you wrote the first

22 draft of this letter, you received input from

1 three individuals: Mr. Herren, Ms. Pickett, and

2 Mr. Gary, correct?

3   A. Yes. And I may have received input from

4 others as well.

5   Q. Around the time of the first draft of the

6 letter in early November of 2017, who else did you

7 receive input from other than Mr. Herren,

8 Ms. Pickett, and Mr. Gary?

9   A. Mr. Aguinaga would have provided -- may

10 have provided some input. I would have had

11 discussions on -- regarding the letter generally

12 with Patrick Hovakimian, who at the time was

13 detailed to the Office of Associate Attorney

14 General, and with Jesse Panuccio in the Office of

15 the Associate Attorney General.

16   And I had various conversations with

17 others at various times throughout this process.

18 But I don't recall who else I would have spoken to

19 at that particular moment in time, around

20 November 1st of 2017.

21   Q. Okay. Around November 1st of 2017, the

22 only career staff in the civil rights division

1   from whom you received input on the letter was

2   from Mr. Herren, correct?

3   A.   That's correct.

4   Q.   After that period of early November

5   of 2017 when you had drafted the initial draft of

6   that letter, Mr. Herren gave you some edits,

7   correct?

8   A.   That's correct.

9   Q.   After that time, did you receive any

10   further edits from Mr. Herren to the draft letter?

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

12   Q.   So you have no recollection of receiving

13   input from career civil rights division staff on

14   the letter requesting a citizenship question other

15   than that one occasion in early November around

16   the time of the first draft from Mr. Herren,

17   correct?

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

19   Q.   You continued to revise the letter after

20   early November of 2017 with input from different

21   people.   But after that first round of edits from

22   Mr. Herren, you received no subsequent edits from

1   people who were career staff in the civil rights

2   division, correct?

3   MR. GARDNER: Objection. Compound.

4   THE WITNESS: To the extent I understand

5   your question, I believe that's correct.

6   BY MR. HO:

7   Q. During this period when you were revising

8   the letter to request a citizenship question, you

9   had multiple conversations with legal staff at the

10   Department of Commerce, correct?

11   A. Yes.

12   Q. And the edits that you were receiving to

13   the letter from other DOJ personnel included

14   political appointees in the front office of the

15   Department of Justice and in the front office of

16   the civil rights division, correct?

17   A. I -- certainly that's correct with

18   respect to the leadership offices at the

19   Department of Justice. I can't remember if I was

20   receiving edits from the front office of the civil

21   rights division at that time after receiving the

22   edits from Ms. Pickett.

1   Q.   Who made the final decision to send the

2   letter requesting the citizenship question be

3   added to the 2020 census questionnaire?

4   A.   I'm not sure I know.   And I can't recall

5   who communicated the final decision to me.

6   Q.   The letter was ultimately sent on

7   December 12th, 2017 --

8   A.   Correct.

9   Q.   -- correct?

10   A.   Correct.

11   Q.   Who gave the final signoff to put that

12   letter in the mail?

13   MR. GARDNER: Objection.   Asked and

14   answered.

15   THE WITNESS: I don't recall who gave the

16   final signoff.

17   BY MR. HO:

18   Q.   Was it you?

19   A.   No, I don't believe I would have given

20   the final signoff.   But maybe.   I guess it depends

21   on what you're asking.   Like, who told Art Gary he

22   could press "send" on the e-mail?   I don't

1   understand your question.

2   Q.   Yes, that's my question.

3   A.   I don't know.

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

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

6   somebody else.

7   Q.   All right.

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

9   (Gore Deposition Exhibit 17 marked for

10   identification and attached to the

11   transcript.)

12   BY MR. HO:

13   Q.   I'm going to show you what's been marked

14   as Exhibit 17. This is a document in the

15   administrative record, the first page of which has

16   the number 000663. This is a letter stamped

17   December 12th, 2017, from Arthur Gary at the

18   Department of Justice addressed to Ron Jarmin at

19   the Census Bureau, correct?

20   A.   Yes. It appears to be.

21   Q.   And this is the letter we've been talking

22   about in which the Department of Justice

1   officially requests that a citizenship question be

2   added to the 2020 decennial census questionnaire,

3   correct?

4   A.   Let me read it.

5   MR. GARDNER: I could use a bathroom

6   break right now, if that's fine.

7   MR. HO: Do you want to go off the

8   record?

9   VIDEO TECHNICIAN: This concludes media

10 unit number 2.   The time on the video is

11 11:32 a.m.   We are off the record.

12   (A recess was taken.)

13   VIDEO TECHNICIAN: This begins media unit

14 number 3.   The time on the video is 11:48 a.m.   We

15 are on the record.

16 BY MR. HO:

17   Q.   Mr. Gore, I want to just follow up on

18 something that you said before the break.

19   You said that your standard practice,

20 even after receiving edits and getting clearance

21 to send a letter after inputting those edits,

22 would have been to check back in with leadership

1 before sending the letter. You said that before

2 the break. Do I have that right?

3   MR. GARDNER: Objection to the extent it

4 mischaracterizes the witness' prior testimony.

5   THE WITNESS: I believe what I said was I

6 would have checked back with leadership in this

7 particular instance with -- before the letter was

8 sent.

9 BY MR. HO:

10   Q. You said that would be your standard

11 practice, right?

12   A. Yeah. I used that phrase.

13   Q. Okay. Who within leadership would it

14 have been your standard practice to check in with

15 before the letter went out?

16   A. With respect to this particular letter or

17 as a matter of standard practice for other

18 matters.

19   Q. Let's just stick to this letter.

20   A. I imagine I would have talked to Rachael

21 Tucker in the Office of the Attorney General.

22   Q. So in between when you received edits to

1   the letter that you sent to Mr. Gary on December

2   8th and said, with these final edits, you're

3   authorized to send on Monday, did you check in

4   with Ms. Tucker or Mr. Troester before the letter

5   went out?

6   A. Yes.

7   Q. And when you checked in with them -- when

8   did you check in with them?

9   A. I think it would have been -- it would

10   have been either Monday or Tuesday, the following

11   Monday or Tuesday.

12   Q. And on either Monday, December 11th or

13   Tuesday, December 12th, when you checked in with

14   them, did either Ms. Tucker or Mr. Troester give

15   you authorization to send the letter out?

16   MR. GARDNER: Objection. Compound.

17   THE WITNESS: I believe one of them must

18   have, because the letter went out around that

19   time.

20   BY MR. HO:

21   Q. So -- but your best memory is that you

22   received final authorization to send the letter

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

2   A.   Correct.

3   Q.   And your recollection is you received

4 final authorization to send that letter either on

5 Monday, December 11th or on Tuesday, December

6 12th, correct?

7   A.   That's my best recollection -- well,

8 although I may be wrong about that, now that I

9 think about that. I can't remember the date the

10 letter was sent. And I don't believe -- so it

11 could have been a couple of days later. I don't

12 remember exactly.

13   Q.   Well, the letter is stamped

14 December 12th, 2017.

15   A.   Okay.

16   Q.   That's a Tuesday.

17   A.   Okay.

18   Q.   You said that you -- you testified that

19 you had spoken with either Ms. Tucker or

20 Mr. Troester on either Monday or Tuesday, December

21 11th or December 12th.

22   So it was when you had a conversation

1   with them, with one of them, on either the 11th or

2   the 12th, that you received final authorization

3   for the letter to go out, correct?

4   A.   I believe that's correct.

5   Q.   So one of them, either Ms. Tucker or

6   Mr. Troester, gave final authorization to send the

7   letter, and it was either on December 11th or on

8   December 12th, correct?

9   A.   I would say that one of them communicated

10 final authorization on one of those dates, and I

11 imagine it was the 12th, since that's the date the

12 letter went out.

13   Q.   If one of them, as you say, communicated

14 final authorization, where did that final

15 authorization come from?

16   MR. GARDNER: Objection.   Vague.

17   THE WITNESS: I believe it would have

18 come from the attorney general.

19 BY MR. HO:

20   Q.   Okay.   Let's talk about Exhibit 17, the

21 December 12th, 2017, letter that's in front of

22 you.

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

2   Q.   Well, you've looked at the first page of

3 this letter, right, Mr. Gore?

4   A.   Yes. Ever. Yes.

5   Q.   From looking at the first page of this

6 letter, does it refresh your recollection that

7 this is the letter that the Department of Justice

8 sent to the Census Bureau to request a citizenship

9 question on the 2020 census?

10   A.   Again, if I can finish reading the

11 letter, I can verify whether I believe it's the

12 same letter.

13   Q.   So the first -- reading the first page

14 doesn't refresh your recollection as to whether or

15 not this is the letter?

16   A.   It appears to be the letter.

17   Q.   Okay. The letter signed by Mr. Gary

18 represents the Department of Justice's final

19 decision and statement of position with respect to

20 the issue of the citizenship question on the

21 census, correct?

22   A.   Yes.

1   Q.   And this letter represents the views of

2   the Department of Justice, connect?

3   A.   Correct.

4   Q.   And Attorney General Sessions agrees with

5   the views expressed in this letter, correct?

6   MR. GARDNER: Objection.   Calls for

7   speculation.   Lack of foundation.

8   THE WITNESS: I can't speak for what

9   Attorney General Sessions believes or does not

10 believe.

11 BY MR. HO:

12   Q.   You believe that the attorney general

13 agrees with the views expressed in this letter,

14 correct?

15   MR. GARDNER: Objection.   Lack of

16 foundation.   Calls for speculation.

17   THE WITNESS: I would be speculating.   I

18 don't think I can answer that question.

19 BY MR. HO:

20   Q.   Mr. Gore, can you look at what we marked   802

21 earlier as Exhibit 12 -- I'm sorry, Exhibit 2.   It

22 was your testimony in Congress.

802

1   A.   Uh-huh.

2   Q.   Please turn to page 23.

3   A.   Sure.

4   Q.   Sorry.   I think I meant page 24.   Oh, no,

5   no.   I'm sorry.   I had it right.   Page 23.

6   The fourth paragraph down here, there's a

7   question from Member Lynch: "This is Attorney

8   General Sessions you're talking about."

9   Your answer is, "It represents the view

10 of the department, so I believe the attorney

11 general agrees with that view.   Yes."

12   That was your testimony in Congress,

13 correct?

14   A.   Yes.

15   Q.   And you gave truthful testimony that day,

16 correct?

17   A.   I did.

18   Q.   Are there any reasons that the Department

19 of Justice has for wanting a citizenship question

20 on the census that were communicated to the

21 Department of Commerce but are not contained in

22 this letter?

1   MR. GARDNER: To the extent you're asking

2   for a yes or no, you may answer that question.

3   THE WITNESS: I don't know.

4   BY MR. HO:

5   Q. Are there any -- just to be clear, there

6   are no reasons that you're aware of that the

7   Department of Justice wants a citizenship question

8   on the 2020 census that are not reflected in this

9   letter, correct?

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

11 reasons.

12   Q. This letter is addressed to Dr. Ron

13 Jarmin, correct?

14   A. Yes, it is.

15   Q. And Dr. Jarmin is the acting director of

16 the Census Bureau, correct?

17   A. That's my understanding. Yes.

18   Q. Why is the letter addressed to him?

19   A. Because he is the acting director of the

20 Census Bureau.

21   Q. Why isn't it addressed to someone from

22 the Department of Commerce?

1   A.   I believe that you showed me a letter

2   earlier that was sent from the Department of

3   Justice to then Acting Director Thompson. And so

4   I understand it to be the practice, when the

5   Department of Justice wants additional questions

6   or information collected by the Census Bureau,

7   either through the census or the ACS or some other

8   instrument, to address that request to the head or

9   acting head of the Census Bureau.

10   Q.   You're aware that Dr. Jarmin has worked

11   at the Census Bureau for 25 years?

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

13   Q.   Okay. You're aware that Dr. Jarmin has a

14   Ph.D. in economics?

15   A.   I take from his title that he has a Ph.D.

16   in something. I don't know what it's in.

17   Q.   Who do you think knows more about the

18   accuracy of various forms of CVAP data, Dr. Jarmin

19   or you?

20   MR. GARDNER: Objection. Calls for

21   speculation. Lack of foundation.

22   THE WITNESS: I have no idea.

1 BY MR. HO:

2   Q. You have no idea whether or not the

3 director of the Census Bureau knows more about the

4 accuracy of various forms of CVAP data than you

5 do?

6   MR. GARDNER: Objection. Calls for

7 speculation. Lack of foundation.

8   THE WITNESS: Again, I don't know

9 anything about Mr. Jarmin -- Dr. Jarmin's

10 background or the work he's done at the Census

11 Bureau. So I have no basis to answer that

12 question.

13 BY MR. HO:

14   Q. Do you think that you know more about the

15 accuracy of various forms of CVAP data than the

16 professionals at the Census Bureau?

17   MR. GARDNER: Objection. Calls for

18 speculation. Lack of foundation.

19   THE WITNESS: Again, I don't know what

20 the professionals at the Census Bureau know or

21 don't know.

22

1   BY MR. HO:

2   Q.   If the professionals of the Census Bureau

3   told you that a particular form of CVAP data were

4   the most accurate form of CVAP data at the census

5   block level, would you trust their judgment?

6   MR. GARDNER: Objection.   Calls for a

7   hypothetical.

8   THE WITNESS: Again, that calls for a

9   hypothetical, and I would want to know more

10 information about why they reached that decision

11 or that judgment and what other information were

12 available in making that judgment.

13 BY MR. HO:

14   Q.   Do you have any background in statistics,

15 Mr. Gore?

16   A.   No.

17   Q.   No graduate degree in survey -- I'm

18 sorry, in anything quantitative?

19   A.   No.

20   Q.   Any experience collecting survey data?

21   A.   I think I did a survey collection in

22 college.   But other than that, no.

1   Q.   Any experience assessing the statistical

2   validity of survey data?

3   A.   No.

4   Q.   You know that people in the Census Bureau

5   do have a lot of experience assessing the

6   statistical validity of survey data, right?

7   A.   I imagine that there are people in the

8   Census Bureau who have that expertise and

9   experience.   I don't know whether Dr. Jarmin or

10   anyone else in particular does.   And I couldn't

11   identify anyone at the Census Bureau who has that

12   expertise.

13   Q.   But you would expect that there are

14   people in the Census Bureau with expertise in

15   assessing the validity of various forms of survey

16   data, wouldn't you, Mr. Gore?

17   A.   I would certainly hope so.

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

19   right?

20   A.   That's correct.

21   Q.   Okay.   Prior to this letter, in the

22   entire 53-year history of the Voting Rights Act,

601

601

1   the Department of Justice had never requested a

2   citizenship question on the decennial census

3   questionnaire that's sent to every household in

4   the United States, correct?

5   MR. GARDNER: Objection. Lack of

6   foundation.

7   THE WITNESS: That is correct. To my

8   knowledge.

9   BY MR. HO:

10   Q. The first page of this letter, in the

11 first paragraph, the second-to-last sentence

12 reads, "To fully enforce those requirements, the

13 department needs a reliable calculation of citizen

14 voting age population in localities where voting

15 rights violations are alleged or suspected. As

16 demonstrated below, the decennial census

17 questionnaire is the most appropriate vehicle for

18 collecting that data and reinstating a question on

19 citizenship will best enable the department to

20 protect all American citizens' voting rights under

21 Section 2."

22   It's the position of the Department of

1   Justice that the decennial census questionnaire is

2   the most appropriate vehicle for collecting CVAP

3   data for purposes of VRA enforcement, correct?

4   A.   Yes.   And -- I think the letter speaks

5   for itself.   But yes, that's the position.

6   Q.   And the letter purports to establish why

7   the decennial census questionnaire is the most

8   appropriate vehicle for collecting CVAP data for

9   purposes of VRA enforcement, correct?

10   A.   Correct.

11   Q.   You testified in Congress that your

12   belief is that the decennial census questionnaire

13   is the most appropriate vehicle for collecting

14   CVAP data for purposes of VRA enforcement,

15   correct?

16   A.   I believe I did.   Yes.

17   Q.   Let's look at page 2 of the Gary letter.

18   That's what I'm going to refer to as shorthand,

19   this request, Exhibit 17.

20   A.   Okay.

21   Q.   So the second paragraph on page 2, the

22   second sentence reads -- it's about four lines

1   down -- "From 1970 through the 2000 census, the

2   Census Bureau collected citizen" -- I'm sorry.

3   "From 1970 to 2000, the Census Bureau

4   included a citizenship question on the so-called

5   long-form questionnaire that it sent to

6   approximately one in every six households during

7   each decennial census."

8   To your understanding, is it accurate to

9   say the from the 1970 through the 2000 censuses,

10   the Census Bureau collected citizenship

11   information through the census long form?

12   A.   That's my understanding.

13   Q.   And the long form was not sent to every

14   household in the United States, correct?

15   A.   That's my understanding.

16   Q.   The long form was sent to a sample of

17   households in the United States, correct?

18   A.   That appears to be correct.

19   Q.   And because the long form was sent only

20   to a sample of households, the citizenship data

21   that the Census Bureau published based on

22   long-form responses were statistical estimates,

1 correct?

2   A. I actually don't know that. I don't know

3 what form those -- that data was reported in by

4 the Census Bureau.

5   Q. Okay. So you don't know whether or not

6 citizenship data derived from long-form responses

7 was reported by the Census Bureau as a hard count

8 or as a statistical estimate, correct?

9   A. That's correct. I understand from this

10 if not every household was sent a long form, I can

11 imagine that there was some estimate that was

12 done. But I don't know what those results look

13 like.

14   Q. Okay. So just so we're clear, right, if

15 you take a sample, a survey sample, and you try to

16 derive generalized data from that survey sample,

17 right, you understand that that generalized data

18 would be a statistical estimate, correct?

19   A. For purposes of this conversation, sure,

20 I understand that. If that's how you want to

21 describe it.

22   Q. Do you want to describe it in a different

1   way?

2   A.   No.   That's fine.

3   Q.   So you agree with me that, if you take a

4   survey sample and you try to derive generalizable

5   data from that survey sample, that that

6   generalized data would be a statistical estimate,

7   correct?

8   A.   Sure.

9   Q.   Okay.   So you understand that citizenship

10   data derived from the long form was a statistical

11   estimate, right, Mr. Gore?

12   A.   What I'm trying to convey to you -- let

13   me go straight to the heart of the matter.   I'm

14   not sure how the Census Bureau reported this

15   citizenship data in these years.   I haven't seen

16   it, so I don't know.

17   Q.   My question wasn't about the how the

18   Census Bureau reported it.   My question was --

19   A.   I think that was your question.   Your

20   question was the Census Bureau reported it in a

21   particular way.   And I don't know that.

22   Q.   My question was, you understand that

1 citizenship data derived from the long form would

2 be a statistical estimate, correct?

3   A. I believe that to be correct.

4   Q. Okay. The last sentence in the second

5 paragraph reads, "For years, the department used

6 the data collected in response to that question in

7 assessing compliance with Section 2 and in

8 litigation to enforce Section 2's protections

9 against racial discrimination in voting."

10   Where the letter says, "that question,"

11 it's referring to the citizenship question on the

12 long form, correct?

13   A. Yes. That appears to be correct.

14   Q. Okay. So for years, the Department of

15 Justice relied on citizenship data collected

16 through the census long form for purposes of VRA

17 enforcement, correct?

18   A. That's my understanding. Yes.

19   Q. And after the long form was discontinued,

20 the Department of Justice began relying on

21 citizenship data collected through the ACS for

22 purposes of VRA enforcement, correct?

1   A.   Correct.

2   Q.   And -- so it would be accurate to say

3 that even when there was a citizenship question on

4 the census long form, the Department of Justice,

5 when it was using citizenship data for purposes of

6 VRA enforcement, it was using data that were

7 statistical estimates based on a sample, correct?

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

9 your question.

601

10   Q.   So it's accurate to say that the

11 Department of Justice, for as long as it's been

12 enforcing the Voting Rights Act, when it's needed

13 citizenship data, it has always relied on

14 statistical estimates rather than hard count data,

15 correct?

16   MR. GARDNER: Objection.   Lack of

17 foundation.

18   THE WITNESS: To the best of my

19 knowledge, I think that's correct.

20 BY MR. HO:

21   Q.   You're not aware of any period of time in

22 which the Department of Justice had access to hard

1   count citizenship data for purposes of VRA

2   enforcement, are you, Mr. Gore?

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

4   Q. Now, you're aware the ACS is sent to

5   about 2 percent of households in the United States

6   every year, right?

7   A. Sounds about right.

8   Q. And you're aware that the Census Bureau

9   produces different estimates based on the ACS in

10   the form of one-year ACS estimates and five-year

11   ACS estimates, right, Mr. Gore?

12   A. That's correct. I think they have

13   three-year ACS estimates as well.

14   Q. The three-year ACS estimates have been

15   discontinued, right, Mr. Gore?

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

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

18   A. I don't --

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

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

21   Q. One-year ACS estimates are statistical

22   estimates based on a single year of ACS survey

1 responses, correct?

2   A.   That's my understanding.

3   Q.   And five-year ACS estimates are

4 statistical estimates that are based on ACS

5 responses that are aggregated from a consecutive

6 five-year period, correct?

7   A.   It's my understanding. Yes.

8   Q.   As of the date of the Gary letter, you

9 understood the difference between one-year and

10 five-year ACS estimates, right?

11   A.   Yes.

12   Q.   ACS one-year estimates are intended for

13 use -- let me start that again.

14   The Census Bureau intends that ACS

15 one-year estimates be used for areas with a

16 population larger than 65,000, right?

17   A.   I think that's right.

18   Q.   Okay. Let me show you a document. This

19 is a screenshot from the Census Bureau website.

20 We'll mark it as Exhibit 18.

21

22

1   (Gore Deposition Exhibit 18 marked for

2   identification and attached to the

3   transcript.)

4   BY MR. HO:

5   Q.   It's a screenshot from the Census Bureau

6   website entitled, American Community Survey (ACS):

7   When to use one-year, three-year, or five-year

8   estimates.

9   Do you see this table titled,

10   Distinguishing features of ACS one-year, one-year

11   supplemental, three-year, and five-year estimates,

12   Mr. Gore?

13   A.   I do, yes.

14   Q.   And the far left-hand column has

15   information about one-year estimates, correct?

16   A.   Correct.

17   Q.   And do you see in the third row of that

18   table, second depending on whether you include the

19   header, that the Census Bureau states that

20   one-year estimates are data for areas with

21   populations of 65,000-plus?

22   A.   Yes, I see that.

1   Q.   So that comports with your understanding,

2 right, that one-year ACS estimates are intended

3 for use only in areas with a population larger

4 than 65,000, correct?

5   A.   Yes, that's correct.

6   Q.   And did you understand that one-year ACS

7 estimates were intended for use in areas with a

8 population over 65,000 as of the date of the Gary

9 letter?

10   A.   Yes.

11   Q.   The far right-hand column of the table

12 has information on five-year ACS estimates. Do

13 you see that?

14   A.   Yes, I do.

15   Q.   And you see where the Census Bureau

16 indicates that five-year ACS estimates have the

17 largest sample size of different ACS estimates?

18   A.   I do see that on this chart. Yes.

19   Q.   You don't have any reason to doubt that,

20 right?

21   A.   No.

22   Q.   Okay. And you see where on the chart it

1   states -- the Census Bureau states that five-year

2   ACS estimates are data for all areas, correct?

3   A.   Yeah, I do see that.

4   Q.   As of the date of the Gary letter on

5   December 12th, 2017, were you aware that the

6   Census Bureau considers five-year ACS estimates to

7   be usable data for all geographic areas regardless

8   of population size?

9   A.   Yes.

10   Q.   All right. Let's talk about the Gary

11   letter a little bit more. Back to page 2. The

12   second-to-last paragraph, the last sentence reads,

13   "The ACS, however, does not yield the ideal data

14   for such purposes for several reasons."

15   In the sentence when the letter refers to

16   "such purposes," that means for purposes of VRA

17   enforcement, correct?

18   A.   It refers to that and other purposes.

19   Q.   Okay.   What other purposes?

20   A.   It also refers to use by state and local

21   jurisdictions in drawing our redistricting plans.

22   Q.   Redistricting plans for purposes of

1   compliance with the Voting Rights Act, correct?

2   A.   Yes, with the Voting Rights Act, and with

3   other federal and state law requirements.

4   Q.   Why would you need ACS citizenship data

5   to draw districts to comply with other federal and

6   state legal requirements other than Section 2 of

7   the Voting Rights Act?

8   A.   Section 2 would be predominant. I don't

9   know every state law requirement that might be

10   implicated by that. There might be state law

11   requirements that require a reference to

12   citizenship data. Currently, to my knowledge,

13   every state in the union uses total population to

14   achieve compliance with the equal protection

15   clause's one-person/one-vote mandate. But I

16   believe that in the past there have been

17   jurisdictions that have used other measures. And

18   whether a jurisdiction might choose to use that

19   measure, I don't know -- measure of citizenship as

20   opposed to something else.

21   Q.   You're not aware of jurisdictions using

22   ACS data for purposes of complying with legal

1 requirements other than Section 2 of the Voting

2 Rights Act, right, Mr. Gore?

3   A.   That is correct.

4   Q.   Okay.

5   A.   Yeah.

6   Q.   So when you say that -- sorry.

7   When the letter says that ACS data does

8 not yield ideal data for such purposes, the

9 predominant purpose that you're referring to there

10 for which the ACS is not ideal is Section 2

11 compliance, correct?

12   A.   I think the predominant purpose to which

13 the letter is referring is Section 2 compliance.

14 That's correct.

15   Q.   Okay. After the letter has that

16 statement, there are four bullet points, correct?

17   A.   That is correct.

18   Q.   Okay. I want to ask you about each of

19 these bullets.

20   Let's start with the first bullet which

21 reads, "Jurisdictions conducting redistricting and

22 the department, in enforcing Section 2, already

1 use the total population data from the census to

2 determine compliance with the Constitution's

3 one-person/one-vote requirement (see Evenwel v.

4 Abbott, 136 S.Ct. 1120, April 4th, 2016). As a

5 result, using the ACS citizenship estimates means

6 relying on two different data sets, the scope and

7 level of detail of which vary quite

8 significantly."

9   Did I read that right?

10   A. Yes, you did.

11   Q. Okay. So tell me if I have this right.

12 The point that's being expressed in this bullet is

13 that citizenship data from the ACS is not ideal

14 for purposes of Section 2 compliance and

15 enforcement because ACS citizenship data is a

16 different data set that's separate and apart from

17 the total population data derived from the

18 decennial census; is that right?

19   A. I believe the point speaks for itself,

20 and I think the way you've described it is more or

21 less correct.

22   Q. Okay. Any ways in which the way I just

1   described it strike you as incorrect?

2   A.   Not as I sit here right now, no.

3   Q.   Okay. The total population data from the

4   decennial census used for redistricting purposes

5   is part of what the Census Bureau calls the

6   PL94-171 data file, right?

7   A.   That's right.

8   Q.   Okay. And currently, the citizenship

9   data from the ACS is produced as part of a

10   different data set, the CVAP table from ACS data

11   produced by the Census Bureau, correct?

12   A.   That's my understanding, yes.

13   Q.   Now, how does the fact that the decennial

14   enumeration data is in one data set, the PL data

15   file, whereas the ACS citizenship data is in a

16   different data set, the CVAP table -- how does the

17   fact that they're in two different data sets

18   render the ACS not ideal data for purposes of

19   Section 2 enforcement?

20   A.   Particularly for a map drawer, if -- a

21   map drawer drawing a map in Maptitude or some

22   other software needs to have both of these forms

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1   of information in order to draw districts that

2   comply with the 14th Amendment and with Section 2.

3   And map drawers currently have to go to two

4   different data sets and try to match up those data

5   sets in geography and specificity to the block

6   level in order to perform that function.

7   If all of the data were available in the

8   PL94-171 data set, they wouldn't have to do that.

9   And experts engaged in redistricting litigation,

10   including analyzing alleged violations of

11   Section 2 and proposed remedial plans for proven

12   violations of Section 2, could use a single

13   data set to draw maps and otherwise to analyze

14   Section 2 claims.

15   Q.   If the Census Bureau could produce

16   citizenship data as part of the PL data file

17   without including a citizenship question on the

18   census, would that resolve the concern that's

19   expressed in this bullet point?

20   MR. GARDNER: Objection.   Calls for a

21   hypothetical.

22   THE WITNESS: Yeah, again, that's

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1   hypothetical. I don't know they can do that

2   either as a matter of law or technical capacity.

3   And I think -- so I don't know the answer to that

4   question.

5   BY MR. HO:

6   Q. But if the Census Bureau came to you and

7   said, Mr. Gore, you've requested -- or the

8   department has requested a citizenship question on

9   the census; one of the reasons why is because the

10   citizenship data we're currently giving you is in

11   a different data set, but we've got a solution for

12   you; we're going to put it all in one data set,

13   and we've got a way of doing that without

14   including a citizenship question on the census,

15   would that resolve the bullet -- the concerns

16   expressed in this bullet?

17   MR. GARDNER: Objection. Calls for a

18   hypothetical. Also, objection, form.

19   THE WITNESS: Again, I can't engage in a

20   hypothetical on that.

21   BY MR. HO:

22   Q. Would you be interested in learning from

1   the Census Bureau if the Census Bureau came to you

2   with that suggestion?

3   MR. GARDNER: Objection.   Hypothetical.

4   THE WITNESS: Again, that's a

5   hypothetical.   I can't engage in a hypothetical.

6   BY MR. HO:

7   Q.   You don't know whether or not you'd be

8   interested in a proposal from the Census Bureau to

9   give you CVAP data as part of the PL data file

10   without including a citizenship question on the

11   census?

12   MR. GARDNER: Same objection.

13   THE WITNESS: Again, you're asking me a

14   hypothetical without fleshing out all the facts

15   and circumstances, so I can't tell you how anyone,

16   the department or anyone else, would respond to

17   that.

18   BY MR. HO:

19   Q.   Has anyone with technical knowledge of --

20   strike that.   Never mind.

21   Prior to the Department of Justice's

22   reliance on the ACS, the citizenship data from the

1   Census Bureau that DOJ used, we established

2   earlier, that came from the census long form,

3   correct?

4   A. Correct.

5   Q. And the census long form citizenship data

6   was not produced as part of the PL data file,

7   correct?

8   A. I don't know the answer to that question.

9   Q. Okay. So you're not aware of any time

10 where the Department of Justice, in enforcing the

11 Voting Rights Act, had a single data set which had

12 total population data and citizenship data in it,

13 right, Mr. Gore?

14   A. I'm not aware one way or the other.

15   Q. Okay. So the bullet in this letter is

16 not expressing a preference for a return to a

17 prior point in time when DOJ had total population

18 data and citizenship data in a single data set,

19 correct?

20   A. Again, I don't know the answer to that

21 question because I don't know what occurred at a

22 prior point in time, as I've just testified.

1   Q.   But you're not saying that -- this letter

2   is not saying that there was a prior point in time

3   in which the Department of Justice had both total

4   population and citizenship data in a single data

5   set, correct?

6   A.   I think the letter speaks for itself, and

7   this particular bullet doesn't say that.

8   Q.   Okay.   Are you aware of a case where the

9   Department of Justice was unable to succeed on a

10   VRA claim because citizenship data and total

11   population data were in two different data sets?

