

**EXAMINING DHS'S MANAGEMENT OF TRUSTED
TRAVELER PROGRAMS**

HEARING

BEFORE THE

**SUBCOMMITTEE ON
BORDER SECURITY, FACILITATION,
AND OPERATIONS**

OF THE

**COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES**

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EXAMINING DHS'S MANAGEMENT OF TRUSTED TRAVELER PROGRAMS

Wednesday, September 30, 2020

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER SECURITY,
FACILITATION, AND OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 310, Cannon House Office Building, and via Webex, Hon. Kathleen M. Rice [Chairwoman of the subcommittee] presiding.

Present: Representatives Rice, Correa, Torres Small, Clarke, Higgins, Lesko, and Guest.

Miss RICE. The Subcommittee on Border Security, Facilitation, and Operations will come to order.

Without objection, the Chair is authorized to declare the subcommittee in recess at any point.

Good morning. We are convening today in our continued effort to understand why this committee received inaccurate and misleading testimony from the DHS regarding its decision to ban residents of New York State from Trusted Traveler Programs like Global Entry.

On February 5, Senior DHS Official Chad Wolf wrote to New York officials to inform them of the ban without notifying Congress and the Members of the New York State delegation who sit on this authorizing committee.

Mr. Wolf cited New York's Green Light law as justification for the ban, stating that the law, "compromises CBP's ability to confirm whether an individual applying for a TTP membership meets program eligibility requirements."

Mr. Wolf then stated, "Because the act prevents DHS from accessing New York DMV records in order to determine whether a TTP applicant or re-applicant meets program eligibility requirements, New York residents will no longer be eligible to enroll or re-enroll in CBP's Trusted Traveler Programs."

After that announcement, this committee continued to receive inaccurate and misleading testimony that repeated the central claims made in Mr. Wolf's letter, that New York State was unique in denying this access to DMV records. At a minimum, the testimony gave a false impression about both the uniqueness of New York State's Green Light law and the supposed ramifications of CBP's inability to access New York State's DMV information.

In March, for example, Mr. Wolf told the committee, quote: New York law specifically prohibits CBP from going into that DMV database. They need information contained there that they can

only get there to vet Trusted Travelers. They have done that above and beyond any other State. There is no other State that prohibits that information. So that is specifically why we took that action with New York and for that action alone.

In summary, the committee was led to believe that New York was the only State that didn't provide DMV information to CBP and that such information was so critical to vetting applicants to the Trusted Traveler Programs that, because New York didn't provide it, CBP had to ban all New York State residents from applying or re-applying for the program.

While the ban was in place for New York State residents, including for residents who already participated in the program and who were prescreened and deemed trustful, it had a detrimental, chilling effect at our Northern Border. Then all of a sudden, over the summer, the ban was lifted, and we learned that other U.S. jurisdictions provide the same access to their DMV records to CBP as New York did, yet residents of these jurisdictions were not banned from participating in the Trusted Traveler Programs.

In fact, today's witness, Mr. Robert Perez, made this clear in a supplemental declaration he submitted on the matter to the district court in New York. We also learned information that raises questions about whether DMV data is actually used to vet every Trusted Traveler Program applicant. Unfortunately, we learned this information only from the court filings in this case on this issue.

DHS did not proactively reach out to the committee or correct the committee's understanding until the committee wrote to DHS after reading the filings, and we are here today because we still don't have the necessary information from CBP on their decision.

There appears to be only 2 explanations for the inaccurate, misleading testimony the committee received from DHS. Either senior DHS officials had a shared and profoundly inaccurate understanding of how the programs they manage actually work, which would be extremely troubling in its own right, or the only other option is that senior officials intentionally obfuscated key details about the applicant vetting process in order to justify a completely political decision to declare all New York residents ineligible for participation in the program.

The President wanted to punish New York for its Green Light law, and this was the retribution, plain and simple. In a transcribed interview with the committee, Mr. John Wagner, CBP's former deputy executive assistant commissioner, informed us that he, "should have been aware that two territories gave CBP no DMV information." He also said he, "should have known that several States and other jurisdictions did not share driver histories."

So why didn't he and other senior officials know this? We still don't have the answer to that, and DHS has refused to cooperate with the committee's investigation. DHS has not provided the documents we requested. DHS has not made available for transcribed interviews the employees we requested. During the course of an entirely voluntary interview with Mr. Wagner, DHS's attorneys repeatedly halted straightforward lines of questioning, effectively undermining the purpose of interview. Today DHS provided only 1 of the 4 witnesses this committee has requested.

We hope that Mr. Perez can tell us which explanation is correct, but we will continue our investigation until we know for sure.

Further, given that the Department stated that DMV data is so critical to assessing the eligibility of applicants to the Trusted Traveler Programs, we would also like to know whether the enrollment of applicants from other States or territories that provide only some or no DMV data has created risks. Similarly, we would like to know exactly what DMV data CBP receives regarding applicants from foreign nations, including whether that data is reliably accurate.

Obviously, we also want to know why DHS officials do not understand the programs they manage and whether this is creating security risks. I, therefore, call on DHS to immediately provide all the documents we have requested and to provide complete answers to our questions. This information is essential for our Nation's security.

I look forward to hearing Mr. Perez's testimony, and I thank him for appearing.

[The statement of Chairwoman Rice follows:]

STATEMENT OF CHAIRWOMAN KATHLEEN M. RICE

SEPTEMBER 30, 2020

We are convening today in our continued effort to understand why this committee received inaccurate and misleading testimony from DHS regarding its decision to ban residents of New York State from Trusted Traveler programs, like Global Entry.

On February 5, senior DHS official Chad Wolf wrote to New York officials to inform them of the ban, without notifying Congress and the Members of the New York State delegation who sit on this authorizing committee. Mr. Wolf cited New York's Green Light Law as justification for the ban, stating that the law "compromises CBP's ability to confirm whether an individual applying for TTP membership meets program eligibility requirements."

Mr. Wolf then stated, "Because the Act prevents DHS from accessing New York DMV records in order to determine whether a TTP applicant or re-applicant meets program eligibility requirements, New York residents will no longer be eligible to enroll or re-enroll in CBP's Trusted Traveler Programs."

After that announcement, this committee continued to receive inaccurate and misleading testimony that repeated the central claims made in Mr. Wolf's letter—that New York State was unique in denying this access to DMV records. At a minimum, the testimony gave a false impression about both the uniqueness of New York State's "Green Light Law", and the supposed ramifications of CBP's inability to access New York State DMV information.

