

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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February 22, 2019

The Honorable Elijah E. Cummings  
Chairman  
Committee on Oversight and Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

Last night, your staff informed the Republican staff that you intend to issue three subpoenas to compel documents from the Departments of Homeland Security (DHS), Health and Human Services (HHS), and Justice (DOJ) relating to the status of family separations at the border. Based on the Departments' efforts to voluntarily comply with your requests, I believe these subpoenas are premature at this time. As I understand it, the Departments have been in continuous contact with your staff about a production schedule as you requested in your February 5, 2019, letters.<sup>1</sup> In fact, HHS produced 792 pages of documents in response to your request just today.

I understand that agencies have been working to expeditiously provide the responsive documents and information you have requested. Since your initial letters of February 5, 2019, the Departments appear to have engaged in substantial good-faith efforts to accommodate your requests:

- On February 8, 2019, bipartisan Committee staff had a call with the Assistant Attorney General for the Office of Legislative Affairs Stephen Boyd.<sup>2</sup> Mr. Boyd and his staff went through each of your eleven categories of requests. The Department informed your staff that it may not have firsthand documents responsive to your requests.
- On February 12, 2019, bipartisan Committee staff had another call with DOJ officials about producing documents responsive to your requests.<sup>3</sup> The DOJ officials explained they had tasked the Civil Division to identify all related documents and offered an *in camera* review for an immediate review.

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<sup>1</sup> E.g. Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. Christine Ciccone et al, Asst. Sec'y, Office of Legislative Affairs, Dep't. of Homeland Security (Feb. 5, 2019).

<sup>2</sup> Telephone Briefing by Stephen Boyd, Assistant Attorney General, Office of Legislative Affairs, Dep't of Justice, to Committee staff, H. Comm. On Oversight & Reform (Feb. 8, 2019).

<sup>3</sup> Telephone Briefing by Office of Legislative Affairs, Dep't of Justice, to Committee staff, H. Comm. On Oversight & Reform (Feb. 12, 2019).

- On February 13, 2019, bipartisan Committee staff had a meeting with DHS officials about producing documents.<sup>4</sup> DHS assured the staff that it was working towards getting documents produced quickly, and offered to provide them on a rolling basis.
- On February 13, 2019, bipartisan Committee staff had a call with HHS about producing documents.<sup>5</sup> HHS officials proposed coordinating with the other two Departments to make the production more efficient. HHS officials offered to make certain documents available *in camera* if there is an immediate need to review the material soon.
- On February 14, 2019, bipartisan Committee staff had a follow-up call with DOJ officials about the status of the production.<sup>6</sup> The DOJ officials indicated that they were gathering documents and were working towards production as soon as possible, consistent with the interagency process. The DOJ officials reiterated their offer for an *in camera* review of documents.
- On February 15, 2019, bipartisan Committee staff had a follow-up with HHS officials.<sup>7</sup> During this call, the HHS officials indicated they would produce materials responsive to your requests, but again offered to facilitate a more immediate review in an *in camera* setting. Your staff agreed to this request.

On this record, it appears that the Departments are making efforts to voluntarily respond to your request despite several factors outside of their control. Federal offices were closed Monday, February 18, 2019, in honor of President's Day, and subsequently Wednesday, February 20, 2019, due to inclement weather. On February 21, 2019, HHS offered to reschedule the *in camera* review to next week and today HHS hand-delivered a production of documents.

Congress's compulsory process authority is a powerful tool that must be wielded responsibly. You became Chairman on January 3, 2019, but the Committee did not organize until January 29, 2019. Your first letters to these Departments requesting material as Chairman came on February 5, 2019. Responsible congressional oversight and investigative work takes time. We should not rush to compel documents from the Departments, especially when they have sought to comply with your request voluntarily. When we rush to judgment—as you have said before—

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<sup>4</sup> Briefing by Office of Legislative Affairs, Dep't of Homeland Security, to Committee staff, H. Comm. On Oversight & Reform (Feb. 13, 2019).

<sup>5</sup> Telephone Briefing by Office of Legislative Affairs, Dep't of Health and Human Services, to Committee staff, H. Comm. On Oversight & Reform (Feb. 13, 2019).

<sup>6</sup> Telephone Briefing by Office of Legislative Affairs, Dep't of Justice, to Committee staff, H. Comm. On Oversight & Reform (Feb. 14, 2019).

<sup>7</sup> Telephone Briefing by Office of Legislative Affairs, Dep't of Health and Human Services, to Committee staff, H. Comm. On Oversight & Reform (Feb. 15, 2019).

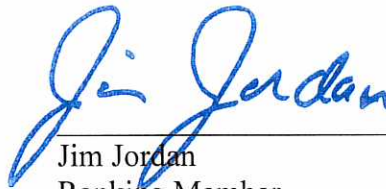
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“[i]t undermines the committee’s integrity, and it destroys the committee’s credibility.”<sup>8</sup> It also could lead to unfair or unsupported assertions.<sup>9</sup>

I hope you will allow the process of accommodation and compromise with the Departments to continue. As you have said in the past, “Sometimes we may be able to find common ground if we just have a chance to talk first. Often compromise enables us to reach a better solution.”<sup>10</sup> Here, there seems to be an opportunity for common ground. As I understand the facts, the Departments are responding voluntarily to your requests. I believe the Committee must allow the Departments sufficient time to provide responsive information voluntarily before we resort to the awesome power of the compulsory process.

Based on the information we have, these subpoenas do not appear to be appropriate at this time. I urge you to allow the traditional accommodation process to proceed as it has since you sent your initial letters. If you intend to issue these subpoenas immediately despite the Departments’ voluntary cooperation, I respectfully request a vote of the Committee.

Sincerely,



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Jim Jordan  
Ranking Member

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<sup>8</sup> *The IRS’s Systemic Delay and Scrutiny of Tea Party Applications before the H. Comm. on Oversight and Government Reform*, 113<sup>th</sup> Congress (2013) (statement of Rep. Elijah E. Cummings, Ranking Member, H. Comm. on Oversight and Government Reform).

<sup>9</sup> Letter from Jim Jordan, Ranking Member, H. Comm. on Oversight & Reform, to Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (Feb. 21, 2019).

<sup>10</sup> *Organizational Meeting of the Committee on Oversight and Reform*, 113<sup>th</sup> Cong. 6 (2013) (statement by Rep. Elijah Cummings, Ranking Member, H. Comm. On Oversight & Reform).