

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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June 3, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Dear Mr. Attorney General:

I am writing to inform you that the Committee is scheduling a vote to hold you in contempt of Congress as a result of your failure to comply with a bipartisan subpoena issued more than two months ago for documents relating to the addition of a citizenship question to the 2020 Census. This action is also based on your unprecedented order directing a Department of Justice official, John Gore, to defy another bipartisan subpoena seeking his testimony before the Committee at a deposition on these matters. This step will initiate the process of bringing a civil enforcement action to obtain compliance with the Committee's subpoenas.

Unfortunately, your actions are part of a pattern. The Trump Administration has been engaged in one of the most unprecedented cover-ups since Watergate, extending from the White House to multiple federal agencies and departments of the government and across numerous investigations. The tactics of this cover-up are now clear. The Administration has been challenging Congress' core authority to conduct oversight under the Constitution, questioning the legislative bases for congressional inquiries, objecting to committee rules and precedents that have been in place for decades under both Republican and Democratic leadership, and making baseless legal arguments to avoid producing documents and testimony.

This cover-up is being directed from the top. Several weeks ago, President Trump vowed publicly, "We're fighting all the subpoenas."¹ Since then, he has refused to work on legislative priorities, such as infrastructure, until Congress halts all oversight and investigations of his Administration.² Although he has suggested that all subpoenas from Congress are partisan and are somehow related to the Russia probe, neither claim is true. The subpoenas in this investigation were adopted on a bipartisan basis, and this investigation has nothing to do with Russia.

¹ *Trump Vows Stonewall of 'All' House Subpoenas, Setting Up Fight Over Powers*, New York Times (Apr. 24, 2019) (online at www.nytimes.com/2019/04/24/us/politics/donald-trump-subpoenas.html).

² *Trump Refuses to Repair Infrastructure Unless Congress Halts All Investigations*, New York Magazine (May 22, 2019) (online at <http://nymag.com/intelligencer/2019/05/trump-stop-investigating-me-or-infrastructure-deal-dies.html>).

New Documents Suggest Real Reason for Adding Citizenship Question

As the Committee has explained repeatedly, we are investigating, among other matters, the actual reasons behind the Trump Administration's decision to add a citizenship question to the 2020 Census. Commerce Secretary Wilbur Ross testified that he added the citizenship question "solely" at the request of the Department of Justice to help enforce the Voting Rights Act.³ However, documents obtained during the course of the Committee's investigation reveal that this rationale was merely a pretext. In fact, Secretary Ross began a secret campaign to add the citizenship question just days after assuming his post and several months before any request from the Department of Justice.⁴

In addition, last week, new documents were unearthed that suggest that the real reason the Trump Administration sought to add the citizenship question was not to help enforce the Voting Rights Act at all, but rather to gerrymander congressional districts in overtly racist, partisan, and unconstitutional ways.⁵

These newly discovered documents include a secret study authored a year before the 2016 election by Thomas Hofeller, a Republican gerrymandering expert who is now deceased. One of the principal conclusions of this study is that counting voting-age citizens in legislative districts—rather than counting all persons—"would be advantageous to Republicans and Non-Hispanic Whites." Although Mr. Hofeller acknowledged that such an approach would be a "leap," he noted that the process could not work unless Republicans started collecting citizenship data through the 2020 Census. He wrote: "Without a question on citizenship being included on the 2020 Decennial Census questionnaire, the use of citizen voting age population is functionally unworkable."⁶

In 2016, Mr. Hofeller reportedly had direct communications with the Trump Transition Team about adding the citizenship question, and they discussed using the rationale of assisting with the enforcement of the Voting Rights Act instead of the actual purpose identified in Mr. Hofeller's study—to help "Republicans and Non-Hispanic Whites." For example, Mr. Hofeller communicated directly with Mark Neuman, the Trump Transition Team official responsible for census issues. Mr. Neuman reportedly had a relationship with Mr. Hofeller going back decades, and he also communicated directly with Secretary Ross about this approach.⁷

³ House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Hearing on FY19 Budget Hearing: Department of Commerce*, 115th Cong. (Mar. 20, 2018) (online at <https://republicans-appropriations.house.gov/calendar/eventsingle.aspx?EventID=395131>); see also Committee on Oversight and Reform, *Hearing with Commerce Secretary Wilbur L. Ross, Jr.*, 116th Cong. (Mar. 14, 2019) (online at <https://oversight.house.gov/legislation/hearings/commerce-secretary-wilbur-l-ross-jr>).

⁴ *Supplemental Memorandum by Secretary of Commerce Wilbur Ross Regarding the Administrative Record in Census Litigation* (June 21, 2018) (online at <https://apps.npr.org/documents/document.html?id=4550951-Supplemental-Memo-by-Wilbur-Ross>).

⁵ *Deceased G.O.P. Strategist's Hard Drives Reveal New Details on the Census Citizenship Question*, New York Times (May 30, 2019) (online at www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html).

