



**Homeland
Security**

September 10, 2019

The Honorable Jamie Raskin
Chairman
Subcommittee on Civil Rights and Civil Liberties
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Raskin:

I write regarding your August 30, 2019, invitations to U.S. Immigration and Customs Enforcement (ICE) Acting Director Albence and U.S. Citizenship and Immigration Services (USCIS) Acting Director Cuccinelli to appear for a hearing on the issue of non-military deferred action. The Department confirmed with your staff via email that Timothy S. Robbins, ICE Enforcement and Removal Operations Acting Executive Associate Director, and Daniel M. Renaud, USCIS Associate Director for Field Operations could testify on September 11, 2019.

Since that time, there have been new developments that will impact the Department's testimony during the hearing. First, USCIS publicly announced on September 2, that it is reviewing—and to the extent closed, reopening—all non-military deferred action cases that were pending as of August 7. USCIS has provided written notification to aliens who had requests pending on that date and received denials. Pursuant to conversations that have taken place at a staff level, the Department understands your position that an emergency hearing is necessary to address individuals who submitted a request for deferred action on August 8 or later. In response to that concern, we can now assure you, and the public, that none of those individuals are under imminent threat of removal as result of recent developments with USCIS deferred action. Additionally, with respect to any future actions in the deferred action space, those conversations remain deliberative and predecisional at this time. Therefore, given that the emergency nature driving the timeline of the original hearing no longer exists and that any further action remains predecisional, we do not believe that public testimony tomorrow is the appropriate setting in which to discuss matters that are still deliberative.

The second development impacting our ability to testify is that on September 5, 2019, the Irish International Immigrant Center initiated a lawsuit against the Department of Homeland Security regarding the operational guidance related to deferred action. As a result, the Department is now in active litigation on the issue. Given that the Government has not yet filed any responsive motions in this proceeding or made public comments concerning it, we will be very limited in our ability to engage publicly on this topic.

The totality of the circumstances described above raise significant concerns with respect to the scope of testimony DHS witnesses will be able to provide. As such, questioning DHS witnesses at the hearing this week would not be the most productive way for the Committee to obtain the information it seeks. Accordingly, the Department requests that the Committee consider postponing tomorrow's hearing while DHS continues to work with the Committee to find alternate means and/or time for providing the requested information.

Should you choose to proceed with tomorrow's hearing as scheduled, the Department's witnesses will be prepared to participate in a limited capacity on Wednesday, September 11, 2019, as members of the *first* panel. We are concerned that the revised hearing notice and memo posted publicly to the Committee's website shows that the Committee is planning on having multiple panels of witnesses, whereby DHS witnesses are presumed to testify on a second panel. Please note, the Department will only permit its witnesses to testify on the first panel, following the longstanding practice of prior administrations, and consistent with Congressional protocol which dictates that executive branch officials will generally testify before other witnesses.

Thank you for your consideration. We can be reached at (202) 447-5890 should you wish to discuss next steps.

Respectfully,



CHRISTINE M. CICCONE
Assistant Secretary for Legislative Affairs