

**PROTECTING THE PROTECTORS: AN ASSESSMENT  
OF FRONTLINE FEDERAL WORKS IN RESPONSE  
TO THE SWINE FLU (H1N1) OUTBREAK**

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**HEARING**

BEFORE THE  
SUBCOMMITTEE ON FEDERAL WORKFORCE,  
POSTAL SERVICE, AND THE DISTRICT  
OF COLUMBIA

OF THE  
COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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**PROTECTING THE PROTECTORS: AN ASSESSMENT OF FRONTLINE FEDERAL WORKS IN RESPONSE TO THE SWINE FLU (H1N1) OUTBREAK**

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**THURSDAY, MAY 14, 2009**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL  
SERVICE, AND THE DISTRICT OF COLUMBIA,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:30 p.m., in room 2154, Rayburn House Office Building, Hon. Stephen F. Lynch (chairman of the subcommittee) presiding.

Present: Representatives Lynch, Connolly, Chaffetz, and Bilbray.

Staff present: William Miles, staff director; Marcus A. Williams, clerk/press secretary; Jill Crissman, professional staff member; Jill Henderson, detailee; Dan Blankenburg, minority director of outreach/senior advisor; Adam Fromm, minority chief clerk/Member liaison; Ashley Callen, minority counsel; and Molly Boyd, minority professional staff member.

Mr. LYNCH. Good afternoon. The Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia hearing will now come to order.

I want to welcome our ranking member, Mr. Chaffetz of Utah, members of the subcommittee, hearing witnesses, and all those in attendance.

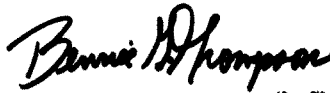
As you may know, the purpose of today's hearing is to examine the status of Federal agencies' occupational safety and health protocols that are responsible for protecting Federal workers from communicable diseases such as the H1N1 virus, also known as the swine flu.

The Chair, ranking member, and subcommittee members will each have 5 minutes to make opening statements. And all Members will have 3 days within which to submit statements for the record.

At this time, I would like to ask unanimous consent for the testimony of the chairman, Benny Thompson, of the Homeland Security Committee to be entered into the record. Hearing no objections, it is so ordered.

[The prepared statement of Hon. Bennie G. Thompson follows:]

BENNIE G. THOMPSON, MISSISSIPPI  
CHAIRMAN



PETER T. KING, NEW YORK  
RANKING MEMBER

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

Statement for the Record for Chairman Bennie G. Thompson  
Chairman, Committee on Homeland Security

Hearing entitled *"Protecting the Protectors: An Assessment of the Front-line Federal Workers in Response to the H1N1 Outbreak"*

*Before the*

Committee on Oversight and Government Reform  
Subcommittee on Federal Workforce, Postal Service and the District of Columbia

*May 14, 2009*

First, I want to thank Chairman Lynch for permitting me to submit a statement for the record for today's hearing entitled, "Protecting the Protectors: An Assessment of the Front-line Federal Workers in Response to the H1N1 Outbreak."

To date, the Federal government's efforts in confronting the H1N1 virus are commendable. However, I believe we can all agree that the best way to ensure an optimal response to an emergency situation is to provide preparation, training, and clear, concise guidance.

The Federal response to the H1N1 outbreak has varied based on the level of preparation by individual agencies. Where there were plans and procedures in place, response efforts have been excellent. Where plans and procedures were absent, response efforts have not been well-coordinated.

As Chairman of the Committee on Homeland Security, I am closely following the response efforts by the Department of Homeland Security.

The Department of Homeland Security includes nearly 40,000 Customs and Border Patrol (CBP) employees who process well over 1 million border crossings a day; over 40,000 Transportation Security Administration (TSA) employees who are in contact with over 2 million passengers a day; and about 17,000 Immigration and Customs Enforcement (ICE) employees who interact with thousands of persons each day. These frontline Federal workers have yet to receive clear and consistent guidance on measures they can take to reduce or eliminate the possibility of exposure to this virus.

The Nation's frontline employees deserve clear guidance on the steps they can take to protect themselves and others. Clear communication on the use of protective personal equipment can assist in these efforts and should be provided.

Complicating the effort to provide guidance is the fact that the previous Administration failed to complete its pandemic planning. Therefore, directives regarding protective measures, including the use of masks were not issued. This left the Department of Homeland Security, as well as others in the Federal government, in the unfortunate position of having to immediately develop and issue guidance. Although limited guidance was issued, unfortunately, it was implemented unevenly. This lack of clarity may have contributed to the uncertainty experienced by many in the Federal workforce and the general public.

Unfortunately, this situation was foreseeable. In January 2009, the Committee on Homeland Security released a report entitled, *Getting Beyond Getting Ready for Pandemic Influenza*. The report identified a number of weaknesses left behind by the previous Administration including:

- Scant evidence of pandemic influenza planning for the Federal Departments and agencies; and
- A lack of guidance on the use of non-pharmaceutical interventions (including the use of masks).

Mr. Chairman, I believe that this Nation and this new Administration must take advantage of this opportunity to identify lessons learned, complete plans, and to issue guidance – so that we are better prepared for more severe influenza outbreaks and pandemics, should they occur.

I thank you for your leadership on this issue and look forward to working with you in assuring that our Federal workforce and the Nation are ready and equipped to face this outbreak and any future outbreaks.

Mr. LYNCH. I will take a moment before we introduce the first panel just to make a brief introductory statement.

In the wake of the H1N1 flu outbreak—we hope it is the wake—this afternoon’s hearing has been convened to examine and discuss current Federal worker safety protections and policies. As Chair of the Federal Workforce Subcommittee, it is my responsibility to ensure the health and safety of our Federal employees, especially frontline Federal workers who are tasked with the awesome job of keeping the American public safe and healthy.

While we have all seen the headlines, have read various reports on H1N1, or swine flu, cases, today’s hearing is especially intended to review existing policies at key Federal agencies relating to employee precautionary behavior and the use of PPE, personal protective equipment. Entitled “Protecting the Protectors: An Assessment of Frontline Federal Workers in Response to the H1N1 Outbreak,” today’s proceedings will provide our agency witnesses an opportunity to elaborate on their own respective responses to the H1N1 virus outbreak.

And today’s hearing also affords us the chance to enter into a dialog about the implementation of future policies that would govern and lay out the rights of frontline workers to access and don protective gear during a time of potential crisis. This is especially noteworthy since most of our medical experts express the opinion that, next fall, we could see a resurgence, or an echo of sorts, of the H1N1 virus but in a more lethal form.

Be it the result of a public health emergency or a manmade disaster, since 9/11 our country, as a whole, has awakened to the need for ongoing emergency preparedness. Subsequently, Federal agencies have been charged with drawing up a variety of disaster scenarios so that our government can respond effectively and swiftly in time of crisis. However, all one has to do is recall the horrific events following Hurricane Katrina on the Gulf Coast to be reminded that much work in the area of emergency preparedness and continuity of government remains to be done.

In addition to the work needed to ensure the public safety, it is essential that agencies implement adequate and uniform worker protection policies for the employees who protect the Nation as part of their daily duties.

Amidst the general emergency response, planning efforts undertaken by agencies to safeguard the public, sufficient time must be devoted to develop and execute sensible policies aimed at securing the health and safety of the very employees who will be called upon to respond in the event of an emergency. Without such policies, not only is the health of frontline workers being put at risk, but the health of their families and the communities in which they live and the general welfare of the public is also placed at risk.

In short, the Federal Government cannot ably respond to emergencies if the very personnel needed as part of that response are, themselves, compromised. Frontline Federal workers, their families, the communities where they reside and where their kids go to school deserve to be reassured that their employer, the Federal Government, which, in this case, we are responsible for, has done everything possible to guarantee their protection while on the job.



I would like to thank the witnesses in advance for their willingness to appear and testify as we take a hard look into what is being done and what is not being done to keep our frontline Federal workers safe.

This concludes my opening statement, and I now yield to our ranking member, Mr. Chaffetz.

[The prepared statement of Hon. Stephen F. Lynch follows:]

STATEMENT OF CHAIRMAN STEPHEN F. LYNCH  
SUBCOMMITTEE ON FEDERAL WORKFORCE  
AND POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA HEARING ON

**“Protecting the Protectors: An Assessment of Front-line Federal Workers in  
Response to the H1N1 Outbreak”**

Thursday, May 14, 2009

IN WAKE OF THE H1N1 FLU OUTBREAK, THIS AFTERNOON’S HEARING HAS BEEN CONVENED TO EXAMINE AND DISCUSS CURRENT FEDERAL WORKER SAFETY PROTECTIONS AND POLICIES. AS CHAIR OF THE FEDERAL WORKFORCE SUBCOMMITTEE, IT IS MY RESPONSIBILITY TO ENSURE THE HEALTH AND SAFETY OF FEDERAL EMPLOYEES - ESPECIALLY FRONTLINE FEDERAL WORKERS WHO ARE TASKED WITH THE AWESOME JOB OF KEEPING THE AMERICAN PUBLIC SAFE AND HEALTHY.

WHILE WE’VE ALL SEEN THE HEADLINES AND HAVE READ VARIOUS REPORTS ON H1N1 (OR SWINE) FLU CASES, TODAY’S HEARING IS SPECIFICALLY INTENDED TO REVIEW EXISTING POLICIES AT KEY FEDERAL AGENCIES RELATING TO EMPLOYEE PRECAUTIONARY BEHAVIOR AND THE USE OF PERSONAL PROTECTIVE WEAR. ENTITLED *“PROTECTING THE PROTECTORS: AN ASSESSMENT OF FRONT-LINE FEDERAL WORKERS IN RESPONSE TO THE H1N1 OUTBREAK,”* TODAY’S PROCEEDINGS WILL PROVIDE OUR AGENCY WITNESSES AN OPPORTUNITY TO ELABORATE ON THEIR RESPECTIVE RESPONSES TO THE H1N1 VIRUS OUTBREAK. TODAY’S HEARING ALSO AFFORDS US THE CHANCE TO ENTER INTO A DIALOGUE ABOUT THE IMPLEMENTATION OF FUTURE POLICIES THAT WOULD GOVERN AND LAY OUT THE RIGHTS OF FRONT LINE WORKERS TO ACCESS AND DON PROTECTIVE WEAR DURING A TIME OF POTENTIAL CRISIS -- BE IT THE RESULT OF A PUBLIC HEALTH EMERGENCY OR A MAN-MADE DISASTER.

SINCE NINE-ELEVEN, OUR COUNTRY AS A WHOLE HAS AWAKENED TO THE NEED FOR ONGOING EMERGENCY PREPAREDNESS. SUBSEQUENTLY, FEDERAL AGENCIES HAVE BEEN CHARGED WITH DRAWING UP A VARIETY OF DISASTER SCENARIOS SO THAT OUR GOVERNMENT CAN RESPOND EFFECTIVELY AND SWIFLY IN A TIME OF CRISIS. HOWEVER, ALL ONE HAS TO DO IS RECALL THE HORRIFIC EVENTS FOLLOWING HURRICANE KATRINA ON THE GULF COAST TO BE REMINDED THAT MUCH WORK IN THE AREA OF EMERGENCY

**PREPAREDNESS AND CONTINUITY OF GOVERNMENT REMAINS TO BE DONE.**

**IN ADDITION TO THE WORK NEEDED TO ENSURE THE PUBLIC'S SAFETY, IT IS ESSENTIAL THAT AGENCIES IMPLEMENT ADEQUATE AND UNIFORM WORKER PROTECTION POLICIES FOR THE EMPLOYEES WHO PROTECT THE NATION AS PART OF THEIR DAILY DUTIES. AMIDST THE GENERAL EMERGENCY RESPONSE PLANNING EFFORTS UNDETAKEEN BY AGENCIES TO SAFEGUARD THE PUBLIC, SUFFICIENT TIME MUST BE DEVOTED TO DEVELOP AND EXECUTE SENSIBLE POLICIES AIMED AT SECURING THE HEALTH AND SAFETY OF THE VERY EMPLOYEES WHO WILL BE CALLED UPON TO RESPOND IN THE EVENT OF AN EMERGENCY. WITHOUT SUCH POLICIES, NOT ONLY IS THE HEALTH OF FRONT LINE EMPLOYEES BEING PUT AT RISK, BUT THE HEALTH OF THEIR FAMILIES AND THE GENERAL WELFARE OF THE PUBLIC IS ALSO PLACED AT RISK. IN SHORT, THE FEDERAL GOVERNMENT CANNOT ABLY RESPOND TO EMERGENCIES IF THE VERY PERSONNEL NEEDED AS PART OF THAT RESPONSE ARE THEMSELVES COMPROMISED.**

**FRONT LINE FEDERAL WORKERS, THEIR FAMILY MEMBERS, THE COMMUNITIES WHERE THEY RESIDE AND WHERE THEIR KIDS GO TO SCHOOL- DESERVE TO BE REASSURED THAT THEIR EMPLOYER-WHICH IN THIS CASE IS THE FEDERAL GOVERNMENT- HAS DONE EVERYTHING POSSIBLE TO GUARANTEE THEIR PROTECTION WHILE ON THE JOB.**

**I'D LIKE TO THANK THE WITNESSES FOR APPEARING HERE TODAY AS WE TAKE A HARD LOOK INTO WHAT IS—AND WHAT IS NOT-BEING DONE TO KEEP OUR FRONT LINE FEDERAL WORKERS SAFE.**

Mr. CHAFFETZ. Thank you, Chairman Lynch, for holding this important hearing on “Protecting the Protectors: An Assessment of Frontline Federal Workers in Response to the Swine Flu (H1N1) Outbreak.”

I also want to thank the witnesses for taking time out of their busy schedules to testify before the subcommittee, and appreciate your understanding and flexibility given the series of votes that we need to participate in. We do appreciate your time and your attention, your being prepared for this, and I want to thank you so much for your participation.

As Federal workers across all sectors have been involved in the response to the medical emergency, it is crucial that the proper protocols are in place to protect these workers. The health of Americans depends on a healthy Federal work force. I hope our witnesses can give us insight into the current response to the H1N1 epidemic and help us assess where we have succeeded and where we have failed.

As a result of the threats from SARS and the avian influenza, former President George W. Bush issued the National Strategy for Pandemic Influenza on November 1, 2005. The strategy guides the Nation’s readiness and response to flu pandemics and has given direction to the Federal, State, and local governments on how to respond in the wake of the current H1N1 flu outbreak.

A key part of the strategy, “is to sustain infrastructure and mitigating impact to the economy and the functioning of society.” That is exactly what we are here to talk about today.

Although a pandemic cannot damage physical infrastructure, such as roads and powerlines, the way other catastrophic events might, it can cripple an organization through impact on the organization’s human resources and prevent it from completing its essential functions. When that organization is the Federal Government, the consequences can be dire.

Planning for the protection of Federal workers from illness and also for continuity of operations should a large enough number of employees get sick is essential. A strong Federal response to a pandemic is the key to mitigating the severity of the illness and loss of life and for the easing of potential devastating effects that an outbreak or pandemic flu can have on our Nation’s economy.

Personnel policies must reflect the twofold goal of keeping our Federal workers healthy and therein ensuring continuity of operations. Providing protective gear, updating telework and other social distancing policies, and implementing health information technology are valuable parts of the pandemic flu strategy. These tools allow Federal agencies to continue their important roles in responding to an emergency.

Recently, it was brought to my attention that the Department of Homeland Security, while issuing written guidance to protect its employees, is not, in fact, executing the guideline on the front lines. Managers, I am told, are prohibiting Customs and Border Protection officers from wearing protective masks. Since our borders provide an opportunity to slow the spread of H1N1, we must ensure the health of our first-line defense: the Border Patrol agents, Transportation Safety Administration officials, and other law enforcement and health care professionals.

Disturbed by this contradictory message from Department of Homeland Security, I, along with 19 of my colleagues, sent a letter to Secretary Janet Napolitano demanding immediate revocation of the prohibition on masks. Mr. Chairman, I would ask unanimous consent to submit the letter sent to President Obama and Secretary Napolitano into the record.

Mr. LYNCH. Without objection, so ordered.

[The prepared statement of Hon. Jason Chaffetz and the information referred to follow:]

EDOLPHUS TOWNS, NEW YORK  
CHAIRMAN

DARRELL E. ISSA, CALIFORNIA  
RANKING MINORITY MEMBER

ONE HUNDRED ELEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
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Minority (202) 225-6074

**Statement of Rep. Jason Chaffetz**  
**Ranking Republican Member**  
**Subcommittee on the Federal Workforce, Postal, and**  
**the District of Columbia**

*“Protecting the Protectors:  
An Assessment of Front-line Federal Workers in Response to the Swine Flu (H1N1)  
Outbreak”*

**May 13, 2009**

Thank you, Chairman Lynch, for holding this important hearing on “Protecting the Protectors: An Assessment of Front-line Federal Workers in Response to the Swine Flu (H1N1) Outbreak” I also want to thank the witnesses for taking time out of their busy schedules to testify before the Subcommittee.

As federal workers across all sectors have been involved in the response to the current pandemic, it is crucial that the proper protocols are in place to protect these workers. The health of Americans depends on a healthy federal workforce. I hope our witnesses can give us insight into the current response to the H1N1 epidemic and help us assess where we have succeeded and where we have failed.

As a result of threats from SARS and Avian influenza, former President George W. Bush issued the National Strategy for Pandemic Influenza on November 1, 2005. The Strategy guides the nation’s readiness and response to flu pandemics, and has given direction to the federal, state and local governments on how to respond in the wake of the current H1N1 flu outbreak. A key part of the Strategy, “sustaining infrastructure and mitigating impact to the economy and the functioning of society,” is exactly what we are here to talk about today.

Although a pandemic cannot damage physical infrastructure like roads and powerlines the way other catastrophic events might, it can cripple an organization through impact on the organization's human resources, and prevent it from completing its essential functions. When that organization is the federal government, the consequences can be dire. Planning for the protection of federal workers from illness, and also for continuity of operations should a large enough number of employees get sick, is essential. A strong federal response to a pandemic is key to mitigating the severity of the illness and loss of life, and for easing the potentially devastating effects that an outbreak of pandemic flu can have on our nation's economy.

Personnel policies must reflect the twofold goal of keeping our federal workers healthy and therein ensuring continuity of operations. Providing protective gear, updating telework and other social distancing policies, and implementing health information technology are valuable parts of a pandemic flu strategy. These tools allow federal agencies to continue their important roles in responding to an emergency.

Recently, it was brought to my attention that the Department of Homeland Security (DHS) while issuing written guidance to protect its employees, is not in fact executing this guidance on the front lines. Managers, I am told are *prohibiting* Customs and Border Protection officers from wearing protective masks. Since our borders provide an opportunity to slow the spread of H1N1, we must ensure the health of our first line of defense -- Border Patrol agents, Transportation Safety Administration officers, and other law enforcement and health care professionals. Disturbed by this contradictory message from DHS, I, along with 19 of my colleagues, sent a letter to Secretary Janet Napolitano demanding immediate revocation of the prohibition on masks.

It is a delicate balance that we must strike between protecting our front line employees and not causing mass public fear and alarm. I hope our witnesses can provide some answers as we look at the effect this epidemic is having on our federal workforce.

**Congress of the United States**  
Washington, DC 20515  
April 30, 2009

President Barack Obama  
The White House  
1600 Pennsylvania Ave, NW  
Washington, D.C. 20500

Secretary Janet Napolitano  
Department of Homeland Security  
3801 Nebraska Avenue NW  
Washington, DC 20528

Dear President Obama and Secretary Napolitano:

It has been brought to our attention that Customs and Border Protection Officers are currently prohibited from wearing protective masks by a policy of the Department of Homeland Security. Many Customs and Border Protection Officers are stressed because they are unable to protect themselves. Customs and Border Protection Officers at all our nation's ports of entry come in close contact with travelers that can be contagious with disease. Officers working at these ports have a reasonable fear of exposure to Swine Flu (H1N1).

The U.S. Office of Personnel Management and the Centers for Disease Control and Prevention have said that at this point travelers can be contagious with Swine Flu without showing symptoms. Without question, any restriction that does not allow employees to wear a protective mask (N-95) significantly heightens their potential exposure to serious disease. This exposure could well cause serious illness, not only to the employee, but to their family, friends, and the community as a whole. Consequently, the agency's restriction on the use of protective gear has resulted in an understandably high level of stress. Many employees have gone to the media in seeking answers and help.

Use of protective masks by Customs and Border Protection Officers is not unprecedented. In 2007, the Department of Homeland Security provided the N-95 mask to all employees, when California was struck with wild fires that damaged homes and caused the death of many. More importantly, no one should have to be infected by a contagious disease before they are allowed to use a life saving device at their immediate disposal.

Last night, the World Health Organization (WHO) raised its pandemic threat alert level for Swine Flu, as the infection spread to more locations across the country and around the world and U.S. health officials reported the first confirmed death in the United States from the illness. The WHO raised the alert level to "Phase 5," its second-highest level, which means that human-to-human spread of the virus has been found in at least two countries in one WHO region.

Secretary Napolitano testified before Congress that federal border agents at unspecified land ports of entry have so far referred 49 travelers entering through U.S. border checkpoints to federal, state or local health officials because they displayed suspicious flu-like symptoms. According to testimony, 41 of the travelers were subsequently cleared and eight others remain under investigation, with diagnostic tests not yet completed.

We insist that our nation's front line of defense, the brave men and women of Customs and Border Protection, be allowed to wear a protective mask if they so wish. We look forward to working with you to ensure the safety and security of our borders and Customs and Border



Protection Officers. With approximately 1.1 million border crossings a day, this policy must be revoked immediately.

Sincerely,

Brian P. Gilley

Walter B. Jones

Louie Gohmert

Dana Rohrabacher

Gary Brown-Waite

Patrick M. McHenry

Bob Casey, FLIS

Mark E. Amodeo

Jeff Miller

Sue Myrick

Scott Garrett

W. C. Coker

Charles Boustany

Ed Whitfield

Howard Coble

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Mr. CHAFFETZ. Thank you.

It is a delicate balance we must strike between protecting our frontline employees and not causing mass public fear and alarm. I hope our witnesses can provide some answers as we look into the effect that this epidemic is having on our Federal work force.

Again, I thank you for your appreciation and look forward to hearing from you.

Thank you, Mr. Chairman.

Mr. LYNCH. The Chair now recognizes the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman. And I want to thank you for holding this important subcommittee hearing.

We must seize this opportunity to explore steps that we can take to protect the Nation from this or future pandemics. Ninety years ago, an influenza epidemic swept the world, starting here in the United States, killing approximately 50 million people. Today, enhanced mobility means that other pandemics could spread even more quickly and more broadly.

Federal, State, and local governments have made significant investments in emergency preparedness since September 11th. In my district, Fairfax County opened a state-of-the-art emergency operation center. Regionally, the Metropolitan Washington Council of Governments, whose emergency preparedness council I chaired until being elected to this job, has coordinated cross-jurisdictional emergency response planning with the goal of enhancing interoperability. The State of Virginia has pursued similar efforts.

While those efforts have positioned us to respond to emergencies more effectively, we were focused more on response to a variety of attacks, perhaps, than events such as a pandemic. Since many levels of government have made substantial investments in both physical infrastructure and personnel for emergency preparedness, we must be able to identify efficient ways in which to ensure these existing facilities and networks can address both pandemics as well as terrorism.

In addition to preparing our response to such pandemics, we need to take all possible steps to reduce the likelihood that they can occur. I am concerned, for example, that the widespread use of antibiotics in factory farms could be creating super-germs that would be resistant to medication we use in humans. While we do not know if there is any link between the use of antibiotics in factory farms and the swine flu, it is a timely reminder that our stock of antibiotics is a finite resource that we need to guard closely.

I believe the Preservation of Antibiotics for Medical Treatment Act, introduced by our colleague, Representative Slaughter of New York, represents a thoughtful approach to protecting the potency of our antibiotics.

Finally, Mr. Chairman, as the hearing brief made apparent, we need to take aggressive steps to protect our transit security employees from pandemics. It is unconscionable that TSA or Border Patrol or customs employees are not permitted to wear respiratory masks while interacting with thousands of travelers as a precaution to prevent the spread of diseases. I expect both agency witnesses and representatives of employee unions to tell this committee how we can rectify that problem immediately.

I thank you again, Mr. Chairman, for holding these timely hearings.

Mr. LYNCH. Thank you.

It is the custom of this committee to swear in witnesses for testimony. Would you please rise and raise your right hands?

[Witnesses sworn.]

Mr. LYNCH. Let the record show that each of the witnesses has answered in the affirmative.

Before I ask for testimony, we will do a brief introduction of the witnesses.

Panel one: Mr. Thomas Galassi is Director of Technical Support and Emergency Management, Occupational Safety and Health Administration. Mr. Galassi is the Director of OSHA—excuse me—the Director of Technical Support and Emergency Management, where he is responsible for the emergency preparedness response activities and workplace safety and health guidance. As a certified industrial hygienist, Mr. Galassi serves as deputy director of the Directorate of Enforcement Programs, where he had oversight of Federal agency safety and health from 1999 to 2008.

Dr. David Weissman, Director of the Division of Respiratory Disease Studies of the National Institute for Occupational Safety and Health, and holds board certifications in internal medicine, allergy, and immunology and pulmonary diseases. He has authored and co-authored more than 60 publications, primarily in the area of lung immunology, tuberculosis, and occupational lung disease.

Ms. Nancy Kichak was named Associate Director of the Human Resources Policy Division at the U.S. Office of Personnel Management in September 2005. In this position, she leads the design, development, and implementation of innovative, flexible, merit-based HR policies. In 2003, Ms. Kichak was awarded the Presidential Rank Award of Distinguished Executive for extraordinary accomplishments in the management of government programs.

Ms. Elaine Duke was confirmed as the Department of Homeland Security Under Secretary for Management on June 27, 2008. Ms. Duke is responsible for the management and administration of the Department, which includes directing the human capital resources and personnel programs for DHS's 216,000 employees. Additionally, she oversees the Department's \$47 billion budget, appropriations, expenditures of funds, accounting, and finance.

Welcome.

Mr. Galassi, you have 5 minutes. Just as a general guideline, that box in front of you will keep track of your time. You have 5 minutes to summarize your written statement that has already been entered into the record. When the light turns yellow, you should probably sum up. And when the light turns red, your time has expired.

Mr. Galassi, welcome.

**STATEMENTS OF THOMAS GALASSI, DIRECTOR, TECHNICAL SUPPORT AND EMERGENCY MANAGEMENT, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION; DAVID WEISSMAN, DIRECTOR, DIVISION OF RESPIRATORY DISEASE STUDIES, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, CENTERS FOR DISEASE CONTROL AND PREVENTION; NANCY KICHAK, ASSOCIATE DIRECTOR, STRATEGIC HUMAN RESOURCES POLICY DIVISION, U.S. OFFICE OF PERSONNEL MANAGEMENT; AND ELAINE DUKE, UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY**

**STATEMENT OF THOMAS GALASSI**

Mr. GALASSI. Chairman Lynch, Ranking Member Chaffetz, members of the committee, thank you for this opportunity to discuss the Occupational Safety and Health Administration's strategy for the protection of America's Federal workers from the new strain of Influenza A 2009-H1N1 virus.

