

Investigation into Misrepresentations of the Origins of the Proposed Citizenship Question on the 2020 Decennial Census

INVESTIGATIVE REPORT NO. 19-0728

JULY 6, 2021

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U.S. Department of Commerce
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Cover: Herbert C. Hoover Building main entrance at 14th Street Northwest in Washington, DC. Completed in 1932, the building is named after the former Secretary of Commerce and 31st President of the United States

Introduction

On May 31, 2019, the Office of Inspector General (OIG) received a joint letter from 13 U.S. Senators alleging that the Department of Commerce (the Department) and the U.S. Department of Justice (DOJ) concealed the contribution of a political redistricting strategist—Dr. Thomas Hofeller—in the rationale for the addition of a citizenship question to the 2020 Decennial Census (2020 Census). The letter made the following specific allegations:

- (a) “In depositions and congressional interviews, Justice and Commerce Department officials failed to disclose the substantive public policy role of political operative, Dr. Thomas Hofeller, in adding the question to the 2020 Census; and
- (b) In concealing the contribution of Dr. Hofeller, Justice and Commerce Department officials purposely obscured the impermissible racial and partisan motivations for adding a citizenship question—to be ‘advantageous to Republicans and Non-Hispanic Whites’ and to ‘clearly be a disadvantage to the Democrats’—in both the Justice Department’s December 2017 letter requesting the citizenship question and the Commerce Department’s March 2018 memorandum adding the question.”

The allegations, if substantiated, would contradict then-Department Secretary Wilbur Ross’s assertion that the addition of the citizenship question was based solely on a DOJ request to assist in the enforcement of the Voting Rights Act of 1965 (VRA).¹ Further, the allegations, if substantiated, would implicate DOJ and Department officials in an effort to conceal from Congress and the public the true rationale for the addition of the citizenship question to the 2020 Census.

On June 27, 2019, our office initiated this investigation based on the allegations listed above and possible violations of 18 U.S. Code § 1001: Statements or entries generally. This report documents our investigation and findings.

Executive Summary

Our investigation was unable to establish that Dr. Thomas Hofeller had a substantive public policy role in the addition of the citizenship question to the 2020 Census. Our investigation did substantiate that correspondence from the Department to the DOJ contained verbiage similar to that used in portions of Dr. Hofeller’s unpublished 2015 study focusing on the use of Citizenship Voting Age Population (CVAP)² for the purposes of redistricting; however, those similar portions related to historical and factual references to the Census and did not include Dr. Hofeller’s opinions.

Our investigation established Secretary Ross misrepresented the full rationale for the reinstatement of the citizenship question during his March 20, 2018, testimony before the House Committee on Appropriations and again in his March 22, 2018, testimony before the

¹ 52 U.S.C. § 10301 et seq.

² *Exhibit I: Chart Comparing Hofeller 2015 Study with DOJ December 2017 Letter*, 125–126. Available at <https://assets.documentcloud.org/documents/6111284/May-31-2019-Unredacted-Exhibits.pdf> (accessed March 8, 2021).

House Committee on Ways and Means. During Congressional testimony, Secretary Ross stated his decision to reinstate the citizenship question was based solely on a DOJ request. That request memorandum was signed by the DOJ on December 12, 2017. However, evidence shows there were significant communications related to the citizenship question among the Secretary, his staff, and other government officials between March 2017 and September 2017, which was well before the DOJ request memorandum. Evidence also suggests the Department requested and played a part in drafting the DOJ memorandum. Further, Secretary Ross sent a memorandum to the Department on June 21, 2018, clarifying his deliberations regarding adding a citizenship question to the Decennial Census. In this memorandum, the Secretary stated he began considering the content of the 2020 Census, to include reinstating the citizenship question, soon after his appointment to Secretary.

Background

On December 12, 2017, [REDACTED] DOJ's Justice Management Division (JMD), sent a letter to [REDACTED], [REDACTED] the U.S. Census Bureau (Census Bureau), requesting that the Bureau add a citizenship question to the 2020 Census.³

On March 26, 2018, Secretary Ross sent a memorandum⁴ to Karen Dunn Kelley, then-Deputy Secretary of Commerce, notifying her of his decision to add the citizenship question to the 2020 Census based on DOJ's request for data to enforce Section 2 of the VRA. The Secretary's March 26, 2018, memorandum maintained that adding a citizenship question would provide DOJ with the most complete and accurate count of CVAP.⁵

Between March 2018 and May 2018, Secretary Ross testified before the U.S. House of Representatives and the U.S. Senate and affirmed that the Department responded solely to DOJ's request to add the citizenship question.⁶

In June 2018, Secretary Ross issued a supplemental memorandum wherein he stated he began considering various fundamental issues with the 2020 Census, which included the addition of a

³ [REDACTED] to [REDACTED] U.S. Census Bureau, December 12, 2017. *Request to Reinstate Citizenship Question on 2020 Census Questionnaire*. Available at <http://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html> (accessed March 8, 2021).

⁴ Wilbur L. Ross, Jr., to Undersecretary for Economic Affairs, March 26, 2018. *Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire*. Available at <http://www.documentcloud.org/documents/4426785-commerce2018-03-26-2.html> (accessed March 8, 2021).

⁵ *Id.* at p. 5.

⁶ Then-Ranking Minority Member Elijah E. Cummings, et al., to Chairmen Trey Gowdy and Mark Meadows, August 2, 2018. *Letter from the Committee on Oversight and Government Reform to the Committee on Oversight and Government Reform and the Subcommittee on Government Operations*. Available at https://connolly.house.gov/uploadedfiles/ogr_dems_request_ross_hearing_8.2.18.pdf (accessed March 8, 2021). This letter was signed by Congressmen Elijah Cummings, Eleanor Norton, Peter Welch, Robin Kelly, Mark DeSaulnier, Gerald Connolly, Carolyn Maloney, Jim Cooper, Brenda Lawrence, Jamie Raskin, Bonnie Watson Coleman, William Lacy Clay, Stacey Plaskett, John Sarbanes, Jimmy Gomez, Stephen Lynch, Raja Krishnamoorthi, and Matthew Cartwright.

citizenship question, soon after being appointed Secretary, despite previously testifying at least three times that his decision was based on DOJ's request.⁷

After Secretary Ross's decision to reinstate the citizenship question on the 2020 Census, multiple civil lawsuits were filed against the Department, DOJ, Secretary Ross, [REDACTED] and other Department and DOJ officials. The lawsuits were referred to the U.S. Supreme Court in February 2019 and argued before the Court in April 2019. On June 27, 2019, Chief Justice Roberts published the Court's opinion, which stated Secretary Ross did not violate the Enumeration Clause, U.S. Const. art. I, § 2, cl. 3; Amdt. 14, § 2; or the Census Act, Title 13 of the U.S. Code, by reinstating the citizenship question.⁸ However, the Court affirmed, in part, a lower court's decision that Secretary Ross's "contrived" rationale for reinstating the citizenship question was an executive branch overreach under the Administrative Procedure Act, 5 U.S.C. § 551 et seq.

