Subject: Fourth Production In Response to FOIA Requests DOC-FOS-2019-001629/DOC-OS-2019-001819 (in litigation as American Oversight v. Dep't of Treasury et al., 19cv2814

Date: Thursday, December 16, 2021 at 7:40:03 AM Pacific Standard Time

From: securefilecollaboration@doc.gov

To: foia@americanoversight.org

CC: hart.wood@americanoversight.org, alexander.v.sverdlov@usdoj.gov

EXTERNAL SENDER

SECURE FILE COLLABORATION

Lieberman, Brian sent you a secure message

Access message

Attached please find the Department of Commerce's fourth and final production in response to FOIA Requests DOC-OS-2019-001629 and DOC-OS-2019-001819. This production consists of 16 documents totaling 42 pages, with applicable exemptions asserted as specified in the documents.

Since this matter is in litigation as *American Oversight v. Dep't of Treasury et al.,* D.D.C. Docket No. 19-cv-002814, please contact Commerce's counsel of record, Alexander Sverdlov, at alexander.v.sverdlov@usdoj.gov, with any questions or concerns,

Brian D. Lieberman

Senior Counsel

Information Law Division

AMERICAN OVERSIGHT

Office of General Counsel

Department of Commerce

1401 Constitution Ave. NW, Room 5092

Washington, DC 20230

(202) 482-1634

Secured by Kiteworks

Attachments expire on Jan 15, 2022

1 PDF

AO-1_19-cv-02814 - Production 4 (2021.12.15).pdf

This message requires that you sign in to access the message and any file attachments.

AMERICAN OVERSIGHT

From: James.Uthmeier@doc.gov [James.Uthmeier@doc.gov]
Sent: 3/12/2019 8:08:51 PM
To: Wall, Jeffrey B. (OSG) [b(6)]
CC: Dewhirst, David (Federal) [DDewhirst@doc.gov]; Rathburn, Kolo (Federal) [CRathburn@doc.gov]; Branson, Ross (Federal) [RBranson@doc.gov]
Subject: Re: URGENT DUE TOMORROW - (OLA WF 119088) [JAW-116-9] -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census

b(5) - AC Thanks!

James W. Uthmeier
b(6)

On Mar 12, 2019, at 7:12 PM, Wall, Jeffrey B. (OSG) < b(6) wrote:

Will do. I think that does it. Thanks very much, David.

On Mar 12, 2019, at 7:03 PM, Dewhirst, David (Federal) <DDewhirst@doc.gov> wrote:

Jeff,

b(5) - DP/AC

David

On Mar 12, 2019, at 6:38 PM, Wall, Jeffrey B. (OSG) b(6) wrote:

David, b(5) - DP/AC

From: Joshi, Sopan (OSG) < b(6)
Sent: Tuesday, March 12, 2019 6:35 PM
To: Wall, Jeffrey B. (OSG) < b(6)
Cc: Francisco, Noel (OSG) b(6)
Subject: RE: URGENT DUE TOMORROW - (OLA WF 119088) [JAW-116-9] -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census

b(5) - DP/AC

AMERICAN OVERSIGHT

b(5) - DP/AC

Sopan Joshi
Assistant to the Solicitor General
b(6)

From: Wall, Jeffrey B. (OSG) b(6)
Sent: Tuesday, March 12, 2019 6:17 PM
To: Joshi, Sopan (OSG) b(6)
Cc: Francisco, Noel (OSG) b(6)
Subject: FW: URGENT DUE TOMORROW - (OLA WF 119088) [JAW-116-9] -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census

Sopan, please review asap. Thanks.

From: Kneedler, Edwin S (OSG) b(6)
Sent: Tuesday, March 12, 2019 6:16 PM
To: Wall, Jeffrey B. (OSG) b(6)
Subject: Fwd: URGENT DUE TOMORROW - (OLA WF 119088) [JAW-116-9] -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census

FYI

Sent from my iPhone

David Dewhirst
Senior Counsel to the General Counsel
U.S. Department of Commerce
ddewhirst@doc.gov
d. b(5) - DP/AC

*Sent from my iPhone. Please excuse any typos.