In March, for example, Mr. Wolf told the committee, "New York law specifically prohibits CBP from going into that DMV database. They need information contained there that they can only get there to vet trusted travelers. They've done that above and beyond any other State, there is no other State that prohibits that information so, that[s] specifically why we took that action with New York and for that action alone."

In summary, the committee was led to believe that: (1) New York was the only State that didn't provide DMV information to CBP, and (2) such information was so critical to vetting applicants to the Trusted Traveler program that because New York didn't provide it, CBP had to ban all New York State residents from applying or re-applying for the program.

While the ban was in place for New York State residents—including for residents who already participated in the program and who were pre-screened and deemed trustful—it had a detrimental, chilling effect at our Northern border. Then all of a sudden, over the summer, the ban was lifted, and we learned that other U.S. jurisdictions provide the same access to their DMV records to CBP as New York did. Yet residents of these jurisdictions were not banned from participating in the Trusted Traveler programs. In fact, today's witness, Mr. Robert Perez, made this clear in the supplemental declaration he submitted on the matter to the District Court.

We also learned information that raises questions about whether DMV data is actually used to vet every Trusted Traveler program applicant. Unfortunately, we learned this information ONLY from the court filings on this issue. DHS did not proactively reach out to the committee or correct the committee's understanding until the committee wrote to DHS, after reading the filings. And we're here today because we still don't have the necessary information from CBP on their decision.

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The President wanted to punish New York for its "Green Light Law." And this was the retribution. Plain and simple. In a transcribed interview with the committee, Mr. John Wagner, CBP's former deputy executive assistant commissioner, informed us that he, "should've been aware" that 2 territories gave CBP no DMV information. He also said he, "should've known" that several States and other jurisdictions did not share driver histories. So why didn't he and other senior officials know this? We still don't know. And DHS has refused to cooperate with the committee's investigation.

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During the course of an entirely voluntary interview with Mr. Wagner, DHS attorneys repeatedly halted straight-forward lines of questioning, effectively undermining the purpose of the interview. And today, DHS provided only 1 of the 4 witnesses this committee has requested. We hope that Mr. Perez can tell us which explanation is correct, but we will continue our investigation until we know for sure.

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Similarly, we would like to know exactly what DMV data CBP receives regarding applicants from foreign nations, including whether that data is reliably accurate. Obviously, we also want to know why DHS officials do not understand the programs they manage, and whether this is creating security risks.

I therefore call on DHS to immediately provide all of the documents we have requested and to provide complete answers to our questions. This information is essential for our Nation's security.

Miss RICE. The Chair now recognizes the Ranking Member of the subcommittee, the gentleman from Louisiana, Mr. Higgins, for an opening statement.

Mr. HIGGINS. Thank you, Chairwoman Rice.

Thank you, Deputy Commissioner Perez, for being here today.

Madam Chairwoman, I was saddened to hear of the passing of CBP Officer Carlo Cayabyab in California. I would like to express my condolences to his family and the entire agency.

Last year, New York State passed legislation referred to as the Green Light law. This law has arguably made communities throughout the entire country less safe. The law barred New York State driver's license and vehicle registration information, driving-related criminal history information, driver's license and corrections images, among other information that is commonly requested by law enforcement, from being divulged on residents, from being shared with Customs and Border Protection, and Immigration and Customs Enforcement.

The sponsor of this law said before the State assembly that it would only impact investigations on immigration-related violations and that criminal investigations would not be impacted. However, criminal investigations have indeed been impacted by this State's law. The totality of negative consequences are much farther reaching.

All 4 U.S. Attorneys for the State of New York have had press releases in February, stating that the Green Light law is impacting active criminal investigations across the board. CBP and ICE are on the front lines of defending homeland from terrorism; transnational crime; dangerous gang members; narcotics, including fentanyl; counterfeit products, including pharmaceuticals; human trafficking; child exploitation; and other very important missions.

The Green Light law limits the Department's situational awareness at border crossings, interior checkpoints, and where high volumes of drug and human smuggling interdictions occur. Peace officer patrol stops and homeland security investigations, including criminal activity on the dark net, are all impacted by the Green Light law.

There are more than 19 million residents of New York State. New York State-licensed vehicles and travelers transit borders, seaports, and airports across the country. The impact of the law is not New York-specific. It affects communities throughout the United States. The Green Light law also requires an individual to be notified if CBP or ICE request information about them outside the scope of the exception. If an ICE officer is investigating a human trafficking case involving an illegal immigrant who resides in New York State and attempts to access related DMV data, the State law requires that individual to be tipped off. That is contrary to law enforcement procedures across the country and does not help criminal investigations.

The Green Light law wrongfully assumes that State DMV data is mainly accessed for civil immigration and violation purposes. The reality is that more than 86 percent of individuals arrested by ICE in fiscal year 2019 had criminal convictions or pending charges.

The Green Light law furthers the left's agenda to rather tie the hands of Federal law enforcement, to ignore some Federal immigration laws, and to attack and call for the dismantlement of ICE and CBP. Not all of my colleagues across the aisle feel this way, but it is part of the National narrative and is directed by my Democratic colleagues.

The fracturing of information shared between Federal, State, and local law enforcement is not a good idea. This law values the ability of an illegal immigrant to get a driver's license over the safety and security of the homeland. The New York State legislation knew it had gone too far. They amended the original language in April of this year to allow for some information to flow to CBP, and I applaud that effort. However, what could have been a good-faith effort to come together and fix this problem devolved into an escalated attack on law enforcement by making it a felony to share DMV information with CBP or ICE outside of narrow exceptions. It is an easy mistake to make.

This move is a direct contradiction to the 9/11 Commission Report on the importance of information sharing. It intentionally poisons the well with Federal, State, and local partners on joint task forces to counterterrorism, gang violence, and drug trafficking, all seen as the best practice to keep violent criminals off the streets.

Instead of speaking about dangerous precedent the Green Light law has set, some of my colleagues seem more concerned with tak-

ing shots at the administration. In an election year, we have seen that from both sides. This committee should be objective about our observations and conclusions. It is interesting that we would attempt to impact career Department of Homeland Security officials just weeks before an election.

It is undeniable that New York State took unprecedented action in blocking CBP and ICE access to DMV information currently available to all other Federal, State, and local law enforcement. This is unique to New York. It is not 100 percent unique complexities of this law that were uncovered as the investigation unfolded, but New York is certainly alone in the totality of this circumstance.

