TESTIMONY OF

Robert E. Perez
Deputy Commissioner
U.S. Customs and Border Protection

BEFORE

U.S. House of Representatives
Committee on Homeland Security
Subcommittee on Border Security, Facilitation, and Operations

ON

"Examining DHS' Management of Trusted Traveler Programs"

September 30, 2020

Chairwoman Rice, Ranking Member Higgins, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss U.S. Customs and Border Protection's (CBP) Trusted Traveler Programs (TTPs) and related issues regarding the State of New York. When New York residents were declared ineligible for CBP's TTPs, it was with the understanding that New York State was unique in its decision to stop sharing all state Department of Motor Vehicles (DMV) information with CBP. While New York remains unique, to our knowledge, in affirmatively terminating our access to all DMV information, as you are aware, during the course of related litigation, CBP became aware that some other jurisdictions also do not provide some or all DMV information to the agency. CBP has clarified earlier statements made during the course of litigation through additional filings to prevent any misunderstandings.

Overview

To provide some background, on June 17, 2019, the New York State Legislature passed the Driver's License Access and Privacy Act, also known as the New York "Green Light Law." The law explicitly prohibited DMV records from being shared with any "agency that primarily enforces immigration law," specifically including CBP and U.S. Immigration and Customs Enforcement (ICE). On December 12, 2019, two days before the Green Light Law went into effect, New York terminated CBP's access to NY DMV data via Nlets. Nlets, the International Justice and Public Safety Network, allows for the sharing of law enforcement, criminal justice, and public safety information. CBP utilizes it to access state DMV information in order to conduct its mission responsibilities. After the Green Light Law went into effect, CBP operators immediately began receiving error messages through Nlets, indicating they were no longer authorized to view NY DMV data that they previously had been able to view. The operators promptly notified Headquarters of the problem. New York's action prevented CBP and ICE from accessing relevant information needed for many of the agencies' mission responsibilities, including aspects of an individual's criminal history that only the state DMV maintains.

On February 5, 2020, Acting DHS Secretary Chad Wolf sent a letter to the Acting Commissioner and Executive Deputy Commissioner of the New York Department of Motor Vehicles, notifying them of DHS' decision to suspend the eligibility of New York residents to enroll or re-enroll in CBP's TTPs because New York's law prevented CBP from accessing New York DMV records to determine whether a TTP applicant or re-applicant met program eligibility requirements.

On April 3, 2020, as part of its Fiscal Year 2020-21 Budget, New York amended its Green Light Law to permit the sharing of DMV information with CBP "as necessary for an individual seeking acceptance into a trusted traveler program, or to facilitate vehicle imports and/or exports." These amendments, however, also made it a class E felony to access, use or share DMV information in violation of the statute, potentially presenting risks of personal liability for CBP personnel as well as state and local partners interacting with CBP. Specifically, as amended, the law continues to prevent CBP from accessing, using or sharing DMV records for other important mission-related purposes, including identifying vehicles being used in illicit activity, verifying the identity of a vehicle's owner before a traffic stop, and investigating activities such as terrorism and human smuggling.

Information-sharing and local, state, and federal partnerships have always been the bedrock of effective law enforcement in the United States. As we learned from the September 11, 2001 terrorist attacks and other such tragedies in the United States, and as discussed in detail in the 9/11 Commission Report, the lack of information sharing among law enforcement agencies can have catastrophic consequences. Indeed, one of the primary reasons that the Department of Homeland Security was created was to ensure greater information sharing among the Nation's various law enforcement partners.

To clarify again, at the time New York residents were declared ineligible for TTPs on February 5, 2020, it was with the understanding that New York State had stopped providing DMV data to CBP that is necessary to effectively screen TTP applicants, and that New York was unique in its decision to stop sharing this information. CBP maintains that DMV information is important to inform TTP vetting, and to our knowledge, New York remains unique in actively terminating CBP's access to full DMV queries while having previously provided the information. However, CBP has since become aware that there are other jurisdictions that do not provide some or all DMV information to the agency.

This awareness came in connection with preparing a response to a July 10, 2020 filing in a lawsuit pending in the Southern District of New York wherein plaintiffs made specific assertions that New York was not the only state that did not provide CBP access to DMV information. While Plaintiffs' assertions were based on information that pertained to ICE, further inquiry in pursuit of investigating plaintiffs' specific allegations, revealed that five states, Connecticut, Florida, Illinois, New Jersey, and Hawaii, as well as the District of Columbia and Puerto Rico provide access to driver's license information (referred to as the Driver's License Query) via Nlets, but do not currently provide access to driver history information, including driving-related criminal histories (referred to as the Driver History Query). CBP uncovered that the District of Columbia, Puerto Rico, and all states except New York, Hawaii, and Missouri, provide vehicle registration information (referred to as the Vehicle Registration Query) in response to CBP's standard Nlets queries. In addition, CBP determined that two territories, Guam and the U.S. Virgin Islands, do not participate in Nlets DMV-related queries, meaning that their DMV records are not available to CBP or other Nlets users. While CBP lacked access to DMV information for those jurisdictions, it continued to accept, vet, and—when appropriate—approve TTP applications from these states, territories, and the District of Columbia.

Upon the discovery of this additional information, CBP ensured that it maintained full candor with the courts in the Southern District of New York and the District of Columbia that are currently overseeing litigation regarding the Department's February 5th Decision, explaining what had been revealed and how it impacted what the Government had conveyed in each litigation matter.

How CBP Operators Are Addressing the Now-Known Discrepancies

Now that CBP is aware of variances in its access to DMV information among domestic jurisdictions, CBP is reaching out to those jurisdictions where it does not receive responses to all

DMV-related Nlets queries to determine how CBP can access this data to ensure we receive all information necessary to conduct full and effective TTP vetting.

In Closing

As mentioned earlier in my testimony, after New York residents were declared ineligible to participate in TTPs, New York State amended its law to allow sharing of state DMV records with CBP "as necessary for an individual seeking acceptance into a trusted traveler program…." Although New York has not yet restored CBP's access to DMV records, CBP has restored the ability of New York residents to apply for TTPs, including Global Entry, NEXUS, Secure Electronic Network for Travelers Rapid Inspection (referred to as "SENTRI"), and Free and Secure Trade (referred to as "FAST"). CBP's concern was—and continues to be—the integrity of TTPs, which are intended to provide travel facilitation benefits to pre-approved travelers who have been deemed to be low risk. We are hopeful that the New York DMV will soon restore CBP's access to DMV records pursuant to its amended law.

CBP needs to be able to utilize all available information—including DMV data—as part of the risk-assessment process to make an informed determination regarding an applicant's eligibility for TTPs. DMV data is used to confirm identities, addresses, and vehicle registrations of applicants, as well as to identify potentially disqualifying information.

While the absence of this vetting criteria likely has not prevented CBP from identifying applicants linked to terrorism or serious crimes, it has likely prevented CBP from identifying potentially disqualifying information related to motor vehicle offenses rising to the level of a misdemeanor conviction or offense.

CBP will continue to seek access to information derived from all DMV queries via Nlets to ensure that it can effectively execute all of its mission responsibilities in securing the Homeland.

Thank you for the opportunity to testify. I look forward to your questions.