Begin forwarded message:

From: "Sutton, Thomas D. (OLA)" b(6)
Date: March 12, 2019 at 3:47:49 PM EDT
To: "Kneedler, Edwin S (OSG)" b(6)
Subject: FW: URGENT DUE TOMORROW - (OLA WF 119088) [JAW-116-9] -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census

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Cc: Escalona, Prim F. (OLA) <b(6)>; Wilson, Karen L (OLA) <b(6)> Sutton, Thomas D. (OLA) <b(6)>; Leeman, Gabrielle (ODAG) <b(6)>; Perkins, Paul (ODAG) <b(6)>; Cox, Stephen (OASG) <b(6)>; Hall, Jeffrey (OASG) <b(6)>
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Importance: High

Please provide comments to Thomas Sutton/OLA, no later than TODAY – 6:00PM Tuesday, 03/12/2019.

From: Matsuo, Kimie L. EOP/OMB <b(6)>
Sent: Tuesday, March 12, 2019 2:46 PM
To: 'HOMELAND SECURITY' <b(6)> Justice Lrm (SMO) <b(6)>
Cc: Sciannameo, Maria EOP/OMB <b(6)>; Brewer, Julie A. EOP/OMB <b(6)>; Hanson, Jennifer L. EOP/OMB <b(6)> DL-OSTP-LRM <b(6)> Wade, Dana t. EOP/OMB <b(6)>; Page, Ben J. EOP/OMB <b(6)>; Enger, Michelle A. EOP/OMB <b(6)>; Snyderman, Rachel B. EOP/OMB <b(6)>; Duffey, Whitney L. EOP/OMB <b(6)>; Leslie, Kerrie L. EOP/OMB <b(6)>; DL OMB OGC <b(6)>; Donlon, Jessica L. EOP/OMB <b(6)> Hobbs, Benjamin R. EOP/WHO <b(6)>; DL-WHO-WHGC-LRM <b(6)>; Doty, George E. III EOP/WHO <b(6)> Cunliffe, Laura M. EOP/OMB

AMERICAN OVERSIGHT

b(6); Vaeth, Matt J. EOP/OMB <b(6)>; Ventura, Alexandra EOP/OMB <b(6)>; Matsuo, Kimie L. EOP/OMB <b(6)>; Weinberg, Jeffrey A. EOP/OMB <b(6)>

Subject: LRM: [JAW-116-9] Due 03/13/2019 Wednesday at 11AM -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census

Importance: High

DEADLINE: 11AM Wednesday, Mar 13 2019

Please provide signoff/specific changes by 11AM on March 13. b(5) - DP

b(5) - DP

Note to reviewers: Attached is Commerce (Secretary Ross) testimony for a hearing on the 2020 Census before the House Oversight & Reform Committee on March 14.

LRM ID: JAW-116-9
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

Legislative Liaison Officer - See Distribution

FROM: Ventura, Alexandra (for) Assistant Director for Legislative Reference
SUBJECT: LRM: [JAW-116-9] Due 03/13/2019 Wednesday at 11AM -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census

OMB CONTACT: Kimie Matsuo(OMB)
E-Mail b(6)
PHONE: b(6)
FAX: b(6)

In accordance with OMB Circular No. A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

b(5) - DP

AMERICAN OVERSIGHT

From: Wall, Jeffrey B. (OSG) b(6)
Sent: 3/13/2019 10:46:34 AM
To: Dewhirst, David (Federal) [DDewhirst@doc.gov]
Subject: FW: URGENT DUE TOMORROW - (OLA WF 119088) [JAW-116-9] -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census

David,

b(5) - DP/AC

Jeff

From: Joshi, Sopan (OSG) b(6)
Sent: Wednesday, March 13, 2019 8:39 AM
To: Wall, Jeffrey B. (OSG) b(6) Mooppan, Hashim (CIV) b(6)
Subject: Fwd: URGENT DUE TOMORROW - (OLA WF 119088) [JAW-116-9] -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census

