



**Homeland
Security**

September 16, 2020

The Honorable Bennie Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Thompson:

The Department of Homeland Security (DHS or the Department) has received your September 11, 2020 subpoena. The Acting Secretary has asked that I respond on his behalf.

We understand that the Committee intends to hold a hearing on September 17, 2020 on “Worldwide Threats to the Homeland.” At that hearing, the Committee will hear from representatives from the Department of Justice, the Department of Homeland Security, and the Office of the Director of National Intelligence. Although the Committee has not asked the Attorney General or the Director of National Intelligence to appear, Acting Secretary Wolf previously expected to attend and testify on behalf of DHS.

On September 8, 2020, however, I advised you that the Acting Secretary was no longer available. The President had expressed his intent to nominate the Acting Secretary to be the Secretary of Homeland Security, and on September 10, the President transmitted that nomination to the Senate. Due to the pending nomination, the Acting Secretary will testify before the Senate Committee on Homeland Security and Governmental Affairs on September 23, 2020, and consistent with long-standing practice, he is not available to testify before another committee of Congress while his nomination is pending.

As previously stated, the Department respects the Committee’s interest in having a DHS representative appear at the Worldwide Threats Hearing. Rather than seeking a delay, we offered to accommodate that interest by making available a senior Department witness, Mr. Kenneth T. Cuccinelli II, who is the Senior Official Performing the Duties of Deputy Secretary (SOPDDS). The SOPDDS is well-positioned and fully knowledgeable to speak on behalf of the Department concerning our strategies to counteract the threats facing the United States homeland. The SOPDDS would be the highest-ranking official to be present at the hearing.

The Department’s reasonable offer could fully satisfy the Committee’s legitimate information needs. However, the Committee rejected the Department’s offer and issued a subpoena seeking to compel the Acting Secretary’s appearance. That action is inconsistent with

the Committee's constitutional obligation to work in good faith to meet the Department's legitimate interests. *See, e.g., United States v. Am. Tel. & Tel. Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977) (requiring each branch to "seek optimal accommodation through a realistic evaluation of [their respective] needs . . . in the particular fact situation"). The Committee does not have a legitimate need for the Acting Secretary to testify at the Worldwide Threats hearing when it may obtain the same information from the SOPDDS.

Although the Acting Secretary will not be available tomorrow, we continue to hope that the Committee will accept our offer to hear from the SOPDDS. Please let us know by 6 p.m. today, if you would like him to appear and testify tomorrow. If you decline this offer, I reiterate that DHS remains willing to work with you to find a later date for the Acting Secretary's appearance after the Senate has concluded its action on his nomination.

Should you have any further questions, please do not hesitate to contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,



Beth Spivey
Assistant Secretary