

August 13, 2018

The Honorable Jesse M. Furman  
United States District Court for the Southern District of New York  
40 Centre Street, Room 2202  
New York, NY 10007

RE: Plaintiffs' fourth letter-motion regarding discovery in *State of New York, et al. v. U.S. Dep't of Commerce, et al.*, 18-CV-2921 (JMF), and *New York Immigration Coalition, et al. v. U.S. Dep't of Commerce, et al.*, 18-CV-5025 (JMF)

Dear Judge Furman,

Plaintiffs write pursuant to Local Civil Rule 37.2 and Rule 2(C) of this Court's Individual Rules and Practices to request an informal discovery conference with the Court, or an order providing the relief described below.<sup>1</sup> Plaintiffs have been unable to resolve the disputes described in this letter-brief through good faith meet-and-confer discussions with Defendants.

1. *The Court should order review by the Census Bureau's Disclosure Review Board of the materials withheld on Title 13 grounds.* On August 2, following an unsuccessful meet-and-confer discussion on July 31, Plaintiffs filed a letter-motion with the Court regarding Defendants' redaction of approximately 60 documents on the ground that they contained information protected by 13 U.S.C. § 9 (the "Title 13" protection). 18-CV-2921, Docket No. 220. In opposing that motion, Defendants presented the Court with a declaration regarding the process ordinarily undertaken by the Census Bureau's Disclosure Review Board ("DRB") in deciding whether Title 13 protections should be applied. Docket Nos. 228, 231.

Plaintiffs share Defendants' interest in assuring the confidentiality of individual census responses and avoiding the disclosure of information that would allow for particular individuals to be identified in violation of Title 13. Plaintiffs further agree that the DRB process is a reasonable approach to protecting sensitive data from disclosure. But the DRB did not review any of the records or information withheld in this case on Title 13 grounds. *See* Ex. 1 (email from counsel, in response to Plaintiffs' inquiry, confirming that "the documents protected from disclosure pursuant to Title XIII have not undergone review by the full Disclosure Review Board"). Instead, Defendants bypassed the DRB and withheld information following review by a single Disclosure Avoidance Officer. This process is clearly not foolproof, by Defendants' own acknowledgment. *See* Docket No. 231, ¶ 26 (identifying documents redacted by the disclosure avoidance officer that do not contain Title 13-protected information).

On August 9, Plaintiffs proposed to Defendants that the Title 13-redacted records be submitted to the DRB for expeditious review at its next scheduled meeting, *see* Docket No. 231, ¶ 6 (the DRB meets twice a week); and Plaintiffs are prepared to work with Defendants to

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<sup>1</sup> This is the fourth letter-motion submitted by the Plaintiffs in 18-CV-2921 and 18-CV-5025 pursuant to Rule 2(C) of this Court's Individual Rules. *See* Pls.' First Letter-Motion, 18-CV-2921, Docket No. 201 (opposed at Docket No. 203, resolved by Court Order at Docket No. 204); Pls.' Second Letter-Motion, 18-CV-2921, Docket No. 220 (opposed at Docket Nos. 228 and 231); Pls.' Third Letter-Motion, 18-CV-2921, Docket No. 236 (not yet opposed).

identify documents for priority processing in the event DRB review must be sequenced. Because Defendants have been unable to agree to this proposal to date, and because of the tight deadlines for litigating these cases, Plaintiffs respectfully request that the Court order this relief.<sup>2</sup>

In addition, Dr. Abowd's August 9 Corrected Declaration identifies three previously-redacted documents that he affirms "do not contain information subject to protection under Title XIII." Docket No. 231, ¶ 26 (citing AR 10462, AR 10913, and AR 11025). Because Defendants identified no other applicable privileges as to these documents on their privilege log, Plaintiffs asked that they be produced immediately. Defendants produced AR 10913, but have not produced or committed to produce the other two documents. Both documents may be pertinent to the deposition of Dr. Abowd, scheduled for this Wednesday, August 15. (AR 10462 is a memo from Dr. Abowd, and AR 11025 is an email to Dr. Abowd.) Because of this time-sensitivity, and because Defendants have apparently withdrawn all claims of privilege as to both documents, Plaintiffs ask the Court to order production of the unredacted versions without delay.

2. *The Court should compel production of materials as to which Defendants did not assert a timely claim of privilege.* At the July 3 hearing in these cases, the Court directed Defendants to complete the Administrative Record and produce a privilege log by July 16, see Hearing Tr. at 88-89 (July 3, 2018) (Docket No. 207); a deadline that the Court extended at Defendants' request to July 23. See *id.* at 91. Defendants then sought a further extension to July 26, which the Court granted while making clear that "[n]o further extensions will be granted." Docket No. 211. On August 3 – more than a week after the July 26 deadline – Defendants made a further production of materials responsive to the Court's July 3 Order, see Docket No. 222; and presented Plaintiffs with an accompanying privilege log of approximately 100 records withheld in full or in part on privilege grounds. Ex. 2.

The Court did not authorize this late production and Plaintiffs did not consent to it. Accordingly, Plaintiffs advised Defendants by email on August 6, see Ex. 3, and by telephonic meet-and-confer on August 8, of Plaintiffs' position that the claims of privilege listed on the August 3 privilege log were waived for failure to assert them in compliance with the Court's extremely clear deadlines. The parties were not able to resolve this disagreement.

This Court has the discretion to conclude that waiver should result from Defendants' untimeliness. See 6 Moore's Federal Practice § 26.90[2] & n.11 (3d ed. 2018). Courts in this district regularly conclude that a party has waived any assertions of privilege – including governmental privileges like deliberative process – by failing to comply with deadlines for asserting and justifying those assertions. See, e.g., *S.E.C. v. Yorkville Advisors, LLC*, 300 F.R.D. 152, 167–68 (S.D.N.Y. 2014) (holding that "the SEC waived its privilege protections by failing to produce in a timely manner a privilege log that complied with the applicable rules") (citing cases); *FG Hemisphere Assocs., L.L.C. v. Republique du Congo*, No. 01-CV-8700 (SAS) (HBP), 2005 WL 545218, at \*6 (S.D.N.Y. Mar. 8, 2005) ("As other judges in this District and I have repeatedly held, the unjustified failure to list privileged documents on the required log of

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<sup>2</sup> This request modifies the relief sought in Plaintiffs' Second Letter-Motion, Docket No. 220. In addition, based on the representations in Dr. Abowd's Corrected Declaration, Plaintiffs do not seek disclosure or DRB review of the documents containing redactions of proprietary information technology information. See Docket No. 231, ¶ 25 (referencing AR 10407 and AR 10995).

withheld documents in a timely and proper manner operates as a waiver of any applicable privilege.”) (citing cases).

A holding that Defendants have waived the claims of privilege on their August 3 log is warranted in the circumstances of this case. The deadlines set at the July 3 hearing gave the parties just over fourteen weeks to conduct all fact and expert discovery in these cases, and gave Plaintiffs just over nine weeks for their initial expert disclosures. On such a truncated discovery schedule, Defendants’ failure to identify and assert timely claims of privilege – regarding what appear to be highly pertinent records showing how the decision to demand citizenship status was reached and justified – is particularly burdensome for Plaintiffs. This is especially so where the deadline to complete the record had already been extended twice, and with clear notice that no extensions past July 26 would be granted. Plaintiffs therefore respectfully request that the Court compel production of the materials listed on Defendants’ August 3 privilege log.