Today I would like to hear on the record about how this New York State law is still negatively impacting CBP's Homeland Security missions. I want case examples on the record about the hoops CBP must still jump through to secure the homeland and what more needs to be done reverse this well-intended but perhaps shortsighted law. I want to know if someone residing in the country illegally who receives a New York State-issued driver's license can obtain NEXUS status which, in some instances, acts in lieu of a passport. I want an update on data-sharing agreements made to ensure CBP can fully vet Trusted Traveler applicants.

[The statement of Ranking Member Higgins follows:]

STATEMENT OF RANKING MEMBER CLAY HIGGINS

SEPTEMBER 30, 2020

Thank you Chairwoman Rice, and thank you Deputy Commissioner Perez for being here today.

Last year, New York State passed legislation, referred to as the Green Light Law, that has disturbingly made communities throughout the entire country less safe.

The law barred New York State driver's license and vehicle registration information, driving-related criminal history information, driver's license and corrections images, among other information on residents from being shared with Customs and Border Protection and Immigration and Customs Enforcement.

The sponsor of this law said before the State Assembly that it would only impact investigations of immigration-related violations . . . and that criminal investigations would not be impacted.

However, criminal investigations have in fact been impacted by this State law and the totality of negative consequences are much farther reaching.

All 4 U.S. attorneys for the State of New York put out a press release in February sounding the alarm that the Green Light Law is impacting active criminal investigations across the board.

CBP and ICE are on the front lines of defending the homeland from terrorism, transnational crime, dangerous gang members, narcotics including fentanyl, counterfeit products including pharmaceuticals, human trafficking, child exploitation, among other important missions.

The Green Light Law limits the Department's situational awareness at border crossings, interior checkpoints where high volumes of drug and human smuggling interdictions occur, peace officer patrol stops, and homeland security investigations including criminal activity on the Darknet.

There are more than 19 million residents of New York State. New York State licensed vehicles and travelers transit borders, sea ports, and airports across the country. The impact of the law is not New York-specific, it effects communities throughout the United States.

The Green Light law also requires an individual to be notified if CBP or ICE requests information about them outside the scope of the exception.

If an ICE officer is investigating a human trafficking case involving an illegal immigrant who resides in New York State and attempts to access related DMV data, State law requires that individual to be tipped off. That is shameful.

The Green Light Law wrongfully assumes that State DMV data is mainly accessed for civil immigration violation purposes. The reality is more than 86 per-

cent of individuals arrested by ICE in fiscal year 2019 had criminal convictions or pending charges.

The Green Light Law furthers the far left's agenda to tie the hands of Federal law enforcement, ignore Federal immigration laws, attack and call for the dismantlement of ICE and CBP, and fracture information sharing between Federal, State, and local law enforcement. This law values the ability of an illegal immigrant to get a driver's license over the safety and security of the homeland.

The New York State legislature knew that it went too far. That's why they amended the original language in April of this year to allow for some information flow to CBP.

But what could have been a good-faith effort to come together and right the original wrong turned into an escalated attack on law enforcement by making it a FELONY to share DMV information with CBP or ICE outside narrow exceptions.

This move flies in the face of the 9/11 Commission Report on the importance of information sharing. It intentionally poisons the well with Federal, State, and local partners on joint task forces to counter terrorism, gang violence, and drug trafficking seen as a best practice to keep violent criminals off the streets.

Instead of speaking out about the dangerous precedent the Green Light Law has set, my colleagues on the other side of the aisle seem more concerned with taking shots at the administration and career DHS officials right before the election.

It is undeniable that New York State took unprecedented action in blocking CBP and ICE access to DMV information currently available to all other Federal, State, and local law enforcement.

Today I want to hear on the record about how this New York State law is still negatively impacting CBP's homeland security missions.

I want case examples on the record about the hoops CBP must still jump through to secure the homeland, and what more needs to be done to reverse this short-sighted law.

I want to know if someone residing in the country illegally who receives a New York State-issued driver's license can obtain NEXUS status, which in some instances acts in lieu of a passport.

I want an update on data-sharing agreements being made to ensure CBP can fully vet trusted traveler applicants.

I yield back.

Mr. HIGGINS. I yield back.

Thank you, Madam Chair.

Miss RICE. I thank the Ranking Member.

Members are reminded that the subcommittee will operate according to the guidelines laid out by the Chairman and Ranking Member in the July 8 colloquy. Member statements may be submitted for the record.

[The statement of Chairman Thompson follows:]

PREPARED STATEMENT OF CHAIRMAN BENNIE G. THOMPSON

SEPTEMBER 30, 2020

The issue that brings us here is our on-going effort to understand why we were misled about the Department's decision to exclude New York residents from Customs and Border Protection's Trusted Traveler programs. DHS's arbitrary and unjustified decision had the potential to limit economic activity by increasing wait times at Ports of Entry and to create unnecessary hardship for hundreds of thousands of American travelers.

As the Chairwoman noted, DHS's explanation for seeking to punish New York residents in this way is now called into serious question. While New York's "Green Light Law" did limit CBP's access to DMV data, other States and territories were providing no or only limited DMV data to CBP when New York residents were cut off from Trusted Traveler Programs. And yet, no other State or territory was targeted as New York was. In fact, the residents of other jurisdictions that provided no or only some DMV data to CBP apparently continued to be enrolled in the Trusted Traveler programs.

Last month, DHS claimed that its officials made statements that were, and I quote, "true to the best of their knowledge at the time they were made." DHS then provided to the committee a few documents it provided to the Court, claimed that these corrected our record, and said, and I quote: "we hope the Committee accepts this explanation." Let me be clear: We don't accept.

Either DHS officials intentionally made misleading statements to this committee, or the officials charged with managing an essential Homeland Security program were ignorant about the program's operation. We are here to find out which it was.

We are also here because in this matter as in so many other matters, the Department has refused to cooperate with the committee's investigation. In seeking clarity about the decision to exclude the residents of an entire State from CBP's Trusted Traveler programs, the committee has requested interviews and documents, but DHS has declined to fulfill either request. Even today, the subcommittee requested 4 witnesses from the Department, but has received only 1.

In fact, the Department even had the gall to allege that by seeking to understand the facts and circumstances surrounding the inaccurate and misleading testimony we received, the committee is acting improperly. Let me be clear about a few things on which I hope all committee Members will agree.

It is never improper for this committee to ask questions of the Department. We will never simply accept inaccurate or misleading testimony or information—and it is absurd for the Department to suggest that we have an obligation to do so. This committee has both the authority and the duty to carry out oversight over the activities and decisions of DHS, and we will continue to use every investigative tool available to us to combat the Department's stonewalling.

