

**THE ADMINISTRATION'S DECISION  
TO DEPORT CRITICALLY ILL  
CHILDREN AND THEIR FAMILIES**

---

---

**HEARING**

BEFORE THE  
SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL  
LIBERTIES

OF THE

**COMMITTEE ON OVERSIGHT  
AND REFORM**

**HOUSE OF REPRESENTATIVES**

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

OCTOBER 30, 2019

**Serial No. 116-70**

Printed for the use of the Committee on Oversight and Reform



Available on: <http://www.govinfo.gov>  
<http://www.oversight.house.gov> or  
<http://www.docs.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON OVERSIGHT AND REFORM

CAROLYN B. MALONEY, New York, *Acting Chairwoman*

ELEANOR HOLMES NORTON, District of Columbia	JIM JORDAN, Ohio, <i>Ranking Minority Member</i>
WM. LACY CLAY, Missouri	PAUL A. GOSAR, Arizona
STEPHEN F. LYNCH, Massachusetts	VIRGINIA FOXX, North Carolina
JIM COOPER, Tennessee	THOMAS MASSIE, Kentucky
GERALD E. CONNOLLY, Virginia	MARK MEADOWS, North Carolina
RAJA KRISHNAMOORTHY, Illinois	JODY B. HICE, Georgia
JAMIE RASKIN, Maryland	GLENN GROTHMAN, Wisconsin
HARLEY ROUDA, California	JAMES COMER, Kentucky
KATIE HILL, California	MICHAEL CLOUD, Texas
DEBBIE WASSERMAN SCHULTZ, Florida	BOB GIBBS, Ohio
JOHN P. SARBANES, Maryland	RALPH NORMAN, South Carolina
PETER WELCH, Vermont	CLAY HIGGINS, Louisiana
JACKIE SPEIER, California	CHIP ROY, Texas
ROBIN L. KELLY, Illinois	CAROL D. MILLER, West Virginia
MARK DESAULNIER, California	MARK E. GREEN, Tennessee
BRENDA L. LAWRENCE, Michigan	KELLY ARMSTRONG, North Dakota
STACEY E. PLASKETT, Virgin Islands	W. GREGORY STEUBE, Florida
RO KHANNA, California	FRED KELLER, Pennsylvania
JIMMY GOMEZ, California	
ALEXANDRIA OCASIO-CORTEZ, New York	
AYANNA PRESSLEY, Massachusetts	
RASHIDA TLAIB, Michigan	

DAVID RAPALLO, *Staff Director*  
CANDYCE PHOENIX, *Chief Counsel*  
AMY STRATTON, *Clerk*

CHRISTOPHER HIXON, *Minority Staff Director*

CONTACT NUMBER: 202-225-5051

---

SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL LIBERTIES

JAMIE RASKIN, Maryland, *Chairman*

WM. LACY CLAY, Missouri	CHIP ROY, Texas, <i>Ranking Minority Member</i>
DEBBIE WASSERMAN SCHULTZ, Florida	THOMAS MASSIE, Kentucky
ROBIN L. KELLY, Illinois	MARK MEADOWS, North Carolina
JIMMY GOMEZ, California	JODY HICE, Georgia
ALEXANDRIA OCASIO-CORTEZ, New York	MICHAEL CLOUD, Texas
AYANNA PRESSLEY, Massachusetts	CAROL D. MILLER, West Virginia
ELEANOR HOLMES NORTON, District of Columbia	FRANK KELLER, Pennsylvania

# C O N T E N T S

---

Hearing held on October 30, 2019 .....	Page 1
WITNESSES	
Mr. Ken Cuccinelli, Acting Director, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security Oral Statement .....	8
Mr. Matthew Albence, Acting Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security Oral Statement .....	10
<i>Written opening statements and statements for the witnesses are available on the U.S. House of Representatives Document Repository at: <a href="https://docs.house.gov">https://docs.house.gov</a>.</i>	

## INDEX OF DOCUMENTS

---

*Documents listed below are available at: <https://docs.house.gov>.*

- \* Statement, Lawyers Community for Civil Rights in Boston; submitted by Rep. Pressley.
- \* Statement, American Immigrant Lawyers Association; submitted by Rep. Pressley.
- \* Letter, Interfaith Immigration Coalition; submitted by Rep. Raskin.
- \* Letter, New York Legal Assistance Group; submitted by Rep. Raskin.
- \* Letter, Boundless Processing Delays.
- \* Letter, Boundless Cover Letter regarding Cuccinelli.



# **THE ADMINISTRATION'S DECISION TO DEPORT CRITICALLY ILL CHILDREN AND THEIR FAMILIES**

**Wednesday, October 30, 2019**

HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL LIBERTIES  
COMMITTEE ON OVERSIGHT AND REFORM  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 2154, Rayburn Office Building, Hon. Jamie Raskin, (chairman of the subcommittee) presiding.

Present: Representatives Raskin, Clay, Wasserman Schultz, Kelly, Gomez, Ocasio-Cortez, Pressley, Norton, DeSaulnier, Cooper, Maloney, Roy, Massie, Cloud, Miller, Keller, and Grothman.

Mr. RASKIN. Good morning, everyone. Thank you all for joining us here today. The subcommittee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time.

Today's hearing will examine the administration's decision to deport children with critical illnesses, a decision that was recently reversed following public outrage and pressure from this subcommittee.

I will now recognize myself for five minutes to give an opening statement and then I will turn to the ranking member.

We are here to get to the bottom of the administration's mysterious campaign to deport critically ill children and their families.

It appears that this policy has, thankfully, been reversed after Congress and the American people rose up in an outcry at the cold inhumanity on display in this policy.

I am going to treat this hearing as not only in honor of the memory of our late beloved chairman, Elijah Cummings, but as a hearing in direct pursuit of a policy objective that was close to his heart.

The threatened deportation of sick children was such an outrage to Chairman Cummings that his very last official act before his death was to issue subpoenas to hold the administration to account.

On Wednesday, in the waning hours of his life, through all of his pain and difficulty, Chairman Cummings recognized the indelible stain that this policy would leave on our Nation and he made holding the government accountable his final official act, and we now have a sacred obligation to follow through on his subpoenas to make sure that we defend some of the most vulnerable people on

the planet—sick children who have come as strangers to our land to seek medical assistance.

So, to our witnesses today, I want to be clear. This subcommittee intends to follow through on Chairman Cummings' promise to unearth the truth behind this policy and his desire to ensure that the policy is truly reversed and that our government treats people in this category with the dignity that they deserve.

Not only do we owe that to our late beloved chairman, but we owe it to Maria Isabel Bueso, to Jonathan Sanchez, to Serena Badia and all of the immigrants whose health and whose lives were threatened by the policy implemented by USCIS.

USCIS must explain, first, what the current policy is on deferred action. It cannot keep the process shrouded in secrecy while these kids wait to hear their fate.

If we could go to the slide. On September 18, Acting Secretary of Homeland Security Kevin McAleenan ordered the acting director, Mr. Cuccinelli, who is with us here today, to, quote, "ensure that effective immediately USCIS resumes its consideration of non-military deferred action requests on a discretionary case-by-case basis." It is unclear whether USCIS has actually granted relief to anyone since reversing course.

He further ordered USCIS to, quote, "ensure that the procedure for considering and responding to deferred action requests is consistent throughout USCIS and that discretionary case-by-case deferred action is granted only based on compelling facts and circumstances."

What exactly does this mean? What is the problem that USCIS is trying to fix? What changes are being considered? Will any outside stakeholders be consulted?

We want to have maximum transparency to ensure that USCIS is not imposing unreasonable requirements on immigrants who deserve our attention and our mercy.

In the meantime, USCIS should explain what will happen to people whose prior deferrals have expired while their renewals are still under review.

We have heard from the family of a 12-year-old boy with an incurable condition that could cause him to bleed to death if he is not treated correctly.

Both of his parents applied in March to renew their deferrals but have been waiting for months without any decision at all. His father's deferral expired in August. His mother's deferral expires in January.

Without a deferral, neither parent would be authorized to stay or work in the United States, threatening their ability to support and care for their sick son.

So, what does USCIS recommend families like his do while the agency is trying to decide how to reinstate deferred action? How many more people are stuck in this kind of limbo and what will we do to protect them?

We want basic answers to these questions and we come here not in any kind of "gotcha" spirit. We just want to deal with a very serious problem that was brought to our committee.

The ongoing confusion regarding deferred action reflects the same kind of chaos that apparently produced this policy in the first

place and that prompted our last hearing and for which the administration I hope today will provide us answers.

What little we have been able to learn about how this policy came to be indicates that it was undertaken in haste without any effort to ascertain what its health and life-threatening effects would be on the people affected.

At our hearing in September, we heard the compelling stories of people who were directly harmed by the policy. Isabel Bueso, a 24-year-old woman suffering from a rare disease, testified that deportation would be, quote, “a death sentence for me.”

She told us, “I want to live. I am a human being with hopes and dreams in my life.”

Jonathan Sanchez is a 16-year-old suffering from cystic fibrosis, which is a disease that affects people in my family.

Jonathan Sanchez told us that upon learning he was facing deportation, he broke down in tears, pleading, quote, “I do not want to die. I don’t want to die. If I go back to Honduras now I will die.”

In his words, quote, “It is incredibly unfair to kick out sick kids who are in the hospital or at home taking treatments and who are just trying to have better opportunities to live.”

It is obvious from the testimony that USCIS either did not realize what the real-world implications of its policy would be or it knew and decided to go ahead anyway.

Either reality, I think, would be damning. But the effects on Maria and Jonathan would have been entirely foreseeable if USCIS had sought public feedback before instituting the new policy.

According to the USCIS, it failed to consult a single external stakeholder before jeopardizing these families. Making matters worse, USCIS did not even issue any public announcement about the policy or provide any guidance to people in Maria and Jonathan’s situation, or any of the critically ill children and their families about what would come next and what they should be done.

Why not? What was the reason for the secrecy and the surprise? Is it USCIS’s practice to implement massive policy shifts like this without providing public notice?

Sadly, the threatened deportation of sick kids is just one example of this administration’s mistreatment of immigrant children. It is not the only one.

USCIS in particular has engaged in a pattern of developing policies that endanger children.

Since, Mr. Cuccinelli, you took office, USCIS has eliminated automatic citizenship for some children of U.S. soldiers stationed overseas, introduced new barriers for immigrant kids fleeing domestic abuse in their home countries, and rolled out a public charge rule that has scared many parents into removing their children from the Central Health and Nutrition Services.

Each of these acts is an affront to the central tenet of Chairman Cummings’ philosophy, that children are the living messengers that we send forward to a future that we ourselves will never see.

The last hearing that Chairman Cummings attended was our September 11 hearing on this issue. Treating children with dignity was so important to him that he made a point to come down from Baltimore, despite his advanced failing health.

At that hearing, Elijah said, quote, “I really do think that we are in a moral situation. People are striving to live. They are trying to breathe the air of our country. They are trying to be better. They are trying to be healthy.”

Chairman Cummings, who himself was striving to live at that moment, trying to be healthy, wanted these children to have the same access to medical treatment that he did.

We will honor the chairman’s memory and the humanity of all those seeking deferred action by remaining vigilant, conducting rigorous oversight, and working to guarantee that this administration treats immigrants with the dignity they deserve.

I welcome today’s witnesses—Mr. Cuccinelli, Mr. Albence. We are delighted that you came today. But we want to make sure that we see no further bureaucratic stonewalling and confusion on these matters.

We want clarity. We are here for answers and we will not stop until we get them. We thank you for coming and I am now delighted to recognize the distinguished ranking member of our committee, Mr. Roy.

Mr. ROY. Thank you, Mr. Chairman.

Thank you, Mr. Cuccinelli, Mr. Albence. Thank you for coming up here and visiting with us today.

I will reiterate what I said in a hearing last week, that, obviously, our continued prayers are with the family of Chairman Cummings and with his staff.

We, obviously, had a great event here in the Capitol last week and I am honored to participate in that and we will continue to move forward in this committee carrying forward the chairman’s legacy and wanting to do what is right and to be better, right.

I do want to say one thing as we head into this, that—and it will not surprise the chairman that I will raise this issue, that currently there are two depositions going on and those depositions are—or, at least, two are scheduled today. One, I think, is going on now in another part of the Capitol and it is impossible for me to be in two places at once.

So, I am sitting here as the ranking member of the subcommittee and I want to carry out my duties to do that, and I am unable to go hear that and then I am unable to go easily see transcripts.

I am unable to easily catch up on what I am missing because we are carrying out the duties of our day. I don’t think that is the right way to carry out things.

I know there is going to, apparently, be a vote tomorrow on something on this process. But I would just suggest that this is part of the problem in real time.

So, anybody watching this, this is the problem with this current broken process.

Here I am sitting. There are very few members here, at least in our side of the aisle. I would also note that I would say my prayers and well wishes to Mr. Hice, whose father passed away yesterday, and so I know he is not able to join us today.

But I don’t think this is the way we should be conducting those kinds of inquiries.



Today, we have a hearing titled, "The Administration's Decision to Deport Critically Ill Children and Their Families." I would take issue with that title.

I do not believe that is what the administration was seeking to do. I think that we are talking about a process change and that we ought to get to that.

This is a topic that involves deferred action requests for people not lawfully present seeking to stay for sympathetic reasons. And this is not the first. We have had the hearing you mentioned on 9/11.

But to be clear, deferred action is not a program. Deferred action is a decision, right? It is a decision, and it is a judgment call reserved for those with prosecutorial powers. We ought to treat it that way, and then we ought to have a discussion about policy changes if there are any to be had for anybody who is here and has overstayed a visa or is sitting here and is in a situation that the chairman described.

We are just dealing with a policy change that would have taken USCIS out of a role it has no real underlying authority to carry out, if I understand it correctly, and it would then leave prosecutorial decision-making to those who actually have that power.

At the time of the first hearing, USCIS had already announced that it would evaluate pending claims subject to an internal policy change.

USCIS also sent a letter to the committee the day before the hearing noting that individuals who had sent deferred action requests to USCIS after August 7 were not under imminent threat of removal.

It is my understanding that none of the deferred action individuals had been targeted for deportation, and in a letter sent to the committee on September 19, the chairman notes, it is returning to the deferred action process that was in place on August 6.

So, for better or worse, no one is being treated any differently than they were on August 6. I think what we have here is a question about how to have the right policy.

Each and every one of us have sympathy for anyone who is sick living in uncertainty. But we need real solutions.

No one here, no one in the administration, wants anyone to not be able to get treatment or be treated unfairly or to live in uncertainty.

But we have got to deal with the real world where we have got people here who lose status and then we have got to figure out what to do with that.

Perpetuating a stay here over your visa and beg for intermittent two-year deferrals that are not really rooted in law and seek deferred action from those who don't actually prosecute and then actually leave them in additional limbo, that is not a good policy.

Yet, that is the existing policy. If Congress wants a different visa class or otherwise to solve the problem, it should act. This is something I beat the drum on many issues.

Congress wants to solve problems, Congress should act. Congress has the power to make policies. This isn't about "gotcha" politics. We should all seek a system rooted in sound policy.

I would remind my Democratic colleagues that this reality was at the root of the SCOTUS decision regarding the so-called DAPA class and in the current debate on the DACA class.

With respect to approving status for people who overstay their existing visas, we have deferred action which, by definition, is prosecutorial discretion. That is what we are talking about here.

We can't defer—we can't give a status to a group of people in the name of prosecutorial discretion.

For perspective, this hearing involves a situation that affects, roughly, 900 current people and the policy is currently at the status quo ante.

But let us think about what is actually happening right now. Border Patrol agents along the southern border encountered a million people trying to illegally enter the country this year. A million.

Today we are talking about 900 and it is very important for each of those 900. But that number—the specific number is 977,509. OK. Plus inadmissibles, there were 1.148 million enforcement actions by CBP.

So, just putting in perspective the numbers, we are talking about 900 versus 851,000 that we are talking about here in apprehensions.

We are not talking in this hearing about the 224 pounds of fentanyl seized crossing our southern border this last fiscal year, and one little sugar packet of fentanyl would kill everybody in this room and we have got 224 pounds of it that come across our border.

We are not having a hearing about the 1,700 inbound weapons CBP intercepted this year, up 300 percent from last year.

We are not talking about the fact that CBP apprehended 1,200 gang members from 20 different gangs. There are, roughly, 576,000 immigrant fugitives in the United States today—576,000.

Over half a million people who have been given a final order of removal by a judge and they are still wandering around the United States.

According to ICE, they have seen a double digit drop in criminal arrests this year due to the volume of personnel and resources they have had to deploy to the border.

This is where we have interior enforcement and we have real problems. Our border is porous and vulnerable to crimes by cartels and traffickers who are taking advantage of migrants.

Traffickers abuse children as props for asylum. There were 473,000 family units this year. This is the highest on record.

We could discuss the 5,400 recorded cases of fraud from alleged family units and the children who are being exploited as a golden ticket to come to the United States.

