

**DOCUMENT PRODUCTION STATUS UPDATE,
PART II**

HEARING

BEFORE THE

**COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS**

SECOND SESSION

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DOCUMENT PRODUCTION STATUS UPDATE, PART II

Tuesday, April 19, 2016

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The committee met, pursuant to call, at 10:00 a.m., in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Mica, Duncan, Jordan, Walberg, Amash, Gosar, Massie, Meadows, DeSantis, Buck, Walker, Blum, Hice, Carter, Grothman, Hurd, Palmer, Cummings, Clay, Connolly, Cartwright, Kelly, Lawrence, Lieu, Watson Coleman, Plaskett, DeSaulnier, and Welch.

Chairman CHAFFETZ. The Committee on Oversight and Government Reform will come to order.

Without objection, the chair is authorized to declare a recess at any time.

This is an important hearing, and I appreciate the participation here. It's our second document production status hearing. Our invitation letters for these hearings went out 4 or 5 weeks in advance, as opposed to the normal 2-week notice. The extra time will allow for some cooperation and, hopefully, for some document production.

For our first hearing in January, we invited 10 agencies. When the hearing occurred, we had resolved our differences with five agencies. It was highly productive to do so.

For this hearing, we invited eight agencies, but three remain, three of the most problematic agencies that we have run into.

Our expectations have not changed. When you get a letter from the Oversight and Government Reform Committee, it is not optional. When you get a subpoena from the Oversight and Government Reform Committee, it is not optional. It is not a game that we are trying to play where agencies try to hide the documents as long as possible and run out the clock. It impedes our ability to do our jobs. And you have a constitutional duty, role, and responsibility to provide those documents to this Congress.

We require extensive cooperation. Most of the agencies that we deal with do it in a fair, honest, and prompt way. For any given investigation, we often need 10 to 15 witnesses to appear before us for transcribed interviews. When the committee sends a document request, we expect an honest effort to collect and respond to those requests. We expect communication. We expect to be informed, and we expect those agencies and the people that represent those agencies to be honest and straight with us. And we expect you to work

with us in good faith, which basically means when you make a commitment, you do what you say you are going to do. For me personally, as a principle, it is one of the most important things you can do. Just do what you say you are going to do.

Today, we are going to hear from a group of senior agency officials from three Cabinet departments. The Office of Management and Budget is here to address its response to a subpoena for materials from its OIRA component, the Office of Information and Regulatory Affairs, related to the Waters of the United States rule-making. OIRA is an office created by Congress, and the job is to review draft and proposed regulations and to ensure continuity across government in that rulemaking process.

We will also hear from the Department of Health and Human Services. We want to discuss their refusal to produce documents related to ObamaCare CO-OPs and exchanges. And the Department of Homeland Security will discuss our oversight request related to the Secret Service, the TSA, and the Immigration and Customs Enforcement, often known as ICE.

Let's talk first about OIRA. They have failed to comply with the committee's subpoena issued over 9 months ago. This is a subpoena that was issued on July 14 of 2015. The committee has been investigating this matter for more than a year. To date, OIRA has produced about 6,000 pages. Roughly 80 percent of those pages are meaningless because they are either duplicates or just copies of the publicly available rule. Despite what is in his testimony from Mr. Shelanski, let me repeat, 80 percent of that is meaningless because they are duplicates or they are publicly available.

By way of comparison, the EPA voluntarily produced more than 22,000 pages related to the rule in the same amount of time. Likewise, the State of Michigan voluntarily produced more than 43,000 pages in response to Flint in just 2 weeks. I am not saying we are done with them, but you can understand the volume that we are getting and the swift manner that we are getting.

Problems go beyond withholding documents. OIRA has intentionally misled and misdirected our investigators. For example, for more than a year, OIRA failed to identify four key officials who reviewed the rule. Let's remember that OIRA has less than 100 employees. This is not some big, massive bureaucracy with thousands of people. You can literally walk around the halls and around the corner and go find the person that you need.

It was only after we started conducting transcribed interviews under oath the names surfaced, and we still don't know if OIRA searched their emails as well. We hope to find out today.

Administrator Shelanski testified before this committee that he had no communication with the EPA about this rulemaking and that OIRA does not engage with agencies before a formal rule review is commenced, although the committee has uncovered documents and information proving both of these statements as untrue and false.

Mr. Shelanski, we expect you to answer under oath today and clarify this.

Health and Human Services, we invited the Department of Health and Human Services today because persistent problems at exchanges and CO-OPs have cost taxpayers billions of dollars and

left many consumers scrambling to find health insurance. The CO-OP problem is particularly problematic. Twelve of 23 CO-OPs have failed. Eight of the 11 remaining CO-OPs are predicted to fail this year. Health and Human Services has not provided any valid legal reason for withholding the information from this committee. Rather, they assert that if certain information was released publicly, it could cause consumers to think twice before enrolling in CO-OP insurance plans.

We know CO-OPs are failing. Given the well-documented troubles, the committee has had a strong interest in ensuring the administration is doing all it can to safeguard the \$2.4 billion in taxpayer dollars loaned to these failing CO-OPs. There's an additional \$5 billion in Federal grants on the line that States received to establish their own exchanges. Exchanges are plagued by security flaws, call center glitches, Web site failures, software problems, lower than expected enrollment numbers, and deficient processes for determining eligibility.

Our efforts to obtain information on these programs have been met with unexplained delays and what seems like bad faith.

And in Homeland Security—we have a witness here from the Department of Homeland Security. They are here to answer for three separate inquiries. Each of the inquiries involves a different agency: the Transportation Security Administration, the TSA; the Immigration and Customs Enforcement, ICE; and the United States Secret Service. In each of these cases, the committee requested documents and testimony directly from the relevant DHS component. The DHS subsequently inserted itself as the gatekeeper for documents and testimony.

Homeland Security has perfected the art of stonewalling. Specifically, Homeland Security failed to meet a host of deadlines in response to committee letters, many which were bipartisan in their nature, and provided only redacted materials, despite subpoenas clearly instructing otherwise. Homeland Security also stalled on making employees available for transcribed interviews. When the committee was finally able to interview one of the employees, DHS attorneys refused to let the employee answer the committee's question of whether the employee had been discouraged from appearing before the committee. This is textbook obstruction, and it will not stand.

A successful working relationship between a congressional committee and an executive branch agency requires effort, communication, and good faith on both sides. We need transparency, and we have to have an understanding of what is happening. And it is our decision, Congress' decision, what we investigate, not yours. And we will make sure that we go and follow the truth wherever it may take us, and that requires documents and the interaction with people.

I yield back and now recognize the ranking member, the gentleman from Maryland, Mr. Cummings, for 5 minutes.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, and I appreciate you holding this hearing.

As I pointed out at a previous hearing on document productions, I strongly support the authority of our committee to obtain docu-

ments we need as part of our investigations. It is impossible for us to do our job without documents.

The executive branch agencies and outside entities have a duty to comply with our request, regardless of which party is in the majority. Documents are one essential tool we use to investigate waste, fraud, and abuse and to ensure that our government runs as effectively and efficiently as possible.

Just this past December, our committee adopted by unanimous vote a bipartisan report on the U.S. Secret Service and made key recommendations for improving the effectiveness and efficiency of that agency. That report would not have been possible without thousands of pages of documents we obtained as a part of our oversight efforts.

Our ongoing investigation into the water crisis in Flint, Michigan, is another example. Documents obtained by this committee reveal how the actions of Governor Snyder and his administration caused this disaster. That investigation is ongoing, and we received another production of documents on Friday.

So I wholeheartedly agree that documents are a critical tool for us to conduct our oversight duties and responsibilities, but we also have an obligation to use that power responsibly and avoid massive and overbroad requests that create the very waste and inefficiency we are trying to eliminate. Our document requests should focus on investigating actual waste or wrongdoing, rather than fishing for nonexistent problems or using the power of the committee for partisan attacks. We need to recognize how much work goes into responding to our requests and how many taxpayer dollars are spent.

We have an obligation to craft our requests narrowly, to seek only those documents we need to do our jobs. For example, in the case of IRS, we have now received more than 1.3 million pages of documents at a cost of tens of millions of taxpayer dollars, including a request for the emails of Lois Lerner, the ones she wrote going back to 1986. The acting Republican inspector general at the IRS has identified no evidence of political targeting, nor has the Department of Justice, nor has this committee. Still this investigation continues with no end in sight.

This is an example of what I believe is an abuse of the committee's authority. Forcing agencies to divert personnel and spend critical taxpayer dollars on baseless and overbroad document requests is counterproductive to good government because it causes the very waste and inefficiency our committee is charged with eliminating. Ironically, the cost to taxpayers by agencies to fulfill requests like these sometimes exceeds any possibility for cost savings.

Finally, let me make one last point. The invitation letters for today's hearing suggests the agencies testifying before us, quote, "routinely fail to cooperate and have produced nothing of value in response to our request." That's simply not the case. For example, HHS has made seven formal and informal productions, totaling more than 30,000 pages, in response to the committee's request for information about Consumer Operated and Oriented Plans under the Affordable Care Act. Now, I understand that the Republicans hate the Affordable Care Act and will continue to attack it, but HHS has been extremely responsive.

I also understand that the House Republicans are engaged in an orchestrated attack on the administration's new Clean Water rule, known as Waters of the United States, or WOTUS. They oppose the expanded protection of our Nation's waterways. So they've been investigating this new rule by sending massive document requests to EPA, the Army, and the Office of Information and Regulatory Affairs, which is here today.

But these agencies are also cooperating. EPA made 15 productions over the past year, totaling 24,670 pages of documents. The Army made 7 productions, totaling 13,087 pages. And OMB has made 8 productions on behalf of OIRA, totaling more than 6,000 pages.

As I noted earlier, DHS has been producing tens of thousands of pages of documents from its component agencies. These include the Secret Service, the U.S. Citizenship and Immigration Services, Transportation Security Administration, and the Immigration and Customs Enforcement, in response to dozens of requests from our committee. These agencies are not refusing to cooperate with the committee. They are trying to do their jobs, trying to act professionally, trying to protect the legitimate interests of the executive branch and trying to provide this committee with the information we need to fulfill our oversight responsibilities under the Constitution of the United States of America.

So I thank our witnesses for being here today, and I hope we can explore these issues in an earnest way so that this can be a win-win situation where we're able to do our job for the American people and do it effectively and efficiently.

With that, I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I will hold the record open for 5 legislative days for any member who would like to submit a written statement.

I will now recognize our witnesses, starting with Howard Shelanski, the Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget.

We also have the Honorable Jim—help me pronounce your last name.

Mr. ESQUEA. Esquea.

Chairman CHAFFETZ. —Esquea, Assistant Secretary for Legislation at the United States Department of Health and Human Services, and Mr. Jonathan Meyer, Deputy General Counsel at the Office of General Counsel at the United States Department of Homeland Security.

We thank you all for being here. Pursuant to committee rules, all witnesses are to be sworn before they testify. If you will please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Thank you. You may be seated.

Let the record reflect that all of the witnesses answered in the affirmative.

We are now going to recognize each of you for your oral statement, which we would appreciate if you would limit to 5 minutes,

so we maximize the time for questions. Your entire written statement will be made part of the record.

Mr. Shelanski, you are now recognized for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF THE HONORABLE HOWARD SHELANSKI

Mr. SHELANSKI. Thank you, Mr. Chairman.

Chairman Chaffetz, Ranking Member Cummings, and members of the committee, I appreciate the opportunity to appear before you today. The Office of Information and Regulatory Affairs, OIRA, is a statutory part of the Office of Management and Budget within the Executive Office of the President. The office serves as the U.S. Government's central authority for the review of executive branch regulations. As Administrator of OIRA, I believe strongly in the importance of congressional oversight and the value that Congress provides ensuring that OIRA, OMB, and the administration are working in the most effective and efficient way on behalf of the public. I am committed to working with Congress and this committee and to provide the information this committee needs to conduct its lawful oversight functions.

OIRA works with OMB's Office of Legislative Affairs, Office of the General Counsel, and other offices within OMB to respond to congressional requests for information, briefings, and documents, relating to issues under OIRA's purview. OMB as an organization strives to provide transparent responses to those congressional inquiries in a timely manner. OIRA has a broad portfolio that ranges from coordination of governmentwide information with statistical policy to review of executive branch regulations to international regulatory cooperation.

Pursuant to Executive Order 12866 and Executive Order 13563, OIRA is responsible for review of significant Federal actions issued by executive departments and agencies. OIRA works under long-established principles that have been implemented across several administrations of both parties.

OIRA is a relatively small office of approximately 50 employees. The sheer volume of work the dedicated OIRA staff does related to rulemakings, information collections, and other matters is impressive. In 2015 alone, OIRA reviewed over 400 rulemakings, over 2,800 information collections, and held hundreds of meetings at the request of stakeholders of all kinds, including numerous meetings by phone and in person with Members of Congress and their staff at their request. We are committed to maintaining the integrity of regulatory review and ensuring the process is accessible and responsive.

The committee has asked me to testify today about its request for information related to OIRA's review of the Clean Water rule defining Waters of the United States that the Environmental Protection Agency and the Department of Army finalized last year.

Since this committee's initial request and subsequent subpoena, OIRA has worked with others within OMB in a good-faith effort to respond to the committee's request related to this rule. To that end, we, to date, have provided eight sets of responsive documents to the committee. These productions have so far provided the com-

mittee with over 6,400 pages of documents, the vast majority of which consist of nonpublic information. We have made these productions to the committee without any substantive redactions. Our most recent production to the committee, on April 7, 2016, less than 2 weeks ago, was our largest to date. Additionally, we have continued to provide regular productions to the committee as we continue working through our review to identify responsive information.

We have also voluntarily agreed to a number of transcribed interviews of OIRA officials. To date, the committee has interviewed two senior OIRA officials involved with review of the rule. I have also agreed to participate in a transcribed interview, which I understand has now been scheduled.

This is also my second time testifying before this committee on its interest in OIRA's review of the Clean Water rule within a little over a month. OMB's Associate Director for Legislative Affairs also testified before this committee in January of this year on the same topic.

In short, OMB is working diligently to satisfy the committee's request and to answer your questions concerning OIRA's review of the Clean Water rule. We remain committed to Congress' oversight process and look forward to continuing to work cooperatively with the committee. Thank you again for your time and attention. I would be pleased to answer any questions you may have.

[Prepared statement of Mr. Shelanski follows:]

EMBARGOED UNTIL DELIVERED

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503
www.whitehouse.gov/omb**

**TESTIMONY OF HOWARD SHELANSKI
ADMINISTRATOR FOR THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES**

April 19, 2016

Chairman Chaffetz, Ranking Member Cummings, and Members of the Committee:

I appreciate the opportunity to appear before you today. The Office of Information and Regulatory Affairs (OIRA) is a statutory part of the Office of Management and Budget (OMB) within the Executive Office of the President and serves as the U.S. Government's central authority for the review of Executive Branch regulations. As Administrator of OIRA, I believe strongly in the importance of Congressional oversight and the value that Congress provides in ensuring that OIRA, OMB and the Administration are working in the most effective and efficient way on behalf of the public. I am committed to working with Congress and this Committee to be transparent about the OIRA rulemaking review process and provide the information this Committee needs to conduct its lawful oversight functions. OIRA works with OMB's Office of Legislative Affairs, Office of the General Counsel and other offices within OMB to respond to Congressional requests for information, briefings, and documents relating to issues under OIRA's purview and OMB as an organization strives to provide transparent responses to those Congressional inquiries in a timely manner.

OIRA has a broad portfolio that ranges from coordination of Government-wide information and statistical policy to review of Executive Branch regulations to international regulatory cooperation. Pursuant to Executive Order 12866 and Executive Order 13563, OIRA is

responsible for coordination and review of all significant Federal actions issued by executive departments and agencies. Both E.O. 12866 and E.O. 13563 set forth standards and analytic requirements for rulemaking by departments and agencies, and call for agencies to regulate only when the benefits of a rule justify its costs, to the extent permitted by law. Overall, OIRA works under long established principles that have been implemented across several Administrations of both parties.

OIRA is a relatively small office of approximately 50 employees situated within OMB. The sheer volume of work the dedicated OIRA staff does related to rulemakings, information collections, and other matters on behalf of the public is truly impressive. In 2015 alone, OIRA reviewed over 400 rulemakings, over 2,800 information collections, and held hundreds of meetings at the request of stakeholders of all kinds, including numerous phone calls and meetings with Members of Congress and their staff at their request. We are committed to maintaining the integrity and legitimacy of regulatory review and ensuring the process is accessible and responsive.

The Committee has asked me to testify today about its request for information relating to OIRA's review of the Clean Water Rule: Definition of "Waters of the United States" that the Environmental Protection Agency and the Department of the Army finalized last year. Since this Committee's initial request and subsequent subpoena, OIRA has worked with others within OMB in a good faith effort to respond to the Committee's requests related to this rule. To that end, we to date have provided eight sets of responsive documents to the Committee. These productions have so far provided the Committee with over 6,400 pages of documents, the vast majority of which consist of non-public information. We have made these productions to the Committee without any substantive redactions. Our most recent production to the Committee on April 7, 2016 was our largest to date. Additionally, we have committed to continuing to provide regular productions to the Committee as we continue working through our review to identify responsive information.

We have also voluntarily agreed to a number of transcribed interviews of OIRA officials. To date, the Committee has interviewed two senior OIRA officials involved with review of the rule.

I have also agreed to participate in a transcribed interview, which I understand is currently being scheduled. This is also my second time testifying before this Committee on its interest in OIRA's review of the Clean Water Rule within a little over a month. OMB's Associate Director for Legislative Affairs also testified before this Committee in January of this year on the same topic.

In short, OMB is working diligently to satisfy the Committee's requests and answer your questions concerning OIRA's review of the Clean Water Rule. We remain committed to Congress's oversight process and look forward to continuing to work cooperatively with the Committee.

