

C A M P A I G N F O R

ACCOUNTABILITY

June 13, 2019

By Fax: 410-962-0122

Robert Harding
Chief, Criminal Division
United States Attorney's Office, District of Maryland
36 S. Charles Street 4th Floor
Baltimore, MD 21201

By Fax: 212-637-2932

Laura Grossfield Birger
Chief, Criminal Division
United States Attorney's Office, Southern District of New York
1 St. Andrews Plaza
New York, NY 10007

Re: Request for Investigation of Principal Deputy Assistant Attorney General John Gore and Former Commerce Transition Official Mark Neuman for Perjury

Dear Mr. Harding and Ms. Grossfield Birger:

Campaign for Accountability ("CfA") respectfully requests that you investigate A. Mark Neuman, a former transition official at the Department of Commerce ("Commerce"), and John Gore, Principal Deputy Assistant Attorney General, for affirmative misrepresentations during depositions in lawsuits concerning a request from Department of Justice ("DOJ") to the Department of Commerce ("Commerce") that a citizenship question to be added to the 2020 Census.

Background

On March 26, 2018, Commerce announced its intention to include a citizenship question on the 2020 Census.¹ Experts believe including the question will result in an inaccurate census because immigrant communities will avoid participating.² After Commerce announced its

¹ Hansi Lo Wang, *How The 2020 Census Citizenship Question Ended Up In Court*, NPR (Nov. 4, 2018, 10:14 AM), available at <https://www.npr.org/2018/11/04/661932989/how-the-2020-census-citizenship-question-ended-up-in-court>.

² Hansi Lo Wang, *2020 Census Could Lead To Worst Undercount Of Black, Latinx People In 30 Years*, NPR (June 4, 2019, 3:26 PM), available at <https://www.npr.org/2019/06/04/728034176/2020-census-could-lead-to-worst-undercount-of-black-latinx-people-in-30-years>.

Mr. Robert Harding
Ms. Laura Grossfield Birger
June 13, 2019
Page 2

intention to include the question, several states and nonprofit organizations filed lawsuits against the agency.³ In the course of litigation, Mr. Neuman and Mr. Gore were deposed regarding their role in adding the question. Mr. Gore also provided sworn testimony to Congress on the same subject.

The deposition testimonies provided by Mr. Neuman and Mr. Gore are in contradiction with Mr. Gore's congressional testimony as well as with recently discovered documents.

The Citizenship Question

The Trump administration's decision to include the citizenship question on the 2020 census appears to have been influenced by the work of Republican redistricting expert Dr. Thomas Hofeller.⁴ In August 2015, Dr. Hofeller produced a study concluding that the inclusion of a citizenship question on the 2020 Census would allow states to draw legislative districts based on the number of voting-eligible citizens rather than the total population, which includes non-citizens.⁵ Dr. Hofeller concluded that federal courts would not allow redistricting based on the more restrictive criteria unless a citizenship question was added to the census.⁶

The Trump administration appears to have adopted Dr. Hofeller's strategy. In August 2017, Commerce determined that the agency needed a defensible rationale for including the citizenship question on the 2020 Census.⁷ On August 31, 2017, Dr. Hofeller drafted a letter for DOJ to send to Commerce explaining the rationale for including the citizenship question.⁸ Dr. Hofeller's letter suggested that DOJ could ask Commerce to add the question, under the pretext that it would further DOJ's efforts to enforce the Voting Rights Act.⁹

After Dr. Hofeller drafted the letter, Commerce General Counsel Peter Davidson arranged for Mr. Gore to meet with A. Mark Neuman, a close friend of Dr. Hofeller and an adviser to Commerce Secretary Wilbur Ross.¹⁰ In October 2017, Mr. Gore met with Mr. Neuman, at which time Mr. Neuman provided Mr. Gore with a ghostwritten draft letter for DOJ

³ See *Litigation About the 2020 Census*, THE BRENNAN CENTER FOR JUSTICE (June 4, 2019), available at <https://www.brennancenter.org/analysis/2020-census-litigation>.

⁴ Michael Wines, *Deceased G.O.P Strategist's Hard Drives Reveal New Details on the Census Citizenship Question*, THE NEW YORK TIMES (May 30, 2019), available at <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html>.