Details of Investigation

A. Timeline of Events

Below is a chronological summary of relevant documents, including testimonies, emails, and other correspondence, collected and reviewed during this investigation.

2017 Correspondence and Testimony

March 10 [Email]: [REDACTED] Department of Commerce [REDACTED] emailed Secretary Ross and courtesy copied [REDACTED] Department of Commerce [REDACTED], with the subject line "Your Question on the Census." [REDACTED] forwarded a link to a 2010 Wall Street Journal article written by Carl Bialik titled, "The Pitfalls of Counting Illegal Immigrants."⁹ [REDACTED] further highlighted a sentence in the article: "No major government survey, including the [D]ecennial [C]ensus now under way, asks Americans about their citizenship status."

April 5 [Email]: [REDACTED] to Secretary Ross, emailed [REDACTED] stating that Steve Bannon, then-White House Chief Strategist, wanted to speak with Secretary Ross about the Census.¹⁰

April 20 [Email]: [REDACTED] sent an email to [REDACTED] and courtesy copied [REDACTED]. In the email, [REDACTED] stated the [REDACTED] had an "April 29 meeting of the National Advisory Committee on Racial, Ethnic and Other Populations. We must get our issue resolved before this!"

⁷ Wilbur L. Ross, Jr., Supplemental Memorandum. *Supplemental Memorandum by Secretary of Commerce Wilbur Ross Regarding the Administrative Record in Census Litigation*, June 21, 2018. Available at <https://assets.documentcloud.org/documents/4550951/Supplemental-Memo-by-Wilbur-Ross.pdf> (accessed March 8, 2021).

⁸ *Dep't of Commerce, v. New York*, No. 18-966, 588 U.S. ___, 139 S. Ct. 2551, 204 L. Ed. 2d 978 (2019).

⁹ Cummings, August 2, 2018, *Letter to Chairmen*.

¹⁰ *Ibid.*

█████ also indicated █████ had trouble sending the email from “SWLR’s Account” so █████ was sending the message from █████ account, but “the message was from him” (referencing Secretary Ross).¹¹

May 2 [Email]: Secretary Ross emailed █████ and █████, and stated, “I am mystified why nothing [has] been done in response to my months['] old request that we include the citizenship question. Why not?” █████ replied, “I agree Mr. Secretary. On the citizenship question we will get that in place. The broad topics were what were sent to Congress earlier this year as required. It is next March—in 2018—when the final 2020 [D]ecennial Census questions are submitted to Congress. We need to work with [DOJ] to get them to request that citizenship be added back as a [C]ensus question, and we have the court cases to illustrate that D[OJ] has a legitimate need for the question to be included. I will arrange a meeting with D[OJ] staff this week to discuss.”¹² This email was then forwarded to include █████ on the email chain.

Later the same day, █████ replied to Secretary Ross, “I continue to talk frequently with █████ and we often have dinner together. █████...talks about [the Census] nonstop. I know █████ would help you as much as █████ can. Do you want me to set up another meeting? I think you could task █████ with putting together an immediate action plan. Also, █████ may be in █████ this weekend. I think you are to[o]. Let me know if you want to have a drink or get together with █████ over the weekend.”¹³ (Note: █████ was further identified as █████ to Secretary Ross on 2020 Census matters.)

May 3 [Email]: █████ emailed █████ “Thanks” in response to forwarding of an email conversation that identified █████ as a “█████ to reach out to at DOJ –Regarding Census and Legislative issue?”¹⁴

July 14 [Email]: █████ emailed Secretary Ross, stating █████ was following up on a telephone discussion █████ and Secretary Ross had referencing how the Census does not ask respondents about their citizenship. █████ also provided an example of a citizenship question that could be added to the 2020 Census.¹⁵

¹¹ *Ibid* and Internal Department document.

¹² Wilbur L. Ross, Jr., to Director of Office of Policy and Strategic Planning and Chief Financial Officer of the Department, May 2, 2017. *E-mail from Secretary Ross to Director of Office of Policy and Strategic Planning and Chief Financial Officer of the Department*. Available at <https://www.documentcloud.org/documents/4616784-May-2-2017-Email-From-Wilbur-Ross.html> (accessed March 8, 2021).

¹³ *Ibid*.

¹⁴ Internal Department document.

¹⁵ Internal Department document.

July 21 [Email]: [REDACTED] forwarded [REDACTED] the email [REDACTED] sent Secretary Ross the week prior and further stated, “He and I had spoken briefly on the phone about this issue, at the direction of Steve Bannon, a few months earlier.”¹⁶

July 25 [Calendar Entry]: Secretary Ross’s calendar entry reflected a telephone call with [REDACTED] from 11:00 a.m. to 11:30 a.m.¹⁷

August 8–10 [Email]: Secretary Ross and [REDACTED] had email conversations pertaining to the DOJ and its analysis of the citizenship question. On August 8, 2017, Secretary Ross emailed [REDACTED] and stated, (b) (5)

[REDACTED] Were you on the call this morning about Census? They seem [dug] in about not [using] the citizenship question and that raises the question of where is the DOJ in their analysis? If they still have not come to a conclusion[,] please let me know your contact person and I will call the [Attorney General].”¹⁸

On August 9, 2017, [REDACTED] replied, “Mr. Secretary—we are preparing a memo and full briefing for you on the citizenship question. The memo will be ready by Friday, and we can do the briefing whenever you are back in the office. Since this issue will go to the Supreme Court we need to be diligent in preparing the administrative record.”¹⁹