Let us talk about those migrants getting abused today on the journey through Mexico. We had 50,000 apprehensions in September—50,000.

We are talking about the numbers being down. Why? Because they were down from over 100,000 in May.

Yet, that is the reality of what is happening on our border right now today. But we are not having hearings on that.

We are having a hearing on something that has no discernible difference from where it was on August 6. I understand the concern of the chairman about some of the questions about the policies.

But we are talking about something that has been largely addressed with respect to the concern that the majority has, and if we want to have a conversation about the policy, let us sit around a round table and figure out what we can do to have legislation that might address some of those concerns.

Let us talk about the other things we could do—fixing asylum, catch and release Flores, TBPR. All these are things that we could fix on one piece of paper in one day if we had the will to do it.

We could fund ICE and Border Patrol properly. We could fund ICE at the level that President Obama asked for, upwards of a billion dollars that he asked for to deal with the unaccompanied alien children that were coming in 2014 to 2015.

Yet, we only got \$200 billion for ICE in June after demanding to get a supplemental vote and that \$200 billion was constrained and not able to be used.

This hearing today is about an issue that affects 900 people for whom we have great sympathy and we ought to address the issue.

But on an average day this year, that is three times less than the total number of crossing during one Border Patrol shift. Think about that. One Border Patrol shift.

Today, CBP apprehends, roughly, 1,400 migrants a day. On an average day in May that number was 5,000.

If the chairman wants to address the facts that these deferrals are not actual programs and are prosecutorial discretion, let us discuss that and figure out a system that will work and that we can work together to try to figure that out.

But I would love to do that in the context of our very, very broken immigration system and border security.

Thank you, Mr. Chairman.

Mr. RASKIN. Mr. Roy, thank you for your very thoughtful remarks and, as always, I am very eager to work with you and all of our colleagues on comprehensive immigration reform.

But you correctly delineate what the object of today's hearing is, which is to focus on this question and we are going to do it and I think—I am very hopeful we will get the answers that we need and we can move on to work on other stuff.

There are several members of the committee who have come today both out of their interest in the subject but also in a tribute to Chairman Cummings.

So, without objection, I would waive them on. Mr. Rouda and Mr. Cooper and Mr. DeSaulnier are members of the broader committee who are joining those of us on the subcommittee, including Ms. Kelly and Mr. Gomez, who have arrived over here.

Also thank you, Mr. Roy, for telling us about Mr. Hice's father. I was not aware of that. Our prayers and our thoughts go out to him. It seems like we are just going to too many funerals these days. But we are sending him the strength and encouragement.

All right. With that, I want to formally welcome our witnesses today: Ken Cuccinelli, who is the acting director of the U.S. Citizenship and Immigration Services at Homeland Security—welcome,

Mr. Cuccinelli—and Matthew Albence, who is the acting director of the U.S. Immigration and Customs Enforcement, ICE, at the U.S. Department of Homeland Security.

If the witnesses would kindly rise and raise their right hands, I will begin by swearing you in.

[Witnesses were sworn.]

Mr. RASKIN. Then let the record show the witnesses have answered in the affirmative.

Thank you. You may be seated. Please speak directly into the microphones. Without objection, any written statements you brought with you or that you decide to provide will be made part of our record.

With that, Mr. Cuccinelli, you are now recognized to give an oral presentation of your testimony.

**STATEMENT OF KEN CUCCINELLI, ACTING DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. CUCCINELLI. Good morning, Chairman Raskin, Ranking Member Roy, and distinguished members of the subcommittee.

First, I want to express my condolences on the passing of Chairman Cummings and I appreciate his dedication to representing the people of Maryland's 7th District for 23 years.

My name is Ken Cuccinelli. I am the acting director of the United States Citizenship and Immigration Services. USCIS administers the Nation's lawful immigration system.

The agency's mission is to safeguard the integrity and promise of that system by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.

I can see—I can tell you that I am extremely proud of the work and professionalism I see every day by the employees at USCIS in service to America.

In Fiscal Year 2019 just ended, USCIS achieved many of President Trump's goals to make our immigration system work better for America.

As an agency, we have tirelessly worked hand in hand with our fellow DHS components to answer President Trump's call to address the ongoing crisis at our southern border.

We have taken significant steps to mitigate the loopholes in our asylum system, particularly in the absence of congressional action, combating fraudulent and frivolous claims, and strengthening the protections we have in place to preserve humanitarian assistance for those truly eligible for it.

The workload USCIS faces each year is staggering. In Fiscal Year 2019, we adjudicated nearly 7 million requests for immigration benefits, a 14 percent increase over the previous fiscal year, and that is with only a two percent increase in fee income, demonstrating improved cost effectiveness even as we face many challenges.

This workload represents the full spectrum of immigration benefits that our law provide to those seeking to come to the United States temporarily or permanently, and those who seek to become citizens of this Nation.

Last year, USCIS naturalized 833,000 new U.S. citizens, the most in more than a decade.

Deferred action is the exercise of discretion to defer removal action on a case-by-case basis against an alien for a certain period of time. Deferred action is not an immigration benefit or specific form of relief. It does not provide lawful immigration status and does not excuse any past or future periods of unlawful presence.

Importantly, deferred action can be terminated at any time at the agency's discretion. Historically, USCIS does not receive many nonmilitary non-DACA deferred action requests.

For the past few years, USCIS has received approximately a thousand such requests annually. Some of these requests are for family support or medical issues.

This has frequently been incorrectly reported or mischaracterized by the media and some in Congress as a medical deferred action program.

To be clear, DHS does not and has never administered a medical deferred action program. Only Congress can provide permanent immigration relief to an entire class of aliens.

Deferred action is a practice in which the secretary exercises enforcement discretion to notify an alien of the agency's decision to forebear from seeking the alien's removal for a designated period of time.

However, USCIS does not enforce orders of removal. Thus, to better align USCIS with its mission of administering our Nation's lawful immigration system, on August 7, USCIS determined that its field offices would no longer accept non-military requests for deferred action.

This redirection of agency resources did not affect DACA, which remains in effect according to the nationwide injunction while cases go through the court system.

It also did not affect other deferred action requests processed at USCIS service centers under statute or other policies, regulations, or court orders.

On September 2, USCIS announced that the agency would reopen previously pending non-military deferred action requests.

Further, on September 18, Acting Secretary McAleenan directed USCIS to resume consideration of non-military deferred action requests on a discretionary case-by-case basis except as otherwise required by an applicable statute, regulation, or court order.

The acting secretary further directed USCIS to ensure that the procedure for considering and responding to deferred action requests is consistent throughout USCIS and that discretionary case-by-case deferred action is granted only based on compelling facts and circumstances.

All cases that were denied around August 7, 2019, have now been reopened and are being considered pursuant to the acting secretary's September 18 directive.

And that concludes my statement. Thank you.

Mr. RASKIN. Thank you very much.

Mr. Albence, you are recognized for five minutes.

**STATEMENT OF MATTHEW ALBENCE, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. ALBENCE. Good morning, Chairman Raskin, Ranking Member Roy, and distinguished members of the subcommittee.

I also want to express my condolences on the passing of Chairman Cummings.

As you know, on September 11, 2019, ICE testified on this matter before this committee. At the time of that hearing, the ICE witness, the Acting Executive Associate Director for Enforcement and Removal Operations, Tim Robbins, stated that he was not aware of anyone at ICE being involved in the decision to end the program.

He further explained that ICE lacks any program or mechanics to consider affirmative deferred action requests, but described a variety of ways that ICE does utilize its discretion as appropriate on a case-by-case basis throughout the immigration enforcement process.

Contrary to claims made by this committee and the media about the willingness to answer questions during that hearing, the only questions our witness declined to answer regarding—regarded—possible future actions being considered by the acting secretary of Homeland Security and questions relating to internal USCIS issues of which he had no knowledge.

And as the committee is aware, within a few days of the hearing, Acting Secretary McAleenan directed USCIS to resume consideration of nonmilitary deferred action requests on a discretionary case-by-case basis.

In addition to our previous testimony, ICE provided several responses to several follow-up questions from that hearing to the committee in a letter on September 24, 2019.

In another letter dated October 15, 2019, DHS further clarified that ICE had no part in USCIS's previous decision. So, even though ICE's discretionary abilities are not at issue here today and as USCIS has resumed consideration of these requests—a process in which ICE is not involved—I am here today and prepared to answer questions you may have regarding ICE's role or, more specifically, lack thereof in this matter.

However, I want to clearly state that I believe this continued repetition of inaccurate information does a tremendous disservice to the dedicated professional men and women of ICE, and just as importantly, does a disservice to the American public, who deserve transparency and facts regarding the operation of their government.

In a day and age when individuals are committing violent acts on ICE offices and making threats against ICE officers, agents, employees, and their families, to continue to suggest that ICE had some role in this process is not only inaccurate, as confirmed by the information already provided to this committee, but also irresponsible.

So, I am here today to defend the men and women of ICE and to, once again, set the record straight.

I look forward to your questions.

Mr. RASKIN. Thank you much for your testimony, both of you, and at this point, having permitted the several members to join the

subcommittee on the dais who wanted to be with us today—Messrs. Rouda, Cooper, and DeSaulnier—we will move to the five-minute questioning portion and I will recognize myself for five minutes first.

Mr. Cuccinelli, threatening to deport sick kids was an appalling thing and it was public revulsion at this prospect which assembled us in our first hearing on it, and we were very glad that the administration reversed course and decided not to pursue that policy.

But I want to ask you, what exactly is the policy in place for processing these requests now? I understand this compelling facts and circumstances standard that has been enunciated.

Do we—are you considering being in the country for purposes of receiving necessary medical treatment to be a compelling fact and circumstance?

Mr. CUCCINELLI. Mr. Chairman, the acting secretary returned us, essentially, to the process we were in before August 7 and I would note that there is no program. That is part of the challenge here.

This is about withholding action, not undertaking a formal process. It is about withholding action, in fact, and the—you saw what the acting secretary wrote with respect to his phrase compelling facts and circumstances. That is the only what I would call substantive commentary that has been distributed to our work force in terms of reopening these cases and how to process them. Otherwise, everything has continued as it was before.

Mr. RASKIN. OK. So, as I understand it, there were at least 424 families whose deferred action requests were pending on August 7. They were denied.

That is when they were told to—that if they didn't leave the country they should report for possible deportation. But then they were automatically reopened after the reversal of the policy.

Can you tell me how many of those requests of those 424 families have been approved at this point?

Mr. CUCCINELLI. I can't relate to the specific 424 and those were ones given notice around August 7. There were over 700 cases pending at that time.

But we have completed as of earlier this week and since the reopening 41 cases was the last number I heard at the beginning of the week. But I have no—

Mr. RASKIN. Forty-one cases where people were granted—

Mr. CUCCINELLI. No. That is where I was going, Mr.—

Mr. RASKIN. Oh.

Mr. CUCCINELLI. I have no idea whether those 41—how they relate to the 424 who got—who were among those who got notices on August 7.

Mr. RASKIN. OK. I got to say this is an occasion for some frustration because we requested a lot of documents on this and I think we received one document, which was, basically, the statement that you had received about compelling facts and circumstances.

So, we don't know what is going on there but we are cheered that there was a formal reversal of the policy. But—and I understand that there is no formal program but there was a policy of allowing people in this situation to stay in the country.

Then it appeared there was a reversal of that policy and that we were going to summon these people essentially for deportation proceedings.

Then there was congressional and public outrage I think of a bipartisan character. That policy was reversed.

But we want to make sure that what was going to take place on a sweeping and categorical level is not taking place at a less visible ad hoc level. We want to make sure that the prior policy really is reinstated.

So, is that your sense of what is going to happen with these 424 people? I mean, do we have to have a hearing on each of these cases? I guess that is what I am asking you.

Mr. CUCCINELLI. Well, of course, we don't testify about individual cases and—but I understand that you would like to see more written material.

But we gave you, in response to one of the letters, the entire universe of what is written on this topic and it didn't even cover one side of one page because this is a pure process question in terms of how USCIS handles this internally.

You know, for other things, standards are laid out. They are discussed. They are—but we don't have a law here. We don't have a regulation. This isn't taking action. It is withholding action.

So, beyond the secretary's statement about grants only on compelling facts and circumstances, which I can't even compare to anything before August 7 because no equivalent existed before August 7, that is the only—that is the only item that has been added to the—to the materials or information that an adjudicating officer might reference.

Mr. RASKIN. And the way I would treat that is that the policy before was that cases of people being in the country to receive medical treatment established a compelling reason to be here and these are all compelling facts and circumstances.

That is certainly the way that I would understand it and it is the way that I am interpreting. I think I speak for a lot of my colleagues in saying that we would not want this to be the occasion for the creation of a new bureaucratic narrowing of the possibilities for people to be in the country to continue the medical treatment that they were here to get.

Let me—well, my time is up and I am going to go ahead and recognize Mrs. Maloney. But we will come back around because we definitely have some more details that we want to get out of this situation. Thank you.

Mrs. Maloney, you are recognized or five minutes.

Oh. OK. Then I will recognize Mr. Roy.

OK. And we will pass it down.

Mr. KELLER. Thank you, Mr. Chairman, and thank you, gentlemen, for being here today.

It is certainly a sensitive issue when we are talking about individuals that have medical problems and it is always—we always want to make sure that we handle things properly.

So, I just want to make sure that, for the record, everything is straight. We are talking about deferred action, which means we are deferring taking action against people that may or may not be in the country here or overstaying a visa or something like that.



Is that correct?

Mr. CUCCINELLI. Well, they are here illegally—

Mr. KELLER. OK.

Mr. CUCCINELLI [continuing]. Thus, the request for the deferred action.

Mr. KELLER. OK. So, it is a request for deferred action. And the rules currently under the law, you are just enforcing the law that is currently on the books?

Mr. CUCCINELLI. That is correct.

Mr. KELLER. OK. You are not making—you are not making law or anything else? You are just enforcing what is on the books?

Mr. CUCCINELLI. That is correct.

Mr. KELLER. So, when people received letters that said, if you are not in the country legally you need—you need to show up or you may—did the letter say may be? Action may be taken?

Mr. CUCCINELLI. That is right.

Mr. KELLER. So, the word “may” was in there?

Mr. CUCCINELLI. It is.

Mr. KELLER. OK. So, it wasn't saying this was actually going to happen; it was going to say this may happen?

Mr. CUCCINELLI. Correct. At the end of that time period, and they were—they were form letters adopted from other usage in the agency, is pretty standard language, and at the end of that time period adjudicating officers would then revisit the case about issuing an NTA or not.

Mr. KELLER. So, in other words, if I was a person that would have gotten one of those letters, I could have shown up and made my case and I wouldn't necessarily have been forced to leave the country?

Mr. CUCCINELLI. Well, I mean, it could be the case that the NTA is not issued. But, you know, we—of course, we never really reached that point in this process with the—with the initial August 7 shutdown of this process because it was reopened less than a month later.

Mr. KELLER. OK. But, again, I don't think it was any person's intent to make people leave that had a medical problem as opposed to making sure that the people that were here actually had a decision made to let them stay by the U.S. Government.

Mr. CUCCINELLI. Well, it would have taken USCIS out of the prosecutorial role of exercising prosecutorial discretion, which is what deferred action is.

It would not have replaced it with anything else and it is—and, you know, had it rolled forward then it would have been considered in the normal course following on those letters.

Mr. KELLER. OK. So, in other words, what really needs to happen is we, as Congress, should set up some kind of law. I mean, I keep hearing program and everything else.

It is not really a program. It is just the fact that we are not taking action on something that we should be.

Mr. CUCCINELLI. That is absolutely correct and, I mean, there is an equivalent in the State Department context. There is B-2 visa.

People can come visit temporarily for medical purposes. They have a whole process set up for that. It is temporary, and that is established pursuant to law passed by Congress.

What we are talking about today is not—is not based on law. It is not based on regulation. It is—it is much like the executive creating law by deciding how to use deferred action, an inherent prosecutorial—a prosecutorial authority to achieve a goal, and if there is a goal in which Congress agrees should be achieved and they pass a law to it, I promise you we will implement that law.

Mr. KELLER. OK. I think that is an important distinction, that you are not trying to do anything other than enforce the laws of our Nation and if we, as Congress, think that that law needs to be changed and we make the changes, you will abide by the changes.

Mr. CUCCINELLI. Absolutely. Absolutely.

Mr. KELLER. OK. Again, when we are doing a discretionary case-by-case scenario, I think that doesn't lead to any certainty for the people trying to enforce our law or for the people that need to come here and get treatment.

Mr. CUCCINELLI. Well, it is not—even deferred action is not durable. It can be revoked at any time, and it isn't an immigration status. So, it is—because it doesn't have a legal foundation it is a very uncertain course for people to be on.

Mr. KELLER. I mean, deferred action—I mean, we can defer many things and it doesn't—it doesn't necessarily make them legal, and I guess that is the point I want to say.