FYI

Sopan Joshi
Assistant to the Solicitor General
b(6)

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Subject: Re: URGENT DUE TOMORROW - (OLA WF 119088) [JAW-116-9] -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census

Hey Sopan,

b(5) - DP/AC

--
David Dewhirst
Senior Counsel to the General Counsel
U.S. Department of Commerce
ddewhirst@doc.gov
c b(6)

AMERICAN OVERSIGHT

From: "Joshi, Sopan (OSG)" b(6)
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Tom,

b(5) - DP/AC

Thanks.

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b(5) - DP/AC

Sopan Joshi
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AMERICAN OVERSIGHT

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Sopan,

CIV provided this comment on b(5) - DP/AC

b(5) - DP/AC

Thanks.

Tom

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AMERICAN OVERSIGHT

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Importance: High

AMERICAN OVERSIGHT

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Legislative Liaison Officer - See Distribution

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OMB CONTACT: Kimie Matsuo(OMB)

AMERICAN OVERSIGHT

E-Mail: b(6)
PHONE b(6)
FAX b(6)

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Could you give me a call?

b(6)

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Tom,

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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Please provide comments to Thomas Sutton/OLA, no later than TODAY – 6:00PM Tuesday, 03/12/2019.

From: Matsuo, Kimie L. EOP/OMB b(6)
Sent: Tuesday, March 12, 2019 2:46 PM
To: 'HOMELAND SECURITY' b(6) ; Justice Lrm (SMO) b(6)
Cc: Sciannameo, Maria EOP/OMB b(6) Brewer, Julie A. EOP/OMB b(6) Hanson, Jennifer L. EOP/OMB b(6) DL-OSTP-LRM b(6) Wade, Dana t. EOP/OMB b(6) Page, Ben J. EOP/OMB b(6) Enger, Michelle A. EOP/OMB b(6) Snyderman, Rachel B. EOP/OMB b(6) Duffey, Whitney L. EOP/OMB b(6) ; Leslie, Kerrie L. EOP/OMB b(6) DL OMB OGC b(6) Donlon, Jessica L. EOP/OMB b(6) Hobbs, Benjamin R. EOP/WHO b(6) ; DL-WHO-WHGC-LRM b(6) Doty, George E. III EOP/WHO b(6) ; Cunliffe, Laura M. EOP/OMB b(6) Vaeth, Matt J. EOP/OMB b(6) Ventura, Alexandra EOP/OMB b(6) Matsuo, Kimie L. EOP/OMB b(6) Weinberg, Jeffrey A. EOP/OMB b(6)
Subject: LRM: [JAW-116-9] Due 03/13/2019 Wednesday at 11AM -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census
Importance: High

AMERICAN OVERSIGHT

DEADLINE: 11AM Wednesday, Mar 13 2019

Please provide signoff/specific changes by 11AM on March 13. b(5) - DP

b(5) - DP

Note to reviewers: Attached is Commerce (Secretary Ross) testimony for a hearing on the 2020 Census before the House Oversight & Reform Committee on March 14.

LRM ID: JAW-116-9
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

Legislative Liaison Officer - See Distribution

FROM: Ventura, Alexandra (for) Assistant Director for Legislative Reference
SUBJECT: LRM: [JAW-116-9] Due 03/13/2019 Wednesday at 11AM -- COMMERCE (Secretary Ross) Oversight Testimony 2020 Census

OMB CONTACT: Kimie Matsuo(OMB)
E-Mail: b(6)
PHONE: b(6)
FAX: b(6)

In accordance with OMB Circular No. A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

b(5) - DP

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From: Dewhirst, David (Federal) [DDewhirst@doc.gov]
Sent: 3/19/2019 1:21:13 PM
To: Sue Bai b(6) Colborn, Paul P (OLC) b(6)
Subject: PRIVILEGED: Draft Response LTR
Attachments: DRAFT 2019.03.19 LTR to Cummings.docx; 2019.03.15 Anello-Platt EML.pdf