Finally, as Chairman, I guarantee that this committee will continue its efforts to hold this Department accountable for the many arbitrary, unjustifiable, and apparently politically-motivated decisions it has made under this administration until we find out the truth about these actions.

Miss RICE. Without objection, Members not sitting on the subcommittee will be permitted to participate in today's hearing.

I now welcome our witness. Our witness today is Mr. Robert Perez, the deputy commissioner for U.S. Customs and Border Protection. In this role, he serves as the agency's senior career official, overseeing the personnel who work every day to protect our Nation's borders. During his 28-year career in Federal law enforcement, Mr. Perez has also served as the director of field operations in CBP's New York field office and in Detroit, Michigan, and held various other positions at CBP headquarters.

Without objection, the witness's full statement will be inserted in the record.

I would now ask Mr. Perez if he would like to summarize his statement for 5 minutes.

**STATEMENT OF ROBERT E. PEREZ, DEPUTY COMMISSIONER,
U.S. CUSTOMS AND BORDER PROTECTION**

Mr. PEREZ. Thank you, Chairwoman Rice, Ranking Member Higgins, and Members of the subcommittee. Thank you again for the opportunity to discuss U.S. Customs and Border Protection's Trusted Traveler Programs and other related issues relating the State of New York's Green Light law.

CBP's Trusted Traveler Programs are designed to provide pre-approved, low-risk travelers with expedited arrival processing at our Nation's ports of entry. CBP uses Department of Motor Vehicle, or DMV, data, along with other law enforcement information, to determine program eligibility of new and existing applicants.

Earlier this year, New York residents were declared ineligible for CBP's Trusted Traveler Programs due to the lack of sharing of DMV information with CBP. At the time of that decision, it was our understanding that New York stood alone in not providing DMV information to CBP. While New York remains unique to our knowledge in terminating our access to all DMV information, CBP has since discovered other jurisdictions that do not provide DMV information to our agency either in whole or in part.

Immediately following the discovery of additional jurisdictions, CBP provided clarifying statements to the court in the Southern District of New York prevent any misunderstandings made during the course of that on-going litigation. As well, I appreciated the opportunity to brief the Members of the committee, of this committee, and of the New York Congressional delegation on the details of this matter back on August 4 and August 5 of this year.

We also began accepting applications for enrollment into our Trusted Traveler Programs from New York State residents and soon thereafter began engaging the other States and U.S. territories to identify a path forward for our agency to receive the relevant DMV information we believed was being provided but that, in fact, was not.

While CBP regrets the confusion caused by this situation, it is important to note the serious concerns that remain with New York's Green Light law, which explicitly prohibits DMV records from being shared with CBP. I share these concerns with the committee today as the deputy commissioner of CBP but also informed by my nearly 28 years in law enforcement, including having previously served as the director of CBP in New York City for over 8 years. I can personally attest to the importance of information sharing among the law enforcement community there, arguably the bedrock of effective law enforcement throughout the United States.

Contrary to facilitating effective law enforcement, on April 3 of this year, the State of New York amended its Green Light law to permit the sharing of DMV information with CBP only as necessary for individuals seeking acceptance into a Trusted Traveler Program or to facilitate vehicle imports and exports. However, this amendment also made it a class E felony to access, use, or share DMV information with CBP in violation of the statute, potentially presenting risks of personal liability for our personnel, as well as to our State and local law enforcement partners.

Specifically, the law still prevents CBP from accessing, using, or sharing DMV records for other important mission-related purposes, including identifying vehicles used in illicit activity, verifying the identity of a vehicle's owner before a traffic stop, and utilizing the information for investigations into criminal activities, such as narcotics trafficking, identity fraud, gang affiliation, and terrorism.

In contrast, the Trusted Traveler Program vetting limitations we discovered, while important, have likely only prevented CBP from identifying potentially disqualifying information for program applicants and members from certain jurisdictions based on misdemeanor motor vehicle offenses.

What is more concerning are the threats to officer and agent safety and the safety of the communities they serve. Under the laws like that of New York, an officer and agent approaching a stopped vehicle may not know if the registered owner or occupants are associated with a lookout or active warrant and may be unaware of prior involvement in illegal or suspicious activity. Of equal concern is the inability to freely share relevant information with State and local law enforcement partners in the pursuit and interest of public safety.

As a career law enforcement officer charged with protecting the security of our country and the American people, I find it profes-

sionally unacceptable that anyone would consider limiting information sharing among law enforcement agencies, particularly with the knowledge of the tragic lessons we have all learned from past attacks on our Nation.

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

[The prepared statement of Mr. Perez follows:]

PREPARED STATEMENT OF ROBERT E. PEREZ

SEPTEMBER 30, 2020

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

OVERVIEW

To provide some background, on June 17, 2019, the New York State Legislature passed the Driver's License Access and Privacy Act, also known as the New York "Green Light Law." The law explicitly prohibited DMV records from being shared with any "agency that primarily enforces immigration law," specifically including CBP and U.S. Immigration and Customs Enforcement (ICE). On December 12, 2019, 2 days before the Green Light Law went into effect, New York terminated CBP's access to NY DMV data via Nlets. Nlets, the International Justice and Public Safety Network, allows for the sharing of law enforcement, criminal justice, and public safety information. CBP utilizes it to access State DMV information in order to conduct its mission responsibilities. After the Green Light Law went into effect, CBP operators immediately began receiving error messages through Nlets, indicating they were no longer authorized to view NY DMV data that they previously had been able to view. The operators promptly notified Headquarters of the problem. New York's action prevented CBP and ICE from accessing relevant information needed for many of the agencies' mission responsibilities, including aspects of an individual's criminal history that only the State DMV maintains.

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

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

Information-sharing and local, State, and Federal partnerships have always been the bedrock of effective law enforcement in the United States. As we learned from the September 11, 2001 terrorist attacks and other such tragedies in the United States, and as discussed in detail in the 9/11 Commission Report, the lack of information sharing among law enforcement agencies can have catastrophic consequences. Indeed, one of the primary reasons that the Department of Homeland Se-

curity was created was to ensure greater information sharing among the Nation's various law enforcement partners.