Before I begin my testimony, I want to express my gratitude for the many Federal workers who have responded so quickly to the current outbreak.

It is clear that Federal agencies must be prepared for public health emergencies so that the Federal workplaces are not disrupted and the delivery of essential programs are not adversely affected. The full range of OSHA's training, education, technical assistance, enforcement, and public outreach programs will be used to help protect the Federal work force.

Preparation is critical. OSHA has been engaged in efforts associated with the National Strategy for Pandemic Influenza, which directs all Federal departments and agencies to plan and prepare for a possible influenza pandemic. To support that effort, OSHA has published two guidance documents to help all employers, including Federal employers, better protect their employees and lessen the impact of a pandemic on society and the economy.

Our guidance on preparing workplaces for an influenza pandemic includes an occupational risk pyramid for pandemic influenza to help employers select for their employees appropriate administrative work practices and engineering controls and personal protective equipment based on exposure risk associated with specific tasks.

OSHA's current outreach efforts are aimed primarily at high-risk and very high-risk workers, those who have direct contact with infected individuals as part of their job responsibilities, such as health care workers and first responders.

OSHA recognizes the importance of protecting health care workers, like those working at the Veterans Affairs, on whom this country will rely to identify, treat, and care for individuals with the flu. OSHA has issued pandemic influenza preparedness and response guidance for health care workers and employers which provides valuable information and tools about health care facility responsibilities during pandemic alert periods.

OSHA is also developing guidance for employers on how to determine the need to stockpile respirators and face masks, along with fact sheets and quick cards written in English and in Spanish. The

agency's Web site, [www.osha.gov](http://www.osha.gov), contains comprehensive information dealing with a pandemic, as well as a link to the Federal Web site at [www.panflu.gov](http://www.panflu.gov).

Federal agency heads play a central role in protecting their employees' safety and health. The Occupational Safety and Health Administration has broad requirements for agency heads to establish and maintain comprehensive occupational safety and health programs.

As part of their programs, qualified safety health inspectors must inspect and identify hazards in the workplace and investigate accidents and employee complaints. Based on findings from investigations, agencies establish engineering and work practice controls and, where necessary, provide respiratory protection and personal protective equipment, as well as training on the use of respirators and how to get the respirator fit tested and to wear it properly, when to wear personal protective equipment, and how to properly put on and take off personal protective equipment.

OSHA also performs inspections of Federal agency workplaces; enforces standards in a manner that is similar to the approach existing in the private sector, but Federal agencies are not penalized for noncompliance.

As part of the 2009-H1N1 outbreak, OSHA has been fully engaged in Federal coordination on issues related to worker protections. OSHA is providing technical assistance to our Federal partners on general and agency-specific issues related to the health and safety of their staffs. I am confident that the numerous exercises we have carried out in emergency planning at both Federal and local levels since 2001 will pay off in our ability to work together in combatting this threat to the workplace.

Mr. Chairman, I would characterize this situation for the Federal work force just as the President has described it for the Nation: "cause for deep concern but not panic." I am very confident in the expertise of OSHA's medical, scientific, compliance assistance, and enforcement personnel. OSHA is prepared to address this threat and will protect our work force.

I will keep you informed about OSHA's efforts to protect America's Federal employees from the current 2009-H1N1 virus and from pandemic flu exposure.

[The prepared statement of Mr. Galassi follows:]

**STATEMENT OF THOMAS GALASSI  
DIRECTOR, TECHNICAL SUPPORT AND EMERGENCY MANAGEMENT  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
U.S. DEPARTMENT OF LABOR  
BEFORE THE  
SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE  
AND THE DISTRICT OF COLUMBIA  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES**

**May 14, 2009**

Chairman Lynch, Ranking Member Chaffetz, Members of the Committee:

Thank you for this opportunity to discuss the Occupational Safety and Health Administration's (OSHA's) strategy for the protection of America's Federal workers, including those at the front-line of the Federal government's response to the new strain of Influenza A (2009-H1N1) virus. During an outbreak of a novel influenza virus like the 2009-H1N1 virus or an influenza pandemic, transmission can occur in the workplace just as it takes place in other settings. Federal agencies need to be prepared for these unusual public health emergencies so that the Federal workforce is protected and essential Federal programs and services are sustained. Fortunately, because of the work OSHA has done in preparing for a possible pandemic related to the Avian Influenza (H5N1) virus, the agency is prepared to address the dangers of the 2009-H1N1 virus. The full range of OSHA's training, education, technical assistance, enforcement, and public outreach programs will be used to help protect the Federal workforce, especially those at the front-line of the response.

Preparation is critical. OSHA has been engaged in the efforts associated with the “National Strategy for Pandemic Influenza” and the “National Strategy for Pandemic Influenza Implementation Plan,” which together direct all Federal departments and agencies to plan and prepare for a possible influenza pandemic. To support the preparations of all employers, including Federal agencies, OSHA published two guidance documents to help employers better protect their employees and lessen the impact of a pandemic on society and the economy. First, DOL/OSHA jointly published with HHS “Guidance on Preparing Workplaces for an Influenza Pandemic” (OSHA 3327-02N 2007, <https://www.osha.gov/Publications/OSHA3327pandemic.pdf>), which provides information of value in all workplaces. The guide includes an “Occupational Risk Pyramid for Pandemic Influenza” to help employers select appropriate administrative, work practice, and engineering controls and personal protective equipment based on exposure risk associated with specific tasks.

In response to the current 2009-H1N1 outbreak, OSHA’s outreach efforts have been aimed primarily at high-exposure risk and very-high-exposure risk workers – those who have direct contact with infected individuals as part of their job responsibilities – such as health care workers and first responders. OSHA recognizes the importance of protecting health care workers, like those working for the Department of Veterans Affairs, on whom this country will rely to identify, treat and care for individuals with the flu. To help health care employers and workers prepare for an influenza pandemic, OSHA also issued in 2007 “Pandemic Influenza Preparedness and Response Guidance for Healthcare Workers and Employers” (OSHA 3328-05 2007,



<https://www.osha.gov/Publications/3328-05-2007-English.html>). The publication provides valuable information and tools about health care facility responsibilities during pandemic alert periods.

OSHA is also developing guidance for employers, including those in the health care industry, on how to determine the need to stockpile respirators and facemasks. The proposed guidance is publicly available on OSHA's website. Once finalized, this guidance will be added as an appendix to OSHA's existing guidance to employers on how to prepare for a pandemic.

In addition, based on our existing guidance and available information about the current outbreak, OSHA is developing numerous sources of information for workers and their employers on pandemic influenza. They include Fact Sheets and *Quick Cards* written in both English and Spanish. The agency's website ([www.osha.gov](http://www.osha.gov)) contains comprehensive information on dealing with a pandemic, including frequently asked questions for health care workers and links to OSHA's guidance documents. OSHA plans to post on this site answers to common questions about the 2009-H1N1 flu from workers and employers. The agency's webpage is linked to [www.pandemicflu.gov](http://www.pandemicflu.gov) where employers can find additional frequently asked questions and answers on work place safety and health issues

As part of the 2009-H1N1 outbreak, OSHA has been fully engaged in Federal coordination on issues related to worker protections. Through formal structures like the

Homeland Security Council's Domestic Readiness Group and the Health and Human Services Secretary's Operation Center, as well as through the informal network of Federal safety and health contacts developed since 2001, OSHA is providing technical assistance to our Federal partners on general and agency-specific issues related to the health and safety of their staffs. OSHA and the Centers for Disease Control and Prevention (CDC) have distributed information to the general public as well as Federal agencies about how to protect workers from influenza exposure in the workplace.

OSHA is charged with providing leadership, guidance, technical assistance, and other information about steps agency heads need to take to protect their workforces, but Federal agency heads play a central role in protecting their employees' safety and health.

Section 19 of the Occupational Safety and Health Act establishes broad requirements for agency heads to establish and maintain comprehensive occupational safety and health programs. Executive Order 12196 requires each Executive Branch agency to establish an occupational safety and health program in accordance with the basic program requirements established by the Secretary of Labor. (Enlisted military personnel, and conditions associated with uniquely military equipment, systems, and operations are excluded from the requirements of Section 19 of the Act, Executive Order 12196, and 29 CFR Part 1960. The US Postal Service is treated as a private sector employer from an OSHA perspective.) Those program elements are established in regulations at 29 CFR Part 1960. The head of every Federal agency must implement a safety and health program for the agency's employees. As part of their programs, qualified safety and

health inspectors must inspect and identify hazards in the workplace and investigate accidents and employee complaints. Among the OSHA standards applicable to Federal agencies are regulations addressing personal protective equipment, including a respirator standard that requires a complete respiratory protection program including training, medical evaluation and fit testing when respirators are needed to protect workers' health. Based on the findings from the investigations, agencies establish the use of engineering and work practice controls and, pursuant to OSHA standards, provide respiratory protection and personal protective equipment as necessary. It is the employer's responsibility to ensure that workers have the protection and training they need: when to wear a respirator, what kind of respirator, how to get the respirator fit-tested and wear it properly; when to wear gloves; and how to put on and take off personal protective equipment. OSHA performs inspections of Federal agency workplaces and enforces the standards in a manner similar to the approach existing in the private sector. One notable difference is that Federal agencies are cited but not financially penalized for non-compliance.

Most Federal agencies have made great progress in planning for needed training, equipment and protection during a pandemic. The current outbreak has provided Federal agencies with an opportunity to evaluate their pandemic influenza plans to ensure the protection of the workforce and continued operation of critical government functions. OSHA strongly encourages Federal agencies to conduct such reviews and adjust plans accordingly to ensure that the Federal workforce is protected in the event that the virus returns in a more virulent form. These plans should include evaluating the exposure risk

of their employees, determining appropriate controls to mitigate exposure risk, and then, if personal protective equipment is needed to protect Federal workers, ordering and stockpiling respirators and other personal protective equipment, conducting fit testing, medical evaluation and worker training.

OSHA recognizes that it plays an essential role in supporting and ensuring employers protect critical emergency responders and workers in such professions as health care, border security, and transportation – as well as the general workforce. Based on OSHA efforts during the World Trade Center tragedy, the anthrax terrorist attack, and Hurricane Katrina response, organizations have learned to come to OSHA for technical assistance. OSHA, in close coordination with the CDC, has also been working to ensure that the guidance issued by all Federal agencies is consistent with the current level of scientific knowledge about the 2009-H1N1 flu and the most effective methods that can be taken to protect workers.

Through planning and preparedness practice, OSHA has worked with the Federal community to deal with emerging health hazards. I am confident that the numerous exercises we have carried out in emergency planning at both the Federal and local levels in the past eight years will pay off in our ability to work together in combating this threat to the workplace.

Mr. Chairman, in addressing the current 2009-H1N1 outbreak and the potential of an influenza pandemic that threatens the workplaces of this nation, we are confronting an

unprecedented hazard. In OSHA's 38-year history, America has never experienced a flu pandemic. However, I would characterize this situation for the workforce just as the President has described it for the nation: "Cause for deep concern, but not panic." I am very confident in the expertise of OSHA's medical, scientific, compliance assistance and enforcement personnel. OSHA is prepared to address this issue and we will protect OSHA's workforce in the process of assisting and ensuring all workers are protected.

We appreciate the Subcommittee's interest in OSHA's efforts to protect America's Federal employees.

Mr. LYNCH. Thank you.  
Dr. Weissman, you have 5 minutes.

#### STATEMENT OF DAVID WEISSMAN

Dr. WEISSMAN. Good afternoon, Chairman Lynch and Ranking Member Chaffetz and other distinguished members of the subcommittee. I am Dr. David Weissman, Director of the Division of Respiratory Disease Studies at the Centers for Disease Control and Prevention. I genuinely appreciate this opportunity to speak to you today and update you on the current efforts that CDC is taking to respond to the 2009-H1N1 influenza outbreak.

Providing frequent and informative communications about the outbreak is an important CDC priority. NIOSH is proud to be part of an aggressive response by CDC to understand the outbreak and to implement effective control measures. It is important to note that our Nation's current preparedness is the direct result of investments and support by Congress for pandemic preparedness and the hard work of Federal, State, and local officials all across the country.

The 2009-H1N1 influenza virus is contagious and spreads from human to human. It spreads in a similar way as seasonal influenza, in that flu viruses are thought to spread mainly from person to person through coughing or sneezing by people with influenza. Sometimes people can get infected by touching something with flu viruses on it and then touching their mouth or nose or eyes.

Surveillance has been ramped up around the country to try to get a better understanding of the magnitude of this outbreak, and we are actively tracking the progression of this virus globally. It is important that we continue to be vigilant. We need to be prepared for a possible return of this virus to the United States in the fall.

CDC has and continues to develop specific recommendations for what individuals, communities, clinicians, and other professionals can do. Everybody has a role to play in limiting this outbreak. Individuals can take actions that will prevent respiratory infections. Frequent handwashing is something that we emphasize as an effective way to reduce transmission. Adults with flu-like illness should stay at home and not go to work. Children with flu-like illness should also stay home and not go to school or child care. And if you are ill, you shouldn't get in an airplane or any public transport to travel. Taking personal responsibility for these things will help reduce the spread of this new virus as well as other respiratory illnesses.

During public health emergencies like the current outbreak, protecting workers, including Federal workers, is a top priority. Like all of us, workers can contract influenza through general community exposures. And some workers, especially health care workers and emergency responders, are at higher risk for infection because their jobs, by definition, bring them into repeated close contact with individuals who are ill with this virus. These workers represent a particularly high priority for prevention.

NIOSH is leading a CDC team effort to minimize the effects of the outbreak on workers by developing and disseminating guidance on precautions to prevent transmission of the illness in the workplace. Our guidance is informed by the hierarchy of controls used

to reduce exposure, including engineering controls like isolation, ventilation, and physical barriers; administrative and work practice controls, like social distancing and telecommuting, hand hygiene and cough etiquette; and personal protective equipment, like gloves, glasses, gowns, and respiratory protective devices.

As the outbreak evolves, specific guidance on the appropriate use of these controls is guided by our evolving understanding of the outbreak and the level of evidence supporting the effectiveness of the various controls.

As part of the larger CDC response, we fielded questions and provided assistance to other Federal agencies responding to this influenza outbreak. For example, soon after the start of the outbreak, the Department of Homeland Security contacted us, and we helped them develop infection control measures to protect their most at-risk employees. We have continued to be in communication with DHS as the outbreak has evolved. We have also provided information to the U.S. Postal Service, the Department of Defense, and the U.S. General Services Administration to help them protect their employees from the virus.

As we learn more, CDC will evaluate its guidance and update it as appropriate and will continue to work with other Federal agencies to provide the best and most current possible guidance for Federal workers.

In closing, we are working hard to understand and control this outbreak and to keep the public and the Congress fully informed about the situation and our response. We are working in close collaboration with our Federal partners, including our sister HHS agencies and other Federal departments.

Even if this outbreak proves to be less serious than we might have initially feared, we must anticipate the possibility of a subsequent or follow-on outbreak several months down the road. While we must remain vigilant, it is important to note that at no time in our Nation's history have we been more prepared to face this kind of challenge.

We look forward to working closely with you to address this evolving situation as we face the challenges in the weeks and months ahead.

Thanks again for the opportunity to testify before you, and I will be happy to answer any questions that you have.

[The prepared statement of Dr. Weissman follows:]



**Testimony before the Subcommittee on  
Federal Workforce, Postal Service and the  
District of Columbia  
Committee on Oversight and Government  
Reform  
U.S. House of Representatives**

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**Protecting the Protectors: An Assessment  
of Front-line Federal Workers in Response  
to the 2009-H1N1 Influenza Outbreak**

**David N. Weissman, M.D.**

Director, Division of Respiratory Disease Studies  
National Institute for Occupational Safety and Health  
Centers for Disease Control and Prevention  
U.S. Department of Health and Human Services

For Release and Delivery  
Expected at 2:00pm  
May 14, 2009



Good afternoon, Chairman Lynch, Ranking Member Chaffetz, and other distinguished members of the subcommittee. I am Dr. David Weissman, Director of the Division of Respiratory Disease Studies in the National Institute for Occupational Safety and Health (NIOSH) at the Centers for Disease Control and Prevention (CDC).

I thank you for the opportunity to update you on current efforts that CDC is taking to respond to the ongoing 2009-H1N1 influenza outbreak, highlighting our efforts to protect federal workers who in the course of carrying out their duties to protect the American public have a greater chance of exposure to communicable illnesses.

Our hearts go out to the people in the United States, in Mexico, and around the globe who have been directly impacted. We share the concern of people around the country and around the globe. NIOSH is proud to be part of an aggressive response by CDC at the federal, state, local, tribal, and territorial levels to understand the complexities of this outbreak and to implement control measures. It is important to note that our nation's current preparedness is a direct result of the investments and support of the Congress for state and local pandemic preparedness, and the hard work of state and local officials across the country. Examples of the government-wide workplace pandemic planning efforts that prepared us for the current outbreak can be found at: <http://www.pandemicflu.gov/plan/workplaceplanning/index.html>.

It is important for all of us to understand that flu viruses – and outbreaks of many infectious diseases - are extremely unpredictable. As with any public health investigation, the overall CDC response has evolved as our investigation proceeds and we learn more about the situation. We

have seen an increase in the number of cases and the number of states affected, and we can expect more people and states to be affected. CDC is carefully monitoring the severity of illness caused by this virus and, while preliminary evidence is encouraging, we understand that this, too, could change. Our goal in our daily communication – to the public, to the Congress, and to the media – is to continue to be clear in what we do know, explain uncertainty, and clearly communicate what we are doing to protect the health of Americans. It has also been a clear priority to communicate the steps that Americans can take to protect their own health and that of their community. As we continue to learn more, these communications and our guidance to public health officials, health care providers, schools, businesses, and the public has changed and will continue to evolve.

Influenza arises from a variety of sources; for example, swine influenza (H1N1) is a common respiratory disease of pigs caused by type A influenza viruses. These and other animal viruses are different from seasonal human influenza A (H1N1) viruses. From laboratory analysis already performed at CDC, we have determined that there is a novel H1N1 virus circulating in the United States and Mexico that contains genetic pieces from four different virus sources. This particular genetic combination of the virus is new and has not been recognized before in the United States or anywhere else worldwide. As a result of our investment in pandemic preparedness, CDC was able to move within two short weeks to identify a novel virus, understand its complete genetic characteristics, and compare the genetic composition of specimens from U.S. patients to others around the globe to watch for mutations. CDC has also quickly developed and (working with FDA) deployed test kits for use in a widening network of laboratories. These steps, along with capacity in place as a result of effective planning, have

allowed for the rapid diagnostic and epidemiologic capabilities that have contributed to a clearer understanding of the transmission and severity of illness caused by the virus. These scientific accomplishments have provided the basis for an evolving set of responses that greatly enhance our nation's ability to address this threat.

CDC has determined that this virus is contagious and is spreading from human to human. It appears to spread with similar characteristics as seasonal influenza. Flu viruses are thought to spread mainly from person to person through coughing or sneezing by people with influenza. Sometimes people may become infected by touching something with flu viruses on it and then touching their mouth, nose or eyes. There is no evidence to suggest that this virus has been found in swine in the United States, and there have been no illnesses attributed to handling or consuming pork. There is no evidence that one can get the 2009-H1N1 influenza virus from eating pork or pork products.

I want to reiterate that as we look for cases, we are seeing more cases. We fully expect to see not only more cases, but also more cases of severe illness. Surveillance has been ramped up around the country to try and get a better understanding of the magnitude of this outbreak, and we are actively tracking the progression of this virus globally. It is important that we continue to be vigilant. The path of this outbreak may change; and one of the reasons we are tracking this virus globally is the need to be prepared for a possible return of this virus to the U.S. in the fall.

CDC has and continues to develop specific recommendations for what individuals, communities, clinicians, and other professionals can do. Everyone has a role to play in limiting the outbreak.

Individuals can take actions to prevent respiratory infections. Frequent hand-washing is something that we emphasize as an effective way to reduce transmission of disease. If you are sick, it is very important to stay at home. If your children are sick, have a fever and flu-like illness, they should not go to school or childcare. And if you are ill, you should not get on an airplane or any public transport to travel. Taking personal responsibility for these things will help reduce the spread of this new virus as well as other respiratory illnesses. These and other CDC recommendations for preventing and treating the 2009-H1N1 influenza are updated regularly and available to the public on the CDC web site – [www.cdc.gov/H1N1flu](http://www.cdc.gov/H1N1flu).

During public health emergencies like the current 2009-H1N1 influenza outbreak, protecting workers, including federal workers, is a top priority. Like all of us, workers can contract influenza through general community exposures, and some workers – especially healthcare workers and emergency responders – are at higher risk for infection because their jobs, by definition, bring them into repeated, close contact with individuals ill with this virus. These workers represent a particularly high priority for prevention, both because of the potential for added risk and because it will be particularly problematic if they become unavailable through illness or reluctance to perform their duties.

NIOSH is leading a CDC team effort to minimize effects of the outbreak on working populations by developing and disseminating guidance regarding precautions to prevent work-related transmission of the illness. Guidance is informed by the hierarchy of controls used to reduce exposure: engineering, administrative and work practices, and personal protective equipment. Engineering controls include isolation, ventilation and physical barriers. Administrative and

work practice controls include social distancing, telecommuting, hand hygiene, cough etiquette, and training. Personal protective equipment (PPE) includes gloves, glasses, gowns, and respiratory protection devices. At any point in an evolving outbreak, specific guidance on the appropriate use of these controls is guided by our evolving understanding of the outbreak and the evidence of effectiveness of each control. If exposure should occur, guidance also addresses the use of antiviral treatment to prevent or treat disease. Finally, should a vaccine become available, recommendations for immunization will be developed and disseminated. Examples of guidance developed specifically in response to the 2009-H1N1 influenza outbreak include guidance for workers in healthcare, emergency medical services, laboratory settings, and the air transportation industry. All of these workplace-related guidance materials are available at <http://www.cdc.gov/niosh/topics/H1N1flu/>.

As part of the larger CDC response, NIOSH has also contributed efforts specifically directed to federal workers. We have tried to set an example by working aggressively to protect CDC's own workforce, emphasizing that employees who are ill or have been exposed to the 2009-H1N1 influenza virus should not come to work. CDC and NIOSH have also fielded questions and provided assistance to other federal agencies responding to this influenza outbreak. For example, very soon after the start of the outbreak, we were contacted by the Department of Homeland Security (DHS) and have been in regular communication with them regarding protection for U.S. Customs and Border Protection (CBP) port staff. This communication has centered not only on guidance for how DHS staff manage ill travelers, but also on protection of DHS employees. As new information about this 2009-H1N1 influenza virus becomes available.

CDC will evaluate its guidance and, as appropriate, update it using the best available science and ensure that these are communicated to DHS and other partners.

CDC also has responded to requests for guidance from other federal agencies:

- We met with the U.S. Postal Service (USPS) about measures for protecting its employees. NIOSH referred the USPS to the Occupational Safety and Health Administration's (OSHA) guidance on assessing occupational risk in pandemic situations ([http://www.osha.gov/Publications/influenza\\_pandemic.html](http://www.osha.gov/Publications/influenza_pandemic.html)). We identified USPS employees who have frequent contact with the public – such as clerks and mail carriers – as falling into a medium risk group, a group for which CDC has not recommended respiratory protection. We recommended that these employees should, to the extent possible, maintain a 6-foot distance from customers and that the USPS could institute administrative controls such as hand washing and distribution of hand sanitizers and put in place barriers to protect clerks from coughs and sneezes.
- We responded to requests from the Department of Defense by providing guidance to the U.S. Navy on how to clean its ships to avoid spread of the 2009-H1N1 influenza virus, and by sharing with the U.S. Northern Command (USNORTHCOM) guidance used by the CDC Emergency Operations Center to protect CDC's own employees during this outbreak.
- We consulted with the U.S. General Services Administration (GSA), providing reassurance that the odds of transmission of the 2009-H1N1 influenza over significant distances through heating, ventilation, and air conditioning (HVAC) systems was extremely remote and that special cleaning of air ducts is not required.

As our prevention recommendations evolve, we will continue to work with other federal agencies to provide the best and most current possible guidance for federal workers.

CDC's response to the 2009-H1N1 influenza outbreak has benefited from a foundation developed over the past eight years. Since 2001, Congress has invested heavily in public health preparedness at the federal, state, local, tribal and territorial levels, and this investment has helped us to become much better prepared to respond to a range of hazards including disease outbreaks like we currently face with the 2009-H1N1 influenza virus as well as natural disasters and acts of terrorism. Using CDC preparedness funding, NIOSH established an Emergency Preparedness and Response Office, and we have greatly increased our focus and attention on the safety and health of emergency responders. This office pursues research and collaborations to better protect the health and safety of emergency responders by preventing diseases, injuries, and fatalities, and in an event like the current outbreak, this office coordinates NIOSH's response activities in conjunction with the CDC Emergency Operations Center.

NIOSH also conducts research to equip responders with critical personal protective technologies (PPT), such as respirators, chemical-resistant clothing, hearing protectors, and safety goggles and glasses. Building upon NIOSH's longstanding respiratory certification and evaluation program for respirators used in the traditional work setting, NIOSH scientists now test and approve respirators used by responders against chemical, biological, radiological, and nuclear (CBRN) agents. An important part of NIOSH's PPT research program focuses on pandemic influenza

and is guided by the Institute of Medicine 2008 report, *Preparing for an Influenza Pandemic: Personal Protective Equipment for Healthcare Workers*.

In closing, we are simultaneously working hard to understand and control this outbreak while also keeping the public and the Congress fully informed about the situation and our response. We are working in close collaboration with our federal partners, including our sister HHS agencies and other federal departments, as well as with other organizations with unique expertise that helps us provide guidance for multiple sectors of our economy and society. While events have progressed with great speed, this will be a marathon, not a sprint. Even if this outbreak yet proves to be less serious than we might have initially feared, we can anticipate that we may have a subsequent or follow-on outbreak several months down the road. Steps we are taking now are putting us in a strong position to respond.

The Government cannot solve this alone and, as I have noted, all of us must take constructive steps. Workplaces are critical to this effort. If you are sick, stay home. If children are sick, keep them home from school and childcare. Wash your hands. Take all of those reasonable measures that will help us mitigate how many people actually get sick in our country.

While we must remain vigilant throughout this and subsequent outbreaks, it is important to note that at no time in our nation's history have we been more prepared to face this kind of challenge. We look forward to working closely with you to address this evolving situation as we face the challenges in the weeks ahead.



Mr. LYNCH. Thank you, Doctor.  
Ms. Kichak, welcome.

#### STATEMENT OF NANCY KICHAK

Ms. KICHAK. Thank you. Chairman Lynch, Ranking Member Chaffetz, and members of the subcommittee, thank you for including the Office of Personnel Management in your discussion of this important topic. I would like to share with you our efforts to ensure the Federal Government is prepared to meet the human resources management challenges posed by the recent H1N1 flu outbreak as well as any future pandemic health crisis.

Our essential function in this regard is to provide critical human resources services to ensure the Federal Government has the civilian work force it needs to continue essential missions in an emergency. These include emergency staffing authorities, leave flexibility, evacuation payments, telework, and flexible working arrangements.