DRAFT | DELIBERATIVE | CONFIDENTIAL | ATTORNEY-CLIENT COMMUNICATION

Sue and Paul,

b(5) - AC/AWP/DP

--
David Dewhirst
Senior Counsel to the General Counsel
U.S. Department of Commerce
ddewhirst@doc.gov
c. b(6)

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Subject: Fwd: Oversight Committee requests
Date: Saturday, March 16, 2019 at 12:49:56 PM Eastern Daylight Time
From: Platt, Mike (Federal)
To: Rathburn, Kolo (Federal), Dewhirst, David (Federal)

Begin forwarded message:

From: "Platt, Mike (Federal)" <MPlatt@doc.gov>
Date: March 16, 2019 at 8:09:02 AM EDT
To: "Anello, Russell" <Russell.Anello@mail.house.gov>
Cc: "Anderson, Tori" <Tori.Anderson@mail.house.gov>, "Grooms, Susanne Sachsman" <Susanne.Grooms@mail.house.gov>, "Kim, Janet" <Janet.Kim@mail.house.gov>, "Branson, Ross (Federal)" <RBranson@doc.gov>
Subject: Re: Oversight Committee requests

Russ -- it was so nice meeting many of the Oversight Committee team members on Thursday. We appreciated working with your team and the Chairman in the run up to the hearing.

The team is working on get backs from the hearing. b(6) b(6) I am copying in OLIA's Deputy A/S Ross Branson, who will be in contact as we work to pull responsive items together.

Thanks again to you and the Chairman for your professionalism and courtesy that was extended to our team.

Have a great weekend.

Mike

On Mar 15, 2019, at 6:05 PM, Anello, Russell <Russell.Anello@mail.house.gov> wrote:

> Mike,
>
> I am writing to follow up on yesterday's hearing and outstanding requests from the Committee.
>
> As you know, Chairman Cummings agreed on March 6 that, as an accommodation to Secretary Ross, the Department could produce a certain set of priority documents prior to the hearing. This was not a new request, but rather a request to prioritize a subset of the documents that had previously been requested. In particular, Chairman Cummings requested the production of unredacted copies of all documents responsive to Request 3 from the Committee's January 8, 2019, letter. For your reference, that request covers the following:
>
> > All communications between or among officials from the Department of Commerce, the Census Bureau, and any other office or entity inside or

AMERICAN OVERSIGHT

outside of the government regarding the addition of a citizenship question.

Unfortunately, the Department did not produce the requested documents, and at yesterday's hearing, Chairman Cummings requested full compliance with his previous requests by Tuesday, March 19, 2019. We expect the Department to produce all documents responsive to Request 3 in the January 8, 2019, letter in unredacted form by that date. Please note that this request includes, but is not limited to, the following documents. For all responsive emails, the entire unredacted email chain and all attachments should be produced.

1. Memo and note from James Uthmeier that was hand-delivered to John Gore in Fall 2017.

2. May 2, 2017, email from Earl Comstock to Wilbur Ross, cc: Ellen Herbst, subject: "Re: Census"

3. May 2, 2017, email from Wilbur Ross to Wendy Teramoto, subject: "Re: Census";

4. August 8, 2017, 7:44:29 p.m., email from Wilbur Ross to Earl Comstock, subject: "Re: (redacted)";

5. August 10, 2017, email from Wilbur Ross to Earl Comstock, subject: "Re: Census Matter";

6. August 11, 2017, email from Earl Comstock to Wilbur Ross, cc: Wendy Teramoto, subject: "Memo on Census Question" (with attachment);

7. September 1, 2017, email from Wilbur Ross to Earl Comstock, cc: Wendy Teramoto, subject: "Re: [redacted];

8. September 1, 2017, email from Earl Comstock to Wilbur Ross, cc: Wendy Teramoto, subject: "Re: ITA Request for [redacted]";

9. September 7, 2017, email from James Uthmeier to Earl Comstock, cc: Peter Davidson, subject: "RE: Census Matter Follow-Up";

10. December 20, 2017, email from John Zadrozny to James Uthmeier, subject "RE: Census Question Request"; and

11. February 26, 2018, email from James Uthmeier to Michael Walsh, subject "Re: Memos".

During yesterday's hearing, Secretary Ross refused to answer many of the Committee's key questions. He cited vague concerns about confidentiality, but he did not assert any valid privilege. Please confirm by Tuesday that the Department will provide responses to the Committee's questions.