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

This awareness came in connection with preparing a response to a July 10, 2020 filing in a lawsuit pending in the Southern District of New York wherein plaintiffs made specific assertions that New York was not the only State that did not provide CBP access to DMV information. While Plaintiffs' assertions were based on information that pertained to ICE, further inquiry in pursuit of investigating plaintiffs' specific allegations, revealed that 5 States, Connecticut, Florida, Illinois, New Jersey, and Hawaii, as well as the District of Columbia and Puerto Rico provide access to driver's license information (referred to as the Driver's License Query) via Nlets, but do not currently provide access to driver history information, including driving-related criminal histories (referred to as the Driver History Query). CBP uncovered that the District of Columbia, Puerto Rico, and all States except New York, Hawaii, and Missouri, provide vehicle registration information (referred to as the Vehicle Registration Query) in response to CBP's standard Nlets queries. In addition, CBP determined that 2 territories, Guam and the U.S. Virgin Islands, do not participate in Nlets DMV-related queries, meaning that their DMV records are not available to CBP or other Nlets users. While CBP lacked access to DMV information for those jurisdictions, it continued to accept, vet, and—when appropriate—approve TTP applications from these States, territories, and the District of Columbia.

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

HOW CBP OPERATORS ARE ADDRESSING THE NOW-KNOWN DISCREPANCIES

Now that CBP is aware of variances in its access to DMV information among domestic jurisdictions, CBP is reaching out to those jurisdictions where it does not receive responses to all DMV-related Nlets queries to determine how CBP can access this data to ensure we receive all information necessary to conduct full and effective TTP vetting.

IN CLOSING

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

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

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

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

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

Miss RICE. I thank the witness for his testimony.

I will remind the subcommittee that we will each have 5 minutes or so, since there is, I think, only 3 of us, as long as the witness is OK with that, to question the witness.

I will now recognize myself for questions.

Mr. Perez, we now know from the filings made by the Department of Justice in Federal district court in New York and from your own supplemental declaration in that case that there were other U.S. jurisdictions that provided limited or even no DMV data to CBP like New York did.

According to DOJ'S filings, Guam and the Virgin Islands, "do not provide any DMV data to any user of the Nlets system that CBP queried to get DMV data." Further and, again, I will quote, "the District of Columbia, the U.S. territories, Puerto Rico, Guam, and the U.S. Virgin Islands and 6 States—New York, Connecticut, Florida, Illinois, New Jersey, and Hawaii—do not provide responses to CBP for queries for driver history query."

Yet, without this access, CBP continued to process and approve applications for TTPs for residents of Connecticut, Florida, Illinois, New Jersey, Hawaii, District of Columbia, Guam, and the U.S. Virgin Islands.

So my first question, Mr. Perez, is: Do you know why Mr. Wolf claimed that he had to ban the residents of New York State from the program while DHS continued to process applications for residents from these other jurisdictions I just named?

Mr. PEREZ. Thank you, Madam Chairwoman.

So, from CBP's perspective, what I can tell you is that at the time and only up until sometime in July during the court proceedings, when some questions were asked and we subsequently did a deep dive technologically on our OIT systems to see what exactly was being returned to us by way of responses, it was only then that we as an agency became aware of what was being transmitted, the returns we were receiving, and the lack of response versus negative responses, if you will. That is what unearthed ultimately this—these nuances, if you will, or differences in these other States as you listed in the territories where we were getting partial returns and some returns for those who were in the program, in the Nlets' platform to transmit that information. In the cases of territories, it was then made aware that they were not even transmitting into the platform.

So that was everybody's understanding up until that point in time and not unlike—again, without getting into too much detail—but not unlike I shared in the briefings I provided last month, it wasn't until and it was only because, through the Trusted Traveler Programs, that we queried in batches. Because of the volumes of information that come back and forth there, the way that that system had been designed and one of the things we are fixing is the manner in which those returns come back.

So those flags were not readily evident, and it was only after that deep dive that we were made aware that then, other than New York, we had this—these other anomalies with the other States. If I can make one other point, New York still remains very unique in this regard. When we query into New York, even as I sit here today, New York provides a definitive response that reads "ORI,"

which means the organization's identifier restricted. They singularly are still the only State and territory as I sit here that I am aware of that provides us that affirmative negative response to a query, and this is in light and even despite the fact that, back in April, they said they would turn it on at least for the Trusted Traveler Programs. To date, they have not.

But that in and of itself presents and gives the people on our staff a much more readily identifiable response as opposed to these very unique systems across every State. They all do it differently. It is a very challenging IT system. Again, I don't want to bore with you those details.

Miss RICE. So the IT system that you did the deep dive on when you were looking more into this, that has always been within your ability to do a deep dive into that system to get additional information. Is that correct?

Mr. PEREZ. Well, it was our staff who did that deep dive.

Miss RICE. What I am asking you just—

Mr. PEREZ. Correct.

Miss RICE [continuing]. Yes, yes or no.

Mr. PEREZ. Yes, it was our folks who—

Miss RICE. So, well before this, you had access to that information in order to do a deep dive to understand exactly what information you would get from the various States. If you wanted to, you could do that deep dive. But it wasn't until this happened that you did.

Mr. PEREZ. Correct.

Miss RICE. OK. So here is my question. You have said on numerous occasions: Our understanding was that New York was unique.

What I am trying to understand is, what was that based on if you made that decision that New York was unique before you ever did that deep dive? So what was that understanding that you and others had that made New York so unique?

Mr. PEREZ. So, so—

Miss RICE. Can I just say this? I didn't mean to interrupt, but I am going to. I apologize.

I think it is really important to put my questions in light of other things that were happening around the time, from the time that New York passed the Green Light law. After that was passed, a New York colleague of ours, Elise Stefanik, she apparently made reference to how Cuomo's Green Light law was hindering local law enforcement. She did that through a tweet, which was re-tweeted by the President of the United States, which tells us that he was aware, I mean, of this Green Light law and re-tweeted what Stefanik, Congresswoman Stefanik said about it. He has—the President has also made comments on multiple occasions about punishing States that he perceives as sanctuary States.

So I think it is important to kind-of put all of this in light of that. Right? New York passes the Green Light law. Elise Stefanik says it is going to hinder law enforcement. The President retweets that. He makes multiple statements about punishing sanctuary States, sanctuary cities like New York City and New York State, and then, after the actual enactment of Green Light law, which came at the end of last year, this action is taken.

So I am trying to understand what your understanding and your colleague's understanding was based on, if it wasn't based on any deep dive that was done at the time that New York State residents were banned from the program.

Mr. PEREZ. So, thank you, Madam Chairwoman.

