ELIJAH E. CUMMINGS, MARYLAND
CHAIRMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

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September 10, 2019

Mr. Ken Cuccinelli
Acting Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
111 Massachusetts Avenue, N.W.
Washington, D.C. 20529

Mr. Matthew T. Albence
Acting Director
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street, S.W.
Washington, D.C. 20536

Dear Acting Director Cuccinelli and Acting Director Albence:

This letter responds to a letter I received this evening from the Department of Homeland Security (DHS) requesting that the Subcommittee indefinitely postpone the hearing scheduled for tomorrow, September 11, on the Trump Administration's revocation of deferred action for critically ill children.

As you know, the Department agreed last week to send witnesses from U.S. Citizenship and Immigration Services (USCIS) and U.S. Immigration and Customs Enforcement (ICE) to testify at tomorrow's hearing. The Department made this promise—in writing—and I expect you to honor that commitment. If you do not, the Committee will be forced to issue subpoenas to compel testimony directly from both of you.

On August 30, 2019, I invited you to attend an emergency hearing on this subject on September 6, 2019. Committee staff explained that this hearing is urgent because of the Department's decision to threaten critically ill children and their families with deportation if they do not leave the country within 33 days. According to doctors, leaving the country under those circumstances would amount to a "death sentence" for many children.

When the Department failed to agree to send witnesses voluntarily, Committee staff explained that Chairman Cummings was prepared to issue subpoenas to compel your appearance. After further discussion, the Committee accommodated the Department by offering to postpone the hearing by several days if the Department agreed to appear voluntarily without the need for subpoenas.

On September 3, the Department agreed. DHS staff informed Committee staff that DHS "understands and appreciates the urgency of this situation," writing:

> Per our conversation, the Department is able to offer voluntary witness testimony on Wednesday, September 11, 2019, on the topic of deferred action requests in response to the Subcommittee's letter of August 30, 2019.

This evening's letter appears to be a last-minute attempt to back out of this agreement. The letter makes several arguments for postponing the hearing, none of which are valid.

First, the letter claims that the "emergency nature" of the hearing no longer exists. The Department argues that it partially reversed its decision by reopening deferment requests received on or before August 7. The letter also states, without explanation, that individuals who made requests after August 7 are not "under imminent threat of removal." The Department has provided no evidence to support that assertion, but even if true, it is not a valid basis to postpone the hearing. The Department made its original decision in secret, with no public announcement and without providing any information to Congress. Although the Department is now backtracking, your agencies are causing unnecessary, ongoing confusion and panic among vulnerable children and families, and you owe them and the American public an immediate explanation.

Second, the Department suggests that, because you are now responding to massive public backlash by revisiting your original decision, testimony from agency witnesses is "predecisional." This argument is baseless. The letters you sent to vulnerable families ordering them to leave the country in 33 days were sent under a bold heading entitled, **"DECISION."** This is the decision the Subcommittee is investigating. The Subcommittee has numerous questions about who made this decision, how this decision was vetted, how the individuals involved are being held accountable for their actions, and what families should expect in the coming days. The fact that the Department is now scrambling to repair the damage this policy caused does not excuse agency witnesses from testifying.

Third, the letter states that the Department has been sued over this policy, so agency witnesses would be "very limited in our ability to engage publicly on this topic." It is not surprising that the Department is facing litigation as a result of its ill-conceived and cruel policy. However, just because the Department is now involved in private litigation does not mean Congress must delay its oversight responsibilities under the Constitution, particularly when litigation can sometimes take months or years. The Supreme Court has clearly and repeatedly ruled that private litigation does not preclude Congress from investigating and is not a valid reason to withhold information from Congress.[1] Under both Republican and Democratic

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[1] *Hutcheson v. United States*, 369 U.S. 599 (1962) ("But surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding or when crime or wrongdoing is disclosed.") (internal citations omitted); *Sinclair v. United States*, 279 U.S. 263 (1929) ("It may be conceded that Congress is without authority to compel disclosure for the purpose of aiding the prosecution of pending suits; but the authority

Chairmen, the Committee has routinely conducted investigations and held hearings concurrent with parallel litigation. The existence of ongoing litigation does not change the facts of what occurred and should not impact your ability to share truthful information with Congress.

Fourth, the Department asserts that if the hearing goes forward tomorrow, the Department insists on testifying only on "the *first* panel." The order of panels at hearings is the Subcommittee's prerogative, not the Department's, and the Committee has held many hearings in which government witnesses have testified on a second panel. In this case, the Subcommittee has determined that it is important for Committee Members and agency witnesses to hear first from individuals affected by the Administration's decision. In this way, Committee Members will be able to pose more informed questions to the agency witnesses, and the agency witnesses will be better prepared to answer them. Also, while I am always willing to consider reasonable requests for accommodations, the panels cannot be switched at this late hour because at least one of the witnesses is unavailable to testify during the second panel.

Please respond by 9:00 a.m. tomorrow morning regarding whether USCIS and ICE will testify voluntarily at the hearing, as previously agreed, or whether alternative means are necessary to secure their testimony.

Sincerely,

Jamie Raskin
Chairman
Subcommittee on Civil Rights and Civil Liberties

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

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of that body, directly or through its committees to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.").