12   MR. GARDNER: I'm going to object to the

13   extent that that calls for the disclosure of

14   information subject to law enforcement privilege.

15   You can answer that question to the

16   extent you can do that without disclosing

17   privileged information.

18   THE WITNESS: I'm not aware of any such

19   publicly disclosed case.

20   BY MR. HO:

21   Q.   Okay.

22   MR. HO: So I'm going to sometimes ask

1   questions about whether or not DOJ has been able

2   to succeed on cases. I'm going to make clear that

3   those questions with limited to cases that have

4   been filed -- right?

5   MR. GARDNER: Okay.

6   THE WITNESS: Okay.

7   MR. HO: And litigated in court.

8   MR. GARDNER: That's fair enough.

9   THE WITNESS: Thank you.

10   BY MR. HO:

11   Q. So the cases that DOJ has filed, you're

12   not aware of any of those cases being unsuccessful

13   because citizenship data and total population data

14   were in two different data sets, correct?

15   A. That's correct. Again, we're not talking

16   about cases that weren't filed. And, obviously,

17   any case that was filed was a case that the

18   Department of Justice believed it could win.

19   Q. Okay. You're not aware of any case filed

20   by any plaintiff anywhere under the Voting Rights

21   Act where the claim failed because of the fact

22   that total population data and citizenship data

1   were in two different data sets, correct?

2   A.   Again, that's correct with respect to

3   cases that were actually filed. And we're not

4   talking about cases that weren't filed.

5   Q.   You're not aware of a case -- and I'm not

6   even going to talk about the Department of

7   Justice -- where people have talked about filing a

8   case publicly, but said, you know what, we're just

9   not going to file this case because population

10   data and citizenship data, they're in two

11   different data sets, right?

12   MR. GARDNER: Objection to form.

13   THE WITNESS: I believe that's right, as

14   I understand your question.

15   BY MR. HO:

16   Q.   The second bullet here, which is on page

17   3, top of page 3, reads, "Because the ACS

18   estimates are rolling and aggregated into

19   one-year, three-year, and five-year estimates,

20   they do not align in time with the decennial

21   census data. Citizenship data from the decennial

22   census, by contrast, would align in time with the

1   total and voting age population data from the

2   census that jurisdictions already use in

3   redistricting."

4   Did I read that right?

5   A. Yes, you did.

6   Q. The point that's being expressed --

7   correct me if I'm wrong -- in this bullet is that

8   citizenship data from the ACS is not ideal for VRA

9   enforcement purposes because ACS citizenship data

10   purportedly does not align in time with the

11   decennial census data, correct?

12   A. That's correct.

13   Q. What do you mean when you say that ACS

14   citizenship data do not align in time with the

15   decennial census?

16   A. What do I mean or what does the

17   department mean?

18   Q. What does the department mean?

19   A. I believe what the department means is --

20   it dovetails with the conversation we had just a

21   moment ago about what the ACS data are.

22   So the ACS data are -- at least for the

1   five-year estimates, are rolling. So they

2   represent some estimate over five consecutive

3   years. And the one-year estimate is a snapshot of

4   one single year.

5   Now, the citizenship data from the

6   decennial census is a recording of data at that

7   point in time, and the ACS data doesn't always

8   align with that particular point in time. So you

9   may be measuring citizenship data from, if you're

10   using a five-year estimate, four or five years

11   before the census or four or five years after the

12   census. And jurisdictions use the total

13   population data in the census, and courts use that

14   as well, throughout the entire decade.

15   Q. So is it your understanding that when

16   experts give testimony in VRA cases using

17   five-year ACS estimates for CVAP, that they are

18   unable to give testimony about CVAP rates that

19   align in time with the decennial census?

20   A. My understanding is that they may or may

21   not be testifying as to CVAP levels that align

22   with the census. It might be possible that they

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1   do that in some cases; in other cases, they might

2   be looking to data that predates the census or

3   post-dates the census, again, because it's a

4   five-year window as opposed to the same snapshot

5   in time as the decennial census.

6   Q.   Are you aware of a filed case by the

7   Department of Justice under the Voting Rights Act

8   where the department was unable to succeed on a

9   VRA claim because of the fact that ACS citizenship

10   data does not align in time with the decennial

11   census data?

12   A.   I am not aware of any such filed case.

13   Q.   Okay.   Are you aware of any case filed by

14   any plaintiff anywhere where the court found

15   that -- against the plaintiffs because the ACS

16   data does not align in time with the decennial

17   census?

18   A.   I am not aware of any such filed case.

19   Q.   Are you aware of any plaintiff ever

20   declining to file a case because ACS data -- and

21   I'm not talking about the department, not filed

22   cases, because I understand that that's

1 privileged.

2   But just based on your knowledge as

3 someone who's knowledgeable about the Voting

4 Rights Act, are you aware of any case where any

5 plaintiff outside of DOJ did not bring a case

6 under Section 2 of the Voting Rights Act because

7 ACS data does not align in time with the decennial

8 census?

9   A.   I'm not aware of that, and certainly not

10 aware of it from any public information.

11   Q.   Okay. Third bullet, which is the second

12 on this page, reads, "The ACS estimates are

13 reported at a 90 percent confidence interval, and

14 the margin of error increases as the sample size

15 and, thus, the geographic area decreases. See

16 U.S. Census Bureau glossary, confidence interval

17 (American Community Survey), available at" -- and

18 then there's a website. I'm not going to read the

19 URL.

20   After the URL, it says, "By contrast,

21 decennial census is a full count of the

22 population."

1   Did I read that right --

2   A.   Yes.

3   Q.   -- other than the URL?

4   Okay. When the letter says, "margin of

5 error," what do you understand that to mean?

6   A.   Because the ACS estimates are estimates,

7 and not a hard count, there's an associated margin

8 in which -- that the Census Bureau assigns a

9 value, usually a percentage, that the Census

10 Bureau assigns to convey that, from a matter of

11 statistics, it has confidence that the true result

12 is somewhere within that range. And that's

13 referred to as the margin of error.

14   Q.   Okay. So something like, you know,

15 91 percent -- this is just an example; I just want

16 to see if we understand margin of error the same

17 way -- 91 percent of the voting age people in this

18 area are citizens plus or minus 2 percentage

19 points?

20   A.   I believe the plus or minus is my

21 understanding of what the margin of error is.

22   Q.   Means it could be -- if the point

1   estimate is 91 percent, it could be 89 -- and it's

2   plus or minus 2 points, it could be 89, it cold be

3   93; somewhere in that range?

4   A.   That's my understanding.

5   Q.   And you'd agree with me that estimates

6   with a smaller margin of error are more precise

7   than an estimate with a bigger margin of error,

8   right?

9   A.   Yes.

10   Q.   Now, the point that's being expressed in

11   this bullet is that citizenship data from the ACS

12   is not ideal for purposes of VRA enforcement

13   because ACS citizenship data has a margin of error

14   that increases as you get to smaller and smaller

15   geographic units, correct?

16   A.   That's correct.

17   Q.   Okay.   And the letter contrasts those ACS

18   estimates with those margins of error with

19   decennial census data, which are a full count of

20   the population, right?

21   A.   That's correct.

22   Q.   You're aware that decennial census data

1   that's published at the block level also has a

2   margin of error associated with it; it's just not

3   published by the Census Bureau, right?

4   A.   I'm aware of that. Yes.

5   Q.   You were aware -- so -- I'm sorry.

6   As of the date of the Gary letter, were

7   you already aware that the decennial enumeration

8   data contained margins of error?

9   A.   I was aware generally that there were

10 margin of errors that the Census Bureau imputed to

11 that data. I don't know what those margins were.

12   Q.   But as of the date of the Gary letter,

13 you knew that even what is referred to in the Gary

14 letter as full count data has margins of error

15 associated with it, too, correct?

16   A.   Yes.

17   Q.   Okay. The Gary letter doesn't mention

18 that full count data from the decennial census has

19 margins of error, does it?

20   A.   It doesn't appear to, no.

21   Q.   Okay. So just so I'm clear here, the

22 Gary letter contrasts full count decennial census

1 data with ACS estimates by noting that ACS

2 estimates have a margin of error, but the Gary

3 letter does not mention that full count decennial

4 census data also has margins of error, correct?

5   A. Not correct, because the Gary letter also

6 draws a contrast with the 90 percent confidence

7 interval for the ACS.

8   Q. My question wasn't about other different

9 kinds of contrasts between the ACS and the --

10   A. You're asking me about the third bullet,

11 and I think, in fairness, you should ask me about

12 the full third bullet and not a piece of it.

13   Q. Well, I think I'm asking you a question

14 about the full bullet, Mr. Gore.

15   My question is this: The bullet mentions

16 the fact that ACS estimates have a confidence

17 interval associated with them, or a margin of

18 error associated with them, correct?

19   A. Correct.

20   Q. And it contrasts the fact that they have

21 a confidence interval or margin of error in the

22 ACS to the decennial census data, which is a,

1   quote, full count of the population, correct?

2   A.   No, that's incorrect.

3   Q.   The letter reads --

4   A.   It's not a confidence interval or a

5   margin of error. It's a confidence interval and a

6   margin of error.

7   Q.   Okay. So let's try this again.

8   A.   Please.

9   Q.   The ACS data is criticized in this bullet

10   as having a margin of error, correct?

11   A.   I don't believe it's criticized. I

12   believe it's described as having a margin of

13   error.

14   Q.   Okay. So let's try that again. The ACS

15   data are described in this bullet as having a

16   margin of error, correct?

17   A.   That's correct.

18   Q.   And the letter reads, "By contrast,

19   decennial census data is a full count of the

20   population," correct?

21   A.   That's correct.

22   Q.   And the bullet does not mention that

1   decennial census data have margins of error

2   associated with them, correct?

3   A.   That's correct, as I've already

4   testified.

5   Q.   Okay.   Now, when citizenship data was

6   derived from the long form questionnaire, that was

7   data that also had a margin of error associated

8   with it, correct?

9   A.   I would imagine that's correct.

10   Q.   Okay.   So you'd agree that, as far as you

11   know, the Department of Justice, when it's relied

12   on citizenship data, that citizenship data has

13   always had a margin of error associated with it,

14   correct?

15   A.   That's my understanding.

16   Q.   Okay.   This letter doesn't mention the

17   fact that citizenship data collected from the

18   census long form were, like the ACS, also

19   statistical estimates with a margin of error

20   associated with them, correct?

21   A.   I'm sorry, can you repeat the question?

22   Q.   Sure.

1   This letter, the Gary letter, it doesn't

2   mention the fact that citizenship data collected

3   from the long form were statistical estimates with

4   a margin of error associated with them, just like

5   the ACS, correct?

6   A.   If I can just say, I think what you mean

7   is citizenship data reported from the long form

8   questionnaire, not collected by the long form

9   questionnaire.

10   But my understanding is that, yes,

11   citizenship data reported from the long form

12   questionnaire were estimates.

13   Q.   And the letter doesn't mention the fact

14   that citizenship data collected from the long form

15   questionnaire and reported from the long form

16   questionnaire were, like the ACS, also statistical

17   estimates that had margins of error, correct?

18   A.   I think that's correct with respect to

19   reported from the long form questionnaire.   I

20   don't know if that's correct with respect to

21   collected by the long form questionnaire because I

22   don't know if the Census Bureau engaged in

1   statistical estimates when it was actually

2   collecting the responses to the long form

3   questionnaire.

4   Q.   Thank you.

5   The letter doesn't mention that the

6   Department of Justice has always relied on

7   statistical estimates of citizenship with margins

8   of error for purposes of VRA enforcement, does it?

9   A.   I believe that's correct. Again, the

10 letter speaks for itself.

11   Q.   Okay. You're not aware of a single filed

12 case by the Department of Justice where the

13 Department of Justice was unable to succeed on a

14 VRA claim because of the fact that the CVAP data

15 on which DOJ was relying was a statistical

16 estimate with a margin of error that increases as

17 the geographic area decreases, correct?

18   A.   I am not aware of any such filed case.

19   Q.   You're not aware of any case where a

20 plaintiff was unable to succeed on a VRA claim

21 because of the fact the five-year ACS citizenship

22 data have a margin of error associated with them,

1   correct?

2   A. Five-year estimates? That's correct.

3   Q. Okay. You're not aware of any case where

4   plaintiffs, other than DOJ, declined to bring a

5   VRA case -- let me start that question again.

6   You're not aware of any case where

7   plaintiffs declined to bring a VRA claim because

8   ACS data are statistical estimates with a margin

9   of error, correct?

10   A. That is correct. I am aware of one case

11 in which a court held that the one-year ACS

12 estimate, because of its associated margin of

13 error, was insufficiently reliable to allow the

14 plaintiff in that case to proceed with a Section 2

15 claim.

16   Q. Right. That's the Benavidez case, right?

17   A. That is correct.

18   Q. We'll talk about that in a bit, but I

19 want to talk about something else first.

20   (Gore Deposition Exhibit 19 marked for

21   identification and attached to the

22   transcript.)

 1 BY MR. HO:

 2   Q. I'm going to show you a document that's

 3 marked as Exhibit 19.

 4   MR. HO: You guys have seen this on your

 5 side. It was used in the Abowd 30(b)(6)

 6 deposition.

 7 BY MR. HO:

 8   Q. I'm going to represent to you that this

 9 is a map derived from census data from the Census

10 Bureau website. And it was joined with Tiger

11 files to show census blocks in the Fort Myers,

12 Florida, area with total population numbers for

13 each census block.

14   So the lines represent the borders of

15 census blocks. The numbers represent the total

16 population in each census block. Okay?

17 Everything I say make sense to you?

18   A. I accept your representation.

19   Q. Thank you. Okay.

20   So I just want to try to understand DOJ's

21 position here about why you need CVAP data at the

22 block level.

1   Is it correct that the Department of

2 Justice, when you look at a map like this and you

3 want to bring a Section 2 case, and you see these

4 population numbers here, you want to know how many

5 of the people in each of these blocks with hard

6 count numbers are voting age citizens as opposed

7 to simply having a statistical estimate of the

8 voting age citizens in each block, correct?

9   MR. GARDNER: Objection to the extent

10 that that calls for information that is subject to

11 deliberative process privilege.

12   To the extent you can answer that

13 question without divulging that information, you

14 may do so.

15   THE WITNESS: The position of the

16 Department of Justice is that we want to have the

17 most complete, accurate, reliable data we can

18 possibly have.

19   We have the ACS data. We have been

20 bringing cases using the ACS data. We believe

21 that having a hard count citizenship data from the

22 census questionnaire would give us another

Non-Responsive

1   data point that we could use to identify

2   jurisdictions for potential Section 2

3   investigations and enforcement.

4   I don't believe it's disputed by anybody

5   that a litigant, any plaintiff, the Department of

6   Justice or a private plaintiff, needs block-level

7   data in order to bring Section 2 redistricting

8   claims -- now, whether that's derived from the ACS

9   or from some other source -- because when

10   jurisdictions draw districts to achieve equal

11   population, they use block-level data.

12   So, for example, on this map you've

13   handed me, a map drawer might draw various lines

14   through this area. And understanding what

15   population is moving between those areas and what

16   the citizenship composition and the racial

17   composition of those areas is is essential to

18   identifying potential Section 2 violations.

19   BY MR. HO:

20   Q.   Okay. So let's look at the middle of the

21   map. Do you see where it says Lee?

22   A.   Yes.

1   Q.   Right in the middle.

2   A.   Yes, I do.

3   Q.   There's a census block right above, or

4 overlapping with that, that indicated there are --

5 and the map indicates there are five people living

6 on that block.

7   Do you see that?

8   A.   I do see that.

9   Q.   Let's just assume for a moment that all

10 those five people are voting age. Okay?

11   A.   Okay.

12   Q.   All things being equal, the Department of

13 Justice would prefer to have a hard account of how

14 many of those five people are citizens as opposed

15 to a statistical estimate derived from the ACS as

16 to how many of those people are citizens, correct?

17   MR. GARDNER: Objection to the extent it

18 calls for hypothetical.

19   THE WITNESS: It calls for a

20 hypothetical, and I think you've misrepresented

21 our position. We want to have as much data as we

22 possibly can. We live in a data-driven world.

1 This is one point of data that we would want to

2 use, and we're using other data as well to

3 identify potential Section 2 investigations and

4 enforcement actions.

5 BY MR. HO:

6   Q. So the way things work right now is, you

7 take an ACS estimate of the percentage of voting

8 age people in a census block who are citizens, and

9 then you look at the census blocks within that --

10 sorry. You look at the individual census blocks

11 within that census block group, and then you

12 estimate how many of the people in that census

13 block are actually citizens of voting age based on

14 the ACS estimate, right?

15   A. I think that's right to the extent I

16 understood your question. I believe what you're

17 saying is the ACS data is reported at the census

18 block group level, and then estimates can be

19 derived for individual census blocks based on that

20 data at the group level.

21   Q. Right. So let's take this block of five   601

22 people. Right? If the block group that this was

601

1   in, the ACS reported 60 percent of the people in

2   that block group are citizens, what you would do

3   right now is you take that 60 percent number and

4   then you apply it to the individual blocks. So

5   you would look at this group of five and you'd

6   say, well, our estimate is three of those five

7   people are citizens, correct?

8   MR. GARDNER: Objection. Form.

9   Objection. Hypothetical.

10   THE WITNESS: That would be one way to

11   estimate census block citizenship data from an ACS

12   estimate at the block group level.

13   BY MR. HO:

14   Q. And what the Department of Justice is

15   saying is that we have these estimates, but we'd

16   also like a hard count, because if we had the

17   decennial census questionnaire out there and had

18   the citizenship question posed, we would know with

19   a hard count instead of an estimate -- instead of

20   only an estimate -- how many of those five people

21   are, in fact, citizens, correct?

22   MR. GARDNER: Objection. Form.

1   THE WITNESS: That's more or less

2   correct.   I believe we want to have the best, most

3   accurate and most complete data we can possibly

4   have.

5   BY MR. HO:

6   Q.   Okay.   Now, you know that the only data

7   the Census Bureau makes available to DOJ is

8   aggregate statistical data over a geographical

9   area and not individual census responses, right?

10   A.   That's correct.

11   Q.   And your understanding is that individual

12   responses to the census questionnaire by law have

13   to stay with the Census Bureau and can't be shared

14   with the Department of Justice or the public,

15   correct?

16   A.   That is my understanding.   Correct.

17   Q.   And the reason why the Census Bureau can

18   only give you that aggregate statistical

19   information covering a geographical area rather

20   than an individual response is because title 13

21   prohibits disclosure of individual responses to

22   the census, correct?

1   A.   That is my understanding. That's

2 correct. And let me just add further, in the

3 civil rights division, what we have traditionally

4 used is only publicly available aggregate data

5 from the census.

6   Q.   Let's look back at this map and that

7 census block that we were talking about that had

8 five people on it.

9   A.   Uh-huh.

10   Q.   To the right of that census block there's

11 a census block with one person on it.

12   Do you see that?

13   A.   Yes, I do.

14   Q.   Okay. For this census block with only

15 one person on it, if the Census Bureau is going to

16 tell you whether or not that person responded

17 affirmatively or negatively to the citizenship

18 question on the census questionnaire, that would

19 violate title 13, right?

20   MR. GARDNER: Objection to the extent it

21 calls for a hypothetical. Also, objection to the

22 extent it calls for a legal conclusion.

1   THE WITNESS: I haven't studies title 13,

2   so I don't know the exact parameters of it.

3   BY MR. HO:

4   Q. Well, you just told me before that

5   individual census responses are prohibited from

6   disclosure. You understand that, right?

7   A. I do.

8   Q. Okay.

9   A. What I don't know is what exceptions, if

10   any, apply to that particular prohibition. As a

11   general matter, I understand that that's a

12   prohibition. I've not studied the issue, and so

13   I'm not in a position to give a legal opinion on

14   it one way or the other. But that's my -- what I

15   testified to before was my general understanding

16   of title 13.

17   Q. Okay. Your expectation is that when you

18   requested a citizenship question on the census

19   questionnaire, that the Census Bureau was going to

20   include it, collect that information, and give it

21   to the Department of Justice on a block-by-block

22   level, correct?

1   A.   Yes.

2   Q.   Okay.   How can the Census Bureau give you

3   block-by-block information based on responses to

4   the census questionnaire for this block with one

5   person on it without telling you how that person

6   responded to the citizenship question on the

7   census questionnaire?

8   MR. GARDNER: Objection.   Calls for a

9   legal conclusion.   Lack of foundation.

10   THE WITNESS: Again, I haven't studied

11   the question as a legal matter.   I would not

12   anticipate, in any event, that the Census Bureau

13   would provide an individual's actual questionnaire

14   to the Department of Justice in connection with

15   our request.

16   BY MR. HO:

17   Q.   That wasn't my question about whether or

18   not they were going to give you a questionnaire.

19   You want individual block-level data

20   derived from the census questionnaire --

21   A.   I actually think it was your question.

22   Because, as I understand title 13, it's a

1 prohibition on providing the individual

2 questionnaire.

3   Q.   So your understanding is that when the

4 Census Bureau includes a citizenship question on

5 the 2020 census questionnaire, collects it,

6 aggregates it block by block, that for this census

7 block with one person on it, what they tell you is

8 going to reflect that one person's answer to the

9 citizenship question?

10   MR. GARDNER: Objection.

11 Mischaracterizes the witness' prior testimony.

12   THE WITNESS: I don't believe that's what

13 I testified to.

14 BY MR. HO:

15   Q.   Okay.   What's your understanding of what

16 the Census Bureau is going to give you for this

17 census block of one person in terms of CVAP data

18 when the citizenship question is included on the

19 census?

20   MR. GARDNER: Objection.   Calls for a

21 hypothetical.

22   THE WITNESS: I have no understanding of

1 what the Census Bureau is going to do or what data

2 it's going to provide us in the future related to

3 this request.

4 BY MR. HO:

5   Q. You don't know one way or the other, is

6 what you're saying, whether or not, when the

7 Census Bureau gives you block-by-block CVAP data

8 derived from responses to the census

9 questionnaire, whether or not, with respect to a

10 block that has one person on it, that that

11 individual block-level CVAP data is going to

12 reflect that person's response to the citizenship

13 question on the census, correct?

14   MR. GARDNER: Objection. Form.

15 Objection. Hypothetical.

16   THE WITNESS: Again, that's hypothetical.

17 What I'm telling you is I don't know how the

18 Census Bureau planned to report the data that

19 we've requested.

20 BY MR. HO:

21   Q. So you don't know one way or the other

22 whether or not the data that you've requested

1   that's reported from the Census Bureau is going

2   to, in fact, be derived from responses to the

3   citizenship question on the census questionnaire,

4   correct?

5   A.   That's not what I said. What I said was

6   I don't know the form that the reporting is going

7   to take. I don't know what information the Census

8   Bureau -- what form they're going to provide the

9   information to us in.

10   Q.   Well, that wasn't my question about the

11 form. I'm just talking about a census block with

12 one person on it.

13   You want block-by-block data from the

14 Census Bureau. That's what you've requested,

15 correct?

16   A.   That is correct.

17   Q.   Okay. So when you get block-by-block

18 level -- block-by-block CVAP data from the Census

19 Bureau derived from responses to the citizenship

20 questionnaire, you don't know whether or not, when

21 you get data back from the Census Bureau about a

22 block that has one person on it, whether or not

1   that citizenship data that you get is going to

2   reflect that person's response to the citizenship

3   question, correct?

4   MR. GARDNER: Objection. Form.

5   Objection. Hypothetical.

6   THE WITNESS: Again, I don't know what

7   form the reporting of the data is going to take

8   from the Census Bureau in the future because it

9   hasn't happened yet. Moreover, the Department of

10   Justice -- and I imagine the Department of

11   Commerce as well -- will abide by all legal

12   requirements with respect to privacy and personal

13   identifiable information, whether they're

14   contained in title 13 or something else.

15   BY MR. HO:

16   Q. So --

17   A. If you're asking me whether you could

18   draw some inference about citizenship based on the

19   data that's reported, I also don't know that,

20   because I don't know what data is going to be

21   reported. It hasn't been reported yet.

22   Q. So I'm not asking about the format of the

1 data, like if it's in an Excel spreadsheet

2 or something like that, and I'm not --

3   A. No, of course you are.

4   Q. -- asking about -- and I'm not asking

5 about whether or not you plan on violating title

6 13. I'm asking a much simpler question than that.

7   It's that when the Census Bureau gives

8 you block-by-block citizenship data, as you've

9 requested, based on responses to the citizenship

10 questionnaire, right now, you don't know, if

11 you're looking at a block with one person on it,

12 whether or not that citizenship data that you get

13 from the Census Bureau is going to reflect the

14 response to the citizenship questionnaire,

15 correct?

16   MR. GARDNER: Same objections.

17   THE WITNESS: Of course I don't know

18 that, because I don't know what the data is going

19 to be. And I don't know whether the person who

20 completes the census questionnaire is going to

21 complete it fully or something else. I have no

22 idea.

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1   BY MR. HO:

2   Q.   Okay.

3   A.   You're asking about something that might

4   happen in the future.   That's a hypothetical.   I

5   don't know.

6   Q.   Well, this is the data that the

7   Department of Justice has requested.   You've

8   requested that the Census Bureau go block by

9   block and ask --

10   A.   That's correct.

11   Q.   -- people block by block, every member of

12   every household, how many people are citizens and

13   not, correct?

14   A.   That is correct.

15   Q.   And you expect that the CVAP table that

16   you get from the Census Bureau on a block-by-block

17   basis is going to reflect answers to those

18   citizenship questions, correct?

19   A.   That would be my expectation.   Yes.

20   Q.   Okay.   But my question for you is -- and

21   if you don't know the answer, just say you don't

22   know; that's okay --

1   A.   I've said now five or six times that I

2   don't know, because you're asking me a

3   hypothetical question.

4   Q.   I haven't asked the question yet.

5   A.   You've asked it now six or eight times

6   and --

7   Q.   Well, Mr. Gore, it's not hypothetical.

8   You understand that there are census blocks with

9   one human on them, correct?

10   A.   I do understand that.   Yes.

11   Q.   Okay.   If the Census Bureau is going to

12   give you CVAP data for that block and tell you

13   whether or not that person is a citizen, you don't

14   know, sitting here today, whether or not that --

15   that data that the Census Bureau is going to give

16   you is going to reflect that person's answer to

17   the citizenship question on the census, correct?

18   A.   I don't know what that data is going to

19   reflect because, again, you're asking me about a

20   hypothetical.

21   MR. GARDNER: I don't want to interrupt

22   you line of questions, but it's about a quarter to

1   1:00. Do you want to break for lunch soon?

2   MR. HO: In a minute.

3   BY MR. HO:

4   Q. Is it your understanding that, when the

5   Census Bureau reports citizenship data after the

6   2020 census about a block that has one person on

7   it, that that citizenship data reported by the

8   Census Bureau will indicate whether or not that

9   person responded to the citizenship question on

10   the census by stating whether he or she is a

11   citizen?

12   A. I'm sorry, can you try that again? I

13   didn't follow that.

14   Q. Sure. Is it your understanding that,

15   when the Census Bureau reports CVAP data block by

16   block after the 2020 census, that, with respect to

17   blocks that have only one person on it, that the

18   CVAP data reported by the Census Bureau will

19   reflect the answer that that person gave to the

20   citizenship question on the census questionnaire?

21   MR. GARDNER: Objection. Form.

22   THE WITNESS: My understanding is that

1   that would certainly be possible, just like it

2   would reflect information about that person's race

3   that they would have provided on the census

4   questionnaire.

5   BY MR. HO:

6   Q.   Now, you're aware that the Census Bureau   601

7   intends to use techniques such as synthetic data

8   noise infusion to avoid the disclosure of people's

9   responses to the census questionnaire?

10   MR. GARDNER: Objection.   Lack of

11   foundation.

12   THE WITNESS: I'm aware that there are

13   some techniques.   I don't know that particular

14   technique.   I'm not familiar with it.

15   BY MR. HO:

16   Q.   So you've never heard the term "synthetic

17   data noise infusion" before?

18   A.   I believe I may have heard it.   I just

19   don't understand it.

20   Q.   You're not aware that synthetic noise

21   infusion is a practice whereby the Census Bureau

22   intends to replace some sensitive information

1 about a census respondent with different

2 information based on sample data from a

3 statistical model when it publishes the data?

4   A.   I generally have that understanding.   I

5 cannot perform that particular data manipulation

6 myself.

7   Q.   You're aware that, because of disclosure

8 avoidance procedures, that when CVAP data is

9 reported by the Census Bureau after the

10 2020 census, that even with a citizenship question

11 on the 2020 census, that that CVAP data at the

12 block level will have error margins associated

13 with it, correct?

14   A.   I believe -- I'm sorry, can you repeat

15 the question?

16   Q.   Sure.   You're aware that, because of

17 disclosure avoidance procedures like synthetic

18 noise infusion, which we talked about a second

19 ago, that even with the citizenship question on

20 the 2020 census questionnaire, the CVAP data

21 produced by the Census Bureau at the block level

22 will have error margins associated with it,

1 correct?

2   A. I'm not aware of that because I don't

3 understand the causal relationship between those

4 masking techniques and any margin of error.

5 Moreover, I don't know what techniques the Census

6 Bureau plans to use or how it plans to deploy

7 those with respect to responses to the

8 2020 census.

9   Q. Okay. So before you requested -- I'm

10 sorry. Let me start that again.

11   Before the Department of Justice

12 requested a citizenship question be added to the

13 2020 census questionnaire, you didn't attempt to

14 ascertain whether or not the data derived from the

15 question would produce error margins or not,

16 correct?

17   A. I believe what I said was I was aware

18 that there are margins of error that can be

19 associated with the census data. I don't know how

20 the Census Bureau plans to ask this question or

21 what it plans to do with respect to data collected

22 in response to that question.

1   Q.   But you're aware, are you not, that the

2   Census Bureau today does not know whether or not

3   the margins of error associated with the CVAP data

4   that it produces based on responses to the census

5   questionnaire will have margins of error that are

6   larger or smaller than the CVAP data currently

7   used by the Department of Justice?

8   MR. GARDNER: Objection.

9   BY MR. HO:

10   Q.   Right?

11   MR. GARDNER: Objection.   Lack of

12 foundation.

13   THE WITNESS: I am not aware of the

14 Census Bureau's view on that issue.

15 BY MR. HO:

16   Q.   Okay.   So you didn't try to determine,

17 before requesting a citizenship question on the

18 census questionnaire, whether or not CVAP data

19 derived from that citizenship question would, in

20 fact, have smaller margins of error than the CVAP

21 data currently relied on by the Department of

22 Justice, correct?

1   A.   Are you asking about me, personally? You

2   used the word "you" in your question. I just want

3   to understand who you're asking --

4   Q.   The Department of Justice.

5   A.   Ah. I'm not aware of what the Department

6   of Justice may or may not have done.

7   Q.   When did you become aware of the fact

8   that, due to disclosure avoidance techniques, CVAP

9   data derived from responses to the citizenship

10 questionnaire would have margins of error

11 associated with it?

12   A.   Again, I have testified that I'm not

13 aware of the causal relationship that you're

14 talking about, so I'm not sure I ever have become

15 aware of that because I don't know what those

16 techniques are, I don't know how they relate to

17 the citizenship question, and I don't know how the

18 Census Bureau plans to deploy them and -- with

19 respect to the 2020 census.