Thank you again for your time and attention. I would be pleased to answer any questions you may have.

Chairman CHAFFETZ. Thank you.
Mr. Esquea, you're now recognized for 5 minutes.

STATEMENT OF THE HONORABLE JIM R. ESQUEA

Mr. ESQUEA. Mr. Chairman, Ranking Member Cummings, and members of the committee, I appreciate this opportunity to testify on the Department of Health and Human Services' response to congressional oversight and request for documents. My name is Jim Esquea. I am the Assistant Secretary for Legislation at HHS. Prior to coming to HHS, I was on the staff of the Senate Committee on the Budget for 11 years for Senator Kent Conrad of North Dakota. I have a deep appreciation for the important work of Congress and strive to facilitate positive and productive interactions between Congress and HHS every day.

HHS' mission is to enhance and protect the health and well-being of all Americans. We accomplish this mission every day by providing effective health and human services and fostering advances in medicine, public health, and social services. Our 11 operating divisions include large and diverse agencies, such as the Centers for Disease Control and Prevention, the Centers for Medicare and Medicaid Services, the Food and Drug Administration, and the National Institutes of Health. From providing healthcare coverage to more than 100 million people through Medicare, Medicaid, and the Children's Health Insurance Program, and the Health Insurance Marketplace, to conducting cutting-edge biomedical research, and working to assure the safety, effectiveness, and quality of foods, drugs, vaccines, and medical devices, HHS programs touch the lives of all Americans.

As part of its critical mission to enhance and protect the health and well-being of all Americans, HHS also regularly interacts and communicates with Congress. Secretary Burwell has made working cooperatively with Congress one of her key priorities, and we view Congress as a valuable partner as we work together on legislation, appropriations, and oversight. HHS recognizes and values Congress' important oversight role and has a long history of cooperating with oversight requests for information regarding its programs. As the Assistant Secretary for Legislation, my office works with many different committees and members on a daily basis to provide Congress with accurate, complete, and timely information. Given my previous experience working for the Senate, I certainly understand and respect the importance of Congress' oversight function. Given the breadth of the programs administered by the Department, we receive inquiries from virtually every Member's office and regularly receive a variety of requests from at least 20 committees on both the House and Senate side. Since the 114th Congress began in January of 2015, the HHS has responded to over 5,200 congressional letters, testified at almost 150 hearings, and provided at least 1,600 briefings to the Hill. In addition, we have responded to numerous requests for documents to multiple committees and have provided tens of thousands of pages of documents. Agency staff also routinely responds to numerous informal inquiries from Congress for requests for information or for help with constituent work.

In responding to this incredible volume of requests, we work to accommodate Congress' legitimate oversight inquiries, consistent with important executive branch interests, while being cognizant of resource constraints. We work collaboratively with congressional staff to understand priorities and to develop mutually agreeable solutions. Often, we receive very broad and complex requests that may involve many different components of the Department. Such requests require more time and attention to ensure that we are providing accurate and complete information.

There have also been some instances where committees have requested extremely sensitive information, involving cybersecurity, market sensitivity, ongoing law enforcement investigations, personally identifiable information, and internal deliberations. In such situations, we have sought solutions to balance the committee's interests and our obligations to safeguard certain information. We have provided substantive narrative responses, briefings by agency experts, and in-camera reviews. In all cases, we work hard to respond to Congress' request for information about our programs. We look forward to continuing to work with this committee and others to respond to requests for information in a timely manner consistent with our obligations to safeguard important information.

Thank you for the opportunity to be here today. I am more than happy to answer your questions. And, Mr. Chairman, as you said in a previous hearing and as you reminded us today, the most important thing we can do is keep an open line of communication. I think we have done that, and we have been aggressive about doing that, but we hear you loud and clear, sir.

[Prepared statement of Mr. Esquea follows:]

Statement by
Jim R. Esquea
Assistant Secretary for Legislation
U.S. Department of Health and Human Services
on
Document Production Status Update, Part II
before
Committee on Oversight and Government Reform
United States House of Representatives
April 19, 2016

Mr. Chairman, Ranking Member Cummings, and Members of the Committee, I appreciate this opportunity to testify on the Department of Health and Human Services' (HHS) response to Congressional oversight and requests for documents. I am Jim Esquea, the Assistant Secretary for Legislation at HHS. Prior to coming to HHS, I was on the staff of the Senate Committee on the Budget for 11 years for Senator Kent Conrad of North Dakota. I have a deep appreciation for the important work of Congress and strive to facilitate positive and productive interactions between Congress and HHS every day.

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As part of its critical mission to enhance and protect the health and well-being of all Americans, HHS also regularly interacts and communicates with Congress. Secretary Burwell has made working cooperatively with Congress one of her key priorities and we view Congress as a valuable partner as we work together on legislation, appropriations, and oversight. HHS recognizes and values Congress's important oversight role, and has a long history of cooperating with oversight requests for information regarding its programs. As the Assistant Secretary for Legislation, my office works with many different Committees and Members on a daily basis to provide Congress with accurate, complete, and timely information. Given my previous experience working for the Senate, I certainly understand and respect the importance of Congress's oversight function.

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We look forward to continuing to work with this Committee and others to respond to requests for information in a timely manner consistent with our obligations to safeguard important information.

Thank you for the opportunity to be here today. I would be happy to answer your questions.

Chairman CHAFFETZ. Thank you.
Mr. Meyer, you are now recognized for 5 minutes.

STATEMENT OF THE HONORABLE JONATHAN E. MEYER

Mr. MEYER. Thank you. Good morning. Mr. Chairman, Ranking Member Cummings, distinguished members of the committee, I'm honored to appear before you today representing the Department of Homeland Security to discuss the considerable efforts DHS devotes to complying with oversight requests by this committee and by the United States Congress generally.

My name is Jonathan Meyer, and I serve as Deputy General Counsel at DHS. I have devoted the bulk of my career to public service and have had the honor to work in both Chambers of Congress for Members on both sides of the aisle as well as in positions in the executive branch as both a career and a political appointee. I consider it a high privilege to have done so, and the varied experience I have accumulated informs my daily work on behalf of the American people. As Deputy General Counsel, I oversee DHS attorneys who are responsible for litigation, regulations, and legislation that is handled by the Office of the General Counsel, and I supervise attorneys providing advice to the many components, offices, and directorates at DHS. More relevant to today's hearing, I also supervise our small congressional oversight team, which works closely with our Office of Legislative Affairs and components of the Department to assist and advise them on responding to congressional oversight requests from the 92 committees and subcommittees with jurisdiction over the Department.

As Assistant Secretary for Legislative Affairs, Tia Johnson said during her testimony in January, Secretary Johnson has pledged transparency and candor with Congress and has committed to respond to congressional inquiries in a timely fashion. Under his leadership, the Department's responsiveness to oversight requests has improved by over 60 percent. We have cut our average response time from 42 business days to less than 17.

We have accomplished this in spite of a significant increase in oversight requests. During calendar year 2015, DHS received approximately 700 oversight letters and countless more oversight requests. Of those, 70 letters came from members of this committee. At the current rate, that number will double this year. Similarly, the hearing schedule has accelerated. DHS is on pace to provide half, again, as many hearing witnesses to this committee this year as last. Recognizing Congress' legitimate oversight responsibility, we are making even greater efforts to accommodate the committee's increased demands.

In inviting DHS to testify today, the committee referenced the Department's responses to oversight requests and demands regarding the Transportation Security Administration, the U.S. Secret Service, and two immigration-related matters.

In the past 6 months, TSA has received 8 letters with over 30 requests for information. In response, TSA has made available approximately 21,000 pages of documents. TSA staff have conducted a briefing, and five TSA personnel have participated in transcribed interviews. Another briefing is scheduled for this Thursday.

Since this committee began its oversight investigation of the Secret Service, it has issued 13 letters, 1 subpoena, and countless informal requests. In response, the Secret Service has provided 15 briefings, hearing testimony from 2 witnesses, and transcribed interviews by 8 employees who have voluntarily left their duties for the day to accommodate the committee's request. At the chairman's request, the Secret Service also facilitated a visit to its headquarters for members of this committee. In total, the Secret Service has made available over 13,000 pages of documents in response to the committee's request in this area in addition to classified documents in the appropriate setting, all at a time when, as the chairman and ranking member have noted, the Secret Service is historically underresourced.

These efforts have supplemented the Secret Service's hard work to respond to inquiries about the operations of the Secret Service from the independent Protective Mission Panel, 7 investigations by the office of the inspector general, and the oversight inquiries of 10 other congressional committees and subcommittees.

With regard to the immigration-related matters, the Department has produced over 2,000 pages of documents, provided a classified and unclassified briefing and a day-long transcribed interview of ICE's special agent in charge of its El Paso office, who flew in from Texas to accommodate the committee. We continue to work to accommodate your requests for documents and additional transcribed interviews.

Mr. Chairman, Secretary Johnson has made responsiveness to Congress a priority, and DHS has shown results, but we are not resting on those results. We are determined to work with the committee to continue to improve our record. I'll be happy to answer any questions the committee may have.

[Prepared statement of Mr. Meyer follows:]

**Statement of Jonathan E. Meyer
Deputy General Counsel
Department of Homeland Security**

**Before the Committee on Oversight and Government Reform
United States House of Representatives**

April 19, 2016

Mr. Chairman, Ranking Member Cummings, Distinguished Members of the Committee:

I am honored to appear before you today representing the Department of Homeland Security (DHS) to discuss the considerable efforts DHS devotes to complying with oversight requests by this Committee, and by the United States Congress generally. My name is Jonathan Meyer, and I serve as Deputy General Counsel at DHS. I have devoted the bulk of my career to public service, and have had the honor to work in both chambers of Congress, for Members on both sides of the aisle, as well as in positions in the Executive Branch as both a career and political appointee. I consider it a high privilege to have done so, and the varied experience I have accumulated informs my daily work on behalf of the American people. As Deputy General Counsel, I oversee DHS attorneys who are responsible for litigation, regulations, and legislation that is handled by the Office of General Counsel, and I supervise attorneys providing advice to the many components, offices and directorates at DHS. More relevant to today's hearing, I also supervise our small Congressional oversight team, which works closely with our Office of Legislative Affairs and components to assist and advise them on responding to Congressional oversight requests from the 92 Committees and Subcommittees with jurisdiction over the Department.

As Assistant Secretary for Legislative Affairs Tia Johnson said during her testimony in January, Secretary Johnson has pledged transparency and candor with Congress, and has committed to respond to Congressional inquiries in a timely fashion. Under his leadership, the Department's responsiveness to oversight requests has improved by over 60%. We have cut our average response time from 42 business days to less than 17. It was therefore gratifying to hear Chairman Chaffetz's recognition of these efforts, when he thanked the Secretary and the Department for our efforts in this area, and recognized the progress that he has made.

We accomplished this in spite of a significant increase in correspondence. During calendar year 2015, DHS received approximately 700 oversight letters and countless more oversight requests. Of those, 70 letters came from Members of this Committee. At the current rate, those numbers will be significantly higher this year, and we expect to make available far more documents than last year. Similarly, the hearing schedule has accelerated. DHS is on pace to provide 50% more hearing witnesses to this Committee this year than last. We recognize Congress's legitimate oversight responsibility and we are making greater efforts to accommodate the Committee's increased demands.

In inviting DHS to testify today, the Committee referenced the Department's responses to oversight requests and demands regarding the Transportation Security Administration (TSA), the U.S. Secret Service, and two immigration-related matters.

In the past six months, TSA has received eight letters with over 30 requests for information. In response, TSA has made available about 15,000 pages of documents, TSA staff conducted a briefing, and five TSA personnel have participated in transcribed interviews. In addition, another briefing is scheduled for later this month.

Since this Committee began its oversight investigation of the Secret Service, it has issued 13 letters, one subpoena, and countless informal requests. In response, the Secret Service has provided 15 briefings, hearing testimony from two witnesses, and transcribed interviews by eight employees who have voluntarily left their duties for the day to accommodate the Committee's request. At the Chairman's request, the Secret Service also facilitated a visit to its headquarters for Members of this Committee. In total, the Secret Service has made available over 13,000 pages of documents in response to the Committee's requests in this area, and thousands of pages of classified documents, in the appropriate setting – all at a time when, as the Chairman and Ranking Member have noted, the Secret Service faces historic challenges on the resource front.

These efforts have supplemented the Secret Service's hard work to respond to inquiries about the operations of the Secret Service from the independent Protective Mission Panel, a number of investigations by the Office of the Inspector General, and the oversight inquiries of ten other Congressional committees and subcommittees.

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Mr. Chairman, Secretary Johnson has made responsiveness to Congress a priority. The Department is determined to continue improving on its past record of oversight response.

I will be happy to answer any questions you or the Members of the Committee may have.

Chairman CHAFFETZ. Thank you.
I will now recognize myself for 5 minutes.

Mr. Shelanski, I want to start with you. On March 3, 2015, our colleague here, Mr. Meadows of North Carolina, asked you some questions regarding the Waters of the United States and made a request for documents. Correct?

Mr. SHELANSKI. I believe that is correct, yes.

Chairman CHAFFETZ. May 12, 2015, the committee issued you a letter requesting information regarding the Waters of the United States. Correct?

Mr. SHELANSKI. I believe that is correct, yes.

Chairman CHAFFETZ. On July 14, 2015, I issued a subpoena from this committee to you and the Office of Information and Regulatory Affairs. Correct?

Mr. SHELANSKI. Yes, sir.

Chairman CHAFFETZ. You received that subpoena. Correct?

Mr. SHELANSKI. Yes, sir.

Chairman CHAFFETZ. Did you understand the subpoena?

Mr. SHELANSKI. Yes, sir.

Chairman CHAFFETZ. Was there any ambiguity about the subpoena?

Mr. SHELANSKI. It was a very broad subpoena, but I understood the subpoena.

Chairman CHAFFETZ. The subpoena right here, one sentence essentially in terms of the schedule: all documents and communications referring or relating to the Environmental Protection Agency and the U.S. Department of Army rule defining the scope of the waters protected under the Clean Water Act.

Is there anything that you didn't understand about that?

Mr. SHELANSKI. No, sir.

Chairman CHAFFETZ. What percentage of the documents in your agency have been provided to this committee?

Mr. SHELANSKI. I don't know what the exact percentage is, in part because the subpoena goes back 9 years to June of 2006, and so I don't know what the full volume of documents ultimately would be. I do know that we have turned over a large number of documents, documents that we have prioritized the review of pursuant to counsel from your staff.

Chairman CHAFFETZ. Why should we settle for anything less than 100 percent?

Mr. SHELANSKI. We agree that you should receive the information that you need for your oversight review, and that is why we have continued to review and work through our documents as quickly as we can in response to your request.

Chairman CHAFFETZ. Do you believe we should get 100 percent of the documents?

Mr. SHELANSKI. I believe you should get all of the documents that are responsive to your request.

Chairman CHAFFETZ. Do you believe we should get 100 percent of the documents?

Mr. SHELANSKI. Without knowing what the documents are sir, without knowing what we are looking for, a lot of documents we have reviewed are nonresponsive. A lot of them contain other kinds of information. I believe you should get all the information you

need for your oversight, and that is why we continue to work with your staff and to follow their counsel until you're satisfied.

Chairman CHAFFETZ. You are under obligation to the subpoena. Correct?

Mr. SHELANSKI. Yes.

Chairman CHAFFETZ. Why have you not given us 100 percent of the documents?

Mr. SHELANSKI. We have been very responsive.

Chairman CHAFFETZ. No, no. That's not the question. Responsiveness, from my viewpoint, on a subpoena that was issued in July of 2015 would be give us 100 percent of the documents. Let me ask you another way. What do you think the United States Congress should not see?

Mr. SHELANSKI. To date, we have turned over our documents without redaction, and we have not withheld any documents that we have reviewed.

Chairman CHAFFETZ. So have you given us 100 percent of the documents?

Mr. SHELANSKI. Of the documents that we have reviewed that are responsive to your subpoena, we have produced those to the committee.

Chairman CHAFFETZ. Have you given us 100 percent of the documents?

Mr. SHELANSKI. Our review is ongoing, sir.

Chairman CHAFFETZ. Why?

Mr. SHELANSKI. Because it takes time to review the documents. The subpoena is—

Chairman CHAFFETZ. How much time does it take?

Mr. SHELANSKI. All of the documents need to be read. We need to make sure that they're responsive.

Chairman CHAFFETZ. But what are you redacting? Name a single thing that the United States Congress should not see in those documents.

Mr. SHELANSKI. At this point, our documents, sir, that we have turned over have been unredacted.

Chairman CHAFFETZ. It's the ones you haven't been turned over that I'm most worried about. What are you hiding? What are you hiding? Why does it take two hearings, a subpoena, letters, requests, and you still are nonresponsive?

Mr. SHELANSKI. We are not nonresponsive, sir. We have turned over—since the last hearing—we have turned over roughly 1,500 additional—

Chairman CHAFFETZ. I want know what percentage. I want to know what percentage.

Mr. SHELANSKI. Because the review is ongoing, because we have prioritized the review of documents that your staff has advised us to prioritize. This is a 9-year subpoena.

Chairman CHAFFETZ. No, no, no, no. Let me make this real clear. I want 100 percent of the documents. That's what's in the subpoena. What documents in your possession did you not give us?

Mr. SHELANSKI. We have not finished reviewing all of the 9 years covered by the subpoena, sir, so there are going to be documents that continue to be produced to the committee as we complete that review.

Chairman CHAFFETZ. How many people are reviewing these materials?

Mr. SHELANSKI. I think roughly half a dozen people are involved with the review.

Chairman CHAFFETZ. Who are those people? Name them.

Mr. SHELANSKI. They would include our Office of General Counsel.