3. *The Court should compel production of materials erroneously withheld.* In addition, Plaintiffs continue to identify additional gaps in the Administrative Record, nearly six weeks after the Court’s July 3 order. By email dated August 6, *see* Ex. 3, and during the parties’ August 8 meet-and-confer call, Plaintiffs noted that an email between Mr. Uthmeier and Acting Deputy Secretary Karen Dunn Kelley referenced “review materials” prepared for a meeting with the Secretary, but those review materials were neither produced nor logged as privileged. *See* Ex. 4 (AR 1996). Defendants would not commit to any deadline for locating or producing these materials. Plaintiffs ask that the Court order their production without further delay.

This instance illustrates a broader concern Plaintiffs have raised with Defendants regarding conspicuous omissions from the Administrative Record, which includes notable omissions regarding Defendants’ communications with third parties, including A. Mark Neuman, Steve Bannon, Kris Kobach, and staff with the Department of Justice and Department of Homeland Security. For example, the record shows that Mr. Neuman spoke frequently with several senior Commerce Department officials (AR 2497, 3699, 3709), but his input is nowhere memorialized in the Administrative Record.<sup>3</sup> And although Mr. Neuman appears to be one of the stakeholders the Secretary consulted in March 2018 (AR 1815, 3421, 3491), the Administrative Record contains no memorialization of that discussion – despite the presence of file memos memorializing what appear to be all of the other stakeholder calls. Similarly, substantive input from Messrs. Kobach and Bannon, as well as that of key individuals at other federal agencies, is similarly referenced but not memorialized (AR 763, 2458, 2488, 2491, 2496, 2561, 2634, 11160, 11193). Defendants are still in the process of confirming to Plaintiffs that all likely custodians were adequately identified, their records adequately searched and reviewed, and no custodians used non-governmental accounts. Plaintiffs wish to make the Court aware that pending these assurances regarding the adequacy of Defendants’ search, Plaintiffs may seek further relief from the Court, including authorization for targeted third-party discovery as necessary. *See* Hearing Tr. at 86 (July 3, 2018) (Docket No. 207) (declining to authorize discovery beyond the Commerce and Justice Departments “[a]t this stage”).

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<sup>3</sup> In their supplemental productions, Defendants withheld on the basis of attorney-client privilege two communications between Mr. Uthmeier and Mr. Neuman (who is a non-government employee); although the Government has withdrawn these assertions, to date, they have not produced one of the documents. AR 11329.

Respectfully submitted,

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49(c)(3).

Attorneys for *NYIC* Plaintiffs, 18-CV-5025

# Exhibit 1

**From:** [Tomlinson, Martin M. \(CIV\)](#)  
**To:** [John.Freedman@arnoldporter.com](#); [DHo@aclu.org](#); [SBrannon@aclu.org](#); [PGrossman@nyclu.org](#); [Bauer, Andrew](#); [Colangelo, Matthew](#); [Goldstein, Elena](#); [Saini, Ajay](#)  
**Cc:** [Ehrlich, Stephen \(CIV\)](#); [Coyle, Garrett \(CIV\)](#); [Federighi, Carol \(CIV\)](#); [Kopplin, Rebecca M. \(CIV\)](#); [Halainen, Daniel J. \(CIV\)](#); [Bailey, Kate \(CIV\)](#)  
**Subject:** RE: State of New York v. Department of Commerce, S.D.N.Y. 18-CV-2921; NYIC v. Department of Commerce, S.D.N.Y. 18-CV-5025: Meet and Confer Request  
**Date:** Thursday, August 9, 2018 8:53:23 PM  
**Attachments:** [0010913.pdf](#)  
[0010957\\_replacement.pdf](#)  
[0010961\\_replacement.pdf](#)  
[0010977\\_replacement.pdf](#)

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Counsel:

This is in response to the issues raised with regard to documents withheld from production pursuant to Section 9 of Title XIII ("Title XIII").

1. We can confirm that the documents protected from disclosure pursuant to Title XIII have not undergone review by the full Disclosure Review Board. Instead, these documents were reviewed by a Disclosure Avoidance Officer authorized to review these documents and bypass review by the full Disclosure Review Board.
2. Dr. Abowd inadvertently omitted or mistakenly characterized a few specific documents withheld as subject to Article XIII protection on Defendants' privilege logs. We have just filed an amended declaration correcting these inadvertent omissions. Specifically:
  - a. Documents 10995 and 10407 are not protected under Title XIII, but contain proprietary information technology information that Defendants must redact as proprietary information.
  - b. Defendants are not asserting Article XIII protection over document 10913, and will be producing an unredacted version of that document (an unredacted version should already appear on the FOIA site).
  - c. Documents 10385, 10530, and 10849, all of which were subject to Article XIII protection as indicated on Defendants' privilege logs, were inadvertently omitted from Dr. Abowd's declaration and should have been listed in Paragraph 24. Documents 10957, 10961, and 10977 were inadvertently listed in Paragraph 25 as not containing information that was subject to protection under Article XIII, when they should have been listed as containing protected information in Paragraph 24. Those errors have been corrected in Dr. Abowd's corrected declaration. However, documents 10957, 10961, and 10977 are being produced (attached to this email), with Article XIII information removed.

Aside from the corrections outlined above, which are all contained in Paragraphs 24, 25, and 26 of the corrected declaration, Dr. Abowd's declaration is identical to his previous declaration, which was filed with the Court on August 7. Thank you.

## **Martin M. Tomlinson**

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20 Massachusetts Ave., NW, Room 6134  
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For overnight/courier deliveries:

# Exhibit 2



| Production:<br>Begin Bates | Production:<br>End Bates | Production:<br>Begin<br>Attachment | Production:<br>End<br>Attachment | To                                                                                       | From                        | CC                                                                                       | File Name                                        | Date/Sent       | Privilege                                                                                                     | Privilege Comments                                                                                            |
|----------------------------|--------------------------|------------------------------------|----------------------------------|------------------------------------------------------------------------------------------|-----------------------------|------------------------------------------------------------------------------------------|--------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| 11253                      | 11253                    | 11253                              | 11253                            | Uthmeier, James<br>(Federal)                                                             | Mooppan, Hashim<br>(CIV)    |                                                                                          | Re: Draft DOC<br>Decision Memo.msg               | 3/24/2018 12:55 | AC - Attorney Client<br>Privilege; WP - Work<br>Product                                                       | Communications between<br>Commerce counsel and DOJ<br>litigation counsel regarding<br>the draft decision memo |
| 11254                      | 11254                    | 11254                              | 11255                            | Teramoto, Wendy<br>(Federal); Kelley,<br>Karen (Federal)                                 | Comstock, Earl<br>(Federal) | Uthmeier, James<br>(Federal); Walsh,<br>Michael (Federal)                                | Latest Version of<br>Census Memo.msg             | 3/26/2018 12:15 | PII - Personal Privacy                                                                                        |                                                                                                               |
| 11255                      | 11255                    | 11254                              | 11255                            | Karen Dunn Kelley                                                                        | Secretary Wilbur<br>Ross    |                                                                                          | DRAFT Census<br>Decision Memo v2<br>3.26.18.pdf  | 3/26/2018       | AC - Attorney Client<br>Privilege; WP - Work<br>Product; DP - Deliberative<br>Process                         | Draft decision memo<br>drafted by counsel with<br>litigation anticipated                                      |
| 11256                      | 11256                    | 11256                              | 11256                            | Ross, Wilbur                                                                             | Comstock, Earl<br>(Federal) | Walsh, Michael<br>(Federal); Kelley,<br>Karen (Federal);<br>Uthmeier, James<br>(Federal) | Re: draft decision<br>memo.msg                   | 3/25/2018 23:24 | AC - Attorney Client<br>Privilege; PII - Personal<br>Privacy; WP - Work Product                               | Discussion of comments on<br>interim draft decision memo                                                      |
| 11257                      | 11257                    | 11257                              | 11257                            | Walsh, Michael<br>(Federal)                                                              | Ross, Wilbur                | Kelley, Karen<br>(Federal); Comstock,<br>Earl (Federal);<br>Uthmeier, James<br>(Federal) | Re: draft decision<br>memo.msg                   | 3/25/2018 22:37 | AC - Attorney Client<br>Privilege; PII - Personal<br>Privacy; WP - Work Product                               | Discussion of comments on<br>interim draft decision memo                                                      |
| 11258                      | 11260                    | 11258                              | 11260                            | Uthmeier, James<br>(Federal)                                                             | Walsh, Michael<br>(Federal) | Comstock, Earl<br>(Federal); Kelley,<br>Karen (Federal)                                  | Re: please use this<br>version.msg               | 3/25/2018 20:13 | AC - Attorney Client<br>Privilege; PII - Personal<br>Privacy; WP - Work Product;<br>DP - Deliberative Process | Email exchange including<br>counsel discussing draft<br>decision memo                                         |
| 11261                      | 11261                    | 11261                              | 11262                            | Ross, Wilbur                                                                             | Walsh, Michael<br>(Federal) | Kelley, Karen<br>(Federal); Comstock,<br>Earl (Federal);<br>Uthmeier, James<br>(Federal) | draft decision<br>memo.msg                       | 3/25/2018 19:15 | AC - Attorney Client<br>Privilege; PII - Personal<br>Privacy; WP - Work Product;<br>DP - Deliberative Process | Discussion of comments on<br>interim draft decision memo                                                      |
| 11262                      | 11262                    | 11261                              | 11262                            | Karen Dunn Kelley                                                                        | Secretary Wilbur<br>Ross    |                                                                                          | DRAFT Census<br>Decision Memo<br>3.25.18 v3.docx | 3/26/2018       | AC - Attorney Client<br>Privilege; WP - Work<br>Product; DP - Deliberative<br>Process                         | Draft decision memo                                                                                           |
| 11263                      | 11264                    | 11263                              | 11265                            | Comstock, Earl<br>(Federal); Kelley,<br>Karen (Federal);<br>Uthmeier, James<br>(Federal) | Walsh, Michael<br>(Federal) |                                                                                          | Re: please use this<br>version.msg               | 3/25/2018 19:05 | AC - Attorney Client<br>Privilege; PII - Personal<br>Privacy; WP - Work Product;<br>DP - Deliberative Process | Email exchange including<br>counsel discussing draft<br>decision memo                                         |
| 11265                      | 11265                    | 11263                              | 11265                            | Karen Dunn Kelley                                                                        | Secretary Wilbur<br>Ross    |                                                                                          | DRAFT Census<br>Decision Memo<br>3.25.18 v3.docx | 3/26/2018       | AC - Attorney Client<br>Privilege; WP - Work<br>Product; DP - Deliberative<br>Process                         | Draft decision memo                                                                                           |

|       |       |       |       |                                                                              |                          |                                                     |                                            |                 |                                                                                                      |                                                                                                                         |
|-------|-------|-------|-------|------------------------------------------------------------------------------|--------------------------|-----------------------------------------------------|--------------------------------------------|-----------------|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| 11266 | 11267 | 11266 | 11268 | Walsh, Michael (Federal); Kelley, Karen (Federal); Uthmeier, James (Federal) | Comstock, Earl (Federal) |                                                     | Re: please use this version.msg            | 3/25/2018 18:28 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including counsel discussing draft decision memo                                                         |
| 11268 | 11268 | 11266 | 11268 | Karen Dunn Kelley                                                            | Secretary Wilbur Ross    |                                                     | DRAFT Census Decision Memo 3.25.18 v3.docx | 3/26/2018       | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft decision memo in track-changes mode                                                                               |
| 11269 | 11269 | 11269 | 11270 | Kelley, Karen (Federal); Comstock, Earl (Federal); Uthmeier, James (Federal) | Walsh, Michael (Federal) |                                                     | please use this version.msg                | 3/25/2018 17:10 | PII - Personal Privacy                                                                               |                                                                                                                         |
| 11270 | 11270 | 11269 | 11270 | Karen Dunn Kelley                                                            | Secretary Wilbur Ross    |                                                     | DRAFT Census Decision Memo 3.25.18 v2.docx | 3/26/2018       | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft decision memo in track changes mode                                                                               |
| 11271 | 11271 | 11271 | 11272 | Uthmeier, James (Federal); Kelley, Karen (Federal); Comstock, Earl (Federal) | Walsh, Michael (Federal) |                                                     | Re: Draft DOC Decision Memo.msg            | 3/25/2018 16:42 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel and DOJ litigation counsel discussing draft decision memo and proposing edits |
| 11272 | 11272 | 11271 | 11272 | Karen Dunn Kelley                                                            | Secretary Wilbur Ross    |                                                     | DRAFT Census Decision Memo 3.25.18 v2.docx | 3/26/2018       | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft decision memo in track changes mode                                                                               |
| 11273 | 11273 | 11273 | 11273 | Kelley, Karen (Federal)                                                      | Walsh, Michael (Federal) | Uthmeier, James (Federal); Comstock, Earl (Federal) | Re: proposed insert on response rate.msg   | 3/25/2018 13:06 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel discussing draft decision memo and proposing edits and addressing process     |
| 11274 | 11274 | 11274 | 11274 | Walsh, Michael (Federal)                                                     | Kelley, Karen (Federal)  | Uthmeier, James (Federal); Comstock, Earl (Federal) | Re: proposed insert on response rate.msg   | 3/25/2018 12:36 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel discussing draft decision memo and process for review and proposing edits     |
| 11275 | 11275 | 11275 | 11275 | Comstock, Earl (Federal); Uthmeier, James (Federal); Kelley, Karen (Federal) | Walsh, Michael (Federal) |                                                     | Re: proposed insert on response rate.msg   | 3/25/2018 11:54 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel discussing draft decision memo and proposing edits                            |
| 11276 | 11276 | 11276 | 11277 | Walsh, Michael (Federal); Uthmeier, James (Federal); Kelley, Karen (Federal) | Comstock, Earl (Federal) |                                                     | Re: proposed insert on response rate.msg   | 3/25/2018 11:39 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel discussing draft decision memo and proposing edits                            |