20   Q.   So you've -- and when I say "you," the

21 Department of Justice -- hasn't reached out to the

22 Census Bureau to try to understand the causal

1 relationship, as you put it, between disclosure

2 avoidance and margins of error associated with

3 CVAP data collected from the 2020 census

4 questionnaire, correct?

5   MR. GARDNER: Objection. Lack of

6 foundation.

7   THE WITNESS: I'm not aware of what

8 everyone in the Department of Justice may or may

9 not have done.

10 BY MR. HO:

11   Q. You're not aware of any such

12 communications between the Department of Justice

13 and the Census Bureau about whether or not, due to

14 disclosure avoidance techniques, the CVAP data

15 produced from responses to the decennial census

16 questionnaire, would, in fact, have smaller

17 margins of error than the CVAP data currently

18 relied on by the Department of Justice, correct?

19   A. I don't believe I'm aware of any such

20 communication.

21   Q. Okay. The Gary letter, when it describes

22 decennial census data as a full count of a

1   population, it doesn't mention the fact that

2   citizenship data based on responses to the

3   decennial census questionnaire would also have

4   margins of error associated with it, correct?

5   MR. GARDNER: Objection. Asked and

6   answered.

7   THE WITNESS: And again, I think your

8   question assumes that there are going to be these

9   margins of error tied to these disclosure masking

10   techniques, and I'm not sure whether that --

11   whether or not that's correct. I don't know one

12   way or the other.

13   BY MR. HO:

14   Q.   The Gary letter doesn't mention the fact

15   that CVAP data derived from the decennial census

16   would have margins of error due to disclosure

17   avoidance techniques that might even be larger

18   than the margins of error currently associated

19   with ACS CVAP data relied on by the Department of

20   Justice at present, correct?

21   A.   Again, I don't -- I'm not sure I'm

22   following all the chains of that hypothetical, and

1 I don't know one way or the other.

2   Q. If the Census Bureau could produce full

3 count CVAP data at the block level without margins

4 of error and without including a citizenship

5 question on the census, would that alleviate the

6 concerns expressed in this bullet?

7   MR. GARDNER: Objection. Hypothetical.

8 Also, objection, compound.

9   THE WITNESS: And we're so far removed

10 from the Gary letter at this point, I don't know

11 which bullet you're referring to.

12 BY MR. HO:

13   Q. I'm referring to the third bullet, the

14 same one we've been talking about this entire

15 time.

16   A. You just put another exhibit in front of

17 me, so --

18   Q. It's on page 3, the second bullet on that

19 page about the ACS estimates being reported at a

20 90 percent confidence interval, and the letter

21 which contrasts that to decennial census data,

22 which is a full count of the population.

1   A.   I understand that the Census Bureau --

2   Q.   I haven't posed a question yet.

3   A.   Oh, I'm sorry.   I thought you posed a

4   question and then pointed me back to it.

5   Q.   So here's my question with respect to   601

6   this bullet.   If the Census Bureau could produce

7   to you full count CVAP data that didn't have

8   sampling margins of error like the ACS CVAP data

9   but -- and could do so without including a

10   citizenship question on the census, that would

11   resolve the concerns expressed in this bullet,

12   correct?

13   MR. GARDNER: Objection.   Calls for

14   hypothetical.

15   THE WITNESS: That's hypothetical.   I

16   can't answer that.

17   BY MR. HO:

18   Q.   You don't know one way or the other?

19   MR. GARDNER: Objection.   Calls for

20   hypothetical.

21   THE WITNESS: It's a hypothetical.   I

22   can't answer a hypothetical.

 1   BY MR. HO:

 2   Q.   The fourth bullet here --

 3   A.   Before moving on to a new bullet, can we

 4   take a break for lunch?

 5   MR. GARDNER: Yeah. It's 12:55. We've

 6   been going over an hour now.

 7   MR. HO: Okay. Sure.

 8   THE WITNESS: Thank you.

 9   VIDEO TECHNICIAN: This concludes media

10   unit number 3. The time on the video is

11   12:55 p.m. We are off the record.

12   (A recess was taken.)

13   VIDEO TECHNICIAN: This begins media unit

14   number 4. The time on the video is 2:05 p.m. We

15   are on the record.

16   BY MR. HO:

17   Q.   Mr. Gore, before the break do you

18   remember talking about margins of error?

19   A.   Yes.

20   Q.   Do you remember how we talked about how,

21   when data has smaller margins of error, we'd --

22   you and I agree that that data would be more

1   precise than data that has larger margins of

2   error, right?

3   A.   Yes.

4   Q.   Today, do you believe that CVAP data

5   produced from responses to a question about

6   citizenship on the census questionnaire will be

7   more precise than the data that the Department of

8   Justice is currently relying on with respect to

9   CVAP for purposes of VRA enforcement purposes?

10   A.   I'm not sure I have a view on that one

11   way or the other, since I don't know what the

12   margin of error is that the Census Bureau will

13   assign to census responses and, particularly, the

14   citizenship question should it be asked on the

15   2020 census.

16   Q.   So just to clarify, right now you don't

17   know whether or not CVAP data produced from

18   responses to the citizenship question on the

19   census questionnaire will, in fact, be more

20   precise than the CVAP data on which DOJ is

21   currently relying for purposes of VRA enforcement?

22   A.   I believe that's correct. I don't know

1   what the margin of error is that will be assigned

2   to that, to that data.

3   Q.   I want to turn back to the Gary letter.

4   And the last bullet, which is the fourth bullet

5   overall, it's the third bullet on page 3 of the

6   letter, it reads, "Census data is reported to the

7   census block level, while the smallest unit

8   reported in the ACS estimates is the census block

9   group. See American Community Survey data 3, 5,

10 10. Accordingly, redistricting jurisdictions and

11 the department are required to perform further

12 estimates and to interject further uncertainty in

13 order to approximate citizen voting age population

14 at the level of a census block, which is the

15 fundamental building block of a redistricting

16 plan. Having all of the relevant population

17 citizenship data available in one data set at the

18 census block level would greatly assist the

19 redistricting process."

20   Did I read that correctly?

21   A.   Yes, you did.

22   Q.   Okay. Correct me if I'm wrong, but the

1 point that's being expressed in this bullet is

2 that citizenship data from the ACS is not ideal

3 for purposes of VRA enforcement because ACS

4 citizenship data is published at the block group

5 level and DOJ is required to perform further

6 estimates to generate CVAP data at the census

7 block level, correct?

8   A. Correct.

9   Q. Historically, CVAP data broken down by

10 race and ethnicity derived from the census long

11 form was not published at the census block level,

12 correct?

13   A. I don't know the answer to that.

14   Q. You're not aware of any time previously

15 where DOJ has had at its disposal CVAP data broken

16 down by race and ethnicity at the census block

17 level, correct?

18   A. I am not aware of that.

19   Q. You're not aware of any time previously

20 where DOJ did not have to use an estimated -- an

21 estimation procedure in order to convert CVAP data

22 from the Census Bureau from one geographical level

1   into block level data broken down by race or

2   ethnicity, correct?

3   A.   As I understand your question, that's

4   correct.

5   Q.   The Gary letter doesn't mention the fact

6   that, for purposes of VRA enforcement, DOJ has

7   always had to use an estimated -- an estimation

8   procedure in order to convert CVAP data from the

9   Census Bureau at one geographic level into CVAP

10   data by race and ethnicity at the block level,

11   correct?

12   A.   I've just testified that I don't know

13   whether that's a fact or not. But there's no

14   mention of that issue in the Gary letter.

15   Q.   You've never assessed the statistical

16   reliability of estimation techniques for deriving

17   block level CVAP data from block group level CVAP

18   data, correct?

19   MR. GARDNER: Objection. Form.

20   THE WITNESS: I don't believe I have, no.

21   BY MR. HO:

22   Q.   You're not aware of any case that was

1 filed by DOJ where DOJ was unable to succeed on a

2 VRA claim because of the fact that DOJ performed

3 an estimation procedure to derive census block

4 level CVAP data correct?

5   A.   I'm not aware of any such filed case.

6   Q.   You're not aware of any case where any

7 plaintiff was unable to succeed on a VRA claim

8 because of the fact that the plaintiff had to

9 perform an estimation procedure to derive

10 block-level CVAP data, correct?

11   A.   I'm not aware of any such filed case, and

12 I understand your question to be limited to filed

13 cases.

14   Q.   You're not aware of any situation where a

15 plaintiff did not bring a case because of the fact

16 that the plaintiff would have to perform an

17 estimation procedure in order to generate CVAP

18 data at the census block level, correct?

19   MR. GARDNER: Objection to the extent

20 that you're calling for information subject to the

21 law enforcement privilege.   To the extent you are

22 asking for that information, I would instruct the

1   witness not to answer.

2   To the extent you can answer that

3   question without divulging law

4   enforcement-sensitive information, you may do so.

5   THE WITNESS: I am not aware of any

6   public, nonprivileged information to indicate the

7   existence of any such case.

8   BY MR. HO:

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9   Q. If the Census Bureau could produce CVAP

10   data at the block level for the Department of

11   Justice instead of at a different level of

12   geography, and could do so without including a

13   citizenship question on the census, would that

14   alleviate the concern that's expressed in this

15   bullet point?

16   MR. GARDNER: Objection. Calls for a

17   hypothetical.

18   THE WITNESS: It's a hypothetical I can't

19   engage in.

20   MR. HO: You're not instructing -- Josh,

21   you're not instructing him not to answer the

22   question, right? You're just lodging an

1   objection.

2   MR. GARDNER: Correct.

3   BY MR. HO:

4   Q.   Okay. So you can answer the question.

5   A.   I have answered the question. I can't

6   engage in a hypothetical.

7   Q.   You -- you can't or you won't engage --

8   A.   I'm not going to engage in a

9   hypothetical.

10   Q.   Okay. So you don't know one way or the

11   other if DOJ -- if Census Bureau came to you and

12   said, look, we have this way of giving you CVAP

13   data at the block level, we can do it without

14   putting a question on the 2020 census

15   questionnaire about citizenship -- you don't know

16   one way or the other whether or not that would

17   alleviate the concern in this bullet?

18   MR. GARDNER: Objection. Calls for a

19   hypothetical.

20   THE WITNESS: And mischaracterizes my

21   testimony. I won't engage in a hypothetical.

22

1   BY MR. HO:

2   Q.   You're just refusing to answer the

3   question, correct?

4   A.   I'm telling you my answer is I won't

5   engage in a hypothetical.

6   Q.   Okay.   Aside from the four bullets

7   expressed in this letter, are there any other

8   reasons why ACS CVAP data are not the ideal data

9   for purposes of VRA enforcement of which you are

10   aware?

11   A.   Not that I'm aware of.

12   Q.   Okay.   I'm going to show you a document.

13   We'll mark this as 20.

14   (Gore Deposition Exhibit 20 marked for

15   identification and attached to the

16   transcript.)

17   BY MR. HO:

18   Q.   This is a printout from the Department of

19   Justice website listing cases brought by the

20   voting section.   The URL for this is on the bottom

21   left-hand corner of the first page.   The first

22   page, the cases -- under the first header, Cases

1 raising claims under Section 2 of the Voting

2 Rights Act, lists cases brought by the voting

3 section at the Department of Justice dating back

4 to the year 1988 under Section 2 of the Voting

5 Rights Act.

6   Do you see that?

7   A. I do.

8   Q. Now, as far as you know, none of the

9 cases on this list failed due to reliance on ACS

10 CVAP data, correct?

11   MR. GARDNER: Objection. Lack of

12 foundation.

13   THE WITNESS: Not to my knowledge. Many

14 of these cases predate the ACS. Those that

15 post-date the ACS, I'm not aware of any case

16 failing on that basis.

17 BY MR. HO:

18   Q. The cases that predate the ACS, you're

19 not aware of any of those cases failing because

20 they were -- they relied on long-form CVAP data,

21 correct?

22   MR. GARDNER: Same objection. Lack of

1 foundation.

2   THE WITNESS: I'm not aware of any such

3 case. I will note that some of these cases are

4 not redistricting cases, and so would not have

5 implicated that issue.

6 BY MR. HO:

7   Q. Okay. The issue of CVAP, your testimony

8 is it's only relevant in Section 2 redistricting

9 cases, but not other kinds of Section 2 cases?

10   A. There may be other kinds of Section 2

11 cases where it's also relevant, but I believe that

12 at least a couple of these cases were cases where

13 it would not have been relevant.

14   Q. You're not aware of any of these cases   601

15 failing because of the quality of CVAP data

16 available to the Department of Justice, correct?

17   MR. GARDNER: Objection. Lack of

18 foundation.

19   THE WITNESS: I am not aware.

20 BY MR. HO:

21   Q. You mentioned earlier a case, the

22 Benavidez case. Do you remember that?

1   A. Yes.

2   Q. It's a case from the Northern District of

3 Texas, right?

4   A. Yes.

5   Q. It's not a circuit court case, right?

6   A. That is correct.

7   Q. Okay. That's the only case in which you

8 are aware that the plaintiff's claim failed in

9 part due to reliance on ACS data, correct?

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

11 think it's the only case of which I'm aware where

12 the plaintiff's case failed in part because of

13 reliance on ACS CVAP data. I believe there's

14 another case out there where plaintiff may have

15 tried to use ACS total population data, and that

16 was not upheld by the court.

17   Q. Okay. That case that you're referring

18 to, that doesn't really have any bearing on the

19 issue of the quality of citizenship data from the

20 ACS, right?

21   A. That's correct. I'm just trying to be

22 responsive to your question.

1   Q.   No, I appreciate that.

2   So just so that the record is clear, the

3   Benavidez case is the only case that you're aware

4   of where the plaintiff's claim failed in part due

5   to reliance on ACS CVAP data, correct?

6   A.   Correct.

7   Q.   And just to be clear, the Benavidez case

8   was not brought by the Department of Justice,

9   correct?

10   A.   Correct.

11   Q.   Now, your understanding is that the

12   plaintiffs in the Benavidez case relied on

13   one-year ACS estimates, correct?

14   A.   That's my recollection from the case.

15   Yes.

16   Q.   And your recollection is that the

17   plaintiffs in the Benavidez litigation did not

18   rely on five-year ACS estimates, correct?

19   A.   That is my recollection.   Correct.

20   Q.   And your recollection is that, in the

21   Benavidez case, the court found that the one-year

22   ACS data that the plaintiffs were relying upon was

1   not sufficiently reliable for the geographic areas

2   at issue in that case, correct?

3   A. Correct.

4   Q. Okay. We established earlier that your

5   understanding is that the Census Bureau publishes

6   the five-year ACS estimates as reliable for any

7   geographic area regardless of population size,

8   correct?

9   A. I believe you showed me a page on the

10 website that says that. I don't know what the

11 Census Bureau means by that or what purposes it

12 intends the ACS data to be used for. But that is

13 the statement that you showed me earlier.

14   Q. And the plaintiffs in the Benavidez case

15 didn't rely on those five-year ACS estimates,

16 correct?

17   A. That's correct.

18   Q. And you --

19   A. That's my recollection.

20   Q. And you're not aware of a single case in

21 which a plaintiff's VRA claim failed due to

22 reliance on five-year ACS estimates, correct?

1   A.   Correct.   I'm not aware of any such case.

2   Q.   You described the Benavidez case in your

3   testimony to Congress, correct?

4   A.   I believe I mentioned it.   Yes.

5   Q.   At the time you testified in Congress,

6   you were aware that the plaintiffs in the

7   Benavidez case relied on one-year rather than

8   five-year ACS data, correct?

9   A.   I believe that's correct.

10   Q.   Okay.   In your testimony in Congress, you

11   didn't mention the fact that although the Census

12   Bureau considers one-year ACS estimates to be

13   reliable only for areas that are -- have 65,000

14   people or more, it considers five-year ACS

15   estimates to be reliable for any geographic area,

16   correct?

17   A.   I don't recollect the specifics of my

18   testimony on that point.

19   Q.   You don't recall making clear to Congress

20   that there are five-year ACS estimates, as

21   distinct from the one-year ACS estimates relied on

22   by the plaintiffs in Benavidez, that are

1   considered by the Census Bureau to be reliable for

2   any geographic area, correct?

3   A.   I do not recall every word that I said in

4   my testimony to Congress.

5   Q.   That wasn't my question.   My question

6   was, you don't recall mentioning the five-year ACS

7   estimates during your testimony in Congress,

8   correct?

9   A.   I don't recall mentioning it or not

10   mentioning it.

11   Q.   In fact, you didn't mention the five-year

12   ACS estimates during your testimony, correct?

13   A.   I answered that question.   I don't recall

14   whether I did or I didn't.

15   Q.   And you didn't mention that the Census

16   Bureau publishes ACS estimates that it considers

17   reliable for any geographic area during your

18   testimony in Congress, correct?

19   A.   I don't recall whether I did or I didn't.

20   And as I said before, I don't know what the Census

21   Bureau means by that or the uses to which it

22   intends the ACS can be put.

1   Q.   Can you think of any reason why you

2 wouldn't mention the fact that the -- that there

3 are five-year ACS estimates during your

4 congressional testimony?

5   A.   I was not asked -- I don't believe I was

6 asked the intervals of estimates that are

7 available through the ACS. I was responding to a

8 different question, as I recall my testimony. But

9 if you point me to where my testimony is in the

10 transcript, I'd be happy to discuss it further.

11   Q.   Can you think of any reason why you

12 wouldn't mention the fact that the Census Bureau

13 produces estimates that have greater reliability

14 at smaller geographic areas than the one-year ACS

15 estimates that you did discuss during your

16 congressional testimony?

17   A.   Again, I'm happy to comment on my

18 testimony if you want to point me to a specific

19 page of it, and I can try to reconstruct why I did

20 or did not give a particular piece of information.

21 It may not have been responsive or relevant to the

22 question.

1   Q. You don't think Congress would have

2   wanted to know that there are ACS estimates that

3   are more reliable than the one-year ACS estimates

4   that the plaintiffs relied on in the Benavidez

5   case?

6   MR. GARDNER: Objection. Calls for

7   speculation.

8   THE WITNESS: These days, I have no idea

9   what Congress wants.

10   BY MR. HO:

11   Q. Going back to the list of cases that's in

12   front of you --

13   A. Exhibit 20?

14   Q. Yes.

15   A. Okay.

16   Q. None of these cases have been filed since

17   you were acting assistant attorney general for

18   civil rights, correct?

19   I meant just the Section 2 cases on the

20   first page, sorry.

21   A. That is correct.

22   Q. In fact, none of the Section 2 cases

1 listed on the first page have been filed since the

2 start of the Trump administration, correct?

3   A. That is correct.

4   Q. Okay. The previous administration -- for

5 part of its time, the previous administration, in

6 addition to having responsibilities under

7 Section 2 of the Voting Rights Act, also had

8 obligations under Section 5 of the Voting Rights

9 Act, correct?

10   A. That's correct.

11   Q. The current administration does not have

12 obligations under Section 5 of the Voting Rights

13 Act to the same extent, correct?

14   MR. GARDNER: Objection to form.

15   THE WITNESS: That's correct.

16 BY MR. HO:

17   Q. What obligations, if any, does the

18 current administration have with respect to

19 Section 5 enforcement?

20   A. That is a fair question. There are a

21 couple of jurisdictions that are covered under

22 Section 3(c) of the Voting Rights Act, which is

1   similar to Section 5. We may, in fact, have no

2   obligations with respect to Section 5 at this

3   point due to the Supreme Court's decision in

4   Shelby County, which was a 2013 decision, so it

5   was about in the middle of the prior

6   administration's tenure.

7   Q. Okay. If you look at the previous

8   administration, 2009 through the beginning of

9   2017, it looks like the Department of Justice

10 filed five Section 2 cases during that period.

11   A. I believe that's correct.

12   Q. Okay. So previous administration had

13 Section 5 obligations to review voting changes in

14 all or part of 16 states for part of that time,

15 correct?

16   A. I believe until the Shelby County

17 decision in 2013.

18   Q. Okay. And the current administration

19 doesn't have those obligations and hasn't filed

20 any Section 2 cases?

21   A. That's correct. We also haven't had a

22 decennial census which has required every state in

1   the union to redistrict during the time of this

2   administration, which the prior administration did

3   in the 2010 census.

4   Q.   You would say that it is not unusual for

5   the Department of Justice to go several years

6   without filing a Section 2 case, right?

7   A.   While I review this list, I think

8   that's -- that may or may not be correct.   But

9   there have certainly been years and multiyear

10   periods where the Department of Justice has not

11   filed Section 2 cases.

12   Q.   You're not saying that reliance on ACS

13   CVAP data is the reason why the Department of

14   Justice has failed to file a Section 2 case since

15   the start of the Trump administration, right?

16   A.   Again, I didn't think we were going to

17   talk about cases that hadn't been filed.   And I

18   believe that's covered by law enforcement

19   privilege and I can't talk about why or why not --

20   why certain cases were or were not filed.

21   Q.   Well, your counsel didn't object to my

22   question.

1   So my question was, you're not testifying

2   that the Department of Justice has failed to file

3   a Section 2 case since the start of the Trump

4   administration because of the quality of CVAP

5   data, correct?

6   MR. GARDNER: I actually understood you

7   to be asking a different question the first time

8   you asked it. I think the way you've asked it

9   that time does implicate the law enforcement

10   privilege. And I will instruct the witness not to

11   answer to the extent that it would require the

12   divulging of information subject to the privilege.

13   MR. HO: Let me just read the question

14   that I asked the first time.

15   BY MR. HO:

16   Q. You're not saying that reliance on ACS

17   CVAP data is the reason why the Trump

18   administration has failed to file a Section 2

19   Voting Rights Act case, correct?

20   MR. GARDNER: And to the extent that you

21   can answer that question without divulging law

22   enforcement-sensitive information, you may do so.

1 Otherwise, I instruct you not to answer.

2   THE WITNESS: Consistent with that

3 instruction, I can't answer.

4 BY MR. HO:

5   Q. Okay. You're not saying that if you had

6 different CVAP data at your disposal, you would

7 have filed some additional Section 2 cases, right?

8   MR. GARDNER: Same objection. Same

9 instruction.

10   THE WITNESS: Consistent with that

11 instruction, I can't answer.

12   MR. HO: We'll mark this as Exhibit 21.

13   (Gore Deposition Exhibit 21 marked for

14   identification and attached to the

15   transcript.)

16 BY MR. HO:

17   Q. It's an e-mail exchange between you,

18 Arthur Gary, and others. The top e-mail on the

19 thread is from you to Arthur Gary dated

20 January 29th, 2018. The first page bears Bates

21 number DOJ 00002712.

22   I want to go through the individual

802

802

1   e-mails on here. Okay?

2   So the top e-mail, this is Arthur Gary

3   e-mailing you, correct?

4   A.   I don't believe so, actually.

5   Q.   Oh, I'm sorry. The top is you e-mailing

6   Arthur Gary, correct?

7   A.   Appears to be, yes.

8   Q.   Okay. And the second e-mail, the second

9   to most recent one on the first page here, Arthur

10   Gary is forwarding to you an e-mail chain between

11   him and Ron Jarmin, the acting director of the

12   Census Bureau, correct?

13   A.   That appears to be correct.

14   Q.   Okay. I want to look at the first e-mail   802

15   in time on this chain. It's on the last page,

16   page 5, Bates number DOJ 2716.

17   This is an e-mail from Ron Jarmin to

18   Arthur Gary, cc'ing Enrique Lamas of the Census

19   Bureau. And it has the date December 22nd, 2017,

20   right?

21   A.   Yes, that's correct.

22   Q.   Okay. The e-mail from Acting Director

1 Jarmin to Mr. Gary reads, "Arthur, thank you for

2 your letter dated 12/12/2017 regarding improving

3 the quality of citizenship information for DOJ

4 enforcement of the Voting Rights Act. Let me

5 start by saying the bureau is fully supportive of

6 providing DOJ with the highest quality statistical

7 information possible. To that end, I directed

8 staff to review all possible ways to address the

9 needs expressed in the letter. They have now

10 briefed me, and their findings suggest that the

11 best way to provide PL94 block-level data with

12 citizen voting population by race and ethnicity

13 would be through utilizing a linked file of

14 administrative and survey data the Census Bureau

15 already possesses. This would result in higher

16 quality data produced at lower cost. I suggest we

17 schedule a meeting of census and DOJ technical

18 experts to discuss the details of this proposal.

19 We look forward to working with you on this

20 important statistical matter."

21   From this e-mail, do you understand that

22 the Census Bureau director, or acting director, is

1   expressing the view that the best way to provide

2   block-level CVAP data for purposes of VRA

3   enforcement is not to add a citizenship question

4   to the census?

5   A.   No, that's not what I understand.

6   Q.   What do you understand the Census Bureau

7   director to be saying?

8   A.   I believe he is saying that he's had

9   staff review the question, and the staff had

10 briefed him, and their findings suggest that the

11 best way to provide that data would be through the

12 linked file of administrative and survey data.

13   Q.   Okay.

14   A.   And then requesting to set up a meeting

15 about that issue.

16   Q.   Okay. So just to clarify, your

17 understanding is that, in this e-mail, the acting

18 director of the Census Bureau is expressing -- is

19 stating that Census Bureau staff have briefed him

20 and sug -- and -- on their findings which suggest

21 that the best way to provide block-level CVAP data

22 is not to add a citizenship question to the

1   decennial census questionnaire, correct?

2   A.   I think that's right.   This e-mail speaks

3   for itself, and obviously I didn't write it and it

4   wasn't addressed to me.

5   Q.   Your understanding is that the Census

6   Bureau director is -- or acting Census Bureau

7   director is stating that Census Bureau staff have

8   conducted an analysis and briefed him on their

9   findings which suggest that the best way to

10   provide block-level CVAP data for DOJ's needs is

11   through a linked file of administrative and survey

12   data that the Census Bureau already possesses,

13   correct?

14   A.   That's my understanding of what this

15   says.   Yeah.

16   Q.   And your understanding is that the Census

17   Bureau director is -- acting Census Bureau

18   director is writing and stating that his staff --

19   that Census Bureau staff have analyzed this issue

20   and briefed him on their findings that the linked

21   file of administrative and survey data would

22   result in higher quality data produced at lower

1   cost than including a citizenship question on the

2   census questionnaire, correct?

3   A.   I understand that he is communicating

4   that the findings of the staff suggest that.   Yes.

5   Q.   Okay.   No meeting between the technical

6   experts at DOJ and the Census Bureau took place

7   between the date of the December 12th Gary letter

8   requesting a citizenship question and the Ross

9   decision memo in March of 2018 directing the

10   inclusion of a citizenship question, correct?

11   A.   I am not aware of any such meeting.

12   Q.   You're not aware of any such meeting of

13   technical staff in the civil rights division,

14   which you are the head of, and the Census Bureau's

15   technical staff to discuss this proposal -- or

16   these findings, rather, about a different way of

17   generating block-level CVAP data referenced in

18   this e-mail, correct?

19   A.   I am not aware of any such meeting.

20   Q.   The next e-mail on this chain is on

21   December 22nd, 2017.   It's on page 4.   Arthur Gary

22   writes to Dr. Jarmin, "Dr. Jarmin, thank you for

1   your response. We look forward to meeting with

2   you and your team in early January. Best

3   regards."

4   Did I read that right?

5   A. Looks right, yeah.

802

6   Q. Okay. On page 3, page DOJ 2714, on

7   January 2nd, Arthur Gary writes to Ron Jarmin, "It

8   should work fine. Let me get back to you. Best

9   wishes to you for 2018 as well."

10   I read that correctly, right?

11   A. Yes, you did.

12   Q. That's in response to a meeting -- an

13 e-mail on the following page which is from Ron

14 Jarmin to Arthur Gary which reads, "Arthur, happy

15 new year. Would the late next week work for a

16 meeting?" Right?

17   A. Appears -- that appears correct.

18   Q. Okay. So at this point, it looked like

19 Mr. Gary was planning on having a meeting or

20 suggested that a meeting the following week with

21 the Census Bureau would work fine, correct?

22   A. Again, these e-mails speak for

1   themselves. And I can't speak for Mr. Gary. But

2   that seems about right.

3   Q. Okay. One week later -- I'm on page 3 --

4   Ron Jarmin writes to Arthur Gary on January 9th,

5   2018, "Gary, any updates? We have a pretty short

6   clock to resolve the request. Would be good to

7   meet with your team as soon as possible. Thanks."

8   Do you see that?

9   A. I do.

10   Q. Okay. In the next e-mail, also on

11   January 9th, 2018, Arthur Gary writes back to Ron

12   Jarmin and suggests a number of times, including

13   Friday, January 19th, at 11:00 a.m., correct?

14   A. I'm sorry, which page are you on?

15   Q. Page 2.

16   A. I don't see any e-mail from January 13th.

17   Q. January 9th, 2018.

18   A. Okay. Which e-mail are we talking about?

19   I'm sorry.

20   Q. From Arthur Gary to Ron Jarmin --

21   A. At the bottom of the page?

22   Q. At the bottom of the page.

1   A.   Okay.

2   Q.   Mr. Gary writes back to Ron Jarmin and   802

3   offers a number of options for a meeting,

4   including Friday, January 19th, at 11:00 a.m.,

5   right?

6   A.   That appears to be correct.

7   Q.   And in the next e-mail on the thread,

8   Dr. Jarmin writes to Arthur Gary on January 10th,

9   "Thanks, Gary. Let's do Friday at 11:00. We're

10 fine meeting at main Justice." Right?

11   A.   Right.

12   Q.   The next e-mail, which is on the first   802

13 page at the bottom, on January 16th, 2018, Arthur

14 Gary writes to cancel the meeting with Ron Jarmin,

15 correct?

16   A.   Well, it looks like -- he says

17 they're unable -- "We" -- I don't know who "we"

18 are -- "will be able to meet on Friday or this

19 week."

20   Q.   Did you have any conversations with

21 Mr. Gary about meeting with the Census Bureau

22 between the date of Dr. Jarmin's e-mail on

1 December 22nd requesting a meeting between Census

2 Bureau and DOJ staff and Arthur Gary's e-mail on

3 January 16th stating, due to some scheduling

4 conflicts, we will be unable to meet on Friday?

5   A. Yes.

6   Q. When did those conversations take place?

7   A. I don't remember the specific dates.

8   Q. What was the content of that

9 conversation?

10   A. I believe the content of that

11 conversation related to this request that the

12 Census Bureau and the Department of Justice hold a

13 meeting.

14   Q. And what did Mr. Gary convey to you about   802

15 the Census Bureau's request to have a meeting

16 between DOJ and Census Bureau technical staff?

17   A. He conveyed to me that the request had

18 been made.

19   Q. What did he -- did he convey to you

20 anything other than the fact that a request had

21 been made?

22   A. I believe he mentioned that they had

1 offered certain dates for that meeting, but

2 that -- I don't recall the specifics of that

3 conversation beyond that.

4   Q. Did Mr. Gary tell you that, in

5 Dr. Jarmin's e-mail, he had written that Census

6 Bureau staff had briefed him on their analysis

7 which suggested that there was a way to produce

8 higher quality CVAP data at lower cost for the

9 Department of Justice through a means other than

10 including a question about citizenship on the

11 2020 census questionnaire?