So, again, from my perspective, and I can tell you, again, from the CBP perspective, what we were basing our understanding on and the lack of anything that told us at the time that required anything further than what we had been doing for years, candidly, in a very complex IT exchange, if you will, by virtue of what is transmitted by 50 States, territories, and the like that is very unique in the returns for specifically Trusted Traveler Programs, there is nothing that made the agency at the time readily aware of any of these anomalies. We own that issue. I mean, that is the truth. That is part of what it is that we have subsequently begun to fix once we discovered those anomalies.

Miss RICE. So but, Mr. Perez, I understand what you are saying. OK.

But once New York was banned, Mr. Katko, my colleague from New York, our colleague from New York, me, I know Congresswoman Clarke from New York, we all started sounding the bell. Why is New York being punished when other States withhold the same information? So it is not as if you at CBP or Mr. Wolf were not aware that there were claims that New York State was being treated differently than other States similarly situated.

So Mr. Wolf claimed that he had to ban the residents of New York State from the program while, at the same time, DHS continued to process applications for residents from those other jurisdictions. Why?

Mr. PEREZ. So, if I may, Madam Chairwoman, a very specific difference that still remains with respect to what was occurring, even then, with New York. New York banned and stopped transmitting any and every bit of information that they were prior and still capable of transmitting. That is still unique. What was happening with the other States and territories, we were still receiving these returns. Again, there was nothing that we were aware of readily by virtue of what we were receiving from those returns with respect to the Trusted Traveler Program that would have alerted us to the fact that there was one of several aspects of the data that was being provided to us that was, in fact, not being returned.

Miss RICE. So, Mr. Perez—

Mr. PEREZ. Because we were receiving information from every single one of those jurisdictions. We were receiving something from them, from the ones who were in the—

Miss RICE. But it was not enough. It was not enough.

This is my question.

Mr. PEREZ. Uh-huh.

Miss RICE. Shouldn't the agency charged with running this program know how it actually functions? I mean, how could you not know how these programs worked before you banned 19 million people from participating in them? Actually a more disturbing question is: It doesn't seem that all of the States that we have identified that were similarly situated—I didn't say exact—but similarly situated as where New York was, still to this day Mr.

Wolf has taken no action against those States to ban any of the residents from those States from participating in the Trusted Traveler Program.

So can you understand why the perception and perhaps, when we get to the bottom of this, the reality looks as if New York State was being punished because it was, in the President of the United States' words, a sanctuary State? Can you understand, just yes or no, the perception that New York State was being punished, the residents? Not Cuomo, because he can go wherever he wants. I am talking about the thousands of people in New York State who rely on the Trusted Traveler Program to travel for work, their livelihood, to put food on the table. Can you understand that that is the appearance? Yes or no?

Mr. PEREZ. Madam Chairwoman, I can absolutely understand how some people—

Miss RICE. Yes. Or—

Mr. PEREZ [continuing]. Might get that impression.

Miss RICE. OK. I am just asking you—

Mr. PEREZ. I am here to tell you that that—

Miss RICE [continuing]. If you can—

Mr. PEREZ [continuing]. Is absolutely not the case.

Miss RICE. I am just asking you that. OK. So now—

Mr. PEREZ. All right. But it was not the case, Madam Chair. Respectfully, I am just letting you know that, as the senior career official in CBP, I can—speaking for CBP, we were basing what it is we were doing on what we understood the facts to be at that time.

Miss RICE. OK. Now—

Mr. PEREZ. Solely that.

Miss RICE. Was there communication, whether through email or reports, within your agency that talked about your understanding about how New York was unique?

Mr. PEREZ. I would imagine there were emails.

Miss RICE. Great.

Mr. PEREZ. I am not sure there—

Miss RICE. So—

Mr. PEREZ [continuing]. Are emails.

Miss RICE. Thank you.

Mr. PEREZ. I am pretty sure there are some.

Miss RICE. OK.

Mr. PEREZ. There were staff-level discussions—

Miss RICE. Yes.

Mr. PEREZ [continuing]. About that—

Miss RICE. That—

Mr. PEREZ [continuing]. Looking into the matter.

Miss RICE. That makes sense.

So, in July, the committee requested 4 categories of documents from the Department regarding the decision to exclude New York State residents from the TTP Program. No documents have been provided by the Department in response to the committee's request.

Do you have any documents with you here today that can shed some light on why, where this understanding came from that New York was unique?

Mr. PEREZ. I don't have them with me today. But what I can share with you, Madam Chair, is that those are actively being

worked on. I know the committee appreciates, I know you appreciate that sometimes it takes time to go through and compile everything that is being asked. But, more importantly, there is a complicating factor here, as the attorneys in our agency and the Department have shared with me, that is the on-going open litigation that just requires further review and analysis before those documents are provided. But my understanding is, as soon as we are ready, we will provide and be responsive to that request.

Miss RICE. It is not that heavy a lift, I would think. I mean, you have them all in your possession. It doesn't take lawyers that long to figure out what is relevant to a request from a committee that has oversight over the agency.

But I think it has more to do with this, I am afraid: In July of this year, DHS announced that they were lifting the ban on New York State residents applying and re-applying for Trusted Traveler Programs. That was on July 23. That same day, following DHS's announcement that they were lifting the ban, Federal Judge Jesse Furman of the Southern District of New York asked DHS how the reversal would affect the lawsuit that was presently pending before Judge Furman.

At that time the Government, the Government, not us, not this committee, not Ds, not Rs—it was not a political thing—the Government sent a letter, withdrawing their motion to dismiss the case because they discovered that the motion and their case was based on inaccurate and misleading statements made by DHS officials concerning the differences between New York's law and similar ID laws across the country.

Now, in order for the Southern District, I believe, which was the issuing agency, to come to that conclusion, they had to have in their possession some kind of paperwork or oral testimony that enabled them to come to the determination that your assumptions, your understandings were incorrect and, in fact, possibly false, which is why they withdrew it from a judge because they did not want to give the imprimatur of their office and the credibility that goes with it to people and an agency that had given inaccurate, misleading, potentially knowingly false information. So I think it is important to kind-of put it in the context of that too.

I have gone over my 5 minutes. I now recognize the Ranking Member, Mr. Higgins, for his questions.

Thank you, Mr. Perez.

Mr. HIGGINS. Thank you, Madam Chair.

Deputy Commissioner Perez, thank you for your 28 years of service in law enforcement to our country.

Let me clarify that I have a lot of friends across the aisle and 2 of my colleagues across the aisle that I have the deepest respect for are seated before you here today, and I know that Madam Chairwoman has a passionate and very focused representation for the people of New York.

From my perspective, as my background in law enforcement and yours, we must recognize that that is—the purity of that, the seeking of truth here, because I believe that I think we can resolve this thing. I would like to see it resolved. I would like to fix it and move on. We have obligations for this committee.