I could—we could decide we want to not enforce IRS law and not collect taxes from a certain amount of people and defer their taxes.

That doesn't mean they still don't owe them. It doesn't mean they are following the law. And I guess the point I would say for this committee rather than—rather than reploting the ground that we have already plowed—the decision has been changed—I would suggest that we give the administration and the individuals trying to enforce our law the tools they need and [that] Congress act on this rather than wasting time on other things.

I yield back. Thank you.

Mr. RASKIN. Thank you, Mr. Keller.

I now recognize Ms. Kelly, the gentlelady from Illinois, for her five minutes of questioning.

Ms. KELLY. Thank you, Mr. Chair.

Ms. Albence, I want to understand ICE's role in this process. USCIS didn't notify the public about this disastrous decision they made in August.

To add to the confusion, once the public found out through media reports, USCIS claimed that ICE would be handling medical deferred action requests, going forward.

At the time, ICE said it was never informed of this hand-off. According to press reports, ICE was, quoted, "blindsided by the move from USCIS" and ICE was, quote, "scrambling to respond."

Mr. Albence, was that true? Were you blindsided?

Mr. ALBENCE. Yes. As we have put in writing back to the committee, there were some discussions over the years with regard to this process. But the ultimate decision and anything contemporaneous with that decision was made by CIS.

Ms. KELLY. And when and how did you find out about the decision?

Mr. ALBENCE. I want to say that my chief of staff for public affairs brought it to my attention.

Ms. KELLY. And when was that?

Mr. ALBENCE. I don't have the exact date. It is going to be when it hit the media. It would have been the day that we put out that statement. So, I think that maybe the 25 or 27 of August. But I am not exactly sure.

Ms. KELLY. So, that was the first time you learned that USCIS was telling the press that ICE would be taking over deferring action requests?

Mr. ALBENCE. I believe so, yes.

Ms. KELLY. OK.

We know from USCIS's written responses to the subcommittee on September 24 that the agency has been discussing ending deferred action since October 2017.

In those same responses, when asked about collaboration with ICE, USCIS wrote, "We can confirm that discussions did take place prior to August 7, 2019." So, which is it? Was ICE blindsided by this decision or had ICE been involved in planning this for months or even years?

Mr. ALBENCE. Well, without getting too far into the deliberative process, as I mentioned, there were discussions that were held under prior leadership of both agencies with regard to this process but that there had—nothing had been settled on that or agreements with regard to how that would go forward or be implemented, and those, largely, fell off the map until this reappeared when CIS moved forward on their own.

Ms. KELLY. So, you were aware of prior discussions. Was anyone at ICE aware of the exact discussions?

Mr. ALBENCE. Again, without getting into the deliberative process, we discussed lots of different programs and issues. There were discussions as to whether or not this would be a good idea.

These were not discussions or decisions that we were involved with, and then, as I mentioned, it kind of just fell off the map.

There was nothing recent with regard to those type of discussions.

Ms. KELLY. OK. Do you want ICE to assume responsibility for deferred action from USCIS?

Mr. ALBENCE. So, I think the secretary has already spoken to that. But to that comment and to, as our witness testified a few weeks ago, ICE does not have a process or a mechanism to affirmatively adjudicate or provide any sort of deferred action.

ICE exercises prosecutorial discretion throughout the enforcement continuum with regard to who to arrest, who to detain, and then, ultimately, if a judge orders somebody removed, who actually gets removed.

So, we do have a process on the back end of that—of that where somebody could file for a stay of removal if so ordered by an immigration judge. But that is where our prosecutorial discretion lies, and rightly so.

Ms. KELLY. Have you discussed this with the acting secretary?

Mr. ALBENCE. We may have had one—

Ms. KELLY. Or with USCIS?

Mr. ALBENCE. I mean, I have spoken with the acting director, certainly, after the—after the fact. I probably was in one meeting with the acting secretary.

But, largely, we have been removed from this process since it went forward because it was not something that ICE was involved in.

Ms. KELLY. And what are your recommendations?

Mr. ALBENCE. My recommendations are that it remains with the agency that is better equipped to adjudicate applications.

Ms. KELLY. OK. At any point in time has ICE considered implementing a deferred action process similar to the one at USCIS where an immigrant can proactively seek relief before entering deportation proceedings?

Mr. ALBENCE. Not a—not a proactive program. We will utilize deferred action in certain instances, for example, if there is a witness that we need in a criminal investigation or somebody that is cooperating with a criminal investigation that we are working or that another law enforcement agency has requested us to.

But, again, it is only in conjunction with our law enforcement mission.

Ms. KELLY. And is ICE playing any role in the USCIS review and updating of this policy that—

Mr. ALBENCE. No.

Ms. KELLY [continuing]. The acting secretary ordered?

Mr. ALBENCE. No, ma'am.

Ms. KELLY. Do you agree with the decision to order critically ill children to leave the country within three days or face deportation?

Mr. ALBENCE. OK. I don't think that is what the letter said. What the letter required them to do is respond and I deferred it to Mr. Cuccinelli.

But the letter required them to respond within 33 days to make a determination as to whether or not a notice to appear would be filed.

A notice to appear is only the beginning part of that process. That begins the immigration court process. Ultimately, nobody can be removed from this country absent a removal order from an immigration judge.

So, that is where ICE steps in at the back end of that process were somebody to be—have their case evaluated on a case-by-case basis if somebody files a stay.

But if somebody has a significant humanitarian concern, a medical issue to that sort, that is when ICE can execute its prosecutorial—excuse me, exercise prosecutorial discretion and grant that stay.

Ms. KELLY. I know I am past my time, but here is a letter that says within 33 days of the date. So, not what you are saying.

Mr. ALBENCE. No, it says 33 days with the date, report to CIS for determination as to whether or not a notice to appear will be issued.

That notice to appear is not a removal order. That notice to appear is what starts the immigration court process.

Again, ultimately, only an immigration judge except in certain circumstances that would not be relevant here have the ability to issue a ruling.

Mr. RASKIN. Thank you, Mr. Albence.

The gentlelady's time has expired. But I know this is going to become an issue. So, I do want to read that sentence just so we are all on the same page here.

This was sent to the—in this case, Maria Isabel Buesa Barrera, but it was the exact same letter that went out to hundreds of people. This is what caused the controversy and the crisis in the first place.

“You are not authorized to remain in the United States. If you fail to depart the United States within 33 days of the date of this letter, USCIS may issue you a notice to appear and commence removal proceedings against you with the immigration court. This may result in your being removed from the United States and found ineligible for a future visa or other U.S. immigration benefits.”

So, that is what was sent to critically ill children. That is what caused the crisis. Again, we are delighted that there was a decision to reverse this new policy with Mr. Cuccinelli.

There was no program in place but there was a policy of not pursuing these. I think for the reason that it was implicit in something that our colleague, Mr. Roy, said, which is this is a very tiny number of people compared to the whole universe of people who are actual immigrants to the country, and most of them are here precisely to get medical treatment.

So, I am going to—Mr. Roy has passed this round and I am going to recognize Mrs. Maloney for her five minutes.

Mrs. MALONEY. I want to thank the chairman for focusing on this important issue, and this is one of several hearings that he has initiated on the subject, and I would like to ask Director Cuccinelli about the standards to be applied to deferred action programs.

I want to make sure that he understands that to many families this is, literally, a life and death issue. Many people, some on the other side of the aisle, have indicated that they are not here legally but many are here legally and they are under deferred action, yet they are being threatened with deportation.

Sitting in the front row behind you is Nicholas Espinoza, and he travelled here today to try to save his daughter's life. She is seven years old and her name is Julia, and there she is, Julia, fighting for her life.

She is in a special treatment program at Seattle's Children's Hospital because she has had most of her lower intestine removed and needs a full team of doctors to keep her alive.

Julia is a U.S. citizen but her parents are not. Her mother is her nurse. Deferred action has allowed Julia's mom to stay in this country but her deferral expired in September. Her father helps support her, too.

His deferral expired three days ago and they have both applied for renewal this June but still have not heard about their cases. It has not been decided, and Julia's doctors say that if she leaves this country and goes back to her home country she will die.

This gives her parents three options. I would say she only has three: stay in the United States with their daughter, even though their deferrals have expired; leave the country and leave their daughter behind without any family to take care of her; or take

their daughter home, at which point her doctors say she would surely die.

So, I want to politely and respectfully ask you, Mr. Cuccinelli, to look at Mr. Espinoza. He is right behind you.

Mr. Espinoza, raise your hand so he can see you. Look him straight in the eye and, as a professional, ask him which of those options he should choose.

Mr. CUCCINELLI. Madam Chairman, Dan Renaud was representing USCIS at the last hearing and one of the things he said that I think humanizes the agency—and I don't mean my, I mean the employees of the agency's position—in many cases is that the hardest cases we have to deal with are the kinds of ones we are talking about today.

They are cases where it is possible that the law calls for a very sympathetic person, or family in this case—

Mrs. MALONEY. Reclaiming my time, because I don't have much time.

We had many people here in our hearings that were brought to this country by American scientists because they wanted to study their disease so that we could possibly save their lives and have medical research that could save the lives of many other people.

I feel it is a very human decision, but I think it is terribly wrong to deport someone who has come here legally—in this case, she is here legally. But I would like to ask you what would you decide if it was your child, if you are talking about humanizing the situation?

Mr. CUCCINELLI. Any parent does whatever they can to care for their children and—

Mrs. MALONEY. Well, then getting back to the specifics, can you say here today that Julia's parents will not be penalized for staying in the U.S. while they fight for the renewal of their request to stay here, which is pending?

In other words, if you put a human face on it, this policy has a devastating effect on people and if this administration claims that it has been reversed, they need to tell people clearly in writing to all the professionals in the government and to the people that are here exactly what this means in real time and what their real possibilities are.

I find this language discretionary—case-by-case basis. What does this mean? Can you get back in writing to me how does USCIS define it?

My time is up, but I would like to see in writing how you define this exactly for the purpose of—

Mr. CUCCINELLI. We do not. That is the answer. I know you all don't like that answer. This is not an action, a program, or policy. It is the withholding of action.

Madam Chairman, you just described what might make an excellent individual standard in a piece of legislation. People coming here and doing scientific studies and getting medical care sounds to me like it would make an excellent piece of legislation. We don't have that. We don't have that.

Mrs. MALONEY. Well, simply put—simply put, one last question.

Will we be applying exactly the same standard to deferred action, going forward, as the agency used in the past? Yes or no.

Mr. CUCCINELLI. We did not explain—we did not pose any standards other than the case-by-case decision, which then goes up functionally to four regional directors who are career employees and they talk to one another primarily to make sure that they are implementing this process consistently across the country.

But there are no standards we have given them other than what you see here from the acting secretary of the language of compelling facts and circumstances because we don't have a legal basis to do so. We would welcome that from you all but we do not—

Mrs. MALONEY. Well, have you written guidance?

Mr. RASKIN. The gentlelady's—

Mrs. MALONEY. Have you provided training?

I yield back.

Mr. RASKIN. Thank you. The gentlelady's time has expired. Thank you for your answer to that.

There was one question embedded in the gentlelady's thoughtful line of questions, which was what would your recommendation be to people in this situation. I heard you to say that parents will do—that all parents, legitimately, will do whatever they can for their kids and I take that to mean that they should continue to stay and have their children treated.

Mr. CUCCINELLI. Well, of course, all of you know I can neither give them legal advice nor will we sit here at a table in front of you and decide individual cases, accepting full well how sympathetic the case is, which is exactly why we use the kind of compelling facts and circumstances language that the secretary did.

But if you are looking for me to decide a case here, I cannot do that, and I believe you all know I cannot do that.

Mr. RASKIN. OK. Thank you.

I am now pleased to recognize our distinguished colleague from Massachusetts, Ms. Pressley, for her five minutes of questioning.

Ms. PRESSLEY. Thank you very much, Mr. Chairman.

This hearing has been a long time coming, and there was some commentary from my colleague across the aisle saying that we have better things to work on and should not be wasting our time.

I never want us to lose sight of the impact on real people's lives when we are talking about policy and that is, in fact, why the American people sent us here. So, we are not wasting our time.

Gentlemen, it is disappointing that it took the threats of subpoenas to bring you before our committee today. In a moment I will turn more to your actions but, first, I want to center the families that have been impacted by this egregious policy shift, families like my constituents, the Sanchez family, and Serena Ibinex and her mom, Conchita. I told them when I met them that I would fight for their children as if they were my own and I intend to honor that.

Sixteen-year-old Jonathan Braley came before this committee and shared his story. He spoke of how cystic fibrosis has ravaged his body and, in fact, the tragic death of his younger sister in Honduras, who suffered similarly.

The reckless actions of your agency that have put his variability to receive life-preserving medical care at risk are just unconscionable.

For 83 days, Mr. Chairman—nearly three months now—we have been demanding answers out of this administration.

Mr. Cuccinelli, you testified that you understand that we want more paperwork but you simply don't have it. None of us here—we are in government—we don't want more paperwork.

But what we do want are real answers and justice for these families and a peace of mind, and they deserve that and their children deserve that.

So, for nearly three months we have been demanding answers out of this administration for its horrendous and calloused efforts to deport our critically ill immigrant neighbors and their families.

And while I am relieved that the policy has been reversed, these families and the American people deserve answers. They deserve the certainty that they will be able to remain in this country.

So, I would like to thank the brave families like these and countless others who, despite the traumatic and imminent fear of deportation and having to fight a life-threatening illness, stepped up and spoke out to shine a light on this injustice as well as the attorneys and the advocacy organizations.

I would also—I would like to request unanimous consent to include statements for the record from the Lawyers Community for Civil Rights in Boston as well as the American Immigrant Lawyers Association.

Mr. RASKIN. Without objection, they will be entered into the record.

Ms. PRESSLEY. Thank you.

Now, gentlemen, your agencies have still failed to turn over a single document in response to our letter, and even in response to the subpoenas that our forever chairman—may he rest in power—Elijah Cummings signed in his last official act before his transition.

It is shameful but consistent. So, I hope that you can answer the questions that I have.

USCIS and ICE have continuously refused to identify who made the decision to end consideration of deferred action at USCIS.

I can only assume it is because no one wants to put their name on such a disastrous, cruel, and un-American policy, and the government officials who made that decision ought to be held to account.

Mr. Cuccinelli, I remind you that you are under oath before us today. Who made the decision that USCIS would stop accepting and processing deferred action requests on August 7?

Mr. CUCCINELLI. That was my decision as the acting director.

Ms. PRESSLEY. And you stand behind that decision?

Mr. CUCCINELLI. That decision has been reversed.

Ms. PRESSLEY. The reversal, yes. OK.

But today, those families have received no notification confirming the reversal of that. Can you tell me why that is?

Mr. CUCCINELLI. I think they have. We are a paper agency when it comes to matters like this. So, when case are closed, literally, a physical file is wrapped up and mailed to a storage facility. So, when we reopen cases, we literally have to—

Ms. PRESSLEY. I am sorry. Sorry, I am running out of time. I apologize. I have to—

Mr. CUCCINELLI. I am just trying to answer the question.



Ms. PRESSLEY. No, I apologize, sir. I just have to reclaim my time.

So, Mr. Cuccinelli, would it be fair to say then that you are not aware of some of the most consequential decisions and policies coming out of your agency, since initially you said you did not know that it was coming?

Mr. CUCCINELLI. I did not say that today.

Ms. PRESSLEY. Earlier today in your testimony. OK.

Yes or no, Mr. Cuccinelli, did anyone at the White House play a role in this decision?

Mr. CUCCINELLI. This was an agency decision solely and other than discussion within the Department of Homeland Security—

Ms. PRESSLEY. So, reclaiming—I am sorry.

Did Stephen Miller play a role in this decision or not?

Mr. CUCCINELLI. So, I am not going to get into specific commentary back and forth. But I made this decision. The only discussions had over the course of the—

Ms. PRESSLEY. So, I am sorry. Again, for the record—

Mr. CUCCINELLI [continuing]. Over the—yes, this is for the record.

Ms. PRESSLEY. Mr. Cuccinelli, I understand—

Mr. CUCCINELLI. And as you noted, I am under oath. So, I want to be completely truthful and I can't do that if I can't be completely—

Ms. PRESSLEY. Yes, you are under oath. So, I—so then this is very easy to answer. So, yes or no—

Mr. CUCCINELLI. I am not going to just answer the way you want me to answer. I am going to give you an honest and accurate answer.

Ms. PRESSLEY. No. No. I am asking you to answer yes or no. Was the president involved in this decision?

Mr. CUCCINELLI. We cannot, as you well know, talk about content of discussions with the White House.

Ms. PRESSLEY. I am sorry, but you just said that you made the decision.

Mr. CUCCINELLI. Yes.

Ms. PRESSLEY. OK. So, was the president involved, yes or no? That should be simple.

Mr. CUCCINELLI. I made this decision alone.

Ms. PRESSLEY. Was Stephen Miller—

Mr. RASKIN. The gentlelady's time has expired. Thank you very much.