We are continuously preparing for an influenza pandemic by developing and updating comprehensive human resources guidance and conducting briefings for Federal human resource specialists, as well as town hall meetings for employees at numerous Federal agencies.

It is not possible to overstate my concern and that of OPM Director John Berry that we do everything necessary to protect the well-being of all Federal employees. However, we at OPM do not have the expertise to make judgments about the efficacy and appropriateness of certain medications and protective devices to frontline workers. Therefore, we have tried to keep Federal agencies apprised of the latest expert advice on these issues.

For example, at the H1N1 Human Resources Readiness Forum we hosted last Friday, we made available representatives of the CDC, OSHA, and the Federal Occupational Health Service in the Department of Health and Human Services to answer questions about personal protective measures. The forum focused on pandemic influenza readiness for human resources directors, Federal employee union leaders, and other interested parties. OPM and other panelists answered the questions that weigh most heavily on the minds of managers and employees when they think about how a pandemic health crisis will affect them.

One tool that can be extremely useful in coping with a pandemic health crisis is telework. It can help mitigate the spread of influenza by promoting social distancing while allowing the critical work of the Nation to continue. OPM Director John Berry recently announced a new initiative that we hope will help agencies ramp up their telework readiness. This initiative is driven not only by Director Berry's belief in the value of work-life programs generally but, more specifically, in the importance of telework as a tool for emergency planning.

Under the director's telework initiative, we will convene an advisory group of telework program managers to formulate standards for agency telework policies, which we have asked agencies to submit to OPM for our review. Each agency has been asked to appoint a telework managing officer and to ensure their existing appeals process is transparent to employees.

Finally, we will work with Congress to assure the provision of high-quality, broadly accessible telework training that will provide the baseline everyone needs to achieve success.

With implementation of this initiative, we believe we will see not only an improvement in the consistency and quality of telework policies but also an increase in participation in telework.

Employees who telework regularly and effectively under normal circumstances are well-positioned to continue to work from home during any type of emergency. Our pandemic planning provides that employees who are not currently teleworking certainly may be able to telework during an emergency. However, experienced teleworkers have the necessary equipment, computer connectivity, and practice working from a remote location that will enable them to continue critical work during an emergency.

The current outbreak reminds us we must always be prepared to take care of our employees while continuing to meet the needs of the Nation. Federal agencies need to ensure their pandemic plans are up-to-date. They should make sure they have telework agreements with as many telework-eligible employees as possible and should test employees' eligibility to access agency networks at home, as well as their procedures for communicating with employees who are teleworking. OPM stands ready to provide guidance and support.

Thank you for inviting me here today. I would be happy to respond to any questions.

[The prepared statement of Ms. Kichak follows:]

STATEMENT OF

NANCY H. KICHAK

ASSOCIATE DIRECTOR FOR  
STRATEGIC HUMAN RESOURCES POLICY  
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND THE  
DISTRICT OF COLUMBIA  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES

on

“PROTECTING THE PROTECTORS: AN ASSESSMENT OF FRONT-LINE  
FEDERAL WORKERS IN RESPONSE TO THE SWINE FLU (H1N1) OUTBREAK”

MAY 14, 2009

Chairman Lynch, Ranking Member Chaffetz, and Members of the Subcommittee:

Thank you for including the Office of Personnel Management (OPM) in your discussion of this important topic. Even though this hearing is focused on “front-line” employees, I understand that you are interested in hearing from OPM more broadly about our efforts to ensure the Federal Government is prepared to meet the human resources management challenges posed by the recent H1N1 flu outbreak, as well as any future pandemic health crisis.

Regarding front-line workers, we know that questions and concerns have arisen regarding the use and dispensing of antiviral drugs, as well as personal protective equipment, such as masks and respirators. It is not possible to overstate my concern – and that of OPM Director John Berry – that we do everything necessary to protect the well-being of all Federal employees. However, we must rely on public health and occupational safety and health officials, including experts at the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the Occupational Safety and Health Administration (OSHA), for advice about the efficacy and appropriateness of certain medications, as well as respirators, masks and other personal protective equipment. We at OPM do not have the expertise to make those kinds of judgments, which is why we have tried to keep Federal agencies with employees at the front line of the response apprised of the latest expert advice on protective measures. For example, at the H1N1 Human Resources Readiness Forum we hosted last Friday, we made available representatives of the CDC, OSHA, and the Federal Occupational Health Service in the

Department of Health and Human Services to answer questions about personal protective measures.

OPM does, nevertheless, have a significant role in preparing the Government for emergencies, including a pandemic health crisis. Our essential function in this regard is to provide critical human resources services to ensure the Federal Government has the civilian workforce it needs to continue essential missions in an emergency. OPM is the central agent for the President and the executive branch with responsibility for providing guidance to agencies regarding Government-wide human resources policies and flexibilities. These include emergency staffing authorities, leave flexibilities, evacuation payments, telework and flexible working arrangements. We also track the effect of a pandemic influenza on the Federal workforce through information on attendance and leave. OPM is responsible for continuing to manage and provide essential information relating to Federal Investigative Services during an emergency, including conducting background investigations for civilian, military and contract employees. Finally, in a worst-case scenario, OPM would coordinate with the White House to manage an orderly evacuation and resumption of normal operations for Federal employees in the Washington, DC, metropolitan area, and we advise Federal Executive Boards and other Federal entities nationwide. We form these determinations in consultation with the Department of Health and Human Services, the Department of Homeland Security, and other appropriate authorities.

I can summarize this by saying that OPM's objective is to ensure Federal agencies have the workforce they need to continue their critical missions, while preparing employees to protect their health and economic well-being. We have been working on Governmentwide preparation for an influenza pandemic for several years, developing comprehensive human resources guidance and conducting briefings for Federal human resources specialists, as well as "town-hall" meetings for employees at numerous Federal agencies.

More recently, since the onset of the current H1N1 flu outbreak, we have updated our pandemic influenza guidance and will continue to do so. We have been collecting and are providing answers to additional questions, to supplement the guidance already on our website. I already mentioned that we held a forum last Friday, which was webcast, on pandemic influenza readiness for agency Human Resources Directors, Federal employee union leaders, and other interested parties. We have received very positive feedback on the forum, which I think was extremely helpful in answering the questions that weigh most heavily on the minds of managers and employees when they think about how a pandemic health crisis will affect them.

After the outbreak of the H1N1 flu, we also posted on the OPM home page a memorandum reminding agencies of the wide range of human resources policies and flexibilities available to meet their needs and the needs of their employees during emergencies. These authorities, which include leave flexibilities, alternative work schedules, telework, and emergency hiring authorities, are all aimed at getting the job

done during an emergency, while assisting employees in taking care of their personal and family needs.

Let me say a bit more about telework. Telework, of course, is not a useful tool for those we think of as “front-line” workers – airport screeners, customs inspectors, and others whose work cannot be done from an alternative location. And with support from the CDC and other public health experts, I am confident the agencies that employ these front-line workers will act responsibly to minimize their exposure to disease. But for the rest of the workforce, telework can be an extremely useful tool in coping with pandemic health crises and other emergencies. It can help mitigate the spread of influenza by promoting social distancing. Telework can also assist employees in balancing their ongoing work responsibilities with the need to care for their families. The recent H1N1 flu outbreak has provided a reminder of the need for social distancing to prevent the spread of infectious disease. It has also demonstrated the effects of social distancing on workplaces, communities, and families. In addition to the issues that front-line Federal employees have confronted in the recent flu outbreak, many others were affected by school closings and have struggled with how to manage their work when their children were sent home.

The H1N1 flu outbreak has demonstrated the importance of making telework an integral part of our normal operations. Although progress is being made, telework has not been implemented widely enough in the Federal Government. Our most recent data on telework in Executive agencies show that, from 2007 to 2008, the numbers of employees who are teleworking did increase, but only incrementally. This is indicative of a longer-term pattern of very slow progress. That is why OPM Director John Berry recently announced a new initiative that we hope will help agencies ramp up their telework readiness. This initiative is driven not only by Director Berry’s belief in the value of work/life programs generally, but more specifically in the importance of telework as a tool for emergency planning.

The Director’s telework initiative has five key components:

- First, OPM will be convening an **Advisory Group** of telework program managers from key agencies, to draw on their knowledge and expertise in formulating standards for agency policies and programs.
- Second, OPM will be asking all agencies to **submit their telework policies for annual review** against a set of standards we will establish with the help of the telework advisor group. Recognizing that strong, consistent policies are critical to program success, we will work with agencies to promote best practices. We will provide technical assistance to each agency to bring policies up to the standard. Once those policies are certified against the criteria, agencies will need to submit their plans to us only once every three years.
- Third, we are asking each agency to designate one of its senior employees as the **Telework Managing Officer**. We will work intensively with these Telework

Managing Officers to provide the support and assistance they need and to cultivate a community of practice.

- Another important element of the new initiative is ensuring the existing **grievance procedure** within each agency is transparent to employees, so that employees whose requests to telework are denied can have that decision reviewed if they believe the denial was not in accordance with the agency's telework policy.
- Finally, we are keenly aware of the need for **training** of both managers and employees in how to establish an effective employee-supervisor relationship in a telework environment. OPM is committed to working with Congress to assure the provision of high-quality, broadly-accessible telework training that will provide the baseline everyone needs to achieve success.

With implementation of these components, we believe we will see not only an improvement in the consistency and quality of telework policies and programs in Executive agencies, but a resulting increase in telework participation Governmentwide, as well.

What will this mean for our level of preparedness for a pandemic? Employees who telework regularly and effectively under normal circumstances are well positioned to continue to work from home during any type of emergency. They have the necessary equipment and connectivity, including secure access to their agency computer systems. Perhaps as importantly, they have practiced communicating with their managers, work teams, and customers from a remote location, and are accustomed to working in a relatively isolated environment on a regular basis. Employees who are not currently teleworking – even employees who don't have a telework agreement in place – certainly may be able to telework during an emergency. But we strongly urge that agencies not rely on impromptu telework as a contingency plan.

Of course during a flu epidemic as with the H1N1 outbreak, the home environment can become complicated. Children are sent home as schools are shut down, and, in a more severe situation, family members who are ill may be in the home as well. Some employees may be unaffected and will be able to continue to work their normal schedule from their homes. Some may be able to use a combination of telework, alternative work schedules, and leave, to accomplish work while also making sure the needs of their loved ones are attended to. Whatever the case, if managers and employees can remain flexible, agencies will be better positioned to continue essential functions. Again, this kind of flexibility is easier in organizations where telework – and other work/life programs like alternative work schedules – are broadly adopted. With all the stressors occurring during an emergency, that is not the time to introduce new ways to work for the very first time.

Beyond telework and other flexible work arrangements, agency Employee Assistance Programs (EAPs) can be very helpful to front-line employees and other Federal workers. The stress and anxiety of the flu outbreak, with massive media coverage, school closings, and other associated dislocations, have a lasting impact on how our employees function.

All our agencies have EAPs; we need to be sure they are part of our pandemic planning and response efforts and that they have the resources necessary to help our employees remain productive during and after a crisis.

In concluding, I would note that, in the recent outbreak of the H1N1 virus, we have been fortunate. In the vast majority of cases, the symptoms of the disease were mild. We should view this as a wake-up call. Public health experts have warned that the virus could mutate and return in a new, more virulent form during the fall flu season. We must be prepared. Federal agencies need to ensure their pandemic plans are up to date. They should make sure they have telework agreements with as many telework-eligible employees as possible and should test employees' ability to access agency networks from home, as well as their procedures for communicating with employees who are teleworking. OPM stands ready to provide guidance and support.

Thank you again for inviting me here today. I would be happy to respond to any questions you may have.

Mr. LYNCH. Thank you.  
Secretary Duke.

#### STATEMENT OF ELAINE DUKE

Ms. DUKE. Thank you. Good afternoon, Chairman Lynch, Ranking Member Chaffetz, and members of the committee. Thank you for the opportunity to come before you this afternoon and discuss how the Department of Homeland Security is preparing and protecting its employees in response to the 2009-H1N1 flu outbreak.

I recognize that, as a department, we must work together to take proper safety precautions to reduce transmission of any disease while still performing our critical mission. This may mean that some employees need to wear personal protective equipment. Some employees may need to telecommute. Others may need to stay home if they have illness in their family or if their child's school is closed.

I am committed to working with the component heads throughout the Department and across the Federal Government to provide our employees with the safest possible working environment. Our work force's safety and security is always a top priority.

It is important to know that we are making all of our decisions based on the science and epidemiology as recommended by the Centers for Disease Control and Prevention, the workplace guidance from the Department of Health and Human Services, the OSHA office, the public health community, and the World Health Organization.

Planning for a pandemic has been ongoing for several years. In fiscal year 2006, the Department was able to build the basis of its pandemic program. We began purchasing personal protective equipment for use by mission-essential employees. Currently, personal protection equipment is pre-positioned at 53 DHS locations and field offices nationwide.

The Department has also stockpiled two types of antivirals, the trademarks Tamiflu and Relenza, dedicated for DHS work force protection. DHS has on hand approximately 540,000 courses of antivirals targeted for its mission-essential work force. Guidance on the use of those antivirals has recently been published.

Another element of planning the work was done in 2006 through several planning documents, including a DHS Pandemic Influenza Contingency Plan; publishing "Screening Protocols for Pandemic Influenza—Air, Land, and Maritime Environments"; the Draft Federal Interagency Pandemic Influenza Strategic Plan; and the National Strategy for Pandemic Influenza Implementation Plan.

And we have exercised these plans. In October 2008, DHS conducted an interdepartmental pandemic influenza table-top exercise. The purpose of the workshop was to facilitate in-depth discussions and highlight potential actions addressing departmental work force protection during the pandemic influenza event. All DHS components were represented, along with 13 other Federal departments and agencies, with a total of 100 participants.

Effective communication in any disaster is critical, and a severe pandemic where there would be nationwide consequences is no exception. DHS has made communication from the Secretary through the rest of leadership and through the components a top priority.



Guidance was issued by headquarters officials and components, advising our employees to follow procedures and recommendations of the CDC, and we have consulted with Department of Labor's OSHA's office regarding work force protections.

Training has also been crucial for preparing DHS work force in the event of a pandemic. The Office of Health Affairs within DHS developed pandemic awareness training, and this is on DVD and available to all our DHS components. Additionally, some components, such as ICE, Immigration and Customs Enforcement, have further developed training.

The Department is taking several steps to ensure continued responsiveness to the components' request and to ensure the health and safety of our DHS work force. Moving forward, one of our goals is to provide uniform occupational health services across the Department in order to ensure operational components can deliver post-exposure prophylaxis and treatment of employees more effectively in the future.

In addition, we hope to strengthen our internal medical oversight capacity, ensuring DHS fully utilizes the capabilities of our medical personnel in health affairs as well as our emergency services medical personnel. Finally, our Health Affairs Office has been developing a formal mechanism for providing medical advice to DHS components.

In conclusion, DHS remains dedicated to protecting the health and safety of our work force in the event of a pandemic and during this recent H1N1 outbreak. I will continue to work closely with Secretary Napolitano and our component heads to respond to the needs of the DHS employees throughout this outbreak and in the future. As I said, our work force safety and security is a top priority.

Thank you for holding this hearing, and I look forward to your questions.

[The prepared statement of Ms. Duke follows:]



**TESTIMONY OF ELAINE C. DUKE,  
UNDER SECRETARY FOR MANAGEMENT,  
U.S. DEPARTMENT OF HOMELAND SECURITY**

**Testimony before the House Committee on Oversight and Government Reform  
Subcommittee on Federal Workforce, Postal Service, and District of Columbia  
May 14, 2009**

Chairman Lynch and Ranking Member Chaffetz, Members of the Subcommittee, thank you for the opportunity to come before you today to discuss how the Department of Homeland Security is protecting and preparing its employees in response to the 2009 H1N1 flu outbreak.

I recognize that, as a department, we must work together to take proper safety precautions to reduce transmission of any disease while still performing our critical mission. This may mean that some employees need to wear personal protective equipment. Some employees may need to telecommute. Others may need to stay home if they have an illness in their family or if their child's school is closed. I am committed to working with component heads from across the department and across the federal government to provide our employees with the safest possible working environment. Our workforce safety and security is always one of my top priorities.

It is important to know that we are making all of our decisions based on the science and the epidemiology as recommended to us by the Centers for Disease Control and Prevention (CDC), the workplace guidance from the Departments of Health and Human Services and Labor, the public health community, and the World Health Organization (WHO).

*DHS Pandemic Influenza Preparedness Activities*

Congress appropriated \$7.1 billion in supplemental funding in fiscal year 2006 for avian and pandemic influenza preparedness activities. A majority of the funding went to the Department of Health and Human Services (HHS). DHS received \$47.3 million, which was distributed to DHS components by the Chief Medical Officer. Congress directed that the funding be used for, among other things, workforce protection.

The Department was able to build the basis for its pandemic program with this appropriation. We purchased personal protective equipment (PPE) for use by mission essential employees including those in the National Capital Region, but primarily designated for use by the operational components whose job functions place them at greater risk during a pandemic event, specifically the U.S. Coast Guard (USCG), U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and the Transportation Security Administration (TSA). Currently, PPE is pre-positioned at 53 DHS locations and field offices nationwide. The Federal Emergency Management Agency (FEMA) is responsible for coordinating the actual distribution logistics of moving PPE from the DHS stockpile to any delivery location defined by need.

The Department has also stockpiled two types of antivirals, oseltamivir (Tamiflu<sup>®</sup>) and zanamivir (Relenza<sup>®</sup>), dedicated for DHS workforce protection. These medications are stored in a pharmaceutical warehouse. In addition, the USCG purchased courses of antivirals through Department of Defense stockpile channels. Overall, DHS has on hand approximately 540,000 courses of antivirals targeted for its mission essential workforce.

The FY06 supplemental also enabled DHS to prepare a number of pandemic plans for the Federal government. The Department's Office of Health Affairs (OHA) coordinated the development of several pandemic plans and products including a DHS Pandemic Influenza Contingency Plan, and Screening Protocols for Pandemic Influenza – Air, Land, Maritime, and the Draft Federal Interagency Pandemic Influenza Strategic Plan.

OHA manages and tracks the action items assigned to DHS under the National Strategy for Pandemic Influenza Implementation Plan.

Effective communication in any disaster is critical, and a severe pandemic where there would be nationwide consequences, is no exception. The Office of Health Affairs worked with the DHS Office of Public Affairs and Federal interagency representatives to create the ESF-15 Pandemic Influenza Communications Go Book, which provides a framework for consistent public communications by Federal agencies as well as state and local communities in the event of a pandemic outbreak.

Training is also crucial for preparing the DHS workforce in the event of a pandemic. OHA developed a pandemic awareness and prevention training DVD for DHS components to use to educate its workforce. The module is accessible on DHScovery, the Department's learning management system, and allows for tracking of trained employees. CBP created its own mandatory training courses for its employees as well. ICE also offers pandemic flu training courses to its employees through its ICE Virtual University web site. These courses have been made available to the ICE workforce since August 2006.

#### *Workforce Pandemic Exercises*

In October 2008, DHS conducted an Intradepartmental Pandemic Influenza Tabletop Exercise, which included participants from all DHS components, the Deputy Secretary of Homeland Security, and the National Pandemic Principal Federal Official team. Last month, the Department conducted an intra-DHS workshop focused on workforce protection in the event of a pandemic. The purpose of the workshop was to facilitate in-depth discussions and highlight potential actions addressing Departmental workforce protection issues during a pandemic influenza event. The objectives of the exercise were to clearly identify Departmental-level, versus component-level, responsibilities and to outline internal communications strategies. All DHS components were represented and 13 other Federal departments and agencies sent representatives to the workshop with total attendance estimated at nearly 100 participants.

*Messages to DHS employees*

Secretary of Homeland Security Janet Napolitano has made communication with the DHS workforce a top priority, especially in light of the inception of the 2009 H1N1 flu outbreak. Guidance we issued advised our employees to follow procedures and recommendations of the CDC and we have consulted with DOL's Occupational Safety and Health Administration regarding workforce protections.

Specifically, on Saturday, April 25, 2009, Secretary Napolitano sent a message to all DHS employees recognizing ongoing Federal activities to monitor the 2009 H1N1 flu outbreak and stressing flu prevention methods. The Secretary followed the next day with a message to DHS employees working on or near the Southwest border, outlining interim actions recommended by CDC should employees encounter travelers who appear unwell.

The Department's Office of Health Affairs physicians drafted guidance for DHS personnel concerning the use of proposed medications, and are drafting guidance for administration of antivirals for components under the medical control of OHA. In addition, on April 30, 2009, I provided all DHS employees with interim PPE guidance concerning response to the 2009 H1N1 flu outbreak, developed in consultation with OSHA.

*Incident Coordination*

The Department established an Incident Management Cell (IMC) early in the 2009 H1N1 event to track requests for information and respond to component inquiries. We ensure that OHA Offices of Medical Readiness and Component Services staff the IMC full-time. This cell responds to requests and inquiries by DHS offices and components 24 hours a day, seven days a week.

*Strengthening Workforce Protection for the Future*

The Department is taking a number of steps to ensure continued responsiveness to Component requests and to ensure the health and safety of the DHS workforce. Moving forward, one of our goals is to provide uniform occupational health services across the Department, in order to ensure operational components can deliver post-exposure prophylaxis and treatment of employees in the future. In addition, we hope to strengthen our internal medical oversight capacity, ensuring DHS fully utilizes the capabilities of our medical personnel as well as our emergency services medical personnel. Finally, OHA has been developing a more formal mechanism for providing medical advice to DHS components.

In conclusion, DHS remains dedicated to protecting the health and safety of our workforce in the event of a pandemic. I will continue to work close with Secretary Napolitano and our component leadership to respond to the needs of DHS employees throughout the response to the 2009 H1N1 flu outbreak. As I said, our workforce safety and security is always one of my top priorities.

Mr. LYNCH. Thank you.

As is often the case in Congress, we are required to be in several hearings at one time. And the ranking member, Mr. Chaffetz, has asked to be excused so he can go into another hearing where he is also questioning some witnesses.

Let me begin by saying thank you to all of you for your willingness to appear before the committee.

Let me try to collapse the issue, because the scope of proper protection for all Federal employees may be a bit overbroad for this one hearing. I do have some major concerns with, principally, the 50,000 TSA workers who are responsible for protecting our country and our security in their own way, as well as I believe we have 40,000 Customs and Border Patrol officers.

Just to give you a snapshot of what my concern focuses on, a full-time transportation security officer [TSO], works an 8-hour shift. Individuals working the split shift have a 10-hour shift: 4 hours on, 2 hours off, 4 hours on.

And depending on the size of the airport, a typical TSO would come into contact with anywhere between 500 and 2,000 individuals in one shift. Data for selected larger airports, as well, for instance, at Miami International Airport, TSOs probably clear about 3,300 passengers per shift. At JFK, it is about 9,000 passengers that they come into contact with daily.

And we are talking about wanding them, checking their bags, checking identification, basically hands-on, literally, so that they have physical contact with these individuals—9,000 per checkpoint per shift. That is in New York. And at Chicago O'Hare, it is between 9,000 and 12,000 per checkpoint per day. So you have a lot of hands-on contact by these folks.

Customs and Border Patrol officers, those shifts are also 8 hours. Although, I know from talking with them, they work a lot of overtime because of the demands of the job, which, can be a 12- or 16-hour shift for those folks. And a typical—I am talking about the average—Customs and Border Patrol officer would see between 1,000 and 2,000 travelers per shift.

The situation we just had—and I don't want to do too much looking back, because I think, as all of you have noted, we are worried about the next iteration of this flu, and that could be in the coming fall or at some time in the future. But there are lessons to be learned by looking back.

And I have received hundreds of phone calls, as the chairman of this committee, affidavits, letters, and e-mails about the way our security personnel, Customs and Border Patrol and TSOs are being treated. And the plain fact of the matter is that there has been a concerted effort to deny these employees the right to have a mask—an N95 mask, to be more specific. But it boggles my mind, quite frankly, that DHS has not come up with a written guidance for addressing the issue of voluntarily wearing protective masks.

Now, these folks, as I said, have high contact. You know, I got a lot of feedback from my folks on the Mexican border, and I have to have some empathy for their position. If you look at the numbers of H1N1 cases in the border States of Texas, Arizona, and California, the incidence of swine flu in those States is probably 400 percent of what the national average is. So there is an issue here, and

it is empirical, what we are seeing. So we have an issue with the Mexican border and a heightened concern and a heightened exposure for those folks. And I have affidavits from a number of officers, from Laredo to Otay checkpoint, where they were told to take that mask off.

And, you know, Madam Secretary, I just want to ask you, No. 1, why don't we have a written guidance from DHS regarding the voluntary use of masks? Why are your managers and officials telling folks to take those masks off when they, on the ground, feel that is a necessary protection that they need? And I would like to hear your response to that.

Ms. DUKE. Mr. Chairman, thank you. And we do, at DHS, agree that from each one of these instances there are lessons learned. And we did issue the policy, as you know, about mandatory use, which comes into the high-risk category under the OSHA prescription—

Mr. LYNCH. Let me just interrupt you, because I don't want you just blowing through there. That is a guidance for mandatory use of masks. And what you say in your guidance is that when an officer specifically knows or suspects that an individual has swine flu or is ill, then they are supposed to put on the mask if they are within six feet of that person.

The problem here, as you probably can guess, is that there is a 7-day incubation period, No. 1. No. 2, you have to get close enough to these folks to do your job anyway, so you are already inside 6 feet. And as smart and as capable as my Customs and Border Patrol and my TSOs are, none of them are doctors, and so they are going to have to make a determination that this person is ill. So that guidance on mandatory mask wearing is virtually useless to someone on the ground doing this work.

And, again, I ask you about the guidance on when an officer or an agent may decide or may be allowed to use a mask, because I see nothing on that. So if you could address that point.

Ms. DUKE. Yes. We looked at the category of potentially medium-risk employees, which would indicate a voluntary use of mask. We followed the medical evidence given to us by CDC's review of the H1N1 virus. And, based on the medical evidence, we determined that there was not a need for policy at this time. It is something that we continue to look at each day as the statistics and the data for this round of H1N1 proceed and the potential next round that follows.

Mr. LYNCH. Wait a minute. You are telling people, if you know or suspect specifically an individual person has H1N1 or is ill, to wear the mask.

Ms. DUKE. Yes.

Mr. LYNCH. And you are saying that apart from that determination, that a person doesn't have the right to use the mask?

Ms. DUKE. There is no medical indication that it would be appropriate to wear the mask in the workplace based on the job requirements, the way H1N1 has progressed through the population this first phase.

Mr. LYNCH. You have to do this before the fact though. You are saying now that it has progressed, you don't warrant it. It just doesn't hold water, that whole argument. You know, you are telling



people, wash your hands, cover your mouth when you cough, stay home when you are sick. But these folks are on the frontlines. You don't think this is a high-risk situation when you have these folks screening hundreds, if not thousands, of travelers coming in from, in this case, Mexico, where we had a very high number of cases already reported?

