



FEB 10 2020

The Honorable Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform
United States House of Representatives
Washington, DC 20515

The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

The Honorable Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor
United States House of Representatives
Washington, DC 20515

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairs Maloney, Pallone, Neal, Scott, and Nadler:

This letter supplements the Department of Health and Human Services' (HHS) ongoing document production in response to your April 8, 2019 letter requesting information concerning the ongoing litigation in *Texas v. United States*, No. 19-10011 (5th Cir.). We appreciate your interest in this significant case. HHS is committed to working towards satisfying the Committees' requests while also ensuring Executive Branch interests remain protected. To that end, HHS has produced 385 documents totaling 4,191 pages in response to your request. We will continue to produce additional responsive, non-privileged documents on a rolling basis.

On December 18, 2019, the United States Court of Appeals for the Fifth Circuit found that the individual mandate of the Affordable Care Act (ACA) was unconstitutional, but remanded to the district court to determine if the mandate is severable from the rest of the ACA. *Texas v. United States*, 945 F.3d 355 (5th Cir. 2019). The ruling did not halt any other provision of the law. HHS continues administering and enforcing all aspects of the ACA as it has before the court issued its decision.

We respectfully refer your requests for information concerning specific litigation decisions to the Department of Justice, which is responsible for handling litigation across federal agencies. We understand that the Department of Justice sent the Committees a letter responding to your inquiry on May 24, 2019.

Requests for documents outlining the details of internal deliberations regarding potential decisions HHS would make as a result of the lawsuit implicate the core deliberative process, attorney work product, and attorney-client privileges. These concerns are heightened given the ongoing nature of the litigation. To the extent the Committees request a number of confidential communications between the President or his close advisors concerning an executive branch litigation decision, White House counsel has previously explained why such a request cannot be accommodated. *See* Letter from Pat Cipollone, Counsel to the President, to Chairman Jerrold Nadler and Chairman David Cicilline (Apr. 15, 2019). Nonetheless, HHS's ongoing document production of responsive, non-privileged material illustrates the Department's continued commitment to working with Congress to satisfy its request for information while ensuring the Department and Executive Branch's interests remain protected.

We look forward to continue working with the Committees on reaching appropriate accommodations for this and other oversight requests. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Arbes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sarah Arbes
Acting Assistant Secretary for Legislation

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

The Honorable Greg Walden, Ranking Member
Committee on Energy and Commerce

The Honorable Kevin Brady, Ranking Member
Committee on Ways and Means

The Honorable Virginia Foxx, Ranking Member
Committee on Education and Labor

The Honorable Doug Collins, Ranking Member
Committee on the Judiciary