

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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August 29, 2019

The Honorable Kevin K. McAleenan
Acting Secretary
Department of Homeland Security
245 Murray Lane, S.W.
Washington, D.C. 20528

Dear Acting Secretary McAleenan:

I am writing to express my deep concern that the Department of Homeland Security (DHS) decided to block Committee staff from conducting visits to 11 detention facilities just days after previous staff inspections revealed potentially serious ongoing problems with the treatment of children and adults in DHS custody—including blocking visits to sites where the Inspector General warned about “an immediate risk to the health and safety of DHS agents and officers, and to those detained.” The Department’s actions are inconsistent with your testimony on July 18, 2019, that you welcome congressional visits to these facilities and would engage in a dialogue about “improving the standards that exist.”¹

Troubling Reports from Facility Inspections Last Week

As you know, last week Committee staff conducted an initial round of bipartisan facility visits. These inspections raised significant concerns about the treatment of immigrants held by DHS, many of which have already been documented by the Inspector General.

For example, detainees at Border Patrol facilities expressed concern that toddlers—and in one case even an infant—were being fed burritos rather than age-appropriate food, young children were held in cold rooms without appropriate clothing, and parents were not given a sufficient number of diapers for their children. One detainee alleged that a Border Patrol agent told a child who had spilled soup that the child would not receive more food unless the child drank the spilled soup off the floor. Detainees at Border Patrol facilities also told Committee staff that they were pressured into signing documents in English without translation and denied access to telephones.

Committee staff visits to Immigration and Customs Enforcement (ICE) facilities, many of them run by for-profit contractors, also raised troubling questions. For example, detainees

¹ Committee on Oversight and Reform, *Hearing with Acting Secretary of Homeland Security Kevin K. McAleenan* (July 18, 2019) (online at <https://oversight.house.gov/legislation/hearings/with-the-acting-secretary-of-homeland-security-kevin-k-mcaleenan>).

expressed concerns about rotten food and inadequate access to medical care. Others raised concerns about their treatment in the “voluntary work program,” in which hundreds of detainees provide up to eight hours of work per day doing cleaning, kitchen, laundry, and gardening services, but are paid only \$1.00 to \$1.50 per day. Detainees also raised concerns about the length of detention, with some stating they had been held by ICE for more than a year.

This week, after Committee staff returned from their visits, the Department informed the Committee that it would deny access to 11 different Customs and Border Protection (CBP) facilities in which immigrants are being held. DHS also imposed new restrictions on Committee staff’s access to detention centers run by ICE and for-profit contractors. DHS took these actions without warning—after Committee staff were already en route to these sites—even though the Committee notified the Department of the inspections weeks ago and agreed to multiple accommodations to facilitate the visits.

Contrary to claims by the Committee’s Ranking Member, Committee staff were not “rude” and never once refused to abide by instructions from agency officials. Committee staff comported themselves professionally at all times while defending the authority of Congress to conduct an independent investigation of these well-documented abuses.

Advance Notice and Significant Accommodations Prior to Site Visits

The Committee provided DHS with nearly three weeks’ notice of our staff visits and offered multiple accommodations to address potential concerns raised by the Department.

On July 12, 2019, the Inspector General and other experts testified before the Committee about severe overcrowding, poor conditions, and risks to the safety and health of immigrants in DHS custody and the DHS personnel working in these facilities.²

On July 18, 2019, you testified about the challenges DHS is facing and welcomed us to visit DHS facilities to see the conditions firsthand. You also stated you would “certainly be willing to work with any Member who wants to have a serious dialogue on these issues,” including “improving the standards that exist.”³

On August 2, 2019, I sent a letter informing you that I was directing Committee staff to inspect DHS facilities in August while Congress was in recess. I wrote that “the Committee expects DHS’s full cooperation in providing Committee staff with access to DHS immigration detention facilities in order to conduct oversight inspections.” I specifically requested “the ability to conduct interviews with detainees and facility staff in a private setting, to photograph

² Committee on Oversight and Reform, *Hearing on The Trump Administration’s Child Separation Policy: Substantiated Allegations of Mistreatment* (July 12, 2019) (online at <https://oversight.house.gov/legislation/hearings/the-trump-administration-s-child-separation-policy-substantiated-allegations-of>).