Chairman CHAFFETZ. No. I want their names.

Mr. SHELANSKI. I believe that they include Ilona Cohen, our general counsel; Charles Luftig, our deputy general counsel. I am not sure of the names of all of their staff that are working with them on this, so it would include our Office of Legislative Affairs.

Chairman CHAFFETZ. Have you provided documents to others in the government that you have not provided to Congress?

Mr. SHELANSKI. My understanding is we are working with your committee and making the productions to you here in Congress.

Chairman CHAFFETZ. Have you provided 100 percent of what's in your possession to the United States Congress?

Mr. SHELANSKI. As we review, we have withheld nothing—

Chairman CHAFFETZ. Mr. Shelanski, I'm on the verge of recommending and pushing forward a contempt citation on you personally, and so I want to know. I'm trying to give you every opportunity. It's the second hearing. Why should we not hold you in contempt of Congress?

Mr. SHELANSKI. You should not hold me in contempt of Congress because we have been responsive to this. We were on our third production of documents prior to receiving your subpoena.

Chairman CHAFFETZ. That was in July of 2015.

Mr. SHELANSKI. Right. And we have already acknowledged that, after receiving the subpoena, we were slow, but then we had two document productions in December. And most of the production of documents that we have provided to you, sir, are nonpublic documents that consist of the communications that your staff asked us to prioritize, communications between the OIRA officials reviewing the rule and agency staff during the proposed rule phase, and we have moved forward with that. To date—

Chairman CHAFFETZ. I have got to wrap up here. Who is Vlad Dorjets? Who is he?

Mr. SHELANSKI. Vlad Dorjets is a desk officer within OIRA who worked on the final—

Chairman CHAFFETZ. If we call him in for a transcribed interview, will you make him available?

Mr. SHELANSKI. I understand that that discussion is ongoing between my staff and yours.

Chairman CHAFFETZ. You're the Administrator. You're the head of the office. Are you or are you not—because I'll issue a subpoena. So tell me right now, what are we going to do?

Mr. SHELANSKI. We will make available to you and the committee, Mr. Chairman, all of the witnesses that you need for your oversight purposes.

Chairman CHAFFETZ. Courtney Higgins.

Mr. SHELANSKI. Ms. Higgins is also a desk officer.

Chairman CHAFFETZ. Stuart Levenbach.

Mr. SHELANSKI. He is also a desk officer.

Chairman CHAFFETZ. Amanda Thomas.

Mr. SHELANSKI. She's an analyst in our office.

Chairman CHAFFETZ. How many people in your office?

Mr. SHELANSKI. We have about just under 50.

Chairman CHAFFETZ. And how many people have been touching these documents?

Mr. SHELANSKI. Within my office, within OIRA itself?

Chairman CHAFFETZ. Yes.

Mr. SHELANSKI. Within OIRA itself, everybody who was involved with the rule would be contributing to the effort.

Chairman CHAFFETZ. I'm just asking how many people is that?

Mr. SHELANSKI. I don't really know. I would guess five or six.

Chairman CHAFFETZ. See this is—you're in the second hearing within a month. You're going to be setting records here, Mr. Shelanski. Our request was pretty simple, and it was a long time ago. You're leaving us with no other choices because when we issue a subpoena, it's not a suggestion. It's not a, "Hey, let's start the review process." It's a demand. It's a compulsion to provide the documents that are in your possession, and you failed to do that. You've failed to recognize how important it is, and you are failing to live up to the obligations, your fiduciary responsibility to comply with that subpoena. My time is well expired. I'll now go to Mr. Connolly of Virginia and recognize him for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Shelanski, welcome back. When did you receive a subpoena from this committee?

Mr. SHELANSKI. In July of 2015.

Mr. CONNOLLY. So last July?

Mr. SHELANSKI. That's correct, sir.

Mr. CONNOLLY. And what was the subpoena for?

Mr. SHELANSKI. The subpoena was for all documents related to our review of the Clean Water rule.

Mr. CONNOLLY. Any ballpark guess when you got that as to the volume, the number of pages of documents that would entail?

Mr. SHELANSKI. It was hard to guess because we were instructed to go back to June 19, 2006, and we really didn't have any idea what might be—

Mr. CONNOLLY. So the subpoena covered a period of time that is now 10 years ago.

Mr. SHELANSKI. That is correct, sir.

Mr. CONNOLLY. That could be a lot of documents presumably?

Mr. SHELANSKI. Yes.

Mr. CONNOLLY. These are documents that would involve multiple agencies, including, of course, the EPA?

Mr. SHELANSKI. Yes, sir.

Mr. CONNOLLY. Was there a point in time at which you could circumscribe the universe of potential number of documents involved?

Mr. SHELANSKI. What we have tried to do is follow the counsel we received from committee staff as to where to begin our review of documents for production. We were originally asked to focus on the proposed rule, and we, therefore, turned over documents—prior to the subpoena—two production's worth, including communications between me and the Administrator of the EPA during the review of the proposed rule.

Mr. CONNOLLY. Yes. Because the chairman's questioning allows an impression that you are willfully ignoring a subpoena from the Congress, and I don't think any of us on either side of this committee would ever support a willful ignoring of a legitimate subpoena from the committee, which is charged with oversight of the Federal Government.

So let me ask you, when you get a subpoena, when you got that subpoena, so what happened?

Mr. SHELANSKI. So the first thing that happened is, obviously, I was concerned that our production prior to the subpoena had not been sufficient to satisfy Mr. Meadows' and the chairman's request.

Mr. CONNOLLY. Just to be clear, you're referring to previous requests for information not involving a subpoena?

Mr. SHELANSKI. That is correct. And we had made two productions and were preparing our third at that time.

Mr. CONNOLLY. And what was the volume of those first two productions?

Mr. SHELANSKI. I believe the first production was several hundred pages, and that consisted mostly of things that, while they were covered by the request, were publicly obtainable.

Mr. CONNOLLY. Did somebody in the agency, including perhaps yourself, look at the response to determine, "This is being responsive," or, "It's inadequate," or, "We need to do more?"

Mr. SHELANSKI. Yes.

Mr. CONNOLLY. And were there communications between committee staff and your office during that process?

Mr. SHELANSKI. I do know that there was an effort during that time to find out from committee staff what they wanted us to prioritize, what they were most interested in.

Mr. CONNOLLY. Presumably, as part of the process, I mean, it's not a simple matter of, "We have got a request or subpoena; let's fill up a pickup truck of anything that says 'Waters of the U.S.' and throw it in the back of that truck and send it on up to Congress." Is that correct? There's some vetting process, some review process?

Mr. SHELANSKI. That is correct. The search terms that we used in consultation with the committee staff were very broad because we wanted to try to capture everything that we could. We then went through to review the documents, and I made it clear to my staff throughout OIRA, actually prior to the subpoena and then again, that anybody who had any interaction with the rule was—and, in fact, everybody was to search their documents and to make them available.

Mr. CONNOLLY. Was it your view that the committee reverted to a subpoena because the committee felt your response to the previous request was inadequate?

Mr. SHELANSKI. I was disappointed to receive the subpoena because I felt like we were working very hard to try to comply. In fact, just before receiving the subpoena, we had produced correspondence between me and the EPA leadership. We had notified the committee that we were producing several hundred additional pages within a week or two, which indeed we did a week after we received the subpoena. A lot of that material was deliberative process, confidential material, and we noted that in the letters.

And we then proceeded to work very hard once we received the subpoena—and we have acknowledged we were a little bit slow out of the box for a variety of reasons—but then have come forward with five additional productions since then.

Mr. CONNOLLY. Is it my understanding that those productions have produced over 6,400 pages of documents?

Mr. SHELANSKI. They have, over 6,400 pages of documents and of the documents that we understood were most relevant, and while we're not ending there, we wanted to start with what the committee thought was most relevant.

Mr. CONNOLLY. So the chairman has indicated not adequate; you must be hiding something. What would be the total amount of documents that we haven't gotten that we should get?

Mr. SHELANSKI. Because we're continuing to review the documents that we searched, I don't know what the total number is. Many of the documents that we get at any moment are nonresponsive because the search terms are very broad. I would note that we have not withheld one document, and we have not redacted any of the documents that we have sent for anything except, for example, a personal phone number or something that is of a personal nature.

Mr. CONNOLLY. I want to be very clear. That is your sworn testimony today?

Mr. SHELANSKI. My sworn testimony is that in our productions to date, we have withheld nothing. There is no document the committee has asked for that we have not turned over.

Mr. CONNOLLY. So, in response to the chairman's question, what are you hiding—

Mr. SHELANSKI. We are hiding absolutely nothing, but we are continuing to review. We are not hiding, but we are not finished.

Mr. CONNOLLY. But review in and of itself is not an unreasonable thing for anybody to engage in in response to any such request?

Mr. SHELANSKI. It is the standard practice, as I have been led to understand.

Mr. CONNOLLY. I would just note, you know, I was in local government for 14 years, and I was subject to a very strict FOIA set of requirements in the Commonwealth of Virginia, very strict. My phone records were subject to FOIA. My schedule was subject to FOIA. Any and all correspondence was subject to FOIA. And I certainly reserved the right, with the advice of counsel, to redact personal information when I responded to a FOIA and review the request. We also reserved the right, especially with respect to requests from media, to try to work with the media to hone the request, so we were responsive, but it wasn't just a fishing expedition.

I certainly support the chairman and the full committee in any and all document requests that we may need to do our work, and we always want to hold executive branch agencies accountable and insist that they be responsive, and there's always a built-in tension, irrespective of who's in the White House and who's here.

But we also want to make sure that we're being reasonable in as we review how responsive you are, and I think the process sometimes could be a little more complicated than we sometimes let on.

Thank you for your testimony today.

Thank you, Mr. Chairman. I yield back.

Chairman CHAFFETZ. Thank the gentleman.

I now recognize the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. Esquea, under ObamaCare, how many CO-OPs were recognized by CMS and DHS?

Mr. ESQUEA. It would be 23 CO-OPs actually went public.

Mr. JORDAN. And how much money did those 23 CO-OPs receive from taxpayers?

Mr. ESQUEA. I believe it was \$2.4 billion.

Mr. JORDAN. How many of those 23 CO-OPs are still in operation?

Mr. ESQUEA. I believe there—11, I believe.

Mr. JORDAN. Which said another way, 12 of them have already failed, right, within the first year. Correct?

Mr. ESQUEA. Yes.

Mr. JORDAN. And how many of the remaining 11 are under some kind of corrective action plan?

Mr. ESQUEA. I believe, eight.

Mr. JORDAN. Eight of the 11. And of the 12 that failed, most of those were under a corrective action plan before they failed. Correct?

Mr. ESQUEA. I believe so.

Mr. JORDAN. And of the ones that are left, the 11 that are operating, 8 of which are under corrective action plans, how many of those do you think are going to fail?

Mr. ESQUEA. I don't actually run the CO-OP program, so I have no firsthand knowledge.

Mr. JORDAN. But I'm asking your opinion, as the guy who is Assistant Secretary of DHS, what you think is going to happen, based on experience? I got my theories, but I'm wondering what you think.

Mr. ESQUEA. I am hopeful that they will continue to be an important option in terms of providing affordable and accessible coverage for consumers.

Mr. JORDAN. "Hopeful" is probably an understatement, wouldn't you say, Mr. Esquea, based on the history?

Mr. ESQUEA. I think the CO-OP was an important option in the Affordable Care Act. Its purpose was to inject competition and provide another avenue for—

Mr. JORDAN. So if you're hopeful, are you seeing something that we're not seeing because we have asked you for—and back to the focus of this hearing and what the chairman talked about in his questioning—we have asked you for a number of pieces of information that you haven't given us? So maybe you've seen something that we haven't that makes you hopeful, because we're not hopeful, but we would at least like to see the information that you have so we can make a better determination on if, in fact, the 11 that are remaining, 8 under corrective action plans, are actually going to be in existence much longer.

Mr. ESQUEA. Congressman, I appreciate the question, and I will say this: Since the first letter we got from the chairman back in November related to CO-OPs, we have worked very hard to pro-

vide significant, relevant, responsive documents. To that end, we have provided over 31,000 pages—

Mr. JORDAN. I don't want to hear the numbers. And I appreciate that, and I apologize for cutting you off, but we'll get thousands of this and thousands of that.

Mr. ESQUEA. Well, but it is important to single out—and I will put that aside—but it is important to note that we did provide two in-camera reviews of these market-sensitive documents unredacted. We made them available to the committee.

Mr. JORDAN. Let me just, two letters, one in November and one in December, asking for specific pieces of information; a subpoena asking for specific information; one hearing already where we asked for information and still have yet to received it; and as you point out, two in-camera reviews, which I find strange. Why can't we just get the information? Why do we have to have an in-camera review? So let me ask you this. Eight of the plans that are still functioning are on corrective action plans. We have asked for the materials related to what exactly is involved in the corrective action plan. You've not given us that. And maybe even more importantly, we have asked which of these remaining 11 have had site visits? Can you tell me the answer to that? How many have had a site visit?

Mr. ESQUEA. I believe we're working on that request for you. I think at the CO-OP hearing you held in February, which, in fact, was a very helpful hearing—

Mr. JORDAN. This, I guess, kind of cuts to the heart of it. There are only 11 of these things still operating, and you can't even tell me which of those 11 you went out to visit. That's a simple question, and that's one of the things we asked for in the two letters, one of the things we have asked for in the subpoena. Why can't you just tell us, "We visited these 7 of the 11, and here are the ones that we visited?" Why can't you tell me that?

Mr. ESQUEA. We are working hard to make sure we get that information for you from CMS.

Mr. JORDAN. It takes that long to find out if you've visited any of 11 sites?

Mr. ESQUEA. We are working very hard to make sure that you get that piece of information and the rest of the information that you requested from that hearing.

Mr. JORDAN. That is like call someone up, "Yeah, we visited," whatever. That, to me, seems problematic of this. If you can't even tell us which of the 11 remaining you went to see, it seems to me this would be a priority. If over half have already failed, we have lost over a billion taxpayer dollars, we have got 11 still functioning, 8 of those are under a corrective action plan, you should be able to tell us which ones you went out to visit.

How about recoupment of any Federal funds? Can you tell me the progress on recouping the over a billion dollars that has already been lost to the taxpayer?

Mr. ESQUEA. I believe we're working with DOJ in terms of recoupment of those funds.

Mr. JORDAN. Why does it have to be in-camera review? Why can't you just get the information to the chairman and to the committee and, more importantly, to the American taxpayer?

Mr. ESQUEA. Again, thank you for that question. Because there's market-sensitive information in the documents themselves that if they were disclosed, quite frankly, they would undermine the ability of these CO-OPs to be competitive, and they would be no longer be able to operate on a level playing field.

Mr. JORDAN. To me, that is almost laughable. Over half have already failed. We know the other 11 are going to fail. What market sensitivity is there? This thing is a complete and total failure, and somehow to hide behind that and say you have to come review it in camera—and my understanding is when staff reviewed it in camera, again, it wasn't responsive to the subpoena and the letters that we had sent.

One other thing here, Mr. Chairman, and I'll be done.

"I will work to ensure the office continues to focus on providing Members the technical assistance they need on legislative priorities, answering oversight requests, and ensuring that Members have the information necessary to meet the needs of their constituents...accurate information available...that is presented in a manner that is useful. The only way information is of any use to Members and policymakers is if it is timely delivered."

Didn't you say that Mr. Esquea?

Mr. ESQUEA. I said that at my confirmation hearing.

Mr. JORDAN. Well, and it was well-said. That's all we're asking is for you and DHS to live up to what you said when the United States Senate confirmed you for the position you hold. And specifically about a CO-OP program that is a complete failure, at least tell us what's happening with the recoupment of taxpayer dollars and what's happening with the site visits to the 11 remaining CO-OPs.

And, with that, I yield back.

Mr. ESQUEA. Mr. Chairman, I did make a promise at my confirmation hearing, and I'm living up to that promise. Since we got the first letter related to CO-OPs back in November, we have been very aggressive about being responsive to the committee's requests, and we will continue to be responsive to this committee's request. Again, these documents will be available in camera, unredacted, with no time limit for any member of this committee. That I can assure you.

Chairman CHAFFETZ. When?

Mr. ESQUEA. We will schedule it whenever you like, sir. Again, we will make these documents available to you for in-camera review, unredacted, whenever you like at the convenience of this committee. I take my responsibility very, very seriously.

Chairman CHAFFETZ. Thank you.

We will now recognize the gentleman from Pennsylvania for 6-1/2 minutes in equal time.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And thank you, Secretary Esquea for being here. I appreciate your answers.

I read your written submitted testimony, and on this point that Mr. Jordan was bringing up, you said that there have also been some instances where committees have requested extremely sensitive information, involving cybersecurity, market sensitivity, on-

going law enforcement investigations, personally identifiable information, and some other things.

So I appreciate that the committee has not publicly disclosed confidential information about the currently operating Consumer Operated and Oriented Plans, so-called CO-OPs, but given that the committee is continuing to pursue these sensitive documents, I want to reiterate my concern about releasing this information in a way that would mislead consumers about the insurance companies in their States. Empowering consumers through transparency is a good thing, but that's not what we would be accomplishing by releasing market-sensitive information in this way. In reality, it would be misleading selectively to release information only about the currently operating CO-OPs that have been placed under corrective action plans, enhanced oversight plans, by HHS, without releasing similar information about all of the insurance companies in these States. Regulators at the State and Federal level routinely use CAPs, corrective action plans, enhanced oversight plans, and other regulatory tools, like consent orders, to make sure insurers stay on track. Secretary Esquea, HHS uses CAPs to monitor and regulate private insurance companies in the Medicare Advantage market. Am I correct in that?

Mr. ESQUEA. That would be correct sir.