⁶ Thomas Hofeller, *The Use of Citizen Voting Age Population in Redistricting* (2015) (online at <https://assets.documentcloud.org/documents/6111284/May-31-2019-Unredacted-Exhibits.pdf>).

⁷ *Deceased G.O.P. Strategist's Hard Drives Reveal New Details on the Census Citizenship Question*, New

Last week, the Department of Justice responded to the public disclosure of Mr. Hofeller's study by claiming that it "played no role in the department's December 2017 request to reinstate a citizenship question to the 2020 decennial census."⁸

However, the newly discovered documents include two instances in which "Mr. Hofeller's digital fingerprints are clearly visible on Justice Department actions."⁹ First, one document found on Mr. Hofeller's hard drive includes a paragraph citing court decisions in support of the Voting Rights Act pretext. That exact paragraph subsequently appeared in a draft of a Department of Justice letter requesting the addition of the citizenship question that Mr. Neuman provided to the Department of Justice. Although this language was not used in the final request to the Census Bureau, it shows a direct link between Mr. Hofeller, Mr. Neuman, and Mr. Gore on this issue. Second, when the Department of Justice sent its final request to add the citizenship question to the Census Bureau on December 12, 2017, the letter included technical arguments in the same order—and sometimes with identical terms—as Mr. Hofeller's study.

Failure to Comply with Document Subpoena

On February 12, 2019, after becoming Chairman of the Committee, I sent a letter to the Department of Justice renewing a request for documents that I originally sent as Ranking Member on May 1, 2018.¹⁰ Over the next few weeks, the Committee identified a subset of key documents to be produced first, including a memorandum and note from then-Senior Counsel to the General Counsel James Uthmeier that were hand-delivered to Principal Deputy Assistant Attorney General John Gore in the fall of 2017. The Department did not produce the memo or note from Mr. Uthmeier or the subset of key documents the Committee identified, and instead produced documents that were heavily redacted and already largely publicly available.

On March 20, 2019, Committee staff wrote to Department staff renewing the earlier request for priority documents and noting that if the Department could not commit to producing them, "the Committee will have no choice but to consider taking additional steps to ensure compliance."¹¹ On March 22, 2019, Department staff wrote to Committee staff, declining to produce the documents and citing "litigation and confidentiality concerns."¹²

On April 2, 2019, the Committee sent a letter to the Department explaining that the existence of separate ongoing litigation is not a valid reason to withhold documents and

York Times (May 30, 2019) (online at www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html).

⁸ *Lawyer Claims Documents Reveal Census Question Added to Help Republicans*, CBS News (May 31, 2019) (online at www.cbsnews.com/news/lawyer-claims-documents-reveal-census-changed-to-help-republicans/).

⁹ *Deceased G.O.P. Strategist's Hard Drives Reveal New Details on the Census Citizenship Question*, New York Times (May 30, 2019) (online at www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html).

¹⁰ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Matthew Whitaker, Acting Attorney General, Department of Justice (Feb. 12, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-12.EEC%20to%20Whitaker-DOJ%20re%20Census_0.pdf).

¹¹ Email from Staff, Committee on Oversight and Reform, to Staff, Department of Justice (Mar. 20, 2019).

¹² Email from Staff, Department of Justice, to Staff, Committee on Oversight and Reform (Mar. 22, 2019).

information from Congress.¹³ The letter explained, as Committee staff had explained repeatedly to Department staff previously, that the Supreme Court has made clear that ongoing litigation does not preclude Congress from investigating and is not valid reason to withhold information from Congress. In *Hutcheson v. United States*, the Court explained:

But surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, *Sinclair v. United States*, supra, at 295, or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135, 179-180.¹⁴

Later that day, following a bipartisan vote, the Committee issued a subpoena requiring the Department to produce the documents it refused to provide voluntarily.¹⁵ Although the Department produced some documents in response to this subpoena, many are heavily redacted, do not include attachments, and are not responsive to the subpoena. The Department has consistently declined to produce unredacted copies of high priority documents demanded by the subpoena, such as the memo and note from Mr. Uthmeier to Mr. Gore, as well as drafts of the December 2017 letter.

Failure to Comply with Deposition Subpoena

On February 14, 2019, the Committee requested a transcribed interview with Mr. Gore.¹⁶ On March 7, 2019, Mr. Gore appeared for his interview, but refused to answer more than 150 questions from Committee staff at the direction of Department counsel. Attorneys from the Department cited “ongoing litigation” and “other executive branch confidentiality interests” as the basis for instructing Mr. Gore not to answer the Committee’s questions.

Following the interview, Committee staff wrote to Department staff identifying 18 priority questions Mr. Gore had refused to answer during the interview, and to which the Committee needed answers. Committee staff proposed that, as the next step in the accommodations process, Mr. Gore return voluntarily to respond to this narrower set of questions.¹⁷

¹³ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Stephen E. Boyd, Assistant Attorney General, Department of Justice (Apr. 2, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-02.EEC%20to%20Boyd-DOJ%20re%20Census_0.pdf).