12   A. I don't believe he conveyed that. I

13 believe what he conveyed was that the Census

14 Bureau thought there might be another way to get

15 the data to the Department of Justice.

16   Q. And what was your response to receiving   802

17 that information?

18   A. I listened to what Mr. Gary had to say

19 and told him that I would think about the issue

20 and discuss it further with others.

21   Q. Did you instruct Mr. Gary not to hold the

22 meeting with the Census Bureau that was scheduled

1 for Friday, January 19th?

2   A.   I don't believe so, no.

3   Q.   Do you know why that meeting did not

4 occur?

5   A.   I believe that -- I believe at the time

6 we were trying to gather more information within

7 the department about this meeting and whether it

8 was consistent with our -- with what we wanted to

9 do. And I believe that -- if I recall correctly,

10 this was a request for more time from the Census

11 Bureau that Mr. Gary submitted.

12   Q.   What, if anything, did you do with the

13 information that the Census Bureau had an

14 alternative means for providing DOJ with

15 block-level CVAP data?

16   A.   I discussed that with various people at

17 the Department of Justice.

18   Q.   And who did you discuss that with?

19   A.   I discussed it with Rachael Tucker, Pat

20 Hovakimian. I may have discussed it with Danielle

21 Cutrona. I'm not sure. And I eventually

22 discussed it with the attorney general.

1   Q.   You didn't discuss the fact that the

2   Census Bureau had an alternative idea for

3   producing block-level CVAP data for purposes of

4   VRA enforcement with voting section employees?

5   A.   I may have discussed it -- I think I

6   probably did discuss it with Chris Herren as well.

7   I may have discussed it with him. I don't recall

8   specifically.

9   Q.   You mentioned that you discussed it with

10   the attorney general. When did you discuss the

11   fact that the Census Bureau had an alternative

12   means of producing block-level CVAP data with the

13   attorney general?

14   A.   It would have been at some point after I

15   spoke to Art Gary. I don't remember the exact

16   date.

17   Q.   Roughly when did you speak to Art Gary?

18   A.   Again, I don't remember the exact date of

19   that either. It would have been before this

20   January 16th e-mail.

21   Q.   So sometime after this conversation -- so

22   let me just back up here.

1   A. Right.

2   Q. You had a conversation with Arthur Gary

3 sometime before the January 16th e-mail about --

4 that -- and you discussed during that -- let me

5 start this again.

6   A. Okay.

7   Q. You had a conversation with Arthur Gary

8 sometime before the January 16th e-mail.

9   A. Right.

10   Q. And during that conversation you

11 discussed the fact that the Census Bureau had an

12 alternative idea for producing block-level CVAP

13 data, correct?

14   A. Not in so many words. As I said before,

15 I think what Art Gary told me is that he had heard

16 from the Census Bureau and they had an idea for an

17 alternate way to produce the data and wanted to

18 meet about it.

19   Q. Okay.

20   A. And that was about the extent of my

21 understanding of it at the time. And that's what

22 I would have conveyed to other people.

1   Q.   And at some point after that, you had a

2   conversation about this proposal with the attorney

3   general, correct?

4   A.   I don't know if it was so much about the

5   proposal, because I wasn't up on what the

6   specifics of the proposal were. I think we had

7   a -- we may have had a conversation related to

8   this issue of Census Bureau wanting to meet.

9   Q.   You didn't ask Arthur Gary for the

10 specifics of the proposal from the Census Bureau?

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

12   Q.   You didn't ask Arthur Gary to get more

13 information about the specifics of the proposal

14 from the Census Bureau to get higher quality CVAP

15 data at lower cost?

16   A.   I don't recall asking him that and I

17 don't recall him conveying that to me that that

18 was a representation that the Census Bureau had

19 made.

20   Q.   Okay. You at some point had a

21 conversation with the Attorney General about this.

22 Was that in person or by phone?

1   A.   In person.

2   Q.   And it was in January of 2018?

3   A.   Probably.   Yeah.

4   Q.   What was discussed with respect to the

5   Census Bureau's alternative proposal for producing

6   block-level CVAP data?

7   MR. GARDNER: Objection.   Calls for

8   information that's subject to deliberative process

9   privilege.   I instruct the witness not to answer.

10   MR. HO: Can I just ask you what decision

11   this deliberation went to, given that the

12   department had already at this point --

13   MR. GARDNER: Sure.

14   MR. HO: -- made the request?

15   MR. GARDNER: It's embedded in your

16   actual question about the consideration of

17   alternatives.

18   Remember, the deliberative process

19   privilege can apply even if no final decision is

20   made.

21   MR. HO: So this is not about the

22   decision to request the citizenship question.

 1   This is a separate deliberation --

 2   MR. GARDNER: Of course.

 3   MR. HO: -- about what, Josh?

 4   MR. GARDNER: About the alternatives that

 5   you just discussed with Mr. Gore that Mr. Gary

 6   raised.

 7   MR. HO: Well, what about the

 8   alternatives? What's the decision --

 9   MR. GARDNER: I'm not here to testify for

10   you. I am telling you -- you just asked him

11   questions about a proposal made by the Census

12   Bureau that Art Gary communicated to John Gore,

13   John Gore then discussed with the attorney

14   general, and you are now asking about these

15   substantive deliberative conversations about that

16   proposal.

17   MR. HO: I guess -- the proposal is a

18   topic.

19   MR. GARDNER: Yeah. And I --

20   MR. HO: What's the --

21   MR. GARDNER: And I allowed him to --

22   MR. HO: What's the decision, I guess,

1   that --

2   MR. GARDNER: Decision as to whether to

3   pursue that proposal.

4   MR. HO: Okay. That's what I just wanted

5   to clarify because --

6   MR. GARDNER: Yeah. Okay.

7   MR. HO: -- it wasn't clear to me.

8   MR. GARDNER: Sorry. I thought that was

9   clear. I apologize. Yeah, that's the decision.

10 BY MR. HO:

11   Q. Okay. So the conversation with the

12 attorney general included a discussion about

13 whether or not to pursue the Census Bureau's

14 proposal to produce block-level CVAP data for DOJ

15 for VRA enforcement purposes without including a

16 citizenship question, correct?

17   A. That is correct. And just to clarify, I

18 wasn't familiar with all the particulars of their

19 proposal.

20   Q. That's fine.

21   The decision was made not to pursue the

22 Census Bureau's alternative proposal for producing

1   block-level CVAP data for purposes of VRA

2   enforcement through a means other than including a

3   citizenship question on the census, correct?

4   A.   That is correct.

5   Q.   Who made that decision?

6   A.   The attorney general.

7   Q.   When was that decision made?

8   A.   Around this time. I don't know exactly

9   when it was made. I can't remember the specific

10   date.

11   Q.   When you say "around this time," you mean

12   around January of 2018, correct?

13   A.   That is correct.

14   Q.   Are the reasons for that decision

15   memorialized anywhere?

16   A.   Not to my knowledge.

17   Q.   Were those reasons ever communicated to

18   you?

19   A.   Yes.

20   Q.   What were those reasons?

21   MR. GARDNER: Objection. Calls for

22   information subject to deliberative process

1   privilege. I instruct the witness not to answer.

2   THE WITNESS: Consistent with that

3   instruction, I can't answer. But I do admire your

4   tenacity.

5   BY MR. HO:

6   Q. On the first page, the second e-mail

7   listed here is from Ron Jarmin to Art Gary on

8   January 26th, 2018 and reads, "Art, any chance of

9   meeting late next week? Thanks. Ron."

10   As of this date, it had not yet been

11   communicated to the Census Bureau that the --

12   whether or not the Department of Justice would

13   meet to discuss the Census Bureau's other proposal

14   for producing block-level CVAP data, correct?

15   A. I'm not sure I know the answer to that

16   question.

17   Q. Who informed Art Gary of the decision not

18   to meet with the Census Bureau to discuss their

19   alternative proposal for producing block-level

20   CVAP data?

21   A. I did.

22   Q. When did you inform Mr. Gary of that

1   decision?

2   A.   It would have been around this

3   January 29th date, I believe.   But I don't recall

4   specifically.

5   Q.   And who informed you that the Department

6   of Justice should not meet with the Census Bureau

7   to discuss the Census Bureau's alternative

8   proposal for producing block-level CVAP data?

9   A.   The attorney general.

10   Q.   You received this e-mail thread from

11   Arthur Gary, which includes the initial e-mail

12   from Dr. Jarmin describing the alternative

13   proposal for collecting CVAP data at higher

14   quality produced at lower cost on January 29th,

15   2018, correct?

16   A.   On this e-mail chain, that's correct.   I

17   don't know whether I received it before then or

18   not.   But yes, this e-mail -- the e-mail dated

19   January 29th, 2018, at 2:33 p.m., is the first

20   e-mail in this chain where Mr. Gary sent me that

21   information.

22   Q.   When you told Congress on May 21st, 2018,

1   that the decennial census questionnaire is the

2   most appropriate vehicle for collecting CVAP data

3   for purposes of VRA enforcement, you didn't

4   mention the fact that the Census Bureau director

5   had written to the Department of Justice to state

6   that Census Bureau staff had conducted an analysis

7   suggesting that there was an alternative way of

8   producing CVAP data for VRA enforcement purposes

9   that would result in higher quality data at lower

10 cost, correct?

11   A. Again, I don't have my testimony in front

12 of me. If you want me to read it, I can confirm

13 that for you. I don't remember exactly everything

14 that I did or did not say to Congress that day.

15   Q. You don't remember telling Congress --

16 when you said that the decennial census

17 questionnaire was the best vehicle for collecting

18 CVAP data, you don't remember telling Congress

19 that the Census Bureau conducted an analysis

20 suggesting that there was a way of producing

21 higher quality data at lower cost, right?

22   A. I believe you said before I characterized

1   it as the most appropriate vehicle; now you've

2   said it's the best vehicle. So I don't know which

3   word or combination of words I used before

4   Congress. I don't recall mentioning this

5   particular proposal because, by the time of my

6   testimony on May 21st, that was not the position

7   of the Census Bureau and the Commerce Department.

8   Secretary Ross had already issued his memo of

9   decision at that point where he had taken a hard

10   look at the various alternatives and had concluded

11   that the alternative he had chosen was the most

12   appropriate vehicle for collecting that data.

13   Q. You understand that the Census Bureau is

14   a discrete entity within the Commerce Department,

15   right?

16   A. Sure. I understand that. Just like

17   there are discrete entities within the Department

18   of Justice. But all of those entities ultimately

19   are led by the person at the top of the

20   department, which in this case, for the Census

21   Bureau and the Commerce Department, is

22   Secretary Ross.

1   Q.   Your understanding is that Secretary Ross

2   speaks for the Census Bureau?

3   A.   Yes. On this -- at least on this issue.

4   I understand that -- and again, I've not studied

5   the legal questions in this case, but it's my

6   understanding that the Secretary of Commerce has

7   the authority to determine which questions will

8   and will not be asked on the census questionnaire.

9   Q.   Do you have any reason to think that   601

10   Secretary Ross knows more about the accuracy of

11   various forms of CVAP data than the career

12   professionals at the Census Bureau?

13   MR. GARDNER: Objection.   Lack of

14   foundation.

15   THE WITNESS: I have no basis to answer

16   that question.

17   BY MR. HO:

18   Q.   You don't know one way or the other

19   whether or not Secretary Ross knows more about the

20   accuracy of various forms of CVAP data than the

21   career professionals who work with statistical

22   research and survey data at the Census Bureau?

1   MR. GARDNER: Same objection.

2   THE WITNESS: I don't know one way or the

3   other, and I don't know what Census Bureau staff

4   ultimately concluded since the e-mail said there

5   were suggestions made by particular findings.

6   It's my understanding that Secretary Ross

7   has the legal right and the legal authority to

8   make that determination on behalf of the Commerce

9   Department and the Census Bureau under the

10   relevant statutes that Congress has enacted.

11   BY MR. HO:

12   Q. So let's leave aside legal right and

13   legal authority and let's just talk about the

14   Census Bureau and what Dr. Jarmin represented in

15   this e-mail.

16   Just here today, you know that Dr. Jarmin

17   wrote to Arthur Gary and said Census Bureau staff

18   have looked at this issue, and their analysis

19   suggests that there's a way to get CVAP data for

20   DOJ that would produce higher quality data at

21   lower cost, and wanted to meet with DOJ about

22   that. You understand that, right?

1   A.   Yes, I believe I've testified that I

2   understand that.

3   Q.   Okay.   And when you told Congress that

4   the best vehicle -- or the most appropriate

5   vehicle for obtaining CVAP data was through the

6   decennial census questionnaire, you didn't mention

7   Dr. Jarmin's proposal, right?

8   MR. GARDNER: Objection.   Asked and

9   answered.

10   THE WITNESS: Again, I don't remember

11   exactly everything that I testified to on May

12   21st.   I'm happy to read that testimony now and

13   answer your question and verify -- or give you the

14   verification or confirmation that you seem to be

15   asking me for.

16   But no, I didn't mention this.   I didn't

17   mention everything about the decision or the issue

18   in that testimony to Congress.   I was asked

19   specific questions by congresspeople and gave

20   answers to the best of my ability and recollection

21   within the constraints that the Department of

22   Justice places on witnesses who testify before

1   Congress.

2   Moreover, all it says here is that there

3   were some career staff who made findings that

4   suggested a particular thing, not that they had

5   firmly reached that conclusion. And of course, as

6   I mentioned before, it's up to Secretary Ross to

7   make that determination as a matter of law, or at

8   least that's my understanding.

9   BY MR. HO:

10   Q. I mean, this isn't an e-mail from just a

11   random Census Bureau staffer. This is an e-mail

12   from the acting director of the Census Bureau,

13   correct?

14   MR. GARDNER: Objection. Argumentative.

15   THE WITNESS: I understand that

16   Dr. Jarmin was the acting director of the Census

17   Bureau, yes.

18   BY MR. HO:

19   Q. He is the acting director of the Census

20   Bureau today, right?

21   A. That, I don't know. But sure, he could

22   be.

1   Q.   Okay.   Are you satisfied that your

2   testimony to Congress, which omitted Dr. Jarmin's

3   proposal to meet with the DOJ to discuss the

4   Census Bureau's findings that there was a way to

5   produce higher quality data at lower cost aside

6   from the census [sic] question -- are you

7   satisfied that that was complete testimony to

8   Congress?

9   A.   Absolutely.   I -- I testified completely

10   and honestly to Congress on the matters that I was

11   in a position to testify on.

12   Q.   Your goal is to get the most complete and

13   accurate CVAP data from the Census Bureau, right?

14   A.   That would be the Department of Justice's

15   goal.   Yes.

16   Q.   And despite having that goal, you did

17   not -- and when I say "you," the Department of

18   Justice did not have a meeting of its technical

19   staff with the Census Bureau to discuss the Census

20   Bureau's proposal to get higher quality CVAP data

21   at lower cost, correct?

22   MR. GARDNER: Objection.   Asked and

1   answered.

2   THE WITNESS: I believe that's correct.

3   BY MR. HO:

4   Q.   Are you aware of any other circumstance

5   where the Department of Justice asked the Census

6   Bureau to collect data but then refused to have a

7   technical meeting to discuss that data request?

8   A.   I'm not aware of that, nor am I aware of

9   any instance where the Census Bureau has offered

10   that kind of meeting.

11   Q.   All right.

12   (Gore Deposition Exhibit 22 marked for

13   identification and attached to the

14   transcript.)

15   BY MR. HO:

16   Q.   This is marked as Exhibit 22.   It's an

17   e-mail from Ron Jarmin to Census Bureau personnel

18   in the administrative record with Bates number

19   9074.

20   In this e-mail, Dr. Jarmin is forwarding

21   to Census Bureau personnel an e-mail that he had

22   previously written on February 6th, 2018, to

1 Enrique Lamas and, it appears, Karen Dunn Kelley.

2   Do you see that?

3   A. I do see that.

4   Q. Dr. Jarmin writes to Ms. Kelley, "Karen,

5 I spoke with Jarmin is Gary. He has spoken with

6 DOJ leadership. They believe the letter

7 requesting citizenship be added to the 2020 census

8 fully describes their request. They do not want

9 to meet. Thanks, Ron."

10   Did I read that right?

11   A. Yes, you did.

12   Q. You're part of the DOJ leadership to whom

13 Art -- Arthur Gary spoke about a possible meeting

14 between the Census Bureau and DOJ, correct?

15   MR. GARDNER: Objection. Calls for

16 speculation. Lack of foundation.

17   THE WITNESS: I don't know who Jarmin is

18 Gary spoke to or who he was referring to. As I

19 testified previously, I did talk to him about this

20 issue.

21 BY MR. HO:

22   Q. Are you aware of anyone else speaking

1   with Arthur Gary about the decision over whether

2   or not to meet with Census Bureau personnel to

3   discuss their proposal to produce block-level CVAP

4   data without a citizenship question?

5   A.   I have no awareness on that one way or

6   the other.

7   Q.   Dr. Jarmin is correct that DOJ leadership

8   did not want to meet to discuss the technical

9   aspects of the citizenship question request,

10   correct?

11   A.   I'm sorry, can you repeat that question?

12   Q.   Dr. Jarmin was correct that DOJ

13   leadership did not want to have a technical

14   meeting to discuss DOJ's request for block-level

15   CVAP data, correct?

16   A.   I believe that's correct.

17   Q.   The reason you didn't want to have that

18   meeting is because it was more important to the

19   Department of Justice to get a citizenship

20   question on the 2020 census questionnaire than to

21   get accurate block-level CVAP data, correct?

22   MR. GARDNER: Objection. Calls for

 1 information subject to deliberative process

 2 privilege.

 3   To the extent you can answer that

 4 question without divulging privileged information,

 5 you may do so. Otherwise, I instruct you not to

 6 answer.

 7   THE WITNESS: Consistent with that

 8 instruction, the answer I can give is that

 9 Secretary Ross determined in his memo of decision

10 that the best possible way to proceed is the way

11 that he approved. And he specifically considered

12 and rejected an alternative that called for

13 comparing administrative records and other

14 information, survey data, already available to the

15 Census Bureau.

16   MR. HO: Well, I know we haven't been

17 going for all that long, I just drank a little too

18 much coffee. I apologize, but I think I need to

19 take a --

20   MR. GARDNER: You don't need to talk

21 about that on the record. It's okay.

22   MR. HO: I can talk about it more on the

1   record.

2   MR. GARDNER: Whatever you wish.

3   VIDEO TECHNICIAN: This concludes media

4   unit number 4.   The time on the video is 2:55 p.m.

5   We are off the record.

6   (A recess was taken.)

7   VIDEO TECHNICIAN: This begins media unit

8   number 5.   The time on the video is 3:16 p.m.   We

9   are on the record.

10   BY MR. HO:

11   Q.   Mr. Gore, as the head of the civil rights

12   division, you want the civil rights division to

13   have access to the most accurate CVAP data for

14   purposes of VRA enforcement, right?

15   A.   Right.

16   Q.   You would like it if technical staff from

17   the civil rights division could meet with the

18   Census Bureau to discuss what the Census Bureau

19   believes is the most accurate CVAP data for

20   purposes of VRA enforcement, right?

21   MR. GARDNER: Objection.   Form.

22   THE WITNESS: Again, I think you're

```
 1  asking me a hypothetical question.  And as I

 2  understand the Census Bureau's position, including

 3  from Secretary Ross' memo and Dr. Jarmin's own

 4  testimony to Congress on May 8th, they believe

 5  that the data that Secretary Ross has decided to

 6  provide and described in his memo of decision is

 7  the most appropriate data for responding to the

 8  DOJ request.

 9  BY MR. HO:

10       Q.  Wasn't my question.

11           My question was, you would like it --

12  given your desire for the Department of Justice to

13  have the most accurate CVAP data available, you

14  would like it if Department of Justice technical

15  staff could meet with the Census Bureau to learn

16  about the Census Bureau's views about the most

17  accurate CVAP data available, correct?

18           MR. GARDNER:  Objection.  Form.

19           THE WITNESS:  Yeah, I think that's a

20  hypothetical question, and the Census Bureau has

21  made its view known to us through Secretary Ross'

22  memo of decision and the testimony it provided to
```

1   Congress on May 8th.

2   BY MR. HO:

3   Q.   Well, before Secretary Ross' decision

4   memo -- that decision memo was in March of 2018,

5   correct?

6   A.   Sounds right.

7   Q.   Okay.   So before Secretary Ross' memo,

8   you didn't know what the Census Bureau's views

9   were about the most accurate form of CVAP data,

10 correct?

11   A.   That's probably correct.   Yeah.

12   Q.   Okay.   So before March of 2018, as

13 someone who wants the Department of Justice to

14 have the most accurate CVAP data for VRA

15 enforcement, you wanted to be able to have a

16 meeting of DOJ technical staff with the Census

17 Bureau to learn about the Census Bureau's views

18 about the most accurate CVAP data, correct?

19   MR. GARDNER: Objection.   Hypothetical.

20   THE WITNESS: That's a hypothetical.

21   MR. HO: It's not a hypothetical.

22

1 BY MR. HO:

2   Q.   There was a request from the Census

3 Bureau to meet with the Department of Justice

4 technical staff. And you wanted that meeting to

5 happen, right, Mr. Gore?

6   A.   I think you're asking me about my

7 deliberative process with respect to whether the

8 Department of Justice would consider alternatives

9 suggested by the Census Bureau or somebody else.

10   Q.   I'm not asking you about your process.

11 I'm just asking that, as the head of the civil

12 rights division and someone who wants the civil

13 rights division to have the most accurate CVAP

14 data possible, when the Census Bureau reached out

15 and said, let's have a meeting to talk about the

16 most accurate CVAP data, you wanted to have that

17 meeting, right?

18   MR. GARDNER: Yeah -- objection. That

19 does call for information subject to deliberative

20 process privilege.

21   To the extent you can answer that without

22 divulging privileged information, you may do so.

1 Otherwise, I instruct you not to answer.

2   THE WITNESS: Consistent with that

3 instruction, I can't answer.

4 BY MR. HO:

5   Q. When was the decision made not to have a

6 meeting with Census Bureau technical staff about

7 their proposal to provide CVAP data at the block

8 level without a citizenship question?

9   A. I believe it was made the day that

10 Mr. Gary communicated that decision back to the

11 Census Bureau.

12   Q. Well, you testified earlier that the

13 decision not to hold that meeting was made by

14 Attorney General Sessions, right?

15   A. That's correct.

16   Q. When did Attorney General Sessions make

17 the decision not to have that meeting?

18   A. I don't know when he made that decision.

19   Q. Did he make that decision during your

20 meeting with him?

21   A. I don't know when he made that decision.

22   Q. Was that meeting made before -- sorry.

1   Was that decision made before your

2   meeting with him to talk about the proposed

3   meeting with the Census Bureau?

4   A.   I don't know.

5   Q.   When was it communicated to you not to

6   have a meeting with the Census Bureau to discuss

7   their proposal?

8   A.   I don't remember the precise date.

9   Q.   During your meeting with the attorney

10   general, was it communicated to you not to have

11   the meeting with the Census Bureau?

12   MR. GARDNER: Objection.   Calls for

13   information subject to deliberative process

14   privilege.

15   To the extent you can answer without

16   divulging privileged information, you may do so.

17   Otherwise, I instruct you not to answer.

18   THE WITNESS: Consistent with that

19   instruction, I can't answer.

20   BY MR. HO:

21   Q.   So just to be clear, your testimony is

22   that the meeting that you had with the attorney

1 general, that was pre-decisional, that the

2 decision not to meet with the Census Bureau hadn't

3 been made yet at that point, correct?

4   A.   That is correct.

5   Q.   And the decision wasn't made at some

6 point during the meeting so that some portion of

7 the meeting became post-decisional, correct?

8   A.   That is correct.

9   Q.   All right. I want to show you a

10 document.

11   (Gore Deposition Exhibit 23 marked for

12   identification and attached to the

13   transcript.)

14 BY MR. HO:

15   Q.   This was produced to us by the Department

16 of Justice. It's the fourth privilege log from

17 the Department of Justice in response to our

18 document subpoenas in this case. It's dated

19 October 3rd, 2018. And I want to ask you a

20 question about an entry on page 49 of the

21 document.

22   The second-to-last entry on this page is

1   entry number 694. It refers to a document with

2   the Bates number DOJ 30395.

3   Do you see that?

4   A.   I do.

5   Q.   The description of this document is that

6   it is an e-mail from Brett Shumate to you dated

7   March 25th, 2018, correct?

8   A.   Yes.

9   Q.   And the description of this document

10 reads, "E-mail among DOJ attorneys discussed and

11 providing legal advice on a draft of Commerce's

12 decision memo concerning the reinstatement of a

13 citizenship question on the census. The e-mail

14 includes attorneys' thoughts and mental

15 impressions concerning anticipated litigation and

16 would reveal deliberative material that pre-dates

17 Commerce's final decision memo."

18   Did I read that right?

19   A.   Yes.

20   Q.   Okay. So it's correct that you received

21 a draft of Commerce's decision memo before the

22 final memo became public, correct?

1   A.   That appears to be correct.   Yes.

2   Q.   You don't remember receiving a draft of

3   Secretary Ross' decision memo directing the

4   inclusion of a citizenship question from

5   Mr. Shumate?

6   A.   No, I do recall that.   I was saying it

7   appears to be correct based on the information you

8   just read.

9   Q.   Okay.   Did you discuss or provide to

10   Mr. Shumate legal advice on a draft of Commerce's

11   decision memo concerning a citizenship question on

12   the census?

13   A.   Yes.

14   Q.   Did Mr. Shumate share with you his

15   thoughts or mental impressions concerning

16   anticipated litigation over the citizenship

17   question?

18   A.   Yes, I believe he did.

19   Q.   Did you share with Mr. Shumate any

20   thoughts or mental impressions concerning

21   anticipated litigation over the citizenship

22   question?

 1   A.   Yes, I did.

 2   Q.   Now, you testified to Congress you're not

 3   involved in the litigation over the citizenship

 4   question, correct?

 5   A.   I testified that that litigation is being

 6   handled by the civil division.   That's correct.

 7   Q.   Were you and Mr. Shumate engaged in

 8   deliberations over whether to include a

 9   citizenship question in the census?

10   MR. GARDNER: Objection.   Form.   Also

11   objection to the extent that question calls for

12   the disclosure of information subject to

13   deliberative process privilege.

14   To the extent you can answer that

15   question without divulging that, you may.

16   To the extent you want to re-ask the

17   question in a different way, that might make

18   sense, too.

19   BY MR. HO:

20   Q.   Were you involved in deliberations over

21   the decision over whether or not to include a

22   citizenship question on the census?

1   A.   I'm not sure I understand the question.

2 Do you have a time frame? I think --

3   Q.   Around the time of this e-mail.

4   A.   Oh.

5   Q.   March 25th, 2018.

6   A.   I'm not quite sure how to answer that

7 question. I think the description in the

8 privilege log describes what my involvement was at

9 that point.

10   Q.   How long were you aware of the existence

11 of a draft of Secretary Ross' decision memo before

12 it became public?

13   A.   I don't recall the date it was published

14 and became public, the final memo. And I don't

15 recall the first date on which I became aware that

16 a draft existed.

17   Q.   All right. I'm going to show you another

18 document.

19   (Gore Deposition Exhibit 24 marked for

20   identification and attached to the

21   transcript.)

22

1 BY MR. HO:

2   Q. This is Exhibit 24. The document and the

3 attachment.

4   MR. GARDNER: Which one do you want to be

5 24 and which do you want to be 25?

6   MR. HO: We'll make the e-mail 24 and the

7 attached draft letter 25.

8   (Gore Deposition Exhibit 25 marked for

9   identification and attached to the

10   transcript.)

11 BY MR. HO:

12   Q. So 24 is an e-mail from Mr. Aguinaga to

13 you dated June 13th, 2018, correct?

14   A. Yes.

15   Q. And it makes reference to attachments of

16 draft responses to members of Congress, correct?

17   A. I believe that's correct.

18   Q. Okay. Exhibit 25 is a draft letter to

19 Congresswoman Carolyn Maloney. Do you see that?

20   A. Yes.

21   Q. Okay. And I want to ask you about the

22 draft letter, specifically, the second paragraph,

1   the second sentence.

2   Before the red-line, that sentence

3   appears to read, "As you noted, the department

4   sent a letter to the Census Bureau asking that the

5   Census Bureau reinstate a question regarding

6   citizenship on the 2020 census questionnaire in an

7   effort to obtain accurate data needed to protect

8   against racial discrimination in voting."

9   Does that appear correct to you?

10   A.   That appears to be correct, yes.

11   Q.   It was revised to read, "As you noted,

12   the department sent a letter to the Census Bureau

13   asking the Census Bureau -- asking that the Census

14   Bureau reinstate a question regarding citizenship

15   on the 2020 census questionnaire in an effort to

16   obtain the most accurate data to protect against

17   racial discrimination in voting" with the

18   word "needed" struck out, correct?

19   A.   That appears to be correct.

20   Q.   Okay. The comment bubble reads, "This

21   edit is designed conform to the original JMD

22   letter, which did not say the data was necessary,

1 but did indicate it would assist our enforcement

2 efforts. John's note to CIV specifically noted

3 that the letter did not say the data

4 was 'necessary,' and I think we should avoid that

5 term."

6   Did I read that right?

7   A. Yes, you did.

8   Q. Okay. So is it correct, as this comment

9 notes, that the December 12 letter requesting a

10 citizenship question be added to the census did

11 not say that it was necessary to collect CVAP data

12 through the census questionnaire for VRA

13 enforcement?

14   A. That is correct.

15   Q. And as the comment bubble indicates, you,

16 Mr. Gore, have at some point specifically noted

17 that the letter did not use the word "necessary"

18 with respect to collecting CVAP data through the

19 census questionnaire, correct?

20   A. That is what the comment says. Correct.

21   Q. And you -- my question was, you,

22 yourself, have specifically noted that the

1   December 12 letter, the Gary letter, did not use

2   the word "necessary" with respect to the inclusion

3   of a citizenship question on the 2020 census,

4   correct?

5   A.   Yes, I have just noted that in my

6   testimony.   I will say I don't know -- I have no

7   recollection of what this comment is referring to.

8   Q.   You agree, right, Mr. Gore, that CVAP

9   data collected through the census questionnaire is

10   not necessary for DOJ's VRA enforcement efforts?

11   A.   I do agree with that.   Yes.

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

13   We'll mark this as 26 and 27.

14   (Gore Deposition Exhibits 26 and 27

15   marked for identification and attached to

16   the transcript.)

17   BY MR. HO:

18   Q.   26 is an e-mail from Mr. Aguinaga to you

19   dated June 12th, 2018, correct?

20   A.   Yes, it is.

21   Q.   And the subject is, QFR responses,

22   correct?

1   A.   That is correct.

2   Q.   And there's an attachment of 2020 census

3   hearing Gore QFRs CRT draft, correct?

4   A.   Correct.

5   Q.   Exhibit 27 has draft responses from you

6   to questions posed by Congressman Jimmy Gomez,

7   correct?

8   A.   Yes, that's correct.

9   Q.   The second answer on Exhibit 27 -- or the

10   second question and answer on Exhibit 27 read, "To

11   Mr. Gore: Is the DOJ and Attorney

12   General Sessions still in agreement with that

13   opinion? Is there any provision of any law that

14   may compel census to disclose confidential census

15   data for law enforcement or national security

16   purposes?"