³ Committee on Oversight and Reform, *Hearing with Acting Secretary of Homeland Security Kevin K. McAleenan* (July 18, 2019) (online at <https://oversight.house.gov/legislation/hearings/with-the-acting-secretary-of-homeland-security-kevin-k-mcaleenan>).

within the facilities, and to receive prompt access to requested records.”⁴

On August 7, Committee staff informed DHS staff that trips likely would take place during the weeks of August 19 and 26.

On August 10, DHS sent a letter stating that personnel from ICE and CBP “are standing by to accommodate your request for staff to visit DHS facilities.” The letter requested “72 hours’ advance notice” before visits. The letter also stated that, due to privacy concerns, interviews with detained immigrants would not be allowed and that photography would not be permitted “without appropriate coordination.”⁵

On August 13, Committee staff responded by offering several accommodations. Committee staff agreed to the Department’s request for 72 hours’ notice and, on August 16, sent DHS staff a list of CBP and ICE facilities for site visits on August 21-22. Committee staff also committed not to publicly release the “names or other identifying information of any detainee, including the detainees interviewed during the inspections” or any “photographs from the inspection showing the face of any detainee.”⁶

On August 19, in response to follow-up questions from CBP and ICE, Committee staff provided additional details about the planned visits, including approximate start times and staff who planned to attend. That same day, DHS staff emailed Committee staff raising additional concerns about the Committee’s requests to take photographs and interview detainees. Committee staff responded by offering further accommodations. In particular, the Committee agreed not to release photographs showing the identity of line staff and to provide DHS an opportunity to review the Committee’s photographs prior to release.

On August 20, CBP staff emailed Committee staff, indicating that facility tours last between 30 and 60 minutes. Committee staff spoke to CBP staff by phone and explained that, while they appreciated the opportunity to tour the facilities, they needed additional time to conduct interviews with staff and detainees. CBP staff stated that Committee staff could take the time they needed.

Later the same day, as Committee staff were traveling across the country to the various facilities, DHS sent a new letter to the Committee. This letter asserted that the Committee staff

⁴ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Acting Secretary Kevin K. McAleenan, Department of Homeland Security (Aug. 2, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-08-02.EEC%20to%20DHS%20re%20staff%20inspections.pdf>).

⁵ Letter from Christine M. Ciccone, Assistant Secretary of Legislative Affairs, Department of Homeland Security, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Aug. 10, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-08-10%20DHS%20Signed%20Response%20Rep%20Cummings%2008.10.2019.pdf>).

⁶ Email from Committee on Oversight and Reform Staff to Department of Homeland Security Staff (Aug. 13, 2019).

had “repeatedly stated that they do not intend to abide by DHS guidelines.”⁷ That statement was incorrect. At no time did any Committee staff claim they would not abide by DHS guidelines. Committee staff arranged a conference call at 7:30 p.m. that evening with DHS staff. During that call, Committee staff reiterated their commitments to protect the privacy of staff and detainees and to work with facility staff to ensure smooth visits. DHS staff agreed to provide a further update on the Committee’s access requests.

Interactions During August 21-22 Site Visits

Committee staff proceeded with scheduled ICE and CBP site visits on August 21 and 22. During these visits, Committee staff were respectful of all facility staff. Since the level of access varied greatly between facilities, Committee staff sought to resolve issues both on site and with DHS headquarters. Ultimately, Committee staff complied with all directives from facility staff, even when these directives did not provide the level of access needed to conduct thorough inspections.

For example, during visits to three ICE facilities in Mississippi and Louisiana, facility staff prevented Committee staff from speaking to detainees, even though ICE policy for congressional visits provides that the agency will facilitate interviews with detainees who volunteer in advance and sign a privacy waiver.⁸

At the Adams County Correctional Center, a detainee shouted through a glass partition that he was being abused and humiliated and wished to urgently speak with congressional staff. Rather than permit him to speak, an ICE official threatened to end the tour immediately and cancel future site visits if Committee staff attempted to communicate with the detainees. Committee staff complied with the directive.