Mr. CARTWRIGHT. And large insurance companies offering Medicare Advantage plans might be placed under a CAP or enhanced oversight plan by HHS. Am I correct in that?

Mr. ESQUEA. That would be correct.

Mr. CARTWRIGHT. State insurance regulators use similar tools to address issues raised by consumer complaints, like billing or claims practices. Correct?

Mr. ESQUEA. Yes, sir.

Mr. CARTWRIGHT. So the committee held a hearing on the CO-OP program in February, and before that hearing, the committee received a letter from the National Association of Insurance Commissioners, or NAIC, and Mr. Chairman, I do ask unanimous consent to place this letter into the record for today's hearing.

Chairman CHAFFETZ. Without objection, so ordered.

Mr. CARTWRIGHT. And here's what the NAIC had to say about the disclosure of confidential information related to the CO-OPs, and I quote: "For the sake of the 11 CO-OPs that continue to operate in our States, we encourage all congressional Members and their staff to heed the confidential nature of some of the financial information that may come to your attention. Divulging information on State actions or the financial status of any plan that is not public could threaten the long-term success of these plans."

Secretary Esquea, my understanding is that HHS has already provided the documents the committee is asking about today in two separate in-camera review sessions with committee staff. Am I correct in that?

Mr. ESQUEA. That would be correct, sir.

Mr. CARTWRIGHT. And, of course, "in camera" is a \$50 Latin phrase that means in private, but in a way the committee can see it. Right?

Mr. ESQUEA. Yes, sir. In private, unredacted.

Mr. CARTWRIGHT. All right. So would HHS be willing to provide additional in-camera review sessions for any member of this committee who would still want to review these sensitive materials?

Mr. ESQUEA. Absolutely, sir.

Mr. CARTWRIGHT. And I think you just said that. Right?

Mr. ESQUEA. Yes, sir.

Mr. CARTWRIGHT. Sometimes people can't take yes for an answer. Can you articulate HHS' concern about producing copies of those sensitive documents, please?

Mr. ESQUEA. Absolutely. Again, you held a very important hearing on CO-OPs back in February, and I think it was the Maryland insurance commissioner who said: It's one thing to talk about CAPs; it's another thing to make them public and make proprietary information that might be in the CAPs public so that they can, in turn, be used against the CO-OP themselves.

These CAPs, as I understand it, do in fact have market-sensitive information that could undermine their ability to compete in their individual marketplaces.

Mr. CARTWRIGHT. I want to echo your concerns and those of the NAIC that releasing information of this nature could not only be misleading for thousands of consumers in the United States, but it also could create a damaging kind of self-fulfilling prophesy for the future of the CO-OPs.

There are those who want to believe that they're all bound for failure, but that's not really a reason to drive a stake through the heart of them by disclosing misleading public information based on incomplete information.

So I thank you for your work, Secretary Esquea, and I encourage you to continue to work with the committee.

And, with that, I yield back.

Chairman CHAFFETZ. Will the gentleman yield?

Mr. CARTWRIGHT. I yield back.

Chairman CHAFFETZ. Okay.

I now recognize the gentleman from Florida, Mr. Mica, for 5 minutes.

Mr. MICA. Did you want to yield to me for 6 and I can yield you 1? Thank you, Mr. Chairman.

Again, we have agencies that do not comply with a request from Congress.

Mr. Meyer, I've got a copy here of—it's a small copy; I usually give these to students. It's the Constitution of the United States. Are you familiar with that document?

Mr. MEYER. I have read it, yes, sir.

Mr. MICA. And I turn to, after the Preamble, "We the people," to Article 1, Section 1. You may be familiar with that, too. It says: "All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives."

Are you aware of that?

Mr. MEYER. I am, sir.

Mr. MICA. And other than this document, these few pages, the first—this is the Constitution. All laws emanate from this document, don't they?

Mr. MEYER. Yes. And all laws emanate from the Congress—

Mr. MICA. Yes.

Mr. MEYER. —authorized by that document.

Mr. MICA. I was here when we created, in fact, I helped author GSA. I helped name GSA and create it. We created that, I believe, before DHS. I spoke from this dais, when DHS came through here, and said: We shouldn't do it. It was a mistake to think it would be more efficient and economical to combine 21 agencies and over 200,000 people.

I turned out to be right, and we should dismantle that. We have the authority to do that, don't we?

My point is that we created DHS. We created TSA. Do you think the Congress and this committee has the right to investigate misconduct and mismanagement at the TSA and DHS?

Mr. MEYER. Yes. Congress has the right to conduct oversight of TSA and DHS and other agencies.

Mr. MICA. Yeah. We created it; we have that right. But TSA, in fact, has failed—and DHS—every document request for production and also extensions of deadlines to produce documents of November 13, 2015; December 17, 2015; February 20, 2016; March 4, 2016; March 29, most recently, 2016, a few weeks ago. You've either failed to produce the—well, you've failed to produce the documents, even under the extended deadline requests.

Mr. MEYER. Congressman—

Mr. MICA. Are you aware of that?

Mr. MEYER. Congressman, TSA has produced over 21,000—

Mr. MICA. Oh, I heard that.

Mr. MEYER. —pages of documents.

Mr. MICA. I heard that. I heard that. I clearly heard that. In fact, I wrote right at the top here, 21,000.

And that's the game they play, for the new members. I've been on this committee longer than anyone, and I can tell you I've never seen agencies—whether you're Democrat or Republican, Independent—this is something that is the worst gaming I have ever seen. They'll do two things. "We produced 21,000 documents," but they didn't produce the documents we asked for. So they try to cloud the issues with saying, "We presented 21,000 documents," but you did not produce the specific request that we have.

Now, then the other thing they'll say, "Oh, we produced the witnesses," but they produced low-level witnesses, okay, or people who have no clue. Well, you've seen them. You've seen them, Mr. Cummings. They have no clue.

But this is fundamental to our responsibility of oversight. So this is the game that Mr. Meyer is playing and the others are playing. You've produced lots of paper. You've produced witnesses.

On Friday—now, in January, we asked the TSA witness to come in and testify. We called them back on Friday, I'm told by staff. Are you aware of that?

Mr. MEYER. Yes, I am.

Mr. MICA. Are you aware what took place? Not only are they producing witnesses that won't be able to testify, those that are able to testify—members of the committee might know that there's a law that goes back, oh, practically to, what was it, 2000—I'm sorry, 1912—Lloyd-La Follette, and this says you can't pay someone if they intimidate someone to not give Congress proper information.

On Friday, your attorneys stopped a witness from giving information and testifying whether he was asked to decline giving information to this committee, which is in violation of Federal law. Are you aware of that?

Mr. MEYER. I'm aware that he was asked to disclose a confidential attorney-client—

Mr. MICA. Yeah. And that—

Mr. MEYER. —communication, and he was asked not to. I'm happy to answer your question, sir.

Mr. MICA. Again—

Mr. MEYER. The question you asked him.

Mr. MICA. Again, we asked him if he was asked, again, to withhold information that we were entitled to. We believe we're entitled to—under the Constitution, under the laws, we created TSA, DHS, and other—other laws that have precedent, we have the right to question that witness, and the law also says that we do not have to pay salaries to people who intimidate people who do not give us the information we request.

And maybe we should start, Mr. Chairman, with withholding this gentleman's salary.

I yield back.

Chairman CHAFFETZ. I thank you gentleman.

I now recognize the gentlewoman from Illinois for 6 minutes. Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chair. I agree with the chairman and the ranking member that our committee has a right and an obligation to obtain documents to fulfill our constitutional oversight responsibilities.

However, I also agree that we here on this committee have our own obligation to avoid making overly broad document demands to agencies. In many instances, by failing to ask for what we really need and instead demanding that agencies produce everything under the sun, we contribute to the very problem that leads us here today.

One need to look no further than the committee's ongoing IRS investigation to see how massive, overly broad document requests can make it difficult for any agency to comply in a reasonable timeframe. In 2014, our former chairman issued a subpoena to the head of the Federal Election Commission demanding copies of all emails sent or received from Lois Lerner going back to 1986, a time when emails barely even existed.

Mr. Meyer, DHS also received a subpoena from this committee last July. That subpoena demanded 18 categories of documents on the Secret Service. The time period for that subpoena was from January 1, 2013—I mean, 2000, excuse me, to July 9, 2015. Isn't that right?

Mr. MEYER. Yes. That's my understanding.

Ms. KELLY. So DHS is being forced to research a 15-year time period. Is that correct?

Mr. MEYER. That's correct.

Ms. KELLY. Can you briefly tell us what is involved in being required to produce documents that span a 15-year period?

Mr. MEYER. Thank you, Congresswoman. I'd be happy to answer your question.

Yes, as you can imagine, researching, finding documents going back 15 years can be quite an intensive task, particularly for an agency like the Secret Service, which is primarily almost exclusively composed of special agents who are trained in protection and law enforcement, not oversight response. As you can imagine, if you go back that far, they're not electronic records. They're, I believe, primarily hardcopy records. They're often stored offsite, not even in the same State. It can take a lot of work and a lot of time, but I'd like to say the Secret Service is committed to doing that and has been working to do that, even within the constraints it has, and has been producing documents. I believe they've produced documents something like 17 different times in response to that subpoena and the letter that preceded it.

Ms. KELLY. Okay. Is it something that could reasonably be done in the 2-week deadline DHS received in the subpoena?

Mr. MEYER. I don't see how something like that could be done in 2 weeks, ma'am.

Ms. KELLY. And is it more because of what you just described, is that the reason, where there are hardcopies and things like, or is there—do you have the staff to do it or—

Mr. MEYER. Yes. It's a very time-intensive endeavor. And, of course, staffing is at a premium, particularly at the Secret Service.

Ms. KELLY. Okay. Mr. Chairman, if we're serious about addressing problems with agency delays in document production, it's imperative that we also examine ourselves. Instead of inundating agencies with overly broad document requests, we should focus on asking for only what we really, really need.

I yield back.

Chairman CHAFFETZ. Will the gentlewoman yield before she—yield to me before she yields back?

Ms. KELLY. Yes, I will.

Chairman CHAFFETZ. The subpoena that we're talking about with the Secret Service was issued on July 9 of 2015. I did this in conjunction with the letters with Mr. Cummings. The letters and requests that we did were not being responded to. And one of the challenges that I think we have, for instance, looking at this document, it takes them so long at Homeland Security to respond to these documents because they take so much time to redact the very information that we need. So we get a document like this. This is about an investigation regarding a confidential—people in the Secret Service using assets that are dedicated for our confidential informants, using it for retirement parties and to reimburse their individual credit cards. And when they spend this much time, everything in blue is redacted, and they redact all that information, then we are left with a document that they've spent a lot of time on instead of just handing it over to us.

It really does beg the question, why do they have to redact anything from the Congress? What is it that they're—that we're not supposed to see?

In Atlanta, the President of the United States was found in an elevator with a person who had been arrested—arrested. And he had a gun on him, and the Secret Service didn't know about it. So we've asked for months upon months for that information. They

sent us this document. All of the names are redacted. I mean, it's just list after list of redactions.

And my question to members on this panel and to the Congress—to those that are testifying, what is it that they don't think they should share with Congress? Because I don't—I don't think there should be anything. They trust us with a lot of sensitive information. So, rhetorically, I ask, what information do you not want to see?

I'll yield back.

Ms. KELLY. And I'll take back some of my time.

Chairman CHAFFETZ. Yes. Go ahead.

Ms. KELLY. Mr. Chairman, it is true we wanted to budget documents going back 15 years, but we didn't call you accusing you of failing to comply. And I—

Chairman CHAFFETZ. No. I appreciate it. You're—if the gentleman will yield. I think your heart and your passion is in the right direction, but I can—as far as the Secret Service is concerned, that is about as bipartisan as this committee has ever done. I don't know how to be any more bipartisan than what we're doing on the Secret Service, but the reality is they still have not provided the information to this Congress. They are still hiding stuff and documents from this committee. And we know it's in their possession, because they give it to us in redacted format, and that's what's outrageous and that—there is no justification for that. There is no justification for that.

If it's confidential or if it's classified, then we'll deal with it in a classified setting, but we still have a right to get it. When we're doing an investigation of the Secret Service, and we've done so in as bipartisan manner as we can—I think I've made my point.

I yield back.

Ms. KELLY. And I don't have much time, but I know they have produced about 15,000 pages of—or copies of documentation, so—I'm done.

Chairman CHAFFETZ. Thank you.

All right. I now recognize the gentleman from North Carolina, Mr. Meadows, for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman.

Mr. Shelanski, let me follow up on where the chairman left off with regards to responsiveness, and where Mr. Connolly of Virginia, because the indication that you have given this committee is that you're doing all that you possibly can as fast as you possibly can to comply with the subpoena. Is that your sworn testimony here today?

Mr. SHELANSKI. We are working as quickly as we're able to review the documents and produce them to the committee.

Chairman CHAFFETZ. If you can please move that microphone just a little bit closer. Thank you.

Mr. MEADOWS. So can you—

Mr. SHELANSKI. Is that better?

Chairman CHAFFETZ. Yes.

Mr. MEADOWS. Can you—

Mr. SHELANSKI. Closer?

Chairman CHAFFETZ. Yes.

Mr. MEADOWS. Can you explain to the committee why the initial request that I made of you for documents, why it required a subpoena to get you to comply? Because when we look at it, there were only 47 unique documents that we couldn't find online that you gave this committee between the initial response and June 4, only 47 that weren't found online, and that's one every other day. Is that the best you can do?

Mr. SHELANSKI. When we started our production, we wanted to start with the material that was responsive but that would be publicly available, not necessarily—

Mr. MEADOWS. In what realm would you think that this committee would ask you for documents that are publicly available?

Mr. SHELANSKI. Well, some of them—

Mr. MEADOWS. If we can go online, we don't need your staff to do that. We can find it. Why would we ask for that?

Mr. SHELANSKI. And very quickly thereafter in our second production, we had documents that were certainly nonpublic, and we are in the process of preparing a substantial additional document—

Mr. MEADOWS. Okay. You've given this committee a little over 1,300 documents that are unique in a year's time, 1,300, three a day. Is that the best that your staff can do? Is that the best that you can do, three a day?

Mr. SHELANSKI. We have been working very hard to—

Mr. MEADOWS. That's not the question. You're giving an answer to a question. Is that the best, yes or no? Is it the best you can do?

Mr. SHELANSKI. We've been doing the best we can after what we've acknowledged, Mr. Meadows, was a slow start since—

Mr. MEADOWS. Slow start? You got a subpoena and you didn't do anything for 4 months. That's not a slow start, Mr. Shelanski, that's a no start.

Mr. SHELANSKI. It's not true that we didn't do anything, sir. The beginnings of a response to a subpoena first involve the search for the documents.

Mr. MEADOWS. Okay. Stop right there. So you got the search for the documents. What is that universe?

Mr. SHELANSKI. Again, I—

Mr. MEADOWS. Because we have to know the universe in order for there to be a search. What was the universe?

Mr. SHELANSKI. I—are you referring to the number of documents?

Mr. MEADOWS. Yeah, the universe.

Mr. SHELANSKI. I don't know what the number of documents was.

Mr. MEADOWS. All right. You've given to me 100 percent of your documents, according to your testimony.

Mr. SHELANSKI. My documents have been turned over. My documents were produced in the second—documents of mine. I mean, I think my—

Mr. MEADOWS. Have they been turned over to the committee, 100 percent of your documents?

Mr. SHELANSKI. I think there are probably more of my documents that are being reviewed. I can't sit here today and tell you that a hundred—

Mr. MEADOWS. Well, then how can you say that nothing has been given or held back from this committee, because your testimony is you've testified that 100 percent of your documents have been turned over? How many does that include?

Mr. SHELANSKI. My documents were included—documents of mine, including documents that we were told were of greatest interest to this committee, were turned over in our second production prior to the subpoena.

Mr. MEADOWS. Okay. Let me stop you, because you're mischaracterizing.

Mr. SHELANSKI. Okay.

Mr. MEADOWS. Six months we allowed you to prioritize. That did not come from this committee; that came from your staff in conjunction with this committee. We asked—we allowed you to start with the first 6 months.

So, out of the 6 months of documents that you're about to talk about, what is the universe? How many total documents?

Mr. SHELANSKI. I do not know, sir, what the total number—

Mr. MEADOWS. So it's taken a year, and you still don't know how many documents?

Mr. SHELANSKI. Because a review is ongoing. The search terms were very, very broad, and when a lot of the documents—

Mr. MEADOWS. Mr. Shelanski—all right. Let me stop you again.

Mr. SHELANSKI. Trying to answer, sir.

Mr. MEADOWS. One year, we need to know, how many documents are you reviewing? What is the universe of that? You only have 45 employees. I could probably come into your office and figure out the universe for the last 6 months within a few days.

Mr. SHELANSKI. The search terms that we've been using—and we have advised your staff of what those search terms are—are very broad. In addition to the search that each person in OIRA has done, there are electronic searches that are run on all of these documents, and I do not know the full number of documents that that electronic search—

Mr. MEADOWS. Okay.

Mr. SHELANSKI. —has turned—

Mr. MEADOWS. Mr. Shelanski, you and two other of your senior OIRA officials have said that you've turned over 100 percent of your documents. You can't have it both ways. Either you turned over 100 percent and we know the number, or you haven't turned over 100 percent, or that testimony is false. Which is it?

Mr. SHELANSKI. So I want to make very clear what the—what my testimony is, since I don't know what testimony you're referring to with the other OIRA officials.

My testimony is that of the documents of mine that have so far been reviewed for production to the committee, they have gone to you unredacted, and there is no document that is identified by this committee that we have said we would not produce.

Mr. MEADOWS. So do you know how many documents you've turned over, the number?

Mr. SHELANSKI. I know that the total number of pages we've turned over to this committee—

Mr. MEADOWS. No, no. Your 100 percent, how many is that—5,000, 15,000—how many?