17   And the response, as drafted, reads, "No

18   one should have to fear responding to the census

19   questionnaire or to a citizenship question if, in

20   fact, it is included. To that end, the department

21   is committed to abiding by all laws protecting the

22   confidentiality and non-disclosure of such

1   responses."

2   Did I read that right?

3   A.   Yes.

4   Q.   If we look back at Exhibit 26,

5   Mr. Aguinaga's e-mail to you, the fourth sentence

6   in his e-mail, beginning with the second draft

7   answer at the end of the second line, it reads,

8   "The second draft answer does not directly address

9   the question because the question asks whether the

10   department agrees with the 2010 OLC opinion and

11   whether any law compels the disclosure of

12   confidential questionnaire responses. I don't

13   think we want to say too much there in case the

14   issues addressed in the OLC opinion or related

15   issues come up later for renewed debate."

16   Did I read Mr. Aguinaga's words

17   correctly?

18   A.   Yes.

19   Q.   Okay. I'm going to show you a document

20   which we'll mark as Exhibit 28.

21

22

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 1                (Gore Deposition Exhibit 28 marked for

 2                identification and attached to the

 3                transcript.)

 4    BY MR. HO:

 5         Q.   This is a Department of Justice Office of

 6    Legal Counsel opinion dated January 4th, 2010,

 7    titled, Census confidentiality and the

 8    Patriot Act.

 9              Does that appear correct to you?

10         A.   One moment.

11              Yes, that appears correct.

12         Q.   When Mr. Aguinaga, in his e-mail,

13    referenced a 2010 OLC opinion concerning whether

14    any law compels the disclosure of confidential

15    questionnaire responses, he's referring to this

16    OLC memo, census confidentiality and the

17    Patriot Act, Exhibit 28, correct?

18              MR. GARDNER:   Objection.  Calls for

19    speculation.

20              THE WITNESS:   I'm not sure what he was

21    referring to.  I don't know.

22
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 1 BY MR. HO:

 2   Q. Are you aware of any other 2010 OLC

 3 opinion besides Exhibit 28 that deals with the

 4 confidentiality of census responses?

 5   A. No.

 6   MR. GARDNER: Objection. Lack of

 7 foundation.

 8 BY MR. HO:

 9   Q. The opening paragraph of this memo --

10 or -- I'm sorry. The last line of the opening

11 paragraph of this memo reads, "We have identified

12 no provision of the Patriot Act that would compel

13 the Secretary to disclose such protected

14 information."

15   Did I read that right?

16   A. Yes.

17   Q. Have you seen this OLC memo before?

18   A. I believe I have once before. Yes.

19   Q. And it's your understanding that this

20 2010 OLC opinion states that there's no provision

21 of the Patriot Act that would compel the Secretary

22 of Commerce to disclose census information to

1 federal law enforcement, correct?

2   A.   That is correct.   That's the sentence

3 that you just read.

4   Q.   Okay.   As Mr. Aguinaga notes, your draft

5 answer to Congressman Gomez does not directly

6 address this question, correct?

7   A.   That was his characterization, yeah.

8   Q.   Do you agree with his characterization

9 that it does not -- as drafted, that response --

10 directly address the question of whether or not

11 the Patriot Act would compel disclosure of

12 otherwise confidential census information?

13   A.   I -- I think it's responsive to the

14 extent that the second question is asking about

15 disclosure of confidential census data.   It's a

16 two-part question propounded by Congressman Gomez.

17   Q.   I know that it's responsive.   I didn't

18 dispute that.

19   A.   I see.

20   Q.   My question was whether or not you agreed

21 with Mr. Aguinaga's characterization that the

22 response, as drafted, does not directly address

1 this issue.

2   A. Yeah. That appears to be correct. The

3 question is about whether the department and the

4 attorney general agree with that opinion.

5   Q. Mr. Aguinaga also said, "I don't think we

6 want to say too much there."

7   Do you agree with that, that you don't

8 want to say too much in response to this question?

9   MR. GARDNER: Objection. Form.

10   THE WITNESS: I'm not sure what

11 Mr. Aguinaga meant by that or what his reasons

12 were for that other than what he says in the rest

13 of the sentence, which you didn't read: "In case

14 the issues addressed in the OLC opinion or related

15 issues come up later for renewed debate."

16   And so I believe that what he was saying

17 was that there was no need to commit the

18 department to a position on that, given that the

19 department might have to revisit that issue at a

20 later time.

21 BY MR. HO:

22   Q. Okay. So let me just ask you about what

1 you just said there.

2   You didn't want to commit too much about

3 the department's position in case the department

4 might, at a later time, revisit whether or not the

5 Patriot Act compels the disclosure of otherwise

6 confidential census information, right?

7   A. I think -- well, it could be that or some

8 other issue. I don't know what other issues might

9 be implicated, but I think it's routine for the

10 Department of Justice not to overcommit on

11 particular legal questions that it may need to

12 revisit in light of new facts or legal

13 understanding.

14   Q. Well, you agree that when the Office of

15 Legal Counsel issues an opinion, the department is

16 committed on that opinion, correct?

17   A. Yes.

18   Q. Okay. So the department has already

19 committed, pursuant to this memo, to the opinion

20 that the Patriot Act does not compel the

21 disclosure of otherwise confidential census

22 information, correct?

1   A.   That would be true as a matter of the

2 department as an institution.   But that commitment

3 could be revisited at a later time.

4   Q.   Okay.   So you testimony is that this

5 administration might revisit the opinion as to

6 whether or not the Patriot Act compels disclosure

7 of otherwise confidential census responses to

8 federal law enforcement, correct?

9   MR. GARDNER: Objection.

10 Mischaracterizes the witness' prior testimony.

11   THE WITNESS: It does mischaracterize my

12 testimony.   No, that's not my testimony.   And

13 you've just asked me a hypothetical, and I won't

14 engage in a hypothetical.

15 BY MR. HO:

16   Q.   But the reason why, as Mr. Aguinaga put

17 it, your answer does not directly -- the proposed

18 draft does not directly answer Congressman Gomez's

19 question and that you don't want to say too much

20 about this issue is because there's a possibility

21 that the administration might abandon the view

22 that the Patriot Act does not compel the

 1 disclosure of otherwise confidential census

 2 information, correct?

 3   MR. GARDNER: Objection. Lack of

 4 foundation. Calls for speculation.

 5   THE WITNESS: And is a

 6 mischaracterization of what Mr. Aguinaga

 7 read [sic]. He didn't say anything about this

 8 administration. He just said, "In case the issues

 9 addressed in the OLC opinion or related issues

10 come up later for renewed debate."

11   That wouldn't necessarily have to be

12 during this administration. It wouldn't even

13 necessarily have to be at the Department of

14 Justice. It's an issue that could be litigated in

15 court. It's an issue that could be raised in

16 Congress. There are all kinds of ways that issue

17 could arise again.

18   So to the extent you're suggesting that

19 Mr. Aguinaga said anything about what this

20 administration would do, that's flatly

21 inconsistent with the actual words on the page.

22

 1 BY MR. HO:

 2   Q. Is it your understanding that this

 3 administration will not reconsider the view that

 4 the Patriot Act does not compel disclosure of

 5 otherwise confidential census information?

 6   MR. GARDNER: Objection to the extent it

 7 calls for the disclosure of information subject to

 8 deliberative process privilege.

 9   To the extent you can answer that

10 question without divulging such information, you

11 may do so. Otherwise, I instruct you not to

12 answer.

13   THE WITNESS: Consistent with that

14 instruction, I can't answer.

15 BY MR. HO:

16   Q. So you've been involved in conversations

17 about whether or not the administration might

18 abandon the view that the Patriot Act does not

19 compel the disclosure of otherwise confidential

20 census information?

21   MR. GARDNER: Same objection. Same

22 instruction.

1   THE WITNESS: Consistent with that

2   instruction, the answer I will provide is, no, I

3   have not been involved in those conversations.

4   MR. HO: Okay. But, I mean, deliberative

5   process is what you're asserting here?

6   MR. GARDNER: Yes.

7   BY MR. HO:

8   Q. Okay. So there are deliberations

9   occurring right now about whether or not to

10   abandon the position that the Patriot Act does not

11   compel the disclosure of otherwise confidential

12   census information?

13   MR. GARDNER: Same objection. Same

14   instruction.

15   THE WITNESS: No, that's not my

16   testimony. And I am not aware of any such

17   deliberations or conversations.

18   (Gore Deposition Exhibit 29 marked for

19   identification and attached to the

20   transcript.)

21   BY MR. HO:

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

1   as 28.

2   MR. GARDNER: 29.

3   MR. HO: 29.   And let's do 30 as well.

4   (Gore Deposition Exhibit 30 marked for

5   identification and attached to the

6   transcript.)

7   MR. GARDNER: Is the e-mail 29?

8   MR. HO: E-mail is 29.   Article is 30.

9   BY MR. HO:

10   Q.   Exhibit 29 is a January 3rd e-mail from

11   Chris Herren to you, correct, Mr. Gore?

12   A.   That is correct.

13   Q.   Okay.   And it appears to indicate that

14   you read it on January 3rd, 2018, at 12:18 p.m.,

15   correct?

16   A.   That is correct.

17   Q.   And Mr. Herren is forwarding you a link

18   to a New York Times article, correct?

19   A.   That appears to be correct.

20   Q.   Okay.   The New York Times article is

21   Exhibit 30.   As you can see, the URL at the bottom

22   left-hand corner matches up with the URL that

1 Mr. Herren forwarded to you.

2   Do you see that?

3   A. Yes.

4   Q. Okay. The title of this article is,

5 "Critics say questions about citizenship could

6 wreck chances for an accurate census," correct?

7   A. That is correct.

8   Q. The first sentence of the article reads,

9 "A request by the Justice Department to ask people

10 about their citizenship status in the 2020 census

11 is stirring a broad backlash from census experts

12 and others who say the move could wreck chances

13 for an accurate count of the population and, by

14 extension, a fair redistricting of the House and

15 State legislatures the next decade."

16   Did I read that right?

17   A. Yes, you did.

18   Q. Okay. The fourth paragraph down reads,

19 "'I can think of no action the administration

20 could take that would be more damaging to the

21 accuracy of the 2020 census than to add a question

22 on citizenship,' Terri Ann Lowenthal, a consultant

1   and leading private expert on census issues, said

2   in an interview. 'It would completely pull the

3   rug out from under efforts to have everyone

4   participate in the census as the Constitution

5   envisions.'"

6   Did I read that right?

7   A. Yes, you did.

8   Q. You received this e-mail containing this

9   link on January 3rd, right?

10   A. That appears to be correct.

11   Q. And that's before Arthur Gary forwarded

12   to you the e-mail thread between him and

13   Dr. Jarmin in which Dr. Jarmin requested to have a

14   meeting about the Census Bureau's proposal to

15   obtain CVAP data from a source other than the

16   decennial census questionnaire, correct?

17   A. That is correct.

18   Q. I'm going to show you documents that I'm

19   marking as 31 and 32 -- it's just document 31. My

20   apologies.

21

22

1   (Gore Deposition Exhibit 31 marked for

2   identification and attached to the

3   transcript.)

4   BY MR. HO:

5   Q.   This is an e-mail from Arthur Gary to

6   Sarah Flores and other people. And you have a cc

7   on this, correct?

8   A.   Yes, that is correct.

9   Q.   And it's dated January 30th, 2018,

10 correct?

11   A.   That appears to be correct.

12   Q.   Mr. Gary writes, "Greetings, Sarah and

13 Ian. I received the attached letter from members

14 of Commerce's census advisory board."

15   If you turn to the third page of this

16 document, there's a letter addressed to the

17 attorney general signed by, among other people,

18 Barbara Anderson of the University of Michigan.

19   Do you see that?

20   A.   Yes, I do.

21   Q.   And it's dated December 9th, 2018.

22   Do you see that?

1   A.   Yes, I do.

2   Q.   Okay.   The first paragraph of this letter

3   reads, "We are sending this e-mail in response to

4   the letter of December 12th, 2017, from Arthur E.

5   Gary of the Department of Justice to the Census

6   Bureau, which requested that citizenship be

7   included as an item on the 2020 census. We are

8   members of the census scientific advisory

9   committee, a congressionally mandated committee

10 which advises the Census Bureau on all scientific

11 matters."

12   Did I read that right?

13   A.   Yes.

14   Q.   Okay.   Looks like the date on this must

15 be wrong, since December 9th, 2018, hasn't

16 happened, unless it came from the future.

17   A.   I was just thinking the same thing. Go

18 ahead.

19   Q.   Okay.   The second paragraph, first

20 sentence, reads, "We hold the strong opinion that

21 including citizenship on the 2020 census would be

22 a serious mistake which would result in a

1 substantial lowering of the response rate."

2   Do you see that?

3   A. Yes.

4   Q. Now, Mr. Gore, when you testified in

5 Congress that you were not aware of any analysis

6 that the citizenship question would reduce

7 response rates to the census, you didn't mention

8 the fact that you had received multiple e-mails

9 from -- one from Chris Herren and at least one

10 from Arthur Gary that referenced analyses

11 indicating that the inclusion of a citizenship

12 question would reduce response rates, correct?

13   MR. GARDNER: Objection.

14 Mischaracterizes the documents.

15   THE WITNESS: That, again, is a gross

16 mischaracterization of this document. This

17 document doesn't contain any analysis on that

18 question. It simply conveys that the authors of

19 the document purport to hold the opinion that

20 there would be a certain result.

21   Moreover, the New York Times article

22 doesn't contain any analysis. It contains quotes

1 from people who hold a particular view or opinion,

2 but there's no analysis or data on that question.

3 Secretary Ross, when he took a hard look

4 at this, from what I understand based on the

5 publicly available memo of decision, didn't find

6 any empirical evidence to support that view,

7 claim, or opinion.

8 So this is not an analysis of that issue.

9 BY MR. HO:

10 Q. Okay. So as of the date of your

11 testimony in Congress, you were aware that people

12 had the opinion that the citizenship question

13 would reduce response rates, right?

14 A. Yes.

15 Q. Okay. But you're saying the reason you

16 didn't mention that is because you believe that

17 was an opinion but not analysis, correct?

18 MR. GARDNER: Objection.

19 Mischaracterizes the witness' testimony.

20 THE WITNESS: I believe the -- and again,

21 I don't have the testimony in front of me. I'm

22 happy to look back at the transcript. I believe I

 1 was asked if I was aware of an analysis. And no,

 2 I was not aware of an analysis. Of course I was

 3 aware that certain people had taken the position

 4 or espoused the opinion or the view that reduction

 5 in response rates might occur. But again, that

 6 was an issue for the Secretary of Commerce

 7 ultimately to make a judgment call about. And he

 8 made that judgment in his publicly available memo

 9 of decision that he didn't think there was any

10 empirical evidence to support that claim and that,

11 in fact, some people who made that claim conceded

12 that there was no such empirical evidence.

13   Q. I'm going to show you a document marked

14 as Exhibit 32.

15   (Gore Deposition Exhibit 32 marked for

16   identification and attached to the

17   transcript.)

18 BY MR. HO:

19   Q. This is a January 19th, 2018, memo

20 drafted by -- from Dr. John Abowd, chief scientist

21 of the Census Bureau, addressed to Secretary Ross.

22   Do you see that?

1   A. Yes, I do.

2   Q. Okay. This is a document from the

3 administrative record. The first page is Bates

4 number 1277.

5   You're familiar with this document?

6   A. No, I'm not.

7   Q. You've never seen this document before?

8   A. No, I don't believe I have.

9   Q. The fifth page of this document, Bates

10 number 1281, the first paragraph, last sentence,

11 about four lines from the bottom, reads, "It is,

12 therefore, a reasonable inference that a question

13 on citizenship would lead to some decline in

14 overall self-response because it would make the

15 2020 census modestly more burdensome in the direct

16 sense, and potentially much more burdensome in the

17 indirect sense, that it would need to a larger

18 decline in self-response for non-citizen

19 households."

20   Did I read that right?

21   A. Yes, you did.

22   Q. Okay. So before I read that to you, you

1 were not aware that the chief scientist of the

2 Census Bureau had opined, based on an analysis of

3 ACS data, that the inclusion of a citizenship

4 question would lead to a larger decline in

5 self-response for non-citizen households?

6   MR. GARDNER: Objection. Lack of

7 foundation.

8   THE WITNESS: That is -- I'm not sure

9 you've correctly characterized this statement.

10 But no, I was not aware of this statement until

11 just now.

12 BY MR. HO:

13   Q. Okay. So --

14   A. Or of the fact that Mr. -- I'm sorry. Is

15 it Dr. Abowd? Mr. Abowd. I'm not sure. I've

16 never met him.

17   Q. Abowd.

18   A. Abowd, thank you.

19   -- had espoused that view.

20   Q. So you're not aware that the Census

21 Bureau has conducted an analysis of ACS response

22 rates and, based on that analysis, has concluded

1 that the inclusion of a citizenship question on

2 the 2020 census is likely to reduce response rates

3 amongst non-citizen households?

4   A. I was not aware of this until today,

5 until you handed me this document.

6   Q. As the head of the civil rights bureau

7 [sic] and someone who depends upon accurate census

8 data for your work, does it concern you that the

9 Census Bureau has conducted an analysis indicating

10 that the inclusion of a citizenship question on

11 the 2020 census is going to lower response rates

12 amongst non-citizen households?

13   MR. GARDNER: Objection. Lack of

14 foundation. Also, objection. Mischaracterizes

15 the document.

16   THE WITNESS: The ultimate judgment as to

17 whether to include the citizenship question is one

18 for Secretary Ross and -- let me finish, because

19 you've asked me a question, and I've allowed you

20 to ask your question; now I'm going to answer

21 it -- and I understand that he made the

22 determination that there was no empirical evidence

1   to support that and that it was his judgment that

2   this citizenship question should be reinstated on

3   the census.

4   That's not a question for the Department

5   of Justice. That's a question for the Census

6   Bureau, the Department of Commerce, and

7   ultimately, Secretary Ross.

8   BY MR. HO:

9   Q. So my question wasn't about who makes the

10   ultimate judgment about -- to include a

11   citizenship question. My question was -- and let

12   me break it up.

13   A. Okay.

14   Q. You're the head of the civil rights

15   division, and the work of the civil rights

16   division depends in part upon having accurate

17   census data, correct?

18   A. We want to have the most complete and

19   accurate data we can have. That's correct.

20   Q. And you understand that if the response

21   rate to the census goes down, that that's going to

22   harm the accuracy of the census, right?

1   A.   Compared to a hypothetical in which the

2   response rate wasn't reduced?

3   Q.   Correct.

4   A.   Sure. That sounds right.

5   Q.   Okay. So --

6   A.   Potentially. Yeah.

7   Q.   -- if the chief scientist of the Census

8   Bureau has conducted an analysis that you've never

9   seen before and you're learning about today --

10   A.   Uh-huh.

11   Q.   -- which indicates that the inclusion of

12   a citizenship question on the census questionnaire

13   is going to reduce response rates in the best

14   judgment of the Census Bureau, does that concern

15   you?

16   MR. GARDNER: Objection.

17   Mischaracterizes Exhibit 32.

18   THE WITNESS: I haven't reviewed

19   Exhibit 32, so I don't know exactly what it says.

20   And so I can't answer your question.

21   BY MR. HO:

22   Q.   As I've represented Exhibit 32 to you,

1 that the chief scientist of the Census Bureau has

2 opined that, in the best analysis of the Census

3 Bureau, the inclusion of a citizenship question is

4 likely to reduce the response rate to the

5 questionnaire, the census questionnaire, the

6 self-response rate -- do you understand what I've

7 just represented to you?

8   A. I believe so. Yes.

9   Q. Okay. Based on that representation, are

10 you concerned, as the head of the civil rights

11 division, about what effect the inclusion of the

12 citizenship question might have on the accuracy of

13 the data that your department relies on?

14   MR. GARDNER: Objection.

15 Mischaracterizes Exhibit 32.

16   THE WITNESS: I can't speak to whether

17 that's an accurate characterization of Exhibit 32.

18 And I don't have enough information, as I sit here

19 today, having not read this document or studied

20 other facts and information that might be

21 available on the issue, to form a view about it

22 one way or the other.

1 BY MR. HO:

2   Q. I'm not actually talking about

3 Exhibit 32.

4   The chief scientist of the Census Bureau,

5 I'm representing to you, has given deposition

6 testimony in this litigation stating that the

7 analysis conducted by the Census Bureau indicates

8 that the best quantitative evidence that's

9 available to the Census Bureau at present suggests

10 to the Census Bureau and leads the Census Bureau

11 to conclude that the inclusion of a citizenship

12 question is likely to reduce self-response rates

13 to the census questionnaire.

14   Do you understand the representation that

15 I've just made to you?

16   A. I do. I can't verify whether it's

17 accurate, since I'm not familiar with that

18 deposition testimony.

19   Q. That's fine. But assuming that it is,

20 does that concern you about the inclusion of a

21 citizenship question on the census, given that the

22 department that you run relies upon accurate

1 census data?

2   MR. GARDNER: Objection. Misrepresents

3 Dr. Abowd's previous testimony.

4   THE WITNESS: Again, I can't engage in a

5 hypothetical on that. I don't know all the facts.

6 For example, you're talking about a reduction of a

7 response rate on the census, but I don't know how

8 that would -- how that would affect the

9 reliability of the census compared to the

10 reliability of the ACS.

11   There's a lot of facts and information

12 here that I just don't know, so I can't come to a

13 conclusion or make a view on that one way or the

14 other.

15 BY MR. HO:

16   Q. Do you plan on having any conversations

17 with the Census Bureau -- and when I say "you," I

18 mean the civil rights division -- about the

19 accuracy of census information once the

20 citizenship question is included?

21   A. Again, that's a hypothetical about what's

22 going to happen in the future. I will say that I

1   would expect --

2   Q. It's actually a question about your

3   current intentions.

4   A. My current intentions. I would expect

5   that conversations like that could occur. Sure.

6   Q. Are there any planned meetings between

7   the civil rights division and the Census Bureau

8   about the effect that the citizenship question on

9   the 2020 census is going to have on the accuracy

10   of census data?

11   A. I'm not aware of any such meetings, nor

12   do I know whether any such meetings would be

13   productive at this point, since the 2020 census

14   hasn't yet been conducted and nobody knows what

15   the effect of the citizenship question on that

16   particular census will be.

17   Q. Mr. Gore, are you aware of any other

18   circumstance in which the Department of Commerce

19   has reached out to the Department of Justice to

20   see if the Department of Justice would request

21   data from the Census Bureau?

22   A. I'm not aware of any other such instance,

1   no.

2   MR. HO: Can we go off the record?

3   VIDEO TECHNICIAN: We are going off the

4   record. The time on the video is 3:57 p.m.

5   (A recess was taken.)

6   VIDEO TECHNICIAN: This begins media unit

7   number 6. The time on the video is 4:15 p.m. We

8   are on the record.

9   BY MR. HO:

10   Q. Mr. Gore, just to circle back on

11   something we talked about earlier, when Attorney

12   General Sessions made the decision for there not

13   to be a meeting between DOJ technical staff and

14   the Census Bureau, at that time, Secretary Ross

15   had not yet issued his decision memo directing the

16   inclusion of a citizenship question on the census,

17   correct?

18   A. That is correct.

19   Q. So it's accurate to say, since that

20   decision memo had not yet been issued, that that

21   decision memo did not play any role in the

22   decision that was made not to have a meeting

1   between Census Bureau and technical staff,

2   correct?

3   A.   That is -- I believe that's correct.

4   Yes.

5   Q.   Okay.

6   (Gore Deposition Exhibits 33 and 34

7   marked for identification and attached to

8   the transcript.)

9   BY MR. HO:

10   Q.   I just want to show you two more

11   documents that have been marked as Exhibits 33 and

12   34.

13   33 is an e-mail from Ben Aguinaga to you

14   and Prim Escalona dated April 6th, 2018, correct?

15   A.   Are you referring to the e-mail at the

16   top of the page?

17   Q.   Correct.

18   A.   Yes, that's correct.

19   Q.   It's a thread, but the top e-mail is from

20   Ben Aguinaga to you and someone else dated

21   April 6th, 2018, correct?

22   A.   That is correct.

1   Q. Okay. And there are various attachments

2 to this e-mail, one of which is census citizenship

3 question briefing paper, correct?

4   A. That is correct.

5   Q. Okay. And if you look at Exhibit 34,   802

6 it's a document titled, Census citizenship

7 question.

8   This is the briefing paper that was

9 attached to that e-mail, correct?

10   A. I can't verify that for sure, but --

11   Q. Does it appear to be?

12   A. It appears to be -- yes, it appears to be

13 a briefing paper on that topic.

14   Q. Okay. And the subject is, AG prep for

15 CJS Approps. hearing, correct?

16   A. That is correct.

17   Q. Okay. So this citizenship -- census

18 citizenship question briefing paper, Exhibit 34,

19 it's for the attorney general, correct?

20   A. That is correct.

21   Q. Okay. Exhibit 34, at the top, the first

22 bullet under the section background reads, "Not

802

1   public. In 2017, Secretary of Commerce Wilbur

2   Ross requested that the Justice Department send a

3   letter requesting the addition of a citizenship

4   question on the 2020 census."

802/

5   Is that statement accurate, as far as you

601

6   know?

7   MR. GARDNER: Objection. Lack of

8   foundation.

9   THE WITNESS: As far as I know, yes.

10   BY MR. HO:

11   Q. And when in 2017, if you know, did

12   Secretary of Commerce Wilbur Ross request that the

13   Justice Department send a letter requesting the

14   addition of a citizenship question?

15   A. I don't know.

16   Q. And it's correct that, as of the date of

17   this e-mail, April 6th, 2018, the fact that

18   Secretary of Commerce Ross requested that the

19   Justice Department send a letter requesting the

20   addition of a citizenship question was not public,

21   correct?

22   MR. GARDNER: Objection. Lack of

1 foundation.

2 THE WITNESS: I believe that was -- I

3 believe that's correct. I don't remember for

4 sure.

5 BY MR. HO:

6 Q. And it's also correct that, as of

7 April 6th, 2018, the Department of Justice was

8 attempting to maintain the fact that

9 Secretary Ross had requested that the Justice

10 Department send a letter requesting the addition

11 of a citizenship question -- that the Justice

12 Department was attempting to maintain the fact

13 that that information was not public, correct?

14 A. I'm not sure whether that's correct or

15 not.

16 Q. Were you authorized, as of April 6th,

17 2018, to publicly discuss the fact that the

18 Secretary of Commerce had requested that the

19 Justice Department send a letter requesting the

20 addition of a citizenship question?

21 MR. GARDNER: Objection. Vague.

22 THE WITNESS: Yeah, I don't know what you

1 mean by that, but I don't know that I was

2 authorized or not authorized to do so.

3 BY MR. HO:

4   Q. As far as you know, it had not yet been

5 made public as of April 6th, 2018, that Secretary

6 of Commerce Ross had requested the Justice

7 Department send a letter requesting the addition

8 of a citizenship question, correct?

9   A. As far as I know and can recall, that's

10 correct.

11   Q. Why, if you know, was it not public by

12 April 6th, 2018, that Secretary Ross had requested

13 that the Justice Department send a letter

14 requesting the addition of a citizenship question?

15   MR. GARDNER: Objection. Lack of

16 foundation. Calls for speculation.

17   THE WITNESS: I don't know.

18 BY MR. HO:

19   Q. You don't know one way or the other?

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

21   MR. HO: Okay. We can go off the record.

22 I think those are all the questions --

1   VIDEO TECHNICIAN: We are going off the

2   record. The time on the video is 4:20 p.m.

3   (A recess was taken.)

4   VIDEO TECHNICIAN: We are back on the

5   record. The time on the video is 4:23 p.m.

6   EXAMINATION BY COUNSEL FOR THE LUPE PLAINTIFFS

7   BY MS. HULETT:

8   Q. Hello, Mr. Gore. My name is Denise

9   Hulett and I represent the Lupe plaintiffs in a

10   case in Maryland.

11   I want to ask you first a few questions

12   about redistricting. Do you hold any opinion as

13   to whether states should redistrict based on total

14   population or on some other measure?

15   A. I do not.

16   Q. And do you know whether Attorney

17   General Sessions holds any opinions on that topic?

18   A. I do not.

19   Q. And do you hold any opinion as to whether

20   congressional seats should be apportioned based on

21   total population or some other measure?

22   A. I do not.

1   Q.   And do you know whether Attorney

2   General Sessions holds any opinions on that topic?

3   A.   I do not.

4   Q.   Have you ever discussed either one of

5   those topics with Attorney General Sessions?

6   A.   I believe I may have discussed the topic

7   about apportionment with the attorney general at

8   some point.

9   Q.   Was that leading to any decision that you

10   needed to make?

11   A.   Yes. I think it was.

12   Q.   And what decision was that?

13   A.   The decision about -- related to the

14   issue in this case.

15   Q.   How was it related to the issue in this

16   case?

17   MR. GARDNER: Objection to the extent

18   that that calls for information subject to

19   deliberative process privilege.

20   To the extent you can answer without

21   divulging privileged information, you may do so.

22   Otherwise, I'd instruct you not to answer.

1   THE WITNESS: Consistent with that

2   instruction, I can't answer.

3   BY MS. HULETT:

4   Q. So in the context of your deliberations,

5   there was some decision made as to the use of some

6   other measure than total population for purposes

7   of apportionment or -- let me take that back. Let

8   me start over.

9   The -- in the context of the decision

10   that was made to request the citizenship data,

11   part of your deliberations leading to that

12   decision was the topic of whether total population

13   or some other measure should be used for

14   apportionment?

15   MR. GARDNER: Objection to the extent it

16   calls for information subject to deliberative

17   process privilege.

18   To the extent you can answer without

19   disclosing privileged information, you may do so.

20   Otherwise, I instruct you not to answer.

21   THE WITNESS: Consistent with that

22   instruction, I can't answer.

1   BY MS. HULETT:

2   Q.   Okay.   But just so I'm clear on it, you

3   have had discussions with Attorney

4   General Sessions on the topic of whether

5   apportionment or redistricting should be conducted

6   using total population or some other measure?

7   MR. GARDNER: Objection to the extent it

8   mischaracterizes the witness' previous testimony.

9   THE WITNESS: I stand by my prior answer

10   that I had a conversation with the attorney

11   general about the question of the use of total

12   population or some other measure for apportionment

13   purposes.

14   BY MS. HULETT:

15   Q.   And you can't disclose that conversation

16   because it was during the pre-deliberative process

17   leading to the decision as to whether to request

18   that the Census Bureau include a citizenship

19   question on the decennial census?

20   A.   That is correct.

21   Q.   Okay. Have you had any conversations

22   with anyone else about whether apportionment or

1 redistricting should be conducted using total

2 population or some other measure?

3   A. I imagine I have. Yes.

4   Q. And do you recall any of those

5 conversations that are not covered by deliberative

6 privilege?

7   A. No.

8   Q. So every conversation that you've ever

9 had is covered by deliberative privilege with

10 regard to this citizenship question issue?