Committee staff were prevented from bringing their congressionally-issued cell phones into ICE facilities to take photographs, despite the accommodations the Committee offered to protect the privacy of staff and detainees. Although DHS offered to provide an official photographer instead, no photographer was provided at the Adams County Correctional Center or the Catahoula Correctional Center. Nevertheless, Committee staff agreed to continue with the tours without their phones.

Committee staff were directed to surrender their phones at the San Ysidro Port of Entry. This was inconsistent with the practice at other CBP facilities, but Committee staff complied with this directive as well.

Staff at several facilities asked about the length of the Committee’s inspections. Committee staff explained that they were seeking sufficient time for a tour and for interviews

⁷ Letter from Christine M. Ciccone, Assistant Secretary of Legislative Affairs, Department of Homeland Security, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Aug. 20, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-08-20%20DHS%20signed%20response%2008-20-2019-%231184060.pdf>).

⁸ Committee staff were able to speak with one detainee at the Adams County Correctional Center whose lawyer facilitated the detainee’s participation.

with staff and detainees, and they worked with facility staff to minimize any disruption and accommodate the facility staff's schedule. On a few occasions, Committee staff asked facility staff for additional time, and they agreed. When facility staff indicated that time for the visit had expired, Committee staff complied.

DHS Cancellation of Site Visits and Imposition of New Restrictions

On August 23, 2019, Committee staff notified ICE and CBP of additional site visits beginning on August 27, including 11 CBP sites and five ICE facilities in Texas. As previously requested by DHS, Committee staff provided more than 72 hours' notice.

On August 26, after Committee staff were already en route, CBP staff informed Committee staff that the Acting Commissioner, with input from DHS headquarters, had decided to bar access to all 11 CBP facilities. CBP claimed inaccurately that Committee staff had not been cooperative during the previous week's visits and had not followed CBP's itineraries. Committee staff explained that they had been courteous and respectful with facility staff and followed their directions, and that CBP headquarters staff had agreed in advance to allow Committee staff the time they needed for interviews with staff and detainees. Committee staff offered to accommodate any remaining logistical issues and asked CBP to reconsider its decision. CBP responded that the decision was final.

On the same day, ICE staff informed Committee staff by email that the agency planned to add new restrictions on site visits. ICE staff stated that staff from local Member offices—who had been invited to serve as translators for the bipartisan Committee staff—would no longer be allowed to participate in the visits. ICE also imposed a two-hour time limit on all site visits, without explanation. Committee staff explained that these restrictions would hamper the Committee's work and again offered to discuss possible accommodations to address the Department's interests while still allowing meaningful inspections.

DHS staff responded by email that Committee staff who “violate the terms of entrance will be subject to removal from that location and may not be granted entry at the subsequent facilities.”⁹ Committee staff then moved forward with inspections of ICE facilities and followed the newly imposed restrictions.

Conclusion

It appears that the Administration expects Congress to be satisfied with receiving agency tours of facilities—in some cases without the ability to photograph conditions or interview detainees—and not to question the policies or decisions that agency officials make. That is not the way effective oversight works. Congress has an independent responsibility under the Constitution to determine whether federal programs are operating as they should be—not merely to accept the Administration's word for it.

⁹ Email from Department of Homeland Security Staff to Committee on Oversight and Reform Staff (Aug. 26, 2019).

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The Committee recognizes that staff members at DHS facilities work hard under challenging circumstances. For this reason, Committee staff have always been respectful, listened to input, and followed directions while seeking to fulfill their constitutional responsibilities.

The Department's last-minute denial of access to CBP facilities and unwarranted restrictions at ICE facilities are unacceptable and impair the Committee's ability to conduct its oversight responsibilities in an effective manner. The Committee requests that the Department provide meaningful access to all CBP and ICE facilities identified by Committee staff.

Thank you for your prompt attention to this matter.

Sincerely,



Elijah E. Cummings
Chairman

cc: Mr. Mark Morgan, Senior Official Performing the Duties of the Commissioner
Customs and Border Protection

Mr. Matthew T. Albence, Acting Director
Immigration and Customs Enforcement

The Honorable Jim Jordan, Ranking Member
Committee on Oversight and Reform