On August 10, 2017, Secretary Ross replied, “I would like to be briefed on Friday by phone. I probably will need an hour or so to study the memo first. We should be very careful, about everything, whether or not it is likely to end up in the [Supreme Court].”²⁰

August 11 [Email]: [REDACTED] Department’s General Counsel and Secretary Ross, and [REDACTED] Department’s Office of the Chief Counsel for Economic Affairs, finalized a memorandum covering the “historical use of citizenship on [C]ensus inquiries.” [REDACTED] forwarded the memorandum to [REDACTED] who then forwarded the memorandum to Secretary Ross and courtesy copied [REDACTED].²¹ A review of [REDACTED] August 11, 2017, memorandum disclosed it was addressed to Secretary Ross, [REDACTED], and [REDACTED] and was titled “Citizenship Inquiries on the Decennial Census.” The memorandum contained a historical and legal analysis of the Secretary’s legal and constitutional authority to add a citizenship question to the 2020 Census. [REDACTED] concluded that (b) (5)

¹⁶ Cummings, August 2, 2018, *Letter to Chairmen*. p. 4 and Internal Department document.

¹⁷ Internal Department document.

¹⁸ Internal Department document.

¹⁹ Internal Department document.

²⁰ Internal Department document.

²¹ Internal Department document.

(b) (5) ²² (b) (5), (b) (6), (b) (7)(C)

²³

August 14 [Email]: [REDACTED] forwarded the August 11, 2017, memorandum to [REDACTED], asking for a review. During the email exchange, [REDACTED] stated, (b) (5), (b) (6), (b) (7)(C)

²⁴

September 8 [Memorandum]: [REDACTED] drafted a memorandum to Secretary Ross titled "Census Discussions with DoJ" wherein [REDACTED] stated:

"In early May [REDACTED] put me in touch with [REDACTED] as the [REDACTED] in the Department of Justice. [REDACTED] worked for AG Sessions in [REDACTED], and [REDACTED] to the Department of Justice. We met in person to discuss the citizenship question. [REDACTED] said [REDACTED] would locate someone at the Department who could address the issue. A few days later [REDACTED] directed me to [REDACTED] in the Department of Justice.

I spoke several times with [REDACTED] by phone, and after considering the matter further [REDACTED] said that Justice staff did not want to raise the question given the difficulties Justice was encountering in the press at the time (the whole Comey matter). [REDACTED] directed me to [REDACTED] at the Department of Homeland Security.

[REDACTED] and I had several phone calls to discuss the matter, and then [REDACTED] relayed that after discussion DHS [Department of Homeland Security] really felt that it was best handled by the Department of Justice.

At that point the conversation ceased and I asked [REDACTED], who had by then joined the Department of Commerce Office of General Counsel, to look into the legal issues and how Commerce could add the question to the Census itself."²⁵

²² Internal Department document.

²³ Internal Department document.

²⁴ Internal Department document.

²⁵ Internal Department document.

September 8 [Email]: [REDACTED] sent an email to [REDACTED] and [REDACTED] to update [REDACTED] on [REDACTED] and [REDACTED] efforts in researching the citizenship question. [REDACTED] stated that they (b) (5), (b) (6), (b) (7)(C) [REDACTED]

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September 13 [Email]: [REDACTED] emailed [REDACTED] wishing to speak to [REDACTED] regarding a “DOJ-[Department] issue.”²⁷

September 16–17 [Email]: [REDACTED] exchanged emails with [REDACTED] at DOJ in attempts to connect then-Attorney General Jeff Sessions and Secretary Ross. On September 17, 2017, [REDACTED] stated, “They connected.”²⁸

December 12 [Letter]: [REDACTED] sent [REDACTED] an official letter requesting the citizenship question be added to the 2020 Census to enforce the VRA.

2018 Correspondence and Testimony

March 20 [Congressional Testimony]: During testimony before the House Committee on Appropriations, Secretary Ross answered Congressman José E. Serrano’s question, “Should political parties and campaign politics ever factor in to what is asked of every household in the country on the [C]ensus?” by stating, “No political party has asked us to do anything on the [C]ensus. We have had a request, as everyone is aware, from the Department of Justice to add a citizenship question to the 2020 [C]ensus.”

Congressman Serrano further asked, “[h]as the President or anyone else in the White House directed you to add this or a similar question to the 2020 census?” Secretary Ross responded, “[w]e are responding solely to the Department of Justice’s request.”²⁹

March 22 [Congressional Testimony]: During testimony before the House Committee on Ways and Means, Secretary Ross answered Congresswoman Judy Chu’s question, “Can you tell me whether the Department of Commerce plans to include the citizenship question in the 2020 Census?” by stating: “Department of Justice has, as you know, initiated the request for inclusion of the citizenship question.” Secretary Ross also stated, “[b]ecause it is from the Department of Justice, we are taking it very

²⁶ Internal Department document.

²⁷ Internal Department document.

²⁸ Internal Department document.

²⁹ House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *FY19 Budget Hearing: Department of Commerce* (Mar. 20, 2018).

seriously and we will issue a fulsome documentation of whatever conclusion we finally come to.”³⁰

March 26 [Memorandum]: Secretary Ross signed a memorandum titled “Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire” addressed to then-Department Deputy Secretary Karen Dunn Kelley. In the memorandum, the Secretary stated: “Following receipt of the DOJ request, I set out to take a hard look at the request and ensure that I considered all facts and data relevant to the question so that I could make an informed decision on how to respond. To that end, the Department of Commerce (“Department”) immediately initiated a comprehensive review process led by the Census Bureau...At my direction, the Census Bureau and the Department's Office of the Secretary began a thorough assessment that included legal, program, and policy considerations.”³¹

May 8 [Congressional Testimony]: During testimony before the House Oversight and Government Reform Committee, ██████ answered Congresswoman Eleanor Holmes Norton’s question, “Why did this question, which was dropped for seventy years, suddenly appear on the Decennial Census? What was the point?” by stating: “We received a request from the Justice Department for this and their rationale was that the level of information that they needed to enforce the Voting Rights Act was not available...This was requested by the Department of Justice for their statutory duty to enforce the Voting Rights Act...The reason for this question was the Justice Department asked this to get more accurate information at the Census block level.”³²

