

# U.S. House of Representatives

## Committee on the Judiciary

Washington, DC 20515-6216  
One Hundred Sixteenth Congress

March 5, 2020

The Honorable Chad F. Wolf  
Acting Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Acting Secretary Wolf:

I write in response to a February 7, 2020 letter from Assistant Secretary Christine Ciccone regarding the Committee's ongoing investigation into the Trump Administration's "zero tolerance" or family separation policy. We appreciate Ms. Ciccone updating the Committee on what the Department of Homeland Security (DHS) believes is the status of the request's communication in our January 11, 2019 letter. Unfortunately, DHS has only made one production since July 9, 2019, and it has taken your Department seven months to send this letter in response to our request.

First, as it relates to Request 1 of the January 11, 2019 letter, DHS asserts "substantial confidentially interests of the Executive Branch" and refuses to produce the document to the Committee. This would appear to be the Administration's latest attempt at stonewalling Congressional efforts to conduct necessary oversight of the executive branch. Longstanding executive branch policy requires the Department to comply with congressional requests for information "as promptly and as fully as possible, unless it is determined that compliance raises a substantial question of executive privilege."<sup>1</sup> If the Acting Secretary finds that we have raised "a substantial question of executive privilege," then he has the obligation to consult with the White House to determine if executive privilege is waived or asserted on any specific question or matter.<sup>2</sup> To the extent you may have concerns regarding the sensitive or confidential nature of any of the requested materials, we stand ready to discuss a mutually acceptable accommodation. Alternatively, if there are classification concerns, the Committee is open to viewing Request 1 in a secure setting.<sup>3</sup>

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<sup>1</sup> Mem. From President Ronald Reagan, *Procedures Government Responses to Congressional Requests for Information* (Nov. 4, 1982); see also William P. Barr, Office of Legal Counsel, *Congressional Requests for Confidential Executive Branch Information*, 13 Op. O.L.C. 152, 161 (1989).

<sup>2</sup> Mem. From President Reagan, *supra*. See also, *Comm. On the Judiciary, U.S. House of Reps v. Miers*, 558 F. Supp 2d 53 (D.D.C. 2008).

<sup>3</sup> Several congressional committees, including the House Judiciary Committee, maintain secure facilities in order to allow Members and cleared staff access to classified materials. Significant amounts of classified information were

Second, Ms. Ciccone’s assertions that DHS has responded to specific requests, at best, display a lack of awareness of the Department’s own efforts to satisfy these document requests, and at worst, are full of inaccuracies and falsehoods. For example, Requests 9 and 10 of our January 11, 2019 letter asks that DHS produce all “[d]ocuments and communications” relating to reunifying family members that were separated by this policy.<sup>4</sup> The Department’s letter from February 7, 2020, states that both requests were completed on May 14, 2019. However, the Department of Health and Human Services (HHS) produced correspondence with key DHS custodians related to the reunifying separated individuals in July, September, October, and December of 2019. Some of these documents, although not all, are even marked as “DHS-Redacted.” These document productions appear to directly contradict the Department’s letter to the Committee and were produced after the date reported by Ms. Ciccone. This is not the only request with which this has occurred. It is unclear why after DHS claimed it had completed its search and is unable to produce documents when simultaneously another Department was able to produce directly relevant DHS documents and correspondence.

Lastly, as it relates to Request 3, the Committee appreciates the Department’s efforts to produce relevant documents that were previously provided to the DHS Inspector General (IG) as part of its most recent report on family separation. We were pleased to see these documents produced this week. However, as the Department’s production acknowledges, there were documents relevant to Request 3 in the IG’s possession that had not yet been turned over to the Committee. Those documents should have already been turned over to the Committee.<sup>5</sup> Further, many of the documents produced this week were duplicates from previous productions and improperly redacted. When these documents were previously produced to the Committee significant sections were not redacted at all. DHS’s inability to identify these documents at the outset, the inconsistent redactions, and the fact that HHS continues to produce documents and correspondence that relate to Request 3, suggests that DHS may not be operating in good faith. This refusal may be further evidence that the Department continues to thwart Congress and its ability to conduct legitimate and urgent oversight the Executive Branch.

Given the urgent and serious nature of these requests, the Committee would greatly appreciate DHS clarify and correct the statements made in the February 7, 2020 letter by no later than March 20, 2020. Your response to these concerns and cooperation with respect to our outstanding requests will assist the Committee as it fulfills its constitutional oversight responsibilities and as it considers legislation related to family separation, immigration reform,

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provided to congressional committees last Congress in connection with both the origins of the Russia election interference investigation and the Clinton email investigation.

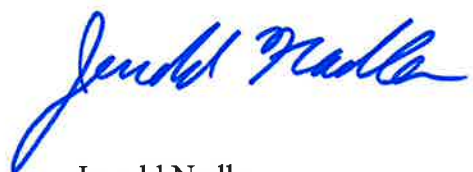
<sup>4</sup> *Nadler Introduces Keep Families Together Act and Sends Letters to DHS, DOJ, and HHS Demanding Answers Regarding Family Separation Policy*, House Judiciary Committee (Jan. 11, 2019), <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=1467>

<sup>5</sup> As part of the Judiciary and Oversight Committees’ 2017-18 investigation into the Hillary Clinton email investigation and the origins of the Russia investigation—which overlapped with an Inspector General review and ongoing review by U.S. Attorney John Huber, the Administration made available nearly one million pages of documents, including classified materials, memos describing interactions with President Trump, and electronic communications authorizing investigations into Russian election interference. *See* Letter from Stephen E. Boyd, Assistant Attorney General, United States to Bob Goodlatte, Chairman, H. Comm. On the Judiciary and Devin Nunes, Chairman, H. Perm. Comm. On Intelligence (July 6, 2018).

border security, among other things. If DHS fails to respond by this date, the Committee will consider alternative options to compel a response.

Thank you for your prompt attention to this matter.

Sincerely,



Jerrold Nadler  
Chairman  
House Committee on the Judiciary

cc: The Honorable Doug Collins, Ranking Member, House Committee on the Judiciary