⁵ See Thomas Hofeller, *The Use of Citizen Voting Age Population in Redistricting*, in Document 595-1, Exhibit D, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF) (S.D.N.Y. 2018).

⁶ See *id.*

⁷ See Letter from John Freedman, et. al., to the Honorable Jesse M. Furman, D. S.D.N.Y., May 30, 2019, in Document 595, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF) (S.D.N.Y. 2018).

⁸ See *id.*

⁹ See Letter from Department of Justice to Director John H. Thompson, Bureau of the Census, U.S. Dep't of Commerce, in Document 595-1, Exhibit G, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF) (S.D.N.Y. 2018).

¹⁰ See *supra* note 7. Wines, *supra* note 4.

Mr. Robert Harding
Ms. Laura Grossfield Birger
June 13, 2019
Page 3

to send to Commerce requesting the citizenship question be added to the 2020 Census.¹¹ DOJ has refused to provide any information about the draft letter beyond its content.¹² Notably, the letter includes a paragraph lifted verbatim from a Word document contained in Dr. Hofeller's files, drafted two months earlier in August 2017.¹³ The paragraph reads:

We note that in these two cases, one in 2006 and one in 2009, courts reviewing compliance with requirements of the Voting Rights Act and its application in legislative redistricting, have required Latino voting districts to contain 50% +1 of "Citizen Voting Age Population (or CVAP). It is clear that full compliance with these Federal Court decisions will require block level data that can only be secured by a mandatory question in the 2020 enumeration. Our understanding is that data on citizenship is specifically required to ensure that the Latino community achieves full representation in redistricting.¹⁴

Following his meeting with Mr. Neuman, Mr. Gore drafted an official letter for DOJ to send to Commerce requesting the citizenship question be added to the 2020 Census.¹⁵ The letter, sent on December 12, 2017, was signed by the General Counsel of the Justice Management Division, Arthur E. Gray.¹⁶ The December letter employs the same reasoning for including the citizenship question on the census that Dr. Hofeller outlined in his 2015 study and that he detailed in his August 2017 letter, which was incorporated into the letter Mr. Neuman delivered to Mr. Gore in October 2017.¹⁷

Mr. Neuman's Deposition

Despite these facts, Mr. Neuman appears to have given an inaccurate account of the events during a deposition. On October 28, 2018, Mr. Neuman was deposed in the case of *Robyn Kravitz, et. al., vs. U.S. Dep't of Commerce, et. al.*, filed in the United States District Court for the District of Maryland.¹⁸

¹¹ See Letter from Joseph H. Hunt, Assistant Attorney General, et. al. to the Honorable Jesse M. Furman, D. S.D.N.Y., June 3, 2019, in Document 601, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF) (S.D.N.Y. 2018). See *supra* note 7.

¹² See Memorandum from Majority Staff of the House Committee on Oversight and Reform to Committee Members Regarding Interview with John Gore, Mar. 14, 2019, in Document 595-1, Exhibit F, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF) (S.D.N.Y. 2018).

¹³ See *supra* note 7.

¹⁴ See Document 595-1, Exhibit H, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF) (S.D.N.Y. 2018).

¹⁵ See *id.*

¹⁶ See Letter from Arthur E. Gray, General Counsel, Justice Management Division, to Ron Jarmin, U.S. Census Bureau, Dec. 12, 2017, in Document 601-6, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF) (S.D.N.Y. 2018).

¹⁷ See *supra* note 7.

¹⁸ See Videotaped Deposition of A. Mark Neuman, Oct. 28, 2018, in Document 595-1, Exhibit B, *Kravitz v. U.S. Dep't of Commerce*, 355 F. Supp. 3d 256 (D. Md. 2018).