In addition, it appears that you sent us only publicly available OGE documents

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today in response to the Committee's request related to Secretary Ross's financial disclosures. The Chairman accommodated Secretary Ross's request not to focus on this issue at yesterday's hearing and to wait until after the hearing to receive responsive documents. We had understood that the Department would make a good faith effort to produce responsive material by today. Can you please tell me when the Department will produce the information and documents that were requested by the Committee on February 8?

Finally, regarding the document request on the Saudi nuclear deal, please advise when the Committee should expect to receive these documents. As you know, the due date on the request was March 5.

Best regards,
Russ

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From: Dewhirst, David (Federal) [DDewhirst@doc.gov]
Sent: 3/19/2019 4:51:55 PM
To: Sue Bai [b(6)]; Colborn, Paul P (OLC) [b(6)]
Subject: Re: PRIVILEGED: Draft Response LTR
Attachments: 2019.03.19 LTR to Cummings FINAL.pdf

Sue, Paul,

FYI, here's the final version of the letter sent over to the Hill this afternoon.

--
David Dewhirst
Senior Counsel to the General Counsel
U.S. Department of Commerce
ddewhirst@doc.gov
c. b(6)

From: "Dewhirst, David (Federal)" <DDewhirst@doc.gov>
Date: Tuesday, March 19, 2019 at 1:22 PM
To: Sue Bai [b(6)] "Colborn, Paul P (OLC)" [b(6)]
Subject: PRIVILEGED: Draft Response LTR

DRAFT | DELIBERATIVE | CONFIDENTIAL | ATTORNEY-CLIENT COMMUNICATION

Sue and Paul,

b(5) - AC/AWP/DP

--
David Dewhirst
Senior Counsel to the General Counsel
U.S. Department of Commerce
ddewhirst@doc.gov
c. b(6)

AMERICAN OVERSIGHT

UNITED STATES DEPARTMENT OF COMMERCE
Office of Legislative and Intergovernmental Affairs
Washington, D.C. 20230

March 19, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Cummings,

Thank you for your staff director's March 15, 2019 email. Please find enclosed approximately 1,032 pages of documents responsive to Document Request 3 in your January 8, 2019 letter. As part of the Department's ongoing commitment to cooperation and accommodation with the Committee, we have expedited this production, ahead of our next-scheduled production date of March 28, 2019, which the Department still intends to meet.

This is the Department's fourth document production, bringing the total count to approximately 9,700 pages. So far, the Department has devoted more than 1,000 hours of staff time responding to your January 8 letter – not to mention the six-plus hours the Secretary spent voluntarily answering the Committee's questions on March 14, 2019. We are continuing to honor our commitment to accommodate the Committee's requests. In the spirit of cooperation, therefore, we would appreciate if the Committee's communications reflected that it is engaging in a mutual accommodation process with a coequal branch of government.

Certain documents in this production contain redactions, and we have provided a log so that you can see the basis for those redactions. Many redactions simply cover personally identifying information or information irrelevant and unresponsive to your requests for production. Some redactions protect attorney-client communications and attorney work product. Other redactions maintain the confidentiality of deliberative and pre-decisional communications among Executive Branch officials.