Ms. DUKE. I think it is critical—and we heard what our employees said, and we continue to evaluate it. To really warrant wearing masks in the workplace, there has to be a high—a reasonable probability that the employees are going to encounter the sicknesses in their line of duty. And based on the medical evidence, I know I have said that before, but I keep having to go back to it, we consulted with experts, and it did not seem appropriate.

Wearing masks is not a neutral physical condition. There are risks with it, with certain populations, in wearing the respirators. Additionally, there are other personal protection and equipment, such as the frequent washing of hands, the social distancing, where you can.

Mr. LYNCH. These workers were not even allowed to use sanitizers. Apart from the masks, they also report that they weren't allowed a chance to go wash their hands or use sanitizers. They were kept on the line. They weren't allowed to have breaks. So here you have somebody who is checking maybe thousands of people. I would hate to be the thousandth person in line after this person has already wandered and checked a thousand people coming through from Mexico, and this whole volume of people is continually coming through, and this person is not allowed to disinfect from one shift to another. And that troubles me greatly.

Ms. DUKE. My understanding is that TSA did change protocols on the cleansing of bins.

But I will check into that, Mr. Chairman.

Mr. LYNCH. I am going to let Mr. Connolly say a few things. We are going to come back to this again.

Look, I am not satisfied with your answer. I am not as satisfied with the policy that DHS has adopted for their employees. I think the decision should be made on the ground, and your guidances have been totally nonresponsive to this situation of voluntary use of masks where these individuals feel they need to. And I am receiving nothing here. You are going to continue to evaluate?

Ms. DUKE. Absolutely.

Mr. LYNCH. That is not good enough. That is not good enough. We will legislate. If that is what I have to do to get the permission for my Federal workers to wear masks on the Mexican border in the middle of an epidemic, a pandemic, or the threat of one; if I have to legislate that they have the right to wear masks to protect themselves and their families and their communities, that is what I will do. But I shouldn't have to do that. I shouldn't have to blow up the bureaucracy just to get something done.

This is a simple issue. This is a really simple issue. Protect these workers that are protecting us. They are screening thousands of people coming in. If they are infected, what about the exposure of those other passengers? What about the exposure of their families? What about the exposure to their kids? What about the exposure to the towns in which they live?

And you look at the numbers in Texas, Arizona, and California, and like I say, they are four times the national average. It is not an immigration thing; it is just a commonsense thing, that we are trying to protect these workers.

And I find your response and the position of DHS unacceptable. It just doesn't work. Your excuses are lame. And you are saying that you are following the medical evidence. This is common sense.

This is common sense. In my prior job I used to have to wear a respirator as a welder. It is not a comfortable thing. It is not something that someone is going to leap to do. If they feel it is necessary, they will put the mask on. It is hot. It is stuffy. It is not something that people enjoy doing, so there is almost an inclination that people won't wear them. But when these workers feel that they are at risk, and they need that protection, well, we ought to provide that. We are supposed to be an example, the power of example, the Federal Government as an employer.

These are very brave people. These are good people. These are hard workers. And we should be taking care of them the way they are taking care of the American people, and I don't think that is being done right now. I really don't. And I think this bureaucracy, this back and forth about agencies, they said this, forget that stuff. Let's just get it done. Let's get these masks to the employees. Let them use it when they deem it necessary. Let them protect themselves, and let's move on.

The ranking member is back.

So, Mr. Connolly, I am going to defer.

Mr. Chaffetz, you are recognized for 5 minutes or whatever time you may consume. I overwent my 5 minutes while you were gone.

Mr. CHAFFETZ. I will be brief. And my apologies for missing the first portion. I had a similar hearing next door. I appreciate your understanding.

My questions are for you, Ms. Duke, because I concur with the chairman here on this. This is not acceptable. You said in your testimony that safety is your top priority. Do you believe that the actions of the Department of Homeland Security are consistent with that testimony that you gave?

Ms. DUKE. I do believe that as we took our actions, we had the safety of our employers in mind.

Mr. CHAFFETZ. What is the policy? What should have happened versus what happened? I mean, why weren't they allowed to wear masks if they so choose? I mean, we were in a medical emergency. Right? Were we not?

Ms. DUKE. Yes, we were.

Mr. CHAFFETZ. What is the written standard? What is the policy? What should have happened per the guidebook? Is the guidebook wrong?

Ms. DUKE. By the guidebook, I will take that as meaning the OSHA policy, we are supposed to analyze the risk of employees. And based on the categorization of the risk to the employees, based on the threat, their work situation, either prescribed mandatory usage, voluntary usage, or—

Mr. CHAFFETZ. So are you saying that at that stage, it had not kicked into the voluntary, voluntary compliance or voluntary usage of the mask would not have kicked in at that stage?

Ms. DUKE. We discussed voluntary usage of the masks. The H1N1—

Mr. CHAFFETZ. Who made the decision not to allow that to happen? And what was the underlying reason that they weren't allowed to?

Ms. DUKE. The underlying reason was, when we consulted with the medical experts within the Federal Government, including CDC, that it was not warranted nor necessary.

Mr. CHAFFETZ. So it wasn't warranted or necessary. And who made that ultimate determination?

Ms. DUKE. I would have to say the Secretary of Homeland Security.

Mr. CHAFFETZ. Now, you said this is based on science. But everything I have read and heard said this is based on proximity; and that there needs to be a certain amount of distance; and that by ultimately touching or coming in contact and all of that. I just find it absolutely unacceptable, that our Federal workers were not allowed, if they so choose, to do things that would protect them from the very—the world is looking at this as a pandemic.

We look at the possibility of this spreading, moving northbound. I just am dumbfounded that the Department of Homeland Security would not take and put, as you say, safety as its top priority. I find nothing in the evidence to suggest that this was the right move. The written policies need adjustment. I would hope that you would return to this committee and that the Homeland Security would return to this committee and demonstrate that, truly, safety is the top priority. Because I see nothing that would exemplify that.

I think this is also something we should note in terms of culture. I spent quite a bit of my career in Asia. It is commonplace. If you have a cold or you are somewhat sick, you wear a mask, and nobody thinks a second of it; maybe a Westerner who has been there for the first time. I remember the first time I saw it. But people become very accustomed to it.

I find a great discrepancy between your insistence that safety is the top priority, and that what we went through and are going through at the border and with our TSA employees and a host of other Federal workers to go through this. I find it totally unacceptable. I concur with the chairman here.

I just want to ask one other thing of, pardon me for how you pronounce your name, Ms. Kichak. What sort of drills or what sort of training or what sort of preparation is there that actually happens for these types of things, and specifically as it relates to the whole telecommuting? Because we could have very quickly had to get into a scenario as it relates to telecommuting, and I wonder how well we would be prepared in order to execute on that.

Ms. KICHAK. Well, each agency has been encouraged, and as I have said, we have done—

Mr. CHAFFETZ. If you could use the microphone.

Ms. KICHAK. Each agency is encouraged to practice, and we have done town halls suggesting this. I know OPM has run several drills where we have sent a good segment of our work force home. And those are not people who normally telework, but we have sent them home to try to work for 3 or 4 days. We want to see what it is like for more than just an afternoon to try to get your work done, so

that people get a sense of what it is like. And so that is the kind of drilling we have done.

Mr. CHAFFETZ. How prepared are we for that? If zero is nothing and 100 is perfect, where are we on that scale?

Ms. KICHAK. As far as practicing telework is concerned, based on the low numbers of teleworkers today, I would put us on a four.

Mr. CHAFFETZ. Out of 100?

Ms. KICHAK. No, Out of 10. I am sorry.

Mr. CHAFFETZ. Maybe 40?

Ms. KICHAK. Yes. I think one thing that we are learning is that you have to practice and then practice and then practice, because your connectivity changes. You do it and you do it, and 6 months later, it is out of date, and you have to do it again.

Mr. CONNOLLY. Would my colleague yield?

Mr. CHAFFETZ. Sure.

Mr. CONNOLLY. Ms. Kichak, you gave it a 4 out of 10. What percentage of Federal work force currently teleworks?

Ms. KICHAK. Six percent on a routine basis.

Mr. CONNOLLY. So 40 percent is really grading on a curve.

Mr. LYNCH. At this point, the Chair would like to recognize the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you.

Ms. Duke, if I could go back to you just for a minute, because I want to followup on the comments of the chairman and the ranking member, and I associate myself with them. I guess the problem I have, and I suspect my colleagues do as well, is you keep on harping back to, there is no medical evidence that would justify the use, the voluntary use or mandatory use, of masks, which, that statement would imply there is some medical threshold by which you measure that would kick in the use of masks. And I guess I would like to know what that medical threshold is if there is such a medical threshold in DHS's mind.

And I guess, from our point of view, and the chairman used the phrase common sense; you have to differentiate, it seems to me, the nature of the job. If I am a transit operator behind a glass panel, and I never have human contact during the course of my 8-hour workday, that is one thing.

On the other hand, as the chairman indicated, if you are a TSA worker, you are patting people down, increasingly you are engaged in near strip searches. You are exposed to all kinds of things. You are dealing with hundreds of people. And let's say you are in El Paso and you are dealing with a lot of Mexican travelers, and the epicenter of this epidemic was in Mexico.

Why wouldn't we, just as a matter of prudent and reasonable prophylaxis, say to those workers, if you feel more comfortable wearing a mask, guidance is have at it? You don't want to, you don't have to; we are not in a mandatory mode. But if that makes you feel safer and gives you a comfort level of going to work and a comfort level extended to your family, why in the world wouldn't we encourage that or allow that?

Ms. DUKE. Mr. Connolly, I guess a couple parts to your question.

First of all, on the mandatory use, the standard for that is that an employee is in the high risk, and that is a known or a probable case. So if, for instance, a Border Patrol agent believes that a trav-

eler has, is exhibiting symptoms, and they decide they are going to refer the case, call in CDC, then that would fit in as an example of fitting into the high-risk category.

DHS has not issued, just to clarify maybe my previous answers, we have not issued a policy to prohibit the use of masks at the Department level. What we have relied on during this first phase of the epidemic is individual judgments based on the specific scenario. And so there was not a prohibition at the Department level of wearing of masks.

Mr. CONNOLLY. If I may interrupt you there, that is contradictory to the evidence presented to this committee. We are hearing from the work force quite the opposite; that, as a matter of fact, there is a general broad prohibition against voluntary use of the masks, that they are not permitted to do it, specifically at DHS.

Ms. DUKE. We have not—I know emphatically, and I will check throughout the components, that we have not issued any guidance that prohibits the use of masks.

Mr. CONNOLLY. Well, that is good to know, Mr. Chairman. And I am sure it will come as a relief to the work force.

Mr. LYNCH. Let me followup on Mr. Connolly's question. You have given permission to Customs and Border Patrol agents—agents, not officers—to wear the masks. They all wear the masks, voluntarily. I am sorry, Border Patrol. So those agents, those Border Patrol agents, under the instruction of your managers, your officers, they are all allowed to use the masks voluntarily, and they do. So, you see what I am saying?

Your own policy for them is, wear the masks. That is completely voluntary for them. And they don't have any, let's say, medical or clinical distinction from the exposure being experienced by the other officers as well. And so you have some great inconsistency here.

I also want to just share, I have a bunch of these affidavits that have come in from different officers all over the country. But this is one case, this is Kenneth Eagan. He actually took this serious enough to file an affidavit, a sworn statement under the penalties of—pains and penalty of perjury.

He says, I am employed by the U.S. Bureau of Customs and Border Protection. I am currently assigned to the Las Vegas port of entry, an airport. On Monday—and he says, my assigned duties include processing inbound passengers, and I regularly come into contact with members of the traveling public arriving from Mexico, and those contacts routinely require contact within 6 feet of those individuals.

He goes on to say that on Monday, April 27th—this is right around the time that this first became apparent, I think it was the 22nd. So this is 5 days into the crisis—I was scheduled to work primary inspection booth eight from 9:30 to 5:30. After I set up in the booth, I began processing passengers. I put on my protective gloves and the N-95 mask.

And this is what an N-95 mask—not anywhere as fearsome as the mask I used to wear as a welder. This is like a little dust mask. I don't know how that would alarm the public.

Anyway, he said, I donned my gloves and my N-95 mask. The first two flights of the day were from Mexico, and one was from

Mexico City, which is the epicenter of the swine flu outbreak. During the second flight, Mexicana Flight 986, arrived from Mexico City. Chief Gonzalez, his superior, came to his assigned booth and blocked the aisle so no new passengers could approach. The other supervisor, Mr. Campbell, blocked the booth door behind him.

I was processing a passenger at the time, and Chief Gonzalez interrupted the inspection, ordered me to remove the mask. He said, take the mask off now; you are not authorized to wear a mask.

He goes on to say, I finished the processing of the passenger and removed the nitrile gloves, used hand sanitizer to clean his hands, and then removed the N-95 mask.

He said, after I removed the mask, Chief Gonzalez told me not to wear a mask while processing passengers. He told me that the only time I could wear a mask was if the person standing in front of me was showing obvious signs of the flu, as had been explained in a muster briefing.

He said, I told Chief Gonzalez that if I waited for someone to hack or cough on me, it would be too late for the mask to provide protection against exposure.

I've got a lot of these. This is from Lilia Pineda, who is also a U.S. Border and Customs Patrol Protection Department of Homeland Security, San Diego. Her assignments again were processing inbound passengers, vehicles, and pedestrians. So this is a lands checkpoint.

Mr. BILBRAY. The largest lands checkpoint in the world.

Mr. LYNCH. There you go.

On or about April 28, 2009, Lilia Pineda was working at Otay Mesa, primary lane four, and decided to wear an N-95 respirator mask. I had made this decision for several reasons. I had been fitted for an N-95 respiratory mask. I was encountering—I had also been trained to fit other Customs and Border Patrol officers for that mask. I was encountering individuals who were coming in from Mexico City and other cities in Central Mexico where the swine flu was prevalent. I also had a cold at the time, and I thought I was especially vulnerable to getting another illness. I was also concerned about exposing other members of my family.

At approximately 9:30, while wearing an N-95 while working, I was approached by Chief Kait who instructed me to remove my mask. I explained to him that I had taken the training for the respirator fit test trainer, and that I felt it was a health and safety issue for me to wear the mask that I had been fitted for. Despite my objection, the chief refused to allow me to wear the mask. He repeatedly asked me angrily, with his hands at his hips, saying, are you going to comply, or do you want to go home sick?

There are a lot of these affidavits that clearly indicate from various parts of the country that there is a concerted effort on the part of DHS not to let these employees wear the masks. And while you say that you don't have any policy that says you can't wear masks, your people on the ground, your managers, the people who work for you are telling these workers they can't use the mask. So, what do you say to that? And it is all around the country, so it is not an isolated case.

Ms. DUKE. What I would say to that is that, during the first round of H1N1, we did, consistent with OSHA—and I am going to

explain—allowed decisions to be made by individual supervisors based on their assessment of risk. What we heard back from the employees is that created at least a perception of inconsistency with DHS.

Mr. Chairman, you mentioned some people were wearing masks. So the inconsistency.

So what we are looking at right now is, should that practice continue? Should it be individual site-specific first-line supervisor discretion? Or, especially if there is another round of H1N1 in the fall, should we look at risk from the Department and ensure consistency in our work force?

Mr. LYNCH. That is too late, as far as I am concerned.

I am going to yield 5 minutes to Mr. Bilbray.

Mr. CONNOLLY. Mr. Chairman, I hadn't quite finished my—

Mr. LYNCH. I am sorry.

Mr. CONNOLLY. And I know we have to vote. If Mr. Bilbray would indulge me on just one issue.

Mr. LYNCH. Sure. Go ahead.

Mr. CONNOLLY. And I just wanted to say, Mr. Chairman, and I certainly associate myself with your remarks.

I was very heartened by Ms. Kichak's comments on telework, and I was very impressed with Mr. Berry's—we had a press conference up here, and he was kind enough to provide several of us who have introduced legislation, H.R. 1722, to promote telework in the Federal Government. And, really, it is nice to have a partnership on this subject.

But I think telework, Mr. Chairman, is essential to any kind of continuity-of-operations plan in the Federal Government. In fact, it is essential for the private sector as well.

And, Mr. Chairman, I would ask that at some point this subcommittee may want to consider hearings and a markup of H.R. 1722 so that we can help codify progress within the Federal ranks to ensure that telework is formally an option for our Federal work force.

I thank the Chair.

Mr. LYNCH. I thank the gentleman.

The Chair now recognizes Mr. Bilbray from California for 5 minutes.

Mr. BILBRAY. Thank you, Mr. Chairman.

Ms. DUKE, I was in local government long enough to know when I hear somebody wordsmithing. It is not an official policy of the Department, but it was an open opportunity for local supervisors to deny the employee the free choice to wear this or not. Is that a fair explanation of your term, "there is no policy, Department policy, against it?"

Ms. DUKE. I guess I am not sure by free choice. I mean, the employer has to manage the workplace and determine if it is appropriate. So, in this case, we did exercise that free choice—excuse me, we did exercise discretion in managing the workplace, and some employees were not allowed to wear their masks in the workplace we learned over the last 2 weeks, yes.

Mr. BILBRAY. My question to you, are you aware of any more exposure that somebody at the land entries would have as opposed to somebody at the airport entries?

Ms. DUKE. Well, the evidence indicates that we have very few instances of DHS employees in general having confirmed cases of the H1N1.

Mr. BILBRAY. For the record, Mr. Chairman, I think that it is essential that those of us along the Frontera point out, that, unlike the airports, people do not fly into the United States specifically to get free medical care, but one of the realities of the Federal mandate of free medical care in this country is that people that are outside the country that want to receive free medical care along the Frontera just have to get in their car and drive across the border and present themselves with their illness.

And one of the issues that has not been discussed is the increased exposure of our men and women at the land port of entries, because of the attractive nuisance of or the situation of actually encouraging people to come into the United States who are showing symptoms because they can get treated for free in the United States. And so the men and women along our port of entries are exposed that much more than not only the general public but also even more than their colleagues that would be handling flights coming in to an airport. And I want to make that clear so that we understand what kind of situations are along the border.

Now, the issue of the primary and secondary, were the secondary people allowed to wear masks at a time that the primary was denied?

Ms. DUKE. I know of no such policy.

Mr. BILBRAY. I was informed there was. Anybody got any? You know, the discussion I had, a 6-foot barrier reminds me of some kind of dancing rule in our cabaret licenses in government. My question to you is, are you aware of the procedure that they would go? Anybody want to talk about that? The 6-foot to me sounds absolutely absurd, as somebody who grew up crossing that border. The primary inspector is at a window. He specifically makes contact with the driver, then proceeds to make contact with every member in that vehicle, which usually means placing his or her head into the vehicle to be able to hold that conversation. To even discuss the 6-foot for primary is absolutely absurd. We are talking about face-to-face discussions going on, and then for a 6-foot issue to come up, do you have any explanation of how anyone in primary could operate their duty and still maintain a 6-foot barrier between them and the individuals making contact?

Ms. DUKE. No. I believe most primary screening would be within 6 feet at a land port of entry.

Mr. BILBRAY. What is the Department doing today—and I apologize for being here late, but I had another hearing and have been bouncing back and forth. What have we done today to make it clear, or has the policy been changed to allow the men and women that are on the frontline to make this determination themselves? Or is it still a-supervisor-by-supervisor's call like it was in the last month?

Ms. DUKE. The current state of H1N1, even CDC has changed their guidance on May 8th, does not warrant the use of respirators, the N-95, even in the conditions that we are discussing here. So the medium risk, which is within the general public recurring for



long periods of time, does not warrant the use of masks, according to CDC guidance.

Mr. BILBRAY. So today, if somebody in San Ysidro wanted to put on a mask in primary, they can't do it.

Ms. DUKE. The supervisor would assess the specifics of the situation. Some employees do wear masks and are permitted by the supervisor.

Mr. BILBRAY. You know, let me just be very frank about this. I have seen the public relations game played along the border for 30 years. This certainly looks to me more like a PR concern than a public health concern. And I operated a public health department for 3 million people for 10 years, and there is no way in the world I could have asked my county or city employees not to be given the ability to make that call. I mean, there is that issue of free choice when it comes to your health. This is one that I just think goes way over.

And madam, I am sorry, I know you are having to carry quite a burden walking in this room. But, frankly, I think this is an indictment on the system that worries about perceptions more than allowing people to make that choice themselves to protect their health, and I just think that it is going to be one that is not going to be let up until it is corrected.

Thank you very much, Mr. Chairman.

Mr. LYNCH. Thank you.

And I am not going to beat this to death, but in the one breath, you say CDC says it is not warranted, that masks aren't warranted. But in the next breath, you've got all your Border Patrol agents all wearing them voluntarily. So you are not relying on CDC, because all those folks can wear the masks. But you have 50,000 others that can't wear the masks, and you have whatever medical evidence you have, but you have made two different decisions where there really isn't a distinction between the jobs being done by those officers.

So you are not relying on CDC. I know you are trying to shift the responsibility to them, but you have already taken it upon yourselves to make a dual policy between border agents and TSOs and Customs folks and ICE, those employees as well, who are not being allowed to wear the masks. That is an internal inconsistency that you have within your own Department.

So let me ask—I am going to have to break for votes here shortly. But, Dr. Weissman, while I recognize that NIOSH is not responsible for setting standards, I understand that NIOSH has taken a lead role in pandemic flu research and personal protective gear. Do you feel, and I am not sure if you can answer this, but do you feel that an airborne transmissible disease standard should be considered by OSHA? And is this one of those areas where NIOSH thinks it might be warranted?

Dr. WEISSMAN. I think that is a policy issue that, obviously, I wouldn't make on my own. But we have guidance and the question of whether it is done in a regulatory way or it is done in a non-regulatory way, as long as it happens, as long as people do the right thing. And in the case of flu, as long as people do not only respiratory protection but do the whole range of protections is what is really important.

So let's not lose track of the fact that people need to do the range of other things that we have talked about. People have to wash their hands. People have to do the distancing and the etiquette and the contact and all those kinds of things, too. And whatever happens, whatever comes down the road, should take into account the full range of the hierarchy of controls.

So I guess that would be my response, I wouldn't focus just on respiratory.

Mr. LYNCH. I understand that. I certainly value your opinion. On that point, though, in a lot of these cases, these transportation security officers were not allowed to wash their hands, not allowed to use sanitizer in the process of screening these passengers. Is there anything you can think of that would warrant refusing them permission to do that?

Dr. WEISSMAN. Well, you know, we didn't talk specifically with DHS about this. The one anecdote that I can give you where this issue did come up was with the Postal Service, where the Postal Service has a history since the anthrax attacks of 2001, of allowing its employees to use N-95 filtering face-piece respirators on a voluntary basis. And when the 2009-H1N1 outbreak occurred, they contacted us with the question of, would it be all right if we allowed them voluntary use of N-95s or surgical face masks? And our response back to them was that it was really important, if that were done, to do it within the context of an educational program to make sure that just, if people used those devices, that they should also follow the other protections, you know, the other things that we have talked about, again, hand washing, distancing to the extent possible, you know, barriers, and also understanding the strengths and limitations of the devices. So that is the one anecdote I can give you of where that came up.

Mr. LYNCH. I am going to have to run over and vote, so I should be back in about 25 minutes. Thank you.

[Recess.]

Mr. LYNCH. Because of the continuous voting schedule, this testimony and this hearing have been delayed to an unreasonable extent, I believe. So to try to accommodate all the witnesses, and I know some members on our first panel had other engagements that they let us know of in advance, we decided that we would continue any questions with that panel in writing and any responses would be returned in writing in order to expedite the hearing. And we may do that with the next two panels as well if there is additional questioning and responses warranted.

But let me first, as is the custom here, we usually swear witnesses. So I ask all witnesses to rise and raise your right hands.

[Witnesses sworn.]

Mr. LYNCH. Let the record reflect that both witnesses have answered in the affirmative. Before proceeding with testimony, I would like to offer a brief introduction of the witnesses on panel two.

T.J. Bonner is the president of the National Border Patrol Council, a professional labor union representing more than 17,000 Border Patrol agents, and whose parent organization is the American Federation of Government Employees. He has been a Border Patrol agent in the San Diego area since 1978, where he is a strong advo-

cate for secure borders and fair treatment of the dedicated men and women who patrol them.

Ms. Colleen Kelley is the national president of the National Treasury Employees Union [NTEU], which is the Nation's independent sector union, representing employees in 31 separate government agencies. A former IRS revenue agent, Ms. Kelley was first elected to the union's top post in August 1999 after a 4-year term as national executive vice president.

Welcome to both of you. And I appreciate your forbearance and your patience.

Mr. Bonner, you now have 5 minutes for an opening statement. Thank you.

**STATEMENTS OF T.J. BONNER, PRESIDENT, NATIONAL BORDER PATROL COUNCIL, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO; AND COLLEEN KELLEY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION**

**STATEMENT OF T.J. BONNER**

Mr. BONNER. Thank you, Chairman Lynch.

Protecting our Federal work force is pretty much a no-brainer. It is in everyone's interest. Not just as a favor to the employees, but any sensible manager needs that work force there. Despite the advances we have made in automation, a few baby steps in telework, many of the tasks performed by Federal employees have to be done with face-to-face contact with the public.

Law enforcement, first responders, health care, primarily, the American Federation of American Government Employees represents many of these employees in the Department of Homeland Security, Veterans Affairs, Social Security, Bureau of Prisons, and other Federal agencies that the American public relies upon, and it makes absolutely no sense to have those employees unnecessarily taken out of the equation by having their health jeopardized by predictable events.

And let me be clear, we are not just talking about the recent swine flu outbreak. We had the SARS outbreak in April 2003. And yet, here we are more than 6 years later, and it appears that the lessons have not been learned.

Our agents at the border, be they Border Patrol agents, CBP officers, and the TSOs, come in contact with people from countries all over the world, some of whom, and I am not saying by any means the majority, but some of whom are carrying communicable diseases. These officers and agents should be allowed to take reasonable precautions in order to safeguard their health.

While it was refreshing to hear the Undersecretary for Management for DHS be upfront about the Department's policies, those policies are, quite frankly, appalling. An admission that supervisors with no medical experience whatsoever are given full rein to decide whether employees can protect themselves?

There are two things that our government should be doing for employees. It should be providing them with the protective equipment that they need and facilitating their use of that equipment.

Border Patrol agents are provided with soft body armor to protect themselves against armed assailants. Listening to the Undersecretary for Management and the inane policy that she was articulating brought to mind a policy, what a policy would look like for Border Patrol agents if they were told you can don your body armor when the bullets start flying. When you are within range of someone and they sneeze on you, it is too late. At that point, you don't don the mask. You have already been infected. These employees should be allowed to wear the mask when they feel the need for that mask.

I am, I suppose, equally mystified and appalled as you, sir, when I hear these alibis for why they are not doing the right thing for their employees. This is something that is a no-brainer. You can go to—and one of the excuses that I have heard is, well, our employees haven't been trained properly. They haven't filled out the medical questionnaire, and they haven't been fit-tested. You can go down to the corner hardware store and buy an N-95 respirator. Millions of Americans do it every year. They don't have to fill out a medical questionnaire. They don't get fit testing. It is kind of common sense.

