



One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

August 17, 2020

Beth Spivey
Assistant Secretary of Legislative Affairs
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Assistant Secretary Spivey:

We write today regarding your letter of August 11, 2020 in response to our letter of July 25, 2020 in which we requested documents and transcribed interviews regarding what appear to be inaccurate and misleading statements made to the Committee by senior officials with the Department of Homeland Security (DHS).

Your letter was both insulting and inaccurate. The Committee has many unanswered questions about why the Department believed, at the time that the decision was made to restrict the eligibility of New York residents to enroll or re-enroll in Trusted Traveler programs, that New York's law was "unique," how the Department learned that its representations to the Committee were misleading, and how long the Department has implemented the Trusted Traveler programs with an apparently incomplete and inaccurate view of the screening activities that were being conducted on program applicants.

Your letter claims that "the Committee does not appear to have a legitimate legislative purpose" to conduct its investigation and that the Committee is engaged in law enforcement.¹ This statement is incorrect. The Committee is not engaged in law enforcement, and the statement makes uninformed presumptions about the Committee's motivations. In fact, given the Committee's legislative and oversight jurisdiction over Customs and Border Protection (CBP) and the Trusted Traveler programs specifically, we would have assumed that the Committee's legislative interests were obvious and did not need to be restated. To be clear, the Committee is profoundly troubled by DHS' apparent mismanagement of the Trusted Traveler programs and is investigating to assess what, if any, legislative reforms may be required to ensure that CBP effectively, thoroughly, and fairly screens applicants. To that end, the Committee has requested "all documents and communications regarding the decision announced earlier this year by the Department of Homeland Security (DHS) to bar citizens of the State of New York from enrolling in Trusted Traveler Programs (TTP)."²

¹ Letter from Assistant Secretary of Legislative Affairs Beth Spivey, Department of Homeland Security, to Chairman Bennie G. Thompson, Committee on Homeland Security, and Chairwoman Kathleen Rice, Subcommittee on Border Security, Facilitation, and Operations (Aug. 11, 2020).

² Letter from Chairman Bennie G. Thompson, Chairman, Committee on Homeland Security, and Chairwoman Kathleen Rice, Chairwoman, Subcommittee on Border Security, Facilitation, and Operations, to Acting Secretary Chad F. Wolf, Department of Homeland Security (July 25, 2020).

The Committee requires factually accurate information to enable it to carry out its legislative and oversight responsibilities. In this case, your letter confirms that senior DHS officials provided wrong and misleading information in testimony before the Committee. Thus, your letter states:

“The statements made by Acting Secretary Wolf and the former Deputy Executive Assistant Commissioner of CBP’s Office of Field Operations, John Wagner, to the Committee were true to the best of their knowledge at the time they were made. DHS, represented by DOJ, also made the same representations in court, which were immediately corrected upon identification of different underlying facts.”³

The Committee seeks to understand what the full and accurate facts are, including why these facts were not identified before wrong and misleading statements were made to the Committee. The information that has already come to light regarding these wrong statements—including information contained in the few and heavily redacted documents that have been produced by the Department to the Committee—raises significant questions about whether and when DHS fully understood how CBP is implementing the Trusted Traveler programs.

Among the few documents produced to the Committee is a memo dated December 30, 2019, sent to the heads of the Department’s operational components stating that “[c]ertain state legislatures have passed laws restricting their respective Department of Motor Vehicles (“DMV”) agencies from sharing information with the Department” and “instructing each operational component to conduct an assessment of the impact of these laws.”⁴ We note that the memo cited “laws” in the plural form. The memo asked each operational component head to answer six questions prior to January 15, 2020.

The limited production provided to the Committee includes assessments returned by several DHS operational components in response to the requesting memo, including a memo from the U.S. Secret Service that answers the six questions. The Secret Service memo, which is undated, clearly acknowledges that there were limitations on that agency’s access to DMV information. For example, the Secret Service memo states, “Driver’s license and vehicle registration information is available from participating states through Nlets,” and it states, “All states participate in driver history sharing except IL, PR and VI.”⁵ As such, it is clear that there were at least some limitations on the sharing of some data related to driver’s licenses with at least one DHS operational component.⁶

In a memo dated January 27, 2020, James W. McCament, the Senior Official Performing the Duties of the Under Secretary, Office of Strategy, Policy, and Plans, provided a consolidated assessment regarding the component operational impact assessments; this assessment discusses assessments provided by the operational components, including the previously referenced Secret Service memo. The McCament memo, which is extensively redacted, is labeled as “law enforcement sensitive.” As such, we do not quote from the memo, but we note that it includes a largely redacted section labeled as a discussion of states and territories restricting access to DMV data. It is thus abundantly clear that there was awareness within the

³ Letter from Assistant Secretary of Legislative Affairs Beth Spivey, Department of Homeland Security, to Chairman Bennie G. Thompson, Committee on Homeland Security, and Chairwoman Kathleen Rice, Subcommittee on Border Security, Facilitation, and Operations (Aug. 11, 2020).

⁴ Department of Homeland Security, “Memorandum for Operational Component Heads, Operational Assessment of State Laws Restricting the Sharing of Department of Motor Vehicle Information with DHS” (Dec. 19, 2019).

⁵ U.S. Secret Service, “U.S. Secret Service Response” (undated).

⁶ *Id.*

Department before senior officials testified in front of the Committee that there were some restrictions on Departmental access to driver's license database information. Although it is unclear from these documents whether such restrictions applied to CBP, it is clear from your letter that, in fact, there were restrictions on CBP's access to such data and that these have been long-standing.

Given this information, the Committee has numerous questions regarding the timeline of the Department's knowledge of the assessments that were being conducted of applicants for the Trusted Traveler programs. For instance, the Committee would like to know whether, as it would appear, individuals have been approved for enrollment in the Trusted Traveler programs even though CBP did not have access to all of the background information on the individuals that CBP claimed was necessary to thoroughly vet applicants. In addition the Committee has questions about CBP's ability to screen foreign nationals who apply to the Trusted Traveler programs by applying the same level of scrutiny that is applied to residents of U.S. states, including for example, the level of access that CBP has to foreign driver's license databases (as well as the extent to which such databases contain accurate information). To inform the Committee's legislative review of the Trusted Traveler programs, the Committee seeks full and thorough information to answer these and numerous other related questions.

Finally, your letter contains the absurd assertion that by seeking to understand the extent of the misstatements in the information provided by senior Departmental officials, the Committee is engaging in improper activity. The Committee is not under any obligation to accept misleading testimony unquestioningly. Further, the Committee has an institutional interest in ascertaining whether the information that was furnished to Congress was done so unwittingly, knowingly, or willfully. A related concern is that, until prompted by the Committee's requests, the Department had taken no action to correct the testimony given to the Committee, despite the fact that it appears that similar statements were made to and corrected before the Judiciary.

The Committee expects that the Department will comply in full with its requests for documents by August 21, and that all requested transcribed interviews will be completed by September 4. If the Department fails to comply, the Committee is prepared to take additional steps to obtain compliance with its oversight requests in furtherance of its legitimate legislative concerns.

Sincerely,



BENNIE G. THOMPSON
Chairman



KATHLEEN RICE
Chairwoman
Subcommittee on Border Security, Facilitation, &
Operations