May 10 [Congressional Testimony]: During testimony before the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, Secretary Ross answered Senator Brian Schatz’s question, “And so, this request for a question to be added to the census comes from DOJ, comes from a political appointee. It seems to be out of left field, and then is not included in the field test because of, I guess, the logistics of printing it in time. I guess I would like to hear how you respond to, if we were just sitting down having a cup of coffee, what I would say is, ‘Come on. This is what it looks like.’ And so, I understand you are doing everything to mitigate the impact of this, but I think the provenance of this is not on the level that DOJ is trying to enforce the Voting Rights Act and on the level through the normal regular order interacted in an interagency professional way, but rather this is a political matter. And so, how can you reassure me that that is not what happened or at least reassure me that you are not going to allow it to be implemented in that way?” by stating: “We spent a lot of time talking with [DOJ] about the request. We truly believe they think they need it and they are a qualified party to make that request under the procedures.” During the same hearing, Secretary Ross answered Senator Patrick Leahy’s question, “And why this sudden interest in that when the [Justice] Department is supposed to

³⁰ U.S. Congress, House of Representatives, Committee on Ways and Means. *Hearing with Commerce Secretary Ross*, 115th Cong, 2nd sess. (Mar. 20, 2018), p. 36.

³¹ Ross to Undersecretary for Economic Affairs, March 26, 2018. *Memorandum*.

³² U.S. Congress, House of Representatives, Committee on Oversight and Government Reform. *Progress Report on the 2020 Census*, 115th Cong., 2nd sess., (May 8, 2018).

enforce violations and does not see any problems?” by stating: “Well the Justice Department is the one who made the request of us.”³³

June 21 [Memorandum]: Secretary Ross signed a “Supplemental Memorandum” to his March 26, 2018, memorandum regarding his decision to add the citizenship question to the 2020 Census. In the memorandum, Secretary Ross stated: “Soon after my appointment as Secretary of Commerce, I began considering various fundamental issues regarding the upcoming 2020 Census, including funding and content. Part of these considerations included whether to reinstate a citizenship question, which other senior Administration officials had previously raised. My staff and I thought reinstating a citizenship question could be warranted, and we had various discussions with other governmental officials about reinstating a citizenship question to the Census. As part of that deliberative process, my staff and I consulted with Federal governmental components and inquired whether the Department of Justice (DOJ) would support, and if so would request, inclusion of a citizenship question as consistent with and useful for enforcement of the Voting Rights Act.”³⁴

August 26 [The Hofeller Files]: Dr. Thomas Hofeller, the aforementioned redistricting expert and political strategist, died. In October 2018, [REDACTED] discovered numerous USB drives, flash drives, and other media storage devices in Dr. Hofeller’s home office. [REDACTED] also told [REDACTED] that [REDACTED], also known as [REDACTED] and [REDACTED], took Dr. Hofeller’s laptop and desktop computer. [REDACTED] reached out to Common Cause, a nonprofit political watchdog group based out of Washington, DC, to help [REDACTED] obtain an attorney. Through Common Cause, [REDACTED] learned that the data on Dr. Hofeller’s storage media might prove valuable in a lawsuit relating to redistricting in North Carolina. In February 2019, in response to a subpoena, [REDACTED] sent the storage media to the law firm of Arnold & Porter, which was representing the plaintiffs in the North Carolina General Court of Justice, Superior Court Division (18 CVS 014001).³⁵ Arnold & Porter forwarded the storage media to Stroz Friedberg, a digital forensic and technical investigations firm in Washington, DC. During the examination of Dr. Hofeller’s storage media, [REDACTED] Digital Forensic Analyst, discovered 21 documents relating to redistricting and the 2020 Census. Included in these documents was a 2015 study Dr. Hofeller conducted for *The Washington Free Beacon* and several emails among [REDACTED], [REDACTED], and Dr. Hofeller between 2010 and 2015.³⁶

³³ U.S. Congress, Senate, Committee on Appropriations, Subcommittee on Commerce, Justice, and Science and Related Agencies. *Review of the FY 2019 Budget Request for the U.S. Department of Commerce*, 115th Cong., 2nd sess., (May 10, 2018).

³⁴ Ross, *Supplemental Memorandum*, June 21, 2018.

³⁵ See *Common Cause v. Lewis*, 18 CVS 014001, N.C. Sup. Ct. Div. (2019).

³⁶ NPR. *Emails Show Trump Officials Consulted With GOP Strategist On Citizenship Question* [online]. <https://www.npr.org/2019/11/12/778496494/emails-connect-trump-officials-and-gop-redistricting-expert-on-citizenship-quest> (accessed March 10, 2021).

October 8 [Deposition]: [REDACTED] was deposed in the United States District Court for the District of Maryland (*Civil Action No. 8:18-cv-01041-GJH*), stating that [REDACTED] has known [REDACTED] for “[REDACTED]” and that [REDACTED] had spoken to [REDACTED] several times during the transition of administrations in 2016-2017. [REDACTED] further answered questions from attorneys of Covington & Burling LLP, including “Did the issue of how states might use citizenship data from the [D]ecennial [C]ensus in deciding how to draw legislative districts come up in your conversations with [REDACTED] by stating: “I don't believe so. Again, you know, when you—these are conversations long ago, but it—it—I don't think so. Because it—again, it's not the kind of thing that he would talk about.” [REDACTED] also testified that [REDACTED] was “familiar” with the draft DOJ letter (discussed in the following congressional testimony); however, [REDACTED] did not author it.³⁷

2019 Correspondence and Testimony

March 7 [Congressional Testimony]: [REDACTED] gave testimony to the House of Representatives Committee on Oversight and Reform (the Committee). When asked if [REDACTED] had any conversations with anyone about the addition of a citizenship question, [REDACTED] stated that [REDACTED] spoke to three individuals at the Department: [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] further testified that around October of 2017, [REDACTED] had a conversation with [REDACTED], who provided [REDACTED] with documents and information regarding the 2020 Census, including “a draft letter that would request reinstatement of the citizenship question on the [C]ensus questionnaire.” [REDACTED] also stated [REDACTED] received a “hand delivered” memorandum about the citizenship question from [REDACTED].³⁸