Mr. SHELANSKI. I'm talking about the documents that we have reviewed and turned over to the committee so far, more than 6,400 pages, most of it—

Mr. MEADOWS. Mr. Shelanski, let me close with this: I am frustrated with your inability to answer questions that we've asked over and over and over. And you're here for sworn testimony today. These questions should not be a surprise to you. If you can't answer them, then say that you're not intending to answer them, so we will know to take the appropriate—but we keep asking. I asked in October, 5 months. It's a simple question. Can you not answer the question here today? Are you not prepared to answer?

Mr. SHELANSKI. Mr. Meadows, I've been trying as sincerely as I can to answer your questions. When I can't answer the question or don't know the answer, I've told you that. I've tried to make clear exactly what my answer is. For example, my documents are being reviewed under the same standards as everybody else's—

Mr. MEADOWS. How many documents are there?

Mr. SHELANSKI. Of my total documents? Since I don't—

Mr. MEADOWS. How many total documents have you turned over?

Mr. SHELANSKI. And, again, I have made clear to you that I don't know the answer to what—

Mr. MEADOWS. Mr. Chairman—

Mr. SHELANSKI. —is.

Mr. MEADOWS. —this witness is being unresponsive, and I think we need to deal with it appropriately.

I yield back.

Chairman CHAFFETZ. I agree with the gentleman.

The gentleman yields back.

I now recognize the gentlewoman from New Jersey, Mrs. Watson Coleman, for 5 minutes.

Mrs. WATSON COLEMAN. Thank you.

Mr. Shelanski, as you know, one of the purposes of the Clean Water Act is to provide clean drinking water for the American public.

Mr. SHELANSKI. That is correct.

Mrs. WATSON COLEMAN. Clean drinking water seems like an unobjectionable goal to me, but many of my Republican colleagues have launched an offensive against the Clean Water Act rule, seemingly driven by their agenda to cripple the EPA. According to Speaker Ryan, the Clean Water Act is, and I quote, "another example of Washington bureaucrats sticking their nose where it doesn't belong," close quote. Former Presidential candidate Marco Rubio agrees. He called the Clean Water Act rule a, quote, "power grab" and a, quote, "brazen overreach." He said this, and I quote: "We need to end this massive mandate once and for all and put a cap on all regulations so that Washington bureaucrats can be held accountable for the costs they are trying to inflict on our economy."

Were aware of these statements that have been made?

Mr. SHELANSKI. I've heard various statements to that effect, yes.

Mrs. WATSON COLEMAN. Opposition to the Clean Water Act rule has not been limited to extreme rhetoric. In November of last year, the Republican-controlled Senate voted on S.J. Resolution 22, a resolution that would nullify the rule.

Were you aware of this situation, this resolution?

Mr. SHELANSKI. Yes, I was.

Mrs. WATSON COLEMAN. Over the last three Congresses, the House has taken at least four votes directly related to the Clean Water Act rule. Now Republicans on this committee have turned to investigation in an effort to stop the rule. They have requested huge numbers of documents from EPA and the Army and your office, OIRA, and they want 9 years of material. All three agencies have provided a combined total of more than 40,000 pages of documents to this committee thus far.

Administrator Shelanski, is your agency cooperating with this committee?

Mr. SHELANSKI. Thank you very much, Congresswoman.

Yes, my agency is trying as hard as possible to cooperate with this committee.

Mrs. WATSON COLEMAN. Thank you, Mr. Shelanski. Will you continue to provide responsive materials?

Mr. SHELANSKI. I pledge our absolute commitment to continuing to cooperate with this committee and as quickly as possible to getting them the material they need for their—

Mrs. WATSON COLEMAN. Thank you, Mr. Shelanski.

During this committee's investigation into the Flint water crisis, Republicans harshly criticized the EPA for not stepping in earlier to save the people of Flint from Governor Snyder's ill-conceived emergency management system and his incompetence. Yet, in the context of the Clean Water Act rule, Republicans want EPA to take a backseat in the States. Representative Gosar said this, and I quote: "That is why the House is acting this week by voting on the Regulatory Integrity Protection Act, which will prevent this blatant Federal overreach. This bill scraps the WOTUS rule and puts States, local governments, and private water rights holders back in the driver's seat for managing our water."

The hypocrisy of my Republican colleagues on the issue of clean water reveals their true motivation, and that is to destroy the EPA at any cost. It is sad that politics continues to trump the interests of the American people for something as basic as clean water, and it's a darn shame that you are being harassed by this committee for trying to do your job with the limited resources you have.

With that, I yield back.

Chairman CHAFFETZ. The gentlewoman yields back.

We'll now recognize the gentleman from Florida, Mr. DeSantis, for 5 minutes.

Mr. DESANTIS. Thank you, Mr. Chairman.

Mr. Meyer, we've, on this committee, done a lot of oversight over the Department of Homeland Security, how they released people who were in the country illegally and then those people ended up committing criminal offenses. And in the past, we've been able to get the figures from fiscal year 2013, fiscal year 2014, the number of people who have actually been convicted of crimes and then still released by DHS.

There was a recent report in the Washington Times that 121 individuals who were in the country illegally and were in custody of ICE were then subsequently released and then subsequently charged with murder, and the committee has tried to get information about that and other issues.

On March 10, the committee staff requested information from ICE regarding the number of criminal illegal aliens who were released by DHS in 2015 broken down by crimes committed, like we've received in the past. Shortly thereafter, the staff also asked for individuals released, based on the Davis case, for 2015 broken down by crimes committed, because that's one of the reasons that ICE will give us for why these individuals are released. And then the committee sent a letter, on March 17, 2015, requesting both of these data sets, along with recidivist information for 2015, and the return date on that letter was March 31, 2016, but nothing has been provided to us.

This is information that clearly the agency keeps, because they provided it in 2013 and in 2014, and we've made repeated requests for this information, and now 6 months after the fiscal year has ended and the Director of ICE is going to testify before this committee next week, no information has been received to date. We've been told repeatedly that the information is available but is in, quote, "clearance." We haven't even received a briefing in preparation of the hearing.

So my question to you is, when will the committee receive this information?

Mr. MEYER. Thank you, Congressman. I am aware that such information has been made available in the past. I have not personally been involved in this issue currently. So I'm happy to take that question back and get you an answer, but I don't myself know that.

Mr. DESANTIS. Well, what would be—I mean, I'm just trying to figure out, what would be the reason to not have it 6 months after the fiscal year ended, when it's something that's been done routinely in the past.

Mr. MEYER. Sir, I don't know. I'm happy to look into that.

Mr. DESANTIS. Okay. You know, I think it's an important issue. We are told that the administration is really focused on people who are coming here committing crimes, but when we get those breakdowns, you know, that suggests that that is not really the case and that there are folks who are in ICE custody, even people who have been convicted of criminal offenses and then released. And I think it's an important issue, because—you know, I wish we could prevent every crime from ever happening in the United States.

Obviously, we have penalties to try to deter people, but when you actually have somebody who's here illegally and then they're in the custody of ICE, if ICE would simply have repatriated them, well, then the person who ended up being the victim of a crime would not have been the victim of a crime. And so that's one example where the government clearly could have prevented crimes from occurring. So I think it's a major issue of public safety.

So I want you to take it back. We have the Director coming next week. We absolutely need to have that information in time that we can review it and then ask her pertinent questions about that.

Mr. MEYER. Yeah. Congressman, I agree with you: it's an important issue. There are obvious public safety implications. I'm happy to look into it and get back to you.

Mr. DESANTIS. Okay. Great.

And, with that, I can yield back the balance of my time.

Chairman CHAFFETZ. Well, if the gentleman will yield.

Mr. DESANTIS. Yes.

Chairman CHAFFETZ. Mr. Meyer, what do you believe Congress has no right to look at?

Mr. MEYER. Congress, as I believe I discussed with Congressman Mica, is entitled to oversight under the Constitution and under various laws, so it is entitled to look into any matter that is legitimate oversight that serves a legislative interest.

Chairman CHAFFETZ. What is legitimate oversight, in your mind?

Mr. MEYER. Well, I don't know. I don't have a view as to what constitutes legitimate oversight.

Chairman CHAFFETZ. Well, you used the word. I didn't—

Mr. MEYER. Yeah. Because I believe that's what—the state of the law, but I think countless courts—

Chairman CHAFFETZ. Who gets to decide what legitimate oversight is?

Mr. MEYER. Well, the courts have called on the executive branch and the legislative branch to work together to try to accommodate each other's interests, and that's certainly what we try to do.

Chairman CHAFFETZ. So what—I'm trying to—my time is short. Very specifically, name something you don't think the Congress has the right to see.

Mr. MEYER. Well, courts have recognized the executive privilege, for example. So if something is clearly covered by the executive privilege—

Chairman CHAFFETZ. And who can offer the executive privilege?

Mr. MEYER. Who can offer it? The President typically would authorize—

Chairman CHAFFETZ. So the President personally has to do that. And if done so—

Mr. MEYER. Right.

Chairman CHAFFETZ. —it is common practice to offer a log of those items. Correct?

Mr. MEYER. I believe so.

Chairman CHAFFETZ. And has the President issued or cited executive privilege on any of the issues that we have been talking about or any of the subpoenas or letter requests?

Mr. MEYER. I can't speak to the other agencies—

Chairman CHAFFETZ. No. I'm talking about just Homeland Security.

Mr. MEYER. In the 5 years I've been at DHS, executive privilege has not been claimed on any item.

Chairman CHAFFETZ. So there's no executive privilege, you can't cite a single thing Congress shouldn't see, so why do you redact materials?

Mr. MEYER. Well, it depends on the material. Some material is simply not responsive to what the committee is asking about, because you can have a document that deals with the issue you're inquiring about and then also includes other issues.

Chairman CHAFFETZ. Do you believe names are important?

Mr. MEYER. It depends on the matter. There are certainly plenty of names we have provided to you.

Chairman CHAFFETZ. See, this is why we think you're totally nonresponsive. You're playing a game of obstruction. I will explore this more.

It's time now to recognize the gentlewoman from Michigan, Mrs. Lawrence, for 5 minutes.

Mrs. LAWRENCE. Thank you, Mr. Chair.

I want to be on the record that I agree legitimate oversight is absolutely the right and the responsibility of Congress. As I've stated numerous times, I've had experience in Federal Government and management, and I do understand that when you receive a request for documents, that is a process that requires a certain amount of time.

So, Mr. Meyer, the committee requested ICE to produce documents about the security of an employment-based visa program, known as EB-5 program. Specifically, the committee requested all documents and communications referring or relating to concerns about EB-5, including communication with other agencies, since January 1 of 2010.

Can you briefly walk me through what's involved in searching and producing all documents and all communications related specifically to EB-5 program beginning from 2010?

Mr. MEYER. Thank you, Congresswoman. I'd be happy to. As you mentioned, the EB-5 program is a program that has been the subject of considerable congressional attention going back as far as 2010 and certainly in 2012, 2014. And at that time, we responded to a lot of congressional oversight about it. We've testified at 16 hearings about—

Mrs. LAWRENCE. That's not my question. I said, how long and what does it take to fulfill that request?

Mr. MEYER. It takes the same sort of thing I discussed with your colleague, Congresswoman. It requires searching for documents, reviewing them, finding—

Mrs. LAWRENCE. How do you search? How many people are involved? How many hours? Who gets the assignment? Is it random? Is there a designated person? How do you search?

Mr. MEYER. So it depends on the issue, but let's take this issue, the EB-5 program. The EB-5 program is a program that is housed primarily at USCIS, United States Citizenship and Immigration Services, but this particular request focused more on ICE, Immigration and Customs Enforcement, but in order for the search to be complete on matters related to EB-5, we have to search in two different places, each of which is tens of thousands of employees.

What we would typically do is try to identify as precisely as we can what the committee is looking for, try to talk to the committee staff so that we can be clear about that, and then go to the people who we think would normally have those documents, and try to identify them. There are also documents, I should say—

Mrs. LAWRENCE. Do you have an internal person that deals only with providing responses to requests for information in your department?

Mr. MEYER. So there are many people who deal with that in various—

Mrs. LAWRENCE. Do you have a particular person? So when the request comes in—

Mr. MEYER. So a request like that comes into ICE, and typically the Office of Congressional Relations at ICE as well as the Chief Counsel's Office would be involved. If there are equities involving the headquarters, then also our Office of General Counsel and the Office of Legislative Affairs at DHS might also be involved.

Mrs. LAWRENCE. You know, Mr. Meyer, you clearly hear the sense of frustration. You have named a wide array of people responding to this. You know, it's bureaucracy, as we look at it as creating efficiency, sometimes creates bureaucracy and hinders the progress.

It would seem to me if we really want to address this issue, because I truly do believe in legitimate oversight, you appear to be sincere in trying to get it, but when you have 10 people at different departments, in some kind of way, we—gentlemen, as you sit here today in your different roles, we need to find a way to streamline this process, hold some accountability, because if you're waiting for the legal department to respond to another department and to—everyone to come together, I clearly see where there could be balls dropped, there could be a delay in the process. And if you don't address that, we're going to continue to keep circling around in this debate. If you keep doing the same thing, you're going to keep winding up here hearing this conversation.

Now, we all know that you have—staff has been reduced. You still must do your job, and I as a Member of Congress expect for you to do it, but you are not meeting the expectation. So, clearly, how could we do it quicker?

Mr. MEYER. So may I respond, Congresswoman?

Mrs. LAWRENCE. Yes.

Mr. MEYER. I completely agree, and we are trying very hard to improve our performance. As I said in my opening statement, we have improved significantly over the past number of years. Our response time has gone down by 60 percent, and that's in the face of—I believe it's something like a 75 or 100 percent increase in the number of requests were getting specifically from this committee, and as I said, despite those increases, we've improved our responsiveness. There's definitely a lot more improvement we can do. We are working to do that.

Mrs. LAWRENCE. I will tell you, if you don't give the information, you're going to get the requests probably broader and more frequently. We've got to improve.

Thank you. I yield back.

Chairman CHAFFETZ. I thank the gentlewoman.

We'll now recognize the gentleman from North Carolina, Mr. Walker, for 5 minutes.

Mr. WALKER. Thank you, Mr. Chairman.

I was just surprised to hear Mr. Meyer agree that he was not doing the job that he should be doing, but my questions—in fact, I have several questions for Mr. Esquea, so let's get started here.

Was it your decision to make certain materials available only through in-camera review?

Mr. ESQUEA. I consulted with CMS, and I was part of the decisionmaking, yes.

Mr. WALKER. Can you repeat that again?

Mr. ESQUEA. I consulted with CMS, and I was part of the decisionmaking, yes.

Mr. WALKER. You were part of the decision?

Mr. ESQUEA. I approved that decision, yes.

Mr. WALKER. Okay. Thank you. What involvement from the White House, OMB, in regards to responding to the committee's requests? Was there any involvement from the White House?

Mr. ESQUEA. Mr. Chairman, when there are—Congressman, when there are agency equities involved, I may consult with others. The ACA is an important priority of this administration, so they probably would like to know what I'm doing, so I may have advised them as to where I was going.

Mr. WALKER. Sure. Well, that wasn't really an answer, so let's hone it down a little bit more. Were there any conversations with Secretary Burwell?

Mr. ESQUEA. The Secretary was aware of what we were doing, yes.

Mr. WALKER. When was the last time you talked with Secretary Burwell?

Mr. ESQUEA. On this topic?

Mr. WALKER. Sure.

Mr. ESQUEA. I'm not—I cannot remember. I don't think I've had a direct conversation with her about this per se.

Mr. WALKER. I think you just said earlier there's been some discussion, but you just don't remember exactly—

Mr. ESQUEA. Well, I consult—

Mr. WALKER. —when it was?

Mr. ESQUEA. I consulted with CMS and CMS leadership to understand exactly what the request was for, what did it entail, and what were the issues that were of concern.

Mr. WALKER. I see. How about Administrator Slavitt?

Mr. ESQUEA. Yes. He was involved in the decisionmaking absolutely.

Mr. WALKER. You remember your conversation with him, but not specifically, so let me ask this: When was the last time you talked to Administrator Slavitt regarding this hearing?

Mr. ESQUEA. I have not spoken with him regarding this hearing. I did have a conversation with the chief of staff, Mandy Cohen, who testified here in February, but that was at the beginning of the process when we first—when I first understood that the committee was interested in these documents.

Mr. WALKER. Okay. Now that we know there's been some influence in preparing for today's testimony, were there any questions that you were directed to not answer?

Mr. ESQUEA. No, sir.

Mr. WALKER. Okay. Were there any materials that you were instructed not to agree to produce to the committee?

Mr. ESQUEA. No, sir.

Mr. WALKER. Okay. Have there been any discussions at HHS about intentionally not producing materials to this committee?

Mr. ESQUEA. No, sir.

Mr. WALKER. Okay. Who is making the final decisions about what does and does not get produced to this committee?

Mr. ESQUEA. Congressman, I will consult, but, ultimately, it's usually my name that goes on these letters that go to the committee. So I help in those decisionmakings.

Mr. WALKER. You say "usually." When are there decisions that your name doesn't go on the letter?

Mr. ESQUEA. Well, if a letter goes directly to the Secretary, for example, and the Secretary wants to sign it herself, you know, she will convey what she would like to do.

Mr. WALKER. Understood.

Mr. ESQUEA. But, by and large, since—I'm more likely to be in the weeds than the Secretary so that's why it's often more appropriate for me to sign the letter.

Mr. WALKER. What is the universe of materials—this may be my final question, because I want to certainly get a definitive answer—

Mr. ESQUEA. Sure.

Mr. WALKER. —since you are—we are all under oath here. What is the universe of materials that has not yet been produced, in other words, types of documents, number of custodians, number of documents? Can you speak to that?