|       |       |       |       |                                                                              |                          |                          |                                          |                 |                                                                                                      |                                                                                              |
|-------|-------|-------|-------|------------------------------------------------------------------------------|--------------------------|--------------------------|------------------------------------------|-----------------|------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| 11277 | 11277 | 11276 | 11277 | n/a                                                                          | n/a                      |                          | Outline for Census Decision Memo v5.docx | n/a             | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft decision memo in track changes mode                                                    |
| 11278 | 11278 | 11278 | 11279 | Comstock, Earl (Federal); Uthmeier, James (Federal); Kelley, Karen (Federal) | Walsh, Michael (Federal) |                          | Re: proposed insert on response rate.msg | 3/25/2018 10:54 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel discussing draft decision memo and proposing edits |
| 11279 | 11279 | 11278 | 11279 | n/a                                                                          | n/a                      |                          | Outline for Census Decision Memo v4.docx | n/a             | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft decision memo in track changes mode                                                    |
| 11280 | 11280 | 11280 | 11281 | Walsh, Michael (Federal); Uthmeier, James (Federal); Kelley, Karen (Federal) | Comstock, Earl (Federal) |                          | Re: proposed insert on response rate.msg | 3/25/2018 10:06 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel discussing draft decision memo and proposing edits |
| 11281 | 11281 | 11280 | 11281 | n/a                                                                          | n/a                      |                          | Outline for Census Decision Memo v4.docx | n/a             | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft decision memo in track changes mode                                                    |
| 11282 | 11282 | 11282 | 11283 | Kelley, Karen (Federal); Uthmeier, James (Federal)                           | Walsh, Michael (Federal) | Comstock, Earl (Federal) | Re: proposed insert on response rate.msg | 3/24/2018 17:27 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel discussing draft decision memo and proposing edits |
| 11283 | 11283 | 11282 | 11283 | n/a                                                                          | n/a                      |                          | Outline for Census Decision Memo v2.docx | n/a             | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft decision memo                                                                          |
| 11284 | 11284 | 11284 | 11285 | Walsh, Michael (Federal); Uthmeier, James (Federal); Kelley, Karen (Federal) | Comstock, Earl (Federal) |                          | Re: proposed insert on response rate.msg | 3/24/2018 15:01 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel discussing draft decision memo and proposing edits |
| 11285 | 11285 | 11284 | 11285 | n/a                                                                          | n/a                      |                          | Outline for Census Decision Memo v2.docx | n/a             | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft decision memo in track changes mode                                                    |
| 11286 | 11286 | 11286 | 11287 | Walsh, Michael (Federal); Uthmeier, James (Federal); Kelley, Karen (Federal) | Comstock, Earl (Federal) |                          | Re: proposed insert on response rate.msg | 3/24/2018 14:25 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel discussing draft decision memo and proposing edits |
| 11287 | 11287 | 11286 | 11287 | n/a                                                                          | n/a                      |                          | Outline for Census Decision Memo.docx    | n/a             | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft decision memo                                                                          |

|       |       |       |       |                                                               |                              |                                                                                     |                                                                        |                 |                                                                                                               |                                                                                                                                                           |
|-------|-------|-------|-------|---------------------------------------------------------------|------------------------------|-------------------------------------------------------------------------------------|------------------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11288 | 11288 | 11288 | 11289 | Kelley, Karen<br>(Federal); Comstock,<br>Earl (Federal)       | Uthmeier, James<br>(Federal) | Walsh, Michael<br>(Federal)                                                         | Re: Draft DOC<br>Decision Memo.msg                                     | 3/25/2018 16:16 | AC - Attorney Client<br>Privilege; PII - Personal<br>Privacy; WP - Work Product;<br>DP - Deliberative Process | Email exchange including<br>Commerce counsel and DOJ<br>litigation counsel discussing<br>draft decision memo and<br>proposing edits                       |
| 11289 | 11289 | 11288 | 11289 | Karen Dunn Kelley                                             | Secretary Wilbur<br>Ross     |                                                                                     | DRAFT Census<br>Decision Memo<br>3.25.18 v2.docx                       | 3/26/2018       | AC - Attorney Client<br>Privilege; WP - Work<br>Product; DP - Deliberative<br>Process                         | Draft decision memo                                                                                                                                       |
| 11290 | 11290 | 11290 | 11291 | Comstock, Earl<br>(Federal)                                   | Uthmeier, James<br>(Federal) | Walsh, Michael<br>(Federal); Kelley,<br>Karen (Federal)                             | Re: proposed insert<br>on response rate.msg                            | 3/25/2018 8:25  | AC - Attorney Client<br>Privilege; PII - Personal<br>Privacy; WP - Work Product;<br>DP - Deliberative Process | Email exchange including<br>Commerce counsel<br>discussing draft decision<br>memo and proposing edits                                                     |
| 11291 | 11291 | 11290 | 11291 | n/a                                                           | n/a                          |                                                                                     | Outline for Census<br>Decision Memo<br>v3.docx                         | n/a             | AC - Attorney Client<br>Privilege; WP - Work<br>Product; DP - Deliberative<br>Process                         | Draft decision memo                                                                                                                                       |
| 11292 | 11292 | 11292 | 11293 | Uthmeier, James<br>(Federal)                                  | Mooppan, Hashim<br>(CIV)     |                                                                                     | FW: Draft DOC<br>Decision Memo.msg                                     | 3/24/2018 11:50 | AC - Attorney Client<br>Privilege; PII - Personal<br>Privacy; WP - Work Product;<br>DP - Deliberative Process | Email exchange including<br>Commerce counsel and DOJ<br>legal counsel discussing<br>draft decision memo and<br>proposing edits                            |
| 11293 | 11293 | 11292 | 11293 | n/a                                                           | n/a                          |                                                                                     | Census decision<br>memo draft 3.22.18 +<br>Civil and CRT<br>Edits.docx | n/a             | AC - Attorney Client<br>Privilege; WP - Work<br>Product; DP - Deliberative<br>Process                         | Draft decision memo                                                                                                                                       |
| 11294 | 11294 | 11294 | 11295 | Uthmeier, James<br>(Federal)                                  | Shumate, Brett A.<br>(CIV)   | Walsh, Michael<br>(Federal); Readler,<br>Chad A. (CIV);<br>Mooppan, Hashim<br>(CIV) | RE: Draft DOC<br>Decision Memo.msg                                     | 3/24/2018 10:50 | AC - Attorney Client<br>Privilege; PII - Personal<br>Privacy; WP - Work Product;<br>DP - Deliberative Process | Email exchange including<br>Commerce counsel and DOJ<br>litigation counsel discussing<br>draft decision memo and<br>proposing edits                       |
| 11295 | 11295 | 11294 | 11295 | n/a                                                           | n/a                          |                                                                                     | Census decision<br>memo draft 3.22.18 +<br>Civil and CRT<br>Edits.docx | n/a             | AC - Attorney Client<br>Privilege; WP - Work<br>Product; DP - Deliberative<br>Process                         | Draft decision memo in<br>track changes mode                                                                                                              |
| 11296 | 11297 | 11296 | 11298 | Comstock, Earl<br>(Federal)                                   | Uthmeier, James<br>(Federal) |                                                                                     | Re: Census paper.msg                                                   | 8/11/2017 15:58 | AC - Attorney Client<br>Privilege; PII - Personal<br>Privacy; DP - Deliberative<br>Process                    | Email exchange including<br>Commerce counsel<br>discussing edits to draft<br>legal memo; also redacted<br>nonrelevant material<br>regarding other matters |
| 11298 | 11298 | 11296 | 11298 | Secretary Wilbur<br>Ross, Wendy<br>Teramoto, Earl<br>Comstock | James Uthmeier               |                                                                                     | Census Memo Draft<br>Aug 11 2017.docx                                  | 8/11/2017       | AC - Attorney Client<br>Privilege; DP - Deliberative<br>Process                                               | Draft legal memo discussing<br>citizenship question and the<br>census                                                                                     |