Moreover, the limited time between the end of the hearing on March 14, 2019 and this date is wholly inadequate to consider the removal of redactions contained in the previously produced 8,700 pages of documents. While the Department always has met and will continue to meet its Constitutional obligation to optimally accommodate the Committee, we cannot assess whether to divulge sensitive information on unreasonably burdensome time frames. Please remember that the Department is currently fielding at least three of your oversight requests and several from other Committees. We are devoting the maximum resources possible to responding to the Committee's requests, but those resources are not infinite. The constitutional accommodation obligation cuts both ways, and the Department hopes in future that the Committee will fully consider all of the circumstances surrounding the Department's continued cooperation with numerous and extensive Congressional requests.

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Upon our review of the fourteen documents identified by your staff director in his March 15, 2019 email, the Department produced Documents 2, 3, 4, 5, 6, 7, 8, 9, and 11 in its second installment on February 19, 2019. As acknowledged in your staff director's description of Document 1, the Department does not possess those materials. The attachment to Document 6 is in its entirety a confidential attorney-client communication. Nevertheless, as an additional accommodation to the Committee, I have asked Departmental staff to include Document 10 in today's production.

As to your staff director's references to the Secretary's citations to "vague concerns about confidentiality," the Secretary voluntarily answered the Committee's questions for over six hours on March 14, 2019. In response to certain questions, he invoked the long-standing, bipartisan practice of protecting the confidentiality of Executive Branch deliberations. He stands by the answers and responses provided in the hearing.

On a different note, the Department on March 15, 2019 produced an installment of documents responsive to your February 8, 2019 letter. As for your staff director's question in the March 15, 2019 email regarding "when the Department will produce the information and documents that were requested by the Committee[,]" I will reaffirm the date for an updated response which the Department provided in its March 15, 2019 production letter – April 11, 2019. The Department is responding to your February 8, 2019 letter in good faith and to the fullest extent possible given the numerous requests from your Committee and others and the Department's diligent commitment to cooperation and accommodation.

As to your February 19, 2019 letter regarding nuclear technology transfer to Saudi Arabia, we are continuing to assess that request and will respond as soon as our resources permit.

We appreciate the opportunity to assist with your inquiry. If you have any additional questions, please contact me at (202) 482-3663.

b(6)

b(6) Ross Branson
Deputy Assistant Secretary for
Legislative and Intergovernmental Affairs

Cc: The Honorable Jim Jordan, Ranking Member

Enclosures:

1. Installment Number 4 of documents responsive to January 8, 2019 Letter from Chairman Elijah Cummings to Secretary Ross and Redaction Log

AMERICAN OVERSIGHT

From: Dewhirst, David (Federal) b(6)
b(6)
Sent: 3/22/2019 4:15:58 PM
To: Sue Bai b(6) b(6) - Paul Colburn
Subject: DRAFT LTR
Attachments: DRAFT 2019.03.22 LTR to Cummings.docx; ATT00001.htm

DRAFT | PRE-DECISIONAL | PRIVILEGED

Sue, Paul,

b(5) - AC/AWP/DP Please call to discuss. Thank you.

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David Dewhirst
Senior Counsel to the General Counsel
Office of General Counsel
U.S. Department of Commerce
ddewhirst@doc.gov
c. b(6)

Sent from my iPad

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From: Dewhirst, David (Federal) [DDewhirst@doc.gov]
Sent: 5/10/2019 3:47:14 PM
To: Sue Bai b(6) Colborn, Paul P (OLC) b(6)
CC: Hull, Cordell (Federal) [CHull@doc.gov]
Subject: DRAFT LTRs
Attachments: 2019-05-XX DRAFT Letter to Cummings re TIs.docx; 2019-05-07 Cummings and Raskin to Davidson-DOC re TI.pdf; 2019-05-13 Letter to Cummings re SWR Meeting.docx; 2019-05-08 Cummings to Ross re Meeting.pdf

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Sue, Paul,

Hope you're both doing well. b(5) - DP/AC

b(5) - DP/AC

Perhaps we could set up a time to discuss by phone on Monday or Tuesday?