It reminds me very much of the little warnings that they put on firearms: Warning, this could be dangerous. Well, yeah. If you experience lightheadedness after you put this on even though you haven't been trained, then common sense tells you, maybe I should take this off.

We give these folks at the border arrest authority. We give them guns to defend themselves and empower them to use deadly force if necessary. And yet, we can't trust them to make commonsense judgments about their own health?

Before I close my statement, I would like to introduce into the record some of the examples at the airports with the TSOs of how different this policy has been administered. I would say—

Mr. LYNCH. We will accept that without objection. You can submit that for the record.

[The information referred to follows:]

## AFGE information

[AFGE Press Release: TSA Must Do More to Protect its Workforce and the Public AFGE letter to Acting TSA Administrator Gale Rossides](#)

## Media reports featuring AFGE

ABC News, Questions Surface About Worker Protections at Border, Airports  
<http://abcnews.go.com/Politics/SwineFlu/story?id=7469798&page=1>

Washington Post, Flu Crisis Underscores Need For Updated Telework Policies  
<http://www.washingtonpost.com/wp-dyn/content/article/2009/04/28/AR2009042803783.html>

FindingDulcinea, com, TSA, FAA and Airlines Accused of Not Protecting Transportation Staff  
<http://www.findingdulcinea.com/news/health/2009/april/Who-is-Protecting-Flight-Attendants-and-Travel-Industry-Workers-Against-Swine-Flu-.htm#0>

## Airport precautions – What we're hearing from our TSOs

Airport	Details	Update
ABE, Allentown, Penn.	No masks	4/30, 5:41 pm
ATL, Atlanta	Box of masks put in storage room but TSOs are denied the masks	4/30, 12:26 pm
BNA, Nashville	600 masks ordered	4/29, 3:40 pm
BRO, Brownsville-	TSOs briefed on how to help spot symptoms and isolate that potentially infected person. TSA has also required them to wear gloves at all times while in airport. In addition, a change of gloves is required when leaving and returning to the checkpoint. TSOs given gloves. Mask are for the public.	4/30, 4:31 pm

South Padre, Texas	TSOs not allowed to wear masks, although management has them ready. Hand sanitizer has been provided. AFSD for Screening says TSOs not allowed to wear any safety gear that is not government issued.	4/30, 3:31 pm
BWI, Baltimore	TSOs denied masks, only given hand sanitizer	4/30, 1:57 pm
CLE, Cleveland	TSOs told masks only issued if they are exposed to someone who is symptomatic.	4/30, 2:56 pm
CLT,	Given hand sanitizer and told to wipe down bins.	
Charlotte/Douglas	Given facemasks and sanitizer. Already had gloves	4/28, 12:54 pm
CVG, Cincinnati	TSOs given gloves. Mask are for the public	4/30, 4:31 pm
DAL, Dallas Love Field	TSOs told to change gloves after rotations. CA-2 forms provided to TSOs who go out on sick leave. Masks will be given out after an OK from HQ.	4/30, 3:17 pm
DCA, National, D.C.	TSOs first told they could request masks if they felt sick. Then told they could not have facemasks due to public panic.	4/30, 2:40 pm
DAY, Dayton	TSOs briefed on giving suspicious passengers masks.	4/30, 2:39 pm
DEN, Denver	Asking for masks but denied on basis of causing a public panic	
DFW, Dallas/Ft. Worth	Baggage screeners given (dust) masks, but not checkpoint. Pregnant TSO told she needed a doctor's note for a mask. FSD worried about public image	4/30, 3 pm
DSM, Des Moines, Iowa	Management has masks but not distributed to TSOs. Management created a list of all employees who have medical training but have not disclosed why this list was created. TSOs directed to notify management if they see passengers with flu symptoms	4/30, 4:31 pm 4/30, 9:26 pm
DTW, Detroit	There are masks but not for the TSOs to wear. Maybe being told to offer masks to passengers who exhibit symptoms	4/29, 4:38 pm
ERI, Erie, Penn.	TSOs told to wear gloves and wash hands.	4/30, 5:41 pm
EWR, Newark	Can request a mask only after they encounter a passenger with flu symptoms	4/30, 1:20 pm
FL, Ft. Lauderdale	TSOs told to wash hands and wear gloves but are denied masks.	4/28, 9:45 am
HRL, Harlingen Valley, Texas	No masks TSOs given gloves. Mask are for the public	4/30, 4:31 pm
HOU, Hobby, Houston	Hand sanitizer issued. Masks at the airport but not issued. TSOs told they need a doctor's note in order to wear a mask. Extra person stationed to observe passengers. If passenger exhibits symptoms, TSOs are to offer them masks. TSOs only given masks after they have had direct contact with	4/30, 11:23 pm

IAH, Houston	<p>said passenger.</p> <p>Hand sanitizer issued. Masks at the airport but not issued. TSOs told they need a doctor's note in order to wear a mask.</p> <p>Extra person stationed to observe passengers. If passenger exhibits symptoms, TSOs are to offer them masks. TSOs only given masks after they have had direct contact with said passenger.</p>	4/30, 11:23 pm
LAS, McCarren, Las Vegas	<p>From management</p> <ul style="list-style-type: none"> <li>- if a TSO gets sick with the swine virus, they can fill out a CA-2 and receive admin leave in lieu of annual/sick leave usage</li> <li>- since 4/27/09, hand sanitizer has been on every lane and available to all TSOs</li> <li>- extra gloves have already been ordered</li> <li>- there are policies and procedures in order to quarantine individuals suspected of having the swine virus (including a segregated lane on the other side of the checkpoint, as far away as possible from all other passengers)</li> <li>- there are face masks at check point offices, but TSOs are not permitted to wear them</li> </ul>	4/30, 12:31 pm
LAX, Los Angeles	<p>TSOs have been given gloves and extra alcohol.</p> <p>TSOs are not permitted to wear masks</p> <p>If they see a passenger who shows the symptoms of the flu, they are to pull them off to a corner and wait with them while a supervisor is being called. Once the supervisor arrives, the Sup should ask if they would like a mask.</p>	4/30, 2:24 pm
LNK, Lincoln, Neb.	<p>Masks received at the airport. TSOs to be briefed on 5/1 on when/how to use masks. TSOs being pushed to use sick leave if needed, not administrative leave.</p>	4/30, 6:30 pm
MFE, McAllen Miller, Texas	<p>TSOs given gloves. Mask are for the public</p>	4/30, 4:31 pm
MIA, Miami	<p>No masks</p>	4/28, 9:45 am
MLB, Melbourne, Fl.	<p>No masks</p>	4/28, 9:45 am
MSP, Minneapolis/St. Paul	<p>Masks were handed out but TSOs are not allowed to wear them.</p> <p>Gloves handed out and being worn.</p>	4/30, 2:30 pm
OAK, Oakland	<p>Denied face masks</p>	4/30, 2:22 pm
OMA, Omaha	<p>BDOs can use only TSA-approved hand sanitizers</p>	4/30, 6:30 pm

ONT, Ontario, Calif.	TSOs given hand sanitizer. TSOs given a mask if they have to pat down a passenger exhibiting flu symptoms	4/30, 2:55 pm
ORD, O'Hare, Chicago	Mixed messages. Masks and sanitizers available. Some managers are requiring TSOs to wear masks, while others say it's optional. TSOs must have three pairs of gloves at all times to change as needed. Some supervisors telling TSOs to say at least six feet from passengers.	4/30, 10:13 pm
PHL, Philadelphia	TSOs told that protective supplies, including masks, are available for anyone wanting one. But, some TSOs told they can wear masks at checkpoint, others told that masks only for passengers. Some areas do not have masks available.	4/30, 3:24pm
PIT, Pittsburgh	TSOs have masks, sanitizers and gloves.	5/1, 7:48 am
PBI, Palm Beach, Fl.	No masks	4/28, 9:45 am
RDU, Raleigh Durham	Management established a "confinement room," which is in the same location that TSOs store their personal belongings. RDU protocol states that if you spot someone sick you are to call an STSO. They are to call a LEO (Law Enforcement Officer). Then the manager is supposed to call the CDC, and you are allowed to wear a mask (only if time permits) while escort this person to a secluded area.	4/30, 2:56 pm
RIC, Richmond, Va.	From the FSD, "N95 protective masks will be located at the checkpoints as a precautionary measure. Based upon the guidance provided by the CDC, there is no need at the present time for personnel to wear protective masks during normal duty operations, nor is there any substantial medical benefit to doing so. In addition to not being medically necessary, the masks interfere with normal TSO duties and hold the potential for unnecessarily alarming the public. Consequently, the routine wearing of protective masks by TSA personnel in the workplace is <i>not authorized</i> . This includes masks purchased by individual employees."  The only preventive measures TSA RIC is taking to protect its' employees are as follows	4/30, 12:10 pm

1. Providing Hand Sanitizer for checkpoints, break rooms and baggage areas
2. Cleaning work surfaces on a daily basis such as ETD Tables, podiums etc.
3. Offering overtime to employees that volunteer their time to clean the "lips" of



	bins	
RSW, Southwest Florida Airport	Cleaning of the bins will only be done regularly if there are enough volunteers to do so. No masks	4/28, 9:45 am
SAN, San Diego	TSOs are given masks when they are requested. At the checkpoint they are asked to wear gloves at all times. They have all been provided with hand sanitizer.	4/30, 2:27 pm
SEA, Seattle-Tacoma	The following instructions were given by the FSD.  Do Hand washing Alcohol wipes are available for use Hand Sanitizers are not being provided Discussion of providing masks at the international checkpoints only	4/30, 12:43 am
SJC, San Jose	Denied face masks	4/30, 2:22 pm
SJU, Puerto Rico	TSOs ordered to use gloves at all times.	5/1, 5:33 am
SMF, Sacramento	Denied face masks	4/30, 2:22 pm
STL, St. Louis	TSOs briefed that: 1. Everyone will wear protective equipment (gloves) at all positions except x-ray. 2. Gloves are changed at every rotation. 3. Hand sanitizer is available and will be used at every IDC position. 4. New masks have been ordered to replace the old ones that have met their expiration dates.	4/29, 4:39 pm

Mr. BONNER. Thank you, sir.

As a Border Patrol agent, I can happily report that, up until this point, they have not prohibited our agents from wearing respirators and other personal protective equipment, but I am very well aware of other instances within Customs and Border Protection officers who are part of the same bureau within the Department of Homeland Security, and yet, in those situations, where in fact they encounter more people than we do every day coming in from Mexico.

And I would just say as an aside that when someone is transiting from Mexico where probably during the height of the outbreak, 25, 33 percent of the people were wearing some type of facial protection, they must have thought they hit the Twilight Zone when they hit the US-Mexico border and didn't see any of the people inspecting them wearing any type of equipment. This is unacceptable, and it needs to change. And I appreciate your hearing to make in-roads in that direction. Thank you very much.

[The prepared statement of Mr. Bonner follows:]

# **AFGE**

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**STATEMENT OF**

**T. J. BONNER, PRESIDENT  
NATIONAL BORDER PATROL COUNCIL  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES  
AFL-CIO**

**BEFORE THE**

**SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND  
THE DISTRICT OF COLUMBIA**

**HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**

**ON**

**PROTECTING THE PROTECTORS: AN ASSESSMENT OF FRONT-LINE  
FEDERAL WORKERS IN RESPONSE TO THE SWINE FLU (H1N1) OUTBREAK**

**MAY 14, 2009**

The American Federation of Government Employees appreciates the opportunity to present the views and concerns of the more than 600,000 Federal and District of Columbia workers that it represents regarding the response of various agencies to protect them and the public they serve from infectious diseases. Like most other workers in America, government employees report to an office or other worksite to perform their tasks, and interact with co-workers and/or the public during the course of a normal workday. When a pandemic strikes, many of them are at an elevated risk of exposure, affecting our government's ability to provide the vital services that our citizens have come to expect.

Although there is clearly a shared interest between management and labor to safeguard the health of our government's workforce, the adversarial relationship that has poisoned the overall atmosphere for the past eight years has unfortunately spilled over to the health and safety programs as well. The recent H1N1 (swine) flu outbreak is no exception. The response of most employing agencies was typical of their responses to other health and safety issues: Slow and inadequate.

The lack of communication was a big part of the problem. There has been little or no communication from agencies' headquarters to the individual workplaces, and the same is true with respect to the communication from those headquarters to the unions. While some information has been available through the media, Federal employees should not have to rely on that limited source. AFGE's members have had a difficult time obtaining useful information about worker protection from their agencies. The information they do get is inconsistent and contradictory, and it is often different from

one part of the country to another. At least one of AFGE's agency bargaining councils felt compelled to issue its own guidance to fill this void.

Many agencies have been dismissive of employees' concerns, showing callous disregard for employees' legitimate worries. Agencies at all different levels in the chain of command need to be attuned to employees' concerns and respond to them quickly and appropriately.

Workers are being deployed to border areas with no protection and with little or no regard for their fears and concerns or whether their failure to act might actually contribute to the spread of the virus. AFGE has been advised that there have been discussions between the public health agencies and the worker health and safety agencies about what respiratory protection is needed, but in the absence of agreement, some workers have gone unprotected, putting both them and the public with whom they interact at increased risk.

At the national level, AFGE has also experienced difficulties getting information. Unions need to be at the table during discussions assessing these situations and dealing with them. Plans to address the H1N1 flu are being developed without the involvement of, or even consultation with, employee representatives. AFGE raised the same issues when agencies were directed to develop pandemic influenza plans and policies after the Severe Acute Respiratory Syndrome (SARS) outbreak more than six years ago.

Only one agency head reached out to AFGE and other Federal employee unions John Berry, the Director of OPM. Director Berry also ensured that unions were invited to attend a forum OPM hosted on Human Resources Readiness. One agency, the

Department of Transportation, has sent AFGE its guidance to managers and supervisors for review. However, that guidance deals mostly with how managers should handle leave issues.

AFGE's National Office has written letters to the Secretary of the Department of Homeland Security, the Acting Administrator for the Transportation Security Administration, and several other agencies to find out how they plan to deal with the outbreak and imminent pandemic and how they plan to protect their workers. To date, AFGE has not received a response to any of its inquiries.

AFGE's agency bargaining councils have also made efforts to learn how their agencies plan to protect workers from on-the-job exposure to the H1N1 flu virus. The AFGE Council of Equal Employment Opportunity Commission Locals has proposed that offices with public contact go to a telephone system until the flu situation abates. Predictably, the agency declined. That Council also proposed testing the agency's Continuation of Operations Plan (COOP). The COOP also includes telework, which OPM is encouraging. Again, the agency declined. This is contrary to OPM guidance on telework and to the recommendation that agencies use this situation as an opportunity to strengthen their telework programs.

Working with the union that represents the vast majority of Federal employees on health and safety in general and the flu outbreak in particular has a direct benefit for the Federal Government. AFGE can help reassure Federal employees that their employer, the Federal Government, is in fact doing whatever is necessary to help protect them

while they carry out the important functions of our government, and in so doing, help protect the public from misinformation and infection.

Until recently, there was no coordination with worker safety and health protection agencies such as OSHA and NIOSH. OSHA and NIOSH should play an active role in the development and enforcement of worker protection policies. At the same time, the implementation of such policies should facilitate, not complicate, efforts to protect workers.

At this point, the CDC is unable to determine whether any of the confirmed cases of H1N1 flu were contracted from a workplace exposure, even in the healthcare and homeland security sectors, where workplace exposures are highly probable. There needs to be better tracking of work-related H1N1 flu cases.

In addition, OSHA should be directed to work on a standard to protect employees from airborne pathogens, such as H1N1 flu and tuberculosis. The Blood Borne Pathogens Standard does not address the hazards of aerosolized pathogens. Although the spread of H1N1 seems to be slowing down, we don't know whether it will come back later, and we don't know how virulent it will be. We need to have a standard that will address the issues that we have faced during the last few weeks.

In AFGE's experience, agencies have a history of not taking action unless forced to do so, either by an arbitrator's decision after the union seeks redress through the negotiated grievance procedure or by an OSHA investigation. One example is asbestos exposure. Thirty-seven years after the AFL-CIO filed a petition for an OSHA asbestos standard, our members are still fighting to get their agencies to abate the hazard.

Asbestos exposure continues to be a major concern for employees who must work in and around contaminated areas. It seems that most agencies would rather ignore or even cover up these problems than fix them. Even when agencies are forced to act on the abatement, some don't ensure that it is done according to the OSHA asbestos standard. Employees often continue to work in the areas undergoing asbestos removal.

Congress needs to send the message to individual agencies and facilities that the Federal Government is serious about correcting, and not just identifying, problems. This kind of support from the highest levels of agency management will set the tone for health and safety compliance and accountability in individual offices throughout the country. Injuries and illnesses among Federal employees have been far too high for far too long. It is imperative that everyone works together to bring the numbers of workplace injuries and illnesses down.

Achieving this goal is not a far-fetched proposition. There are already several ways to do it, including national and establishment-level health and safety committees, OSHA partnerships with agencies and unions, and other DOL programs. Ultimately, there also needs to be more enforcement of OSHA standards and regulations in Federal workplaces. Too many agencies are quick to ignore OSHA notices of unsafe and unhealthful conditions because they don't carry a fine. For various reasons, including its own limited resources, OSHA has not done the follow-up to ensure that the hazards are mitigated. AFGE is encouraged by the comments the Secretary of Labor made recently that OSHA is back in the enforcement business. It is also encouraging to see that President Obama's budget proposal includes major increases for OSHA,



MSHA, and NIOSH. This demonstrates a major commitment to strengthening health and safety programs and worker protections.

The existing health and safety regulations for Federal agencies contained in 29 C.F.R. 1960 are largely satisfactory, but need to be enforced in order to be effective. Some agencies also have good health and safety programs, and if they were followed at the local level, the Federal Government would be the model employer that it should be. When policies and guidance are issued by the headquarters of an agency, they are not always followed at the local level. That needs to change if we are to effectively address health and safety problems.

We should aim for preventive health and safety programs in which employees and employers are actively involved and engaged in identifying workplace hazards and in fixing problems before people become ill or get hurt. Workers and their unions are key in this process. Front-line workers often know best how to abate the hazards.

The importance of encouraging Federal agencies to involve their unions in all aspects of such programs, both at the national and the local level, cannot be overstated. AFGE has a number of very knowledgeable safety representatives and activists who are eager to work with their employing agencies to reduce injuries and illnesses among our members.

The Federal Government has made some good-faith attempts at improving health and safety. Programs such as the Federal Worker 2000 and its successor, Safety, Health, and Return to Employment (SHARE) are good starting points. AFGE remains willing to work on these types of programs and hopes that the new

Administration will not only continue, but also expand them soon.

There is also the issue of workers' compensation. Some Federal employees will undoubtedly get sick from H1N1 due to a workplace exposure. These employees need to be taken care of and advised about their right to file for workers' compensation without interference from their employing agency.

For workers with predictable workplace exposure, such as health care workers, Homeland Security employees, and others with direct public contact, a diagnosis of H1N1 flu should be presumptive for workers' compensation purposes. AFGE has already received reports that some TSA managers are telling employees that if they contract H1N1 flu they would have no way to prove that it was a result of their employment. This type of attitude is unacceptable, and AFGE urges the Committee to ensure that it doesn't permeate throughout the Government. At such a difficult time, employees need help from their agencies, not resistance to the filing of a claim. They should not be denied their right to file or to receive medical attention under workers' compensation.

While no Federal agency was fully prepared to respond to the H1N1 flu outbreak some responded better than others. One of the agencies whose employees were most directly affected by the outbreak had one of the least satisfactory responses. The Department of Homeland Security failed to ensure that its various components issued sufficient quantities of personal protective equipment, and failed to promulgate or follow sensible or useful guidance to employees.

As news of the H1N1 flu epidemic spread across the United States, DHS workers began asking their supervisors for information and, more important, direction in responding to this potentially deadly threat. Unfortunately, by and large, the answers to these questions from DHS supervisors were confused, conflicting, or non-existent.

When it finally issued Department-wide guidance, DHS placed itself in violation of the OSHA regulations. Had it continued to allow employees to voluntarily use respirators, they would not have been required to complete medical questionnaires and undergoing fit testing. By mandating the use of respirators in certain situations, however, DHS triggered the aforementioned requirements. This would not have been a problem if DHS had ensured that those requirements had been completed before the outbreak, but it did not even have the resources in place to complete those requirements for several weeks. This response is completely unacceptable. Employees should never be placed in harm's way without being provided with the necessary personal protective equipment.

The situation at one of DHS' components, the Transportation Security Administration, is illustrative of this unsatisfactory response. Beginning the weekend of April 25, 2009, AFGC began to receive phone calls, e-mails, and blog comments from its Transportation Security Officer (TSO) members who expressed grave concerns about the conflicting information and indifferent attitude they were receiving from TSA management to their questions regarding precautions against the H1N1 virus. On any given day, a TSO will come in close contact with hundreds or even thousands of passengers at screening checkpoints, examining their travel documents, photo

identification, and belongings. They are in constant contact with surfaces touched by the traveling public, and breathe the same air as infected individuals. Yet, despite this constant exposure to potential health hazards, TSA offered no official guidance to TSOs for more than a week after the H1N1 virus outbreak, and when that guidance was finally issued, TSOs found it to be confusing, illogical, and in conflict with the guidance of both the CDC and DHS Secretary Napolitano.

For example, in Atlanta, Baltimore-Washington, Cleveland, Denver, Detroit, Las Vegas, Los Angeles, Minneapolis/St. Paul, Oakland/Richmond, and Sacramento, TSOs were denied respirators when requested. At Baltimore-Washington Airport, managers were given respirators, but TSOs were not. TSOs in Denver and Dayton were denied respirators because, according to TSA management, doing so would cause a "public panic." TSOs in Detroit were told masks were only to be given to passengers who exhibited flu-like symptoms. TSA management at Houston Hobby and Dallas/Ft. Worth were told they could only wear a respirator with a doctor's note. Although most airports had gloves available for TSOs, many airports had no sanitizer or other disinfectant for TSO usage. Behavioral Detection Officers at the Omaha airport were told they could only use TSA-approved hand-sanitizers. TSOs at airports providing hand-sanitizer and other disinfectants were not allowed recurrent breaks to either wash their hands or apply the hand sanitizer. Clearly, TSA management at individual airports—and sometimes by shift at airports—was flying by the seat of its pants and making up the rules as they went along. By this time, the news was widespread that the H1N1 virus had infected thousands of people in Mexico and was spreading throughout the United

States. TSOs were left to worry about their health and the health of their families for a week without direction from DHS and TSA management.

As early as April 27, 2009, OPM Director John Berry issued a memorandum entitled "Advice to Federal Employees and Agencies on Preventing the Spread of the Current Flu and maintaining Readiness to Use HR Flexibilities if Necessary," directing "employees who work in locations in which they may come in contact with people carrying the swine flu virus," such as TSOs, to follow precautions such as separating a traveler who appears unwell to an area away from workers and the public and providing the ill traveler with a surgical mask. The memo specifically required that federal workers keep "a distance of six feet" between themselves and someone who appears ill and to use "N95 respirators" if the "employee must maintain closer contact than the six feet of distance." This information was not officially communicated to TSOs until May 1, a full week after the H1N1 virus was first recognized as a major public health threat.

AFGE's letter to TSA Acting Administrator Gale Rossides was never acknowledged by TSA, and even though AFGE represents more than 10,000 TSOs and has done so for more than eight years, TSA never informed AFGE of the latest H1N1 developments and never sought its input to protect the 40,000 men and women who serve as America's first line of defense against terrorism in our skies. If TSA had engaged in dialogue with AFGE, it would have heard the following: In keeping with OSHA guidelines, N-95 respirators, gloves, and hand sanitizers should have been made available to any TSO requesting them; shifts should have been rotated to allow TSOs to wash or otherwise sanitize their hands and wipe down their work stations on a recurrent

basis; TSA should have provided testing for TSOs who either suspected they were ill or had been exposed to the H1N1 virus; TSOs infected with the H1N1 virus should have been provided with a CA-2 form and granted administrative leave; and TSOs who either had to care for a sick family member or children out of school due to closings should have been afforded the same "human resources policies and flexibilities" as other federal workers as stated in OPM Director Berry's April 27, 2009 memorandum. These are simply common-sense steps that serve to protect the public and workers and their families.

Out of the many airports where AFGE has members, only TSOs at Covington/Cincinnati, Washington National, Pittsburgh, St. Louis, and San Diego airports reported that the universal precautions of respirators, gloves, and hand sanitizers were put in place immediately following the notice of a public health emergency. It is by sheer luck that this flu outbreak did not evolve into a mass public health hazard, and far too many TSOs and their families were needlessly placed at risk because their employer failed to take simple steps to recognize the situation and protect all involved. TSA has chosen to deny TSOs the rights of other federal workers to have a voice at work through a union that is their exclusive representative. TSO concerns could have been addressed through communications with AFGE as their exclusive bargaining agent, or even addressed beforehand in a collective bargaining agreement. To this end, AFGE calls for the swift passage of H.R. 1881, the Transportation Security Workforce Enhancement Act of 2009 introduced by Rep. Nita Lowey (D-NY) in April and again asks DHS Secretary Napolitano to order Acting TSA Administrator Rossides to

grant TSOs all rights under title 5, including the right to collective bargaining.

In conclusion, the problems with agencies' responses to occupational illnesses such as H1N1 flu are not new. Agencies are generally slow to respond to health and safety concerns, often citing lack of funding for health and safety improvements. Federal agencies have fostered a culture in which employees are discouraged from reporting safety hazards. Employees are reluctant to report injuries and/or illnesses for fear of being targeted with retaliatory actions.

AFGE urges the Committee to hold Federal agencies accountable for providing a safe and healthy working environment and to protect their employees. Having in place effective workplace health and safety programs with active worker and union participation will help us better prepare for the next crisis. We don't know which disease we will be dealing with next, but we should be using this time to better prepare. AFGE also urges the Committee to ensure that workers who become ill as a result of their exposures on the job receive compensation consistent with existing statutes.

AFGE is prepared to work with the Committee, employing agencies and OSHA to make the Federal Government a safer and more healthful workplace. This will not only improve morale, but will also allow governmental agencies to continue to carry out their vital missions during a pandemic event.

This concludes my statement. I will be happy to respond to any questions.

Mr. LYNCH. Thank you, Mr. Bonner.  
President Kelley for 5 minutes.

**STATEMENT OF COLLEEN KELLEY**

Ms. KELLEY. Thank you very much, Chairman Lynch.

Thank you for holding this hearing today and for inviting me to testify on behalf of the thousands of employees represented by NTEU who work every day to protect our country from threats and who have continued to do their critical work diligently during the current swine flu outbreak.

The NTEU represented employees most affected by the current spread of the H1N1 influenza work for the Department of Homeland Security, as we have been discussing. Our Customs and Border Protection officers and agriculture specialists work at the land, at the sea, and at the air ports of entry across the country, and our transportation security officers work at airports.

You have clearly articulated the work that they do and the number of travelers that they interact with every day doing their jobs, and why the 6-foot rule that we have heard about does not work.

Many of these employees work on the U.S.-Mexico land border. Many also process international flights from Mexico. Once the origin and the breadth of the swine flu became clear, these employees in particular were concerned about protecting their health and that of their families. That is certainly reasonable.