|       |       |       |       |                                                        |                            |                            |                                                     |                      |                                                                                   |                                                                                                                                                       |
|-------|-------|-------|-------|--------------------------------------------------------|----------------------------|----------------------------|-----------------------------------------------------|----------------------|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11299 | 11299 | 11299 | 11299 | Uthmeier, James (Federal); Langdon, David (Federal)    | Robinson, Barry (Federal)  |                            | RE: Census Process for Adding Questions.msg         | 1/25/2018 12:54      | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process | discussion between counsel regarding follow-up questions and research for legal opinion                                                               |
| 11300 | 11300 | 11300 | 11300 | Uthmeier, James (Federal); Keller, Catherine (Federal) | Willard, Aaron (Federal)   | Park-Su, Sahra             | follow-up.msg                                       | 9/12/2017 18:14      | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process | Email exchange including Commerce counsel discussing further research on legal issues relating to citizenship data, as well as other unrelated issues |
| 11301 | 11301 | 11301 | 11302 | Uthmeier, James (Federal)                              | Shambon, Leonard (Federal) | Shambon, Leonard (Federal) | second chronology.msg                               | 8/16/2017 18:23      | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process | Discussion of draft legal memo and personal plans                                                                                                     |
| 11302 | 11302 | 11301 | 11302 | n/a                                                    | Leonard Shambon            |                            | foreigners included in enumeration Aug 16 2017.docx | 8/16/2017            | AC - Attorney Client Privilege; DP - Deliberative Process                         | Draft outline of history related to census, prepared by counsel                                                                                       |
| 11303 | 11304 | 11303 | 11304 | Uthmeier, James (Federal)                              | Comstock, Earl (Federal)   | Shambon, Leonard (Federal) | Re: Census Timeline.msg                             | 8/11/2017 18:52      | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process | Discussion of draft legal memo and personal plans                                                                                                     |
| 11305 | 11305 | 11305 | 11306 | Uthmeier, James (Federal)                              | Shambon, Leonard (Federal) | Shambon, Leonard (Federal) | Here's .msg                                         | 8/11/2017 18:16      | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process | Discussion of draft legal memo and personal plans                                                                                                     |
| 11306 | 11306 | 11305 | 11306 | n/a                                                    | Leonard Shambon            |                            | Census category chronology August 11 2017.docx      | 8/11/2017, 6:13 p.m. | AC - Attorney Client Privilege; DP - Deliberative Process                         | Draft legal memo on citizenship and the census                                                                                                        |
| 11307 | 11308 | 11307 | 11308 | Uthmeier, James (Federal)                              | Comstock, Earl (Federal)   |                            | Re: Census paper.msg                                | 8/11/2017 16:07      | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process | Discussion of draft legal memo; material on an unrelated issue                                                                                        |
| 11309 | 11310 | 11309 | 11311 | Uthmeier, James (Federal)                              | Comstock, Earl (Federal)   |                            | Re: Census paper.msg                                | 8/11/2017 15:40      | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process | Discussion of draft legal memo; material on an unrelated issue                                                                                        |
| 11311 | 11311 | 11309 | 11311 | Secretary Wilbur Ross, Wendy Teramoto, Earl Comstock   | James Uthmeier             |                            | Census Memo Draft Aug 11 2017 ec edits.docx         | 8/11/2017            | AC - Attorney Client Privilege; DP - Deliberative Process                         | Draft legal memo on citizenship question and the census in track changes mode                                                                         |
| 11312 | 11313 | 11312 | 11313 | Uthmeier, James (Federal)                              | Shambon, Leonard (Federal) |                            | RE: Census paper.msg                                | 8/11/2017 14:56      | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process | Discussion of draft legal memo                                                                                                                        |
| 11314 | 11315 | 11314 | 11315 | Uthmeier, James (Federal)                              | Comstock, Earl (Federal)   |                            | Re: Census paper.msg                                | 8/11/2017 13:10      | AC - Attorney Client Privilege; DP - Deliberative Process                         | Discussion of draft legal memo; discussion of unrelated issue                                                                                         |

|       |       |       |       |                                                                                                       |                             |                                                   |                                                               |                 |                                                                                                      |                                                                                                                                               |
|-------|-------|-------|-------|-------------------------------------------------------------------------------------------------------|-----------------------------|---------------------------------------------------|---------------------------------------------------------------|-----------------|------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| 11316 | 11316 | 11316 | 11316 | Uthmeier, James (Federal)                                                                             | Comstock, Earl (Federal)    |                                                   | Re: Census paper.msg                                          | 8/11/2017 8:11  | PII - Personal Privacy                                                                               |                                                                                                                                               |
| 11317 | 11317 | 11317 | 11318 | Uthmeier, James (Federal)                                                                             | Schnell, Austin (Federal)   |                                                   | Hearing Prep - Census.msg                                     | 7/11/2017 14:23 | PII - Personal Privacy                                                                               |                                                                                                                                               |
| 11318 | 11318 | 11317 | 11318 | n/a                                                                                                   | n/a                         |                                                   | Hearing Prep - Census.docx                                    | n/a             | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft Qs&As on citizenship question for hearing prep                                                                                          |
| 11319 | 11319 | 11319 | 11319 | Uthmeier, James (Federal)                                                                             | Keller, Catherine (Federal) |                                                   | 2020 Census.msg                                               | 6/23/2017 13:30 | PII - Personal Privacy                                                                               |                                                                                                                                               |
| 11320 | 11320 | 11320 | 11320 | Walsh, Michael (Federal)                                                                              | Uthmeier, James (Federal)   | Comstock, Earl (Federal); Kelley, Karen (Federal) | Re: proposed insert on response rate.msg                      | 3/25/2018 12:00 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel discussing draft decision memo and proposing edits                                                  |
| 11321 | 11321 | 11321 | 11322 | Walsh, Michael (Federal); Comstock, Earl (Federal)                                                    | Uthmeier, James (Federal)   |                                                   | Fwd: Draft DOC Decision Memo.msg                              | 3/24/2018 12:32 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Communications between Commerce counsel and DOJ litigation counsel regarding the draft decision memo with view towards potential litigation   |
| 11322 | 11322 | 11321 | 11322 | n/a                                                                                                   | n/a                         |                                                   | Census decision memo draft 3.22.18 + Civil and CRT Edits.docx | n/a             | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft decision memo in track changes mode                                                                                                     |
| 11323 | 11323 | 11323 | 11324 | Rockas, James (Federal)                                                                               | Uthmeier, James (Federal)   |                                                   | Fwd: Draft DOC Decision Memo.msg                              | 3/24/2018 11:33 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Communications between Commerce counsel and DOJ litigation counsel regarding the draft decision memo with a view towards potential litigation |
| 11324 | 11324 | 11323 | 11324 | n/a                                                                                                   | n/a                         |                                                   | Census decision memo draft 3.23.18.docx                       | n/a             | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process                         | Draft decision memo in track changes mode                                                                                                     |
| 11325 | 11326 | 11325 | 11326 | Shumate, Brett A. (CIV)                                                                               | Uthmeier, James (Federal)   | Walsh, Michael (Federal)                          | Re: Draft DOC Decision Memo.msg                               | 3/24/2018 5:02  | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product                            | Email exchange between Commerce counsel and DOJ litigation counsel exchanging drafts of decision memo and commenting                          |
| 11327 | 11327 | 11327 | 11328 | Walsh, Michael (Federal); Kelley, Karen (Federal); Comstock, Earl (Federal); Semsar, Joseph (Federal) | Uthmeier, James (Federal)   |                                                   | Draft decision memo.msg                                       | 3/24/2018 5:00  | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email summarizing draft decision memo                                                                                                         |