First, Mr. Neuman appears to have made several false statements about the October 2017 meeting with Mr. Gore. When Mr. Neuman was asked about the meeting, he denied that it was about the DOJ letter to Commerce requesting the citizenship question:

- Q. Right. Because the meeting with John Gore was about the letter from DOJ regarding the citizenship question, correct?
- A. No, the letter -- the meeting with John Gore was about the -- how Census interacts with the Justice Department.¹⁹

Mr. Neuman was also asked specifically what information he provided to Mr. Gore.²⁰ Mr. Neuman said that he provided an Obama administration-era letter about the census, but he did not admit that he had delivered a letter to Mr. Gore containing the paragraph written by Dr. Hofeller.²¹

Next, Mr. Neuman misled the court about his relationship with Dr. Hofeller. Mr. Neuman was asked extensively about his communications with Dr. Hofeller including specifically, “what was the substance of your conversation about this issue, about the citizenship question?”²² Mr. Neuman provided inaccurate answers claiming that Dr. Hofeller only mentioned “block level data” and the budget of the census.²³

Mr. Neuman was also asked if he relied on Dr. Hofeller for his expertise of the Voting Rights Act. Specifically, he was asked, “Was Mr. Hoffler one of the people you relied on for expertise about the Voting Rights Act?”²⁴ Mr. Neuman said no despite delivering a letter to DOJ that included language drafted by Dr. Hofeller about the Voting Rights Act.²⁵

Finally, Mr. Neuman also tried to claim that he wasn’t involved in drafting the December 2017 letter DOJ sent to Commerce. Specifically, he was asked:

- Q. Did you have any involvement in the drafting of that letter?
- A. Well, it -- again, I wasn't part of the drafting process of the letter, but I'm sure that in our -- I -- when I met with John Gore, I wanted to show him what the Census Bureau said about why they ask the ACS question.²⁶

¹⁹ *Id.* at 273.

²⁰ *Id.* at 123-125.

²¹ *Id.*

²² *Id.* at 138..

²³ *Id.*

²⁴ *Id.* at 143-144.

²⁵ *Id.*

²⁶ *See supra* note 18, at 114.

Mr. Robert Harding
Ms. Laura Grossfield Birger
June 13, 2019
Page 5

Mr. Gore's Deposition

Mr. Gore also appears to have given an inaccurate account of the events during a deposition. On October 16, 2018, Mr. Gore was deposed in the matter of *New York Immigration Coalition, et. al., v. United States Department of Commerce, et. al.*, filed in the United States District Court for the Southern District of New York.²⁷ First, when asked whether it was “fair to say that [he] wrote the first draft of the letter from the Department of Justice to the Census Bureau requesting a citizenship question on the 2020 Census questionnaire,” he replied, “yes”.²⁸ Mr. Gore also stated that he “drafted the initial draft of the letter to request the citizenship question . . .”²⁹ When asked for the names of those who had provided input regarding the drafting of the letter, Mr. Gore failed to name either Mr. Neumann or Dr. Hofeller.³⁰

Mr. Gore's Congressional Interview

On March 7, 2019, Mr. Gore was interviewed by staff for the House Committee on Oversight and Government Reform. According to a memo summarizing the meeting, Mr. Gore's interview “produced troubling new information about the Trump Administration's (sic) decision to add a citizenship question to the 2020 Census.”³¹

During the interview, Mr. Gore conceded that he had worked with Mr. Neuman on drafting the letter to Commerce seeking to add the citizenship question to the census:

Mr. Gore stated during his interview that in October 2017, he spoke to Peter Davidson, the General Counsel of the Department of Commerce, about the citizenship question. Mr. Davidson mentioned a former member of the Trump Transition Team, Mark Neuman, who then contacted Mr. Gore. According to Mr. Gore, Mr. Neuman provided him with “a draft letter that would request reinstatement of the citizenship question on the census questionnaire.”³²

The interview transcript provides:

Q: Was that all [Neuman] provided you?

A: No, he also provided me a draft letter.

²⁷ See Videotaped Deposition of John Gore, Oct. 16, 2018, in Document 595-1, Exhibit E, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF) (S.D.N.Y. 2018).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ See Memorandum from Majority Staff of the House Committee on Oversight and Reform to Committee Members Regarding Interview with John Gore, Mar. 14, 2019, in Document 595-1, Exhibit F, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF) (S.D.N.Y. 2018).

³² *Id.*

Q: A draft letter of what?

