



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

July 25, 2020

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Acting Secretary Wolf:

The Committee on Homeland Security and the Subcommittee on Border Security, Facilitation, and Operations write today to request 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). In addition, the Committee requests that four officials with DHS and U.S. Customs and Border Protection (CBP) complete transcribed interviews with the Committee no later than September 4, 2020.

The Committee and Subcommittee are investigating testimony given by you and another senior official 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 and all personnel at DHS will cooperate fully, completely, and in a timely manner with the Committee's investigation. If the Department fails to produce all requested documents and communications—or if any individual fails 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, you 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

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).

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

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 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

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).

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.*

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 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 March 3, 2020, you testified before the Committee. During your appearance, Rep. Yvette Clarke asked you about the Department’s decision to bar residents of New York from TTP. In response to her questions, you stated:

“I would just say, again, New York law specifically prohibits CBP from going into that DMV database. They need information contained there that they can only get there to vet trusted travelers. They’ve done that above and beyond any other state, there is no other state that prohibits that information so, that specifically why [sic.] we took that action with New York and for that action alone.”⁹

Given the statements made in the letter from the U.S. Attorney’s office, it appears that your testimony before the Committee—like DHS’ assertions in federal court—was inaccurate and gave the wrong impression.

In addition, a senior CBP official provided testimony that also made inaccurate assertions regarding New York’s Green Light Law. On February 6, 2020, Mr. John Wagner, the former Deputy Executive Assistant Commissioner of CBP’s Office of Field Operations, testified before the Committee. In response to a question from Rep. John Katko, Mr. Wagner 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.”¹⁰

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

⁸ *Id.*

⁹ Testimony of Acting Secretary Chad F. Wolf, Department of Homeland Security, Committee on Homeland Security, *Hearing on Fiscal 2021 Budget Request for the Homeland Security Department* (116th Congress) (March 3, 2020).

¹⁰ 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).

“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.”¹¹

Requests for Documents and Transcribed Interviews

The Committee is investigating the facts and circumstances surrounding the inaccurate testimony provided by you and Mr. Wagner. As part of that investigation, the Committee requests that DHS produce the following to the Committee no later than August 21, 2020:

1. All documents referring or relating to the decision to bar residents of New York State from Trusted Traveler Programs;
2. All communications (a) between DHS personnel; and (b) between DHS personnel and any personnel at the White House; and (c) between DHS personnel and/or any federal agency referring or relating to the decision to bar residents of New York State from Trusted Traveler Programs;
3. All documents referring or relating to any state, territory, or district that limits DHS’ access to any type of information pertaining to driver’s licenses and/or vehicle registration or to any information contained in any database that stores information on driver’s licenses and/or vehicle registrations; and
4. All documents referring or relating to the discovery by DHS that information provided to the office of the U.S. Attorney for the Southern District of New York and/or to any federal court regarding the enrollment of residents of the State of New York in the TTP was in any way inaccurate or misleading.

In addition, the Committee requests that the following individuals complete transcribed interviews no later than September 4, 2020:

1. Scott L. Glabe, Senior Official Performing the Duties of Under Secretary for Strategy, Policy, and Plans, and Assistant Secretary for Trade and Economic Security;
2. Mark A. Morgan, Senior Official Performing the Duties of the Commissioner, CBP;

¹¹ *Id.*

3. Robert Perez, Deputy Commissioner, CBP; and
4. Pete R. Acosta, Director, Immigration Advisory Program, CBP.

To schedule the transcribed interviews, please contact Lucinda Lessley at 202-226-2616. Thank you for your urgent attention to this matter.

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