And we will go now to Mrs. Miller.

Mrs. MILLER. Thank you, Chairman Raskin.

Mr. RASKIN. Mrs. Miller, you are recognized for five minutes.

Mrs. MILLER. Thank you. We have a crisis on our border. This year, to date, we have had over 850,000 total apprehensions on our southern border. I commend and thank President Trump for stepping up and taking action, while my colleagues across the aisle have refused to appropriately and adequately address this crisis.

During our last hearing on this topic, I posed a question to Mr. Homan regarding all of the rhetoric surrounding the crisis at our southern border, and now I want to propose it—pose it to you.

Director Cuccinelli and Director Albence, has all of this rhetoric helped move the ball forward on solving our Nation's larger immigration issues?

Mr. CUCCINELLI. Madam Congresswoman, I cannot say that that is the case. Certainly there is extraordinary public interest in this subject, and so you expect a certain amount of rhetoric back and forth, but when it gets in the way of constructive discussions—and, in fact, it has, to some degree, in the very subject we are here talking about, deferred action, which we have focused on in the case, in medical cases—but I keep hearing reference to medical-deferred action, which does not exist, by way of example of inaccuracy, and that doesn't help the public discussion. And the hotter the rhetoric gets, the harder it is for people to step back and have a constructive discussion, even about our disagreements, and how to implement our agreements.

So, you know, the thrust of your question is hard to argue with, and I think all of us own some piece of that, but yet at USCIS we just keep pressing forward to do the best job we can, whatever that environment is.

Mrs. MILLER. Thank you. Mr. Albence?

Mr. ALBENCE. You are right in stating that we do have a border security crisis, both in terms of illegal aliens but also in terms of opioids and other contraband that is being smuggled into and out of this country. ICE has, and DHS, has, frankly, made clear, for many weeks now, that ICE was not involved in this process. Yet here I sit, while we have a tremendous crisis at the border, tremendous opioid crisis. Last year we seized—Mr. Roy, you mentioned several hundred pounds—we seized 11,700 pounds of fentanyl. We have communities that are suffering greatly from the scourge of this drug.

I am more than willing—and I probably have testified in front of Congress more than anybody from ICE within the past two to three years—I am more than willing to come and speak about anything that my agency does, and I am proud to do so. But when I am dragged into an issue that has nothing to do with what my agency does, it does take away—research, as I am sure you understand, preparation for a hearing, and paperwork, and time. I will also say that we did provide our documentation with regard to the subpoenas to DHS prior to the deadline that was established by this committee.

Mrs. MILLER. Well, as you may know, my district is ground zero with the opioid crisis, so it is very important to me. How has the strategy proposed by our President helped curb the flow of the illicit drugs?

Mr. ALBENCE. So, we have worked diligently, both domestically and internationally, with regard to trying to address the opioid crisis. As I mentioned, we seized more than—almost 12,000 pounds last year. That is a significant increase over the prior year. We initiated more cases into narcotics smuggling organizations.

We have expanded our border enforcement security teams to 69 this year, focusing a lot on the international mail facilities, because we know that a lot of the precursors and the material necessary to create these opioids is coming from overseas, often from China. So, we have dedicated the resources to where we think we will

have the most impact. Obviously, if Congress gives us more resources we can certainly do more.

Mrs. MILLER. Just as an aside, I even noticed, a year or so ago, in my neighborhood, all of a sudden there were all of these personnel surrounding a house, waiting on a mail delivery. So, it happens everywhere.

In your opening statement you also mentioned threats and violent attacks on ICE officers, personnel, and their families. Can you shed some light on that?

Mr. ALBENCE. It is unfortunate, and I think a lot of the danger that is being unnecessarily placed on our personnel stems from misinformation or vilification or disgusting terms that are used to describe sworn Federal law enforcement agencies and other Federal civil servants. We have seen instances over the past several months with officers being assaulted. We had—thankfully, nobody was hurt, but we had an individual shoot into one of our buildings at night, where our command center was, where we had officers working on getting criminal aliens out of the communities.

This heightened rhetoric—and I have testified in front of Congress before about this—needs to—if Congress does not like, or those in Congress do not like the laws that we enforce, they have every ability to change them. But we are not, as sworn law enforcement officers, in a position to pick and choose what laws we should enforce. And I wouldn't think Congress would want the Executive branch to override their decisions as to the laws they pass.

Mr. RASKIN. Thank you. The gentlelady's time has expired. Thank you for your questioning.

By the way, Mr. Albence, I appreciate very much more answer to Mrs. Miller. ICE is here because of answers that were provided on September 24 by USCIS, which said that ICE had participated in discussions leading up to the original decision. We are still trying to get to the bottom of the decision, and that is why we are here. We want to make sure that we have clarity as to what the policy is and we can figure out how this took place.

With that I go to Mr. Gomez for questioning for five minutes.

Mr. GOMEZ. Mr. Chairman, thank you so much, and thank you for clarifying that. I was about to do that but you beat me to it.

Mr. Albence, I think Democrats would agree that we want you to focus on preventing illegal drugs from entering this country, making sure that people that shouldn't be here are not here, people who are—and illegal guns. That is why we are having this discussion, because all of a sudden instead of focusing on that we are—this—there was a focus on kids who were terminally ill, right, these chronic illnesses that needed to be here. So, that is why we do want you to focus on the other stuff.

You mentioned that there was a discussion, and you couldn't get into how—you couldn't get into who was in the discussion, involved in the discussion, regarding deferred action. Could you tell me how far back the discussion, at least, started?

Mr. ALBENCE. It would have been—I don't have the exact dates, obviously. I wasn't party to it. But it would have been three ICE directors ago and one CIS director ago.

Mr. GOMEZ. How—it is hard to keep track how many directors this Administration has gone through, but how many months?

Mr. ALBENCE. Pushing probably a year and a half to two years.

Mr. GOMEZ. OK. So, about when this Administration—2018?

Mr. ALBENCE. I would say probably 2018.

Mr. GOMEZ. 2017. OK.

Mr. ALBENCE. Not 1917. 1918.

Mr. GOMEZ. 1918? OK. Thank you. I just wanted to get clarification on that.

I want to go into, just quickly, into the questions. Mr. Cuccinelli, you apparently sent an email to the American Immigration Lawyers Association saying, quote, “USCIS field offices are informing the public of the change in person and on individual basis,” end quote. This seems to be the approach that has led to panic and confusion, and I believe it was not acceptable.

Mr. Cuccinelli, according to a recent news report, you personally decided that it was not necessary to notify the public. Is that true?

Mr. CUCCINELLI. Congressman, it is our typical practice, when we change a process that doesn’t have—that isn’t based in regulation or law, to not do public notification.

Mr. GOMEZ. So, that is—that—

Mr. CUCCINELLI. So, that is the rationale for having done it on a case-by-case basis.

Mr. GOMEZ. So, you did not notify the public. OK. Why didn’t you think it was necessary? Because of the—it was just a process? That is it? That is the way you did it, even though it was dealing with people’s lives?

Mr. CUCCINELLI. Well, sir, everything we do deals with people’s lives, and, you know, in various ways. And—but as I said, typically when we are changing a process and not changing legal standards or something else of that nature, guidance to adjudicators, for instance, then we do not have public announcements.

Mr. GOMEZ. Your agency’s September 24 response to this subcommittee you said that you did not notify the public because this was merely a, quote, “operational change,” which is kind of what you are saying again.

Mr. CUCCINELLI. Yes, sir.

Mr. GOMEZ. Do you really think telling critically ill children and their families they have 33 days to leave the country or face deportation is merely an operational change?

Mr. CUCCINELLI. Well, you are referencing the form letters that got sent out, and the reality is that they weren’t—

Mr. GOMEZ. Don’t tell me that it wasn’t—

Mr. CUCCINELLI [continuing]. Facing—do you want me to answer the question?

Mr. GOMEZ. I have it right here. I have it right here.

Mr. CUCCINELLI. I know you do.

Mr. GOMEZ. OK. What does it say?

Mr. CUCCINELLI. It says you may get an NTA. That is what it says.

Mr. GOMEZ. No, it says very clearly you are not authorized to remain in this country. If you fail to depart the United States within 33 days of this letter, the U.S. may issue—may, but it is pretty scary. I mean—

Mr. CUCCINELLI. In the case—

Mr. GOMEZ [continuing]. What happens if the IRS sent you a letter saying, hey, if you don't report to the IRS we might begin to audit you. Would you be concerned about that?

Mr. CUCCINELLI. I would certainly pay attention to it. Yes, I would.

Mr. GOMEZ. Exactly.

Mr. CUCCINELLI. Perhaps it would help if you all knew that when anyone presents to USCIS, seeks a benefit, and does not obtain some status that has them at least not here illegally—

Mr. GOMEZ. I am going to reclaim my time—

Mr. CUCCINELLI [continuing]. We—we—

Mr. GOMEZ [continuing]. Because I have a few more questions.

Mr. CUCCINELLI [continuing]. We give them a similar letter.

Mr. GOMEZ. Let me ask you a few more questions. Did you approve this policy without even bothering to figure out how you would implement it?

Mr. CUCCINELLI. No.

Mr. GOMEZ. No, you did not. So, what was your plan to notify people requesting deferred action, in the general public, if they knew that USCIS would stop considering deferred action requests?

Mr. CUCCINELLI. Oh, as you noted earlier, our plan was to notify them one at a time, individually and directly.

Mr. GOMEZ. That was the plan. So, you had no plan but you did?

Mr. CUCCINELLI. That was the plan.

Mr. GOMEZ. Was to notify them.

Mr. CUCCINELLI. Yes.

Mr. GOMEZ. But then you also stated that the function would be transferred over to—

Mr. CUCCINELLI. No, no, no, no, no, no. No, sir. That is a dramatic mischaracterization, and I think it is how ICE got dragged into this in the first place. There was never any suggestion, anywhere, by anyone, that we were going to transfer some affirmative application process for deferred action over to ICE. That has never, ever been the case.

Mr. GOMEZ. But Mr. Albence just testified that he was first notified by a public affairs officer that learned about it through the press. That was not correct?

Mr. CUCCINELLI. It is not transferring this to ICE. ICE has their own discretionary authority, which Mr. Albence described. We were, to put it in simple terms, ceasing use of this discretionary authority—

Mr. GOMEZ. So—

Mr. CUCCINELLI [continuing]. Which dates all the way back to INS.

Mr. GOMEZ. When you decided to reverse the policy, why didn't you choose to issue a new—like a news alert, a public release, something that said that was being reversed?

Mr. RASKIN. The gentleman's time has expired. You may answer the question.

Mr. CUCCINELLI. Yes. If you are referring to the Secretary's reversal, we did do that.

Mr. GOMEZ. On the—regarding the September—

Mr. RASKIN. He is referring to the initial policy.

Mr. CUCCINELLI. Well, I thought I heard reversal.

Mr. GOMEZ. Your full policy reversal on September 18?

Mr. CUCCINELLI. Yes, sir. That was publicly announced.

Mr. GOMEZ. OK. I don't have that.

Mr. RASKIN. OK. The gentleman's time has expired. We will come to—

Mr. GOMEZ. Thank you so much.

Mr. RASKIN. Thank you. We will come to Mr. Roy for five minutes of questioning.

Mr. ROY. Thank you, Mr. Chairman. Mr. Albence, it is—falls under ICE for removal proceedings. Correct?

Mr. ALBENCE. That is correct.

Mr. ROY. Mr. Cuccinelli, let me ask you a question. Has Congress, this august body, created a status for individuals who overstay visa or come here illegally?

Mr. CUCCINELLI. No.

Mr. ROY. Is there a law directing USCIS to give status to any of the individuals we are talking about here today, that Congress has made clear and put into law?

Mr. CUCCINELLI. No.

Mr. ROY. My colleagues mention a compelling reason to be here as a standard of some sort. Is that a visa category?

Mr. CUCCINELLI. No, and it is very difficult to talk about at a policy level, about how it would affect any particular case, because by definition it is case by case.

Mr. ROY. Is it a status?

Mr. CUCCINELLI. No.

Mr. ROY. Is it as a human being, as a Christian, or as someone of faith, or of, you know, looking at someone through the eyes of a human being, something that is concerning, a compelling reason to be here?

Mr. CUCCINELLI. Sure.

Mr. ROY. Somebody who is sick.

Mr. CUCCINELLI. Sure. Absolutely.

Mr. ROY. Is anything in the letter that was sent on August, whatever it was, 7, factually untrue?

Mr. CUCCINELLI. No.

Mr. ROY. Was it legally correct?

Mr. CUCCINELLI. Yes.

Mr. ROY. Might people quibble over tone—

Mr. CUCCINELLI. Oh, sure.

Mr. ROY [continuing]. But it was factually correct?

Mr. CUCCINELLI. Sure.

Mr. ROY. Now you said you made a decision to change procedures.

Mr. CUCCINELLI. Yes.

Mr. ROY. My perception of the procedures, that I can try to figure out the policy, which is what Congress should theoretically be in the job I am doing, if one overstays a visa or comes here illegally, and you face a health issue and you are getting care—in the process that you were here, you had status, you were here legally—or you had status and you were getting care and now you are overstaying your visa, and the process, really, is essentially to go to USCIS and to beg for some sort of intermittent, two-year deferral from an entity, USCIS, without it being really rooted in any law

that Congress has put forward, and you seek deferred action from, in essence, ICE, by way of a USCIS letter, when USCIS doesn't actually prosecute and, therefore, you are effectively leaving these individuals in limbo. Do I have roughly the characterization correct?

Mr. CUCCINELLI. Yes, and it might help people to understand, the reason I said this goes back to INS days, back in INS, the same person, as a regional director, had the prosecutorial authority that ICE now manages, and the USCIS authority, at the same time. That was all in one person.

When INS was broken up, in the initial distribution of authorities, this was just given to the three agencies, and I don't think with much consideration of what is the difference between CBP, ICE, and USCIS, as it relates to something like we are talking about.

Mr. ROY. So, in trying to clarify the procedures, were you—can you clarify why you were trying to clarify those procedures?

Mr. CUCCINELLI. So, several years ago the President indicated, publicly, that he wanted us to stop utilizing essentially expanding the law to provide benefits that aren't provided by Congress or by regulation, and that has been an ongoing process at USCIS. There are lots of little things that have already taken place, all publicly known. This is along those lines, which is why I understand Francis Cissna, then the director, all the way back at the end of 2017, in conversations with field leadership, determined that this was one of those types of, just descriptively, authorities, and to start working to back out of utilizing that authority because it wasn't appropriate for USCIS' mission.

Mr. ROY. Isn't this at the core of the questioning here, right? I mean, on so many levels I get frustrated that Congress doesn't act. I get frustrated that Congress doesn't act with respect to the authorization of the use of military force. Eighteen years after we passed the first one in 2001, we have men and women enlisting into the military who were not alive when we passed that authorization of force.

In the spring I introduced legislation called the Article One Act, that would have national emergency declarations expire after a year. I happen to believe that regardless of who is in the White House, Congress should reclaim its authority. Congress should act. Congress should do what we are supposed to do, which is pass laws and then hold you all accountable for carrying out those laws.

And it strikes me that part of the problem we have here, in this case, but also with things like DACA and DAPA, right, so let's—you know, in terms of whoever is in the White House—it doesn't matter to me—like let's have clarity in the law, and let's not expect bureaucrats, respectfully, those in the agencies, to be making policies on the margins of the law that Congress passes.

So, if we have, in the case of DAPA and DACA, which when I was the first assistant attorney general of Texas we litigated, and it went to the U.S. Supreme Court, the question was whether or not conferring status and benefits to a class of individuals is something you could plausibly say is actually prosecutorial discretion. It is ridiculous for Congress to be building a policy on the back of asking bureaucrats to make those decisions when we hold the pen, and

we could decide what laws we want to put in place. Would you agree with that?

Mr. CUCCINELLI. Yes. You are not building a policy. You are telling us to implement a policy. You are not giving us standards. You are asking us for standards that don't exist in law. And as I said earlier, pass a law. I promise you we will implement it.

Mr. RASKIN. All right. The gentleman's time has expired. I want to thank Mr. Roy for his thoughtful comments.

I want to—I do want to say I concur with a lot of your sentiments about Article I and the exercise of congressional power. On the DACA question, the House of Representatives has passed the Dream Act and it is over in the Senate, so we are waiting for Senate action. So, it takes two to tango here in the U.S. Congress. It is not just the House side. It is the Senate as well, in order to have effective Article I action.

With that I will recognize Ms. Wasserman Schultz for her five minutes of questioning.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

Mr. Cuccinelli, under your leadership USCIS has actually bragged about systematically restricting legal immigration, and I think it is important for us all to be clear about what you have been aiming to accomplish. My constituents, Americans across the country, are not fooled by this Administration's specious attempts to distinguish between documented and undocumented immigration. You and Mr. Trump don't want anyone who looks or talks differently than Caucasian Americans to be allowed into this country.