March 14 [Congressional Testimony]: During testimony before the Committee, Congressman and Committee Chair Elijah Cummings’s stated, “Secretary Ross, you have claimed repeatedly that you added the citizenship question only because the Justice Department asked you to. You testified under oath on three occasions. Each time, you said you were responding solely to the Department of Justice's request. But now we have obtained documents showing that you were working to add the citizenship question from your very first days at the Commerce Department.” Secretary Ross responded by stating, “My reasons for adding the citizenship question are described in detail in the March 26, 2018, decision memo. After we received the Department of Justice letter on December 12, 2017, we, namely Commerce Department, myself, and the Census Bureau, initiated a very detailed, very thorough process to consider that request. That's what we were responding to.” When asked by Congressman Cummings whether Secretary Ross wished to withdraw his prior testimony after the new documents had come to light, Ross responded, “I testified truthfully to the best of my ability in response to what my understanding of the questions were.”

³⁷ *New York v. U.S. Dep’t of Commerce*, No. 18-CV-2921, Docket Entry 595, Att. 1 (S.D.N.Y. May 31, 2019).

³⁸ Majority Staff to Committee Members, March 14, 2019. *Supplemental Memo on Transcribed Interview with [REDACTED] Regarding Addition of Citizenship Question to Census*. Available at [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-14.%20Supplemental%20Memo%20on%20\[REDACTED\].%20TI.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-14.%20Supplemental%20Memo%20on%20[REDACTED].%20TI.pdf) (accessed March 10, 2021).

Congressman Cummings went on to ask, “in early April 2017, you got a call from Steve Bannon about the citizenship question. That was also a month before the Department of Justice sent its letter. Is that correct?” Secretary Ross answered by stating, “Yes, sir.” Congressman Cummings continued by asking, “Is it your testimony that your call with Mr. Bannon had nothing to do with efforts to pursue the citizenship question?” Secretary Ross answered, “Steve Bannon called with a simple request, namely asking if I would take a call from [REDACTED], and I agreed to that request as a courtesy since he was a White House staffer. And shortly thereafter, possibly the next day, I did have a conversation with [REDACTED].”³⁹

May 30 [Congressional Interview]: [REDACTED] [REDACTED], gave testimony to the Committee, wherein [REDACTED] testified that [REDACTED] contacted [REDACTED] in “early November of 2016” to discuss legislative proposals regarding the citizenship question. [REDACTED] stated [REDACTED] received a call from [REDACTED] [REDACTED] who told [REDACTED] that [REDACTED] “would be receiving a phone call from someone from the Department of Commerce related to the Census.” [REDACTED] called and asked “if [DHS] could use or had a need for the information for citizenship information of the Census that would facilitate a departmental mission.” [REDACTED] testified that [REDACTED] checked with experts within the DHS, but that nobody identified a need for this information. [REDACTED] reported to [REDACTED] that DHS “didn’t really have a use for” the information.⁴⁰

June 3 [Congressional Interview]: [REDACTED] participated in an interview with staffers of the House of Representatives Committee on Oversight and Reform and stated [REDACTED] met with President Donald Trump, Bannon, and Reince Priebus, President Trump’s then-Chief of Staff, to discuss the addition of a citizenship question to the 2020 Census. [REDACTED] recalled two meetings in late January or early February of 2017—one with Bannon and the second with the President, who may have been accompanied by Bannon and Priebus. [REDACTED] also recalled a telephone conversation with Secretary Ross in the first half of 2017 in which [REDACTED] requested that Secretary Ross consider reinstating the citizenship question to the 2020 Census. [REDACTED] could not recall whether Secretary Ross was supportive of the idea at that time. Later, in July 2017, [REDACTED] emailed Secretary Ross to provide proposed verbiage for the citizenship question and mentioned that the lack of a citizenship question leads to the problem that aliens who do not reside in the U.S. could still be counted for congressional apportionment. [REDACTED] again could not recall if Secretary Ross responded to [REDACTED] request. Later, in February 2018, [REDACTED] was provided an opportunity to make an official notice and comment for additions to the 2020 Census. [REDACTED] used that opportunity to send Secretary Ross an official comment requesting the reinstatement of the citizenship question and offering [REDACTED] support for the DOJ’s request. During the interview, [REDACTED]

³⁹ U.S. Congress, House of Representatives, Committee on Oversight and Reform. *Hearing with Secretary of Commerce Wilbur L. Ross, Jr.*, 116th Cong., 1st sess., March 14, 2019.

⁴⁰ U.S. Congress, House of Representatives, Committee on Oversight and Reform. *Interview of Gene Patrick Hamilton*, 116th Cong., 1st sess., May 30, 2019.

denied ever speaking to [REDACTED] or [REDACTED] about the citizenship question and denied ever reading Hofeller's 2015 Redistricting Study.⁴¹

June 27 [Supreme Court Decision]: The U.S. Supreme Court ruled that Secretary Ross could not add the citizenship question to the 2020 Census based on his "contrived" rationale. The Court found "the decision to reinstate a citizenship question cannot be adequately explained in terms of DOJ's request for improved citizenship data to better enforce the VRA." The Court further found "the evidence tells a story that does not match the explanation the Secretary gave for his decision" and that "the VRA enforcement rationale—the sole stated reason—seems to have been contrived."⁴²

November 12 [Congressional Memorandum]: Congresswoman Carolyn B. Maloney, in her position as Acting Chairwoman of the House of Representatives Committee on Oversight and Reform, sent a memorandum titled "Update on Investigation of Census Citizenship Question Since House Held Attorney General Barr and Commerce Secretary Ross in Contempt of Congress" to members of the Committee on Oversight and Reform. The memorandum outlined the following four documents since received from [REDACTED]:⁴³

- (a) **August 30, 2017** [Email]: [REDACTED] emailed Dr. Hofeller asking if the language in the following excerpt was correct:

"We understand that the Bureau personnel may believe that ACS [American Community Survey] data on citizenship was sufficient for redistricting purposes. We wanted the Bureau to be aware that two recent Court cases have underscored that ACS data is not viable and/or sufficient for purposes of redistricting. Two important citations from these cases are as follows:

___ Bartlet v Simpson; lullac v perry 'Relevant numbers must account for citizenship in order to determine the group's opportunity to elect candidates in order to determine the groups opportunity to elect candidates...pg 4 lulac v [sic]."⁴⁴

Note: The same legal citations sent to the DOJ from the Department were also in the final letter requesting the reinstatement of the citizenship question to the Census from the DOJ to the Department.⁴⁵

⁴¹ U.S. Congress, House of Representatives, Committee on Oversight and Reform. *Interview of* [REDACTED], 116th Cong., 1st sess., June 3, 2019.