|              |              |       |       |                                                                             |                           |                            |                                                   |                     |                                                                                   |                                                                                                   |
|--------------|--------------|-------|-------|-----------------------------------------------------------------------------|---------------------------|----------------------------|---------------------------------------------------|---------------------|-----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 11328        | 11328        | 11327 | 11328 | n/a                                                                         | n/a                       |                            | Census decision memo draft 3.23.18.docx           | n/a                 | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process      | Draft decision memo in track changes mode                                                         |
| 2013         | 2013         |       |       |                                                                             |                           |                            |                                                   |                     |                                                                                   |                                                                                                   |
| 0002013_0001 | 0002013_0005 | 2013  | 2013  | Davidson, Peter (Federal)                                                   | Uthmeier, James (Federal) | Walsh, Michael (Federal)   | Re: DOC Morning News Clips for Tuesday, March 20, | 3/20/2018 10:37     | PII - Personal Privacy                                                            |                                                                                                   |
| 11329        | 11330        | 11329 | 11330 | A M Neuman                                                                  | Uthmeier, James (Federal) |                            | Re: Questions re Census.msg                       | 9/13/2017 16:33     | AC - Attorney Client Privilege; PII - Personal Privacy                            | Matter on which legal advice has been sought; PII                                                 |
| 11331        | 11331        | 11331 | 11331 | Davidson, Peter (Federal)                                                   | Uthmeier, James (Federal) |                            | Re: Close Hold Census paper.msg                   | 8/14/2017 17:33     | AC - Attorney Client Privilege; DP - Deliberative Process                         | Discussion among counsel on citizenship question decision and advice given to Secretary           |
| 11332        | 11332        | 11332 | 11332 | Shambon, Leonard (Federal)                                                  | Uthmeier, James (Federal) |                            | Re: Census paper.msg                              | 8/14/2017 11:12     | PII - Personal Privacy                                                            |                                                                                                   |
| 11333        | 11334        | 11333 | 11335 | Comstock, Earl (Federal)                                                    | Uthmeier, James (Federal) | Shambon, Leonard (Federal) | Fwd: Census Timeline.msg                          | 8/11/2017 18:34     | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process | Discussion of draft legal memo                                                                    |
| 11335        | 11335        | 11333 | 11335 | n/a                                                                         | n/a                       |                            | Census category chronology August 11 2017.docx    | 8/11/2017 6:13 p.m. | AC - Attorney Client Privilege; DP - Deliberative Process                         | Draft legal memo on citizenship question history                                                  |
| 11336        | 11336        | 11336 | 11336 | Schnell, Austin (Federal)                                                   | Uthmeier, James (Federal) |                            | Re: Hearing Prep - Census.msg                     | 7/11/2017 17:56     | AC - Attorney Client Privilege; PII - Personal Privacy                            |                                                                                                   |
| 11337        | 11337        | 11337 | 11338 | Walsh, Michael (Federal); Kelley, Karen (Federal); Comstock, Earl (Federal) | Uthmeier, James (Federal) |                            | Re: proposed insert on response rate.msg          | 3/25/2018 9:35      | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process      | Email exchange, including counsel, discussing draft decision memo and including proposed language |
| 11338        | 11338        | 11337 | 11338 | n/a                                                                         | n/a                       |                            | Outline for Census Decision Memo v3.docx          | n/a                 | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process      | Draft decision memo in track changes mode                                                         |
| 2051         | 2051         |       |       |                                                                             |                           |                            |                                                   |                     |                                                                                   |                                                                                                   |
| 0002051_0001 | 0002051_0001 | 2051  | 2051  | A M Neuman                                                                  | Uthmeier, James (Federal) |                            | Questions re Census.msg                           | 9/8/2017 8:45       | PII - Personal Privacy                                                            |                                                                                                   |
| 11339        | 11339        | 11339 | 11340 | Uthmeier, James (Federal)                                                   | Schnell, Austin (Federal) |                            | RE: Hearing Prep - Census.msg                     | 7/11/2017 16:05     | PII - Personal Privacy                                                            |                                                                                                   |
| 11340        | 11340        | 11339 | 11340 | n/a                                                                         | n/a                       |                            | Hearing Prep - Census.docx                        | n/a                 | AC - Attorney Client Privilege; DP - Deliberative Process                         | Draft Qs&As for hearing prep, prepared by counsel                                                 |
| 11341        | 11341        | 11341 | 11342 | Shambon, Leonard (Federal)                                                  | Uthmeier, James (Federal) |                            | FW: Census paper.msg                              | 8/14/2017 9:50      | PII - Personal Privacy                                                            |                                                                                                   |

