

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON OVERSIGHT AND
REFORM, UNITED STATES HOUSE
OF REPRESENTATIVES,

Plaintiff,

v.

MERRICK B. GARLAND, in his official
capacity as Attorney General of the
United States, *et al.*,

Defendants.

No. 1:19-cv-3557 (RDM)

JOINT STATUS REPORT

The parties respectfully submit the following joint status report in compliance with the Court's Minute Order of August 13, 2021.

Since the parties submitted their most recent status report on August 12, 2021, they have come to terms on an agreement, which, they expect, will facilitate the resolution of this action. A copy of the parties' agreement is attached hereto. The parties will work diligently and in good faith to execute the terms of their agreement. The parties therefore jointly request that they file a further joint status report on or before October 29, 2021.

Dated: August 30, 2021

Respectfully submitted,

BRIAN BOYNTON
Acting Assistant Attorney General

BRIAN D. NETTER
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director

ELIZABETH J. SHAPIRO
Deputy Director

/s/ James J. Gilligan
JAMES J. GILLIGAN
Special Litigation Counsel

SERENA M. ORLOFF
STEVEN A. MYERS
CRISTEN C. HANDLEY
Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883
Washington, D.C. 20044

Telephone: (202) 514-3358
Fax: (202) 616-8470
E-mail: james.gilligan@usdoj.gov

Counsel for Defendants

/s/ Douglas N. Letter
Douglas N. Letter (DC Bar No. 253492)
General Counsel
Todd B. Tatelman (VA Bar No. 66008)

OFFICE OF GENERAL COUNSEL
U.S. HOUSE OF REPRESENTATIVES
5140 O'Neill House Office Building
Washington, D.C. 20515

Telephone: (202) 225-9700
douglas.letter@mail.house.gov

*Counsel for Plaintiff Committee on Oversight
and Reform, U.S. House of Representatives*

Agreement Concerning Accommodation

Committee on Oversight and Reform, U.S. House of Representatives v. Barr, No. 19-cv-03557 (RDM) (D.D.C.)

This document describes the terms of an accommodation between the Committee on Oversight and Reform, U.S. House of Representatives (the "Committee"), and the Executive Branch as represented by the Department of Justice. The accommodation is intended to facilitate the end of the litigation in *Committee on Oversight and Reform, U.S. House of Representatives v. Garland*, No. 19-cv-03557 (RDM), which is now pending in the United States District Court for the District of Columbia.

Scope of *In Camera* Review by Committee Staff

- The Department of Commerce (the "Department," or "Commerce") will make available for "*in camera*" review by the Committee the documents identified in paragraph 1 of the Schedule to the Committee's January 13, 2021, subpoena to the Department (the "priority documents"), together with an additional 486 documents previously selected by Committee staff from the documents identified on Commerce's privilege logs prepared in *State of New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF), as further narrowed by the parties and reflected in the Committee's e-mail of August 25, 2020.
- Access to the documents for *in camera* review in accordance with typical accommodation-process procedures shall be limited to Committee members and staff. Note-taking is permitted, but no copies (whether electronic, photographic, or otherwise) of the documents made available for *in camera* review shall be made.
- The priority documents and the additional documents selected by the Committee staff will be made available for review in full, without redaction, except as follows:
 - Personally identifying information (PII) will be redacted;
 - Information not pertaining to the 2020 census, including discussion of certain Department of Justice memoranda from the 1980s, will be redacted from 39 documents, subject to certification by the Department of Justice that the redacted information is not responsive to the Committee's January 13, 2021, subpoena;
 - 31 documents selected by the Committee staff that contain no information pertaining to the 2020 census, including certain Department of Justice documents from the 1980s, will be withheld in full, subject to certification by the Department of Justice that the withheld documents are not responsive to the Committee's January 13, 2021, subpoena.
- After the Department makes these documents available for the Committee's *in camera* review, the Committee will have 30 days within which to make a request for disclosure to the Committee of a limited number of relevant documents, acting in good faith to identify a significantly narrower set of documents for production. The Department will consider any such requests in good faith. No further request for review or production of other

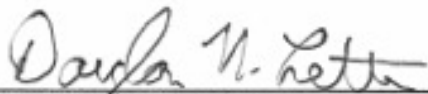
documents within the scope of the January 13, 2021, subpoena, as well as the Committee's April 2, 2019, subpoena to the Department of Commerce, shall be made in this proceeding.

- The Committee further acknowledges that the *in camera* staff review previously conducted of documents sought by the Committee's separate January 13, 2021, subpoena to the Department of Justice discharged the Department of Justice's obligations under that subpoena, as well as the Committee's April 2, 2019 subpoena to the Department of Justice, and that no further request for review or production of other documents within the scope of that subpoena shall be made in this proceeding.
- The Committee agrees that it shall not raise any argument, contention, or claim in this or any other judicial, administrative, or legislative proceeding that the disclosure to Committee staff of information contained in the Department of Commerce or Department of Justice documents described above, or production of any such information to the Committee, constitutes a subject-matter waiver of any privilege, although the Committee continues to disagree with the Executive Branch regarding the privileges applicable to Congress.

Litigation

- Upon entry into this agreement, the Committee and the Department of Justice will jointly file a notice advising the Court that the Committee and the Executive Branch have reached an agreement that both sides anticipate will facilitate the resolution of this action and requesting sixty days in which to submit either a stipulation of dismissal or a joint status report regarding further proceedings.
- If the parties reach an agreement with respect to the documents that the Committee selects from among the documents provided for *in camera* review, the Committee and the Executive Branch will file a stipulation of dismissal of this action, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). In the event that the parties do not reach such an agreement, they will file a joint status report regarding further proceedings.
- The Committee and the Executive Branch agree that to the extent it becomes necessary in this proceeding, the parties will support this accommodation as an appropriate resolution of the dispute between the Legislative and Executive Branches, without prejudice to either party's ability to advocate for its positions on any legal issues that may be raised.

For the Committee on Oversight and Reform,
U.S. House of Representatives,



DOUGLAS N. LETTER

General Counsel
U.S. House of Representatives
5140 O'Neil House Office Building
Washington, D.C. 20515

Dated: August 30, 2021

For the U.S. Department of Justice:

BRIAN BOYNTON

Digitally signed by BRIAN
BOYNTON
Date: 2021.08.30 21:13:17 -0400

BRIAN M. BOYNTON

Acting Assistant Attorney General
U.S. Department of Justice, Civil Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dated: August 30, 2021