So, that being said, when a Customs—it has been indicated that this is somehow politically-driven, and I understand that suspicion in today’s environment in America. But when a Customs and Border Patrol protection officer or ICE, dealing with transnational crime, gangs, narcotics, counterfeit products, human trafficking, when they call in for data on someone that they are enacting with, they have reasonable suspicion and they need background data on, is anyone worried about tweets? Do you know of an officer out there that checks the President’s tweets before he moves forward with an inquiry?

Mr. PEREZ. I would expect not, Ranking Member.

Mr. HIGGINS. I don’t know of any.

Mr. PEREZ. No.

Mr. HIGGINS. You are focused on that interaction at that moment in order to accomplish that mission and peacefully and within the parameters of the Constitution and in recognition of the civil rights of that individual you move forward with that interaction. Nobody is checking any tweets.

Commissioner, it is my understanding that CBP uses the National Law Enforcement Telecommunications System that is referred to as Nlets to access State, territory, and local-level data that could preclude an applicant from qualifying for a CBP Trusted Traveler Program. What happened after the Green Light law went into effect when your officers attempted to query information from Nlets for Trusted Traveler Programs vetting? Did an error message appear?

Mr. PEREZ. It did, Ranking Member, as I mentioned previously. There was a very specific and singular response, singular in the sense that there is no other State or territory that I am aware that provides this type of response.

Mr. HIGGINS. Right.

Mr. PEREZ. No ORI restriction.

Mr. HIGGINS. Let’s move there to the interest of time. The Nlets website states it has over 150 message types including DMV-related data. We have learned that there are a few States and territories that do not provide some or all DMV data times but still provide a range of data types in Nlets.

Was New York State the only jurisdiction that returned an error message for all data types when CBP attempted to query a Trusted Traveler Programs vetting?

Mr. PEREZ. It is my understanding that, yes, specifically stating ORI restricted.

Mr. HIGGINS. Thank you.

It was pointed out that Guam and the Virgin Islands did not provide DMV-related data through Nlets, while still providing other data. Did you receive error messages from Guam and the Virgin Islands?

Mr. PEREZ. No, not that I am aware of.

Mr. HIGGINS. To the best of your knowledge, has Nlets data ever been used to disqualify a resident of Guam or the U.S. Virgin Islands from a CBP Trusted Traveler Program?

Mr. PEREZ. Not that I am aware of.

Mr. HIGGINS. Has the Department initiated conversations with Guam and the Virgin Islands and jurisdictions that are only shar-

ing partial DMV data to work out an agreement to access that data? If so, what is the status of those conversations?

Mr. PEREZ. Thank you, Ranking Member. We have. We immediately began to initiate those conversations with all those jurisdictions. Varying states of status across the board, again, given the difference between capability of each of the States and the territory, whether they even have the information readily available. Some don't even gather it up and automate it. It is really, as you alluded to earlier, 150 types of data that is in this system. It is literally, when you are dealing with the entire country and all the U.S. territory, all over the place, if I may, and that makes it a bit complex.

Nonetheless, by and large, we are getting receptivity to the request. In the end, we expect to get all the data we require from all the States and the territories.

Mr. HIGGINS. Thank you for your answers.

If the Chairwoman will indulge, I would like to give the commissioner an opportunity to respond to the phrase "political retribution." It has been presented that this, that the actions taken that we are discussing here today by CBP are retribution for New York's position on some things and the President's tweet. It has been used by the New York State Attorney General, the term "political retribution," and it has been echoed by the Majority to describe the Department's decision to exclude New York State residents from enrolling or re-enrolling in CBP Trusted Traveler Programs earlier this year.

I don't believe that accusation is true. Again, with the spirit of trying to get past this thing and seek a resolution, would you like, would you care to comment on that accusation that the CBP actions—

Mr. PEREZ. Thank you, Ranking Member.

Mr. HIGGINS [continuing]. Are based on political retribution.

With your answer, I will close, Madam Chair.

Mr. PEREZ. Pardon me and thank you, Ranking Member.

Again, as I mentioned just a moment ago, from my perspective, from where I sit in my position in representing this agency, I assure you that it was not. It was based on the facts at that time and, frankly, the facts that still remain. New York remains unique, unique in the returns when what it is we are trying to access DMV data. We are totally shut out as an agency from getting anything from New York wherein they have the capability to provide that data to us readily and, in fact, prior to this Green Light law, they did. That remains unique and even before they made the amendment to their law in April, which made it a class E felony to share data and where they provided for the ability to at least share partial for the use of the Trusted Traveler Programs.

Again, as I sit here today, we still receive nothing from New York, absolutely nothing. We get the return that, from the system, as I referred to before, being restricted, that negative message, and that is a unique acceptance as speculate of New York's Green Light law and the impact that it continues to have on CBP.

Mr. HIGGINS. Thank you, sir.

Madam Chair, I yield.

My time has expired.

Miss RICE. The Chair now recognizes—thank you, Mr. Ranking Member.

The Chair now recognizes the gentleman from California, Mr. Correa.

Mr. CORREA. Thank you, Madam Chair.

Mr. Perez, welcome. Thank you for being here today.

Mr. PEREZ. Thank you, Congressman.

Mr. CORREA. I wanted to follow up with some of your statements that you just made a little while ago in terms of facts.

You mention that the Green Light law of the State of New York came to your attention when you started getting error messages essentially from IT inquiries, so to speak. Yet you all knew that this Green Light law and its specifics was heading your way before it was actually implemented. Yes? No?

Mr. PEREZ. I don't recall specifically myself having knowledge and when it is I became aware of when they passed the law. I know, Congressman, that they passed it earlier in the summer. It became effective or we began, the officers, the agents on the front line began getting the messages—

Mr. CORREA. In my—

Mr. PEREZ [continuing]. Error messages in December of last year.

Mr. CORREA. The reason I am asking that is that your professional organization—and, as you said, it is a very complicated job you have to do, and I anticipate your Government relations people are pretty up on this stuff. So they can tell you way in advance that this is what is going to happen. If you don't have those capabilities, I am getting concerned about what capabilities you really have.

State of California passed a driver's license law 5, 6, years ago. I was in the State legislature when that happened. I can tell you that ICE was in Sacramento talking to us about the law's implications way before it was passed, way before it was signed. So, for you to say that you only figured out that this law, New York Green Light law, was going to create challenges for you after it was implemented kind-of leaves me puzzled here.