Mr. CUCCINELLI. That is false.

Ms. WASSERMAN SCHULTZ. I am sorry. Please don't interrupt me, and I would like the time to—

Mr. CUCCINELLI. That is defamatory.

Ms. WASSERMAN SCHULTZ. Excuse me. There is nothing defamatory about it, and—

Mr. RASKIN. The gentlelady controls the time and the witness will get a chance to respond.

Ms. WASSERMAN SCHULTZ. Thank you very much. You want to block all immigration and make life harder for immigrants, and you have demonstrated that you will pursue this heinous white supremacist ideology at all costs, even if it means making critically ill children your collateral damage in the process. And this goes to a comprehensive pattern of harm at USCIS under your leadership.

In August, you announced the Administration's new public charge rule, for example, which would deny legal status to immigrants who use social services. Mr. Cuccinelli, has USCIS done any analysis of how many children may stop receiving critical services due to fear of losing legal status under this rule? I would like you to answer that question please.

Mr. CUCCINELLI. After declaring that I am not a white supremacist, that you alluded—

Ms. WASSERMAN SCHULTZ. You have had white supremacist—

Mr. CUCCINELLI. Nor is the President.

Ms. WASSERMAN SCHULTZ. OK. Facts matter.

Mr. CUCCINELLI. Yes, they do. Yes, they do. Truth matters.

Ms. WASSERMAN SCHULTZ. That is why I am stating them here.

Mr. CUCCINELLI. Yes, no. You certainly are—



Ms. WASSERMAN SCHULTZ. Please answer the question. Please answer the question.

Mr. CUCCINELLI [continuing]. You are certainly——

Ms. WASSERMAN SCHULTZ. How many children——

Mr. CUCCINELLI [continuing]. Cloaked in legislative privilege, but that means you can get away with not telling the truth.

Ms. WASSERMAN SCHULTZ. Reclaiming my time. How many children may stop receiving critical services due to fear of losing legal status under this rule? Yanking social services.

Mr. CUCCINELLI. You are asking a public charge.

Ms. WASSERMAN SCHULTZ. That is right.

Mr. CUCCINELLI. I don't have that information in front of me.

Ms. WASSERMAN SCHULTZ. Does anyone behind you have the information?

Mr. CUCCINELLI. We came to talk about deferred action today.

Ms. WASSERMAN SCHULTZ. I am able to ask any question I would like in your jurisdiction.

Mr. CUCCINELLI. That is fine, but I——

Ms. WASSERMAN SCHULTZ. You have a policy——

Mr. CUCCINELLI [continuing]. Am here to accommodate what the subcommittee wants.

Ms. WASSERMAN SCHULTZ. No. Reclaiming my time. You are the head of USCIS, and you are going to tell me that you established a policy on the public charge rule and you don't know how many children, off the top of your head, it affected? Did you not think it through before you insisted that——

Mr. CUCCINELLI. That rule——

Ms. WASSERMAN SCHULTZ.—was the policy?

Mr. CUCCINELLI [continuing]. That rule is 1,000 pages long, ma'am.

Ms. WASSERMAN SCHULTZ. It is a pretty—so, you know, when you are talking about affecting children, one would think that someone in your position, if you were going to establish such a heinous policy, with such far and significant reach, and potentially harm thousands of children, that you would know how many children it would affect.

Mr. CUCCINELLI. So——

Ms. WASSERMAN SCHULTZ. You don't know?

Mr. CUCCINELLI [continuing]. The—what you refer to as heinous policy is a 1986 law——

Ms. WASSERMAN SCHULTZ. OK. I am not asking you for a commentary——

Mr. CUCCINELLI [continuing]. Passed on——

Ms. WASSERMAN SCHULTZ.—On the policy.

Mr. CUCCINELLI [continuing]. A wildly bipartisan basis.

Ms. WASSERMAN SCHULTZ. OK. But you have implemented a policy that yanks social services and denies the ability——

Mr. CUCCINELLI. It denies nothing.

Ms. WASSERMAN SCHULTZ.—of children legal status to immigrate here if they are going to use social services. In fact, advocates have reported that immigrant families are terrified and that some have already dropped their children from essential programs, like Medicaid and Temporary Assistance for Needy Families.

When you announced this rule you were asked whether it was consistent with the poem under the Statue of Liberty, which reads, quote, "Give me your tired, your poor, your huddled masses yearning to breathe free." In response you said the poem was only referring to people coming from Europe, and people coming from Europe would not be a public charge.

Mr. CUCCINELLI. I did not say that.

Ms. WASSERMAN SCHULTZ. That is what you said.

Mr. CUCCINELLI. That is not what I said.

Ms. WASSERMAN SCHULTZ. Do you think—well, it certainly was the implication.

Mr. CUCCINELLI. No, no, no. It is what you would like to broadcast, but that is—

Ms. WASSERMAN SCHULTZ. No, no. I—

Mr. CUCCINELLI [continuing]. Absolutely inaccurate.

Ms. WASSERMAN SCHULTZ.—I heard you say it. I heard you defend it. And I want to know whether you think our immigration policies should treat immigrants from Europe differently from other immigrants from other parts of the world.

Mr. CUCCINELLI. No.

Ms. WASSERMAN SCHULTZ. And is the purpose—you don't think so?

Mr. CUCCINELLI. Correct.

Ms. WASSERMAN SCHULTZ. So, then I am not sure why you made that statement—

Mr. CUCCINELLI. Well, I didn't.

Ms. WASSERMAN SCHULTZ.—because it certainly made it seem like—

Mr. CUCCINELLI. You—you—you—

Ms. WASSERMAN SCHULTZ. You did. You said the poem—

Mr. CUCCINELLI [continuing]. You appended your own—your own piece—

Ms. WASSERMAN SCHULTZ. No, no, no.

Mr. CUCCINELLI [continuing]. To the end of that.

Ms. WASSERMAN SCHULTZ. You said the poem was only referring to people coming from Europe. There is no doubt about that.

Mr. CUCCINELLI. You added, to the end—

Ms. WASSERMAN SCHULTZ. And—and—

Mr. CUCCINELLI [continuing]. Of the statement—

Ms. WASSERMAN SCHULTZ.—and the implication was that people from Europe were not likely to be a public charge.

Mr. CUCCINELLI. No, it was not.

Ms. WASSERMAN SCHULTZ. Is this—were you attempting to shut down the American dream for immigrants who may not be rich or white, with this policy?

Mr. CUCCINELLI. No. Obviously.

Ms. WASSERMAN SCHULTZ. OK. We are the wealthiest country on earth. Surely we can live up to the spirit of Lady Liberty and open our arms to immigrant families who just want to make a better for their children, and not yank the rug out from under them, as you have, with this heinous public charge policy, and the intimidation tactics that you have used to make sure that people understand that they are not welcome here if they are brown or if they need help.

Mr. CUCCINELLI. That is false.

Ms. WASSERMAN SCHULTZ. Thank you. I yield back the balance of my time.

Mr. CUCCINELLI. That is utterly false.

Ms. WASSERMAN SCHULTZ. It is not false.

Mr. RASKIN. The lady is—

Ms. WASSERMAN SCHULTZ. The time is not yours.

Mr. CUCCINELLI. With the law back to—

Ms. WASSERMAN SCHULTZ. Thank you. I yield back the balance of my time.

Mr. RASKIN. The lady has yielded back her time.

Ms. WASSERMAN SCHULTZ. And the witness does not have the floor.

Mr. RASKIN. I will now recognize Mr. Clay, the gentleman from Missouri, for his five minutes of questioning.

Mr. CLAY. Thank you, Mr. Chair, and thank you for conducting this hearing. The American Academy of Pediatrics, or AAP, represents over 67,000 pediatricians across the country. After USCIS decided to deport critically ill children, AAP wrote a letter to you, Acting Director Cuccinelli, and to Acting DHS Secretary Kevin McAleenan, about the decision.

AAP wrote, and I quote, “We implore you to reverse this decision so that countless children and their families can continue to apply for deferred action. For some children, this is a matter of life and death.”

Mr. Cuccinelli, have you read that letter?

Mr. CUCCINELLI. Yes, sir.

Mr. CLAY. Turn on your mic for me, please.

This subcommittee received 15 more letters from state chapters of the American Academy of Pediatrics in advance of our hearing in September. These letters include truly heartbreaking stories of children and families thrown into fear for their lives because of this situation. Doctors in Massachusetts reported that the family of a 10-year-old who had been blinded by eye cancer had been ordered to leave the country, along with the family of a seven-year-old suffering from severe epilepsy.

Mr. Cuccinelli, did you know about either of those—these cases, when USCIS decided to end deferred action?

Mr. CUCCINELLI. Congressman, we don’t read individual cases when making a procedural decision like that, so the answer to your question is no.

Mr. CLAY. Did you think about maybe these kids needed some life-saving medical attention, that they could only get here, in this country?

Mr. CUCCINELLI. Well, Congressman, we knew that as a practical matter they had come to us seeking deferred action affirmatively. They were not in removal proceedings. None of the cases we have talked about before USCIS were in removal proceedings. None were threatened with deportation. I have heard ICE people say that they were not on—you know, none of these people would be on any targeted list. So, when we withdrew from the exercise of deferred action in these circumstances, we knew that deferred action continued to be available to every single one of these sympathetic families.

Mr. CLAY. OK. Listen to this. Pediatricians in Indiana reported that parents of at least two infants in a neonatal intensive care unit received letters from USCIS, telling them to leave the country within 33 days. Imagine that. You have just had a child that is so sick she is in NICU. At the moment, your child's health should be the only thing you have to worry about. The U.S. Government orders you to pack up and leave the country.

Mr. Cuccinelli, did you know about these cases before USCIS decided to end deferred action?

Mr. CUCCINELLI. My answer is the same as the earlier examples.

Mr. CLAY. Which is?

Mr. CUCCINELLI. We do not look at particular cases when making process decisions.

Mr. CLAY. So, you don't care.

Mr. CUCCINELLI. No, you asked——

Mr. CLAY. No, I am asking.

Mr. CUCCINELLI. You bet I care.

Mr. CLAY. Do you care that——

Mr. CUCCINELLI. You bet I care.

Mr. CLAY [continuing]. Somebody is in a——

Mr. CUCCINELLI. You bet I do.

Mr. CLAY [continuing]. In a——

Mr. CUCCINELLI. And it would be great——

Mr. CLAY [continuing]. Neonatal intensive care unit, about to die?

Mr. CUCCINELLI [continuing]. If we had a law—if you cared enough to pass a law, we would enforce it.

Mr. CLAY. Let me ask you this. What would you recommend those parents do when they receive that letter?

Mr. CUCCINELLI. What, what most——

Mr. CLAY. What should they do?

Mr. CUCCINELLI [continuing]. What—what we expected most of them to do was very little, candidly. We send a lot of those letters out, and not in circumstances like we are talking about.

Mr. CLAY. What do you expect them to do? Do you want them to leave the country? Pack up their stuff? Take their sick child and go?

Mr. CUCCINELLI. Either that or make their case in the immigration process, where it is appropriate to do so——

Mr. CLAY. All in the middle of——

Mr. CUCCINELLI [continuing]. To stay.

Mr. CLAY [continuing]. All in the middle of them being there trying—hoping and praying that they save their child's life?

Mr. CUCCINELLI. Which is why deferred action continues to exist elsewhere——

Mr. CLAY. How cruel. How cruel. Really? Really? I don't believe this. I yield back.

Mr. RASKIN. Thank you. The gentleman's time has expired. Thank you for your questions, Mr. Clay.

Mr. Grothman has joined us and would like to waive on to the committee, and without objection we will waive him on to the committee, or to the subcommittee, for purposes of questioning.

Mr. Grothman, you are recognized now for five minutes.

Mr. GROTHMAN. First of all, I would like to thank you for all the business you—all the work you do. I have been down on the border myself. I know some of the challenges that, you know, you guys are dealing with, with the illegal immigrant population, and I think it is very underappreciated, I think, given some of the stories I have heard. While I respect law enforcement, in general, there a few people who have to deal with as much as you folks do.

Mr. Albence, in your opening statement you mentioned violent attacks and threats on ICE offices and personnel and their families. Could you elaborate on that a little bit?

Mr. ALBENCE. Certainly. We had an individual, and unfortunately has yet to be caught, that fired a weapon into one of our facilities where we had officers working. We have had protest groups lay our buildings under siege, threatening individuals at work there, aggressive actions against them, many of whom—we have to remember, many of the people that work for us are not law enforcement officers. We have attorneys. We have mission support specialists, many of whom served their country and their government 30, 40, 50 years, and have done nothing but honorable work that entire time.

I think reckless language used to denigrate them as individuals, and the service that they have done, only serves to heighten and stir into action some people who might not be of a right mind.

Mr. GROTHMAN. How is this committee's insistence on continuing hearings on this issue impacting you?

Mr. ALBENCE. Well, as I mentioned previously, and as DHS has made clear, this was not anything that was involved in the decision on this process. It was CIS'. It is a CIS process that they made the decision on, as Mr. Cuccinelli himself has spoken, that this is his decision.

As you can understand, with an agency 20,000 strong, enforcing more than 400 criminal laws, things that serve as distraction, you know, are very difficult for us to try to keep focused on the very important tasks we have, whether it is with regard to getting criminal aliens out of our communities, whether it with regard to the opioid and fentanyl epidemic, whether it is dealing with child predators and sexual exploitation. And even with all this, the dedicated men and women of ICE show up every day and do the best that they can for this country and uphold the oath that they took.

Mr. GROTHMAN. I am sure the vast majority of people from my district respect what you are trying to do, and I think it is very tragic when other people go after you.

I will give you another question. You have been in the news a lot lately, talking about sanctuary cities, the harm they cause American families, both citizens and immigrants. I think the issue would be better explored by the Oversight Committee, the House Oversight Committee overall. Would you agree?

Mr. ALBENCE. I would welcome help from anyone in Congress that would like to give it to us.

Mr. GROTHMAN. Can you speak to the harms that sanctuary cities cause to us, cause to American citizens, in general?

Mr. ALBENCE. Certainly. And we had our EID testify, I believe, in front of the Senate Judiciary a few weeks ago. There are, every day, right now, as we speak, convicted criminal aliens that are

walking out the front doors of jails because we have jurisdictions that will not cooperate with us. Unfortunately, many of these individuals will go out and commit further crimes. Those are preventable crimes. Those are preventable victims. And, unfortunately, we have more jurisdictions that are choosing not to cooperate with us, choosing to put politics over public safety, and putting their communities in harm's way, rather than remembering why we are here, as law enforcement officers, and that is to keep every community safe and every person within that community.

Mr. GROTHMAN. Yes. Just horrible. I sometimes think of it as like my—sometimes these people who don't like putting criminals in jail. They don't live anywhere where the criminals live. It is all fine and good to send criminals out—

Mr. ALBENCE. It is hard for me to understand sometimes, where you have a jurisdiction which just arrested this exact same individual for a criminal violation, enforcing the laws that they were sworn to uphold, yet when we come to take enforcement action against that exact same individual, sometimes hours later, to enforce the laws that we are sworn to uphold, we are prevented from doing so.

Mr. GROTHMAN. Well, I think—my guess is part of the answer, the people who prevent you from doing so live in the nicer parts of the communities, where they don't have to worry about the crimes being committed.

But at a Senate Judiciary Committee last week, one of our colleagues seemed confused about detainers and sanctuary cities and that ICE was looking for local law enforcement to detain innocent people. Could you set the record straight, or maybe kind of educate some of these Congressmen on what is going on?

Mr. ALBENCE. So, just like another law enforcement agency, when we lodge and detain, or we do so based on probable cause, most of the individuals against whom we lodge and detain are convicted criminals. On the civil immigration enforcement side, 70 percent of the people that we arrest come out of state jails and prisons. Ninety percent of the people that we arrest—and this has been consistent for the better part of the last decade—are a convicted criminal, have a pending criminal charge.

Then two smaller buckets within that 90 percent are individuals who have been deported previously and illegally re-entered, which is a Federal felony and one which we prosecute aggressively, almost 7,000 times in 2018, and those that are immigration fugitives, those who have their day in immigration court, gone through the entire court process, and now have avoided complying with that order. We have more than 576,000 immigration fugitives, a number that grows every day.

Mr. RASKIN. Thank you, Mr. Albence. The gentleman's time has expired. I now recognize the vice chair of the committee, Ms. Ocasio-Cortez, for her five minutes of questioning.

Ms. OCASIO-CORTEZ. Thank you, Mr. Chair. Mr. Cuccinelli, I just wanted to confirm something that I had heard earlier with my colleague from Massachusetts. Did I hear correctly that it is your testimony today that you were the individual who made the decision to end deferred action?

Mr. CUCCINELLI. Yes. I'm the acting director when we implemented this, and I am responsible for that.

Ms. OCASIO-CORTEZ. OK.

Mr. CUCCINELLI. So, at that time it is my decision.