--
David Dewhirst
Deputy General Counsel for Litigation
U.S. DEPARTMENT OF COMMERCE
ddewhirst@doc.gov
c. b(6)

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ELIJAH E. CUMMINGS, MARYLAND
CHAIRMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

Majority (202) 225–5051
Minority (202) 225–5074

http://oversight.house.gov

May 7, 2019

Mr. Peter Davidson
General Counsel
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Mr. Davidson:

The Committee requests your appearance for a transcribed interview on Tuesday, May 28, 2019, at 9:30 a.m., in room 6400 of the O'Neill House Office Building.

The interview will address the decision by Secretary of Commerce Wilbur Ross to add a citizenship question to the 2020 Decennial Census and other topics. Documents obtained by the Committee show that you played a key role in communications leading up to this decision within the Department of Commerce and with the Department of Justice.

On March 14, 2019, Secretary Ross testified before the Committee, but he refused to answer key questions or commit to providing requested documents regarding the addition of the citizenship question. I explained at the hearing that if he continued to withhold this information, the Committee would, among other steps, seek transcribed interviews with Department of Commerce and Department of Justice staff to obtain the information.

On March 20, 2019, Committee staff emailed Department of Commerce staff to request your attendance at a transcribed interview. The Department refused to arrange the interview, instead demanding that the Committee identify "further justification" for the request.[1]

On March 29, 2019, I wrote to Secretary Ross and provided a detailed explanation of the purpose of the Committee's investigation and the need for this interview, including specific examples of information the Committee seeks.[2]

---

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

[2] Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Mar. 29, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-29.EEC%20to%20Ross-DOC.pdf).

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On April 1, 2019, the Department of Commerce responded by demanding further information on the Committee's "particularized needs."[3]

The Department does not appear to recognize that Congress is an independent and co-equal branch of government that will determine its own investigative steps without undue interference or delay by the Department.

On April 2, 2019, the Committee voted on a bipartisan basis to authorize a subpoena to Secretary Ross for the key documents sought by the Committee.[4]

On April 11, 2019, Committee staff emailed the Department of Commerce regarding the subpoena and again asked the Department to arrange an interview with you.[5] The Department did not respond to the interview request, further delaying the Committee's investigation.

For all of these reasons, the Committee is now writing to you directly to request your voluntary participation in this interview.

Please be advised that any official at the Department who "prohibits or prevents" or "attempts or threatens to prohibit or prevent" you from speaking with the Committee could have his or her salary withheld pursuant to section 713 of the Financial Services and General Government Appropriations Act.[6] The Government Accountability Office (GAO) has reported to the Committee in the past when an agency official has violated this provision by preventing agency staff from being interviewed by Congress,[7] and a portion of that official's salary was

---

[3] Letter from Michael Platt, Jr., Assistant Secretary, Legislative and Intergovernmental Affairs, Department of Commerce, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Apr. 1, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.04.01%20LTR%20to%20Cummings.pdf).

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

[5] Email from Staff, Committee on Oversight and Reform, to Staff, Department of Commerce (Apr. 11, 2019).

[6] Pub. L. No. 116-6, § 713 ("No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who ... prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee.").

[7] Letter from Government Accountability Office, to Chairman Jason Chaffetz, Committee on Oversight and Government Reform, et al. (Apr. 5, 2016) (online at www.gao.gov/assets/680/676341.pdf); Letter from Aaron Santa Anna, Acting General Deputy Assistant Secretary for Congressional and Intergovernmental Relations, Department of Housing and Urban Development, to Chairman Charles E. Grassley, Senate Committee on the Judiciary (June 19, 2017) (online at www.judiciary.senate.gov/imo/media/doc/06-19-17%20Santa%20Anna,%20Aaron%20to%20CEG%20re%20GAO%20Legal%20Opinion%20Financial%20Services%20and%20General%20Government%20Appropriations%20Act_Redacted.pdf).

AMERICAN OVERSIGHT

ordered to be returned to the federal government.[8] If at any time you believe any Department official has violated this provision, I encourage you to notify the Committee and/or GAO.