⁴² *Commerce v. New York*, 139 S. Ct. 2551 (2019).

⁴³ Carolyn B. Maloney to Members of the Committee on Oversight and Reform, November 12, 2019. Memorandum from Acting Chairwoman Carolyn B. Maloney to Members of the Committee on Oversight and Reform. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-11-12.Memo%20to%20COR%20Members%20re.%20Census.pdf> (accessed March 10, 2021).

⁴⁴ [REDACTED] to Tom Hofeller, August 30, 2017. *Email Census*. Available at [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017.08.30%20Email%20from%20\[REDACTED\]20to%20Thomas%20Hofeller%20%281%29.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017.08.30%20Email%20from%20[REDACTED]20to%20Thomas%20Hofeller%20%281%29.pdf) (accessed May 26, 2021).

⁴⁵ [REDACTED] to Census Director, December 12, 2017. *Letter*.

Later that same day, Dr. Hofeller responded to [REDACTED] by saying, “[REDACTED]: Just [sic] read it, and says it is fine as written. Tom.”⁴⁶

- (b) **October 6, 2017** [Text Message]: [REDACTED] sent [REDACTED] a text message with [REDACTED]’s draft language that contained content approved by Dr. Hofeller and on August 30, 2017.⁴⁷
- (c) **October 8, 2017** [Email]: Secretary Ross and [REDACTED] exchanged emails with the subject line: “Re: Letter from DOJ,” wherein Secretary Ross requested a “status.” [REDACTED] replied that [REDACTED] was speaking with [REDACTED], who was relaying notes from a meeting the previous week.⁴⁸
- (d) **October 8, 2017** [Text Message]: [REDACTED] texted [REDACTED], stating “[Thanks]... [REDACTED] appreciated the update and your help.”⁴⁹

B. Relevant Interviews

[REDACTED] stated [REDACTED] assumed the role of an [REDACTED] to Secretary Ross and the Census Bureau after [REDACTED]. [REDACTED] had years of experience working on the [REDACTED] and agreed to advise Secretary Ross on policy and procedure issues dealing with the 2020 Census. [REDACTED] denied any involvement in drafting the language sent from the Department to DOJ, but [REDACTED] admitted that [REDACTED] emailed [REDACTED] the verbiage in the letter to “confirm the language” used in the letter was accurate. Additionally, [REDACTED] stated [REDACTED] reached out to [REDACTED] throughout the transition of administrations because [REDACTED] was an expert in block counting for apportionment. Also, [REDACTED] was considered a “stakeholder” and it was very common for members of the Department to reach out to stakeholders during a transition. When [REDACTED] asked [REDACTED] opinion on issues that may arise during the 2020 Census, [REDACTED] recalled [REDACTED] believed that counting based on citizenship would become an issue, among others. [REDACTED] described Dr. Hofeller as a redistricting specialist, but did not believe [REDACTED] had any influence over the decision to add the citizenship question to the 2020 Census. Instead, [REDACTED] believed [REDACTED] was the

⁴⁶ Tom Hofeller to [REDACTED], August 30, 2017. *Email RE: Census*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017.08.30%20Email%20from%20Thomas%20Hofeller%20to%20%20.pdf> (accessed May 26, 2021).

⁴⁷ [REDACTED] to [REDACTED], October 6, 2017. *Text Message*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017.10.08%20Text%20from%20%20to%20%20.pdf> (accessed May 26, 2021).

⁴⁸ Ross and [REDACTED], October 8, 2017. *Email Re: Letter from DOJ*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017.10.08%20Email%20from%20%20to%20Wilbur%20Ross%20about%20DOJ%20Letter%20status%20-%20AR%202482%20%281%29.pdf> (accessed June 4, 2021).

⁴⁹ [REDACTED] to [REDACTED], October 8, 2017. *Text Message*. Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2017.10.08%20Text%20from%20%20to%20%20.pdf> (accessed June 4, 2021).

“mastermind” behind it. Lastly, [REDACTED] stated [REDACTED] never attended any meetings at the White House to discuss the citizenship question with the administration.

[REDACTED] stated [REDACTED] assumed the role of [REDACTED] for the Census Bureau after [REDACTED], and [REDACTED] performed the [REDACTED]. [REDACTED] previously served as the [REDACTED]. [REDACTED] assumed [REDACTED] current duties as the [REDACTED]. Upon assuming the role of [REDACTED] of the Census Bureau, [REDACTED] had never heard any rumors or conversations about the potential of adding a citizenship question to the 2020 Census. Additionally, [REDACTED] was unaware of any other departments or agencies that might have been planning to request the inclusion of the question. In June 2017, during the transition, [REDACTED] informed [REDACTED] that the topic of adding the citizenship question may come up, but [REDACTED] never informed [REDACTED] why. [REDACTED] assumed it was based on meetings [REDACTED] had attended with political appointees in Secretary Ross’s office. After that conversation with [REDACTED] did not hear anything from the Department about the possibility of adding the citizenship question until approximately November 2017. During that time, [REDACTED] contacted [REDACTED] and advised [REDACTED] to “keep an eye out” for a letter that would be making the request. Upon receiving the citizenship question request from the DOJ in December 2017, [REDACTED] stated that a team of technical experts from the Census Bureau outlined a way in which the Census Bureau could collect citizenship data in a more cost-effective way without adding the citizenship question to the 2020 Census. [REDACTED] contacted the DOJ requesting to meet with its technical experts to discuss their data needs for enforcement of the VRA. After multiple attempts to schedule a meeting, [REDACTED] ultimately informed [REDACTED] that no meeting would take place and that the DOJ’s letter adequately described their request. [REDACTED] stated this was the only time [REDACTED] recalled a meeting to discuss technicalities being declined. [REDACTED] also stated the events in November and December of 2017 puzzled [REDACTED] team at the Census Bureau, and [REDACTED] knew there had to have been other conversations outside of the DOJ prompting these actions and requests. [REDACTED] stated that [REDACTED] belief about other conversations outside of the DOJ was confirmed when Secretary Ross sent his March 2018 memorandum to the Census Bureau.