11   MR. GARDNER: Objection.

12 Mischaracterizes the witness' previous testimony.

13   THE WITNESS: I would say conversations

14 that I can recall that have taken place while I've

15 been employed by the Department of Justice would

16 all fall within that category, that's correct.

17 It's possible that I had conversations regarding

18 that topic while I was in private practice, but

19 those obviously were before my time serving in the

20 government and wouldn't relate to this particular

21 letter.

22   There was a case that went to the Supreme

1   Court a couple of terms ago, the Evenwel versus

2   Abbott case, which raised this issue, and I may

3   have discussed that case or read the briefs in

4   that case while I was still in private practice.

5   BY MS. HULETT:

6   Q.   Did you have an opinion as to whether or

7   not Evenwel was decided correctly by the U.S.

8   Supreme Court?

9   A.   At what point in time?

10   Q.   After the opinion came out.

11   A.   Yeah, the opinion came out while I was in

12   private practice, and I believe I had an opinion

13   on that.

14   Q.   And what was your opinion on that at that

15   time?

16   A.   That it was correctly decided.

17   Q.   Have you had any conversations with any

18   state officials -- let me start again.

19   Have there been any state officials that

20   communicated to the Department of Justice about

21   the possibility of using data other than total

22   population for redistricting purposes?

1   A. I don't know -- I can't speak for other

2 individuals in the Department of Justice. I can

3 tell you that no state official has communicated

4 with me about that. Whether some state official

5 has communicated with some other person associated

6 with the Department of Justice, I don't know.

7   Q. I'm going to ask you a few questions

8 about Section 203. Are you familiar with

9 Section 203 of the Voting Rights Act?

10   A. Yes.

11   Q. And do you agree that Section 203

12 requires the director of the census to determine

13 which jurisdictions meet the requirements for

14 coverage under Section 203?

15   A. Yes, I do.

16   Q. And in order to make that determination,

17 do you agree that it's necessary to estimate the

18 total population of voting age persons who are

19 citizens?

20   A. Yes. I believe that's correct.

21   Q. And that the permitted data source for

22 those estimates are the most current available ACS

1 data; isn't that correct?

2　　A.　That is correct.　Those determinations

3 have to be made by the Census Bureau every five

4 years.　And I believe that the ACS data is

5 specifically mentioned in the statute that

6 Congress enacted directing the Census Bureau to

7 make those determinations.

8　　　　I believe that the Gary letter also

9 mentions that issue in the last or second-to-last

10 paragraph.

11　　Q.　So you would agree, then, that whether or

12 not the short form contains the citizenship

13 question, the data for Section 203 coverage will

14 continue to come from the ACS or will have to

15 continue to come from the ACS?

16　　A.　I -- some data related to 203 will

17 continue to come from the ACS because those

18 determinations are made every five years.

19　　　　I can't remember the wording of the

20 statute precisely as to whether the Census Bureau

21 is required to consider that data or can use other

22 data.　It may be permitted to use other data as

1   well. But I'm familiar that its current practice

2   is to use the ACS data.

3   And the decennial census data obviously

4   is only available every ten years, not every five

5   years.

6   Q. I'd like to draw your attention back to

7   this Exhibit 17, which is the December 12th,

8   2017 -- I think we've been referring to it as the

9   Gary letter.

10   A. Yes. Bear with me one moment. My

11   exhibits are not in order.

12   Q. Okay.

13   A. Let me see if I can find it. Got it.

14   Thank you.

15   Q. When you were -- do you see that you've

16   cited several cases in this letter?

17   A. I see that the department has cited

18   several cases in the letter. Yes.

19   Q. You drafted -- did the initial draft of

20   this letter, correct?

21   A. That is correct.

22   Q. And when you were drafting the letter,

1 did you, personally, do the research that resulted

2 in the citation to these particular cases or did

3 someone else do it for you and send them to you?

4   MR. GARDNER: Objection. Calls for

5 information subject to deliberative process

6 privilege. I instruct the witness not to answer.

7   THE WITNESS: Consistent with that

8 instruction, I can't answer.

9 BY MS. HULETT:

10   Q. So you can't tell me whether you chose

11 these cases or whether someone else chose these

12 cases for inclusion in the letter because that's

13 deliberative process? I just want to make sure I

14 understand what you're refusing to answer.

15   A. Yes. That's on the instruction of

16 counsel.

17   Q. Okay. Did you read the opinions that are

18 cited in the letter?

19   A. Yes, I did.

20   Q. How recently have you read the opinions?

21   A. Well, let me look at which opinions we're

22 talking about.

1   Q. Well, to start with, I'm talking about

2 Reyes versus City of Farmers Branch, Barnett

3 versus City of Chicago, Negron versus City of

4 Miami Beach, Romero versus City of Pomona, and

5 LULAC versus Perry.

6   A. I read all of those cases before this

7 letter was sent. And I may have read the LULAC

8 versus Perry decision more recently than that.

9   Q. And before you list these cases, the

10 sentence right before the cases in the second

11 paragraph says, "Multiple federal courts of appeal

12 have held that, where citizenship rates are at

13 issue in a vote dilution case, citizen voting age

14 population is the proper metric for determining

15 whether a racial group could constitute a majority

16 in a single-member district."

17   Did I read that correctly?

18   A. Yes, you did.

19   Q. These are all appellate court or Supreme

20 Court cases. Did you read any of the lower court

21 opinions in these cases?

22   A. I believe I did. Yes.

1   Q.   And do any of these appellate court

2   opinions that are cited in this paragraph hold

3   that long-form data or ACS survey data is

4   deficient or unsuitable for use in a Section 2

5   analysis?

6   MR. GARDNER: Objection.   Compound.

7   THE WITNESS: I don't believe so.

8   BY MS. HULETT:

9   Q.   Would you agree that the Supreme Court

10   has not yet adopted a standard requiring proof of

11   citizen voting age majority to meet the prong 1

12   Gingles test?

13   A.   I think you're asking me for a legal

14   conclusion, and I don't believe the Supreme Court

15   has addressed that question squarely.   The LULAC

16   versus Perry decision does analyze vote dilution

17   claims by reference to citizen voting age

18   population.   That's a case out of the State of

19   Texas.   And that's my recollection of that case.

20   But to the extent you're asking me for a

21   legal opinion, I don't know that I can provide

22   one.

1   Q.   The question of whether prong 1 requires

2 a showing of a majority of CVAP or some other

3 majority requirement wasn't squarely addressed in

4 LULAC versus Perry, though, was it?

5   MR. GARDNER: Objection. That does call

6 for a legal conclusion.

7   THE WITNESS: Right, that calls for a

8 legal conclusion, and I haven't read that case

9 recently enough to remember.

10 BY MS. HULETT:

11   Q.   I want to talk for a moment about the

12 first case that you cite, Reyes versus Farmers

13 Branch, at 586 F.3d 1019.

14   A.   Uh-huh.

15   Q.   Is this one of the cases in which you

16 read the district court opinion?

17   A.   I believe so.

18   Q.   And do you recall that the court in that

19 case found that plaintiffs were unable to

20 establish a prong 1 CVAP majority based solely on

21 2000 decennial census data?

22   A.   I do not recall that.

 1   Q.   The trial in this case occurred in 2006

 2   [sic].

 3   MR. GARDNER: Is that a question?

 4   MS. HULETT: I'm not finished with my

 5   question yet.

 6   MR. GARDNER: I was asking if that was a

 7   question.

 8   MS. HULETT: No.

 9   MR. GARDNER: Sorry.

10   MS. HULETT: It's not.

11   MR. GARDNER: Please continue.

12   BY MS. HULETT:

13   Q.   The trial in this case occurred in 2008.

14   Is it fair to say that in this Farmers Branch

15   case, plaintiffs well past mid-decade were stuck

16   with long-form data that came from the 2000

17   census?

18   A.   I don't recall the case or the issues in

19   the case, so I don't know as I sit here today.

20   MS. HULETT: I'd like to introduce as

21   Exhibit 35 a copy of the district court opinion in

22   Reyes versus City of Farmers Branch, at 2008

1 Westlaw 4791498.

2   (Gore Deposition Exhibit 35 marked for

3   identification and attached to the

4   transcript.)

5 BY MS. HULETT:

6   Q. Do you see the date on the opinion --

7   A. I see a date. Yes.

8   Q. -- that says November 4th, 2008?

9   A. Yes.

10   Q. If you look at -- I'm sorry. Forgive me.

11 I though I had this -- here we go.

12   If you look at page 6 -- page 6 at the

13 bottom of the page, top right-hand column, the

14 sentence reads, "Thus, plaintiffs are unable to

15 establish an HCVAP majority based solely on 2000

16 census data. Accordingly, plaintiffs looked to

17 the TLC's estimate of SSRVs in the proposed

18 district to establish Gingles 1."

19   Did I read that correctly?

20   A. You did.

21   Q. So the parties in this case didn't have

22 ACS data because it wasn't available yet, correct?

1   MR. GARDNER: Objection. Lack of

2   foundation.

3   BY MS. HULETT:

4   Q. The court didn't have ACS data before it,

5   correct?

6   MR. GARDNER: Same objection.

7   THE WITNESS: I don't know. I've not

8   studied the record in the case. And as I said,

9   I've not read this opinion in a long time.

10   BY MS. HULETT:

11   Q. Are you aware that, a few years later,

12   when ACS data was available, Latino voters sued

13   Farmers Branch again?

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

15   Q. The case is called Fabela versus City of

16   Farmers Branch.

17   MS. HULETT: I'd like to mark that as

18   Exhibit 36.

19   (Gore Deposition Exhibit 36 marked for

20   identification and attached to the

21   transcript.)

22

1 BY MS. HULETT:

2   Q. Do you recall whether you ever read this

3 opinion?

4   A. Bear with me for one second. I believe I

5 have read this opinion at some point.

6   Q. Is there any reason why you didn't

7 include this case in your letter, since it was

8 brought in the same town under Section 2 a few

9 years later?

10   A. I've not read this case in some time, so

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

12   Q. Do you recall that, because it was a

13 small town plaintiffs were attempting to district,

14 some of the ACS data had to be disaggregated down

15 to the block level?

16   A. I'm not aware of that.

17   Q. Are you aware that it was the DOJ that

18 requested that breakdown down to the block level?

19   A. I'm not aware of that as I sit here

20 today.

21   Q. If you look on page 5, first column, down

22 at the bottom there's a paragraph that starts with

1   the word "rather." And if you go down to the

2   middle of it, there is a sentence that says,

3   "Defendants rely primarily" --

4   A. I'm sorry. I don't mean to interrupt,

5   but --

6   Q. Okay.

7   A. -- I'm looking at page 5 and I don't see

8   a paragraph that starts with "rather."

9   Q. I'm sorry, it's page 6.

10   A. Page 6.

11   Q. That's why.

12   A. Thank you. I didn't mean to interrupt

13   you, I apologize.

14   Q. No, that's fine.

15   MR. GARDNER: Can you reorient us?

16   MS. HULETT: My fault.

17   MR. GARDNER: Can you reorient us again

18   where on page 6 we should be looking?

19   MS. HULETT: Page 6, column 1, the last

20   paragraph, seven lines down.

21   BY MS. HULETT:

22   Q. It says, "Defendants rely primarily on

1   the following contentions to challenge Ely's

2   Hispanic CVAP estimates. There are high margins

3   of error for the ACS data. Combining data from

4   the ACS and census is statistically problematic

5   and there are various errors and uncertainties in

6   estimating the number, location, and citizenship

7   status of the Hispanic population."

8   The high margin of error in block-level

9   data is one of the objections that the DOJ has to

10   using the ACS data, correct?

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

12   don't think the DOJ has an objection to using the

13   ACS data. I believe what the DOJ has said in the

14   Gary letter and otherwise is that the DOJ would

15   like to have the most complete, accurate and

16   reliable data it can possibly have, and that would

17   include as much data as we can get our hands on,

18   which is the way of the data-driven world in which

19   we live.

20   Q. Are you aware that, in this particular

21   case, over the objection that I just read to you

22   by defendants, the court found the ACS data to be

1   adequate for the purposes of Gingles prong 1

2   compliance?

3   A.   I am not aware of that.

4   Q.   I'll direct your attention to the bottom

5   of page 5. On the right-hand column, "The court

6   finds that plaintiffs have proved they can draw a

7   demonstration district that contains greater than

8   50 percent Hispanic CVAP and have, therefore,

9   satisfied the first prong."

10   So I'm going to call these two cases

11   together the Farmers Branch saga. In the first

12   Farmers Branch case, plaintiffs were relying on

13   the long-form 2000 data here, over the objection

14   of defendants who said, among other things, that

15   the margin of error was too high for ACS data.

16   Same town, same challenge, a few years later they

17   had the ACS data and they prevailed.

18   So would it be fair to say that the

19   Farmers Branch saga, these two cases together,

20   stands for the court's acceptance of continually

21   updated ACS service -- survey citizenship data

22   over other means of demonstrating Gingles

1 compliance?

2   MR. GARDNER: Objection. Form.

3   THE WITNESS: I don't know whether that

4 would be fair to say or not. As I've said, I

5 haven't studied those opinions recently, and so I

6 can't give an opinion or state a view or

7 characterize those opinions as I sit here today.

8 BY MS. HULETT:

9   Q. But you think you did read this opinion?

10   A. I believe I've read both of those

11 opinions at some point in my lifetime.

12   Q. But you only included the first one in

13 the letter, correct?

14   A. I all the cases -- well, I believe you're

15 asking me what the department included in the

16 letter. And all the cases included in the letter

17 are appellate court cases or Supreme Court cases.

18   Q. The next case that you cite in that

19 paragraph of Exhibit 17 is Barnett versus City of

20 Chicago.

21   Did that case hold that citizenship

22 voting age population is the proper metric for

1 determining prong 1 of Gingles, like your letter

2 says, or for measuring proportional equality of

3 voting power?

4   MR. GARDNER: Objection. Compound.

5   THE WITNESS: I don't know, as I sit here

6 today.

7   MS. HULETT: Well, it's not a compound

8 question. It's a --

9   MR. GARDNER: You asked two questions

10 with --

11   MS. HULETT: -- question in the

12 alternative.

13 BY MS. HULETT:

14   Q. Do you know whether Barnett -- where is

15 my copy of that letter?

16   In your letter, last paragraph, it says,

17 "Multiple federal courts of appeal have held that,

18 where citizenship rates are at issue in a vote

19 dilution case, citizen voting age population is

20 the proper metric for determining whether a racial

21 group could constitute a majority in a

22 single-member district."

1   That's not what Barnett held, did it?

2   A.   As I sit here today, I don't recall

3   exactly what Barnett held or what that case said.

4   I understand that, when you're referring to this

5   as "your letter," you're referring to the

6   Department of Justice?

7   Q.   Yes.

8   A.   Thank you.

9   Q.   At the time you included it, you

10   obviously thought that it was a case that held

11   that citizen voting age population is the proper

12   metric for determining whether a racial group

13   could constitute a majority in a single-member

14   district, correct?

15   A.   I don't know that I can speak to what the

16   department or any individual thought. I will say

17   that the citation begins with a CEG cite, the

18   string cite following that sentence, which

19   generally suggests that the cases in authority

20   cited lend some support to that proposition.

21   Q.   The third case you cite is Negron versus

22   City of Miami Beach.

1   Did you read that case?

2   A.   Yes, I did.

3   Q.   Now, that case does actually directly

4 deal with prong 1.

5   Do you recall that, in that case,

6 plaintiffs lost because they couldn't meet the

7 prong 1 standard?

8   A.   I do not recall that as I sit here today.

9   Q.   Do you recall whether this case imposes

10 that blanket rule that citizen voting age

11 population is the proper metric for determining

12 whether a racial group could constitute a majority

13 in a single-member district?

14   A.   I don't recall that as I sit here today.

15   MS. HULETT: I'd like to mark this as

16 Exhibit 37. It's a copy of a case you cited,

17 Negron.

18   (Gore Deposition Exhibit 37 marked for

19   identification and attached to the

20   transcript.)

21 BY MS. HULETT:

22   Q.   Negron versus City of Miami Beach,

1   113 F.3d 1563. And if you look on page 8 at the

2   bottom, the last full paragraph, 13 lines down,

3   sentence beginning with the word "of course." "Of

4   course the requirement that voting age population

5   data be further refined by citizenship data

6   applies only where there is reliable information

7   indicating a significant difference in citizenship

8   rates between the majority and minority

9   population."

10   So this is not a case that imposes a

11   blanket rule that CVAP population is the proper

12   prong 1 metric, is it?

13   A. Again, I've not re-read this case

14   recently, and so I can't state a view on that

15   question one way or another.

16   Q. You didn't mention the qualification in

17   this sentence in your letter, though, in the DOJ's

18   letter.

19   A. Well, I belive the department's letter

20   does, in fact, say that courts of appeal have held

21   that, where citizenship rates are at issue in a

22   vote dilution case -- so yeah, I do believe that

1 that incorporates that idea.

2   Q. And this case also upheld the district

3 court's consideration of citizenship statistics

4 even though they were based on sample data, didn't

5 it?

6   A. I don't recall that as I sit here today.

7   Q. Can you look at page 8, second column,

8 last full paragraph?

9   Have you finished reading it?

10   A. No.

11   Q. Do you agree that the court declined to

12 reject the citizenship data simply because it was

13 based on sample data?

14   A. Sorry, I'm still reading.

15   Can you repeat your question?

16   Q. Would you agree that the court declined

17 to reject the CVAP data solely because the data

18 was based on sample data without some indication

19 that the sample was tainted in some way?

20   A. I believe that the paragraph speaks for

21 itself. I'm not sure that's exactly what it says.

22 It doesn't use -- I don't see the word "tainted."

1 I see the word "skewed."

2   And then I see the court saying that

3 reasonably accurate citizenship information should

4 be taken into account. And that is, of course,

5 the position of the Department of Justice as well.

6   Q. Four -- one, two, three -- four lines

7 down page 8, last paragraph. I'm going to read

8 it, and you tell me if I read it correctly. "The

9 use of sample data is a long-standing statistical

10 technique, whose limits are known and measurable.

11 We will not reject the citizenship statistics

12 solely because they are based on sample data

13 without some indication that the sample was

14 tainted in some way."

15   Have I read that correctly?

16   A. You have read that correctly. And this

17 case from 1997 predates the ACS data. So the

18 sample data being referred to here is some other

19 sample data, and I don't know what that is.

20   Q. But you would agree with me, then, that

21 this case specifically approves the use of sample

22 data for measuring citizenship, regardless of

1 whether it came from CVAP -- I mean, ACS or long

2 form?

3   A. Again, I haven't read the whole opinion

4 in a long time, and I'm not familiar with the data

5 in the record, so I don't have a view on that as I

6 sit here today.

7   Q. All right. You also cite Campos versus

8 City of Houston in your December 12th letter,

9 correct?

10   A. Let's see. I believe that's on page 2 of

11 the letter.

12   Q. Did you read that case?

13   A. Yes, I did.

14   Q. Do you recall that, in that case,

15 plaintiffs actually urged the court to reject

16 citizenship data based on the long-form survey

17 because it was derived from a sampling of the

18 population as opposed to the head count?

19   A. I do not recall that as I sit here today.

20   (Gore Deposition Exhibit 38 marked for

21   identification and attached to the

22   transcript.)

1   BY MS. HULETT:

2   Q.   I'm going to introduce as Exhibit 38

3   Campos versus City of Houston, 113 F.3d 544. I'd

4   like to direct your attention to page 4, the

5   right-hand column. There's a subheading B that

6   says, "Use of citizenship data in the Gingles

7   analysis." And it says, "Plaintiffs urge us to

8   reverse the district court and abandon the

9   examination of citizenship data as a factor for a

10   vote dilution claim. They contend that unlike

11   general census data, which the Supreme Court has

12   determined to be not inherently unreliable despite

13   its significant shortcomings, citizenship data is

14   derived from a 12 percent sampling of the

15   population, as opposed to a 100 percent head

16   count."

17   The court declined to reject survey-based

18   citizenship data in this case, didn't it?

19   A.   I don't recall, as I sit here today.

20   Q.   In the very last paragraph right under

21   what I've just read, it says, "Despite these

22   limitations, we decline to reject citizenship as a

1   relevant factor in the Gingles analysis."

2   Do you see that?

3   A. I do.

4   Q. So would you agree, then, that this

5   decision doesn't support the DOJ position that

6   survey citizenship data is less well suited for

7   prong 1 purposes --

8   A. No, I do not.

9   Q. -- than head count -- hard count data?

10   A. No, I do not agree with that.

11   Q. Why is that?

12   A. Well, first of all, I haven't read this

13   opinion in its entirety in a long time, so I don't

14   have a view on what it does or does not hold, nor

15   what the implications of that decision are with

16   respect to the DOJ request.

17   Q. When is the last time you read any of

18   these opinions?

19   A. I don't believe I've read any of these

20   opinions in a long time.

21   Q. All right. All right. I'm going to

22   change subjects for a moment and refer you to --

1   (Gore Deposition Exhibit 39 marked for

2   identification and attached to the

3   transcript.)

4   BY MS. HULETT:

5   Q.   I'd like to show you Exhibit 39, which is

6   a series of January 2nd, 2018, e-mails between you

7   and Devin O'Malley regarding review of a statement

8   in response to citizenship question on census.

9   Who is Devin O'Malley?

10   A.   Devin O'Malley at the time was employed

11 in the Department of Justice's Office of Public

12 Affairs.

13   Q.   Is that a Ms. or a Mr.?

14   A.   Mr.

15   Q.   Do you recall this exchange, this e-mail

16 exchange?

17   A.   Yes, I do.

18   Q.   On page 2, Mr. O'Malley asks you at

19 4:28 -- it's right in the center of the page on

20 page 2 -- "There's no reason I can't point the

21 reporter to the Constitution on background and

22 make the point that there's somewhat of a

 1 constitutional basis for using the census in this

 2 process and not the ACS, right?"

 3   And right above it is your response:

 4 "It's a little bit of a stretch, but it's okay

 5 with me."

 6   How is there a constitutional basis for

 7 using a census rather than the ACS to collect

 8 citizenship data?

 9   A. Unlike the ACS, the census is actually

10 mentioned in the Constitution. The Constitution

11 directs the federal government to conduct a census

12 every ten years. There's no mention of the ACS in

13 the Constitution.

14   Q. The ACS is run by the Census Bureau,

15 right -- conducted by the Census Bureau?

16   A. Yes.

17   Q. But you don't consider it to be part of

18 the census?

19   A. I consider -- I believe what Mr. O'Malley

20 is referring to here is a decennial census versus

21 the ACS. I understand the ACS is not part of the

22 decennial census.

1   Q.   And what did you mean that it's a

2   stretch?

3   A.   I believe what I meant was it's certainly

4   correct that the census is mentioned in the

5   Constitution and that the ACS isn't. But I

6   wasn't -- I don't believe that that was a reason

7   mentioned in the Gary letter for seeking

8   reinstatement of the citizenship question on the

9   census questionnaire.

10   Q.   And you think the argument is a bit of a

11   stretch?

12   A.   Which argument?

13   Q.   The argument that the Constitution

14   supports -- that there's a constitutional basis

15   for using the decennial census instead of the ACS.

16   A.   I -- yeah, I believe that's a little bit

17   of a stretch.

18   Q.   On page 3, in another e-mail from you in

19   this exchange at 4:04, you say, "Unfortunately,

20   it's not accurate to blame the prior

21   administration for abandoning the citizenship

22   question on the census questionnaire. That move

1 was put into place under bush after the 2000

2 census.   The ACS started under Bush."

3   When you say "prior administration," you

4 mean the Obama administration?

5   A.   Yes, I do.

6   Q.   And why was it unfortunate?

7   A.   I'm referring to the e-mail that

8 Mr. O'Malley had written, which is on page 4. The

9 second paragraph of that e-mail, the second

10 sentence, he had drafted a sentence saying, "In

11 2010, the previous administration abandoned this

12 long-established practice and utilized an entirely

13 different data set, called the American Community

14 Survey, which has no statutory relevance to

15 apportionment and has the potential for

16 statistical inaccuracies that could be detrimental

17 to the protection of voting rights."

18   My response to that was that that

19 sentence was inaccurate. And I was trying to let

20 Mr. O'Malley off easy for the fact that he didn't

21 know that.