Mr. ESQUEA. I think the best answer to that would be that I'm meeting with the committee staff—my staff is meeting with this committee staff later this week to determine what questions still remain in terms of—and answers.

Mr. WALKER. Legitimately, I believe we, along with the American people, have—we're obligated to be frustrated with this. It's been 5 months since the first request. You've had weeks to prepare, and I just don't understand why we're not being able to get the timely responses that we're needing to get. So let me—

Mr. ESQUEA. Congressman, again, since we first got this request back in November, we have provided 31,000 pages of documents over six productions; we've provided an in-person briefing by our key CMS official, who provides oversight of the CO-OP program; we've provided a witness for a hearing for this committee; and we've had two in-camera reviews. So, again, I think we've acted fairly aggressively, and we've worked very closely with this committee.

Mr. WALKER. You've acted fairly aggressively under your definition, but it's like dealing with my children when I ask them for the truth, what we act—like to get or what we call the truth at our house is when they share all the information and not just partial information. I thank you for your time.

With that, I yield back, Mr. Chairman.

Chairman CHAFFETZ. If the gentleman will yield to me prior to yielding back, I'd appreciate it.

Mr. WALKER. Absolutely.

Chairman CHAFFETZ. Mr. Esquea, why should we settle for an in-camera review?

Mr. ESQUEA. Mr. Chairman, we are doing all that we can to be responsive and to respond to the questions of this committee.

Chairman CHAFFETZ. No, no, no, no.

Mr. ESQUEA. We are—

Chairman CHAFFETZ. Wait a second. I issued you a subpoena, right—

Mr. ESQUEA. Yes, sir.

Chairman CHAFFETZ. —Health and Human Services a subpoena?

Mr. ESQUEA. Yes, sir.

Chairman CHAFFETZ. Do you feel an obligation to provide that information to this committee?

Mr. ESQUEA. I believe I have an obligation to make sure you have access to this information, which I have done.

Chairman CHAFFETZ. So you don't believe that a subpoena is compulsion to provide the documentation to the committee?

Mr. ESQUEA. Sir, let's be clear. We are responding to the subpoena. We are making sure that you have access to these materials whenever you like—

Chairman CHAFFETZ. Where—

Mr. ESQUEA. —access.

Chairman CHAFFETZ. Where do you get the legal justification to provide access as opposed to providing?

Mr. ESQUEA. Sir, I'm at a disadvantage in that I'm not a lawyer, so I will answer the question this way.

Chairman CHAFFETZ. Well, I'm at a disadvantage—

Mr. ESQUEA. I will—

Chairman CHAFFETZ. —but—

Mr. ESQUEA. I—what I will say is that we are working very hard to make sure that you have access to this information whenever you like unredacted. This information will be available—

Chairman CHAFFETZ. Is there a national security concern?

Mr. ESQUEA. Oh, sir, I think you understand this is about market sensitivity and the ability of these CO-OPs to—

Chairman CHAFFETZ. It could be embarrassing. It's just—

Mr. ESQUEA. No.

Chairman CHAFFETZ. —because of embarrassment?

Mr. ESQUEA. No, sir. I don't think it's a question of embarrassment. It's just a question of we will—this—we have made these materials available to you. We will continue to make these materials available to you. It's a question of market sensitivity.

Chairman CHAFFETZ. I'm going to come back this. My time has expired.

I want to recognize the gentleman from Missouri, Mr. Clay, for 5 minutes plus.

Mr. CLAY. Thank you, Mr. Chairman.

And, you know, today's hearing is to address the status of agency responses to committee document requests. I want to make clear that I fully support the committee's authority to obtain documents as part of our investigative function.

However, we on this committee also have a duty not to send overbroad requests that actually cause the waste and inefficiency we are trying to root out.

Mr. Esquea, last month, your agency received a letter from this committee seeking a large amount of information about art and artifacts possessed by your agency. The letter stated, and I quote: "Art collections in Federal buildings bring creative and artistic beauty to public spaces and create attractive work environments for Federal employees and the public that they serve. These tax-

payer-funded art programs, however, raise the potential for wasteful spending,” end of quote.

To your knowledge, have there been any specific examples of art possessed by your agency that have been identified by the committee as wasteful—

Mr. ESQUEA. Congressman—

Mr. CLAY. —to your knowledge.

Mr. ESQUEA. To my knowledge, no. And I know my walls are fairly sparse, so I’m not aware of any problems in this area.

Mr. CLAY. Is this a widespread problem at HHS?

Mr. ESQUEA. I am not aware this is a problem, sir.

Mr. CLAY. Are any of you aware of any concerns that have been raised by the GAO of your agency’s inspector—or your agency’s IG about wasteful spending on your art or artifacts? Mr. Meyer?

Mr. MEYER. No, sir.

Mr. CLAY. Mr. Shelanski?

Mr. SHELANSKI. No, sir.

Mr. CLAY. Thank you.

Mr. Esquea, you were not alone. In fact, the committee sent these letters to 27 different agencies.

Mr. Meyer, DHS received one as well. Is that correct?

Mr. MEYER. Yes, we did, sir.

Mr. CLAY. The committee’s letter requested every document, and I quote, “referring or relating to the number, nature, location, and monetary value of art and artifacts” in your agency’s possession.

Were you aware that 26 other agencies received this request, including the U.S. Fine Arts Commission and the National Archives and Records commission?

Mr. MEYER. I was aware that some other agencies had received it. I wasn’t aware of who they all were.

Mr. CLAY. Okay. And the letter also asked for documents relating to the resources used by the agency to preserve art and manage exhibits, insurance premiums paid on art and artifacts, contracts related to art and artifacts, and pending purchases and acquisitions of art and artifacts.

The Department of Homeland Security has 16 different operational and support components. Can you describe the type of resources that will be needed to comply with these requests?

Mr. MEYER. Well, as I understand it, to fully comply with this request, we would have to look at every location that DHS maintains. I believe we are located in all 50 States. We have 200 and—approximately 230,000 employees. We—just in the national capital region, we have over 50 locations. So it would be substantial, the number of resources required.

Mr. CLAY. Thank you for that response.

The Department of Defense told the committee that responding to this request will require, and I quote, “reaching across the military departments and agencies to seek specific documents and detailed information from numerous and diverse defense facilities.”

It seems like the real waste here is the resources agencies will have to expend to respond to this request. Again, let me be clear: If there is some specific allegation or abuse or if there is a case in which someone comes to us to allege waste, fraud, or abuse, that’s

fine. But this is a fishing expedition across the entire Federal Government, and I don't think that it serves the taxpayers well.

And, you know, I'll yield to my friend, the chairman. Maybe you can explain why we are expending so many resources to do this, Mr. Chairman. I mean, look, the Department of Defense, don't you think they have some—you know, some more important things to do like fight terrorism?

Chairman CHAFFETZ. One of the things sitting before us, the reason we have Homeland Security here, is our investigation into the Secret Service, and that's been as bipartisan as can possibly be.

Mr. CLAY. And then it gets into art and artifacts?

Chairman CHAFFETZ. Well—

Mr. CLAY. What is that all about?

Chairman CHAFFETZ. Again, let's focus on the hearing here. I think there is a good—there are millions and millions of dollars going out the door in art and artifacts. I will talk to you more about that, but the gentlemen that are sitting here before us have topics that are very relevant to the committee and I—Homeland Security, which you asked a question; Secret Service, it couldn't be more bipartisan.

Mr. CLAY. But, Mr. Chairman, don't you think those are kind of onerous requests that don't have anything to do with waste, fraud, and abuse? I think it is, to ask the Department of Defense.

Chairman CHAFFETZ. The Department of Defense is not testifying today.

Mr. CLAY. I know it, but you requested that—

Chairman CHAFFETZ. Yes. And I think—

Mr. CLAY. —information from them.

Chairman CHAFFETZ. And when you see the conclusion of this, I think you'll be mystified as to how we're spending millions and millions of dollars going out the door and how it's out. That's one of the parts of our jurisdiction—

Mr. CLAY. Sure.

Chairman CHAFFETZ. —is the Department of Archives.

Mr. CLAY. I don't have a problem with that, but I would love to discuss this further with you—

Chairman CHAFFETZ. Happy to do so.

Mr. CLAY. —and to see the evidence and—

Chairman CHAFFETZ. Well, we—

Mr. CLAY. —government—

Chairman CHAFFETZ. Until the agency provides that information, we have reason to believe that there is a lot of waste, fraud, and abuse. And to ask these agencies to provide that information, which should be right at their fingerprints, tell us what's in your possession, that is not a difficult request.

Mr. CLAY. I will await the responses. Thank you.

Chairman CHAFFETZ. Thank you.

I now recognize the gentleman from Georgia, Mr. Hice, for 5 minutes.

Mr. HICE. Thank you very much, Mr. Chairman.

Just as the previous conversation was going on, we're all here because of waste, fraud, and abuse, and we're not getting the information we have to deal with the problem that we need to deal with.

Mr. Esquea, particularly HHS has failed, as these others as well, but HHS has not produced the documents from the subpoena. And, you know, I was—hearing Mr. Shelanski a while ago making a big deal about the reason for their delay and potential obstruction, whatever it may be, is because of review, it's just taking absolutely forever for them to review, and, quite frankly, that's made him an uncooperative and unresponsive witness here today. Do you use the same excuse that review is the reason that we're not getting the information requested?

Mr. ESQUEA. Actually, Congressman, we are making materials available to the committee for their review.

Mr. HICE. Then why are we here? Why are you here? If you've provided all the information, why are you seated here? Why are we having this hearing? It's because we don't have the information.

Your excuse has been market sensitivities. What in the world is market sensitivities?

Mr. ESQUEA. Again, I'm not an expert on the CO-OPs, but at your hearing in February, I believe our witness said that the types of information that were in these CAPs were related to plan pricing, vendor oversights, business strategy, that sort of thing, the type of thing that, if you would make public, could undermine the competitiveness of these CO-OPs. So, again, I don't run the CO-OP program, and I don't have firsthand knowledge.

Mr. HICE. So what is the legal basis, then, for market sensitivities being the reason Congress can't get the subpoenaed information?

Mr. ESQUEA. Well, we are—we have made this submission available to the committee. We're just asking the committee to work with us to continue with in-camera reviews of this information.

Mr. HICE. Are market sensitivities exempted from a subpoena? Is that reason enough to exempt the information we request?

Mr. ESQUEA. You are asking appropriate oversight questions, and we are trying to provide you those answers via in-camera reviews at—

Mr. HICE. We're not asking for in camera. We're asking for the information to this committee.

Mr. ESQUEA. And we are providing access to this information whenever—

Mr. HICE. You're not providing the information; otherwise, we wouldn't be having this hearing.

Mr. ESQUEA. Well, again, Congressman, we are doing all we can to provide the committee with access to this information.

Mr. HICE. Well, God forbid that you provide this market-sensitive information to the public market, free marketplace. I mean, you've got—we've got 23 CO-OPs: 12 of them have failed; 21 of them have incurred net losses; 19 have claims exceeding premiums; 13 are not meeting enrollment. It's an absolute failure in every direction. There is no reason to hide behind market sensitivities as an excuse not to provide this committee with that which has been requested through subpoena.

All right. Not only is it market sensitivity. I mean, you use that excuse, but the vast majority of documents have been withheld with absolutely no explanation whatsoever.

Mr. ESQUEA. Sir, I'm not aware of any documents that have been withheld. We are working diligently to provide responsive document—

Mr. HICE. Well, if you are that clueless as to not even know why you are here, you're here because we have not received the documents that have been requested or they've been redacted to point they're worthless.

Mr. ESQUEA. I'm not aware of any documents that we've redacted, sir.

Mr. HICE. All right. Well, there have been no documents that have been produced to this committee relating to recoupment of Federal funds from failed CO-OPs and exchanges.

Mr. ESQUEA. I believe, sir, that the DOJ has the lead on that, so I'm not sure we have any information on it.

Mr. HICE. So when is that information going to be available?

Mr. ESQUEA. Again, I can circle back to see what DOJ can provide, but DOJ is the lead in terms of recoupment of those funds.

Mr. HICE. It's just—so you don't have anything to do; that's out of your jurisdiction? Is that your testimony?

Mr. ESQUEA. Well, my testimony is I believe DOJ has the lead for that.

Mr. HICE. Well, that's not my question. Are you saying that it is outside of your jurisdiction to have that information for us?

Mr. ESQUEA. I don't have that information, but, again, I can circle back to see—just to be clear about what it is I may have, but my understanding is DOJ has the lead for that, and they might be the appropriate place to ask that question.

Mr. HICE. Mr. Chairman, I'll yield back, but, again, it just seems that we have all three witnesses today—they're being totally unresponsive to what we're trying to get to. I feel like we're running circles and chasing rabbits and getting absolutely nowhere.

Chairman CHAFFETZ. Will the gentleman yield—

Mr. HICE. Yes, sir.

Chairman CHAFFETZ. —prior to yielding back?

Mr. HICE. Yes.

Chairman CHAFFETZ. Mr. Esquea, you cannot simultaneously sit and tell this committee and testify, "We're doing all we can do," which was your quote, and still not provide them to this committee. If you were doing all you can do, you would actually provide those documents to the committee. Your assertion that an in-camera review is an appropriate response to a subpoena is fiction. There's no basis in law.

Is it your testimony that the Health and Human Services Secretary, Ms. Burwell, has no intention of complying with the subpoena? Is that your testimony?

Mr. ESQUEA. Mr. Chairman, my testimony is that we're working very hard to accommodate and understand the interests of this committee, including having access to this information.

Chairman CHAFFETZ. Is there anything that is ambiguous—is there any ambiguity about the nature of the subpoena? You obviously have these materials. Correct?

Mr. ESQUEA. We've made the materials available to the committee. So, yes, we have them.

Chairman CHAFFETZ. No. You—

Mr. ESQUEA. They're in our possession, sir.

Chairman CHAFFETZ. But they're in your possession; they're not in our possession.

Mr. ESQUEA. That's correct, sir.

Chairman CHAFFETZ. Are you testifying that you have no intention of making those materials—giving those materials to the United States Congress?

Mr. ESQUEA. I am—my testimony is that we are making this material available to the committee in camera—

Chairman CHAFFETZ. It's not available to us unless you give it to us. And so my staff cannot review it at their leisure. Our members cannot access that information immediately by coming down to the committee rooms. Your definition is fiction. You're making it up. It's not part of the law.

I'm going to ask you one more time: Are you or are you not going to take those materials and give them, as they're required under the subpoena, to the United States Congress, this committee?

Mr. ESQUEA. Mr. Chairman, if there are further accommodations we can make, we will make them, and we will continue to work with—

Chairman CHAFFETZ. If you will make them, you will comply with the subpoena and give them to us. Are you or are you not going to do that?

Mr. ESQUEA. Mr. Chairman, we will continue to make these documents available to the committee. And we—and I—I simply ask that you work with us in this process.

Chairman CHAFFETZ. I—no. I'm not in a negotiation mode. When I issue a subpoena to you, it's not a negotiation point. You owe these documents to the United States Congress based on this subpoena.

Are you or are you not going to give this committee, the United States Congress, these documents that are under subpoena, yes or no? Yes or no?

Mr. ESQUEA. We will continue to work with this committee, Mr. Chairman.

Chairman CHAFFETZ. I recognize the ranking member, Mr. Cummings.

Mr. CUMMINGS. Thank you very much.

Gentlemen, in listening to all of this, we have to have a balance here. And it seems, in listening, that this process at the very least can be speeded up.

What can we do to speed up the process of getting the documents that the committee has asked for? What can we do to help you speed that process up? Talk to me. Come on. Don't be silent.

Mr. Shelanski.

Mr. SHELANSKI. Thank you, Mr. Cummings. We just seek to continue to have cooperative discussions with the committee staff so that we know what documents they are most interested in and we can know what to prioritize next in our review.

As I tried to make clear in response to Mr. Meadows' statement, I have turned over all of my documents for review; all of our documents have been searched and are being reviewed; and we have been producing them to this committee as quickly as we can get through them.

Mr. CUMMINGS. But you had said a little bit earlier that when you first got the subpoenas, that you were kind of slow, your folks were kind of slow, and then you implied that you sped things up. And I'm just trying to make sure you're not moving in the slow gear again.

Mr. SHELANSKI. No, sir.

Mr. CUMMINGS. And I'm trying to figure out why you were in slow gear.

Mr. SHELANSKI. We've been speeding up. In fact, following up on our commitment to this committee in two recent hearings, we have increased our level of production, and we are working to—and I'm very hopeful we are nearing the stage where we will complete this phase and get good guidance from the committee staff on what they would like us to prioritize next.

I would also note we have two senior officials—in regard to Mr. Mica's comment about agencies producing low-level officials—we are producing our very senior officials' information and availability for transcribed interviews first. We are starting at the top, and we are going to continue to work with the committee as quickly as possible to complete our production.

Mr. CUMMINGS. Let me get to the thing that concerns me most today, though I may come back to this if I have time, is the idea that the majority gets documents that we don't get. See, that—I'm going to tell you something: that really bothers me.

Mr. Meyer, the committee has requested multiple document productions from TSA as well as transcribed interviews of employees of TSA. In your testimony, you stated, and I quote: "In the past 6 months, TSA has received 8 letters with over 30 requests for information. In response, TSA has made available about 15,000 pages of documents. TSA staff conducted a briefing, and five TSA personnel have participated in transcribed interviews." Is that correct?

Mr. MEYER. Yes.

Mr. CUMMINGS. Come on, Mr. Meyer. That's your testimony. Just say "yes."

Mr. MEYER. Yes.

Mr. CUMMINGS. That is—all right.

Mr. MEYER. Yes, sir.

Mr. CUMMINGS. Is TSA continuing to cooperate with the committee to produce documents in response to these requests?