Ms. OCASIO-CORTEZ. So, it was your decision.

Mr. CUCCINELLI. Yes, ma'am.

Ms. OCASIO-CORTEZ. OK. Thank you. I actually greatly appreciate that, because we have been trying to get to the bottom of that question for quite some time, and I am sure it will help us in future examinations of this issue.

Mr. Cuccinelli, in your agency's September 24 response to this committee, you stated that USCIS did not engage external stakeholders to solicit feedback on the anticipated consequences of your policy change. Why didn't you do that?

Mr. CUCCINELLI. For something like this, where we are changing a process and we are not operating off of a legal or regulatory foundation, it is not a common practice—I am not aware of any other instances where we would seek that kind of input.

Ms. OCASIO-CORTEZ. So, you did not consider the impact your decision would have on critically ill children before making this decision?

Mr. CUCCINELLI. We understood that even with USCIS backing out of the role of affirmatively granting deferred action in a limited number of cases, that that opportunity still existed within the entire DHS system.

Ms. OCASIO-CORTEZ. I see. Mr. Cuccinelli, in August you told Fox News that you, quote, "see USCIS as a vetting agency, not a benefits agency." But Congress created USCIS separate from ICE and CBP to serve immigrants. In fact, it is USCIS' own policy manual that explains that Congress created the agency to, quote, "focus exclusively on the administration of benefit applications."

So, Mr. Cuccinelli, USCIS is a benefits agency. Why do you consider it not to be one?

Mr. CUCCINELLI. So, perhaps the best way to put that is that I would characterize us as a vetting agency first, but also a benefits agency, because you all in Congress have laid out a whole lot of different benefits that we adjudicate for immigrants and potential immigrants to this country. So, that is part of our business and mission, and my phrasing is to emphasize the role we also play, as an element of Department of Homeland Security, in ensuring the safety and security and integrity of both the country and that immigration system.

Ms. OCASIO-CORTEZ. So, Mr. Cuccinelli, I think what is tough here is that—and while I respect that Congress hasn't done its job, in many respects, in defining immigration policy, it has been a failure for a very long time, for Congress to be able to define a lot of policies correctly. But we still have created a mission for USCIS through which the agency can interpret the spirit of this law. It says right here, in USCIS' website, the agency's core values are defined as integrity, respect, innovation, and vigilance. And there is a reason that USCIS is separate from ICE and CBP. I don't understand how deporting critically ill kids is consistent with any of these values.

Mr. Cuccinelli, do you believe that you treated children with cancer, cystic fibrosis, and other diseases with the dignity and courtesy of the mission of this agency, when you decided, in secret, to end consideration of deferred action and ordered them to leave the country within 33 days or face deportation?

Mr. CUCCINELLI. Yes, there was nothing secret about what we did. Because it was a process change, we made individual notifications. But you, yourself, just referred to the ability to view the mission and the spirit, and it is one chain after another. There is no law or regulation in any of that. So, we do the best we can, fulfilling our role and limiting ourselves to our role, particularly when there is continuing avenue—

Ms. OCASIO-CORTEZ. Right, but—

Mr. CUCCINELLI [continuing]. Recourse for these folks.

Ms. OCASIO-CORTEZ [continuing]. But you have discretion in your role. So, here is the thing that I can't figure out, is that you have thousands, tens of thousands, hundreds of thousands of cases, if not millions.

Mr. CUCCINELLI. Millions.

Ms. OCASIO-CORTEZ. Millions of cases in this country. And you decided to prioritize the deportation of critically ill kids, and I am trying to figure out why.

Mr. CUCCINELLI. So, we did not do that. We have gone through—

Ms. OCASIO-CORTEZ. Out of all the—but you did—out of all of the—

Mr. CUCCINELLI [continuing]. The process—

Ms. OCASIO-CORTEZ [continuing]. Reclaiming my time. Reclaiming my time, with respect.

Mr. CUCCINELLI. Well, so you asked a question—

Ms. OCASIO-CORTEZ. But with respect—

Mr. CUCCINELLI [continuing]. And I should answer the question.

Ms. OCASIO-CORTEZ [continuing]. With respect, and I will give you a moment. I will give you a moment. With respect. When you make this decision, at a time, at a specific time, you are making this decision with—at the cost of other decisions. So, why did you make this decision to deport critically ill kids before almost all the other decisions that you had to make as an agency?

Mr. CUCCINELLI. So, we didn't decide—

Mr. RASKIN. The gentlelady's time has expired. You can go ahead and answer the question.

Mr. CUCCINELLI [continuing]. We didn't decide to deport anyone. We made the decision at the end of a long road that predates me coming into my current position, and discussions across DHS. But it was on August 7 and I was the director, so at that point it is my decision.

One of the things that Dan Renaud testified to, from USCIS, at the last hearing, is that, to your point, there are tradeoffs, as you note, quite correctly, and handling 1,000 of these cases absorbs resources, which, by the way, we are not paid for, that would otherwise deal with approximately 2,000 naturalization cases. Now we did more naturalizations last year than the whole decade. Nonetheless, there are still more pending, and we—I hear from many of



you all, legitimately, about concerns about backlogs in some areas. We have improved in many areas.

But we have limited resources, and this is an undertaking by USCIS that was and is going on, that has never been assigned by Congress, that has never been part of a regulation, and the authority to grant the same relief continues to exist even had USCIS not continued to participate in the way that we now do again.

Mr. RASKIN. Thank you, Mr. Cuccinelli. The gentlelady's time has expired.

The gentlelady from the District of Columbia, Eleanor Holmes Norton, is recognized for her five minutes of questioning.

Ms. NORTON. I want to thank Chairman Raskin for really this very necessary, I must say painfully necessary, hearing.

Of course, today's witnesses had not only the hearing before, because they said they were in the midst of ongoing discussions with DHS to resolve it, and now, of course, they say it has been resolved, so why in the world should we come to Congress, apparently not understanding the role of Congress, and making sure that a matter does not reappear of this kind.

Mr. Cuccinelli, you sent a letter to Chairman Raskin, the date was September 19, informing him that DHS Secretary McAleenan had—and here I am quoting—“directed you USCIS to open consideration of non-military deferred requests,” sick children of the kind under investigation today, “on a discretionary, case-by-case basis.”

Now DHS has provided the committee with a September 18 memo from the acting secretary to you, providing the same directive. Why was the decision made to reverse the policy on deferred action—to defer action on a case-by-case basis, when it came to these sick children?

Mr. CUCCINELLI. That was not a change, Congresswoman Norton. It was always case-by-case. Deferred action, by definition, is a case-by-case consideration.

Ms. NORTON. But there was a category.

Mr. CUCCINELLI. No, ma'am, and there was no medical deferred action. You sort of implied in your comment that this was just about people seeking medical concerns, and—

Ms. NORTON. Sick children. Sick children. We are interested in the sick children.

Mr. CUCCINELLI. Well, they are among—they are among those. We also get ADHD filings, and we have filings for people who are getting older, and that is their basis for their claim.

Ms. NORTON. So, you—

Mr. CUCCINELLI. So—

Ms. NORTON [continuing]. So, there was no directive whatsoever to reverse the policy to case-by-case, and we did not understand the policy to be anything—to be case-by-case before. So, you are telling us it has always been case-by-case—

Mr. CUCCINELLI. Yes.

Ms. NORTON [continuing]. Is your testimony.

Mr. CUCCINELLI. Yes.

Ms. NORTON. Obviously, you have to look at every case, but we are looking at the category of sick children. I want to—I am asking you because of a decision that directly conflicts with the recommendation your agency reportedly prepared for the acting Sec-

retary just 10 days prior to reversal. And I am referring to a memo that was apparently prepared by your policy and strategy chief, for a September 9 meeting with Secretary McAleenan.

You were selected to lead that meeting. Are you familiar with that memo?

Mr. CUCCINELLI. I don't have it memorized but I am familiar with what you are referring to.

Ms. NORTON. The USCIS has not produced that memo for us, but the press reports indicated that the memo recommended that the Secretary revoke USCIS authority to grant requests for deferred action. Reportedly it said, in here—here is the quote from the memo—“runs counters to the President's agenda to enforce our existing laws and potentially contrary to his goal of making sure aliens are self-sufficient,” end quote.

Mr. Cuccinelli, did you direct your policy and strategy chief to send that memo that I just quoted from?

Mr. CUCCINELLI. Well, we certainly did send a memo with recommendations to the Secretary before he made his ultimate decision. It included six or seven, as I recall, different alternatives.

Ms. NORTON. Did you agree with that recommendation, that the authority of USCIS to grant deferred action requests should be revoked? Particularly I am interested, even as to these sick children.

Mr. CUCCINELLI. It was a broader comment that, with the break-up of INS, this authority was appropriate for the prosecutorial arms of the Department of Homeland Security.

Ms. NORTON. So, you did not think that, even with respect to sick children?

Mr. CUCCINELLI. Not—and not appropriate for USCIS. So, it wasn't—we didn't—it wasn't just related to this category. And, of course, you mentioned sick children, which I, and I am sure everyone else at USCIS are very sympathetic to, but that is a category. That is exactly the kind of thing we would look for in legislation as a category. We do not have the power or authority to create a categorical grant of a benefit.

Ms. NORTON. Mr. Chairman, I just want to indicate that, of course, there is administrative authority to create categories, but if they need legislation maybe we need to tell them what they already know.

I thank you very much, Mr. Chairman.

Mr. RASKIN. The gentlelady yields back, and perhaps you could pursue this with Ms. Norton, who is the chair of the EOC, so she knows administrative law and policy very well. But it is an interesting conversation.

Let's see. We come now to Mr. DeSaulnier. He recognized for five minutes of his questioning.

Mr. DESAULNIER. Thank you, Mr. Chairman. Mr. Cuccinelli, it is a little difficult for me to sit here and listen to you say it is the Congress' responsibility, when this Administration has, and the President has publicly said that the second article of the Constitution tells—gives him the authority to do whatever he wants. And the amount of discretion that you have tried to—the Administration, I should say—in this field, have been challenged in court. The courts have so far upheld things like funding of the border wall, separation of children.

So, you are an attorney. I assume you believe in precedence. Deferred action started in the early 1970's, I was told, in the Nixon administration. There have been iterations all along, allowing for discretion, administrative discretion. And now suddenly you say the Congress needs to act.

I would like—as I said at the last hearing—the historical perspective, at least in the last five sessions, Senate Bill 744, the so-called Gang of Eight bill, four Republicans, four Democrats, passed out of the House with bipartisan support, led by Senators Schumer and Durbin and McCain and Rubio. Then it got over here and we are told now, through articles in the press and interviews by Mr. Bannon, that he and others went to elements of the Republican caucus, and I am not privy to this, but argued that that bill should never come up, because it was a good wedge issue for politics. So, it never came up.

Recently, last session, Will Hurd, a very well-respected Republican member, and Pete Aguilar, introduced a very similar bill. Again, the speaker never brought it up.

So, any member is free to put a piece of legislation in and let the public see what it is, and I would encourage my colleagues on the other side to do that, and I would be happy to work with them. But this context that it is everyone's fault defies what we have been told in the press, about the dynamics in the other caucus.

So, having said that, I want to turn my attention specifically to one case. You have talked about process, and you have been very dispassionate about it. Mr. Renaud, who was here last time, in the case of Isabel Bueso, who has become—the family has become dear friends—they came here legally, by the way. They were here legally, under a tourist visa. They were invited to the United States under a Federal program, to be part of a medical trial that has kept her alive.

She was seven years old when she came here from Guatemala. She is now 24. Her doctor, a very well-respected doctor at the University of California at San Francisco children's facility in Oakland, says if she goes back to Guatemala she will die, because she can't get the weekly treatment she gets.

So, you said all of these people were here legally. In this case, at least, that is not the truth. Now maybe we can argue some of the parameters of that, but I want to read the letter that she got, as I understand it, at your direction from the field office director in San Francisco.

“Dear Ms. Bueso, thank you for the request for deferred action for U.S. Citizenship and Immigration Services field offices. No longer considered deferred action request, except those made according to the U.S. Department of Homeland Security policies for certain military members. The evidence of record shows that when you submitted your request you were lawfully present in the United States,” so even your department recognizes, contrary to your earlier comments, that she was here legally. “Your period of authorized stay has expired. You are not authorized to remain in the United States. If you fail to depart the United States within 33 days of the date of this letter, USCIS may issue a notice to appear and commence removal proceedings against you in the immigration court.”

So Ms. Bueso, she was asked at the last meeting how did she take this when she received this letter. She was at the hospital, receiving treatment, her mom gave her the letter, and she told us that she vomited, that she was so upset they had to take—

So, how can you, as dispassionately as you describe this, Ms. Renaud said—I am not finished, and there is a process here, and it is Congress' process—he said, Mr. Grothman, and he wouldn't answer my questions, but questions of Mr. Grothman, he said, “Oh, there would have been a file. We would have known about her. We would have pulled the file and that should have gone up the chain of command.” So, did you ever hear about Isabel Bueso before you made this direction?

Mr. CUCCINELLI. Before this was decided? No, sir.

Mr. DESAULNIER. Did you ever think of the consequences for people like her? Did you ever think that with all the other things you have to do—and I respect that, and I also respect the fact that Congress needs to come together. But you still have consequences, and as the record shows, multiple administrations—and she was—she, in her case, was approved for deferred action by your administration. So, all of a sudden things changed. She is here, she is under a program, she is saving people's lives, Americans' lives and others, under a much-respected American Federal Government program, and then she gets this letter. You are responsible for that. Would you care to respond?

Mr. CUCCINELLI. When we withdrew on August 7 from granting affirmative requests for deferred action, we knew that that authority continued to exist, and anyone who would have received such a letter could have or would have been in the process where they could also get it from a more appropriate source other than us.

And as Mr. Renaud, who you referenced, also said that day, the adjudicator who would have been dealing with a particular case, I believe is what Mr. Renaud was referring to, would have known about it. That doesn't mean that all however many hundred cases are all known at any given time by a regional director or the head of field operations or myself, at any given time. And usually only a small portion of them are ever learned about.

Mr. RASKIN. The gentleman's time has expired, and I am going to recognize Mr. Cloud now. He has just arrived.

Mr. CLOUD. Thank you, Chairman. I apologize for tardiness. I have been in the SCIF. I would like to yield time to Mr. Roy.

Mr. ROY. I thank my friend from friend from Texas. I would have been in the SCIF, but we have had competing circumstances here. So, I would just ask a couple quick questions. Mr. Cuccinelli, I have heard a few of my colleagues and other side of the aisle, particularly my colleague from New York, talk about benefits. Can you clarify for the record here whether or not there is or is not a benefit being conferred, or are we talking about, in essence, a discretion, a prosecutorial discretion, choice, as to how we handle these cases?

Mr. CUCCINELLI. Well, deferred action is a prosecutorial discretion.

Mr. ROY. Right.

Mr. CUCCINELLI. And we are not a prosecuting agency. The closest thing to that is simply issuing an NTA that starts a process that puts you into the prosecutorial process. We do not participate

in that. That is where deferred action has historically existed and been appropriate, and, frankly, it is inherent in that authority. It is not inherent in our authority at USCIS.

Mr. ROY. Right. Also, you touched on this a little bit ago, the cost of adjudicating DACA applications, applications like we are talking about here, these deferred actions, not just DACA and DAPA, but these deferred action cases, the cost of adjudicating those, and what that means in terms of diverting resources from naturalization applications. You mentioned that before. Can you reiterate how important that is in the decision-making in a world of limited resources?

Mr. CUCCINELLI. Yes, and I didn't mean to suggest that the people doing this would automatically spend 100 percent of that time on naturalizations.

Mr. ROY. Right.

Mr. CUCCINELLI. I was just trying to give the subcommittee a point of reference. And the Congresswoman correctly alluded to the fact that there are tradeoffs. If we are doing this, we are not doing something else. And we, like any other agency, struggle to keep up with our workload, but unlike most agencies of the Federal Government, we are 96-plus percent fee funded by part of the immigrant community we serve, and we have to operate on what amounts to a balanced budget function year to year. So, we don't have the opportunity to come financially flexed to absorb more work that hasn't been assigned by Congress or by law or regulation in some way.

Mr. ROY. One more clarifying question, and then I want to yield back to my colleague from Texas. One of my colleagues referenced something about people who are here legally getting wrapped into this, and I just want to clarify for the record that that is not the case, correct? I mean, when we go back to the letter and question in August, all that has been done, all that was attempting to be done, was noticing folks who were here who did not have status.

Mr. CUCCINELLI. Right.

Mr. ROY. And then Congress has not produced a status for you to give, that this was a letter clarifying their status.

Mr. CUCCINELLI. That is right. And just understand, you could have a situation where someone is coming back for a repeat deferred action request, and they do it within the two-year time period that is traditionally, though there is no requirement that it be two years, granted. It can also be the duration of treatment if we can identify that. And at that point in time, they will at least be under the then-existing deferred action grant.