Mr. PEREZ. So, if I may, Congressman, I don't recall any outreach and any exchange, at least from the CBP level, of any—

Mr. CORREA. From the State of New York legislature.

Mr. PEREZ. From the State of New York.

Mr. CORREA. So you-all—is it your statement, Mr. Perez, that you were caught completely off-guard with the Green Light law and its applications and its details until after it was actually signed into law?

Mr. PEREZ. My personal understanding is, my personal answer to that is yes—

Mr. CORREA. For the whole Department?

Mr. PEREZ [continuing]. That it was not in law.

Mr. CORREA. So you are saying—

Mr. PEREZ. But I am also not aware of the agency being consulted or asked by New York State—

Mr. CORREA. Well, but you—you would be—

Mr. PEREZ [continuing]. For any—

Mr. CORREA [continuing]. Following this. But you would be following this at an agency whose business it is to follow this kind

of legislation. You did it in the State of California, and New York has got New York has got 20 million residents. So you figure you would probably have a heads-up on this. Just a statement.

Mr. PEREZ. Uh-huh.

Mr. CORREA. SENTRI program, Trusted Traveler Program—

Mr. PEREZ. Right.

Mr. CORREA [continuing]. It is a very complex application process. Very extensive. You go into a person's criminal background. You look at a lot of records. Yes? No?

Mr. PEREZ. For the Trusted Traveler Programs.

Mr. CORREA. Yes.

Mr. PEREZ. Pardon me, Congressman. Yes.

Mr. CORREA. Yes.

Mr. PEREZ. Uh-huh. Uh-huh.

Mr. CORREA. So understanding how and when the DMV information is used is important. So in a supplemental declaration where Mr. Acosta, who I wish would have been here today, he stated, and I am going to quote him. He said: While available DMV records may manually be queried through National Law Enforcement Telecommunications System by TTP, vetting officers to complete their assessment in determining program eligibility and admissibility for the TTP applications does not as a matter of policy require that vetting officers initiate manual queries of NI for every TTP applicant, but as a matter of practice, a vetting officer may at his discretion initiate manual query available DMV recovered.

So my question is, is DMV data always used to vet every applicant, the Trusted Traveler Program?

Mr. PEREZ. The DMV—

Mr. CORREA. Let me repeat that.

Mr. PEREZ. Yes.

Mr. CORREA. Is DMV data always used to vet every applicant to the Trusted Traveler Programs?

Mr. PEREZ. The DMV data is part of the totality of data that we rely upon.

Mr. CORREA. Is it always used?

Mr. PEREZ. Yes, it is my understanding that it is.

Mr. CORREA. It is always used.

Mr. PEREZ. It is part of the information.

Mr. CORREA. DMV data is always used by vetting officers. DMV data is always required, Trusted Traveler Program.

Mr. PEREZ. It is my understanding, Congressman, that the DMV data is part of the suite of information and queries done uniformly to assess the risks associated with an applicant who is trying to participate in the Trusted Traveler Program. Again, as I mentioned before, it was through the analysis and the deeper analysis on what it is we were actually returning, a no-response versus positive and negative responses, essentially, and that discovery of what was coming to us in its totality versus what was coming to us in pieces and/or incomplete, that then we subsequently identified that there was some jurisdictions that were not providing us total—the total information from the DMV that we required. If I can make a comment about California's—

Mr. CORREA. Will you indulge us, Madam Chair?

Miss RICE. Yes.

Mr. CORREA. Go ahead.

Mr. PEREZ. Thank, Congressman.

I think it is important distinction—I am glad you raise it—in California, Congressman, just about the practicality of what was enacted there because, again, I think it is important for the committee to understand and know how the New York law still stands unique. When it comes to data sharing and the utilization of the data itself, while California and other States that have passed Green Light laws has some restriction on use of the DMV data that we receive, it has no bearing, none whatsoever, on what it is we need to do with other law enforcement missions, on how it is we adjudicate the Trusted Traveler Program, and our ability to share is absolutely unhampered. We do still get returns from California.

Mr. CORREA. Let me ask you.

Mr. PEREZ. Very different than what is happening in New York.

Mr. CORREA. If I can interrupt you.

Mr. PEREZ. Please.

Mr. CORREA. In this year of 2020, what percentage of applicants have DMV data been used as part of the vetting process for the Trusted Traveler Programs?

Mr. PEREZ. My understanding is, again, that is that part of the—

Mr. CORREA. A hundred percent?

Mr. PEREZ [continuing]. Standard protocol. That is part of the standard protocol. Now from a practical perspective, just to be clear, Congressman, if I may, respectfully, now that we know that, while we have been querying DMV information and believing that, for example, the U.S. territories that have not had the capability to provide that to us, clearly we have been adjudicating some applications where those returns had not been returning to us. So—

Mr. CORREA. So your statement is you have been adjudicating and essentially approving Trusted Traveler Programs in other jurisdictions outside of New York without having DMV information.

Mr. PEREZ. That is what we have discovered. That is what exactly we are remedying at the moment, Congressman.

Mr. CORREA. So I guess, if you may indulge me, Madam Chair, you shut down New York for not providing you that information, but there are other jurisdictions that you continue to work with when New York was shut down, given the DMV information or lack thereof. Yes? No?

Mr. PEREZ. So it is my understanding that at the time that that and subsequent to that decision being made with New York, there were conversations with New York to try to find a mutually-agreeable remedy and path forward.

Mr. CORREA. But what I am saying, Mr. Perez, and I don't want to be argumentative with you.

Mr. PEREZ. Please, no, please.

Mr. CORREA. I am just trying to get the facts here.

You shut down New York because they wouldn't give you DMV information. Yet other jurisdictions continue to have their Trusted Traveler Program applications approved without DMV information. It is your statement here today to this committee that you just didn't know that you were processing other jurisdictions. So you

continued to process them, but New York kind-of came to your attention, and, therefore, you shut them down.

Mr. PEREZ. So that is not exactly correct, Congressman.

Mr. CORREA. OK.

Mr. PEREZ. If I could explain, I am going explain it, what and how that played out.

New York was the sole entity, State, or territory, that shut us down from something that was already being provided for. All the other States and territories that were providing something, we were getting some DMV information. What we unearthed and what we discovered was that there was one aspect of the multiple queries, the driver history, OK, that was not being returned by some of these other—

Mr. CORREA. But—

Mr. PEREZ [continuing]. States.

Mr. CORREA. Madam Chair, I am just—final statement here.

Mr. PEREZ. Please.

Mr. CORREA. Mr. Perez, I am just trying to figure out. