



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

July 25, 2020

Mr. John Wagner
Former Deputy Executive Assistant Commissioner
Office of Field Operations
U.S. Customs and Border Protection
Via Email

Dear Mr. Wagner:

The Committee on Homeland Security and the Subcommittee on Border Security, Facilitation & Operations write today to request that you complete a transcribed interview with the Committee no later than September 4, 2020.

The Committee and Subcommittee are investigating testimony given by you and Department of Homeland Security (DHS) Acting Secretary Chad F. Wolf that appears to have been inaccurate and misleading. It is intolerable for any federal official to provide false information to any Committee of the United States Congress, and those responsible for providing false information must be held accountable. Further, under 18 U.S.C. § 1001, if these statements were made knowingly and willfully, they could constitute criminal acts. We expect that you will cooperate fully, completely, and in a timely manner with the Committee's investigation. If you fail to appear as requested, the Committee will be forced to consider alternative means to obtain compliance.

DHS' Claims in Federal Court Are False

On February 5, 2020, Acting Secretary Wolf wrote to officials with the New York State Department of Motor Vehicles (DMV) informing them that because New York had enacted the Driver's License Access and Privacy Act (commonly known as the "Green Light Law"), "New York residents will no longer be eligible to enroll or re-enroll in CBP's Trusted Traveler Programs."¹ New York State challenged this action in court, alleging that DHS' actions were "political retribution for the State's enactment of legislation that the federal government disfavors."²

¹ Letter from Acting Secretary Chad F. Wolf, Department of Homeland Security, to Acting Commissioner Mark J. F. Schroeder, et. al., New York State Department of Motor Vehicles (Feb. 5, 2020) (online at https://www.dhs.gov/sites/default/files/publications/20_0206_as1-letter-to-ny-dmv-signed.pdf).

² *State of New York v. Chad F. Wolf, et. al.*, Case 1:20-cv-01127 (Feb. 10, 2020) (S.D.N.Y.) (online at https://ag.ny.gov/sites/default/files/ny_v_w_complaint.pdf).

On July 23, 2020, Audrey Strauss, the Acting United States Attorney for the Southern District of New York, wrote to the Honorable Jesse M. Furman, United States District Judge for the Southern District of New York, “to correct several statements in defendants’ briefs and declarations, and to withdraw defendants’ motion to dismiss” in the matter of *New York v. Chad F. Wolf, et al.*, No. 20 Civ. 1127 (JMF) (S.D.N.Y.) and *Lewis-McCoy, et al. v. Chad Wolf, et al.*, No. 20 Civ. 1142 (JMF) (S.D.N.Y.).³

The letter from the Acting U.S. Attorney states that DHS had maintained in court filings that its decision to suspend New York from the Trusted Traveler Programs (TTP) was “not arbitrary and capricious, because the data restrictions imposed by New York’s Green Light Law—in particular, its restriction of access to certain criminal history information in New York DMV records—were unique and precluded CBP from conducting adequate risk assessments of New York applicants for TTPs.” However, according to the Acting U.S. Attorney’s letter: “Last Friday afternoon, July 17, DHS advised this Office that those statements and representations are inaccurate in some instances and give the wrong impression in others.”⁴

According to the letter, on an undisclosed date:

“DHS learned . . . that several states, the District of Columbia, and a territory provide access to driver’s license information (referred to as Driver Query) and vehicle registration information via Nlets, but do not currently provide access to driving history information, including driving-related criminal histories. In addition, DHS determined that two territories do not participate in Nlets DMV-related queries, such that DMV records are not available to CBP (or other Nlets users). Nevertheless, CBP has continued to accept, vet, and, where appropriate, approve TTP applications from these states and territories.”⁵

The Acting U.S. Attorney’s letter concedes that “These revelations undermine a central argument in defendants’ briefs and declarations to date: that CBP is not able to assure itself of an applicant’s low-risk status because New York fails to share relevant DMV information with CBP for TTP purposes.”⁶

According to the letter, misleading statements in support of the contention that New York’s restriction of DHS’ access to motor vehicle records was unique and prevented the Department from assessing the risks posed by applicants from New York to TTP also appeared in declarations filed by several Department officials.⁷

The Acting U.S. Attorney’s letter concludes:

“Defendants deeply regret the foregoing inaccurate or misleading statements and apologize to the Court and plaintiffs for the need to make these corrections at this late stage in the

³ Letter from Audrey Strauss, Acting United States Attorney, Southern District of New York, to the Honorable Jesse M. Furman, United States District Judge, Southern District of New York (Case 1:20-cv-01127-JMF Document 89) (July 23, 2020).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

litigation. Defendants respectfully request that the Court accept this letter to correct the record, and permit them to withdraw their motions to dismiss and for summary judgment, along with all briefs and declarations submitted in support of those motions.”⁸

Testimony Before the Committee

On February 6, 2020, in your capacity as the then-Deputy Executive Assistant Commissioner of CBP’s Office of Field Operations, you testified before the Committee. In response to a question from Rep. John Katko, you asserted that New York was the only state that prohibited DHS from accessing driving records. The exchange is produced below:

“KATKO: So am I to understand that New York State is the only one who forbids Customs and Border Protection as well as ICE to have access to our driver databases?”

WAGNER: Yes. That is the only one that I am familiar with right now.”⁹

You repeated the same assertion in response to questions posed by other Members of the Committee. For example:

“RICE: And yet here I am a sitting Congresswoman with global entry. So to me—to me—to me I understand the distinction that you are making there are at least 15 other states your thing that you have individual agreements with all of them where they do not block access to this database. 15 other states who have a global—

WAGNER: I am not aware of any other state blocking our access to that information.

RICE: Okay, so I would like you—we are going to follow up, I’m going to follow up directly with you because there are at least 15 other states that allow undocumented people to get driver’s license, okay and I would like—

WAGNER: I’m not aware of them blocking our information.”¹⁰

Request for Transcribed Interview

The Committee is investigating the facts and circumstances surrounding the inaccurate testimony provided by you and Acting Secretary Wolf. As part of that investigation, the Committee requests that you complete a transcribed interview no later than September 4, 2020. To schedule the interview, please contact Lucinda Lessley at 202-226-2616.

⁸ *Id.*

⁹ Testimony of Deputy Executive Assistant Commissioner John Wagner, Office of Field Operations, Customs and Border Protection, Committee on Homeland Security, *Hearing on About Face: Examining the Department of Homeland Security’s Use of Facial Recognition and Other Biometric Technologies, Part II* (116th Congress) (Feb. 5, 2020).

¹⁰ *Id.*

Sincerely,



Bennie G. Thompson
Chairman
Committee on Homeland Security



Kathleen Rice
Chairwoman
Subcommittee on Border Security,
Facilitation, and Operations

cc: The Honorable Mike Rogers, Ranking Member, Committee on Homeland Security

The Honorable Clay Higgins, Ranking Member, Subcommittee on Border Security,
Facilitation, and Operations