Mr. ROY. OK.

Mr. CUCCINELLI. So, you know, however you would like to phrase that.

Mr. ROY. I would yield to my colleague from Texas.

Mr. CLOUD. Thank you. I only have about one minute left, but could you tell me what law authorizes USCIS to grant deferred action to any immigrant who is here illegally?

Mr. CUCCINELLI. Well, there is no specific law that does that. This is a derived authority granted to the Secretary for use specifically in case-by-case circumstances that came when INS was broken up and, you know—

Mr. CLOUD. So, to be clear, the USCIS does not have a formally established medical deferred action program? Is that correct?

Mr. CUCCINELLI. Absolutely not, never has and it is never existed in the Department of Homeland Security or its predecessor, INS, as far as I know.

Mr. CLOUD. And would you say that it is being treated as if it were a formally established program?

Mr. CUCCINELLI. Certainly a lot of the discussion sort of assumes a program that a lot of people use the medical deferred action title for. And, you know, there are other reasons people request deferred action other than medical. They are perfectly good human reasons, sympathetic reasons why we are talking about the medical, but other requests are made as well.

Mr. CLOUD. OK. And how many requests for medical departments do you receive each year?

Mr. CUCCINELLI. If you count not just the requester, but family members who might be requesting to stay to be with another family member for medical reasons, probably in the 500, to 600, to 700 range.

Mr. CLOUD. And do you feel you have to appropriately deal—

Mr. CUCCINELLI. Well, I mean, we can do the work, but then we are not doing other work that is legally assigned. I mean, that is the tradeoff.

Mr. CLOUD. Thank you, Chair.

Mr. RASKIN. Thank you very much, Mr. Cloud. OK. We are going to do one other round just to clean up some questions that are lingering and any member who would like to do a few more. I am going to start with the gentlelady from Massachusetts, Ms. Pressley. You are recognized for five minutes.

Ms. PRESSLEY. Thank you, Mr. Chairman. And, again, our forever chairman, Elijah Cummings, reminded us that the charge of this committee is to be in efficient and effective pursuit of the truth. So, I am encouraged that today we made some progress in that regard, and I want to thank you under oath for your honesty, Mr. Cuccinelli, in taking responsibility for that decision to reverse the policy. I want to ask you, it was previously mentioned on the record that your Agency had done analysis to ascertain what would be the impact of such an abrupt policy change. Do you believe that your Agency did enough analysis to assess that impact?

Mr. CUCCINELLI. I am sorry if I was unclear earlier. We didn't do any separate studies, for instance, like we might when preparing a regulation or something. It was an internal discussion, not what I would characterize as a study.

Ms. PRESSLEY. Well, given that it was an abrupt policy that stood to impact, quite literally, the lives of critically ill children, in hindsight, do you think that you should have done some analysis?

Mr. CUCCINELLI. Well, I do think if in the "I had it to do over again category" that I would not have applied it to people then pending, if for no other reason than to ease the information out and to not surprise them with a change in circumstances. That would be the main thing I would do differently.

Ms. PRESSLEY. All right. Mr. Cuccinelli, it has been widely reported that the Office of Legal Counsel at the Department of Justice determined that you were not eligible to serve as acting sec-

retary of Homeland Security under the Vacancies Reform Act and the Homeland Security Act. It has also been reported that the director of the Presidential Personnel Office at the White House has accepted this decision and briefed the President accordingly. Do you accept the decision of the Department of Justice and the President Personnel Office that you are ineligible to serve as acting secretary?

Mr. CUCCINELLI. I am not privy to anything you just described, and so I cannot answer that question.

Ms. PRESSLEY. Well, it is public record, but, you know, just could you give me your visceral response?

Mr. CUCCINELLI. As you may know, my last government post was Virginia state government, and I am no expert. I know areas of the law very well, but I don't know them all, and one I don't know very well is Federal employment law, including things like the Vacancies Act and so forth. And I have not studied it or looked at it.

Ms. PRESSLEY. Sure, but, again, the Department of Justice and the Presidential Personnel Office have ruled that you are ineligible to serve as acting secretary. So, if asked to serve contrary to the law, will you decline?

Mr. CUCCINELLI. I would not do anything contrary to the law. If I understood something to be contrary to the law, I wouldn't do it.

Ms. PRESSLEY. All right. Very good. If President Trump chooses either of you to replace Acting Secretary McAleenan, will you commit to keeping deferred action protections in place at USCIS? And this is for both Mr. Cuccinelli and Mr. Albence.

Mr. CUCCINELLI. I don't think it is appropriate to comment forward like that. I told you just here what I would characterize, I will call it a mistake because it was, to apply this retroactively in particular. I do think the underlying philosophy was correct, and I also understand that deferred action that remains available for all the people even had the USCIS policy going forward. But I cannot tell you going forward what I would advise some other secretary to do or what they would do, or even if I were the secretary.

Ms. PRESSLEY. Well, that is disappointing because this is—

Mr. CUCCINELLI. I understand, ma'am.

Ms. PRESSLEY. Mr. Cuccinelli, respectfully, you have accepted responsibility for making this egregious policy reversal. You have also expressed regret, and just now you use the word "mistake." So, I am not sure why it is challenging for you to just offer if you are the acting secretary, would you keep the deferred action protections in place at USCIS.

Mr. CUCCINELLI. I don't expect to see any change regardless of who the secretary is unless the program itself changes dramatically.

Ms. PRESSLEY. Reclaiming my time. Mr. Albence, your response?

Mr. ALBENCE. I mean, first, I don't think there is any reason to speculate that I might be the acting secretary because I don't see that happening.

Ms. PRESSLEY. Would you keep the policy in place, sir? Yes or no.

Mr. ALBENCE. I would certainly look at any decision going forward. I support the decision that acting secretary McAleenan made.

Ms. PRESSLEY. Reclaiming my time. In closing, I just want to remind my colleagues here today to not lose sight of why we are here, the families and their critically ill children, whose lives are on the line. We have talked a lot about process, but this isn't about process. It is about people, and we should never forget that. Thank you, and I yield.

Mr. RASKIN. The gentlelady yields back. Thank you for your comments. Mr. Roy, anything? The gentleman from Texas, Mr. Cloud, is recognized for five minutes.

Mr. CLOUD. Thank you, Chairman. Mr. Cuccinelli, you started to get into the lack of resources to do what you are legally mandated to do. Could you speak to that?

Mr. CUCCINELLI. Wow, I could use a lot more than five minutes on that, Congressman. You know, I will start with what I think is the highest-profile backlog we have, which I would say is accurately characterized as a backlog, and that is asylum cases. Over half of them are over two years old, and I am referring to affirmative asylum cases. There are two ways to claim asylum. The Department of Justice, if they were here, would be talking about defensive asylum claims in immigration proceedings. We deal with affirmative asylum claims. We have about 340,000 cases pending. As soon as I arrived, I began the work to plan and execute, and we are in the middle of executing, a massive hiring campaign for asylum officers to start attacking that backlog more effectively.

The main problem in attacking that backlog effectively is the crisis at the border. We broke records again for credible fear interviews last year, just to use one example, reasonable fear interviews associated with the MPP Program. The same people are doing that work, and none of what I just described to you, Congressman, is paid for. None of it. So, when we construct our fees, we have to build into those things what we do charge for, the cost of the things that we don't charge for, typically humanitarian work of a variety of forms.

Mr. CLOUD. OK. You mentioned that this program is not formally established. Could you speak to what the process for formally establishing it would be? Who is—

Mr. CUCCINELLI. Well, I mean, really the only avenue is legislation. This authority, as I said, was around in INS days, and that was when prosecutorial authority in a region was residing in the same person who was responsible for all of our visa work, the benefits that I was talking with the Congresswoman about earlier. Within the division of INS, those authorities were divided, but it appears, looking back, I wouldn't even call it a solution. The almost knee-jerk reaction was just to assign the same authority to all three agencies, even though we don't have prosecutorial responsibilities.

Mr. CLOUD. Right. Since USCIS is using your own discretion to provide deferred action, can you speak to some of the common illnesses that are normally granted deferred action for medical treatment?

Mr. CUCCINELLI. I am sorry, the common what?

Mr. CLOUD. Some of the common medical illnesses that you see that are granted.



Mr. CUCCINELLI. So, I have to say my information is anecdotal. Obviously we have been talking about this, as you all have, over the course of the last several months. So, I pulled a selection of cases, for instance, just to review at random to see what the cases look like, so to get an idea of what adjudicators' workload was associated with these and what they had to do and contend with, and it runs the gamut. I mean, it runs from the kind of cancer and cystic fibrosis we have heard about today.

Obviously among the most sympathetic types of situations you can imagine, there are two things that look to me, even though I don't decide these cases, rather patently abusive. I use the ADHD example. Really? Just not in the same league. You know, people claiming getting older. And I also mentioned earlier a good number of them are not medical. They are other claims as to reasons they want to stay. And candidly, the cases we talked about here, even though we can't decide a case sitting at this table, are the ones that you would think are most likely to be found by a career employee, and that is who decides these, to use the Secretary's language, compelling facts and circumstances. But I can't sit here and prejudge them even favorably, even though I am sympathetic to them.

Mr. CLOUD. And you mentioned that really when this comes down to it, it is our job to manage the resources and give you direction on them. Could you explain what is the best thing that we could do when it comes to what your job is? You talk about the limited resources to do all these things.

Mr. RASKIN. The gentleman's time has expired. Please answer the question.

Mr. CUCCINELLI. OK. I mean, don't make us guess, you know. Congresswoman Norton referenced category of sick children, and she said "category." If it is a category, you all should be assigning it to us. Of course the Supreme Court is going to take up DACA on November 12, and it follows the pattern of the DAPA that Ranking Member Roy mentioned. Can the executive branch use these inherent authorities that Congress hasn't given any direction on to create categorical grants of benefits? It is the position of this Administration that we cannot do that.

We will use the authorities we do have that are discretionary on a case-by-case basis. Nonetheless, at the beginning of this process on August 7, it was understood that the authority to grant this relief would continue to exist at a different point in the process, and I know people don't necessarily want to. They would rather go to USCIS than ICE. But the fact of the matter is that that is the appropriate and historically appropriate, getting outside the Federal Government, place for prosecutorial discretion. And that is with a prosecutorial agency.

Mr. RASKIN. Thank you very much. I am going to recognize Mr. DeSaulnier for five minutes of further questioning.

Mr. DESAULNIER. Thank you, Mr. Chairman. You have mentioned waiting for legislative action, even though it is clear you have the discretion, or the precedent is there for discretion. So, what I would suggest to you, and I would like a response, I have a private bill for Isabel. It is in Judiciary right now. We are looking

for support. We have had comments from legal experts. If there ever was an example of a need for a private bill, this is it.

So, I would ask in the interim for this specific case, that as she goes through, and I am being told by her attorney some of the questions are different than the last 4 times she went through this, that you would work with us because I assume you don't want to be back in the position where she is on the cover of national magazines, she is in the New York Times as example, even though she may be a little bit different. So, that is one.

And then Ms. Pressley and I are working with the committee, are looking for Republicans to work with, to tailor a bill for this group of people that would help them. And in a normal functioning relationship between both parties in Congress and the Administration, we would be trying to work on something knowing that they would be give and take. So, within that context, I hope and I would like some kind of response from you, that you have the discretion to at least work with us to see if we can provide legislative remedy for this group of people, and specifically for this person.

Mr. CUCCINELLI. Well, I don't necessarily agree with your initial comment about precedent and our authority. We will absolutely work with you, and I want to make it very clear. We don't even have to agree with what you are doing to be willing to help you do it correctly and craft it correctly. We will do that and bring subject matter experts to help you do that. We would be glad to do that.

Mr. DESAULNIER. Well, I am grateful for the help. It sounds a little patronizing, but I will accept that.

Mr. CUCCINELLI. Well, no, I mean—

Mr. DESAULNIER. We will give you help in return.

Mr. CUCCINELLI [continuing]. I say it that way simply because the nature of some of the discussions, you know, people can have the opposite impression. It is not intended to be patronizing at all. It is intended to, you know, to point out that is a function we—

Mr. DESAULNIER. Accepted. Accepted. That was my Irish sense of humor. So, in the process of how all this developed, you issued what came to be the letter. You were going to eliminate deferred actions. There was this big public response. We had a, I thought, very bipartisan hearing here. And then there was discussion within the Administration about what you should do about it. There is a memo that the press has got a hold of that was given to you by your policy director suggesting that you shouldn't backtrack, that you should keep it as you originally were going to do. Is that true? And did you have an opinion at that time? And clearly at that time—that was after our hearing—you knew about Isabel and some of these other cases. So, did you support the Acting Secretary's decision to change the policy on deferred action?

Mr. CUCCINELLI. Yes, I thought it was particularly critical to get the question decided. And as I view our role when advising something like that, we gave him a wide variety of options, presented those to him. With respect to my earlier comments, to Congresswoman Pressley where I noted that I did think it was a mistake to implement this on a retroactive basis, I freely concede that. But philosophically, it is appropriate or more appropriate for this authority to rest with the prosecutorial element of the Department of

Homeland Security, which is not USCIS, and that these folks would still, while under different circumstances, be able to avail themselves of that.

Mr. DESAULNIER. OK. So, in this specific case, and this is for both of you, they are in limbo. They are in a legal bureaucratic limbo, the boyos. Dad keeps working. And by the way, there was no public charge here. They paid for their insurance to be part of the program. They are taxpayers. They are beneficial to the economy and the community. Isabel went and got a degree with honors from Cal State East Bay. So, how do we work to help them through this process until we get to the point where either she can get her deferred action in this bureaucratic limbo?

Mr. CUCCINELLI. Well, we have, as you know, reopened these cases. And I speak to timelines for particular cases, but I do know that we have commenced deciding them. I mean, we are getting through some of the work. We have seen an uptick in filings, I would note for you, since this public discussion began, and which that is behind the boyos in that they were already in the pipeline, if you will, so theirs would not be affected by that uptick. But I can't speak to exactly how long it would take for each of those cases to be decided. I can check it separately when we leave here—

Mr. DESAULNIER. In the idea of working together, and I would be willing to help you in this regard, not being patronizing hopefully, they are in this situation. It is a practical situation. If we could work to assure them they were going to have their due process as you currently outline it.

Mr. CUCCINELLI. Right.

Mr. DESAULNIER. And if there is a gap in there, we are going to work through until the decision-making. And then if we could work on legislation that would be permanently correct, at least for this group of people or for her, that is what I would like to hear.

Mr. CUCCINELLI. Yes, we would be glad to do each one of those things.

Mr. DESAULNIER. All right. Appreciate it. Yield back, Mr. Chairman.

Mr. RASKIN. Thank you very much. The gentleman from Kentucky, Mr. Massie, is recognized for five minutes.

Mr. MASSIE. Thank you, Mr. Chairman, and thank you for having a hearing on this important topic. I want to thank the witnesses for showing up and dispelling the misinformation that has been out in the press and the false narratives that we have heard for the last several weeks and months.

Before I yield time to the ranking member here, I just want to lament that the full committee, this committee is right now simultaneously conducting a bogus impeachment process three stories underground beneath the Capitol Visitor Center in a closed room. You have to go through three doors to get there, and a lot of my colleagues who would like to be here today are down there, both on the Democratic side and the Republican side. So, I just want to say I think it is a shame that that is simultaneously happening. Not just that it is happening out of the view and sight and sound of the American public, but that it is happening at the same time

as this important hearing. With that, I would like to yield the balance of my time to the ranking member, Chip Roy.

Mr. ROY. I thank my friend from Kentucky. I have made that similar point before you were able to join, and I will make it again. I agree with you. We shouldn't be having these things concurrently. This is too important an issue, and this has been happening on a regular basis. Last week I had to do the same thing on a different hearing where I was unable to participate in the depositions that are going on on this important matter in a way that, as I will reiterate, it is very difficult to get transcripts, even for those of us on the committee.

You are trying to figure out how to go get information for a thing that is occurring right now that I can't physically be present for, and now I want to go try to figure out what I missed, and I can't do it in an easy fashion. And any of my colleagues who aren't on the committee can't do it. Now again, some of this may get remedied tomorrow. Not sure. But I happen to believe that the House Rules indicate that the records of this body are the possession of each and every member, and we are supposed to be able to have access to those records and have an open process to be able to go see this information. And it is, I think, critically important for the American people to know that this is what has been going on and that we can't have the kind of full debate that we ought to have.

I do want to just come back one thing, and at a little bit of risk of repetition, but it is, I think, really important because I appreciated some of the comments from my friend and colleague from California that maybe we could work with you all and try to figure out how to solve any of the issues here from a policy perspective as a legislative body, act as a Congress to solve the issue.

In carrying out the action that Mr. Cuccinelli carried out, and you can jump in here because I don't speak for you, but I will characterize it in this way. One might say the letter could have been written a different way or maybe we could have carried it out a different way, and this is what has been discussed. And Mr. Cuccinelli has said that, you know, maybe he hoped to have done it differently. But it has highlighted an issue, an issue that has been lingering where my colleague use the word "limbo." Even with the letter from USCIS, you are in limbo. There is status given, right?

