

C A M P A I G N F O R

ACCOUNTABILITY

June 13, 2019

By Email: opr.complaints@usdoj.gov

Corey Amundson
Director and Chief Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Suite 3266
Washington, DC 20530-0001

Re: **Request for Investigation of Principal Deputy Assistant Attorney General John Gore for Perjury**

Dear Director Amundson:

Campaign for Accountability (“CfA”) respectfully requests that you open an investigation into Principal Deputy Assistant Attorney General John Gore for affirmative misrepresentations during a deposition for a lawsuit concerning a request from Department of Justice (“DOJ”) to the Department of Commerce (“Commerce”) that a citizenship question be added to the 2020 Census. Mr. Gore may have committed perjury during his deposition and should be appropriately sanctioned by DOJ if he lied under oath.

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

Mr. Gore’s deposition testimony is in contradiction with his congressional testimony as well as with recently discovered documents.

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>.

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>.

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 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:

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.

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.

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. Gore’s Deposition

During his October 16, 2018 deposition in the matter of *New York Immigration Coalition, et. al., v. United States Department of Commerce, et. al.*, Mr. Gore provided a very different version of events.¹⁸ 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”.¹⁹ Mr. Gore also stated that he “drafted the initial draft of the letter to request the citizenship question . . .”²⁰ 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.²¹

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

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 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).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

interview “produced troubling new information about the Trump Administration’s (sic) decision to add a citizenship question to the 2020 Census.”²²

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.”²³

The interview transcript provides:

Q: Was that all [Neuman] provided you?

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

Q: A draft letter of what?

A: It was a draft letter that would request reinstatement of the citizenship question on the census questionnaire.²⁴

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.²⁵

Legal Ethics Violation

District of Columbia Bar Rules provide it is professional misconduct for lawyers to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;” or “engage in conduct that seriously interferes with the administration of justice.”²⁶

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 including a

²² 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).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ D.C. R. Prof. Conduct 8.4.

paragraph that matches **verbatim** a paragraph in the letter that Mr. Gore received from Mr. Neuman. Clearly, this is not a coincidence.

Moreover, as plaintiffs explained in the matter of *New York Immigration Coalition, et. al., v. United States Department of Commerce, et. al.*, “the content, language, and structure of DOJ’s December 2017 letter bears striking similarities to Dr. Hofeller’s 2015 study . . .” as the two documents “contain similar descriptions of the history of the citizenship question on the census” and make matching arguments, in the exact same order.²⁷

Considered together, it is clear Mr. Gore’s testimony was, at a minimum, deliberately deceptive. As a result, Mr. Gore appears to have violated the Bar prohibition against conduct “involving dishonesty, fraud, deceit, or misrepresentation.” And, because his misleading statements were made in the course of sworn testimony in a significant civil lawsuit, he appears to have engaged in conduct that seriously interferes with the administration of justice.

Conclusion

Mr. Gore was asked point blank if he had any help in drafting the letter DOJ sent to Commerce requesting the citizenship question be added to the 2020 Census. In a lawsuit now before the Supreme Court, Mr. Gore claimed that he had no help in drafting the letter. Yet, it is now apparent that Dr. Hofeller was the force behind the citizenship question, and that Mr. Gore relied on language suggested by Dr. Hofeller, funneled to him through Mr. Neuman, to draft the December 2017 DOJ letter. Mr. Gore himself admitted to Congress, after the case at issue had been decided, that he did in fact receive information from Mr. Neuman and, by proxy, from Dr. Hofeller, facts he left out of his deposition testimony. Therefore, the Office of Professional Responsibility should immediately investigate whether Mr. Gore violated the prohibitions against engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation and interfered with the administration of justice.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens
Executive Director

²⁷ See *supra* note 7, at 3.