22   Q.   And -- but why did you think it was

```
 1  unfortunate that you couldn't blame the prior

 2  administration?

 3      A.  I thought it -- what I was trying to do

 4  was let Mr. O'Malley off easy.  He's not a lawyer

 5  and wasn't familiar with that, and I wanted to be

 6  more polite in my response to him as opposed to

 7  more direct.

 8      Q.  All right.

 9      A.  He's a wonderful guy.

10          (Gore Deposition Exhibit 40 marked for

11           identification and attached to the

12           transcript.)

13  BY MS. HULETT:

14      Q.  I'd like to introduce Exhibit 40.  This

15  is an e-mail exchange between you and Ben -- I'm

16  trying to see if anybody else is -- you,

17  Ann Riley, a few other people, Ben Aguinaga.

18          And at the bottom of page 1 -- do you

19  recall this e-mail exchange, by the way?

20      A.  Well, let me review it.

21          Yes, I do.

22      Q.  And the subject of the exchange is,
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1   Commerce edits Oversight and Government Reform

2   hearing on May 8th, Gore opening statement.

3   This was right before your congressional

4   testimony before the Oversight and Government

5   Reform hearing, correct?

6   A.   That is correct.

7   Q.   And if you look on page 2 at the bottom,

8   the e-mail from Ann Riley says, please send

9   from -- "Please see edits from commerce to your

10   revised testimony attached. Let me know as soon

11   as possible how you respond."

12   And then, if you look on page 1 at the

13   bottom from her again, says, "I've sent our

14   rejection to OMB and I've gotten the following

15   response: Congress disagrees that the language

16   goes beyond what the letter says. Commerce find,

17   rather, that it provides a concise explanation as

18   to why DOJ is sending the letter. Is DOJ willing

19   to reconsider and accept this language?"

20   Do you recall what the -- what the

21   language was that DOJ was not initially agreeing

22   to, what edit it was?

1   A.   I do not recall that as I sit here today.

2   Q.   I'm going to show you the attachment to

3 this e-mail and mark it as Exhibit 41. That may

4 or may not help your recollection.

5   (Gore Deposition Exhibit 41 marked for

6   identification and attached to the

7   transcript.)

8 BY MS. HULETT:

9   Q.   This appears to be the edits that

10 Commerce made to your statement before the

11 Committee on Oversight and Government Reform for

12 the May 18th hearing.

13   And because the e-mail says, "Commerce

14 finds that their edits provide a concise

15 explanation as to why DOJ is sending the letter,"

16 I'm wondering whether the language that Commerce

17 added is at the top of page 2 at the beginning of

18 the paragraph about the fact that DOJ sent a

19 letter. So the language that adds "in furtherance

20 of the department's commitment to fair and

21 even-handed enforcement of the nation's voting

22 rights laws."

1   A.   I have to apologize, I'm not sure -- are

2   we reading from the same thing?

3   Q.   Should be.

4   A.   I'm sorry, can you repeat --

5   MR. GARDNER: She's asking you about --

6   THE WITNESS: Oh, I'm sorry.   Do you mind

7   repeating your question?   I apologize.

8   BY MS. HULETT:

9   Q.   Sure.   I'm asking you whether -- this is

10   a guess on my part.

11   A.   Okay.   Oh, all right.

12   Q.   This was attached to the e-mail.

13   A.   Okay.

14   Q.   The e-mail seems to say to me that

15   commerce made some edits that DOJ initially

16   disagreed with because they thought the language

17   went beyond what the letter said, and I'm assuming

18   that means the Gary letter, and that Commerce felt

19   it provided a concise explanation as to why DOJ is

20   sending the letter.

21   So I'm wondering whether that -- the edit

22   that is referred to in this e-mail, is the

1 addition of the language at the top of page 2 that

2 says, "In furtherance of the department's

3 commitment to fair and even-handed enforcement of

4 the nation's voting rights law," comma, and then

5 it goes on to say that --

6   A. I see.

7   Q. -- you sent a letter.

8   A. Thank you.

9   I cannot verify that these are Commerce's

10 edits as opposed to somebody else's. There are

11 other references in this e-mail chain to edit that

12 OMB received from DPC. So I don't know which

13 version of the draft this is, so I don't know the

14 answer to your question.

15   Q. In the order that these documents were

16 produced, I'm presuming that this was the draft

17 that's attached to that e-mail.

18   A. And you may be correct about that. I

19 just can't independently verify that, as I sit

20 here today. These are e-mails from back in May

21 and an attachment that sounds like it's also from

22 May. But I can't verify that as I sit here today.

1   Q. Okay. As you sit here today, do you

2 think that the language "in furtherance of the

3 department's commitment to fair and even-handed

4 enforcement of the nation's voting rights laws"

5 captures why you sent the letter or goes beyond

6 why you sent the letter?

7   MR. GARDNER: Objection to form.

8   THE WITNESS: And by "you," you mean the

9 department?

10 BY MS. HULETT:

11   Q. Yes.

12   A. Thank you.

13   I do believe that that captures the

14 reason the department sent the letter.

15   Q. And as you sit here today, you couldn't

16 imagine any reason why the Department of Justice

17 would take the position initially that it goes

18 beyond what the letter said?

19   MR. GARDNER: Objection. Form.

20   THE WITNESS: No. And as I said, I don't

21 know where this language came from either. It's

22 not clear to me that it came from the Census

 1 Bureau.

 2 BY MS. HULETT:

 3   Q. Okay. I want to go back to the -- to the

 4 letter for a moment. And I want to direct your

 5 attention to the first bullet.

 6   A. All right.

 7   Q. The last sentence says, "As a result,

 8 using the ACS citizenship estimates means relying

 9 on two different data sets, the scope and level of

10 detail of which vary quite significantly."

11   And I think earlier -- and I'm sure I

12 won't capture this exactly -- but earlier, when

13 you were talking to Mr. Ho, you described how a

14 mapper would have to load two sets of data onto

15 Maptitude or whatever program they were using

16 instead of just one; is that correct?

17   A. That is -- I believe we discussed that,

18 yes.

19   Q. All right. Do -- and I heard you agree

20 with the definition of prong 1 burden, that a

21 plaintiff has to demonstrate that they would be

22 able to comprise the majority and, in some cases,

1   the majority of the citizen voting age population,

2   in a compact district, correct?

3   A.   If I understand your question, I think

4   the "they" in your question is not referring to a

5   single plaintiff, but to a --

6   Q.   Plaintiffs.

7   A.   -- minority group?

8   Q.   Yes. Plaintiffs.

9   A.   And I believe that's correct. Under

10   step 1 of Gingles, a plaintiff or plaintiffs must

11   demonstrate that a minority group is sufficiently

12   numerous an geographically compact to constitute

13   the majority in a single-member -- compactly drawn

14   single-member district.

15   Q.   And you would agree with me that the

16   Supreme Court has held that, in the context of

17   prong 1, the minority community within the

18   District has to demonstrate a shared community

19   interest in order to comply with prong 1; is that

20   correct?

21   A.   That sounds correct.

22   Q.   And do you know how plaintiffs

1 demonstrate that shared community of interest,

2 what data they use?

3   A. I don't know that, as I sit here today.

4   Q. Would you agree that they -- that

5 plaintiffs showing a shared interest in proving

6 that they are a compact community use

7 socioeconomic characteristics such as education,

8 income, language, literacy, those kinds of

9 characteristics?

10   A. They may.

11   Q. And that those characteristics are

12 captured by the ACS as opposed to the decennial

13 census?

14   A. Some of that data may be captured by ACS

15 questions.

16   Q. But none of that data -- education,

17 income, language -- is captured on the decennial

18 census short form, is it?

19   A. I believe that's correct. I don't have

20 the short form right in front of me.

21   Q. So you'd agree that if the DOJ wanted to

22 bring a Section 2 case, even if the citizenship

1 question is on the short form, the DOJ would have

2 to use the ACS to complete the prong 1 proof,

3 correct?

4   A. Not necessarily. I believe that proof

5 could come from a source other than the ACS.

6   Q. And --

7   A. The data or evidence regarding a shared

8 community of interest I imagine could come from

9 some other source.

10   Q. Like?

11   A. There may be other survey data or

12 literature on those particular issues.

13   Q. And that data would have to be loaded on

14 the machine with the other data, correct?

15   A. I don't know, actually, if it does need

16 to be loaded on the machine or how else it could

17 come into evidence. I suppose you could just put

18 a witness on the stand.

19   Q. If someone wanted to show the education

20 level of the inhabitants of a prong 1 district,

21 you'd have to load that data on the machine in the

22 program to determine the characteristics of that

1 district, correct?

2   A. I don't know whether that's correct.

3 That could be correct. But there may be other

4 ways to introduce that information into evidence

5 other than by loading it onto the computer. I am

6 not meaning to quibble with you, because I don't

7 know, but you could -- I imagine, before there

8 were computers, that evidence came in somehow and

9 -- other than through the Maptitude program.

10   Q. But given the Supreme Court LULAC versus

11 Perry requirements, putting the citizenship

12 question on the short form doesn't obviate

13 completely the need to use other databases for

14 prong 1 compliance.

15   A. No, I don't think it does. And I don't

16 think we've suggested that it does.

17   Q. Okay. And do you know what kind of

18 evidence is required to win court approval of a

19 remedial plan in a Section 2 case?

20   A. Generally, I'm aware of that. Yes.

21   Q. And what data is that?

22   A. It's similar to the data that you need to

1   prove the demonstration district for liability

2   purposes. You do have to show that you conform a

3   majority and that there's racially polarized

4   voting or that this remedial district otherwise

5   cures the Section 2 violation that's been proven

6   and found.

7   Q.   And do courts review, for example,

8   registration data to gauge the effectiveness of a

9   remedial district?

10   A.   They do on some occasions. And they may

11   review registration data even at Gingles

12   preconditions 2 and 3 to determine the extent of

13   racially polarized voting.

14   Q.   And if they viewed registration data,

15   that would have to be loaded on the machine as

16   well, correct?

17   A.   That is correct.

18   Q.   I want you to look at the second bullet

19   for a moment. And the second bullet talks about

20   how ACS estimates do not, quote, align in time

21   with decennial census data.

22   When you say "align in time," do you mean

1 the time it was collected or the time it was

2 reported?

3   A. I believe it could mean either one.

4   Q. All right. And is it your position that

5 if citizenship data were collected in the hard

6 count on the short form, that that data would

7 align in time with the total population data

8 simply because it's collected at the same time?

9   A. I would imagine it would be collected and

10 reported at the same time, so yes.

11   Q. All right. And I want to ask you about

12 at-large challenges. Are you familiar with

13 challenges under Section 2 to at-large

14 jurisdictions?

15   A. Yes, I am.

16   Q. If DOJ brought a Section 2 case

17 challenging an at-large district, say, in 2022,

18 and the citizenship question was on the short

19 form, the two data sets would align in time?

20   MR. GARDNER: Objection. Calls for a

21 hypothetical.

22   THE WITNESS: Yeah, that does call for a

1 hypothetical. I'm not sure what's going to happen

2 in the lawsuit, whether the question is going to

3 remain on the census, and what evidence DOJ or any

4 other plaintiff would want to educe in support of

5 a Section 2 claim in the year 2022, which is four

6 years from now.

7 BY MS. HULETT:

8   Q. If the citizenship data were only

9 collected on the short form and you brought a case

10 in 2028, the data would be seven to eight years

11 old, correct?

12   A. If it were only collected on the short

13 form, that's correct. But that's not what we've

14 requested.

15   Q. Do you know whether the Census Bureau

16 intends to continue to collect citizenship data on

17 the ACS?

18   A. I don't know that. I believe they intend

19 to do -- my guess would be they intend to do that,

20 but that's a guess. I believe that they continue

21 to need that data, as I mentioned before, and we

22 discussed before, the Section 203 issue.

1   Q. Would it be a problem for voting rights

2   enforcement during the decade if you didn't have

3   current citizenship data from some other source

4   besides the short form?

5   A. That's a hypothetical question. I can't

6   engage in that.

7   Q. Really? If you bring a case in 2028 and

8   you had no other data but what was collected in

9   2020, would DOJ consider that to present an

10 obstacle to Section 2 challenge to an at-large

11 election?

12   MR. GARDNER: Objection. That does call

13 for a hypothetical.

14   THE WITNESS: That is a hypothetical.

15 BY MS. HULETT:

16   Q. Yes.

17   A. I will -- yes, and so I won't engage in a

18 hypothetical. I will point out that, for total

19 population purposes, the courts have held that

20 litigants in courts depend upon the census hard

21 count data for the entire decade.

22   Q. That's true. But to determine prong 1

1 and whether a community can constitute the

2 majority in a single-member district, the court

3 looks to CVAP data in general, correct?

4   A. Generally, that's true.

5   Q. And if the only source of that data was

6 the short form, it would have to be used,

7 regardless of how old it was, throughout the

8 decade, correct?

9   A. Again, that's hypothetical. I suppose

10 it's correct. And I'll just reiterate that the

11 department has not asked for that.

12   Q. I'm sorry?

13   A. The department has not -- that's not the

14 department's request, that the census data be the

15 only data.

16   Q. And you would also agree with me that

17 hard count census data are less probative the

18 further away from the census -- from the

19 collection date gets?

20   A.   I don't know that for sure. There may be

21 instances where there aren't significant changes

22 in the population in a particular area or in the

1 demographics of a population in a particular area.

2 So I don't know how to answer that.

3   Q. In the next-to-final paragraph on the

4 December 12th letter you write, "Accordingly, the

5 department formally requests that the Census

6 Bureau reinstate into the 2020 census a question

7 regarding citizenship. We also request that the

8 Census Bureau release this new data regarding

9 citizenship at the same time as it releases the

10 other redistricting data, by April 1st following

11 the 2020 census."

12   I was just wondering what you mean by

13 other redistricting data.

14   A. That would be the other PL94-171 data,

15 including the total population data. There are

16 certain states that have odd-year elections, like

17 the State of Virginia and the State of New Jersey.

18   Q. Oh.

19   A. And they have to engage in redistricting

20 very early on, right after the census results are

21 published. In fact, I believe the Census Bureau

22 publishes the Virginia results first because the

1 Virginia legislature meets for just a short period

2 of time every year. And so the Census Bureau, as

3 an accommodation, publishes that data so that the

4 Virginia general assembly can redistrict in time

5 for its own fall State, House, and Senate

6 elections, which follow just a few months after

7 the plans are drawn because, by the state

8 Constitution, those occur in the odd-numbered

9 years rather than the even-numbered years.

10   Q. Okay. I want to ask you just a few more

11 questions -- I know you talked about margin of

12 error and the third bullet with Mr. Ho. I want to

13 ask you a legal question about this.

14   Would you agree with me that what is

15 material to a court's determination of prong 1 is

16 how certain a demographer can be that the minority

17 population is sufficiently compact to constitute a

18 majority in the district?

19   MR. GARDNER: Objection. Calls for a

20 legal conclusion.

21   THE WITNESS: I think that calls for a

22 legal conclusion. I understand that you're

1 referring to prong 1 of the Gingles analysis, and

2 I think that that prong, and the cases construing

3 that prong, speak for themselves.

4 BY MS. HULETT:

5   Q. Would you agree that courts considering

6 that question consider the pertinent margin of

7 error to be the margin of error for CVAP for the

8 entire district?

9   MR. GARDNER: Objection. Calls for a

10 legal conclusion.

11   THE WITNESS: I'm not sure that I can

12 agree or disagree with that as I sit here today.

13 I've not studied that issue recently.

14 BY MS. HULETT:

15   Q. Would you agree that the point estimates

16 for a district established to a 90 percent

17 confidence level is broadly recognized by courts

18 as sufficient to meet the prong 1 standard?

19   MR. GARDNER: Objection. Calls for a

20 legal conclusion.

21   THE WITNESS: Again, I can't agree or

22 disagree with that as I sit here today.

1 BY MS. HULETT:

2   Q. Can you name any case in which a court

3 required for prong 1 purposes any level of

4 certainty about the margin of error in each and

5 every block of the district?

6   A. Again, I can't name such a case, as I sit

7 here today either way.

8   Q. So is the point that's being expressed in

9 this bullet is that citizenship data from the ACS

10 is not ideal for purposes of redistricting because

11 it's an estimate with a margin of error that

12 increases for smaller geographic areas?

13   A. I think the bullet speaks for itself. I

14 believe it does mention the margin of error and

15 the increase in that margin of error as the

16 geographic area decreases. It also mentions the

17 90 percent confidence interval associated with the

18 ACS.

19   Q. So when you're drawing a district and you

20 want to know what percent of adult citizens are of

21 a particular racial group, let's say, Latinos, and

22 when you look at the margin of error for the

1   block-level estimates, they might be relatively

2   high; is that correct?

3   MR. GARDNER: Objection. Calls for a

4   hypothetical.

5   THE WITNESS: It calls for a hypothetical

6   and I don't know how to answer that question as I

7   sit here today.

8   BY MS. HULETT:

9   Q. Well, the hypothetical is in your bullet.

10   A. Really?

11   Q. Well, it says that ACS estimates are

12 reported at a 90 percent confidence level and the

13 margin of error increases as the sample size and

14 the geographic area decreases.

15   That, I guess, is a hypothetical, too.

16   I guess the point I'm trying to establish

17 with you is that as -- would you agree with me

18 that if the margin of error is high in the

19 block-level data, the margin of error is going to

20 get narrower and decrease as the geography

21 increases, so the block group-level data will have

22 a smaller margin of error, and the census tract

 1 area will have an even smaller margin of error and

 2 so on?

 3   A. I'm not sure I totally follow your

 4 question. What I will say is I disagree with your

 5 characterization of the first sentence of the

 6 bullet. I don't think it's a hypothetical. I

 7 think it's a statement of fact that comes from the

 8 Census Bureau's own glossary about the American

 9 Community Survey. I think it is a fact that the

10 ACS estimates are reported at a 90 percent

11 confidence interval. I don't think that's a

12 hypothetical.

13   I also think it's a fact that the margin

14 of error of the ACS estimates increases as the

15 sample size and, therefore, the geographic area

16 decreases.

17   So those are not hypotheticals. Those

18 are facts.

19   In terms of what I understand your

20 question to be, if the error increases as the

21 sample size decreases -- I think you're asking me

22 if the error decreases as the sample size

1 increases; is that correct?

2   Q. Yes.

3   A. That's my understanding.

4   Q. So when you combine block groups into

5 census tracts and then combine the census tracts

6 into districts, the margin of error shrinks each

7 time as the level of geography grows?

8   A. I'm not sure what you mean by combining

9 all of that. I do believe the ACS estimates are

10 reported at certain levels and, at a larger

11 geographic area, there is a smaller margin of

12 error assigned to the ACS estimate that at a

13 smaller geographic area.

14   Q. All right. Say at the level of a typical

15 congressional district, you would expect the

16 margin of error on CVAP to be much smaller than

17 the margin of error in each block in that

18 district, correct?

19   A. I would -- with respect to ACS estimates?

20   Q. Yes.

21   A. Yes. And I would expect that with

22 respect to any statistical sampling or with

 1 respect to hard count data.

 2   Q. And by the time you get to the size of a

 3 congressional district, the margin of error is

 4 likely to be quite small; isn't that correct?

 5   A. I don't know what you mean by quite

 6 small. I mean, you could certainly conceive of

 7 districts or hypothetical districts where the

 8 margin of error would still matter at the size of

 9 a congressional district or a state house or state

10 senate district. You might have a hypothetical

11 district that is close to the line of 50 percent,

12 but because of the margin of error associated with

13 the ACS data, you wouldn't know one way or the

14 other whether it's over 50 percent or slightly

15 under 50 percent.

16   And that's what we are trying to avoid.

17 We are trying to get the best possible, most

18 accurate, more reliable, most comprehensive and

19 complete data that we possibly can because --

20 there's been a lot of talk today about file cases.

21 We're trying to identify good cases for

22 investigation and filing.

1   Q. So if you're looking to see what the

2 margin -- whether or not there's a majority CVAP

3 in a district, you're going to look at the margin

4 of error for the district?

5   A. That is correct.

6   Q. And you're going to see t how close it is

7 to 50 percent, is it a little over, is it a little

8 under, is it way over, is it way under, correct?

9   MR. GARDNER: Objection to form.

10   THE WITNESS: That is correct, although

11 the block-level data, of course, aggregates up

12 into the district-level data. And so you might

13 want to know, if you moved a line or swapped a

14 precinct in and out of a district, how that would

15 affect the overall composition. And for that, you

16 would need much more granular data than just the

17 district-wide data. You're asking me a question

18 about once the district is already drawn. I'm

19 talking about drawing the districts in the first

20 instance --

21 BY MS. HULETT:

22   Q. Right.

1   A.   -- which would require more granular data

2   than district-level data for a district that's not

3   yet been drawn.

4   Q.   But each time you look to determine

5   whether prong 1 has been met or not, you are

6   looking at the CVAP of the entire district and the

7   margin of error for that number for the entire

8   district, correct?

9   A.   Whether it has been met, that's perhaps

10 correct. Whether it can be met is a different

11 inquiry. Because whether it can be met requires

12 you to go in and draw the districts and also to

13 experiment in the way that I've just laid out with

14 swapping precincts or census blocks in a way that

15 may change the overall composition of the

16 district.

17   Q.   Right. And if you move blocks out and

18 move other blocks in, you're still looking at the

19 margin of error for the entire district, correct?

20   A.   You would be. But you're trying to

21 identify which blocks to move in and out if you

22 want to try to get to a certain result at the

1   district level.

2   Q.   But if the relevant margin of error is

3   the district, why does it matter what any

4   individual block margin of error is?

5   A.   Because -- again, because you may be

6   trying to draw a district and there may be more

7   than one way to draw a district in a particular

8   area. And so if you have the block-level data,

9   that will inform how you draw the district in the

10   first instance to get to some result at the

11   district level.

12   Q.   Right. And you have block-level data.

13   Why does it matter what the margin of error is in

14   each little block that you're either putting in or

15   out of the district?

16   A.   Because if you have a smaller -- the

17   smaller the margin of error at the block level,

18   the smaller the margin of error at the district

19   level because the district level is an aggregation

20   of those margins of error and those blocks.

21   Q.   Has any demographer engaged in

22   redistricting tasks, either since you've been in

1 DOJ or in your prior voting rights defense work,

2 ever told you that using ACS block-level data --

3 ACS data hindered him or her from map drawing?

4   MR. GARDNER: Objection to the extent it

5 calls for information subject to deliberative

6 process privilege.

7   To the extent you can answer that

8 question without divulging privileged information,

9 you may do so. Otherwise, I instruct you not to

10 answer.

11   THE WITNESS: Consistent with that

12 instruction, I can't answer the question.

13 BY MS. HULETT:

14   Q. Has any demographer outside -- in your

15 work outside of the DOJ ever told you that using

16 ACS data hindered him or her in any way from

17 drawing or analyzing a map?

18   A. Outside of -- from DOJ?

19   Q. Yes.

20   A. Prior to my time at DOJ?

21   Q. Yes.

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

 1 do recall having conversations with demographers

 2 about the ACS data and the inconvenience of using

 3 that data in addition to the census data.

 4   Q. What do you mean by inconvenience?

 5   A. Because it's a separate data set and it's

 6 a data set that requires further estimates and

 7 extrapolations down to the block level.

 8   MR. GARDNER: Denise, before we mark

 9 another exhibit, we've been going over an hour.

10 Can we take a break?

11   MS. HULETT: Sure.

12   MR. GARDNER: Thank you.

13   VIDEO TECHNICIAN: This concludes media

14 unit number 6. The time on the video is 5:33 p.m.

15 We are off the record.

16   (A recess was taken.)

17   VIDEO TECHNICIAN: This begins media unit

18 number 7. The time on the video is 5:46 p.m. We

19 are on the record.

20 BY MS. HULETT:

21   Q. Okay. I'm going to hand you now

22 Exhibit 43.

1   MR. GARDNER: I think 42, right?

2   MS. HULETT: Really? Oh, you're right.

3 No, this is 42. No, it's not.

4   (Discussion off the record.)

5   (Gore Deposition Exhibit 42 marked for

6   identification and attached to the

7   transcript.)

8 BY MS. HULETT:

9   Q. Let me hand you first Exhibit 42. This

10 appears to be an e-mail introduction by Arthur

11 Gary, June 11th, 2018 -- an e-mail introduction by

12 Arthur Gary to put Jay Town from the U.S.

13 Attorney's Office in the Northern District of

14 Alabama in touch with you; is that correct?

15   A. That appears to be correct. Yes.

16   Q. Do you recall this e-mail exchange?

17   A. I don't.

18   Q. Do you recall whether Jay Town called you

19 on June 11th, as he indicated that he would?

20   A. I do not recall whether he called me on

21 June 11th. I have spoken to Mr. Town on several

22 occasions. And I do not recall whether one of

1 those occasions occurred on June 11th.

2   Q. Do you remember the topic of the

3 conversation with Jay Town?

4   A. I've had several conversations with him

5 on several topics related to Department of Justice

6 matters.

7   Q. The subject of this particular e-mail is

8 census -- quote, usual residence rule, unquote.

9   Do you recall a conversation with him

10 about the usual residence rule?

11   A. I do not recall a conversation on that

12 topic.

13   Q. What is your understanding of what the

14 usual residence rule is?

15   A. I do not have an understanding of what

16 that rule is.

17   Q. Are you aware that, on May 21st, 2018,

18 the State of Alabama sued the Department of

19 Commerce seeking a declaratory judgment that the

20 residence rule is unlawful?

21   A. I am aware that the State of Alabama

22 filed a lawsuit against the Department of

1 Commerce. I'm not sure, as I sit here today, what

2 the date of that filing was, nor am I sure what

3 issues in particular were presented in that

4 litigation.

5   Q. Are you aware that they are seeking a

6 declaratory judgment declaring that any

7 congressional apportionment should exclude

8 undocumented immigrants from the population

9 figures utilized to apportion congressional seats?

10   A. I do believe that I'm aware of that.

11   Q. How did you become aware of that lawsuit?

12   A. I believe that lawsuit was reported in

13 the media, and I may have read a publicly

14 available article about it, is I believe how I

15 became aware of it.

16   Q. Do you recall discussing that case with

17 Art Town [sic]?

18   A. I'm sorry, do you mean Art Gary or Jay

19 Town? I'm not familiar with Art Town.

20   Q. No, I'm sorry. Jay Town.

21   A. Jay Town.

22   Q. When he called.

 1   A.   I believe I discussed that case with

 2   Mr. Town, yes.

 3   Q.   And what was the substance of that

 4   discussion?

 5   MR. GARDNER: Objection.   Calls for

 6   information subject to multiple privileges,

 7   including deliberative process privilege,

 8   potentially work product doctrine, as well as the

 9   attorney-client privilege.   And, therefore, I will

10   instruct the witness not to answer.

11   THE WITNESS: And consistent with that

12   instruction, I can't answer.

13   BY MS. HULETT:

14   Q.   Okay.   The December 12th, 2017, letter

15   that's Exhibit 17 in this deposition asks the

16   department to add a citizenship question to the

17   decennial census because it's needed for Voting

18   Rights Act enforcement.

19   Does the DOJ currently have a similar

20   need for hard count data regarding immigration

21   status?

22   MR. GARDNER: Objection.

1 Mischaracterizes the exhibit.

2   THE WITNESS: So first of all, I disagree

3 with your characterization of the exhibit. The

4 letter does not say that that hard count data is

5 needed. I believe it says that that data would be

6 appropriate to facilitate enforcement of Section 2

7 of the Voting Rights Act.

8 BY MS. HULETT:

9   Q. Does the DOJ have a need for hard count

10 data regarding immigration status?

11   A. I am not aware of any such need, no.

12   Q. Does it have a use for hard count data

13 regarding immigration status?

14   A. I don't know. I'm not aware of any such

15 use.

16   Q. Do you believe the U.S. Department of

17 Commerce intends to defend that lawsuit in

18 Alabama?

19   MR. GARDNER: Objection. To the extent

20 it calls for information subject to privilege, I'd

21 instruct the witness not to answer.

22   THE WITNESS: Consistent with that

1 instruction, I can't answer.

2   MS. HULETT: Okay.

3   (Gore Deposition Exhibit 43 marked for

4   identification and attached to the

5   transcript.)

6 BY MS. HULETT:

7   Q. I'd like to give you Exhibit 43.

8 Exhibit 43 is a March 28th, 2018, e-mail exchange,

9 the subject of which is, Some additional

10 background on citizenship question.

11   And at the top of the first page the

12 e-mail is from you. And the top of the e-mail

13 appears to be responding to an e-mail, again, from

14 Mr. O'Malley. And his e-mail says, "Safe and

15 accurate to say that the decision to add the

16 question to the short form balanced the commitment

17 to protecting the right to vote with the

18 commitment of protecting taxpayer dollars.

19 Reinstituting the long form questionnaire would

20 have come at great expense to the American

21 taxpayers?"

22   And your response, in part, is, "Check

1   Secretary Ross' decision memo. I think it laid

2   out some other purposes of the census and

3   citizenship question, including to determine

4   federal funding for certain programs. If that's

5   right, I think we can say that the goal is to

6   protect voting rights, efficiently allocate

7   government funding, and effectively implement

8   government programs. We can pitch this as good

9   government."

10   What did you mean by "pitch this"?

11   A. So again, Mr. O'Malley at the time was

12   employed in the Office of Public Affairs. I

13   haven't read through this whole e-mail chain. I

14   will say it looks like some of these e-mails were

15   sent on March 27th, 2018, and not just March 28th,

16   2018.

17   And I believe what I was saying was that

18   if it were correct that Secretary Ross had

19   identified other reasons and bases for

20   reinstituting and reinstating the citizenship

21   question on the census questionnaire, that

22   Mr. O'Malley could identify those in response to

1 questions from members of the media.

2   And so the -- I believe -- you asked me

3 about the pitch language. I believe it was a

4 suggestion of the message that could be shared if,

5 as I inevitably anticipated, members of the press

6 or the media contacted Mr. O'Malley or the Office

7 of Public Affairs to understand more about

8 Secretary Ross' decision.

9   Q. Okay. Did you determine that asking a

10 citizenship question on the short form would more

11 efficiently allocate government funding?

12   A. I did not determine that. Again, I think

13 the e-mail explains that I had, at the time, a

14 memory that Secretary Ross had mentioned that in

15 his decision memo. As I sit here today, I don't

16 know whether that memory was accurate or not. And

17 I suggested that Mr. O'Malley review that memo and

18 see if there were any other information that could

19 be gleaned from it.

20   Q. And these efficiently allocate government

21 funding and effectively implement government

22 programs did not end up in your -- the Department

1 of Justice December letter, correct, either?

2   A. Well, I would say that effectively

3 implementing government programs could include the

4 effective enforcement of Section 2 of the Voting

5 Rights Act. I don't believe that anything

6 referred to government funding, per se, but again,

7 allocating government funding and wisely and

8 efficiently expanding those resources on Section 2

9 enforcement could fall into that description in a

10 broad sense.

11   Q. Could you look briefly at the top of

12 page 2, an e-mail that you wrote at 8:16 in the

13 morning? And I think, again, you were responding

14 to a question from Mr. O'Malley. But you say that

15 DOJ could prosecute someone for lying about their

16 status -- their citizenship status -- on the

17 census.

18   Are you aware of any such prosecutions in

19 the past?

20   A. No, I am not.

21   Q. Are you aware of any discussions at DOJ

22 that raise that possibility in the future?

 1   MR. GARDNER: Objection to the extent it

 2 calls for information subject to law enforcement

 3 privilege as well as deliberative process

 4 privilege.

 5   To the extent you can answer that

 6 question without divulging privileged information,

 7 you may do so. Otherwise, I instruct you not to

 8 answer.

 9   THE WITNESS: No, I'm not aware of any

10 such conversations.

11 BY MS. HULETT:

12   Q. Okay. But you believe that an individual

13 answer to a citizenship question, if it was a lie,

14 could be prosecuted.

15   A. I believe what I said at the time is

16 that, as I understood the law -- I had not studied

17 the law and was trying to suggest to Mr. O'Malley

18 that he could look into that issue further. And

19 this relates to the issue I discussed with Mr. Ho

20 earlier today with respect to title 9 -- title 13

21 of the United States code. But it is my

22 understanding that individuals' responses to the

1 census questionnaire have certain privacy

2 protections embedded in federal law, and that

3 there may be exceptions that allow the sharing of

4 those responses in certain circumstances. But as

5 I've said, I have not studied the issue, so I

6 don't know it precisely.

7   I understand that there is somewhere in

8 the federal code some kind of prohibition on

9 answering a census questionnaire falsely.

10   Q. So that would be one of the circumstances

11 under which an answer to a citizenship question

12 would not be immune to disclosure to law

13 enforcement, then?

14   A. That, I actually don't know because, as I

15 said, I haven't studied the statute and I don't

16 know exactly what those exceptions are. Moreover,

17 I don't know how anyone who had access to

18 individual answers on the census questionnaire,

19 such as a Census Bureau employee, knows whether or

20 not the answer is true or false. So I don't know

21 how they go about figuring that out.

22   And as I said, I'm not aware of any

1   prosecutions on that basis, at least at all

2   recently. And I think I might have read something

3   once that suggested there might have been one

4   decades ago, but I don't know that for sure.

5   Q. And just a few final questions. Have you

6   ever communicated in any way -- by phone, in

7   person, by e-mail, text -- have you ever

8   communicated about the citizenship question with

9   Kris Kobach?

10   A. No.

11   Q. Have you ever communicated in any of

12 those ways about the citizenship question with

13 Steve Bannon?

14   A. No.

15   Q. Have you ever communicated in any of

16 those ways about the citizenship question with

17 Stephen Miller?

18   A. No.

19   Q. Have you ever communicated with anyone at

20 the White House about the citizenship question?

21   A. Yes.

22   Q. Who?

1   A.   I communicated with John Zadrozny.

2   Q.   And who is he?

3   A.   Z-a-d-r-o-z-n-y, I believe, is how he

4 spells his last name. And at the time, he was

5 working, I believe, for the Domestic Policy

6 Council.

7   Q.   And when did you communicate with him?

8   A.   I believe it was sometime in October of

9 2017.

10   Q.   Who initiated the contact?

11   A.   I don't recall. What I recall about it