And, Mr. Cuccinelli, am I correct about that? In other words, USCIS gives a letter that basically says, here, you got a letter. Hey, we, USCIS, who have no authority to say whether or not ICE is going to exercise their prosecutorial discretion, we are giving you a letter that sort of says you might be okay for a couple of years. Is that roughly correct?

Mr. CUCCINELLI. Roughly, yes.

Mr. ROY. And can you cleanup my roughness?

Mr. CUCCINELLI. I mean, that deferred action can be revoked at any time.

Mr. ROY. Right.

Mr. CUCCINELLI. And in circumstances where there might be a reason for someone to be in removal proceedings, ICE and USCIS talk about those individual cases. They are rare, but they do happen, and we coordinate our efforts.

Mr. ROY. And, again, going back to the beginning, was anyone being targeted, any one of these families in question, targeted for removal after said letter went out?

Mr. CUCCINELLI. No.

Mr. ROY. So, putting aside whatever—

Mr. CUCCINELLI. Absolutely not, no.

Mr. ROY. So, acknowledging the concerns of the families receiving the letters, I think everyone acknowledges the concern of how that was received. And we are all guilty of doing a lot of stuff in a fast-paced environment, like getting out and executing, and then going well, maybe we could have executed that better. But the question becomes the letters go out as a process matter. None of these families were being targeted for removal to the best of your knowledge?

Mr. CUCCINELLI. Well, not to the best of my knowledge, no.

Mr. DESAULNIER. Would the gentleman—

Mr. ROY. Mr. Albence, to the best of your knowledge?

Mr. ALBENCE. No, I mean, we wouldn't even know they existed. Even that grant of deferred action is not something that would have come to our attention when USCIC does that, so we don't even know these people exist.

Mr. ROY. OK.

Mr. DESAULNIER. Would the gentleman yield just for a second?

Mr. ROY. I would be happy to.

Mr. DESAULNIER. I appreciate the tone. I think the caveat would be precedent. We have heard there is a long precedent in the evolution of deferred action. And in this case, this family, they have been approved four times before, including by this Administration. So, I am agreeing with you, but from their perspective, the precedent was what it was.

Mr. CUCCINELLI. I see. May I address that?

Mr. ROY. Yes, sir.

Mr. CUCCINELLI. So, now understanding what you may have meant by "precedent" a little better, Congressman, it is important to realize each review is a fresh review. And particularly in medical circumstances, those evolve, of course, and those would be reviewed anew each time. So, perhaps I misunderstood your use of the word "precedent" previously.

Mr. DESAULNIER. Maybe we just disagree on perspective. From their perspective, previously their attorneys had said you do this and this is the likely outcome. So, you do need to go through the process.

Mr. CUCCINELLI. Right.

Mr. DESAULNIER. What changed was the unilateral decision to get rid of all deferred action, so that changed the precedent is my point.

Mr. CUCCINELLI. OK. Understood. Now I understand what you mean better.

Mr. ROY. And the last point I will make, and I am over my time, but then I won't try to take any additional time after Mr. Massie—

Mr. RASKIN. Please take your time, Mr. Roy.

Mr. ROY. It would just be to say the precedent we are talking about is a, in my view, flawed precedent. In other words, it is a

kind of patched-together circumstance to deal with a population who is inherently in limbo, and it is not affirmatively set out, and so I get a little frustrated. Your tone, this has been great. Some, nameless they may be, come here to bluster about the evils of what has transpired here and to try to impute to Mr. Cuccinelli or to any other members of DHS a desire to create harm for people as opposed to have a system where the rule of law means something.

Mr. CUCCINELLI. May I suggest sort of a rhetorical question?

Mr. RASKIN. By all means.

Mr. CUCCINELLI. Just a thought exercise. So, an obvious way to think about this isn't case-by-case. It is asking the question for each person, where do you draw the line? How do you do that?

Mr. RASKIN. Thank you, Mr. Cuccinelli for that because that goes right to my closing thoughts here, and I want to start by thanking all the members of the committee for a very productive conversation. I want to thank both of you for participating, for educating us and participating in what, I think, has been a constructive process. I want to thank you particularly, Mr. Cuccinelli, for expressing regret about the mistake that was made in what you said was the retroactive application of a shift in the presumption, I think, and I thank you for that.

I do want to pose a question about that though, and obviously it caused great anguish among the families that were affected, and I assume that moved you. I know you to be a man with a heart, and so you were moved by what you saw. And, you know, this may have looked like it was sort of easy pickings in terms of going over a whole series of administrative policies where, you know, one could just tighten the leash in some way, but suddenly it caused a major furor because of the anguish and pain that was effected for the families.

But what does that mean about going forward given that, you know, the compelling facts and circumstances, standard that you are operating under? You said there are certain things that look clear. We apparently all have a consensus about cancer, cystic fibrosis, leukemia, very serious diseases that we have heard about from people coming forward. On the other end, I think you said—this was almost humorous—aging, that somebody was actually granted deferred action because they were aging?

Mr. CUCCINELLI. Oh, I didn't say they were granted.

Mr. RASKIN. Oh, I see. OK.

Mr. CUCCINELLI. I just said we see those applications.

Mr. RASKIN. But would it be your intention, because I did look at the question of where your authority comes from. It is not a totally made-up of authority. I think that in the June 2003 delegation to the Bureau of Citizenship and Immigration Services from the Secretary of Homeland Security, P was the authority to grant voluntary departure and deferred action.

Mr. CUCCINELLI. Yes.

Mr. RASKIN. So, you do have that delegation of authority. Presumably you could operate it either on kind of a more arbitrary case-by-case, everybody make up their own rule standard, or what it seems like you are trending toward now, which is to develop certain categories that would strike everybody as commonsensical medical compelling need, versus, you know, people want to be here

to age in place, you know, in the United States. Is that you are thinking, that you would try to develop—

Mr. CUCCINELLI. So—

Mr. RASKIN [continuing]. Some directives for the people who actually make these decisions?

Mr. CUCCINELLI. OK. So, a couple of points, Mr. Chairman. First of all, the authority site there in the Homeland Security Act is how you trace this back statutorily. It goes to the secretary, but the purpose of deferred action is it is inherently a prosecutorial discretion, thus my descriptions here today. So, and what you point to in the statute doesn't provide, other than case-by-case consideration, doesn't provide guidance or categories.

Mr. RASKIN. OK. Can I pause you there?

Mr. CUCCINELLI. Yes.

Mr. RASKIN. And then maybe it is a question for Mr. Albence. Would you pursue deportation of people who had been granted deferred action for a medical purpose? So, do you know of any cases where that has happened, and do you have any intention in the future of doing that?

Mr. ALBENCE. I am not aware of any cases in which that would happen.

Mr. RASKIN. OK. Fair enough.

Mr. ALBENCE. Excuse me. I am not aware of any case in which that has happened.

Mr. RASKIN. Got you.

Mr. ALBENCE. I will not say that there is somebody that could have been granted medical deferred action, gets involved in some sort of—

Mr. RASKIN. I got you. Somebody could commit a crime while they were here on deferred action for medical reasons.

Mr. ALBENCE. Exactly.

Mr. RASKIN. I got you for that. So, but is it your thought, Mr. Cuccinelli, that you would try to elaborate and specify what some of these circumstances are?

Mr. CUCCINELLI. No, sir. To be clear, from the acting secretary, Secretary McAleenan, it is to continue it as a case-by-case. What we do internally is try, and I heard some comments a little different than this, is to maintain consistency. And the way we do that is that the 4 people who are regional directors, sort of at the top of decision chains in the field, talk together about these cases periodically as they feel the need—those are not conversations I participate in—about cases to make sure that similarly situated people end up with similar outcomes, whether it is grants or denials. But that is just for consistency. It doesn't introduce any standards or measuring stick, if you will, to provide guidance as to how these may come out. We don't have any basis to do that.

Mr. RASKIN. OK. All right. Well, we might have a difference of opinion about that, whether your authority would include that.

Mr. CUCCINELLI. I understand.

Mr. RASKIN. The only point I would make, and I appreciate what you just said about at least trying to develop consistency. But the point I would make is just when we say that there is a case-by-case method of decision-making, that just means that each of the facts is treated on their own their own presentation, but there still

need to be rules and standards applied for the decisionmaker to decide how the decision is to be made.

Mr. CUCCINELLI. And I think that is the nub, you know.

Mr. RASKIN. Yes. Well, okay. Let me just shift to another question in my role as chair of the subcommittee. We have got to just get on top of the discovery here, which I think we should be able to complete in relative short order. And again, we feel strongly about this in general because Congress as the lawmaking branch of government has the authority to receive any information we want in order to make the laws that we want to make. You properly chide us for not having comprehensively overhauled immigration law, but we can only do it if we get the information about everything that we need.

Mr. CUCCINELLI. I can provide you an update on that.

Mr. RASKIN. OK. If you could that would be great, and specifically with respect to a couple of things. One is the memo that was written on September 9 from Kathy Kovarik, which was announced to us, but we have never seen it. So, that is one thing that I know we would very much like to get. That was one of the things that Chairman Cummings signed the subpoena for.

The other thing is that you received from Mr. McAleenan on September 18 his directives with respect to this matter. And he asked you for a memo 30 days after the date, and that passed a week or two ago, discussing your implementation of these directives. I don't know whether you brought that with you or you have—

Mr. CUCCINELLI. I did not. That was just a simple update, but that is what—

Mr. RASKIN. So, if we could have that, that would be terrific just because we don't have any update about anything that has happened at this point.

Mr. CUCCINELLI. So, to be clear, the document request, we are still in litigation. The plaintiffs have not dropped their cases.

Mr. RASKIN. Oh.

Mr. CUCCINELLI. So, our—

Mr. RASKIN. Of course, but that has nothing to do with Congress. I mean, the Supreme Court has been clear about that.

Mr. CUCCINELLI. Well, please let me finish.

Mr. RASKIN. Yes.

Mr. CUCCINELLI. What it does have to do with is we have to review our materials to know our own position. So, we are doing all of that gathering of documents and review now, so all of what we can provide we certainly will.

Mr. RASKIN. OK. This is one area of the law that I actually know very well, that anyone's requirement to comply with a congressional subpoena request for information is not stayed in any way by virtue of the existence of other legal proceedings or litigation, and we can get you all of the case authority on that. So, in other words, we can't wait for cases to be decided, appealed, removed, you know, and so on.

Mr. CUCCINELLI. I didn't mean to suggest that.

Mr. RASKIN. Yes.

Mr. CUCCINELLI. It complicates our own review of materials as we gather them.



Mr. RASKIN. OK. Well, again, let me just restate. We would at least like an answer from you today if you can tell us. When will you be able to comply with the subpoena that Chairman Cummings signed on the day that he died? It is dated, you know, several hours before he lost his life, so I feel very strongly about this. Do you know when you will be able to comply?

Mr. CUCCINELLI. I know we are working to comply. I can't tell you sitting here now. I would have to revisit it, and I didn't do this this morning before I came. I would have to revisit with the review team back in the office.

Mr. RASKIN. OK. Can you tell me when you will be able to tell me when you can comply?

Mr. CUCCINELLI. Well, we can at least give you at least an estimate by the end of today.

Mr. RASKIN. OK. If you could tell us by the end of the day, we can get on a timetable. We want and we need that information. Mr. Albence, can you also comply with that timetable? Could you tell us by the end of the day when you would—

Mr. ALBENCE. So, I can't answer that question. We provided our material to the Department on October 20, so at this point it is undergoing departmental review. It is outside of ICE's hands. Obviously our material is much more limited than what Mr. Cuccinelli has or expected to be. So, they are reviewing it for deliberative and privileged information, and then when they are done with that review, I am sure they will release it.

Mr. RASKIN. OK. Very good. All right. Good. All right. Well, actually, are there people with you today who can just tell us when that would be?

Mr. ALBENCE. No, it is with the Department. These are all ICE people, so it is with Department general counsel, so that would be the entity that would have to answer that question. I could ask him and see when they think they will have it cleared, but—

Mr. RASKIN. OK. If you could get back to me.

Mr. ALBENCE. I asked yesterday and got an "unknown date yet," so.

Mr. RASKIN. OK. If you could get back to us as promptly as possible. OK. Let's see. We have some letters for the record that I want to admit, without objection. Let's see. We have letters from several disability organizations, the Interfaith Immigration Coalition and the New York Legal Assistance Group, discussing the consequences of these policy changes for children who benefit from deferred action. I ask unanimous consent that these letters be entered into the hearing record.

Without objection, they will be entered.

Mr. RASKIN. OK. And finally, Mr. Cuccinelli, I am seated in Mr. Cummings' chair, and so I am mindful of his extraordinary career and the fact that he always told us we are here to help people. And I have got an opportunity with you here to just ask you about one other case that I have been unable to get an answer from the Department about, and so I wonder if you would indulge me by just listening to this.

OK. It regards the case of an Afghan national whose name is Muhammad Kamran, and he was a U.S. military interpreter for us in the Afghan war. He fled Afghanistan with his family under

threat by the Taliban and was unable to seek entry to the U.S. on a special immigrant visa, so he sought entry under humanitarian parole. He was denied as a matter of discretion. To the best of our knowledge, he served this country faithfully and admirably for nearly a decade as an interpreter for U.S. military operators, who have written letters in his support and in his defense.

Since fleeing to Pakistan where he is still in hiding with his family, he has been beaten up multiple times by Pakistani police. Last week, he was arrested by the Pakistani military. Advocates for him in the U.S. report that he has been tortured, although he has finally been released, but he was subjected to torture while he was being held. So, as the result of bipartisan advocacy, we have members on both sides of the aisle who have been working for him. His case for humanitarian parole was reopened, but on August 1, we were informed by you that he was again denied on a discretionary basis with the addition of the phrase "lack of credibility," but there was no explanation of what that meant, and we have been denied the ability to have a classified briefing on the matter.

I am very concerned that Mr. Kamran will be killed or he will be disappeared in Pakistan by the forces that are against him, and the same fate may await him and his young daughters. So, I would like it if you would be able to get clarification for the basis of this denial. If there are real facts there that show that he or his young children are a security risk, then by all means, please let us know. We don't want security risks entering the country, but this is a guy who served our country with everything that he had, putting his life at risk. We have Republican and Democratic members who are asking you to take a look at it.

Would you be willing to clarify his case for us? Would you be willing to provide a briefing for us on the status of the Special Immigrant Visa Program as it relates to wait times for processing and the dropoff that which has been radical of acceptance of former interpreters who served with us in combat zones. Would you be willing to work with us to see that there is justice in this case?

Mr. CUCCINELLI. So, with respect to the individual case, I presume there is no privacy waiver from the individual, so I would have to find out what I am allowed to share. You know, we operate within privacy restrictions ourselves, but I am happy to go determine that and turn back around and re-contact you—

Mr. RASKIN. Please do. I mean, his advocates—

Mr. CUCCINELLI [continuing]. With a result.

Mr. RASKIN. Yes, his advocates are asking us to do whatever we can to save his life from their perspective. He is someone who served with the Afghan government and with our country faithfully, honorably. The people who worked with him over there are asking us to take a look at his case. We know that there has been a dramatic drop in the numbers of interpreters who have been admitted to the country, and if that is just part of a general tightening of ability of people to get in, I don't think it is fair. If there is some reason that he shouldn't be admitted, then by all means, please show us that evidence. But if you would be willing to meet with us or have someone from your staff come and meet with us, then I think we would be doing a little bit of fairness in the spirit of Chairman Cummings.

Mr. CUCCINELLI. So, let me see how much detail I am permitted to share, and whatever the answer to that is, I will let you know, report back.

Mr. RASKIN. OK.

Mr. CUCCINELLI. And then we can go from there in terms of share what we can.

Mr. RASKIN. I appreciate that. And if there is anything else, Mr. Roy?

Mr. ROY. I will just say I thank the chairman for the last 10 or 15 minutes, 20 minutes in particular, not to say anything about the forum, but of the back and forth and give and take and the conversations with our colleague from California about how to move forward. So, I appreciate that.

Mr. RASKIN. And I appreciate very much the participation, as always, of the ranking member. I understand from my staff that he has signed a privacy waiver release, Mr. Kamran has, so that is something that presumably we could meet about. You can double check with your people.

Mr. CUCCINELLI. That will be very significant.

Mr. RASKIN. I want to thank all of the witnesses today for your testimony. I know you have got important business to attend to, so we thank you very much.

Without objection, all members will have five legislative days within which to submit additional written questions for the witness of the chair, which will be forwarded to the witnesses for response. I ask you to please respond as quickly as possible if anybody has any followup questions. Mr. DeSaulnier, I want to thank you for your endurance.

The hearing is now adjourned.

[Whereupon, at 12:46 p.m., the subcommittee was adjourned.]