The U.S. Government had advised against unnecessary travel to Mexico, and all of the first cases of H1N1 flu in the United States involved people who had recently traveled from Mexico, and, unless they came into the United States illegally, they must have passed through a port of entry staffed by these employees.

Those who work on the land borders saw their Mexican counterparts, often just steps away, wearing masks as they performed their duties. Some of these employees wanted the option of wearing a protective mask or respirator, but CBP and TSA have prohibited the wearing of masks unless an employee is in close contact with an ill traveler. Under that circumstance, a mask is required to be worn.

Now, as soon as questions began coming in to NTEU from our members across the country as to whether or not they could wear respirators or masks, NTEU began trying to find out what the current policy was. We contacted CBP. We contacted TSA. And we contacted Homeland Security, and we got no answers.

During this time, a DHS spokesperson was quoted in the press as saying, "The Department of Homeland Security has not issued an order saying our employees cannot wear masks." And a CBP spokesperson was quoted saying, "CBP officers and Border Patrol agents are provided personal protection gear which they may utilize at their discretion." But CBP and TSA were both clearly enforcing a prohibition, without exception, across the board. This was not on a manager-by-manager basis. This was clearly a directive from the head of CBP or the head of Homeland Security.

Some statements from DHS that appeared in the press indicated that managers who were preventing the wearing of the masks were misinformed about the actual policy. The idea that a few managers were misinformed is clearly not accurate. NTEU heard from many,



many employees from around the country. And, as you already noted, attached to my written testimony are affidavits from some of them relating instances of supervisors demanding that they remove their masks. Some of them are disturbingly threatening, and some include comments indicating that the reason for the prohibition was fear of alarming the public.

The affidavits also confirm that the policy has not been disseminated in writing, and that employees' requests for written guidance on the issue have been denied.

I trust that this committee will ensure that the employees who provided these affidavits will be free from any negative impact within the Department or the Bureau and their jobs.

After researching possible scientific or medical reasons for prohibiting the optional wear of masks at CBT and TSA, NTEU is convinced that the reasons are not based on science or medicine but on public relations. In our view, avoiding unnecessarily alarming the public is not without merit. However, it is one factor that must be weighed against the potential health risks to employees, their families, and others. It is difficult to weigh the competing factors when there is a refusal to even acknowledge them.

The first person to die in the United States from swine flu was a toddler; the second was a pregnant woman. Both had traveled from Mexico to the United States. Some of our members working on the Mexican border are parents of young children. Some may be pregnant or have a pregnant spouse. Some may live with family members who are particularly vulnerable. Does the risk of possibly alarming the public carry more weight than the unnecessary possible exposure to the swine flu of individuals in these situations?

To my knowledge, NTEU members at ports of entry have followed the directives of their local managers, and they have worked diligently through this swine flu outbreak, even if they have requested and been denied the ability to wear protective masks for reasons of great concern to themselves and to their families. These employees deserve better.

They deserve to know what the policies are. They deserve to know who is responsible for making those policies. They deserve to know the reasons for the policies. They deserve to have the opportunity to provide information to the policymakers. And, in this instance, they need the policy to be changed to reflect a rational balance that gives more weight to the importance of their ability to protect their health than to the potential for public alarm.

I thank you very much for holding this hearing and for your views on this issue which you have made very clear throughout the day. And I look forward to any questions that you might have for me.

[The prepared statement of Ms. Kelley follows:]



**STATEMENT OF COLLEEN M. KELLEY  
NATIONAL PRESIDENT  
NATIONAL TREASURY EMPLOYEES UNION**

**ON**

**PROTECTING THE PROTECTORS: AN ASSESSMENT OF  
FRONT-LINE FEDERAL WORKERS IN RESPONSE TO THE  
SWINE FLU (H1N1) OUTBREAK**

**BEFORE**

**THE HOUSE SUBCOMMITTEE ON THE FEDERAL  
WORKFORCE, POSTAL SERVICE AND THE DISTRICT OF  
COLUMBIA OF THE U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON OVERSIGHT AND GOVERNMENT  
REFORM**

**May 14, 2009**

Chairman Lynch, Ranking Member Chaffetz, distinguished members of the Subcommittee; I would like to thank the Subcommittee for the opportunity to provide this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents thousands of Transportation Security Officers (TSOs) at the Department of Homeland Security's (DHS) Transportation Security Administration (TSA) and 22,000 Customs and Border Protection (CBP) Officers, Agriculture Specialist (CBP AS) and trade enforcement specialists who are stationed at 327 land, sea and air ports of entry (POEs) across the United States. TSOs, CBP Officers and CBP AS make up our nation's first line of defense in the wars on terrorism, drugs, contraband smuggling, human trafficking, agricultural pests, and animal disease while at the same time facilitating legitimate trade and travel.

Employees on the frontlines of our nation's borders and airports are exposed to many threats, the newest being exposure to the H1N1 influenza. On Wednesday, April 22, 2009, the first reports of swine flu exposure in the U.S. became public and the press began reporting on a swine flu outbreak originating in Mexico. This outbreak has raised serious concerns about how the federal government creates and communicates policies to protect the health of frontline personnel. I applaud the Subcommittee for holding this timely hearing.

Policies to mitigate health risks for federal employees should vary according to the type of work being done and the potential for exposure, in this case, to the H1N1 influenza. The general guidelines, which include staying out of crowds, do not adequately address situations where an employee's entire work shift requires him or her to be in close contact (within six feet) of literally thousands of travelers, which is the case for Transportation Security Officers, Customs and Border Protection Officers and Agriculture Specialists.

Specific guidance must be developed and communicated clearly and in writing to these employees who are at increased risk of exposure. It is unacceptable and shocking that more than three weeks after the onset of the so called swine flu and despite repeated urging from NTEU and others, there is still no comprehensive guidance in place to protect the health of these frontline employees.

Shortly after the swine flu outbreak became public, NTEU started receiving questions from our members at ports of entry around the country. In numerous locations, personal protection equipment (PPE), including gloves and N-95 respirators, was distributed to employees. At JFK Airport in New York, for example, distribution to CBP employees began on April 25<sup>th</sup> and continued through April 26<sup>th</sup> with little guidance. In the afternoon of the 26<sup>th</sup> employees were initially told they were only to wear the respirators if in contact with an ill individual. Later they were told they were not to wear the respirators at all, so as not to alarm the public or offend passengers.

On April 26<sup>th</sup> Homeland Security Secretary Napolitano sent a message to DHS employees working near the Southwest border. That message stated: "CDC recommends that a distance of six feet should be maintained between all employees and someone who appears ill. The use of N95 masks are suggested if an employee must maintain closer contact than the six feet of distance."

On April 28<sup>th</sup>, a CBP spokesperson was quoted in CNSNews.com saying, "CBP officers and Border Patrol agents are provided personal protection gear which they may utilize at their discretion".

On April 30<sup>th</sup> a DHS spokesperson was quoted in a media report saying, "the Department of Homeland Security has not issued an order saying our employees cannot wear masks."

Transportation Security Officers at Dallas/Fort Worth Airport were issued masks on April 26<sup>th</sup> and on the 28<sup>th</sup> told they could not wear them unless they were dealing with a traveler exhibiting swine flu symptoms. NTEU wrote to TSA Acting Administrator Gale Rossides asking that TSOs be allowed to wear masks since they were constantly within six feet of travelers and were not expert in determining whether a traveler was ill. We have not received a reply.

According to a press report in the Washington Times on May 2<sup>nd</sup>, a TSA PowerPoint presentation was distributed to TSA employees on April 29<sup>th</sup> that stated: "... the routine wearing of protective masks by TSA personnel in the workplace is not authorized ... In addition to not being medically necessary, the masks interfere with normal [transportation security operation] duties and hold the potential for unnecessarily alarming the public ..."

NTEU requested a copy of the PowerPoint presentation, but was told it was not available for public distribution.

As soon as questions began coming in to NTEU from our members around the country as to whether they could wear respirators or masks, NTEU began trying to find out what the current policy was and urged that these employees be allowed to wear the masks if they felt their health was at risk. We contacted CBP, TSA and DHS. DHS was saying it had not issued a department wide order prohibiting the voluntary wearing of masks, but CBP and TSA were clearly enforcing such a prohibition.

Some statements from DHS that appeared in the press indicated that managers who were preventing the wearing of masks were misinformed about the actual policy. The idea that a few managers were misinformed is clearly not accurate. NTEU heard from many, many employees from around the country and attached to this testimony are affidavits from some of them relating instances of supervisors demanding that they remove respirator masks. Many of them are disturbingly threatening and many include comments indicating the reason was fear of alarming the public. I trust this Committee will ensure that the employees providing these affidavits will be free from any negative impact.

On April 30<sup>th</sup>, DHS issued Interim Guidance stating that: "Employees who work closely with (either in contact with or within 6 feet of) people specifically known or suspected to be infected with the H1N1 virus **must** wear respiratory protection." (Emphasis Added.) The guidance did not address the question of the voluntary donning of masks. In addition, the Interim Guidance noted it was being released "as an interim measure until the Office of Personnel Management provides comprehensive guidance for all federal employees." OPM has since indicated it does not intend to provide such governmentwide guidance, stating that on

questions such as this, affecting narrow segments of the workforce, decisions are up to the individual agency.

On May 1st, I wrote to DHS Secretary Napolitano and OPM Director Berry urging that written guidance be issued immediately clarifying that these frontline employees would be allowed to wear masks at their discretion. On May 5<sup>th</sup> CBP Acting Commissioner Ahern sent out an employee message reiterating the mandatory use of respirators when employees were in close contact with people known or suspected to be infected with the H1N1 virus. The message included no reference to the voluntary wearing of respirators despite NTEU's repeated requests to CBP for such guidance.

On May 8<sup>th</sup>, I sent a second letter to Acting TSA Administrator Rossides and a letter to Acting CBP Commissioner asking again for written guidance that these employees be allowed to wear respirators/masks at their discretion. There is still no written guidance from DHS or CBP or TSA on this issue.

As NTEU tried to address the concerns of its members at CBP and TSA, we learned that other components within DHS and other federal agencies had conflicting policies. It is our understanding that employees of the Border Patrol, a division within CBP, which operates on land borders between ports of entry, were voluntarily donning masks without objection from supervisors.

At a briefing last week, NTEU was informed that if our members who work at the IRS wish to wear masks to reduce the potential for exposure to swine flu they are free to do so.

For the last several weeks NTEU has tried to answer several simple questions.

- 1) Who is responsible for the the policy prohibiting the voluntary wearing of masks at CBP and TSA?

OPM says it is up to each agency. DHS says it has no Departmentwide policy. CBP and TSA say verbally that voluntary wearing of masks is prohibited, but will not put it in writing. OSHA says there is no policy to prohibit the voluntary wearing of masks and CDC says it is not recommended at this time in low risk situations, which in our view, does not cover the situations our frontline employees are in.

- 2) What is the rationale for prohibiting the voluntary wearing of masks?

No one has been willing to address this question. In the course of attempting to answer this question, we have heard several possibilities, such as the respirators/masks aren't effective. That makes no sense, since when working in close contact with an ill traveler, it is recommended that the traveler and required that the employee don masks.

We have heard that the masks aren't appropriate unless the wearer has undergone a medical evaluation ensuring he or she is fit to wear the mask and the mask is properly fitted. Clearly, the masks would be worn in an emergency situation even if those criteria were not met, but, regardless, most NTEU members have done the medical evaluation and been fitted.

That leaves us with no other possible reasons than a desire to not alarm the public as was apparently stated in the TSA PowerPoint presentation and has been cited by numerous local supervisors. In our view, avoiding unnecessarily alarming the public is not totally without merit. However, it is one factor that must be weighed against the potential health risks to employees, their families and others. It is difficult to weigh the competing factors when there is a refusal to even acknowledge them.

As stated earlier, the duties of our members who work at ports of entry require them to spend their entire workday in crowded conditions. The Transportation Security Officers in Miami International Airport clear approximately 3,300 passengers on each shift, over half this number are international travelers, at JFK it's roughly 9,000 passengers per checkpoint per shift and at O'Hare it's between 9,000 and 12,000 per checkpoint per day. Both TSA and CBP employees perform duties such as reviewing travel documents, wanding passengers, questioning them and sometimes patting them down. All of these duties require being in close contact with travelers.

The NTEU members who have been most affected by this issue work on the land border with Mexico and at airports that clear international travelers, including many entering the country from Mexico. The U.S. Government has advised against unnecessary travel to Mexico and all of the first cases of H1N1 flu in the U.S. involved people who had recently traveled from Mexico. Those who work on the land border saw all of their Mexican counterparts, often just steps away, wearing masks as they performed their duties. Everyone who crossed the Mexican border in either direction saw all the Mexican border officials wearing masks. Would it have unduly alarmed them to see some U.S. border officials also wearing masks?

The first person to die in the U.S. from swine flu was a toddler. The second was a pregnant woman. Both had been in Mexico. Some of our members working on the Mexican border are parents of small children. Some may be pregnant or have a pregnant spouse. Some may live with family members who are particularly vulnerable due to chemotherapy treatment or autoimmune disease or even old age. Does the risk of possibly alarming the public carry more weight than the unnecessary possible exposure to the swine flu of individuals in these situations?

To my knowledge NTEU members at ports of entry have followed the directives of their local managers and worked diligently through this swine flu outbreak, even if they have requested the ability to wear protective masks for reasons of great concern to themselves and their families. These protectors deserve better. They deserve to know what the policies are. They deserve to know who is responsible for making those policies. They deserve to know the reasons for the policies. They deserve to have the opportunity to provide information to the policymakers and in this instance they need the policy to be changed to reflect a rational balance that gives more weight to the importance of these employees' ability to protect their health than to the potential for public alarm.

Thank you again for holding this important hearing.

## AFFIDAVIT

I, Ryan K. Inamura, do hereby state:

1. I am employed by the U.S. Bureau of Customs and Border Protection, Department of Homeland Security, in the position of CBP Officer. I am currently assigned to the port of Las Vegas at McCarran International Airport.
2. My assigned duties include processing of inbound passengers to ensure compliance of U.S. customs and immigration laws. In the course of these duties I regularly come into frequent contact with members of the traveling public from Mexico. These contacts routinely require interaction within six feet of these travelers.
3. CBP employees at my Port were generally instructed that we were not authorized to wear protective masks unless we were within six feet of an individual who was actively exhibiting flu-like symptoms. These instructions were issued orally at muster to CBP employees by Port Director Debbie Sanders, on or about April 28, 2009.
4. On May 1, 2009, I sent an e-mail message to Ms. Sanders through my respective chain of command. The subject was a request for discretionary use of an N95 respirator mask as means of minimizing my chance of contracting H1N1 and in turn infecting my wife, 20 month old daughter and my newborn son. Also included were references to CDC disseminated information that individuals infected with H1N1 could be contagious while not showing outward signs of being sick.
5. Approximately, one hour later, CBP Chief Antonio Gonzalez, came and verbally informed me that Port Director Sanders denied my request. I asked Chief Gonzalez if I would be receiving a written response and he declined. I noted the time and immediately sent an e-mail message to NTEU stewards Monique Jacobs and Ken Eagan regarding the management response. I also sent a copy to Chief Gonzalez so he would have an opportunity to correct anything I may have misinterpreted. To date, Chief Gonzalez has neither challenged nor corrected my recollection of this encounter.
6. CBP management is gambling with the health and lives of its employees and their families. We are a group of dedicated, vigilant and hardworking professionals that love our jobs and our country. All we ask in return is the right to protect ourselves and our families while we protect America.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: *R. Inamura*

Dated: 05/11/2009

## AFFIDAVIT

I, Maria M. Seda Franqui, do hereby state:

1. I am employed by the U.S. Customs and Border Protection, Department of Homeland Security, in the position of Customs and Border Protection Agriculture Specialist. I am currently assigned to the Laredo, Texas Port of Entry, a land port across the border from Mexico.
2. My assigned duties include processing vehicles, passengers, and pedestrians inbound to the United States from Mexico to ensure compliance with, among other laws, U.S. Agriculture, Customs, and Immigration laws. In the course of performing those duties, I regularly come in contact with members of the traveling public inbound from Mexico. The performance of my regularly assigned duties as a CBP Officer requires that I routinely maintain contact within six feet of individuals arriving from Mexico.
3. On or about April 27, 2009, at approximately 1700 hours I was assigned to and working the secondary inspection area at the Laredo Port of Entry. I was in the process of inspecting a vehicle and its passengers, and writing a penalty. A young woman (age 14-16 years), one of the passengers in the vehicle I was inspecting began vomiting. Despite the obvious illness, Supervisory Customs and Border Protection Officer Francisco Molina ordered me to remove the protective mask I was wearing. He said he had decided that the woman was sick because she was pregnant and that I did not need to wear the mask unless the passenger showed signs of sickness. The woman's mother had also placed an ice-pack over the woman's head at all times I was present with her. I understood that I had to obey the orders of the supervisor, and that is why I removed the protective mask.
4. I desired to wear the mask because of concerns about contracting swine flu.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: Maria M. Seda Franqui Dated: 05/08/2009



AFFIDAVIT

I, Lilia Pineda, do hereby state:

1. I am employed by the U.S. Bureau of Customs and Border Protection, Department of Homeland Security (hereinafter referred to as "CBP") in the position of CBP Officer. I am currently assigned to the Otay Mesa Port of Entry a land border.
2. My assigned duties include processing inbound passengers, vehicles and pedestrians to ensure compliance with U.S. Customs and Immigration laws. In the course of performing those duties, I regularly come in contact with members of the travelling public inbound from Mexico. These contacts routinely require contact within six feet of those individuals.
3. On or about April 28, 2009, I was working at Otay Mesa, Primary Lane 4, and decided to wear an N-95 respirator mask. I made this decision for several reasons. I have been fitted for an N-95 respirator mask. (I had also been trained to fit other CBP Officers for the N-95 respirator mask.) I was encountering individuals who were coming from Mexico City and other cities in central Mexico where the swine flu is prevalent. Also, I had a cold at the time and felt I was especially vulnerable to getting another illness. I was also concerned about exposing other family members to the swine flu, including my infant nephew, whom I see regularly.
4. At approximately 9:30 a.m., while wearing the N-95 respirator mask while working, I was approached by Chief Kait who instructed me to remove my mask. I explained to him that I had taken the training for respirator fit test trainer, that I felt it was a health and safety issue for me to wear the mask, that I had been fitted for a respirator mask, etc. Despite my objection, Chief Kait refused to allow me to wear the mask. He repeatedly asked me angrily with his hands at his waist, "Are you going to comply or do you want to go home sick." I did comply.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: \_\_\_\_\_



Dated: \_\_\_\_\_

05/08/09

**AFFIDAVIT**

I, Kenneth Eagam, do hereby, state:

1. I am employed by the U.S. Bureau of Customs and Border Protection, Department of Homeland Security, in the position of Customs and Border Protection Officer. I am currently assigned to the Las Vegas Port of Entry, an airport.

2. My assigned duties include processing inbound passengers, to ensure compliance with U.S. customs and immigration laws. In the course of performing those duties, I regularly come in close contact with members of the traveling public arriving from Mexico. These contacts routinely require contact within six feet of those individuals.

3. On Monday April 27 2009, I was scheduled to work Primary Inspection Booth 8 from 0930 until 1730. After I set up in the booth to begin processing passengers, I donned protective gloves and the N-95 mask. The first two flights of the day were from Mexico, and one of those was from Mexico City, the epicenter of the swine flu outbreak. During the second flight, Mexicana flight 996 arriving from Mexico City, Chief Gonzalez came to my assigned booth and blocked the aisle so no new passengers could approach. The other supervisor, Ernie Campbell blocked the booth door behind me. I was processing a passenger at the time and Chief Gonzalez interrupted the inspection, ordering me to remove the mask. He stated, " TAKE THE MASK OFF NOW, YOU ARE NOT AUTHORIZED TO WEAR A MASK." I finished processing the passenger, removed the nitrile gloves, used hand sanitizer to clean my hands and then removed the N-95 mask.

4. After I removed the mask, Chief Gonzalez told me not to wear a mask while processing passengers. He told me that the only time I could wear a mask was if the person standing in front of me was showing obvious signs of the flu, as had been explained in a muster briefing. I told Chief Gonzalez that if I waited for someone to hack (cough) on me, it would be too late for the mask to protect against exposure. Additionally, I advised him that according to the CDC, a person could have the flu from one to seven days without showing any symptoms, but would be contagious within 24 to 48 hours after becoming infected. He again ordered me to not wear any protective masks until flu symptoms were being displayed by the passenger in front of me.

5. CBP employees at my POB were generally instructed that we were not authorized to wear protective masks unless we were within six feet of an individual who exhibited flu-like symptoms. These instructions were issued verbally at multiple musters by Chief Gonzalez, Supervisors Ernie Campbell, Frank Hoopes, Olivia Dorsey and Port Director Sanders.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: 

Dated: 05/08/2009

## AFFIDAVIT

I, Samuel Santiago, do hereby state:

1. I am employed by the U.S. Customs and Border Protection, Department of Homeland Security, in the position of Customs and Border Protection Officer. I am currently assigned to the Laredo, Texas Port of Entry, a port on the land border with Mexico.
2. My assigned duties include processing vehicles, passengers, and pedestrians inbound to the United States from Mexico to ensure compliance with, among other laws, U.S. Customs and Immigration laws. In the course of performing those duties, I regularly come in contact with members of the traveling public inbound from Mexico. The performance of my regularly assigned duties as a CBP Officer requires that I routinely maintain contact within six feet of individuals arriving from Mexico.
3. On April 28, 2009, and again on April 30, 2009, U.S. Customs and Border Protection management instructed me not to wear a protective mask and to remove the protective mask that I had been wearing.

On April 28, 2009, at around 0740 I arrived at Bridge 1, Laredo POE to begin my assigned shift (0800-0400). I inquired what preventive measures were being taken to avoid exposure to the Swine Flu, to which I was informed that face masks were available for use. I opted to wear one. A few minutes later Supervisor Esteban Morales communicated by radio that the use of face masks was not authorized. I asked to see the policy in writing, as I was led to believe that the masks were provided by the agency for safety reasons, to be used by all employees. After this incident, I went into the CBP Net website which indicated that the use of masks was to be at the employee's discretion if official duties were to be carried out at a distance of less than 6 feet of other individuals. I proceeded to pass this information on to Supervisor Morales, who forwarded it to Chief CBP Officer Adriana Arce.

On April 30, 2009, at approximately 0930, I was working on primary when Supervisor Juan Garza approached me and indicated that my presence was requested at a meeting with Chief CBP Officers Arturo Ramirez and Adriana Arce. I immediately complied, and when I reached the office, Supervisors Herminia Garcia, Jorge Ruiz, Esteban Morales, and Juan Garza were present. Two other CBP Officers, Miguel Madrano and Carlos Garcia, had also been called in to the meeting. Chief CBP Officer Arce and the other managers told me we were not authorized to use the face masks as protection against the risk of exposure to the Swine Flu, but that we could keep them within reach, in case we encountered an infected person. I requested the order in writing, to which Chief Arce replied that she would not put anything in writing. Chief Arce became very upset and said she could proceed to take disciplinary action against me.

The Chief indicated that the public was not to be alarmed, as it would create a negative economical impact, that the Swine Flu was only a virus, and there was no reason to be concerned. I responded that I was not a doctor, and had no medical training, so how was

I supposed to know when a person might be ill. I was also told to escort any person who was ill to another area, far from the rest of the traveling public. I wanted to know what that area was, or where it was, since we had not received instructions on how to properly process an ill person.

I asked if I was expected to pay medical expenses out of my own pocket if I were to become ill due to the Swine Flu, to which the managers indicated that the agency would not be responsible for any of my expenses, even though they would be directly responsible for any exposure and subsequent illnesses.

4. I desired to wear the mask because of concerns about contracting swine flu.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: Josuel Santiago

Dated: 05/08/2009

**AFFIDAVIT**

I, Monique Jacobs, do hereby state:

1. I am employed by the U.S. Bureau of Customs and Border Protection, Department of Homeland Security (hereinafter referred to as "CBP") in the position of CBP Officer. I am currently assigned to the Las Vegas Port of Entry, an airport.
2. My assigned duties include processing inbound passenger to ensure compliance with U.S. Customs and Immigration laws. In the course of performing those duties, I regularly come in contact with members of the travelling public inbound from Mexico. These contacts routinely require contact within six feet of those individuals.
3. On or about May 1, 2009, I sent an email to Chief Antonia Gonzalez, and requested that I be afforded the option of wearing a protective mask while processing passengers to protect me and my family against the H1N1 flu. I asked for a YES or NO answer to my question. What prompted my email was an incident that occurred earlier in the day, where a concern arose about whether an inbound passenger had been infected. By the time the passenger had been identified numerous CBP Officers had been physically within six feet of the passenger.
4. While on my nutrition break at 1728, I was approached by Chief Gonzalez. He requested that I turn off the television because he needed to speak with me. He stood in front of me - on the other side of the table - while Supervisor Hoopes stood behind me in front of the door. Chief Gonzalez then told me that in accordance with the directive, unless a passenger appears to be ill, I am not allowed to don a mask and that this was as close to in writing as I was going to get. I later confirmed in writing that based upon this conversation, I understood that I was being denied the right to don a mask unless I have visual signs of an ill passenger.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

M. Jacobs

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AFFIDAVIT

I, Scott Cottingham, do hereby state:

1. I am employed by the U.S. Bureau of Customs and Border Protection, Department of Homeland Security (hereinafter referred to as "CBP") in the position of CBP Officer. I am currently assigned to the Otay Mesa Port of Entry, a land border.
2. My assigned duties include processing inbound passengers, vehicles and pedestrians to ensure compliance with U.S. Customs and Immigration laws. In the course of performing those duties, I regularly come in contact with members of the travelling public inbound from Mexico. These contacts routinely require contact within six feet of those individuals.
3. On or about May 8, 2009, I was working at the Otay Mesa POE on primary and decided to wear the N-95 respirator mask. I have received the necessary training and fitting to wear the mask. I decided to wear the mask, because many of the individuals I was in contact with were coming inbound from central Mexico, where there have been many reported cases of swine flu. I was instructed to remove the N-95 respirator mask and told that I was not to return to working primary until I took the mask off.

I swear/affirm under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Signed: \_\_\_\_\_

  
Scott T. Cottingham

Dated: MAY 10 2009

Mr. LYNCH. Thank you.

Thank you both.

President Kelley, your testimony in one part I think offered a very telling visual. You were describing security, either TSA or Customs/Border Patrol folks on our side with no masks—they were refused the right to wear masks—looking across at their Mexican counterparts, the Mexican security officers on the Mexican side of the border doing the same job, and they all had masks on.

And it sort of points out the absurdity, I think, of the Department of Homeland Security's position on this that—and I have heard and seen in the testimony and the affidavits that have been submitted, a lot of the employees repeating the statement by management, DHS in this case, that we don't want to alarm the public, so we can't wear the masks. And so, they are worried about the economic impact or the perception of our folks wearing masks.