12 is that I participated in a conference call on the

13 issue on which Mr. Zadrozny -- in which

14 Mr. Zadrozny also participated.

15   Q.   Conference call on the issue of adding

16 the citizenship question?

17   A.   That's correct.

18   Q.   In October of 2017?

19   A.   I believe it was October of 2017.

20   Q.   Who else was on that conference call?

21   A.   I can recall that other people from the

22 Department of Justice were on the call. Rachael

1 Tucker, who we've discussed previously, and Gene

2 Hamilton I believe was on the call. And there may

3 have been others, but I can't remember

4 specifically who they were.

5   Q. Other than the addition of the

6 citizenship question to the census, was that the

7 only topic --

8   A. Yes.

9   Q. -- discussed in the call?

10   A. Yes, it was.

11   Q. And were there people from the Department

12 of Commerce on that call?

13   A. No, there were not. Or at least not to

14 my knowledge.

15   Q. So to your knowledge, it was one White

16 House official, and the rest of you were all from

17 the Department of Justice?

18   A. To the best of my knowledge and

19 recollection, yes.

20   Q. And who set up this conference call?

21   A. I don't recall who set it up. I know it

22 wasn't me.

1   Q.   Do you know at whose request the

2   conference call happened?

3   A.   I do not recall that.

4   Q.   And did you know before the call why you

5   were invited?

6   A.   Yes.

7   Q.   And why were you invited?

8   A.   Because I was involved in this issue on

9   behalf of the Department of Justice.

10   Q.   And did the -- John -- I'm sorry, how do

11   you say his name again?

12   A.   I think it's Zadrozny, but I don't know

13   for sure.

14   Q.   Zadrozny. Do you remember what he

15   contributed to that conference call?

16   MR. GARDNER: Objection. That question

17   calls for the disclosure of information subject to

18   executive privilege.

19   To the extent you can answer that

20   question without divulging such information, you

21   may. Otherwise, I instruct you not to answer.

22   THE WITNESS: Consistent with that

 1 instruction, I can't answer.

 2 BY MS. HULETT:

 3   Q. Do you remember whether he was in favor

 4 of or opposed to the addition of the citizenship

 5 question?

 6   MR. GARDNER: Same objection. Same

 7 instruction.

 8   THE WITNESS: Consistent with that

 9 instruction, I can't answer.

10   MS. HULETT: Can we take just a very

11 quick break?

12   MR. GARDNER: Absolutely.

13   VIDEO TECHNICIAN: We're going off the

14 record. The time on the video is 6:03 p.m.

15   (Discussion off the record.)

16   VIDEO TECHNICIAN: We are back on the

17 record. The time on the video is 6:03 p.m.

18   MS. HULETT: We're back on the record

19 just for me to tell you that I'm done and turning

20 it over to Mr. Greenbaum.

21   VIDEO TECHNICIAN: We are going off the

22 record. The time on the video is 6:04 p.m.

1   (Discussion off the record.)

2   VIDEO TECHNICIAN: We are back on the

3   record. The time on the video is 6:08 p.m.

4   EXAMINATION BY COUNSEL FOR

5   THE CITY OF SAN JOSE AND BAJI

6   BY MR. GREENBAUM:

7   Q. Good evening, Mr. Gore. John Greenbaum.

8   I reintroduced myself to you a couple of minutes

9   ago, and now I'm going to be the one asking the

10 questions.

11   A. Okay.

12   Q. Several hours ago at the beginning of the

13 deposition you mentioned that you reviewed a

14 report by Pam Karlan; is that correct?

15   A. That is correct.

16   Q. And do you know who Ms. Karlan is?

17   A. I don't know her personally and I've

18 never met Ms. Karlan to my knowledge. I

19 understand that she has been and may still be

20 affiliated with Stanford University and was

21 previously a deputy assistant attorney general in

22 the civil rights division at the United States

1 Department of Justice.

2   Q. And are you familiar at all with her

3 background in terms of voting rights issues?

4   A. Only with -- only from the report that I

5 read. I understand that she has been involved in

6 litigating voting rights cases in the past and has

7 published on that issue.

8   Q. In terms of her report, how much time did

9 you spend reading her report?

10   A. It was a fairly short report, as I

11 recall. And I can't remember how long I spent

12 reading it, but it would have been less than half

13 an hour. Maybe half an hour. I don't recall

14 exactly.

15   Q. And at the time you read the report, was

16 there anything in the report that you recall

17 disagreeing with?

18   A. There are a couple of things in the

19 report that I think were inaccurate. I don't have

20 the report in front of me, so I can't speak to

21 that. But if you provide me a copy, I'm happy to

22 read it and let you know what I think.

1   Q.   All right.   We'll do that.

2   MR. GREENBAUM: I'm going to mark it as

3   Exhibit 44.

4   (Gore Deposition Exhibit 44 marked for

5   identification and attached to the

6   transcript.)

7   BY MR. GREENBAUM:

8   Q.   Mr. Gore, do you recognize Exhibit 44?

9   A.   Yes.   This appears to be the report -- a

10 copy of the report from Pam Karlan that I reviewed

11 and that we were just discussing.

12   Q.   Okay.   In looking at it, do you recall,

13 when you read it the last time, what you thought

14 was inaccurate?

15   A.   Let me review it.

16   Q.   All right.   Because of the amount of time

17 that I have --

18   A.   Okay.

19   Q.   -- I'm not going to spend my time having

20 you review the report, so I'm going to ask you

21 about a couple of statements --

22   A.   Sure.

1   Q.   -- in the report.

2   If you'd move to page 7 -- and in the

3   second paragraph under the unsuccessful Section 2

4   suits are not due to problems with existing data,

5   there's a sentence that says, "It is striking that

6   the Gary letter fails to identify even a single

7   case where inadequate citizenship data" --

8   A.   I apologize. I'm sorry, which page are

9   you on?

10   Q.   Oh, sorry. Page 7.

11   A.   7. Okay. I'm there.

12   Q.   If you go to page 7 --

13   A.   Yeah -- oh, I see. Second from the

14   bottom. I apologize.

15   Q.   Yes.

16   A.   All right. Go ahead.

17   Q.   "It is striking that the Gary letter

18   fails to identify even a single case where

19   inadequate citizenship data caused plaintiffs to

20   lose."

21   That sentence.

22   A.   Yes.

1   Q. Do you agree, disagree, or have no

2 opinion with -- with respect to what Professor

3 Karlan says in that sentence?

4   A. I disagree that it's striking. I do

5 believe the Gary letter does not identify a case

6 where inadequate citizenship data caused

7 plaintiffs to lose. I also think that's the wrong

8 question because we also have to identify cases to

9 bring, and of course, no plaintiff files a case

10 and brings a case unless they think they can win.

11   So if a plaintiff thought -- I imagine if

12 a plaintiff thought that it had inadequate

13 citizenship data, it just wouldn't file the

14 lawsuit; it would try to find better data or

15 improve its evidence before going to court. I

16 don't know anybody who files a lawsuit in court

17 when there's some big question about the adequacy

18 of their evidence.

19   Q. And in the case of DOJ, would it be fair

20 to say that DOJ does not file marginal cases in

21 terms of Section 2 cases?

22   MR. GARDNER: Objection to the extent it

1 calls for information subject to deliberative

2 process privilege.

3   To the extent you can answer that

4 question without divulging such information, you

5 may do so. Otherwise, I instruct you not to

6 answer.

7   THE WITNESS: When the Department of

8 Justice files a case, at least in my experience,

9 it believes it can win the case.

10 BY MR. GREENBAUM:

11   Q. So in your experience -- and you wouldn't

12 approve a case that you thought was marginal,

13 correct?

14   MR. GARDNER: Same objection. Same

15 instruction.

16   THE WITNESS: Consistent with that

17 instruction, I can't answer.

18 BY MR. GREENBAUM:

19   Q. Can you recall an instance where the

20 Department of Justice filed a Section 2 lawsuit

21 where there was considerable doubt as to whether

22 the first Gingles precondition could be met?

 1   MR. GARDNER: Same objection. Same

 2   instruction.

 3   THE WITNESS: Consistent with that

 4   instruction, I can't answer.

 5   BY MR. GREENBAUM:

 6   Q. All right. So I want to now move to a

 7   sentence in the last paragraph of that same

 8   page 7, and it's the sentence that starts with,

 9   "The problem." "The problem the Gary letter

10   purports to identify -- that the Department of

11   Justice lacks sufficient data to bring Section 2

12   cases -- would only arise where an actual

13   enumeration would show the possibility of majority

14   minority CVAP district, but survey-provided

15   estimates cannot show such a possibility."

16   Agree, disagree, have no opinion with

17   that sentence?

18   A. I -- again, I disagree, because I don't

19   believe that that is the, quote/unquote, problem

20   the Gary letter purports to identify. I believe

21   what the Gary letter is saying is that the

22   Department of Justice wants to have the most

1 complete, accurate, and reliable data possible.

2 And it's not presenting an either/or between

3 census data and ACS data or some other form of

4 data.

5   There are a couple of places, now that

6 I've looked at this, where I do think Professor

7 Karlan misstates -- mischaracterizes the Gary

8 letter.

9   Q. Okay. Do you want to point those out?

10   A. Sure. I'd be happy to.

11   Page 3. If you look at the very top of

12 the page under the heading "Background

13 assumptions," the first paragraph says, "When I

14 refer to case law in this report, I do so for two

15 reasons: One, to describe the standards that I

16 have assumed apply to cases litigated under

17 Section 2; and, two, to provide real-world

18 illustrations of why the Gary letter is wrong to

19 argue that citizenship data from decennial census

20 questionnaires are critical to Section 2

21 enforcement."

22   Now, that's a mischaracterization of the

1 Gary letter, because that's not what it says.

2   Q. Does the Gary letter say that citizenship

3 data provided from decennial census questionnaires

4 is critical to Section 2 enforcement?

5   A. I think the Gary letter speaks for

6 itself, and I think there's no dispute that

7 citizenship data is crucial -- accurate

8 citizenship data is crucial to carrying out the

9 Department of Justice's Section 2 enforcement

10 mission.

11   Q. Do you -- are you of the view that that

12 citizenship data needs to be taken from decennial

13 census questionnaires?

14   A. And by "you," are you referring to the

15 Department of Justice or me personally?

16   Q. I'm referring to you, personally.

17   A. No.

18   Q. Okay. All right. And then is there

19 anything else in the Karlan report that you would

20 characterize as inaccurate?

21   A. There are a couple of things that come to

22 mind. Again, if I had time to read it all, I

1 would read it all and give you a complete list.

2 But I can give you a partial list based on having

3 flipped through it just now.

4   Q. And based on your prior reading.

5   A. And based on my prior reading. Thank

6 you. That's fair.

7   If you look on page 4 -- a couple of

8 things. First of all, Ms. Karlan is referring to

9 her time at the Department of Justice. I would

10 just point out that during her time at the

11 Department of Justice, which I believe fell in the

12 time frame of around 2014 -- but I could be off on

13 those years -- I don't think there were very many

14 Gingles cases being litigated by the voting

15 section. So she says she didn't hear

16 conversations or participate in conversations

17 about certain issues, and I just don't know how

18 many conversations like that would have happened,

19 given the -- the division's docket at the time.

20   Q. Are you familiar with the Texas

21 redistricting case?

22   A. Yes, I am.

1   Q. Were you aware that the Department of

2 Justice was litigating the Texas redistricting

3 case during the time Ms. Karlan was at DOJ?

4   A. That could be right.

5   Q. Okay.

6   A. And then she says, for example, at the

7 bottom of page 4, "Census data are used in

8 analyzing all three Gingles preconditions, but

9 information about citizenship is most important to

10 the first Gingles precondition. The other two

11 preconditions, which together indicate the level

12 of racial block voting or racial polarization

13 within the relevant jurisdiction, can be proven

14 without the need for citizenship data."

15   There are cases in which the two

16 preconditions related to racially polarized voting

17 are proven with respect to citizenship data. That

18 can be done, for example, when the racial

19 polarized voting analysis is looking at registered

20 voting and you use CVAP data to understand the

21 levels of voter registration and turnout by a

22 particular racial group and its citizenship

1 composition.

2 So it's true that they can be -- there

3 are cases, I believe, where they can be, but there

4 are cases where -- and the Department of Justice

5 currently has such a case, the United States

6 versus Eastpointe case. We are using CVAP data in

7 part to prove the second and third Gingles

8 preconditions.

9 Q. And the CVAP data are you using -- is

10 that based on ACS?

11 A. Yes.

12 Q. Okay. And --

13 A. I was just going to point out another,

14 but go ahead.

15 Q. You can point out the other case.

16 A. No. I was going to point out another

17 issue in --

18 Q. Oh, I wanted to --

19 A. -- Professor Karlan's report.

20 Q. I actually wanted to ask you a question

21 about this particular issue.

22 A. Okay.

 1   Q. Going back to Exhibit 17 --

 2   A. Yes.

 3   Q. -- the Gary letter. In the Gary letter,

 4 when talking about how the citizenship data is

 5 critical to the department's enforcement of

 6 Section 2 of the Voting Rights Act, was that only

 7 with reference to Gingles 1 or was it reference to

 8 any other aspect of Section 2 enforcement?

 9   A. Well, I believe the letter speaks for

10 itself. Is there a particular sentence you're

11 referring to?

12   Q. Sure. I'm just -- I'm referring to -- in

13 the first paragraph --

14   A. Okay.

15   Q. -- at the end, it says that, "As

16 demonstrated below, the decennial census

17 questionnaire is the most appropriate vehicle for

18 collecting that data and reinstating a question on

19 citizenship will best enable the department to

20 protect all American citizens' voting rights under

21 Section 2."

22   A. Well, as I've just laid out, we do use

1 citizenship data at all three steps of the Gingles

2 analysis. The letter speaks for itself in terms

3 of what it talks about. And --

4   Q. Does the letter in any place mention any

5 other aspect of Section 2 enforcement other than

6 Gingles 1?

7   A. I don't believe that it does, but I don't

8 know -- again, I haven't gone back and reviewed

9 all these cases recently, so I don't know what

10 they do or do not say or may or may not say with

11 respect to the use of citizenship data, Gingles

12 steps 2 and 3.

13   Q. You don't see anything in the letter,

14 correct, that references any aspect of how this

15 data is relevant to Section 2 enforcement other

16 than with respect to Gingles 1, correct?

17   A. I don't see anything like that. That's

18 correct.

19   Q. And isn't it the case that the

20 department, in making a request to the Census

21 Bureau about the need for -- the need for having a

22 citizenship question on the census and why it's

1 critical for Section 2 enforcement, isn't it the

2 case that the department was going to put forward

3 its best arguments?

4   A. I think the department put forward

5 arguments it strongly believed in and that this

6 was the argument that the department put forward.

7   Q. And in your view, are -- are these the

8 best arguments that the department could put

9 forward?

10   A. My view when? As of now or at the time?

11   Q. At the time.

12   MR. GARDNER: Objection to the extent

13 that that calls for the disclosure of information

14 subject to deliberative process privilege.

15   To the extent you can answer the question

16 without divulging that information, you way.

17 Otherwise, I instruct you not to answer.

18   THE WITNESS: Consistent with that

19 instruction, I can't answer.

20 BY MR. GREENBAUM:

21   Q. All right. How about today?

22   A. I agree with the letter. I think the

1 letter represents the position of the department,

2 and I agree with it.

3   Q. Okay.

4   MR. GARDNER: Did you want him to finish

5 his answer, by the way --

6   MR. HO: Yes.

7   MR. GARDNER: -- about --

8 BY MR. GREENBAUM:

9   Q. Is there anything else in Ms. Karlan's

10 report that you find is inaccurate?

11   A. On page 5, I will mention one thing.

12 Second full paragraph down: "Citizenship data is

13 almost never important in cases involving

14 African-American, American Indian, or Alaskan

15 Native plaintiffs."

16   I'm not quite sure what she means by

17 "almost never." But I will point out that the

18 department is using CVAP data in the United States

19 versus Eastpointe case, which is a case involving

20 African-American voters.

21   Q. Do you recall a case in which anybody

22 bringing a case on behalf of African-American,

1 American Indian or Alaska Native voters lost on

2 Gingles 1 based on a -- because they couldn't meet

3 the CVAP threshold, but they could meet the VAP

4 threshold?

5   MR. GARDNER: Objection. Form.

6 Objection. Compound.

7   THE WITNESS: I am not -- as I understand

8 your question, I'm not aware of any such filed

9 case.

10 BY MR. GREENBAUM:

11   Q. And you are aware of cases where this

12 happened with respect to Hispanic or Latino

13 voters, correct?

14   A. I believe that I am, yes.

15   Q. Okay. So there are differences when it

16 comes to Gingles 1 in terms of -- strike that.

17   Anything else about -- in your

18 recollection, about the Karlan report that is

19 inaccurate in your view?

20   A. One thing I'll point out -- and, again, I

21 haven't had time to review this letter in its

22 entirety. I will say that the -- on page 11,

1   other problems with the Gary letter -- "There are

2   problems with the Gary letter beyond its claim

3   regarding the need for additional citizenship

4   information. The Gary letter asserts that it is

5   problematic to use different data sets to

6   determine compliance with the Constitution's

7   one-person/one-vote requirement and to analyze

8   Section 2 claims. Not so. Although

9   one-person/one-vote is a common way of referring

10   to the requirement that jurisdictions draw equal

11   populous districts, that requirement does not

12   focus at all on election results or the ability of

13   groups of citizens to elect representatives of

14   their choice. So there is nothing anomalous about

15   using an actual enumeration to determine whether

16   jurisdictions have satisfied the equal populous

17   districting requirement and using sophisticated

18   estimation techniques to determine whether it is

19   possible to create districts where a minority

20   group can be electorally successful."

21   Professor Karlan is ignoring the task of

22   map drawers. And as I've testified earlier, map

 1 drawers' lives and jobs would be less complicated

 2 if they didn't have to use two data sets. And

 3 that's not something that she mentions. It is

 4 mentioned in the Gary letter, and she doesn't

 5 mention it here when she's discussing this topic.

 6   Q. So going to that, isn't it also the case

 7 that map drawers have had to use an actual

 8 enumeration for -- to determine total population

 9 of districts and sampling in terms of to estimate

10 the percentage of citizen voting age population of

11 the district?

12   A. I believe, as I understand your question,

13 that's correct. If I could just restate -- I

14 believe what you asked me is that map drawers use

15 the hard count data from the census to determine

16 equal population of one-person/one-vote, and

17 estimates from some other source, which may or may

18 not be the ACS, to determine CVAP level for

19 purposes of complying with Section 2. Is that --

20   Q. Yes.

21   A. Yes, that's my understanding.

22   Q. And so her point that there's nothing

1   anomalous about using an actual enumeration to

2   determine whether jurisdictions have satisfied the

3   equal populous districting requirement and using

4   estimation techniques to determine whether it's

5   possible to create districts where a minority

6   group can be electorally successful is one that

7   you would agree with?

8   A.   I would agree that, currently, map

9   drawers do use that. She doesn't refer to map

10   drawers. But the Gary letter does mention that

11   the task for map drawers, as well as litigants and

12   courts, would be simplified if all data were

13   available in a single data set.

14   Q.   Where specifically in the Gary letter are

15   map drawers referenced?

16   A.   It's in the first bullet point. I think

17   it would be the individuals who, on behalf -- are

18   mentioned in the phrase "jurisdictions conducting

19   redistricting." When jurisdictions conduct

20   redistricting, they use map drawers to draw the

21   maps.

22   Q.   So you're including map drawers within

1   the term "jurisdictions"?

2   A.   I am not familiar with any redistricting

3   plan that's ever been drawn by someone who wasn't

4   a map drawer, so yes.

5   Q.   All right. Have you -- strike that.

6   Has any map drawer, outside of somebody

7   employed by the federal government, ever

8   communicated to you that it would be better if the

9   citizenship data were in the same data set as the

10 total population data?

11   MR. GARDNER: Could you re-ask that

12 question again? I'm sorry. I missed the first

13 clause.

14   MR. GREENBAUM: Can you read it back?

15   (The reporter read the record as

16   requested.)

17   THE WITNESS: I don't know who you mean

18 by "you." If you mean the Department of Justice,

19 I can't answer that question because I don't know

20 what conversations have happened between map

21 drawers outside of the federal government and

22 members of the Department of Justice.

1 BY MR. GREENBAUM:

2   Q. I mean you, John Gore.

3   A. Me, personally? I don't believe I've

4 ever had any such conversation that I can recall.

5   Q. At the time that the Gary letter was

6 issued on December 12th, did you know what the

7 position of the Census Bureau was that --

8 regarding whether citizenship data would be more

9 accurate if there was a citizenship question on

10 the census?

11   MR. GARDNER: Objection. Assumes facts

12 not in evidence.

13   THE WITNESS: I'm not sure I have a basis

14 to answer that question.

15 BY MR. GREENBAUM:

16   Q. I'm asking you whether you knew, yes or

17 no.

18   A. Whether I knew what?

19   Q. Okay. I'll --

20   A. Sorry, can you just rephrase the

21 question?

22   Q. -- go back -- I will state the question

1 again.

2   A. Okay.

3   Q. And I'm asking whether you knew one way

4 or another in asking this question. Okay?

5   A. Okay.

6   Q. At the time the Gary letter was issued on

7 December the 12th, did you know what the position

8 was -- of the Census Bureau was regarding whether

9 citizenship data would be more accurate if there

10 was a citizenship question on the census?

11   MR. GARDNER: Same objection.

12   THE WITNESS: What's the objection?

13   MR. GARDNER: Assumes facts not in

14 evidence.

15   THE WITNESS: I did not know.

16 BY MR. GREENBAUM:

17   Q. Okay. And isn't it true that DOJ doesn't

18 have jurisdiction to bring racial or partisan

19 gerrymandering claims?

20   A. That is correct. Those claims, to the

21 extent they are brought, are brought under the

22 Constitution, and the Department of Justice does

1   not have authority or standing to assert such

2   constitutional claims. The Department of Justice

3   has, in the past, gotten involved in racial

4   gerrymandering claims, either as an intervener or

5   as an amicus because frequently those claims

6   implicate districts that were drawn or preserved

7   to comply with Section 2 or Section 5 of the

8   Voting Rights Act, which the Department of Justice

9   does enforce.

10   Q. So a citizenship question would not help

11 DOJ bring racial or partisan gerrymandering claims

12 because DOJ doesn't have jurisdiction to bring

13 them in the first place, correct?

14   A. That's correct, although it would

15 facilitate DOJ's participation in such cases if it

16 chose to participate for -- because, again,

17 particularly, racial gerrymandering cases can

18 implicate Section 2 and Section 5 districts where

19 CVAP data is not necessary.

20   Q. Prior to December 12th, 2017, did you

21 have any communication with anybody who was not a

22 federal employee at the time about having a

1 citizenship question on the census?

2   A. Yes.

3   Q. Who?

4   A. I had a conversation with a gentleman

5 named Mark Neuman, who I believe was not a federal

6 employee at the time.

7   Q. Who is Mark Neuman?

8   A. I understand Mark Neuman to be a former

9 employee of the Census Bureau or the Department of

10 Commerce -- I'm not sure which one. And I

11 understood that he was advising the Department of

12 Commerce and the Census Bureau with respect to

13 this issue.

14   Q. And what was the substance of your

15 conversation with Mr. Neuman?

16   MR. GARDNER: Objection. Calls for

17 information subject to deliberative process

18 privilege. I instruct the witness not to answer.

19   THE WITNESS: Consistent with that

20 instruction, I can't answer.

21

22 BY MR. GREENBAUM:

1   Q. Other than Mr. Neuman, did you have a

2 conversation with anybody else -- or a

3 communication with anybody else who was not an

4 employee of the federal government about having a

5 citizenship question on the census?

6   A. No.

7   Q. Did you communicate with anybody employed

8 by the Census Bureau about the issue of putting a

9 citizenship question on the census prior to

10 December 12th, 2017?

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

12   Q. Do you know anybody at DOJ who did?

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

14   Q. Did DOJ consider privacy issues related

15 to revealing a person's citizenship data or --

16 strike that.

17   Prior to the issuance of the

18 December 12th letter, did you, John Gore, consider

19 privacy issues related to revealing a person's

20 citizenship status if citizenship data was taken

21 from -- was at the individual level or at the

22 block level on the census?

1   MR. GARDNER: Objection. Calls for

2   information subject to deliberative process

3   privilege. I instruct the witness not to answer.

4   THE WITNESS: Consistent with that

5   instruction, I can't answer.

6   BY MR. GREENBAUM:

7   Q. Okay. Mr. Ho earlier showed you a map

8   that had the number of people in particular census

9   blocks in it. Do you recall that?

10   A. I do recall that.

11   Q. And some of those blocks had one person

12   in the census block, correct?

13   A. That is correct.

14   Q. And if the Census Bureau were providing

15   census data at the block level, isn't it true

16   that, for those census blocks that have one

17   person, that that person's answer to the census

18   question regarding citizenship would be revealed

19   in the data itself?

20   MR. GARDNER: Objection. Calls for a

21   hypothetical.

22   THE WITNESS: Again, I believe I had this

1 discussion with Mr. Ho earlier. I don't know the

2 answer to that question. It's a hypothetical

3 question.

4   Mr. Ho also talked about data masking

5 techniques that the Census Bureau might use. I

6 don't know how those would implicate the answer to

7 the question. I don't know how the Census Bureau

8 is planning to report the results of this data or

9 this question from the questionnaire to the

10 Department of Justice.

11   There's a lot I don't know, so I can't

12 take a view on that and I, unfortunately, can't

13 answer your question.

14 BY MR. GREENBAUM:

15   Q. But if it were the case that the Census

16 Bureau was providing the block-specific --

17 accurate block-specific data for blocks that have

18 one person in it, that it would reveal the

19 citizenship status as reported by that person?

20   A. Again, I've answered this question. I

21 don't think I can add anything to my answer. It's

22 a hypothetical. I don't know, again, how that

1   data is going to be reported and whether your

2   definition of accurate includes any data masking

3   techniques that Mr. Ho referred to earlier.

4   To the extent it would reveal that

5   information, it would also reveal information

6   responsive to the other questions on the census,

7   which include questions about sex, race, Hispanic

8   origin, and sexual orientation. And if those

9   questions were all -- the results of those

10   questions were also divulged, that information, I

11   guess, would be available on parity with the

12   response to the citizenship question.

13   Q. You may have answered this earlier, but

14   I'm going to ask it again. Who decided that the

15   Department of Justice would request that the

16   Census Bureau add a citizenship question to the

17   census?

18   A. I believe I've answered that earlier, and

19   it was the attorney general.

20   Q. Okay. And do you recall the date in

21   which the attorney general made that decision?

22   A. I don't know exactly when he, in his own

1 mind, may have made that decision. The decision

2 became final when the letter was sent on

3 December 12th.

4   Q. When was it communicated to you?

5   A. As I testified before, I don't remember

6 the exact date. I believe it was December 12th.

7   MR. GARDNER: I don't want to interrupt

8 your question. How much time do we have left?

9   VIDEO TECHNICIAN: Ten minutes.

10   MR. GARDNER: Ten minutes? Thank you.

11   MR. GREENBAUM: I want to mark as

12 Exhibit 45 documents Bates stamped -- well, the

13 first Bates stamp is DOJ 28385.

14   (Gore Deposition Exhibit 45 marked for

15   identification and attached to the

16   transcript.)

17 BY MR. GREENBAUM:

18   Q. Mr. Gore, do you recognize Exhibit 45?

19   A. I'm not sure I recognize it, no.

20   Q. Would it be fair to say that Exhibit 45

21 shows a series of e-mails between you and Chris

22 Herren, chief of the voting section.

1   A. It appears to. And Ben Aguinaga is also

2   copied on some of those e-mails.

3   Q. And do the e-mails reflect that you asked

4   Mr. Herren for comments and edits to the draft

5   letter that was a -- that was the first draft that

6   you discussed this morning of what became the

7   December 12th letter?

8   A. The e-mail on the bottom of page 1,

9   carrying over to the top of page 2, appears to be

10   an e-mail that I've already discussed today. And

11   yes, it does appear to be an e-mail conveying a

12   draft to Chris Herren and asking for his comments

13   and edits regarding that particular draft.

14   Q. And did Mr. Herren provide comments and

15   edits on or about November 3rd?

16   A. Yes, he did.

17   Q. And do you recall sharing any subsequent

18   drafts of what became the December 12th letter

19   with Mr. Herren?

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

21   Q. Do you recall him giving you comments on

22   any subsequent drafts?

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

2   MR. GREENBAUM: All right. I want to

3   mark as Exhibit 46 a series of e-mails. At the

4   top is an e-mail from John Gore to Chris Herren.

5   It's marked as DOJ 28354.

6   (Gore Deposition Exhibit 46 marked for

7   identification and attached to the

8   transcript.)

9   BY MR. GREENBAUM:

10   Q.   Mr. Gore, do you recognize these e-mails?

11   A.   I'm not sure whether I recognize these

12   e-mails, but I -- I believe I recall them.

13   Q.   Okay. Do you recall responding to

14   questions from the civil division about the census

15   citizenship question litigation case?

16   A.   Yes, I do.

17   Q.   And do you recall seeking Mr. Herren's

18   comments?

19   A.   Yes, I do.

20   MR. GREENBAUM: All right. I'm going to

21   mark as Exhibit 47 a document that you probably

22   recognize, but I want to make sure we've got it in

1   the record.

2   (Gore Deposition Exhibit 47 marked for

3   identification and attached to the

4   transcript.)

5   BY MR. GREENBAUM:

6   Q.   Mr. Gore, do you recognize Exhibit 47?

7   A.   Exhibit 47 appears to be a copy of my

8   written testimony to the Committee on Oversight

9   and Government Reform at the U.S. House of

10 Representatives, which I presented on May 18th,

11 2018.

12   Q.   I'd like to go back to Exhibit 23.

13   A.   Okay.

14   Q.   And I want to call your attention to

15 pages 48, 49, and 50. And there are -- on this

16 privilege log, if you'll look at item 690, using

17 the rows along the left -- 693, 694, 698, they all

18 seem to reflect e-mails that you received from

19 Mr. Shumate at the civil division regarding the

20 draft of Commerce's decision memo.

21   Is that a fair characterization?

22   MR. GARDNER: Objection. Compound.

1   THE WITNESS: Just to confirm, you're

2   talking about 690, 693, 694, and 698?

3   BY MR. GREENBAUM:

4   Q. Yes.

5   A. With -- I appear to be at least one of

6   the recipients on all of those e-mails. And

7   according to this chart, those e-mails are from

8   Mr. Shumate.

9   Q. Do you recall responding to Mr. Shumate,

10   through e-mail or any other means, with respect to

11   those four e-mails that he sent you?

12   A. I don't -- I don't recall that one way or

13   the other.

14   Q. I want to go back to Exhibit 5. And I'm

15   going to refer you -- if you look at the very

16   bottom of page 1 to the very top of page 2,

17   there's an e-mail in that chain from Mr. Gary to

18   you that says, "John, my contact at OJC [sic], not

19   at the department level, has heard nothing, and is

20   equally puzzled about the question."

21   Do you see what I'm referring to?

22   A. I see it. Yes.

1   Q.   Was -- were you puzzled about the

2 question?

3   A.   Was I puzzled about the question?

4   Q.   Yes.

5   A.   I don't recall at the time whether I was

6 puzzled about it or not.

7   Q.   Do you recall if Mr. Gary was puzzled

8 about the question?

9   A.   I can't speak for Mr. Gary, and I don't

10 recall whether he told me that or not. I believe

11 the e-mail itself is referring to Mr. Gary's

12 contact at census OGC.

13   Q.   Yes. And it said that he's equally

14 puzzled about the question, which connotates that

15 someone else other than him was puzzled.

16   MR. GARDNER: Objection. Lack of

17 foundation. Calls for speculation.

18   THE WITNESS: I don't know.

19   MR. GREENBAUM: Okay.

20   MR. GARDNER: Oh, we're out of time. If

21 you have one more question, I'm happy to let you

22 ask it, just out of professional courtesy, but we

1   do need to wrap up.

2   MR. GREENBAUM: I'm done.

3   MR. GARDNER: Terrific. We reserve the

4   right to read and sign.

5   VIDEO TECHNICIAN: This concludes our

6   video deposition. The time on the video is

7   6:48 p.m. We are off the record.

8   (Whereupon, at 6:48 p.m., the videotaped

9   deposition of JOHN GORE was concluded.)

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1   CERTIFICATE OF NOTARY PUBLIC

2   I, CHRISTINA S. HOTSKO, the officer before

3   whom the foregoing deposition was taken, do hereby

4   certify that the witness whose testimony appears in

5   the foregoing deposition was duly sworn by me; that

6   the testimony of said witness was taken by me in

7   stenotypy and thereafter reduced to typewriting under

8   my direction; that said statement is a true record of

9   the proceedings; that I am neither counsel for,

10   related to, nor employed by any of the parties to the

11   action in which this statement was taken; and,

12   further, that I am not a relative or employee of any

13   counsel or attorney employed by the parties hereto,

14   nor financially or otherwise interested in the

15   outcome of this action.

16

17

18   CHRISTINA S. HOTSKO

19   Notary Public in and for the

20   District of Columbia

21   My commission expires:

22   November 14, 2021

1 NEW YORK IMMIGRATION COALITION, et al., vs.

2 UNITED STATES DEPARTMENT OF COMMERCE, et al.

3 JOHN GORE

4

5 INSTRUCTIONS TO THE WITNESS

6 Please read your deposition over carefully and

7 make any necessary corrections. You should state the

8 reason in the appropriate space on the errata sheet

9 for any corrections that are made.

10 After doing so, please sign the errata sheet and

11 date it. You are signing same subject to the changes

12 you have noted on the errata sheet, which will be

13 attached to your deposition.

14 It is imperative that you return the original

15 errata sheet to the deposing attorney within

16 thirty (30) days of receipt of the deposition

17 transcript by you. If you fail to do so, the

18 deposition transcript may be deemed to be accurate

19 and may be used in court.

20

21

22 PA 3072371

1   NEW YORK IMMIGRATION COALITION, et al., vs.

       UNITED STATES DEPARTMENT OF COMMERCE, et al.

2

                        JOHN GORE

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4   E R R A T A

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5   PAGE   LINE   CHANGE

6   _ _ _ _ _ _   _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

7   Reason:_____

8   _ _ _ _ _ _   _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

9   Reason:_____

10   _ _ _ _ _ _   _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

11 Reason:_____

12   _ _ _ _ _ _   _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

13 Reason:_____

14   _ _ _ _ _ _   _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

15 Reason:_____

16   _ _ _ _ _ _   _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

17 Reason:_____

18   _ _ _ _ _ _   _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

19 Reason:_____

20   _ _ _ _ _ _   _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

21 Reason:_____

22 PA 3072371

1   NEW YORK IMMIGRATION COALITION, et al., vs.

2   UNITED STATES DEPARTMENT OF COMMERCE, et al.

3   JOHN GORE

4

5   ACKNOWLEDGMENT OF DEPONENT

6   I, _____, do hereby certify

7   that I have read the foregoing pages and that the

8   same is a correct transcription of the answers given

9   by me to the questions therein propounded, except for

10   the corrections or changes in form or substance, if

11   any, noted in the attached Errata Sheet.

12

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.