Mr. MEYER. Yes, sir.

Mr. CUMMINGS. On December 3, 2015, Chairman Chaffetz sent a letter to TSA requesting documents and communications relating to cases of alleged misconduct by executive-level TSA employees since 2012, including reports of investigation. On April 6, 2016, TSA made available for in-camera review unredacted versions of the reports. TSA also made available other documents relating to proposed disciplinary actions, employee responses, and final administrative decisions on 13 of 17 cases. Yesterday, the committee was notified that the remaining four cases are now available for review. Is that correct, Mr. Meyer?

Mr. MEYER. Yes. That's my understanding.

Mr. CUMMINGS. TSA has made productions to the majority, Mr. Meyer, without simultaneously making productions to the minority. Now, when you started your statement, I paid special attention to

your written statement, and you said it here today about all your work, working on both sides of the aisle, working all these years in Congress, and being over the producers of the documents. You know the significance of getting documents to the majority and the minority simultaneously, do you not?

Mr. MEYER. Yes, sir.

Mr. CUMMINGS. What's that about? Help me with that. Because let me tell you something. Let me tell you something: I want—my job in part is to make sure that my staff has the same documents that the majority has. Now you have got to explain to me why it is, why it is, that the majority gets documents and we don't. Help me with that.

Mr. MEYER. There is no explanation. There is no excuse, sir. I've only recently learned that that was happening. It was an error. We will share with you every document we share with the majority.

Mr. CUMMINGS. How was that an error?

Mr. MEYER. I don't know, sir. I can find out.

Mr. CUMMINGS. I don't like this approach at all. I think the TSA should provide Democrats with the copies at the same time it provides them to Republicans. So you agree with that?

Mr. MEYER. I do, sir.

Mr. CUMMINGS. How soon can my staff get the documents that they may not have?

Mr. MEYER. As soon as we can figure out what they are missing.

Mr. CUMMINGS. How did you find out, by the way? How did you find out that we were not getting documents?

Mr. MEYER. I recently learned in conversation that you had not gotten—I believe there were cases where you had and other cases where you hadn't. We're working to fix that, if it already hasn't been fixed.

Mr. CUMMINGS. So you will ensure that, in the future, the minority will receive all the documents the TSA transmits to the committee at the same time they are transmitted to the majority?

Mr. MEYER. Yes, sir.

Mr. CUMMINGS. Will you ensure that they are delivered directly to the minority's office and not to the majority's office with the expectation that the majority will have to provide them to the minority? That creates a delay. Do you follow me?

Mr. MEYER. Yes.

Mr. CUMMINGS. I trust my friend and his staff, but they get them one day. Then they may have to copy, do whatever, and I don't know when we'll get them. We deserve to have them at the same time.

And let me tell you something: if I was on the other side, I would be making the same argue.

Hello?

Mr. MEYER. Yes, sir. We'll send them wherever you would like us to send them.

Mr. CUMMINGS. I'm also somewhat disturbed that TSA has provided official briefings to the committee's majority staff that excluded minority staff. What's that about? Did you know about that?

Mr. MEYER. I don't know if I did, but we will fix it, sir.

Mr. CUMMINGS. So do you agree that the minority staff should be included in briefings that TSA provides to this committee?

Mr. MEYER. Yes, sir.

Mr. CUMMINGS. Will you ensure that, in the future, the minority staff of this committee is invited to briefings that TSA provides to the committee?

Mr. MEYER. Yes, I will.

Mr. CUMMINGS. You got to tell me how that happens. How does that happen? Let me tell you something. I have got hardworking employees. They give their blood, their sweat, their tears, and when these kinds of things happen, it really bothers everybody. You know why? Because they can't do their job.

Mr. MEYER. I agree, sir.

Mr. CUMMINGS. So is somebody not telling you something on your staff?

Mr. MEYER. TSA does not work for me, sir, but I work with them, and we are going to improve communication to make sure these kinds of errors don't take place again.

Mr. CUMMINGS. I want to thank you, Mr. Meyer, for your willingness to be here today to discuss TSA's responsiveness to the committee's request in documents and for your commitment to ensuring that TSA responds to this committee's oversight in a bipartisan way.

And, with that, I yield back.

Chairman CHAFFETZ. I share and concur with the frustration that Mr. Cummings is expressing. The minority staff has less staff than we do in the majority, and certainly Homeland Security has, by the tens of thousands, in fact, hundreds of thousands, more people than we do on either of our staffs here in Congress. And the unprofessional nature in which their responses have been happening is totally and wholly unacceptable. And I stand by Mr. Cummings in that.

Mr. CUMMINGS. Mr. Chairman?

Chairman CHAFFETZ. Yes.

Mr. CUMMINGS. I want to thank you for supporting me on that because I just think it's so important that we all work together. We may have our differences of opinion, but we need to be working from the same information. Thank you.

Chairman CHAFFETZ. Totally agree. There is a basic principle in equal access. The information is pivotal to our doing our jobs, both as Members and the staff. Their job is hard enough, let alone trying to figure out which documents are being hid where.

I now recognize the gentleman from Georgia, Mr. Carter, for 5 minutes.

Mr. CARTER. Thank you, Mr. Chairman, and thank each of you for being here.

Mr. Esquea, I've got a question that's kind of unrelated to the subpoena from February 17. I don't know about you guys; I don't know what you all do, but I kind of want to base my opinions on my personal experiences. So I want to share a personal experience with you that I had with Secretary Burwell that happened right here in this room in a hearing on March 22—excuse me. The hearing was before March 22. I sent a letter to her on March 22.

Now, we had hearing here with Secretary Burwell. During that hearing, I asked her about office-use compounding of prescription medication. She at that time told me erroneously that it was al-

lowed. And I knew it was wrong, and I cannot tell you whether she did it intentionally or not. I know that you all take oaths, and the only thing we can do on this committee is to hope that you tell us the truth. But she was absolutely wrong in what she told me.

So she told me it was allowed, and I knew it wasn't allowed, and I knew that the Agency was considering what they were going to do in the near future, and I wanted to have input on that. That's why I asked her about it.

So she suggested, she said, have your staff send my staff a letter. In fact, she looked behind her, and her staff said: Yeah, yeah, do that.

That's when, on March 22, we sent the letter outlining our concerns about prescription compounding, about compounding for office use. We sent her that letter on March 22, and I thought it was a pretty responsible timeframe that we did that and asked for a response within 10 days.

Well, on April 11, we didn't have any response, so we called her office: Why haven't you responded?

Well, their response was to my office: FDA, HHS received a letter and will be sending a response as soon as possible.

Well, okay. Yesterday, guidance was issued for this particular situation, for office-use compounding. And in that guidance, it disallowed it.

Now, I still haven't heard. I still haven't had a response. I still haven't had a response from the office yet on this particular issue that I wanted to have input. I am a pharmacist, the only pharmacist in Congress. I felt like, and I feel like, I should have some input on this. Well I didn't. I thought after she testified in this committee—and, again, I can't look into your hearts and tell you: Yeah, you did this intentionally—or didn't.

I just have to believe that when you take that oath, you're telling me the truth. She was wrong, and I knew she was wrong, and yet she said: Let's follow up with staff.

I agreed. And I did that, and yet still the guidance comes out before she responds to me. Now what am I to think? I sit here, and I listen to all of my colleagues talking about the fact that we're lacking communication, and I'm thinking: Yeah, that's been my experience.

Tell me why I shouldn't feel this way. Tell me why I shouldn't agree with everything that's been said here by my colleagues today, that communication is lacking, is suffering. My question is, is it intentional or unintentional? Because I know they're right: it is lacking. I have proof. I have personal proof, personal experience, and that's what I go on. The question is, is it intentional? Did she intentionally not respond to my letter until after the guidance was issued?

Mr. ESQUEA. Congressman, I can assure you that was not intentional. Or, in fact, I remember the back and forth. I remember the exchange. I remember the conversation with you, and it was my understanding, after the hearing, that FDA was going to reach out to you to have a meeting. If that did not happen, that would be my fault. I should have followed up with them, but it was my understanding they had already set up a meeting to discuss this with you.

Mr. CARTER. Well, guess what? It didn't happen. And guess what? The guidance has already been issued.

Let me tell you what happens. I go home, and I'm the Congressman. And people ask, my constituents, they want to know: Why did you all do this? Why did you do that?

And I'm saying: I don't remember doing that.

And then I go and I say: It wasn't us. It was the Agency. It was the Agency that promulgated these rules, that passed these rules, that's having such a big impact, but I got to answer to it. I got to answer to the pharmacists about this. I did my best to have input before it was issued, but I was denied that. What do you want me to tell them? You see what a quandary this puts me in?

Mr. ESQUEA. Yes, sir.

Mr. CARTER. Let me tell you: That is poor, and I don't appreciate it. Listen, I don't need any help in looking bad. I can do that all by myself. Tell me.

Mr. ESQUEA. Congressman, you're right. I apologize. I'm more than happy to discuss this further. But that was not intentional. I remember the exchange. I had thought that FDA was going to follow up with you to have a conversation. If that did not happen, that's on me. I should have followed up with them. My apologies to you. I'm more than happy to continue having this conversation. I can assure you Secretary Burwell did not do that intentionally. If there is any fault there, it would be mine.

Mr. CARTER. You know, I want to believe you. I really do.

Mr. Chairman.

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

Mr. CARTER. I yield.

Mr. CUMMINGS. First of all, I agree with the gentleman. He deserves—I remember that. I spend a lot of time on these issues that he's talking about, these pharmaceutical issues. But there's one thing, Secretary Burwell, of all the Secretaries I think, is probably one of the more responsive. And she is. She has been very responsive. And so, you know, you cannot, if it's your responsibility to have reminded her, do whatever, you need to do that. Okay? I mean, I can get—I usually can get a hold of her when I can get a hold of nobody else. So I think you're making her look bad, to be frank with you. All right? I don't usually say those things, but I just want to be fair to her, too. All right? So I'm hoping, unfortunately, you've already admitted that you screwed up. We got to do better than that, though. Because the gentleman—the questions that he raised are legitimate questions. They are important questions, and they go to a lot of the things the American people are most concerned about, and he deserved an answer. I thank the gentleman for yielding.

Chairman CHAFFETZ. I thank both gentlemen. I will now recognize the gentleman from Alabama, Mr. Palmer, for 5 minutes.

Mr. PALMER. Thank you, Mr. Chairman.

Mr. Shelanski, you clerked for the U.S. Court of Appeals for the D.C. Circuit. You also clerked for the U.S. District Court in Philadelphia, and later for Justice Scalia, the U.S. Supreme Court. In your role as a legal clerk, and even in your role in your private practice, wouldn't it be reasonable to believe that you are familiar with subpoenas? That's a yes or no.

Mr. SHELANSKI. I had never dealt with one prior to this.

Mr. PALMER. You had never dealt with one prior to this. But you're a lawyer. You understand how it works.

Mr. SHELANSKI. Yes, sir.

Mr. PALMER. I doubt seriously that Judge Williams or Pollak or Scalia would have had the patience that this committee has had in this process. I want to ask you, in the last hearing, Ms. Fucile said that four document custodians had been identified to date. Since then, through interviews conducted by this committee, we have learned that there are at least four additional OIRA staff that were responsible for the review of the rule not previously identified by OMB or OIRA. Can you explain why you only identified half of the custodians to the committee?

Mr. SHELANSKI. When we began our document review, began to produce documents to this committee, we focused initially on the proposed rule stage, given the request, as we understood it, and the guidance we received from committee staff. So we identified the principal custodians that we thought were most relevant there. As we've moved forward and the committee expressed interest in the additional custodians, we have prioritized those and, indeed, produced those documents in our last production.

Mr. PALMER. Well, should the committee be prepared to learn of additional names of potential document custodians?

Mr. SHELANSKI. It is my belief that if there are any additional custodians, they have had a far lesser role and would not have been the principal people involved with reviewing the rule.

Mr. PALMER. Well, how long would it take to ask everyone at OIRA, did you work on the Waters of the U.S.?

Mr. SHELANSKI. We have done that. The problem is that—

Mr. PALMER. You did? Well, why did it take over a year to find out that instead of four, there were eight?

Mr. SHELANSKI. The initial identification of four was related to our focus on the period of the proposed rule and those were the relevant custodians. The additional ones that have been identified are as we have moved to reviewing documents in the final rule stage and, again, were people who I think really had far lesser roles. Sometimes documents are—

Mr. PALMER. Shouldn't you have let the committee decide whether or not they wanted to have information about everyone? I mean, everyone is everyone.

Mr. SHELANSKI. No, and it is our duty to be responsive in that regard.

Mr. PALMER. But you didn't.

Mr. SHELANSKI. Well, we've been reviewing—

Mr. PALMER. You've been delaying.

Mr. SHELANSKI. No, sir. In all sincerity, we have long acknowledged that our initial response was slow. If you look at our productions, our last five productions, we have committed to regular productions, and we have met those productions. We have also committed to making our productions faster to the extent we can. Since my last hearing, we have given our largest production to date. It is my hope we are moving very—

Mr. PALMER. Okay. Let me move to something else. In the March 3, 2015, hearing before this committee, several members asked you

to produce documents related to OIRA's review of the rule. Did OMB accompany you to that hearing? Did anyone come with you?

Mr. SHELANSKI. I'm sorry. To my March 15 hearing?

Mr. PALMER. The March 3, 2015, hearing.

Mr. SHELANSKI. March 3, 2015, hearing.

Mr. PALMER. Thirteen months ago.

Mr. SHELANSKI. Oh, okay. Okay. Sorry about that, 2015. And the question is, did anyone from OMB accompany me to that meeting?

Mr. PALMER. Right.

Mr. SHELANSKI. I generally have some people who come with me. I don't specifically recall who might have been here at the time.

Mr. PALMER. Among those who came with you, did you instruct OIRA staff to initiate a search for the responsive records?

Mr. SHELANSKI. We, as soon as we received the request for the documents, we immediately, I personally immediately instructed OIRA staff to search their records.

Mr. PALMER. Did anyone tell you not to initial a search at that time?

Mr. SHELANSKI. No, sir.

Mr. PALMER. Well, I know that the frustration of the committee is after the hearing, committee staff followed up with your staff on numerous occasions about this request but received no response. And I think we would like know and I think all of us on both sides of the aisle would like to know why there has been no response.

Mr. SHELANSKI. I think that there has been constant engagement between our staff and your staff. And, in particular, I would point that, since December, we have produced five regular document productions and are hard at work on our next one. Our latest one was just 2 weeks ago. We have prioritized the periods of review and the custodians that the committee has expressed most interest in. I would also note that the three most senior officials at OIRA have voluntarily agreed to transcribed interviews, two of which have already occurred, including the person most responsible for the review of both the proposed and final rule, and that my own transcribed interview is being scheduled for a time, I think, fairly soon to come.

Mr. PALMER. Well, here's my problem with this, and I think the problem that a lot of us on the committee are having, is that there seems to be a pattern here of running out the clock and, again, going back to your experience at OIRA, even though you never participated, been involved with a subpoena before, as a lawyer, you understand that a request for documents is something that most people, judges, lawyers, expect to be fully complied with, and it's throughout the administration. We have seen this time and time again. And I just, frankly, have a hard time believing there's been a good-faith effort to produce the documents in a timely manner.

Thank you, Mr. Chairman. I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I will now recognize the gentleman from Wisconsin, Mr. Grothman, for 5 minutes.

Mr. GROTHMAN. Thank you. I have another question here for Mr. Meyer and this goes to another thing where just, you know, the response of your agency seemed a little bit unusual. You mentioned during your testimony a situation in which Homeland Security flew

an immigration witness all the way from Texas to Washington to give the committee a day-long interview. And at the beginning of the interview, committee staff were informed that the witness would not be able to answer questions related to the vulnerabilities of the EB-5 investor program. The working group was clearly identified in the committee's letters as a central—as a major reason why we wanted to talk to this guy. Can you give us what was the basis for refusing to allow the witness to speak about his staff's involvement in the interagency EB-5 working group?

Mr. MEYER. Okay. So, just to be clear, almost the entire day was about the vulnerabilities in the EB-5 program. But you're inquiring about the interagency working group?

Mr. GROTHMAN. Well, we were informed that the witness would not be allowed to answer committee's questions regarding the working group.

Mr. MEYER. Right. So the process, the interagency working group process is a process, and this goes back probably decades. It's a longstanding administration position, Democratic, Republican, not to discuss interagency processes like that one. And so what we suggested, I believe what our attorney suggested, is that we sit down with the staff and try to get the information to the staff that they need in a different way.

Mr. GROTHMAN. Was productive? Why wouldn't you have told the committee upfront before you flew this person all the way from Texas to Washington that given, I think, the working group is clearly one of the reasons why they wanted to talk to the witness, why wouldn't you have told them upfront that we're not going to talk about that?

Mr. MEYER. I believe in conversations with the staff leading up to that, we did make clear that there would be some areas that the witness would not be able to speak about. But, you know, the interview went all day, and so they had a productive day.

Mr. GROTHMAN. I guess that depends on who you talk to.

Homeland Security has produced so far only one 8-page memo to the committee on this topic. Can you know let us know when Homeland Security will produce the rest of the documents that we asked for in January?

Mr. MEYER. We're going through those requests right now and trying to get more to the committee. A large part of what was requested in that letter were for drafts, and again, going back decades, if not centuries, it's not the policy of the executive branch to share deliberative material like that with the legislative branch. But you have, the committee does have the final document, the signed document, and other final documents.

Mr. GROTHMAN. Okay, well, we have been waiting like 3 months. Can you let us know about when you think we're going to get the documents we have been asking for?

Mr. MEYER. I'll have to go back and talk to ICE about when we'll be able to get more documents.

Mr. GROTHMAN. Okay. Can you let us know soon? Thank you.

I'll yield the remainder of my time to the chairman.