And all I can say is, I remember when I first started to travel internationally, the first time I saw security officers with heavy weaponry in—it might have been Ben Gurion Airport in Israel or Tel-Aviv or it might have been Charles DeGaulle Airport in Paris, I forget—but seeing them there with Uzis and heavy weaponry sort of got my attention because we hadn't had it here in the United States. And it was a little bit of a surprise, but now you see it everywhere, and it has become the norm. And I think that if you travel in Asia now, folks wearing these respirators is a very, very common sight.

And so the balance of interests here, clearly, falls on the side of protecting our Federal employees than worrying about what a dust mask might do to someone's impression or willingness to travel. I just think that it is a misplaced priority and that we have to get serious about protecting the people who protect our borders and our airports.

Mr. Bonner, you highlighted in your testimony as well the distinction that some of your border agents were given the right to voluntarily decide. They gave them their own discretion to wear masks, but other employees were not, that you work in conjunction with or in the same area with. Can you identify any reason that might be the case for any facts that might mitigate to that type of policy?

Mr. BONNER. I think that President Kelley touched upon it when she said it was mainly for public perception reasons. The Border Patrol by and large operates in the shadows. The only time you encounter us along the immediate border is if you are trying to enter the country illegally. We do operate traffic checkpoints on certain highways, not a large number of agents engaged in that activity. But even in those areas, we have not heard reports of agents being prohibited from wearing it. But, obviously, it is a different universe of people that you are encountering.

For example, if you are up in Oceanside, CA, most of the people that you encounter have not crossed the border. So it is a different threat level, so most agents don't feel the need to wear a mask in those situations. Now, if they were in an area right at the border, I am sure they would be viewing things a lot differently.

Mr. LYNCH. Ms. Kelley, and Mr. Bonner, I guess this is a fair question for each of you. What type of a response have you had

from these different agencies. You are both representing significant numbers of employees that are involved in this activity. What has been your experience with the response of the agencies who are responsible for this policy or absence of a policy?

Ms. KELLEY. I have received no written response from the Department of Homeland Security. I have received no written response from the Administrator of TSA. And I received a written response last night from the acting commissioner of CBP which, in my view, was a nonresponse. But, I actually have a letter that I guess intends to respond to my inquiry and my request that they make clear whether there is or is not a prohibition. I asked them to put that in writing, and they to date have not done that.

Mr. LYNCH. Mr. Bonner.

Mr. BONNER. Similarly, AFGE wrote to TSA and Homeland Security and has yet to receive a response.

Mr. LYNCH. OK. The committee is actively considering legislation. You know, it is not my first choice. I would rather have this done in a regulatory fashion by the folks that are on the ground. You know, I don't prefer legislation. It is cumbersome, takes a lot of energy, a lot of time. But I see no signals coming from these agencies that there is going to be any type of change soon.

So I discussed it with the Members who are here today. They think we need to proceed, and so do I.

What are your own thoughts on undertaking these changes legislatively instead of—I know you are a collective bargaining agent for a lot of these employees, each of you. Talk to me about the two processes, and do you think that we are at that point? With the lack of response and the lack of accountability, do we have to go this route?

Ms. KELLEY. If it has to come to that, obviously NTEU would be glad to work with the committee on whatever that it would require.

I do have to say I think it's very disappointing if it has to come to that. The first day that I became aware of this as an issue, I really believed it was just a misunderstanding or a miscommunication and that if I made a call, that of course they would make it clear that the employees could wear the mask at their discretion.

Mr. LYNCH. You would think.

Mr. KELLEY. That is what I thought. I thought this was going to be an easy one. That was on day one.

And then I started getting the finger-pointing, well we're waiting for this one to do this and that, and can you give us a little time?

And by the 4th day, I was getting a little impatient. And then I started talking to everybody that everybody was pointing the fingers at in the hopes that someone would step up and do the right thing.

And here we are, I guess about 18 days later, and no one has stepped up yet to do the right thing. And no one has even been willing to be upfront about why—you know, they say, on the one hand, even when I listened to the testimony of the earlier panel, Ms. Duke said—and I wrote this down.

First she said, and I believe I heard this right, the voluntary wearing of masks was not warranted, and that was Secretary Napolitano's decision.



Then later she said there was no Department-level prohibition against wearing the masks. Well, that is a little bit different.

And then the third one I heard was individual supervisors were allowed to make the decisions, which is—I wrote some notes here that I won't repeat to you about my thoughts about that, but I know that is absolutely false because I have talked to our members at airports across the country and TSA and at ports of entry across the country, including the southwest border and anywhere that a Mexico flight comes in, and there was one very clear oral directive given and that was "no masks are to be worn." They were toward that in musters. No one would put it in writing, and no one would take responsibility for it.

So I think it would be a shame if it has to be legislated, that someone would not just not step up and do the right thing. But if that is what it takes, NTEU will be glad to work with you to help make that happen and avoid this in the future.

I cannot believe that employees would ever be put in this position again. And from what everyone says, this will happen again, whether it's in the fall or in 2 years or 5 years, and we should not ever have to have this conversation again.

Mr. LYNCH. Mr. Bonner.

Mr. BONNER. I think we may be at that point.

After the SARS epidemic 6 years ago, the agencies were directed to come out with assessments, guidance. CDP came out with an assessment estimating that 40–50 percent of its work force would be taken out of service due to a pandemic with the proper medical response.

I would say that nearly all of the work force would be taken out of the equation with nonsensical procedures in place, waiting until it's too late.

And one of the disturbing parts of that guidance, that draft guidance, was a call for greater flexibility to discipline people for taking sick leave when they were affected by that. It was just mind numbing to see their take on how to deal with this, rather than protecting the employees and ensuring that they did not get sick, that when they were sick—I mean, one of the worst things that you can do is show up sick, because then you're going to infect your coworkers and almost guarantee that they will become ill.

Mr. LYNCH. One of the, the following panel, I'm going to ask them to address some of the medical aspects of this. But I would like you to work with us.

You've already raised a number of points, the sick leave. I understand from the testimony that I received directly to the committee, there were some workers' compensation issues where employees who came down sick with the flu, their illnesses were contested because they said they could have gotten them at home instead of inspecting 3,000 workers at the border coming in from Mexico. So, you've got these absurd cases, not to mention what it does to morale.

Mr. BONNER. And we would be, AFGE along with NTEU, would be more than happy to work with the subcommittee in drafting such legislation and moving it along.

Mr. LYNCH. I appreciate all of the work you've done, both of you, in representing your employees and the people that are on the

ground doing this. I got a lot of evidence in from your folks and from you as well, and I think you've got a good perspective of things on the ground.

So we would welcome your involvement in drafting the legislation going forward, because the silver lining on this is we may have dodged a bullet here with this experience. It was not lethal. But that doesn't mean, and the following panel I think will elucidate on this, the following strain won't be lethal. And what would happen then if we had this same nonsensical policy in place and folks started dropping out of their positions on the border, started infecting their own families and those communities? You could see this whole thing snowballing.

And, my family is very much involved in the Post Office. And I remember when they had the anthrax attacks on the Post Office, and my sisters, who both had young children at the time, were worried about, should I go into work, because if I get some of this stuff on my clothes, I will come back and infect the kids?

It's the same dynamic here. It takes a certain amount of courage under the situation, and especially, imagine if the rate of fatalities were elevated here. Now you've got folks who are Custom and Border Patrol and TSOs and ICE employees responsible for working on the border. They know there's a threat there. They know there's a likelihood that they'll be exposed and bringing that back to their families. It's tough enough to just to go and do your job, never mind trying to do it without adequate protection and without the support of your employer.

It's just disheartening given the service that these folks are rendering to their country.

And I would ask you to work with our committee, help us draft something that is tight enough to address the actual situation on the ground for especially those frontline employees. And we welcome your participation on that.

There may be some followup questions in writing from some of my colleagues who are not here. If you would, we would welcome your responses in writing as well. I want to give each of you an opportunity, if there have been aspects of this that we haven't covered during the hearing that you want to illuminate a little bit, Mr. Bonner, please feel free.

And Ms. Kelley, if you have anything.

Mr. KELLEY. I would just add that these frontline employees who we have been talking about, because of their work, really just deal with thousands of employees or thousands of travelers every day; these are professional employees who exercise judgment every minute that they are on the job. So why not respect their judgment and let them make the judgment as to whether or not they think that they should wear a mask? We have no idea how many employees would want to do that. It might not even be the majority. But if someone wants to exercise that right, why deny them?

And I do have to say, I hesitated from putting in my original testimony to not digress from the subject, which is employees' rights to wear the masks at their discretion.

But this issue of morale that you raised, Chairman Lynch, is a very, very real one for every employee, for every job, and every agency. But in the Department of Homeland Security employees

have rated them 29th out of 30 agencies from a morale perspective every year that the survey has been given. And this is the kind of thing that the employees remember. This is the kind of thing that they point to and say, what kind of an employer is this that I work for who doesn't care? They can put out all of the statements they want about caring about employees, but actions really speak louder than words, especially on issues like this.

Mr. LYNCH. Absolutely, I mean this is a perfect illustration I think in terms of whether you respect the service that the workers render and whether we're giving them the protection that they deserve. So I agree with you heartily.

Mr. Bonner, anything in conclusion?

Mr. BONNER. I think that we've pretty much covered the waterfront on what the problem is and also, unfortunately, what needs to be done. Since there appears to be a real shortage of common sense within this bureaucracy, it appears that the legislature is going to have to step in and force that. And I know that the conventional wisdom is you cannot legislate common sense, but at least we can put procedures in place to force these bureaucracies to do the right thing, not just for their employees but for the greater public good.

The greater public good is not well served if the employees who are responsible for protecting us become transmission agents for deadly diseases, spreading it not to just their own families but well beyond their own communities and facilitating a pandemic event.

So thank you very much, once again, for convening this hearing.

Mr. LYNCH. Thank you we will continue to work together. We appreciate your input, and Jill here will be the point person for the committee in drafting this legislation so you can work with her.

Thank you very much for your willingness to testify. Sorry about the long wait. But we really do appreciate your testimony. Thank you.

If we could possibly have the third panel, final panel.

Welcome. It is the custom of the committee to swear in all witnesses who are to submit testimony. Could you please raise your right hands and repeat after me?

[Witnesses sworn.]

Mr. LYNCH. Let the record show that both of the witnesses have answered in the affirmative.

I will offer a brief introduction of our witnesses, and then each will be allowed to present an opening statement of about 5 minutes in length.

Dr. Thomas F. O'Brien has been a consultant in infectious diseases for over 20 years and the medical director of the Microbiology Laboratory at Brigham and Women's Hospital. He also serves as an associate professor of medicine at the Harvard Medical School; codirector of the World Health Organization Collaborating Center for the Surveillance of Antimicrobial Resistance and vice president of the Alliance for the Prudent Use of Antibiotics [APUA].

Dr. Jeffrey Levi is the executive director of Trust for America's Health, where he leads the organization's advocacy efforts on behalf of a modernized public health system. Dr. Levi is also an associate professor at the George Washington University Department of Health Policy where his research has focused on HIV/AIDS, Medic-

aid, and integrating public health with the health care delivery system.

Welcome, gentleman.

Dr. O'Brien, I would like to give you an opportunity to offer an opening statement for 5 minutes.

**STATEMENTS OF THOMAS F. O'BRIEN, MD, VICE PRESIDENT, GLOBAL ALLIANCE FOR THE PRUDENT USE OF ANTI-BIOTICS, AND DIRECTOR MICROBIOLOGY LABORATORY, BRIGHAM AND WOMEN'S HOSPITAL, BOSTON, AND ASSOCIATE PROFESSOR OF MEDICINE, HARVARD MEDICAL SCHOOL; AND JEFFREY LEVI, PH.D., EXECUTIVE DIRECTOR, TRUST FOR AMERICA'S HEALTH, AND ASSOCIATE PROFESSOR, DEPARTMENT OF HEALTH POLICY, GEORGE WASHINGTON UNIVERSITY**

**STATEMENT OF THOMAS F. O'BRIEN, MD**

Dr. O'BRIEN. Thank you very much, Chairman Lynch and subcommittee members, for the opportunity to testify on behalf of the Alliance for the Prudent Use of Antibiotics concerning how best to protect frontline workers and the public during a crisis such as the current influenza epidemic—pandemic.

I will just say briefly, the Alliance for the Prudent Use of Antibiotics was established in 1981 as an independent public health organization with a mission of strengthening society's defenses against infectious diseases by promoting appropriate use of antibiotics and by controlling antimicrobial resistance.

And I think use of antibiotics—I was pleased to hear that, in the discussion of this, Mr. Connolly brought up the issue of agricultural use of antibiotics, which is one of the things we've tried to restrain as part of the general effort to keep strains of bacteria viruses from becoming resistant.

Based in Boston, the APUA has affiliated chapters in over 60 countries, and it is the world's largest network that is totally dedicated to education and research concerning antibiotic resistance with a goal of preserving these lifesaving drugs.

That particular interest plays into an influenza outbreak in two ways. One is that there is concern about resistance in Tamiflu, or potential for resistance in Tamiflu, or the antiviral drugs themselves, which is a concern moving forward. But another one that has to be kept in mind is that, should there be a very severe influenza outbreak with cases of viral, a lot of cases of viral pneumonia, in the past, there is evidence that the mortality of these illnesses has been greatly magnified by superimposed bacterial infections and, in particular, staphylococcal bacterial infections.

And the fact that we now have staphylococcal—multi-resistant staphylococci circulating, not just in hospitals but now, in recent years, in the community as well, would mean that the resources, the drugs available to treat such pneumonias would be diminished if antibiotic resistance increases to the point where, as in some past years with staphylococci, there have been virtually no drugs left for that treatment. So this is a particular concern of ours that relates not—hopefully not to the influenza we have had or even to

the coming influenza, but is a potential threat, added threat, to a severe influenza outbreak.

And I might say that one of the problems about viral influenza, just thinking about the discussion we've been hearing, and I think it plays into some of these questions of how we respond, one of the problems is that, of all of the contagious illnesses, there's none that is as wildcard or as unpredictable as viral influenza. Most other things, most of the other major infections, there is a way to project forward what will happen. With the influenza virus, that is, as I think has been demonstrated over and over again, is very hard to do. So that creates a level of uncertainty that we don't encounter with the other diseases.

I would say that we've been impressed by the good work that has been done by our public health agencies, both National and State public health agencies, in recent years in building up infrastructure to deal with these problems and to deal with the lack of predictability. And I think, again, in their response has become much more sophisticated, and I think the congressional support they have had in getting better funding for their programs has helped enormously in putting us way ahead.

It's helped, also—or will help, I think—the general support for biomedical education that the Congress has been very good at in recent years, will help in the broader understanding, given the capabilities, biomedical capabilities, now of nucleotide sequencing, molecular modelling and the new disciplines that are coming in, I would be willing to predict that going forward in another 10 years, that viral influenza, which will still be with us with the new threats, will be much more predictable. We will be able to pick up earlier new strains. We will be able to get a sense which way they are going. I think, by this broad biomedical research, we will enhance our ability to get out ahead of them sooner and to have a proper response or make vaccines faster and perhaps make better drugs and deploy them faster.

So I think a lot, with all of this, we don't want—I would like to point out how much infrastructure has been built, both in public health and basic bioresearch, to give us a better control of all of these issues going forward. And as you can imagine, even in the issues that have been discussed here, better predictability would help a lot.

Just on the subject, it just occurred to me on the subjects that have been discussed here about the workers protection and the voluntary masks and so on—it's not my field—but just one thing that occurred to me that might be worth mentioning is that it may be that some of Undersecretary Duke's advisors, public health epidemiologists, have a principle in mind that, in an impending epidemic, it's important to put some restraint on panic, not to allow people to be overly panicked because that diffuses resources and complicates everything.

And that may have been an element, as I say, an element and somehow it got into the area of mask wearing. And it just occurs to me that there might be a way to deal with that in the sense that it is a public relations issue, as you point out; it is a cultural issue, the understanding of what a mask-wearing is. And it could be destigmatized by careful public health—with the media, it would be

fairly easy to get the word out that masks are precautionary, are conditional, provisional, and that people encountering mask-wearing people doesn't mean that something terrible is about to happen. It's just a cultural response to a problem that people can adjust to.

And as you pointed out, we've adjusted culturally to seeing armed guards in airport security, and I think in other cultures, Asia, as the ranking member pointed out, in Asia, mask-wearing does not trigger—would not be seen as a trigger of public concern because it's kind of random and haphazard, and people do it anyway.

It just occurred to me that maybe that is a small element that could be introduced to this that might—and if it were true that some of the public health concerns were that, that might be minimized by—of paying attention a little to better cultural adaptations to mask-wearing.

[The prepared statement of Dr. O'Brien follows:]



**Testimony by the Alliance for the Prudent Use of Antibiotics (APUA)**  
 Subcommittee: Federal Workforce, Postal Service and District of Columbia  
 May 14<sup>th</sup>, 2009

**Presented by: Thomas O'Brien, MD, Vice President APUA**  
**Drafted in Collaboration with Stuart B. Levy, MD, President APUA,**  
**Kathleen Young, Executive Director APUA**

**The 2009 H1N1 Pandemic: Lessons for the Public and Federal Workforce Protection**

Thank you Congressman Lynch and Committee members, for this opportunity to testify on behalf of the Alliance for the Prudent Use of Antibiotics concerning how best to protect front-line workers and the public during a crisis such as the current influenza pandemic. Established in 1981 as an independent public health organization, APUA's mission is to strengthen society's defenses against infectious disease by promoting appropriate antimicrobial use and controlling antimicrobial resistance. Based in Boston, with affiliated chapters in over 60 countries, APUA represents the world's largest international network totally dedicated to research and education, concerning antibiotics and resistance, with the goal of preserving the power of these life saving drugs.

**Background**

Infectious disease epidemics and pandemics have occurred throughout human history. They remain the major cause of death worldwide and they will not be conquered during our lifetimes. Today our focus is on the threat of influenza pandemics, however many other infectious diseases also pose major threats to our national security (Taubenberger, & Morens, 2008). Infectious agents are subject to genetic change and evolution, spurred on by modern transport and population growth and crowding. Many of these diseases may be prevented, and new diseases will also emerge, but it is impossible to predict their individual emergence in time and place.

As of Friday May 8<sup>th</sup>, 2009, there have been 896 reported cases of H1N1 in the U.S. in 41 states and Dr. Richard Besser of the CDC, states that: "We are still on the upswing of the epidemic curve." Only about 10 percent of those infected had a travel history to Mexico, said Besser. Of the confirmed cases only about 5% have been hospitalized. Even if swine-flu symptoms are mild, the ease with which the new virus can spread among a world population with no natural immunity makes it a threat (Randall, 2009). The public health investments of Congress over the past ten years have paid off in the latest round on H1N1 Flu, and these need to be expanded. Dr. Richard Besser of the CDC and Dr. Alfred DeMaria, in the Massachusetts Department of Public Health are examples of public health servants who have performed brilliantly as scientists and communicators to identify and mitigate these disease episodes.

**The 1918 Influenza Pandemics**

The 1918 influenza A pandemic claimed more than 50 million lives worldwide in less than a year and is considered one of the worst disasters in history. Approximately one in four people in the U.S. became ill and 500,000 died. The unusually high fatality rate among previously healthy young adults meant the loss of a disproportionate number of society's most productive members. The elderly, the very young, and those with chronic disease are most at risk of death from the viral infection itself or from complications resulting from secondary bacterial pneumonia. Two to three percent of those who fell ill during the 1918 flu died, compared to .10 percent for other influenza pandemics. (Taubenberger & Morens, 2006)

This first wave of the 1918 influenza spread rapidly, circling the globe in less than five months. The disease resurfaced in a more virulent form in the United States in August of 1918, causing large

numbers of deaths in many U.S. cities as it spread from the East Coast to California. Health authorities reacted by requiring citizens to wear masks in public places and by taking other steps that were presumed to prevent the spread of disease. Many of these efforts were not put in place, however, until the worst of the epidemic had passed.

Some characteristics of the 1918 pandemic appear unique: most notably, death rates were 5–20 times higher than expected. Clinically and pathologically, these high death rates appear to be the result of several factors, including a higher proportion of severe secondary bacterial infections of the respiratory tract, rather than involvement of organ systems outside the normal range of the influenza virus. Also, in 1918, three separate recurrences of influenza followed each other with unusual rapidity, resulting in 3 explosive pandemic waves within a year's time.

#### **The History of Selected H1N1 Viruses:**

Sequence and phylogenetic analysis of the completed 1918 influenza virus genes shows them to be the most avian-like among the mammalian-adapted viruses. This finding supports the hypotheses that pandemic virus contains genes derived from the avian-like influenza virus strains and that the 1918 virus is the common ancestor of human and classical swine H1N1 flu viruses. This information will help to elucidate how pandemic influenza virus strains emerge and what genetic features contribute to virulence in humans. (Taubenberger, JK 2006)

All influenza A pandemics since then have been caused by the descendants of the 1918 virus, including H1N1 virus. (Taubenberger, & Morrens, 2006). Since 1977, H1N1 viruses have circulated globally to produce seasonal epidemics, causing approximately 36,000 US deaths annually. It is unclear, however, whether continuing co-circulation, coupled with an increase in influenza vaccines will increase or decrease pandemic risk or influence the subtype of the next pandemic virus (Taubenberger, et al 2007).

The core work of APUA to control emergence of antibiotic resistance is given a special relevance to this danger by recent evidence that secondary bacterial infection was a major contributor to the 1918 influenza death rate and also by recent changes in methicillin-resistant *Staphylococcus aureus* (MRSA). MRSA has spread widely in the community in recent years and on multiple occasions has acquired resistance to vancomycin, the powerful drug that has been relied on for treating it. MRSA will thus be a very likely major contributor to the mortality of future influenza infections, and preventing its further acquisition of antibiotic resistances is necessary to keep those infections from becoming untreatable.

#### **The Ecology of Infectious Diseases: Bacterial Transfer between Humans and Animals**

Ecology, the study of how living organisms interact with other species and their environment, is a relatively new scientific enterprise which holds keys to understanding infectious diseases. (Summers, 2002) The continuous exchange of bacteria between humans and their environment and exchange among the genetic elements of these bacteria means that imposition of selection on any microbial ecosystem will result in proliferation of highly resistant bacteria (Summers, 2002).

Discovering new antibiotics will buy us time, but the same ancient molecular mechanisms will ensure their eventual loss of efficacy as well. Therefore it is critical that all sectors that use antibiotics—human medical, veterinary, and horticultural—need to cooperate in devising novel methods to stop unnecessary use of these agents and to minimize proliferation of resistant bacteria while meeting their respective therapeutic needs. The simple ecological principle is that everything is connected to everything else (McEwen, & Fedorka-Cray 2002). After all the 2009 H1N1 flu virus is a mix of swine, human, and avian flu, which originated in swine. Since it has mutated to be transmissible from human to human, contact with swine is no longer the primary concern.



Food animals in the United States are often exposed to antimicrobials to treat and prevent infectious disease or to promote growth. Many of these antimicrobials are identical to, or closely resemble, drugs used in humans. Precise figures for the quantity of antimicrobials used in animals are not publicly available in the United States, and estimates vary widely. Transfer of resistance genes and bacteria among animals and animal products and the environment is prolific. Factory farms are an ideal environment for bacterial gene exchange. To slow the development of resistance, some countries have restricted antimicrobial use in feed, and some groups advocate similar measures in the United States. Alternatives to growth promoting and prophylactic uses of antimicrobials in agriculture include improved management practices, wider use of vaccines, and introduction of probiotics. The EU is far more proactive in instituting protections such as monitoring programs, prudent use guidelines, educational campaigns, and a ban on use of critically important human antibiotics for animal growth promotion (McEwen, & Fedorka-Cray 2002).

**Public Health Protections Worth the Investments**

While the bad news is the omnipresence of infectious disease, the good news is the well-known prevention and control measures which are available for Congress to support in order to protect federal workers and the public from infectious disease epidemics. Due to the complexity of infectious diseases and the problems of drug resistance, infection prevention is by far the preferable intervention (Salyers, & Whitt, 2005).

- a. **Surveillance:** Surveillance is the foundation of the public health system and disease prevention and control efforts. A good public health surveillance system requires local laboratory infrastructure to recognize new or emerging infectious diseases, and to track the prevalence of more established ones. Any disease that is not on CDC's current list of notifiable illnesses may go undetected or may be detected only after a severe outbreak. We live in a global village where bacteria and viruses know no boundaries. Thus it is necessary to link U.S. domestic and international public surveillance efforts and other surveillance programs such as APUA's international commensal resistance tracking program for U.S. AMRIID and the WHONET program of resistance surveillance at hospitals worldwide. Surveillance combined with genomic sequencing of large numbers of animal influenza viruses will help us understand the genetic basis of host adaptation and the extent of the natural reservoirs of influenza viruses. (Taubenberger, & Morens, 2006)
- b. **Basic Research:** Understanding infectious diseases require multidisciplinary research over extended periods of time. Genetic analysis and bioinformatics, while expensive, allow acceleration of research findings critical to public health. Many basic questions remain about how to live with and battle microbes. The dramatic increase in funding for HIV research over the last two decades has proven to produce good results, while other disease states, like resistant bacterial diseases, are still under-funded and less understood. The expansion of National Institutes of Health-supported research in such areas is fundamental to our understanding of the microbial world. The Department of Defense infectious disease programs and laboratories, such as the AMRIID project and NBACC, should also continue to receive priority support.
- c. **Vaccines:** Vaccines are helpful, but they should not be viewed as the entire solution for defeating emerging microbial threats to health. Because viruses continue to mutate, they tend to stay one step ahead of the vaccine. The potential value of vaccination and the speed with which vaccines can be developed depend on many factors, such as the existing scientific knowledge of the agent (or a similar organism), its molecular biology, rate of transmission, pathogenesis, how the human immune system responds to natural infection, and the nature of protective immunity. Economic factors may also impede vaccine development, which requires an extensive, up-front investment in research.

- d. Sanitation: Clean water supplies, personal hygiene, and safe food handling are now fundamental public health practices in the U.S. that can protect us from infectious diseases.
- e. Hygiene and Antiseptics: Washing hands and surfaces with ordinary soap and water is a surprisingly effective way to remove germs and clean surfaces. Alcohol and common household bleach are also good old-fashioned stand-bys and have not been shown to prompt resistance. One of the greatest advances in human health during the past century was the discovery that our natural defenses could be augmented with externally provided chemical defenses: antiseptics and disinfectants. In almost all cases, antiseptics and disinfectants are benevolent agents that, when properly used, make an enormous contribution to protecting people, especially those facing surgery (Salyers, & Whitt, 2005). Resistance to antiseptics and disinfectants is still poorly understood, but does occur. Already, antiseptics are being used as an important part of the strategy for combating methicillin-resistant *Staphylococcus aureus* strains. Overuse and abuse of antiseptics and disinfectants could reduce effectiveness of key antiseptics and disinfectants and potentially of antibiotics. (Salyers, & Whitt, 2005)
- f. Antimicrobial Treatments: Antimicrobial is the name for a chemical that either kills or prevents the growth of microbes such as bacteria, viruses, fungi or protozoa. Different microbes require different types of antimicrobials for treatment—for example, antibiotics for bacteria, antivirals for viruses.