[REDACTED] has been employed with the Census Bureau since [REDACTED] and had previously worked on the [REDACTED] where [REDACTED] became friends with Dr. Hofeller and [REDACTED] the Census Bureau in [REDACTED] to take a [REDACTED]. Shortly after deciding to [REDACTED] was contacted by [REDACTED] who asked [REDACTED] to stay to assist with 2020 Census operations since [REDACTED]. Ultimately, [REDACTED] decided to [REDACTED]. [REDACTED] When asked if [REDACTED] relationships with Dr. Hofeller and [REDACTED] were a contributing factor in the Department’s [REDACTED] stated it was possible, but [REDACTED] was unsure. [REDACTED] stated [REDACTED] was unaware of any attempts to request the inclusion of a citizenship question until [REDACTED] read about it in the news in December

2017. After [REDACTED] was tasked with evaluating and analyzing options regarding the citizenship question to present to Secretary Ross. After significant research and analysis, [REDACTED] team recommended Secretary Ross use administrative records to provide DOJ the block-level citizenship data they requested. [REDACTED] stated [REDACTED] felt it was the most cost-effective method of collecting the data and would create the least harm to the 2020 Census. When the options were briefed to Secretary Ross, he ultimately proposed "Alternative D," which was the use of administrative records as well as including the citizenship question. [REDACTED] stated [REDACTED] was disappointed in the Secretary's decision to not use administrative records alone to collect the data because [REDACTED] felt that [REDACTED] and [REDACTED] team put together a very strong argument. [REDACTED] also stated that [REDACTED] was disappointed because after [REDACTED] read the Secretary's March 2018 memorandum announcing his decision to include the citizenship question, [REDACTED] realized that the Secretary had already made up his mind to include the question.

When asked about [REDACTED] communication with [REDACTED] [REDACTED] characterized [REDACTED] email correspondence as friendly exchanges of news articles of mutual interest. Around January of 2017, [REDACTED] contacted [REDACTED] requesting contact information for [REDACTED] presumed [REDACTED] intended to discuss material related to the 2020 Census, as it was a shared interest, but stated [REDACTED] never inquired about the context of [REDACTED] and [REDACTED] communications.

[REDACTED] was the [REDACTED] of the Census Bureau in the [REDACTED] timeframe and worked directly for [REDACTED] after [REDACTED] had initially requested [REDACTED] fill the [REDACTED] position, [REDACTED]. Prior to December 2017, [REDACTED] was unaware of the Department's or DOJ's efforts to include a citizenship question on the 2020 Census. However, [REDACTED] recalled attending several 2020 Census-related meetings with Secretary Ross, Deputy Secretary Kelley, [REDACTED] and [REDACTED] to Secretary Ross. The meetings initially were focused on 2020 Census budgetary issues due to cost overruns incurred during [REDACTED]. At some point, the focus of the meetings changed to 2020 Census content. At first, they looked at the content of the American Community Survey (ACS) and the justifications for its questions. Later, they began to look at all 2020 Census questions, as well as their legislative mandates to include them on the questionnaire. At some point, there was discussion of adding a citizenship question to the 2020 Census, but [REDACTED] could not recall who brought it up or in what timeframe the meetings occurred. The next incident [REDACTED] could recall regarding the citizenship question was when [REDACTED] pulled [REDACTED] into a hallway from a meeting to inquire if [REDACTED] had received the DOJ's written request to add the question. [REDACTED] recalled [REDACTED] relayed it was urgent that they receive the letter. [REDACTED] stated [REDACTED] and [REDACTED] received the DOJ letter shortly after this conversation.

[REDACTED] was the Census Bureau's [REDACTED]. [REDACTED] stated [REDACTED] never had any conversations or consultations with Department [REDACTED]

officials about adding a citizenship question to the 2020 Census and learned of it after the Bureau received the request from DOJ in December 2017. Additionally, [REDACTED] stated it was [REDACTED] section's responsibility to provide citizenship and CVAP data to the DOJ for their role in enforcing the VRA. According to [REDACTED] the CVAP data [REDACTED] section provided was acquired through ACS responses, and DOJ had previously stated the data was difficult to work with because it was based off of one-year-old geography. However, the DOJ never informed [REDACTED] that their difficulties with the data impaired or impeded their ability to enforce the VRA, and they never proposed a citizenship question be added to the 2020 Census to provide them with better data. In addition to providing DOJ data for enforcing the VRA, [REDACTED] section was also responsible for providing state legislatures with the 2020 Census data they required for redistricting. According to [REDACTED] each state provides a nonpartisan representative to the National Conference of State Legislatures (NCSL), which the Census Bureau considers to be its redistricting stakeholders. [REDACTED] would frequently attend the NCSL meetings and seminars to speak to the states about redistricting. It was at these meetings where [REDACTED] first met [REDACTED] and [REDACTED] [REDACTED] stated Dr. Hofeller was a frequent speaker at the NCSL meetings and always provided valuable briefings related to redistricting. [REDACTED] denied ever seeing [REDACTED] 2015 redistricting study and denied that [REDACTED] ever spoke to [REDACTED] about adding a citizenship question to the 2020 Census. [REDACTED] described [REDACTED] as being very "vocal" when the topic of redistricting came up and having strong partisan opinions about redistricting. However, [REDACTED] stated [REDACTED] never heard [REDACTED] bring up the topic of adding a citizenship question to the 2020 Census to aid in Republican redistricting efforts. Lastly, [REDACTED] stated if Secretary Ross wanted to add a citizenship question to the 2020 Census, he thought it would have been prudent to ask the individual state legislatures if there was a need for the information before making a decision.