|       |       |       |       |                                                                              |                           |  |                                      |                 |                                                                                                      |                                                                                                                         |
|-------|-------|-------|-------|------------------------------------------------------------------------------|---------------------------|--|--------------------------------------|-----------------|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| 11342 | 11342 | 11341 | 11342 | Secretary Wilbur Ross, Wendy Teramoto, Earl Comstock                         | James Uthmeier            |  | Census Memo Draft Aug 11 2017.docx   | 8/11/2017       | AC - Attorney Client Privilege; DP - Deliberative Process                                            | Draft legal memo addressing citizenship question and the census                                                         |
| 11343 | 11345 | 11343 | 11346 | Comstock, Earl (Federal)                                                     | Uthmeier, James (Federal) |  | Re: Census paper.msg                 | 8/11/2017 16:05 | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process                    | Discussion of draft legal memo; discussion of unrelated matter                                                          |
| 11346 | 11346 | 11343 | 11346 | Secretary Wilbur Ross, Wendy Teramoto, Earl Comstock                         | James Uthmeier            |  | Census Memo Draft Aug 11 2017.docx   | 8/11/2017       | AC - Attorney Client Privilege; DP - Deliberative Process                                            | Draft legal memo on citizenship question and census                                                                     |
| 11347 | 11348 | 11347 | 11349 | Comstock, Earl (Federal)                                                     | Uthmeier, James (Federal) |  | Re: Census paper.msg                 | 8/11/2017 10:18 | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process                    | Discussion of draft legal memo; discussion of unrelated matter                                                          |
| 11349 | 11349 | 11347 | 11349 | Secretary Wilbur Ross, Wendy Teramoto, Earl Comstock                         | James Uthmeier            |  | Census Memo Aug 11 2017.docx         | 8/11/2017       | AC - Attorney Client Privilege; DP - Deliberative Process                                            | Draft legal memo on citizenship question and the census                                                                 |
| 11350 | 11351 | 11350 | 11352 | Comstock, Earl (Federal)                                                     | Uthmeier, James (Federal) |  | Re: Census paper.msg                 | 8/11/2017 9:55  | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process                    | Discussion of draft legal memo; discussion of unrelated matter                                                          |
| 11352 | 11352 | 11350 | 11352 | Secretary Wilbur Ross, Wendy Teramoto, Earl Comstock                         | James Uthmeier            |  | Census Memo Aug 11 2017.docx         | 8/11/2017       | AC - Attorney Client Privilege; DP - Deliberative Process                                            | Draft legal memo on citizenship question and the census                                                                 |
| 11353 | 11353 | 11353 | 11353 | Shambon, Leonard (Federal)                                                   | Uthmeier, James (Federal) |  | Census.msg                           | 8/7/2017 8:28   | AC - Attorney Client Privilege; PII - Personal Privacy                                               | Attorney's opinions on client matter                                                                                    |
| 11354 | 11354 | 11354 | 11354 | Schnell, Austin (Federal)                                                    | Uthmeier, James (Federal) |  | Re: Hearing Prep - Census.msg        | 7/11/2017 17:56 | PII - Personal Privacy                                                                               |                                                                                                                         |
| 11355 | 11355 | 11355 | 11355 | Shambon, Leonard (Federal)                                                   | Uthmeier, James (Federal) |  | Census.msg                           | 6/27/2017 8:23  | AC - Attorney Client Privilege; PII - Personal Privacy; DP - Deliberative Process                    | discussion of request for legal advice                                                                                  |
| 11356 | 11356 | 11356 | 11356 | Comstock, Earl (Federal); Uthmeier, James (Federal); Kelley, Karen (Federal) | Walsh, Michael (Federal)  |  | proposed insert on response rate.msg | 3/24/2018 12:26 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Discussion of proposed language for decision memo                                                                       |
| 11357 | 11360 | 11357 | 11361 | Walsh, Michael (Federal); Comstock, Earl (Federal); Kelley, Karen (Federal)  | Uthmeier, James (Federal) |  | Re: Draft DOC Decision Memo.msg      | 3/24/2018 11:22 | AC - Attorney Client Privilege; PII - Personal Privacy; WP - Work Product; DP - Deliberative Process | Email exchange including Commerce counsel and DOJ litigation counsel discussing draft decision memo and proposing edits |



|       |       |       |       |                                                      |                           |                           |                                          |                 |                                                                              |                                                               |
|-------|-------|-------|-------|------------------------------------------------------|---------------------------|---------------------------|------------------------------------------|-----------------|------------------------------------------------------------------------------|---------------------------------------------------------------|
| 11361 | 11361 | 11357 | 11361 | n/a                                                  | n/a                       |                           | Census decision memo draft 3.23.18.docx  | n/a             | AC - Attorney Client Privilege; WP - Work Product; DP - Deliberative Process | Draft decision memo in track changes mode                     |
| 11362 | 11362 | 11362 | 11363 | Ross, Wilbur                                         | Comstock, Earl (Federal)  | Teramoto, Wendy (Federal) | Memo on Census Question.msg              | 8/11/2017 16:12 | PII - Personal Privacy; DP - Deliberative Process                            | Discussion of process for preparing and reviewing legal memo. |
| 11363 | 11363 | 11362 | 11363 | Secretary Wilbur Ross, Wendy Teramoto, Earl Comstock | James Uthmeier            |                           | Census Memo Draft2 Aug 11 2017.docx      | 8/11/2017       | AC - Attorney Client Privilege; DP - Deliberative Process                    | Draft legal memo on citizenship question and the census       |
| 11364 | 11364 | 11364 | 11365 | Uthmeier, James (Federal)                            | Schnell, Austin (Federal) |                           | Census Responses .msg                    | 7/13/2017 18:30 | PII - Personal Privacy                                                       |                                                               |
| 11365 | 11365 | 11364 | 11365 | n/a                                                  | n/a                       |                           | Hearing Prep - Census.docx               | n/a             | AC - Attorney Client Privilege; DP - Deliberative Process                    | Draft Qs&As for hearing prep                                  |
| 11366 | 11366 | 11366 | 11367 | Uthmeier, James (Federal)                            | Schnell, Austin (Federal) |                           | RE: Hearing Prep - Census.msg            | 7/11/2017 16:05 | PII - Personal Privacy                                                       |                                                               |
| 11367 | 11367 | 11366 | 11367 | n/a                                                  | n/a                       |                           | Hearing Prep - Census.docx               | n/a             | AC - Attorney Client Privilege; DP - Deliberative Process                    | Draft Qs&As for hearing prep                                  |
| 11368 | 11368 | 11368 | 11369 | Uthmeier, James (Federal)                            | Schnell, Austin (Federal) |                           | Hearing Prep - Census.msg                | 7/11/2017 14:23 | PII - Personal Privacy                                                       |                                                               |
| 11369 | 11369 | 11368 | 11369 | n/a                                                  | n/a                       |                           | Hearing Prep - Census.docx               | n/a             | AC - Attorney Client Privilege; DP - Deliberative Process                    | Draft Qs&As for hearing prep, prepared by counsel             |
| 12464 | 12464 | 12464 | 12464 | Secretary Wilbur Ross, Wendy Teramoto, Earl Comstock | James Uthmeier            |                           | Citizenship Inquiry Memo Aug 11 2017.pdf | 8/11/2017       | AC - Attorney Client Privilege; DP - Deliberative Process                    | Draft legal memo on citizenship question and the census       |
|       |       |       |       |                                                      |                           |                           |                                          |                 |                                                                              |                                                               |

# Exhibit 3

**From:** [Freedman, John A.](#)  
**To:** ["Bailey, Kate \(CIV\)"; Ehrlich, Stephen \(CIV\); Federighi, Carol \(CIV\); Eshkenazi, Lara \(USANYS\); Tarczynska, Dominika \(USANYS\); Vargas, Jeannette \(USANYS\); Coyle, Garrett \(CIV\)](#)  
**Cc:** [DHo@aclu.org; SBrannon@aclu.org; PGrossman@nycclu.org; Bauer, Andrew; Colangelo, Matthew; Goldstein, Elena; Saini, Ajay](#)  
**Subject:** State of New York v. Department of Commerce, S.D.N.Y 18-CV-2921; NYIC v. Department of Commerce, S.D.N.Y. 18-CV-5025: Meet and Confer Request  
**Date:** Monday, August 6, 2018 8:37:57 PM

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Counsel --

We are writing to raise several issues with regard to your communications on Friday evening, and to request a meet and confer tomorrow or Wednesday. Tomorrow we are available other than between noon and 3. Wednesday we are available other than between 3 and 4.

1. Department of Justice Production: We received the Department of Justice production late this morning and are still reviewing. While we are reserving all of our rights, your cover letter characterized this as your "first" production. Can you confirm that we will be receiving additional responsive materials from the Department of Justice, and if so, the anticipated timing for these productions?