A: It was a draft letter that would request reinstatement of the citizenship question on the census questionnaire.³³

When the Committee asked Mr. Gore if any language from the draft letter appeared in his final December 2017 letter, DOJ counsel refused to allow Mr. Gore to answer the question.³⁴

Legal Violations

As you know, a person who has taken an oath “that he will testify, declare, depose, or certify truly” in any case in which a law of the United States authorizes an oath to be administered, and “willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true” is guilty of perjury and is subject to fines and imprisonment of up to five years.³⁵ Similarly, “[w]hoever under oath . . . in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration” is subject to fines and a term of imprisonment of up to five years.³⁶ While 18 U.S.C. § 1621 explicitly refers to deposition testimony, courts have found that § 1623 also applies to deposition testimony.³⁷

As the Second Circuit has explained, the federal perjury statutes are significant because “[n]o legal system can long remain viable if lying under oath is treated as no more than a social solecism. Swearing to tell the truth is a solemn oath, the breach of which should have serious consequences.”³⁸ To convict someone of perjury under § 1623, the government must prove that a defendant knowingly made a false, material declaration under oath, in a proceeding before or ancillary to any court of the United States. Applying the materiality element to prosecution for perjury during a civil deposition, the Second Circuit Court of Appeals has found that a false statement is material if a “truthful answer might reasonably be calculated to lead to the discovery of evidence admissible at the trial of the underlying suit.”³⁹

Here, it is clear that both Mr. Gore and Mr. Neuman gave false testimony during their sworn depositions.

Mr. Neuman appears to have made several false statements about the October 2017 meeting with Mr. Gore, mischaracterizing the reason for and subject matter of the meeting, as well as the information he provided to Mr. Gore during the meeting. Mr. Neuman also was

³³ *Id.*

³⁴ *Id.*

³⁵ 18 U.S.C. § 1621.

³⁶ 18 U.S.C. § 1623.

³⁷ *See e.g. U.S. v. McAfee*, 8 F.3d 1010, 1014 (5th Cir. 1993), citing *Dunn v. U.S.*, 442 U.S. 100, 88 S. Ct. 2190 (1979).

³⁸ *U.S. v. Cornielle*, 171 F.4d 748, 753 (2nd Cir. 1999); *SEC v. Payton*, 176 F. Supp. 3d 346, 348 (S.D.N.Y. 2016).

³⁹ *U.S. v. Kross*, 14 F.3d 751, 754 (2^d Cir. 1994).

Mr. Robert Harding
Ms. Laura Grossfield Birger
June 13, 2019
Page 7

untruthful in his responses to questions concerning his conversations and relationship with Dr. Hofeller, denying they discussed the citizenship question and any reliance on Dr. Hofeller for expertise about the Voting Rights Act.

Perhaps most significantly, Mr. Neuman denied a role in drafting DOJ's letter to Commerce, a statement belied by Mr. Gore's congressional testimony that Mr. Neuman had provided him with "a draft letter that would request reinstatement of the citizenship question on the census questionnaire."⁴⁰

Mr. Gore's deposition testimony, in which he claims to have written the first draft of the letter from DOJ to Commerce requesting the citizenship question, clearly conflicts with his congressional testimony, in which he revealed that Mr. Neuman provided the initial draft of the letter requesting the citizenship question. Further, the extent of Mr. Gore's duplicity is illuminated by the discovery of Dr. Hofeller's files, which include a document that has a paragraph that matches **verbatim** a paragraph in the letter that Mr. Gore received from Mr. Neuman and DOJ's letter is strikingly similar to Dr. Hofeller's 2015 study.

Therefore, had Mr. Neuman and Mr. Gore testified truthfully, it is quite likely that plaintiffs would have discovered the important evidence contained in Dr. Hofeller's files – and which came to light only in the wake of his death as a result of his daughter's actions – as the case wended its way through the courts. In fact, a Supreme Court decision on whether the citizenship question was properly introduced into the census is expected any day.

Conclusion

Mr. Neuman and Mr. Gore were asked directly about their roles in drafting the letter DOJ sent to Commerce requesting the citizenship question be added to the 2020 Census. In lawsuits now under consideration by the Supreme Court, Mr. Neuman and Mr. Gore appear to have lied about their efforts to add a citizenship question to the 2020 Census. Mr. Gore himself later admitted to Congress that he did receive information from Mr. Neuman to inform the DOJ letter to Commerce. The actions of Mr. Neuman and Mr. Gore to mislead the courts about the origins of the citizenship question is not only reprehensible, it likely violates federal criminal law and both men should promptly be investigated for potential perjury.

Sincerely,



Daniel E. Stevens
Executive Director

⁴⁰ *Id.*