**BACKGROUNDER ON DEPARTMENT OF COMMERCE COOPERATION**

**WITH HOUSE OVERSIGHT ON CENSUS INVESTIGATION**

Since receiving the Committee on Oversight and Reform’s (Committee) January 8, 2019, document request and subsequent subpoena on April 2, 2019, the Department of Commerce (Department or DOC) has worked to identify and produce relevant documents and information to the Committee. The Secretary and the Department have both worked in good faith with the Committee, produced additional batches of documents and provided senior staff to the Committee for transcribed interviews within the last several months. Nevertheless, it has become abundantly clear that in spite of this long record of cooperation, the Committee has prioritized politics over good government.

**Documents Produced:**

* The Department has made nine submissions to the Committee in its ongoing rolling document production, totaling approximately 2,000 documents comprised of more than 14,000 pages of responsive material.
  + Document productions were made on the following dates:
  + January 29, 2019
  + February 19, 2019
  + March 6, 2019
  + March 19, 2019
  + March 28, 2019
  + April 25, 2019
  + March 31, 2019
  + June 3, 2019
  + June 6, 2019

**Hearing Attendance:**

* Prior to the January 8, 2019 inquiry, the Department proactively produced Senior Advisor Earl Comstock and Census employee Ron Jarmin for testimony before the Committee in a public hearing on May 8, 2018, to answer specific questions regarding the Census and the reinstatement of the citizenship question.
* Moreover, DOC Secretary Wilbur Ross testified before the Committee for nearly seven hours on March 14, 2019, without objection from the Department.

**Transcribed Interviews:**

* The Department has made available two senior officials, and one former official, for voluntary transcribed interviews.
* On June 11, 2019, James Uthmeier, a former employee of the Department in the role of Senior Counsel, spent nearly six hours answering Committee questions regarding the reinstatement of the citizenship question on the 2020 Census without objection from the Department.
* DOC made available its General Counsel, Peter Davidson, for a June 18, 2019, transcribed interview and
* DOC made its Deputy Chief of Staff, Earl Comstock, available for a June 21, 2019 transcribed interview.
* The Department is working with the Committee to make a senior Census Bureau official available for a transcribed interview.
* For the three completed transcribed interviews, Department witnesses spent more than a dozen hours answering the Committee’s questions on the topic. This is in addition to the hours spent testifying in open hearings.

**FACTS & FALLACIES**

**SETTING THE RECORD STRAIGHT ON FALSE CLAIMS**

***Fallacy:*** *DOC has been stonewalling the House Oversight Committee’s requests for information regarding the Census and is engaged in a “nefarious” “cover-up” that is “being directed from the top.”[[1]](#footnote-2)*

**Fact:** DOC has been actively providing documents and witness testimony to the Committee since the January request. Since January 11, just 3 days following the Committee’s initial request, the Department pledged to work with the Committee to produce the information and documents it requested. Since January 29, the Department has produced approximately 14,000 pages of responsive material and made two senior DOC officials and one former employee available for hours of transcribed interviews.

***Fallacy:*** *DOC has been engaged in a “secret campaign to add the citizenship question”[[2]](#footnote-3) to the 2020 Census.*

**Fact:** In May 2018, several months before the Committee’s initial request for information regarding the reinstatement of the citizenship question, the Department produced Senior Advisor Earl Comstock and Census employee Ron Jarmin for testimony before the Committee to address specific questions on this same topic.

***Fallacy:*** *DOC is “hiding” information behind questionable privilege claims.*

**Fact:** DOC produced the Secretary of Commerce for voluntary testimony three months ago and has since made available two senior officials and one former employee for transcribed interviews with the Committee. Final scheduling details for these transcribed interviews took place before the Committee elected to schedule its contempt vote. However, the Committee, with the objection of many in its membership stated its intent to hold a business meeting on the contempt vote before the first of these interviews even took place.[[3]](#footnote-4) The Committee then scheduled its contempt vote *having since conducted* the first of the three transcribed interviews and *knowing* also that the two remaining and previously scheduled transcribed interviews would take place subsequent to that vote. The timing is baffling, and can only be understood as a vehicle to gin up media interest. As further example of the Department’s intent to participate in the mutual accommodation process, DOC produced more than 14,000 pages of documents responsive to the Committee’s request. The Committee short-circuited the accommodation process by pursuing its premature contempt resolution, choosing instead to focus on a small subset of privileged documents.

These documents—a number of which were *already* upheld as privileged by a federal judge—implicate fundamental Executive Branch interests and are protected from disclosure by the deliberative process privilege, attorney-client privilege, attorney work product doctrine, and now, as a result of the bizarre and unnecessary escalation of this matter, Executive privilege.

***Fallacy:*** *DOC is ignoring oversight inquiries and isn’t participating in the Constitutionally mandated accommodation process.*

**Fact:** Department of Commerce employees have logged several thousand man-hours engaging in the Department’s cooperation with the Committee’s requests. Any insinuation that the Department’s workers are not doing their jobs under the constitutionally-mandated accommodation process is false and offensive to the staff who have dedicated their careers to public service, and their thousands of hours of time and attention to this matter.

***Fallacy:*** *Secretary Ross lied to Congress about when he made his decision to re-instate the citizenship question on the 2020 Census.*

**Fact:** For many decades, theDepartment has researched the benefits and challenges of re-instating the citizenship question on the Census. However, it was only after the Department of Justice formally requested the question be re-instated – and solely on the basis of that request – that Secretary Ross decided to re-instate the question.

***Fallacy:*** *Department officials refused to answer any questions about the Census posed by*

*the Committee*.

**Fact:** The Department made its General Counsel, Senior Advisor, and a former

employee available for day-long transcribed interviews, during which they

answered more than a thousand questions. Even after the Oversight Committee

voted to approve a resolution holding Secretary Ross in contempt of Congress.

1. Letter from Elijah Cummings, Chairman, Committee on Oversight and Reform (June 3, 2019). [↑](#footnote-ref-2)
2. Letter from Elijah Cummings, Chairman, Committee on Oversight and Government Reform (June 3, 2019). [↑](#footnote-ref-3)
3. Letter from Jim Jordan, Ranking Member, Committee on Oversight and Government Reform (June 11, 2019) [↑](#footnote-ref-4)