[REDACTED] was the [REDACTED] for DOJ JMD and [REDACTED] request to add the citizenship question. According to [REDACTED] first heard conversations about the DOJ requesting reinstatement of the citizenship question around September 2017. No one in the JMD section knew where the conversations originated, but [REDACTED] believed they came from [REDACTED] and personnel in the DOJ's Civil Rights Section. Ultimately, in November 2017, [REDACTED] sent [REDACTED] a draft of the DOJ letter requesting the reinstatement of the citizenship question. [REDACTED] stated [REDACTED] spent time reviewing and editing the letter, but [REDACTED] primary role was to ensure the positions and citations used in the letter were "legally defensible." After coordination with [REDACTED] the letter in December 2017 and had [REDACTED] transmit it to [REDACTED] After receiving the letter, [REDACTED] contacted [REDACTED] and requested a meeting to discuss the technicalities of the DOJ's request. [REDACTED] contacted [REDACTED] several times to inquire about [REDACTED] and the DOJ's Civil Rights Section meeting with personnel from the Census Bureau to discuss the request, but [REDACTED] refused to meet with them. During a conversation with [REDACTED] [REDACTED] recalled [REDACTED] stating "we don't even care about this." [REDACTED] also informed [REDACTED] that the DOJ's request to reinstate the citizenship question was not a priority for the DOJ and the request was only sent because Attorney General

Sessions made a commitment to assist Secretary Ross. After those conversations with [REDACTED] [REDACTED] contacted [REDACTED] and informed [REDACTED] a meeting would not take place.

C. *Interview Declinations*

This office interviewed agency officials in the key offices involved, including from the Census Bureau and the Department of Justice Office of General Counsel (DOJ OGC).

This office experienced certain challenges obtaining access to witnesses during this review. Most notably, OIG did not obtain testimony from then Deputy Secretary Karen Dunn Kelly nor then Secretary Wilbur Ross. The Department of Commerce, Office of General Counsel (OGC), requested to be present during any interviews of Deputy Secretary Kelly and Secretary Ross. OIG rejected that request as inappropriate and not in accordance with the IG Act. Our office then set a deadline for scheduling interviews of the Secretary and Deputy Secretary through their respective personal attorneys. The Secretary and Deputy Secretary's personal attorneys each reported communicating with OGC and receiving representations that the issue of OGC attendance was still unresolved. Secretary Ross's attorney questioned the OIG's legal authority to investigate this matter. Due to the OIG's position on refusing OGC's presence during the interviews, both the Secretary and Deputy Secretary declined to be interviewed with both attorneys asserting that OGC need to be present to assert confidentiality and Departmental/Executive privilege in the requested OIG interviews.

This office experienced challenges obtaining witness interviews from former Department of Justice officials and political appointees. Most notably, OIG was unable to establish contact with former Department of Justice Attorney General, Jefferson Sessions, despite multiple attempts made by OIG.

OIG requested a witness interview from [REDACTED] [REDACTED] [REDACTED]. This office's request was ultimately denied as the Department of Justice issued a memorandum to the OIG that the information requested from [REDACTED] [REDACTED] and DOJ would be asserting those privileges in reference to [REDACTED] conversations with Mr. Sessions.

This office encountered challenges when attempting to interview former Department officials and political appointees. Three former additional officials either ignored, declined or initially expressed willingness to participate in an OIG interview but ultimately failed to respond by an established deadline to be interviewed.

Findings

Allegation 1: The Department purposely concealed Dr. Hofeller’s substantive public policy role in the motivations to add a citizenship question to the 2020 Census.

Finding: OIG found no evidence Dr. Hofeller played a “substantive public policy” role in the attempt to reinstate the citizenship question on the 2020 Census. OIG identified one exchange between Dr. Hofeller and advisor to Secretary Ross and the Census Bureau, [REDACTED]. Documents provided to Congress by [REDACTED] show that the Department’s draft language sent to the DOJ requesting reinstatement of the citizenship question was forwarded to Dr. Hofeller for review by him and his business associate, but nothing was found to show Dr. Hofeller contributed to the drafting of the memorandum or that he provided suggestions for the language to be used in the memorandum. In addition, a comparison of the draft memorandum and Dr. Hofeller’s 2015 redistricting study shows similarities in the verbiage used, but those similarities were comprised of historical and factual references to the Census and did not include Dr. Hofeller’s opinions. OIG did not identify evidence Secretary Ross had knowledge of [REDACTED] communication with Dr. Hofeller during his March 20, 2018, testimony before the House Committee on Appropriations and again in his March 22, 2018, testimony before the House Committee on Ways and Means.

Allegation 2: Secretary Ross knowingly misrepresented the rationale for the addition of a citizenship question during his March 20, 2018, testimony before the House Committee on Appropriations and again in his March 22, 2018, testimony before the House Committee on Ways and Means.

Finding: As OIG lacked the benefit of interviewing Secretary Ross, Deputy Secretary Kelley, and several other former key Department and DOJ officials related to this investigation, as detailed above, many questions about the genesis and rationale for the Secretary’s decision remain unanswered. However, based on the troves of emails and documents that were reviewed, OIG’s investigation concludes there were significant communications related to the citizenship question among the Secretary, his staff, and other government officials between March 2017 and September 2017, which was well before DOJ made the decision to request reinstatement of the citizenship question.

Additionally, during those communications, the Secretary’s staff advised him on multiple occasions to be “diligent in preparing the Administrative Record,” because they anticipated involvement from the U.S. Supreme Court. This investigation also confirmed the DOJ was not interested in requesting the reinstatement of the citizenship question and only put forth an effort to request the question after Secretary Ross contacted Attorney General Sessions in September 2017, and three members of Secretary Ross’s staff coordinated with DOJ’s Assistant Attorney General of the Civil Rights Section. Also, Secretary Ross’s June 2018 Supplemental Memorandum contradicted his Congressional testimony when he testified that the decision to reinstate the citizenship question was based “solely” on the DOJ’s request. In his Supplemental Memorandum, the Secretary admitted he began considering the content of the 2020 Census, to include reinstating the citizenship question, which senior administration officials had previously raised, soon after his appointment. OIG concludes Ross misrepresented the full rationale of the

addition of the citizenship question during his March 20, 2018, testimony before the House Committee on Appropriations and again in his March 22, 2018, testimony before the House Committee on Ways and Means.

Disposition

This investigation was presented to and declined for prosecution by the Public Integrity Section of the DOJ's Criminal Division.