Chairman CHAFFETZ. Thank you.

I'll now recognize myself. Mr. Meyer, a series of questions for you. Are you aware of regular meetings at the White House involving legislative affairs officials from various agencies?

Mr. MEYER. Yes, I believe those do occur.

Chairman CHAFFETZ. Have you ever attended these meetings?

Mr. MEYER. Legislative Affairs officials. I don't go to the general OLA type meetings because I'm in the General Counsel's Office.

Chairman CHAFFETZ. Do you know how often the White House holds these meetings?

Mr. MEYER. I do not.

Chairman CHAFFETZ. Do you know who coordinates these meetings at the White House?

Mr. MEYER. I do not.

Chairman CHAFFETZ. Do you know what the purpose is?

Mr. MEYER. I assume they discuss legislative affairs, but beyond that, no.

Chairman CHAFFETZ. Do you coordinate requests from Congress with the White House?

Mr. MEYER. As with any agency, we will coordinate with the White House when they have equities in a request.

Chairman CHAFFETZ. What would they not have equities in?

Mr. MEYER. You would have to ask them that.

Chairman CHAFFETZ. I'm asking, what equities does the White House have at Homeland Security?

Mr. MEYER. Well, for example, we have requests from you relating to the Vice President and his residence at the Vice President's Office, and the White House has equities in that.

Chairman CHAFFETZ. So what role does the White House play in providing guidance on document production?

Mr. MEYER. As with any agency, be it DOJ, HHS, what have you, we will coordinate with them when they have equities, and we will consult with them, and they'll be part of our consultative process in deciding how to go about responding.

Chairman CHAFFETZ. So, outside of the legislative affairs, are there similar meetings at the White House for Department counsel, and have you ever attended any of those meetings?

Mr. MEYER. I have attended on occasion meetings.

Chairman CHAFFETZ. How often do those happen?

Mr. MEYER. I haven't been to the White House for a meeting with White House counsel in quite some time. I would say, on average, a few times a year, I would go over there.

Chairman CHAFFETZ. But how often do the meetings happen? Even though you may have gone there only a few times, how often do the meetings happen?

Mr. MEYER. Oh, I don't think there's a regular meeting of counsel in the way there is with Legislative Affairs.

Chairman CHAFFETZ. Last Friday, the committee conducted a transcribed interview of a TSA witness whose testimony the committee requested in January. You're familiar with this interview?

Mr. MEYER. Yes, I am.

Chairman CHAFFETZ. When the committee attorneys asked the witness whether they had been discouraged from speaking with the committee, both the agency and the Department attorney repeatedly refused to allow the witness to answer the question, even

going so far as to interrupt when the witness appeared willing to answer. How does the Department justify this?

Mr. MEYER. As I told Mr. Mica, the questions were requesting him to discuss what attorneys advised him. That's subject to the attorney-client privilege, so our attorneys asked him not to respond and suggested that we discuss it in a different setting and try to get the committee the information they want. If you'd like, I can answer the broader question that I think they were asking right now.

Chairman CHAFFETZ. No. I want to get specific to that so-called attorney-client privilege. It's the practice of the House of Representatives to leave to the congressional committee the determination of whether to recognize claims of attorney-client privilege or attorney work product. In this case, there is not a compelling reason to recognize the privilege.

Further, I would go on to say I believe you're intimidating somebody. I believe it's intimidating to have attorneys saying: Don't answer that question.

I'll go back to my original—or the question I asked you earlier. What is it that you think that we shouldn't be able to see here in Congress?

Mr. MEYER. Well, to this point, it's a longstanding position of the executive branch, going back probably to before I was born, that we will not share attorney-client communications with the legislative branch. I recognize that the legislative branch takes a different position. That's a longstanding dispute between the branches.

Chairman CHAFFETZ. What other guidance and directives did you give to the witness prior to them coming and testifying before Congress?

Mr. MEYER. I met with the witness once. That's the only time I've ever met him. And we discussed what to expect in a transcribed interview.

Chairman CHAFFETZ. How long did you meet with him?

Mr. MEYER. I don't recall. I believe it was an hour, an hour and a half.

Chairman CHAFFETZ. So you spent an hour to an hour and a half prior to testifying before Congress. What direction or directives did you give him?

Mr. MEYER. I'm not going to discuss attorney-client advice.

Chairman CHAFFETZ. The attorney-client privilege, whether you recognize it or not, belongs to the witness, not to the Department. Correct?

Mr. MEYER. No. We were representing him in his official capacity. We offered him the option of having personal counsel. He chose to use agency counsel, so my client is the Agency.

Chairman CHAFFETZ. Was he pleading the Fifth?

Mr. MEYER. I was not in the room. I don't believe he pleaded the Fifth at the transcribed interview.

Chairman CHAFFETZ. Did anybody in the Department—did the Department attorney contact you or anyone else in your office during the interview to seek guidance on this issue?

Mr. MEYER. I don't recall. They may have.

Chairman CHAFFETZ. What was so invasive about that question or questions that you felt it imperative to make sure that Congress never heard the answer?

Mr. MEYER. I think the attorney-client privilege is well enshrined in the history of the United States and going back to English common law and generally respected by the courts and the law.

Chairman CHAFFETZ. Are you familiar with the anti-gag rider?

Mr. MEYER. I'm not, sir.

Chairman CHAFFETZ. You're not?

Mr. MEYER. No.

Chairman CHAFFETZ. You're not familiar with the law that says you cannot—you're not familiar with that—

Mr. MEYER. Are you speaking about the law that was the subject—

Chairman CHAFFETZ. The rider states that no appropriations are available to pay the salary of any Federal employee who, quote, "prohibits or prevents or attempts or threatens to prohibit or prevent," end quote, any other Federal employee from, quote, "having any direct oral or written communication," end quote, with Congress.

Mr. MEYER. Yes. Let me correct. I was not familiar with that name for it, but I am aware of that legislation.

Chairman CHAFFETZ. The Lloyd-La Follette Act of 1912.

Mr. MEYER. I did not know it was from 1912 or by Mr. La Follette, but—

Chairman CHAFFETZ. I'm assuming that was from before you were born.

Mr. MEYER. I believe it is.

Chairman CHAFFETZ. And that was what you stated, since before you were born. We will further explore this, but I think you're intimidating the witness. I think you're providing counsel that is inconsistent with the law, and I think, as such, anybody who is providing that information should have their pay duly docked, and the government should recover that.

Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Meyer, do you think that you or your office was intimidating anyone?

Mr. MEYER. Not at all, sir.

Mr. CUMMINGS. And I take it that you—is this a standard practice before a witness comes up, to talk to them and—

Mr. MEYER. Yes. And if I may, I might add also that he requested that agency counsel be there. If he were intimidated, I don't think he would have done so.

Mr. CUMMINGS. Did you get any indication from—did you see anything that would lead you to believe that he was intimidated?

Mr. MEYER. Nothing at all, sir.

Mr. CUMMINGS. I don't have anything else.

Chairman CHAFFETZ. Just the last point there. I wasn't in the room, but what I've been told by staff is he was willing to answer the question. He started to answer the question when counsel jumped in and insisted that he not answer the question. That's what I have a problem with.

Mr. Cummings and I, on February 18 of 2015, Mr. Meyer, 2015, more than a year ago, jointly sent a letter, along with Mr. DeSantis and Mr. Lynch, requesting some information. There were 16 issues, 16 topics. There are still topics that we have had no production on, literally not a document on. We further have issued subpoenas, but why is it that we can't get a single document out of Homeland Security regarding Secret Service, the April 2012 Cartagena incident? Why aren't you providing that information to us?

Mr. MEYER. So we have provided quite a good number of documents relating to the Cartagena incident. We have provided to you every—I believe the Secret Service has given you every document that was previously made available to Congress, because, as you know, there were prior investigations of that—I believe in the House, but certainly in the Senate. So you have those.

I do recognize—I understand from the Secret Service that they have not yet begun production on this additional request, which asks for all documents, communications, emails, et cetera, I believe, regarding the Cartagena incident. As you know, that's a very broad request. It requires a very broad search, which I'm told is undertaken—

Chairman CHAFFETZ. At what point do we get frustrated enough—we issued you a subpoena. Was that not good enough? Item 15 is where we have had no response I believe. Why should we not hold you in contempt?

Mr. MEYER. Sir, we have produced—

Chairman CHAFFETZ. Nothing under item No. 15, not one document.

Mr. MEYER. Yes, I confirmed that for you. We have produced about 17 times in response to the letter in the subpoena. In addition, your staff requested that we prioritize a different item over that one, and so we have been producing on that. That's the February 10, 2016, letter.

Chairman CHAFFETZ. You know, our patience is pretty well exhausted on this, and you leave us with no other remedy. You leave us with no other choice. The three of you are here for a reason. You earned it. You earned it because you're not being responsive to duly issued subpoenas. I do hope—I really do hope at some point you—well, I don't want to make it too personal, but I got to tell you, you have a fiduciary responsibility, and our checks and balances, our constitutional form of government only works if we have good, honest, decent people who actually comply with the law. And when we issue a subpoena, it's the law. You can come up with all the excuses and all the things you want to hide out there, but when we issue a subpoena from the Congress, it's not optional. You have to provide it, not to your counsel, not to Legislative Affairs, but to the United States Congress. That's how it works.

Mr. Shelanski, do you believe that Congress has the authority to investigate and legislate regarding the Waters of the United States?

Mr. SHELANSKI. Yes, sir.

Chairman CHAFFETZ. And you believe that the concerns or questions we have about WOTUS and OIRA are within the committee's legitimate areas of interest. Correct?

Mr. SHELANSKI. Yes, sir.

Chairman CHAFFETZ. That we may need to consider some legislative action, and the documents under subpoena might assist us in that effort. Correct?

Mr. SHELANSKI. I don't understand the full purpose, but, yes, I would assume that to be true.

Chairman CHAFFETZ. Is it true that there are documents that your search turned up that are currently sitting with your general counsel but have not been given to Congress?

Mr. SHELANSKI. Our review is ongoing. Yes.

Chairman CHAFFETZ. And you have no idea when we'll receive those documents?

Mr. SHELANSKI. I will go back and work with them to make sure that our production is as fast as possible. We have been trying to produce even more quickly with each production.

Chairman CHAFFETZ. And how many total documents have you turned over to the Office of General Counsel that have not been given to the Congress?

Mr. SHELANSKI. I don't know the answer to that question, sir.

Chairman CHAFFETZ. We issued that in your letter. We put it in the March 18. This is like a month ago. We sent this to you to be prepared to answer that question.

Mr. SHELANSKI. Because the search required by the subpoena is so broad—

Chairman CHAFFETZ. It's a simple exercise to go in and look at what is sitting in the General Counsel's Office that you haven't yet given to Congress. That is not a difficult mathematical equation. You received the invitation to testify specifically on this information more than a month ago, and for your unwillingness to provide that information under oath today is just without excuse.

Mr. SHELANSKI. Mr. Chaffetz, it's very difficult to understand what the full universe of documents might be for such a broad and long subpoena going back 9 years. I don't want to give an incorrect answer, and so—

Chairman CHAFFETZ. We gave you a month to come up with it. You can't even tell me how many are sitting in there.

Mr. SHELANSKI. That is correct because a lot of the documents are unresponsive. We're continuing to review, and it's hard to know what the—

Chairman CHAFFETZ. You can err on the side of giving us too much information, but what you're choosing to do is to hide the documents from the United States Congress. That's my opinion. We have well established this through—

Mr. SHELANSKI. We aren't hiding documents.

Chairman CHAFFETZ. We have got to conclude this at some point.

Mr. SHELANSKI. Our production is ongoing, and we hope to conclude as quickly as we can. We are hiding nothing.

Chairman CHAFFETZ. For a subpoena—the document requests have been going on for a year. We have had enough.

The last thing from me. Mr. Meyer, why do you give us documents with these redactions? Why? It takes longer than just producing them. They're under subpoena from the United States Congress. What justification do you have for redacting these documents?

Mr. MEYER. I can't speak to that specific document that you're holding. I'd have to look at it, but we have redacted documents for any number of reasons, for national security reasons, deliberative communications, documents that are protected by law, information that may constitute an unwarranted invasion, an unnecessary invasion of personal privacy, those sorts of things.

Chairman CHAFFETZ. Let me give you a couple of—we have information that the Secret Service personnel, some of them, were inappropriately using funds that were allocated for confidential informants, that they were using those for their own retirement party and to pay off credit cards. We are doing a legitimate investigation here. It's something of critical importance. These people stand with a gun by the President of the United States. You redact out the date of the incident, the location of the incident, the lead inspector of the incident, the reviewing supervisor of the incident, the date the case went to the administrative review, the destroy date, the last update by, the names of the people that are involved in this. So what justification do you have? What is the national security imperative that says you can't give us, the Congress, the date of the incident?

Mr. MEYER. So I don't believe I've ever seen these specific documents.

Chairman CHAFFETZ. How can you not have seen them?

Mr. MEYER. Because I don't work at the Secret Service, Mr. Chairman, but I am happy to review them and get you an answer.

Chairman CHAFFETZ. Homeland Security insists that we work through Homeland Security on Secret Service issues. They're part of Homeland Security. Correct?

Mr. MEYER. Absolutely. But I will freely admit I have not read all 13,000 pages that they have produced to you.

Chairman CHAFFETZ. Well, I am asking you specifically about these incident reports. Whose responsibility, when I issue a subpoena, whose responsibility is it to provide full and complete information?

Mr. MEYER. The Department's.

Chairman CHAFFETZ. Who specifically? The Secretary? Correct? Who does he hire to do that?

Mr. MEYER. There are any number of people who work on that at the Department. One person alone could not produce all of these documents, sir.

Chairman CHAFFETZ. So who specifically in Homeland Security on your team reviews the Secret Service redactions? Who does that?

Mr. MEYER. So it depends on the matter, on the documents, on the issues. It could be—

Chairman CHAFFETZ. Give me some names. I want to know who they are.

Mr. MEYER. There are attorneys at the office.

Chairman CHAFFETZ. I want to know who they are. I want their names.

Mr. MEYER. There are employees of the Office of Legislative Affairs. There are employees of the Office of Congressional Relations.

Chairman CHAFFETZ. I'm asking you for specific names. I know what their responsibilities are. When will you provide me those names?

Mr. MEYER. I do not want—if you want to blame someone, blame me, sir. I'm not going to blame career—

Chairman CHAFFETZ. You say you're not involved.

Mr. MEYER. They work for me. The attorneys at the Office of General Counsel—

Chairman CHAFFETZ. I'm asking you a simple question, Mr. Meyer. When will you provide this committee the names of people who were involved in creating the redactions on the Secret Service documents that were under subpoena?

Mr. MEYER. I certainly couldn't tell you that here and now.

Chairman CHAFFETZ. I'm asking you when.

Mr. MEYER. I will get back to you on that.

Chairman CHAFFETZ. I'm asking you when.

Mr. MEYER. I don't know, sir.

Chairman CHAFFETZ. I'm asking you to come up with a date to tell me who reviews the Secret Service redactions. That's not a difficult request.

Mr. MEYER. I don't know the names of all the people who review those.

Chairman CHAFFETZ. And I'm giving you time to come up with those. Seriously. Come on. You watched this YouTube video. I mean, come on. This is what we're up against. Give me a date, a reasonable date, to come up with the names of people who were involved in creating the redactions on the Secret Service documents?

Mr. MEYER. I imagine I can get that to you sometime in the next couple of weeks.

Chairman CHAFFETZ. Come up with an actual specific date. How about May 5? Is that fair?

Mr. MEYER. I am not going to promise anything because I'm not in the business of, under oath, making predictions that I cannot be certain I will keep, but I will do everything I can to get you an answer by May 5.

Chairman CHAFFETZ. This is the game that we play, and it's what makes people sick and disgusted with their government. It makes them sick and disgusted with these agencies and the bureaucracy that won't be responsive to the American people. We're trying to do a legitimate oversight of the Secret Service. You've got people that are misusing funds. We have established that, and you're playing games with us, with the very people that are holding these guns near the President of the United States, his daughters, his wife, and you're playing these kind of games with us. I don't know how you justify it. I don't know how you justify your existence. When the Congress introduces a subpoena, it is the law of the land that you provide those documents to the United States Congress, not go back and start using your Wite-Out and making sure that we don't see that information. This is one of the most frustrating things we do in the United States Congress, and I better stop saying any more before I say something that goes too far.

Mr. Cummings, do you have any other?

Mr. CUMMINGS. Yes. Can you all understand the frustration that we have?

Mr. SHELANSKI. Yes, sir.

Mr. CUMMINGS. But you can't do anything about it, you don't think?

Mr. SHELANSKI. We have been trying to do something about it. We have been trying to work ever faster and ever better with the committee, and we pledge to continue to do so so that we may, without running out the clock, give the committee what it needs for its oversight functions.

Mr. ESQUEA. Mr. Cummings, we will continue to work to understand and accommodate the interests of the committee.

Mr. CUMMINGS. Mr. Meyer?

Mr. MEYER. Yes, we will continue to try to improve. As I say, we have improved a lot over the last couple years in the face of increased demands, but we're not going to rest on that. We're going to continue to try to improve.

Mr. CUMMINGS. Gentlemen, we have to do better. We got to do better. I can understand the chairman's frustration. As I said, there has to be a balance. We have to be able to get the documents to do our jobs.

At the same time, we take in consideration the problems that you all may have, the various privileges that you may be asserting, but I got to tell you that this is not balancing out. It sounds to me like there's some rope-a-doping here going on. I'm just telling you, and I think we can do better. I really do. That's just my opinion, and I would hope that you would go back to your agencies and try to speed up this process. Thank you.

Chairman CHAFFETZ. The committee stands adjourned.

[Whereupon, at 12:41 p.m., the committee was adjourned.]