¹⁴ *Hutcheson v. United States*, 369 U.S. 599, 618 (1962).

¹⁵ *Committee Approves Subpoenas in Security Clearance and Census Investigations*, Committee on Oversight and Reform (Apr. 2, 2019) (online at <https://oversight.house.gov/news/press-releases/committee-approves-subpoenas-in-security-clearance-and-census-investigations>).

¹⁶ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to John Gore, Principal Deputy Assistant Attorney General, Department of Justice (Feb. 14, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-14.EEC%20to%20Gore-DOJ%20re%20Transcribed%20Interview%20Request_1.pdf).

¹⁷ Email from Staff, Committee on Oversight and Reform, to Staff, Department of Justice (Mar. 7, 2019).

On March 22, 2019, the Department wrote to decline this request, again citing “litigation and confidentiality concerns.”¹⁸ As a result, following a bipartisan vote on April 2, 2019, the Committee issued a subpoena compelling Mr. Gore to appear for a deposition.¹⁹

On April 9, 2019, the Department sent a letter to the Committee explaining that you personally directed Mr. Gore not to comply with the subpoena and not to appear for the deposition. The letter challenged the Committee’s longstanding deposition rule, which has been in place for decades under both Democratic and Republican Chairmen, prohibiting agency counsel from attending. The letter stated that “the Attorney General has determined that Mr. Gore will not appear at the April 11 deposition unless a Department representative may accompany him.”²⁰ As a result of your order, Mr. Gore did not appear for the deposition.²¹

Oversight and Legislative Jurisdiction Over Census

The Constitution expressly empowers Congress to pass laws governing the Census,²² and that power has been assigned to the Committee on Oversight and Reform, which has both oversight and legislative jurisdiction over the Census.²³ The Committee is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

In this investigation, the Committee is seeking information on a host of questions, including the Administration’s actual reasons for trying to add the citizenship question, the process the Administration followed to add the citizenship question, the Administration’s understanding of how the question could reduce census response rates and could impact congressional apportionment, and the accuracy of the Administration’s past statements to Congress and the public regarding these issues.

¹⁸ Email from Staff, Department of Justice, to Staff, Committee on Oversight and Reform (Mar. 22, 2019).

¹⁹ *Committee Approves Subpoenas in Security Clearance and Census Investigations*, Committee on Oversight and Reform (Apr. 2, 2019) (online at <https://oversight.house.gov/news/press-releases/committee-approves-subpoenas-in-security-clearance-and-census-investigations>).

²⁰ Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Apr. 11, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-4-9%20HOCR%27s%20subpoena%20to%20John%20Gore%20%28CRT%29%20-%20Cummings%20%234235573.pdf>).

²¹ See Letter from John D. Adams, McGuireWoods LLP, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Apr. 24, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/April%2024%20ltr%20to%20The%20Hon.%20Elijah%20E.%20Cummings%20from%20John%20Adams_0.pdf); Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Apr. 24, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-4-24%20HOCR%27s%20subpoena%20to%20John%20Gore%20%28CRT%29%20-%20Cummings%20%234235573_0.pdf).

²² U.S. Const. art. 1, sec. 2.

²³ House rule X, clause 1(n), clause 4(c).

The Committee is examining, among other issues, whether and how Mr. Hofeller's study may have influenced the Department of Justice's request, which requires our review of documents leading to that request and drafts of the request itself. The Department cannot issue a blanket denial, but then refuse to produce documents that could relate to the veracity of its assertions.

The Committee's investigation may lead to legislation, including but not limited to reforming the process used to add questions to the Census, changing requirements for congressional notifications or testing of new or existing topics and questions, requiring disclosure of Census questions proposed by third parties, mandating additional non-response follow-up to prevent an undercount, or prohibiting the inclusion of a citizenship question altogether.²⁴ This list is not exhaustive, but rather illustrative of many legislative steps Congress could take after examining the evidence obtained during this investigation.

Conclusion

For all of the reasons described above, I respectfully request that you stop defying the Committee's bipartisan subpoenas and immediately begin producing all subpoenaed testimony and documents in unredacted form, including full email chains and associated attachments.

As an additional effort towards accommodation, the Committee will consider postponing its contempt vote if you produce—by June 6, 2019—unredacted copies of the documents identified in Item 1 of the subpoena and all drafts of the Department of Justice's letter to the Department of Commerce on December 12, 2017, which are responsive to Item 2 of the subpoena.

If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,



Elijah E. Cummings
Chairman

cc: The Honorable Jim Jordan, Ranking Member

²⁴ See, e.g., 13 U.S.C. §141(f) (requiring the Secretary of Commerce to report to Congress regarding the subjects and questions to be included in the decennial census).