2. Deposition Dates

a. Department of Justice Depositions

i. John Gore: We requested that you provide dates for John Gore on July 11. On July 18, you committed to get us deposition dates for him and other witnesses "as quickly as we can." Your communication on Friday evening that you would not be producing him is both untimely and improper. Mr. Gore's testimony is, among other things, directly relevant to the question of whether the Commerce-orchestrated, Gore-ghostwritten request for Arthur Gary to submit is pretextual, which is relevant for both the APA and Equal Protection claims.

ii. With regard to your position regarding the Department of Justice 30(b)(6) notice, as we noted, we are evaluating the production we received earlier today. While we are reserving all of our rights, based on our preliminary review, we do not think that the production is sufficient to address the topics we identified in our notice.

And while we acknowledge your objections, we reiterate our request that you, without waiving your objections, that you provide dates of availability for Mr. Gore and your 30(b)(6) notice so that in the event the Court orders their testimony, these can proceed expeditiously.

b. Commerce/Census Depositions

i. This will confirm that we will be taking depositions of Karen Dunn Kelley on August 28 and Earl Comstock on August 30. We will issue notices later this week.

ii. With regard to Ms. Teramoto, on July 11, we requested that you provide all dates of her availability during the month of August, and you previously advised that she was available August 29, 30 or 31. We subsequently advised that we would proceed on August 29. On Friday, you advised that the only date she was available to be deposed was September 7, the date our expert reports are due. Your retraction of a previously agreed upon date in light of the quickly approaching deadlines is both untimely and inappropriate. We would suggest that you revisit this matter with your clients, or we will bring this to the Court's attention.

iii. With regard to the Census Bureau 30(b)(6), to the extent individuals other than Messrs. Abowd or Jarmin will be designated, so that out of town counsel can plan their travel, can you please provide the potential dates when such witnesses will be made available?

3. Continuing Deficiencies in the Commerce/Census Bureau's Supplementation of the Administrative Record:

a. From our discussions during the July 31 meet and confer, we understood the Defendants would be making a supplemental production. At no point did you advise that you would be withholding almost 100 documents on the basis of a purported privilege. The Court did not authorize this untimely log, nor did we consent to it. Our position is that any privilege claim as to any document that was withheld after the Court's July 23 "no further extensions will be granted" order has been waived. These materials should be produced immediately.

b. Even had these privilege assertions been timely, there are a number of privilege assertions on the newest log that are improper on their face. For example, Defendants have withheld a second communication with Marc Neumann on the basis of attorney-client communication [11329-330]. This should be produced immediately. And there is a further work product assertion in July 2017, well before any reasonable anticipation of litigation [11317-18] -- this document should be treated consistently with the materials discussed in Judge Furman's August 4 order.

c. With regard to Mr. Uthmeier's August 11 memo, we do not understand how the failure to produce half a dozen copies of this document [11306, 11342, 11346, 11353, 11363, 12464] can be considered "inadvertent," particularly in light of the Government's insistence during the July 31 meet and confer that it was included in prior productions. This should also be produced immediately.

d. As we noted during the July 31 meet and confer, there continue to be significant gaps in the Administrative Record.

i. We raised specific concerns during the call about the lack of materials prior to December 12, 2017 (as well as prior to May 1, 2017) involving Secretary Ross, Ms. Teramoto, Ms. Alexander, and Messrs. Comstock, Branstad, Hernandez, and Uthmeier.

During the call, you confirmed that you had inquired into whether relevant materials

would be found in Secretary Ross' personal emails, and you agreed to inquire whether the six other officials engaged in communications about this topic through means other than their government emails, e.g., personal emails, text, messaging apps or personal devices, or voicemails. We are still waiting for a report back.

ii. The supplemental production has done nothing to address the gaps in the Administrative Record with regard to the questions we raised concerning Secretary Ross, Ms. Teramoto, Ms. Alexander, and Messrs. Comstock, Branstad, or Hernandez. While the supplemental production does address some of our concerns regarding Mr. Uthmeier, it is apparent that certain of his materials still have not been produced and are not otherwise reflected on any log. For example, we have not found the "review materials" Uthmeier prepared on or around September 5, 2017 [AR 1996-1999], nor do we see any notes or other evidence of his or Peter Davidson's engagement with Marc Neumann on or around September 8 and October 8, 2017 [AR 2051\_001, 2497].

iii. During the July 31 call, we specifically noted the lack of documents reflecting the engagement of either the Departments of Homeland Security or Justice (as referenced in AR 2458 & 9834) as well as key third parties, including Steve Bannon (as referenced in AR 2561 & 763), Kris Kobach (as referenced in AR 763), and Marc Neumann (as referenced in 3699). The new production did not cure these issues.

Additionally, while it is clear that there was stakeholder engagement with Messrs. Kobach and Neumann during the stakeholder engagement process [AR 1141, 1815, 3421, 3491] unlike virtually every other contact during that time, there are no file memos or follow up acknowledgments regarding these contacts.

Each of these issues should be cured immediately.

Please advise when you will be available on Tuesday or Wednesday to meet and confer regarding these issues.

John

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John A. Freedman

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# Exhibit 4

**From:** Kelley, Karen (Federal) [REDACTED] PII  
**Sent:** 9/5/2017 5:36:04 PM  
**To:** Uthmeier, James (Federal) [REDACTED] PII  
**Subject:** RE: Prep for Wed Census meeting with Sec

**From:** Uthmeier, James (Federal)  
**Sent:** Tuesday, September 05, 2017 1:35 PM  
**To:** Kelley, Karen (Federal) <[REDACTED] PII >  
**Subject:** RE: Prep for Wed Census meeting with Sec

Great, will do. Office number?

**From:** Kelley, Karen (Federal)  
**Sent:** Tuesday, September 05, 2017 1:34 PM  
**To:** Uthmeier, James (Federal) <[REDACTED] PII >  
**Subject:** RE: Prep for Wed Census meeting with Sec

Right now

**From:** Uthmeier, James (Federal)  
**Sent:** Tuesday, September 05, 2017 1:33 PM  
**To:** Kelley, Karen (Federal) <[REDACTED] PII >  
**Subject:** RE: Prep for Wed Census meeting with Sec

Hi Karen-

Is there a good time when I might be able to drop off some review materials in preparation for today's meeting and provide a bit of context? Please let me know and I will run them down.

Thanks,  
James

**From:** Kelley, Karen (Federal)  
**Sent:** Monday, September 04, 2017 7:41 PM  
**To:** Uthmeier, James (Federal) <[REDACTED] PII >; Davidson, Peter (Federal) <[REDACTED] PII >; Hernandez, Israel (Federal) <[REDACTED] PII >; Dorsey, Cameron <[REDACTED] PII >  
**Subject:** Re: Prep for Wed Census meeting with Sec



understood

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**From:** Uthmeier, James (Federal)

**Sent:** Monday, September 4, 2017 7:36:33 PM

**To:** Davidson, Peter (Federal); Kelley, Karen (Federal); Hernandez, Israel (Federal); Dorsey, Cameron

**Subject:** Prep for Wed Census meeting with Sec

Hi Everyone-

I hope you're having a wonderful weekend. Due to some unexpected meetings tomorrow morning, we are going to hold this meeting at 5 pm. Please let me know if any issues and we can find a new time.

Thanks,

James

**Prep for Wed Census meeting with Sec**

Scheduled: Tuesday, Sep 5, 2017 from 10:00 AM to 10:30 AM

Location: Room 5870

Invitees: Davidson, Peter (Federal), Kelley, Karen (Federal), Hernandez, Israel (Federal), Dorsey, Cameron

Sent from my iPad