Please contact the Committee by May 13, 2019, to confirm your attendance.

The Committee on Oversight and Reform 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. If you have any questions, please contact Committee staff at (202) 225-5051.

Sincerely,

Elijah E. Cummings
Chairman

Jamie Raskin
Chairman
Subcommittee on Civil Rights and
Civil Liberties

cc: The Honorable Jim Jordan, Ranking Member

The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

[8] Letter from Craig T. Clemmensen, Senior Advisor to Acting Deputy Secretary, Department of Housing and Urban Development, to former General Deputy Assistant Secretary (June 15, 2017) (online at www.judiciary.senate.gov/imo/media/doc/06-19-17%20Santa%20Anna,%20Aaron%20to%20CEG%20re%20GAO%20Legal%20Opinion%20Financial%20Services%20and%20General%20Government%20Appropriations%20Act_Redacted.pdf) (directing the former General Deputy Assistant Secretary to repay a portion of his salary for violating this provision).

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b(5) - AC/AWP/DP

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ELIJAH E. CUMMINGS, MARYLAND
CHAIRMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

Majority (202) 225-5051
Minority (202) 225-5074

http://oversight.house.gov

May 8, 2019

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

Dear Mr. Secretary:

I am writing to request a meeting to discuss the Department's refusal to produce documents pursuant to a subpoena authorized by the Committee on a bipartisan basis regarding your decision to add a citizenship question to the 2020 Census. I would like to meet with you in person, preferably in the next two weeks, to ensure that you are fully apprised of the actions of your staff and to determine whether there is any way to resolve this impasse before initiating potential enforcement action.

On April 2, 2019, after making repeated requests, the Committee voted to authorize a subpoena to compel the production of responsive documents by April 16, 2019. This subpoena was issued only after the Department failed to comply with multiple previous requests for these documents.

The Department sent no response by the subpoena's due date. Instead, on April 17, 2019, a Department official sent an email to Committee staff stating that the Department would not comply with the subpoena unless the Committee provides "the particularized information we have requested as to each identified document and how those documents relate to a legitimate legislative purpose."[1]

The Department's insistence on an individual justification for each responsive document is wholly unwarranted. The Committee has clearly and repeatedly explained its need for these documents, and the Committee has also accommodated the Department's interests by greatly narrowing the scope of its original document request, identifying 11 priority documents, and providing a detailed explanation for why the Committee needs to review these documents.

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[1] Email from Staff, Department of Commerce, to Staff, Committee on Oversight and Reform (Apr. 17, 2019).

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For example, on March 29, 2019, the Committee sent a letter describing the purpose of the Committee's investigation and how the priority documents identified by the Committee—the same documents identified in the subpoena—would further the Committee's investigation.[2]

The Department's refusal to produce these documents is obstructing and delaying the Committee's investigation. As a result, further investigative steps have become necessary. For example, the Committee is now seeking transcribed interviews with three current and former Department officials to obtain information necessary for our investigation.[3]

In order to try to resolve this matter, I would like to meet with you directly before taking any further action, and I would like to determine whether there is any way we can address our Committee's important oversight interests without further investigative steps or enforcement actions. I would encourage you to bring your counsel to this meeting so that we can discuss various options in an efficient and effective manner.

Please contact Committee staff at (202) 225-5051 to schedule this meeting.

Sincerely,

Elijah E. Cummings
Chairman

cc: The Honorable Jim Jordan, Ranking Member

[2] Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Mar. 29, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-29.EEC%20to%20Ross-DOC.pdf).

[3] Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Earl Comstock, Deputy Chief of Staff and Director of Policy, Department of Commerce (May 7, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-07.EEC%20JR%20to%20Comstock-DOC%20re%20TI.pdf); Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Peter Davidson, General Counsel, Department of Commerce (May 7, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-07.EEC%20JR%20to%20Davidson-DOC%20re%20TI.pdf); Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to James Uthmeier (May 7, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-05-07.EEC%20JR%20to%20Uthmeier%20re%20TI.pdf).

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