Antivirals: Some viral infections can be successfully controlled with currently available antiviral drugs. Unfortunately, as has been the case for antibiotics, resistance to antiviral drugs has been reported. Ultimately, control of the viral infection relies on the individual's immune response. Individuals who are immunocompromised, with chronic or recurrent viral infections, often develop drug-resistant viruses. Because resistance to antiviral drugs appear to occur quite rapidly in such individuals, appropriate use and availability of drugs with alternative mechanisms of action are important. Sufficient data are not yet available, however, to recommend limitations on the use of antiviral drugs (Salyers, & Whitt, 2005). In terms of resistance however, clearly prudent use of these therapeutics means using them only for viral infections and making sure the dose and length of treatment is as recommended. Inadequate dosing helps develop antiviral resistance. As with antibiotics, these agents should not be misused, stockpiled or demanded from physicians. A single individual's error leading to the emergence of resistance can be devastating to a whole community. The influenza threat is a moving target. Scientists who develop antiviral compounds face a daunting challenge. There are only a few known targets that can be hit by antiviral compounds. In HIV treatment, resistance to AZT and to protease inhibitors has already appeared (Salyers, & Whitt, 2005).

Antibiotics for Bacterial Diseases: Antibiotics are antibacterial compounds that are effective against bacteria but have no efficacy against viruses. Thus we should not take antibiotics for the common cold or to treat an influenza virus. Antibiotics are highly effective however against bacterial infections such as pneumonia. In the 1918 Great Flu Epidemic more people died from secondary bacterial infections (pneumonia) than from the flu virus. The usefulness of antimicrobial drugs can be ensured only if they are used carefully and responsibly. To ensure the availability and usefulness of antimicrobials and to prevent the emergence of resistance, demands careful use. Resistant infections cost 10 to 100 times more to treat compared to non-resistant infections. Thus any investments, which will improve antibiotic use and preserve the power of existing

drugs is a good one. APUA recommends that clinicians, the research and development community and the U.S. government introduce protective measures i.e. the education of health care personnel, veterinarians, and users in the agricultural sector and the general public regarding the importance of rational use of antimicrobials.

Conclusions: The H1N1 virus outbreak of April and May 2009 clearly illustrates the value of an effective U.S. public health infrastructure and the need for coordination with other disease surveillance programs around the world. This outbreak also underscores the dangers of drug resistance, which could leave US citizens defenseless against death-causing microbes. Influenza viruses develop resistance quickly and overuse of Tamiflu or any antimicrobial will hasten drug resistance. We are concerned that if the virus mutates and becomes resistant to all antivirals, the US could be left extremely vulnerable during a subsequent wave. While there is a lot of bad news out there right now, there is also the good news to report. First, Congress has had good payoff from its ten year build up of our public health infrastructure. The U.S. leaders in place have proven highly effective in this test run of our pandemic response. Sanitation is a cost effective intervention and there are simple messages and methods to make this intervention work at home, on the job and in all public areas. Public awareness of the need for prudent use of antimicrobials, antiseptics, and vaccines will help to minimize antimicrobial resistance. Basic research regarding antibiotic treatment, diagnostics, and vaccines is informing our interventions but needs to be expanded. Finally, the STAAR Act introduced by Representative Jim Matheson (D-VT) provides an opportunity for Congress to take leadership in advancing APUA's mission to "preserve the power of antibiotics." Thank you and the federal agencies here today for their dedication and attention.

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### **H1N1 Pandemic Flu**

If the H1N1 pandemic flu follows the pattern of the 1918 Great Pandemic it could come back with more vigor in a second wave next fall. In 1918, three separate recurrences of influenza followed each other with unusual rapidity, resulting in 3 explosive pandemic waves within a year's time. Dr. Thomas O'Brien, Vice President of the Alliance for the Prudent Use of Antibiotics and Microbiology Lab Director at Brigham and Women's Hospital stated this concern on May 14th before a Congressional Subcommittee, chaired by Congressman Stephen Lynch from the 9<sup>th</sup> district of Massachusetts.

Congressman Lynch called the hearing to consider how to protect federal workers who are first responders during flu epidemics. "I want to be sure we have good procedures in place to ensure the safety of federal workers and the public at large." Congressman Lynch has initiated other Congressional public health investigations.

The core work of APUA is given a special relevance to this danger by recent evidence that secondary bacterial infection was a major contributor to the 1918 influenza death rate and by recent changes in methicillin-resistant *Staphylococcus aureus* (MRSA). Because of overuse of related antibiotics, MRSA has spread widely in the community in recent years and on multiple occasions has acquired resistance to vancomycin, the drug that has been relied on for treating it. "MRSA will thus be a very likely major contributor to the mortality of future influenza infections, and preventing its further acquisition of antibiotic resistances is necessary to keep those infections from becoming untreatable," according to Dr. O'Brien of APUA.

The best defense is to ensure funding for strong state and federal public health programs, said Dr. O'Brien. He complimented Dr. Richard Besser, acting Director of the CDC and Dr. Alfred DeMaria, Director of Communicable Disease Control of the Massachusetts Department of Public Health for their epidemiology investigations and effective communications during the influenza outbreak in April and May. He emphasized the importance of disease tracking programs and the need for simple but critical everyday hygiene measures such as vigorous hand washing with soap and water or alcohol gels for all citizens. For surface disinfection APUA recommends soap and water or use of bleach and alcohol antiseptics rather than those that contain antibacterial agents such as triclosan that could select for antibiotic resistance. Emphasis for front-line workers and the general public should be on the proven protections of good hygiene and hand washing and not on an unproven need for facemasks. Facemasks are currently only recommended for healthcare professionals with prolonged exposure to patients diagnosed with H1N1.

Dr. O'Brien cautioned against unnecessary or over use of antibiotics and antivirals, such over use leave us without effective antiviral or antibiotic drugs when the need is greatest.

APUA is an international public health organization based in Boston with chapters in 61 countries; Dr. Stuart B. Levy is President of APUA and a Professor at Tufts Medical School. APUA's mission is to control drug resistance and preserve the power of antibiotics, through research and education worldwide. For more information please visit our website at [www.APUA.org](http://www.APUA.org)

Mr. LYNCH. Thank you.  
Mr. Levi.

**STATEMENT OF JEFFREY LEVI, PH.D.**

Mr. LEVI. Thank you, Mr. Chairman, and thank you for holding this hearing.

I want to depart a little bit from my prepared remarks just to address some of the specific questions around public health guidance around mask wearing.

I think it's really important in the context of a public health emergency for all agencies of the Federal Government, including the Department of Homeland Security, to consistently and clearly follow CDC and OSHA guidelines for their employees, both because it's the right thing to do and because it's a model for other employers.

It's unfortunate that, because of all of the voting, that there wasn't an opportunity for the CDC, I think, to explain in more detail the rationale and the science behind their guidelines, which, as I understand it, do not currently call for the routine use of N-95 respirators. And so it's not clear that the Department of Homeland Security was violating what is current public health guidance.

And I think there are opportunities in this situation to pass legislation that could better protect Federal workers, and actually, all workers. But I think we need to take care in drafting such legislation so that the policy that is legislated is both based on the science and flexible enough that we don't box ourselves in as the science evolves.

Our understanding, for example, of what are appropriate precautions in the context of an influenza epidemic has been changing over time in part because of the investment in research that has been occurring over the last several years.

It would be unfortunate if we mandated certain types of approaches to disease control in legislation that may be outstripped by improvements in our understanding in the science.

So I hope that we can find a balance here between making sure we're doing everything we can to protect workers without substituting, I think, for—or restricting ourselves to current understanding of the science as science may be evolving.

And I think that, to me, brings me to a series of questions that we posed in our testimony today that addresses broader questions, including but beyond the use of N-95 masks, and I would like to very briefly put some of those questions on the table.

The first and probably most basic is, have the Federal agencies updated and reviewed their strategic plan, their implementation strategies associated with the National Strategic Plan? The current Office of Personnel Management guidelines, which covers the entire Federal Government, including DHS, has not been updated since 2006. And a lot has happened since 2006 in terms of the guidance that CDC has put out, that OSHA has put out, and those should be incorporated into the OPM policies.

And in fact, you know, it's not just the DHS workers that we need to be concerned about. There is a wide range of Federal employees who are consistently at risk, including those who are work-

ing in health care facilities, who are at the greatest risk, whom we need to make sure are being protected.

For critical employees, I think that we clearly need to know, in addition to the issue of N-95 masks, what other workplace changes can be made to promote social distancing. But also we need to think about the CDC recommendations around stockpiling of antivirals. CDC recommends not just that agencies, that employers, stockpile antivirals for treatment but also for prophylaxis, so employees who are going to be routinely exposed to the virus, which could include some of the agency employees but certainly health care workers, that the employers stockpile sufficient drugs for prophylaxis.

To the best of my knowledge, we do not have—the individual agencies have not done that yet, except in some rare occasions. And the Strategic National Stockpile has no courses in its supply for that kind of prophylaxis. So that would be an opportunity to address legislatively or through the appropriation's process.

Similarly, if we move toward broader use of masks, whether it's N-95 or a face masks, again have agencies stockpile that? There is a tremendous production capacity problem, and if we are going to move toward use of these, and there may be a point in the context of a pandemic where we would want workers to routinely wear N-95 masks or surgical masks, we don't have enough in the stockpile to make that happen. So the guidelines will be meaningless if the Federal Government hasn't taken steps to make sure we have those things available.

I think the last point that I would want to make is broadly speaking around sick leave. For health care workers—and I would say health care workers means people who are working in VA and DOD hospitals, in prison hospitals, or investigators working for CDC, but also those people that we ask to volunteer in the context of the pandemic and the various medical and volunteer corps who come forward, we need to make sure that we are providing them with adequate protection and that when people do become sick in the context of their work, because they have placed themselves at risk, that they are not using up their sick leave but that the Federal Government is making sure that they are continued to be paid, and in fact, the copayments associated with their care or through their Federal insurance will also be covered.

That is a broader issue around sick leave, in terms of even following CDC guidelines to stay home if someone in your household is sick. We need a lot of flexibility from OPM. We need it broadly from other Federal employers, employees—from other employees in the private sector as well.

Those are areas that I think could together become a comprehensive package that would make, I think, very useful legislation in assuring, in a broad sense, we're protecting Federal workers in the context of a pandemic or some other kind of public health emergency.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Levi follows.]

Testimony of Jeffrey Levi, PhD  
Executive Director  
Trust for America's Health

Before the Subcommittee on Federal Workforce, Postal Service  
and the District of Columbia  
Committee on Oversight and Government Reform

Thursday, May 14, 2009

Chairman Lynch, Ranking Member Chaffetz and members of the subcommittee, thank you for the opportunity to testify before you today to discuss protection of front-line federal workers during a public health emergency.

I am Dr. Jeffrey Levi, Executive Director of Trust for America's Health (TFAH). TFAH is a non-profit, non-partisan organization dedicated to saving lives by protecting the health of every community and working to make disease prevention a national priority.

The recent outbreak of the 2009 H1N1 influenza virus is an important wake up call for the nation, a clear reminder that influenza pandemics can happen -- that novel flu viruses do emerge and can threaten the nation's and the world's health. While so far not as virulent as some prior pandemic viruses, we are not yet out of the woods -- the virus has not finished playing out this season and there is a very real danger that it could return in a far more virulent form in the fall. In the meantime, scientists continue to be worried about the threat posed by the H5N1 avian flu virus.

The fact that this H1N1 outbreak originated in Mexico and moved rapidly to the United States is a reminder that we really must have detailed plans in place regarding the national response -- including how we protect federal workers -- *prior* to the emergence of a novel strain of flu. The National Strategy for Pandemic Influenza and Implementation Plan, issued in 2005 and 2006 respectively, make the assumption that we will have weeks or possibly months before a novel virus arrives in the U.S. In a globalized economy, where international travel is commonplace, that is not likely.

Mr. Chairman, I commend you for your concern about how we best protect our front-line federal workforce during a pandemic. TFAH maintains that the working definition of front-line workers should be relatively broad. Though different workers, depending on their duties, may require different levels of protection, we must keep in mind that the American people will and should expect continuity of operations in agencies across the federal government. Thus, we are not just talking about federal health care workers who will be providing direct services to the sick, but also those workers who provide police protection, staff our prisons, help keep the economy functioning -- including payment of Social Security and other federal financial benefits -- and countless other tasks that are critical to the smooth functioning of our society. A severe pandemic will be disruptive of

most aspects of our economy, but the federal government has a particular obligation to play a role in reducing those disruptions.

As a large employer, the federal government needs to be a role model for other public and private sector employers: Visible in its preparations, transparent in its approach to worker protection, and consistent with the policy recommendations of federal public health agencies, in particular the Centers for Disease Control and Prevention (CDC).

TFAH does not have the resources to systematically review the plans and policies of all federal agencies. However, based on our review of CDC and Occupational Safety and Health Administration (OSHA) recommendations and some familiarity with the National Strategy on Pandemic Influenza and policies being pursued in the private sector and in other countries around the world, we can recommend some critical areas of focus that we would urge this Committee to investigate:

1. How recently has each federal agency updated and reviewed its continuity of operations plans since the original 2006 mandate to create such plans? For example, the Office of Personnel Management pandemic strategy has not been updated since 2006.
2. Have the agencies been transparent with their customers and constituencies about what services will and won't be continued during a pandemic?
3. For those critical employees outside the health care delivery field who will be expected to work during a pandemic<sup>1</sup>:
  - a. What structural changes in the workplace will be made to promote social distancing (e.g., requiring more physical space between workers, teleconferencing)?
  - b. Is there a sufficient stockpile of antivirals available for those workers? This requires sufficient antivirals to provide *prophylaxis* against the virus until a vaccine is available. Each federal agency has been told to create

<sup>1</sup> In 2008, HHS released three interim and final guidance documents regarding preparation for pandemic influenza: *Interim Guidance on the Use and Purchase of Facemasks and Respirators by Individuals and Families for Pandemic Influenza Preparedness*; *Considerations for Antiviral Drug Stockpiling by Employers in Preparation for an Influenza Pandemic*; and *Guidance on Antiviral Drug Use during an Influenza Pandemic*. Through its *Proposed Guidance on Workplace Stockpiling of Respirators and Facemasks for Pandemic Influenza* (May 2008), OSHA urged companies to review their business structures and consider stockpiling personal protective equipment for employees at high risk of exposure. These are not requirements, but recommendations for businesses and individuals to consider. Guidances are available here: *Use of Facemasks by Individuals* (interim): <http://aspe.hhs.gov/panflu/facemasks.html>; *Considerations for Antivirals* (final): [http://www.pandemicflu.gov/vaccine/antiviral\\_employers.html](http://www.pandemicflu.gov/vaccine/antiviral_employers.html); *Guidance on Antiviral Drug Use* (final): [http://www.pandemicflu.gov/vaccine/antiviral\\_use.html](http://www.pandemicflu.gov/vaccine/antiviral_use.html); *Proposed Guidance on Respirators*: <http://www.osha.gov/dsg/guidance/stockpiling-facemasks-respirators.html>.



such a stockpile; it is our understanding that some critical agencies have not done so yet. The antivirals held in the federal Strategic National Stockpile (SNS) are meant for treatment only, not prophylaxis. Yet the CDC has recommended that employers create stockpiles for prophylaxis of front-line works. As an employer, the U.S. government should heed this advice.

- c. Have agencies stockpiled personal protective equipment, such as N-95 respirators, for their frontline workers? We have no evidence that agencies have begun to do so. The SNS has a stockpile of respirators, but it is woefully short of any demand that might be associated with a severe pandemic. It is also our understanding that the respirator manufacturers are not producing at full capacity at the moment because of the recession, so rapid replacement of any respirators taken from the SNS might be difficult.
4. For those on the frontlines of the health care delivery system -- such as those in the Public Health Service Commissioned Corps who will be called up for service, those who work in the Department of Veterans Affairs (VA) and Department of Defense (DOD) hospitals, those disease investigators working for CDC and other agencies and even postal workers who may be asked to deliver countermeasures during an emergency -- particular attention must be paid to their safety as their risk may be significantly higher than ordinary Americans. We should assure that appropriate protection is in place not just at federal facilities such as VA, DOD or Bureau of Prisons hospitals and clinics, but also federally-funded settings such as community health centers, which will be at the frontlines of the response to an initial wave of influenza. The key issues for worker protection are similar to those for the general workforce, but the risk is higher and the scope of need may well be broader:
- a. Have antivirals been stockpiled for prophylaxis for healthcare workers? Have antivirals been stockpiled for families of workers, since those families have a higher risk of exposure and assuring such protection to families may be critical to assuring that healthcare workers are willing to risk coming to work?
  - b. Have healthcare facilities stockpiled sufficient personal protective equipment? Have workers been adequately trained and fit-tested for the use of N-95 respirators?
  - c. Are systems in place at health care facilities to minimize cross-contamination between those caring for (or receiving care for) influenza and other conditions that may require use of a health care facility?
  - d. As agencies consider who will require protection, careful consideration should be given to the protection needs of the many volunteers from our various stand-by medical and volunteer corps as well. Once they join a response to a federally declared emergency, we have a responsibility to be offering them the same level of protection as federal workers.
  - e. As frontline workers are at higher risk due to their participation in the pandemic response, federal emergency leave policies should also protect

workers who contract a disease such as pandemic flu as a result of his/her employment (e.g., hospital workers exposed to sick patients). Contracting influenza in the line of duty should not cost people their personal sick leave, and the federal government should cover all co-pays and deductibles for health care associated with an occupationally acquired infection.

5. Finally, we must also be sure that the federal government's leave policies consistently support compliance with CDC's public health recommendations regarding mitigation of disease transmission in the absence of a vaccine. This includes:
- a. Sufficient sick leave to comply with CDC recommendations to stay home while sick and immediately after recovery (since one can shed virus while no longer being symptomatic). At the beginning of this H1N1 outbreak, CDC was recommending that people stay home from work for two weeks. For those who have insufficient sick leave accrued, OPM should provide assurances that in a public health emergency additional sick leave will be available so there are no financial incentives to disregard public health advice. The current OPM pandemic plan, last updated in 2006 which is prior to release of these CDC recommendations, provides for flexibility in use of earned sick leave and allows advance use of leave for the given year, but no additional leave is provided.<sup>2</sup>
  - b. Sufficient sick or personal leave to assure compliance with recommendations regarding quarantine of households. CDC has recommendations in place that, under certain circumstances, would call on entire households of individuals with the flu to stay home as well for two weeks. OPM should assure those individuals in these situations that they will have paid leave to comply.
  - c. If schools and day care centers are ordered closed during a pandemic, OPM should also assure (a) that day care centers available to federal workers are in compliance and (b) that flexibility in use of leave is assured for parents needing to care for children home from school or day care.

Mr. Chairman, this is a rather comprehensive list of activities and policies that need to be in place to adequately protect its employees. Although the media attention is dying down and Americans are already showing signs of "flu fatigue," I urge Congress and the public to stay alert as to the seriousness of this threat. In the last few major flu pandemics, infections have come in waves, with a break of a few months in between outbreaks. We are entering summer now, and the public is likely to think the threat is gone and its government overreacted. If this or another virus comes back in a more virulent strain, the cooperation of workers and businesses will be critical to mitigating the medical, social, and economic effects of an outbreak.

I thank you for the opportunity to testify today and look forward to your questions.

<sup>2</sup> [http://www.opm.gov/pandemic/OPM-Pandemic\\_AllIssuances.pdf](http://www.opm.gov/pandemic/OPM-Pandemic_AllIssuances.pdf)

Mr. LYNCH. No, Thank you.

Thank you both.

I would want to note that I agree, the CDC analysis would be helpful. We've received some of that in testimony, quite a bit, in fact. But it seems, despite their analysis, there was a decision by Department of Homeland Security to allow some employees in the face of that analysis to wear the masks and deny 50,000 other employees the right to use the same masks. So they interpreted it, and then they took two different responses, which was very difficult to explain.

Mr. LEVI. From a public health standpoint, the most important thing to do in a crisis like this is to be consistent. So either be very consistent in adhering to the CDC guidelines, or if you're changing it, then change it consistently across the Departments.

Mr. LYNCH. Right.

One of the other questions I had was there seems to be a policy on the part of DHS and Customs and Border Patrol as well as the Transportation Security Agency to have employees act as sort of an inactive surveillance. They are not being given gloves. They are not being given sanitizer. They are not being given masks, either N-95 or dust masks. And yet they are being asked to conduct passive surveillance of passengers and people crossing the border.

From your standpoint, is there wisdom in that? I know they have this 6-foot rule here somewhat. Is that a real distinction? I'm not sure if it's—

Mr. LEVI. It is not clear to me—Dr. O'Brien may be better able to answer—whether in the context of passive surveillance, what level of risk there is of whether you actually need to wear gloves at a time like that. I think, clearly, for lots of reasons that have nothing to do with flu, if workers want to wear gloves or certainly having hand sanitizer available is something that is very prudent under any circumstances.

Mr. LYNCH. These folks are also being asked to wand these people, check these people—they are in close physical contact with these people as well, but they are also being asked to do this sort of analysis.

Dr. O'BRIEN. I'm not quite sure that I understand what the passive surveillance is. They are not being asked to test the level of infectivity by getting it themselves, I hope. But I don't think that is the issue.

I think, just backing up a little bit, that the problem again is— or a huge element is the unpredictability. If it's a mild disease and very low level, it's sort of always present. Or it comes every year, and there are a lot of fatalities every year from viral influenza, and it happens over various period of time. There is almost no uniform level of protection for that. It's too random.

On the other hand, in a very serious, focused, short-term, highly lethal type of influenza, you'd want to use everything possibly that you could. As, for example, was done with SARS and was effective in SARS. And SARS, it was contained at a time when really I think the expectation was that it could not be contained.

So there is a range of appropriate responses that CDC and guidelines are trying to adjust to. And one of the problems is the nimbleness with which you can adjust. And I'm thinking that

maybe the technology is at hand to adjust these more quickly as circumstances change. And I can't translate that into what it means day to day for who uses what, but I think that kind of the general problem that is being dealt with here is trying to get the right degree of alertness for this week's risk.

Mr. LEVI. And I think to take it totally out of this context, we saw in the CDC's evolving guidance surrounding school closures, that at the beginning of the outbreak, there was very serious concern because we didn't know how lethal this was going to be. And as we learned more and had more experience and recognized that kind of approach was probably not going to be effective in containing the spread, and combined with the fact that the virus turned out in this stage not to be as lethal, that CDC backed off from that recommendation, and schools are remaining open.

And I think that is part of the flexibility that we need to be able to build into whatever policy approach is ultimately made. We need to be consistent across Federal Government at each stage, but the answer or the approach that you take at the beginning of the outbreak may not be the one that you would want to consistently maintain throughout the outbreak.

Mr. LYNCH. Let me ask you, Dr. O'Brien, in your testimony, you state that, "it's necessary to link the U.S. domestic and the international public surveillance efforts." What does it say or what type of assessment would you give this recent experience? It seemed that it took maybe a month between the time at which the H1N1 epidemic was identified in Mexico, Mexico City, and the time at which we, as a government, asked our public health agencies to get involved, to engage. There was, I would say, about a month's passage of time there.

You talked about the need for coordination here because this is obviously global. How would you grade our response, at least in this most recent iteration of flu?

Dr. O'BRIEN. I have to say, first of all, that I wasn't really focused on the time line as very carefully. That wasn't my major concern. But I had the impression that the response was really quite good and quite prompt; that from the time it could first be identified that this was a new virus, which is critical thing, and second, it was one to which we don't have immunity. It's enough different from the previous influenza viruses so we don't immunity, and that there were multiple cases turning up. And the early testimony—the early evidence from Mexico actually overestimated the virulence of this—that by the time that came in over a week or two, it struck me that CDC was very alert, and Richard Besser, as pointed out, I think maybe being concerned that they had overreacted, had said you have to do this, you have to move very quickly. You only have one chance to get ahead of these things. You have to overreact.

And I think WHO, again, sensitized—I mean, they have had some training in recent years. The general director of WHO was in China when SARS broke out, and the Chinese response to that was really very good, and also I think was responsible—was in Hong Kong and was the responsible officer for the original, dealing with the flocks of chickens with the avian influenza. They went to top level alert, as I recall, almost as soon as they could.

So I think, whether it's ideal or not, national and global response, was better than it has been previously; Was quicker and more alert than it has been previously.

Mr. LYNCH. Let me ask you on this point, each of you.

On the one hand, you had CDC and DHS saying it was not medically necessary to use masks. On the other hand, you had the World Health Organization going to level 5, one level short of pandemic. It seems to me there is some inconsistency there. Is that because I'm naive and not understanding that?

Mr. LEVI. That is a really good point and one of the two lessons from this experience in terms of pandemic levels. One is the U.S.'s plan tracks WHO levels but actually doesn't start gearing up on its plan until we reach WHO level 6, which is not to say that lots of stuff wasn't put in place. I would agree with Dr. O'Brien that the public health response was phenomenal in the situation, because the U.S. plan assumes that the initial outbreak will be somewhere far away from the United States, and that didn't turn out to be the case. So lots of triggers would not have been pulled if people had followed the U.S. plan originally.

The problem with the WHO stages is it does not make a distinction whether something is virulent or not virulent. So something can be pandemic, meaning it's a novel virus and it's worldwide, and not be terribly lethal and not be any worse than a seasonal flu, which may, at least so far is not the case; it may change but is certainly not the case now.

We need in those stages to be able to distinguish, which is not to say that you don't want to raise your awareness, it doesn't mean you don't want to raise your response, but I think there's a communications problem there that when you reach level 5, we're one step away from a full-blown pandemic, that we need to be able to distinguish when it is virulent or not virulent because I think that creates a very different kind of public response and a different kind of policy response.

Mr. LYNCH. Dr. O'Brien.

Dr. O'BRIEN. I was going to say that Chairman Lynch made a very good point that has other implications about the mismatch between the high level response and low level. Because the high level response, the CDC, the World Health—the highest levels of response were so quick this time, it may have made it clearer and this, what we've heard about today, may have made it clearer, that once you have that understanding, that alertness triggered, the cascade of ramifications at all levels of society is enormously complex in terms of what are you going to do about school closures and what does that mean about the school budget and today's subject is a perfectly good example of that. As you've pointed out, there has never been an influenza pandemic for almost a century now. There's never been one that has started close to the United States before.

So that is new. So the need for this country to be involved instantly almost in all of these levels points out that people have to start thinking about a master plan, about all of the details. I mean, this isn't my field, and I am really not an authority on what has been done on this.

But just from what I've heard, it sounds as though there needs to be attention to, as you draw out a chart of all of this, what happens at what level and how quickly and who decides what are all of the options. It strikes me there may be room there for more systemization.

Mr. LYNCH. I agree.

On behalf of Mr. Connolly and also the ranking member, they indicated that they may want to submit questions to you in writing. And then, obviously, you would be given a reasonable period within which to respond in writing as well. But in their absence, I just want to thank you for your willingness to come before the committee, offer very thoughtful testimony.

We appreciate your patience while we have had all of these votes across the way. But thank you very, very much for your willingness to testify, and we really appreciate the work that you've done on this.

Thank you.

[Whereupon, at 5:26 p.m., the subcommittee was adjourned.]

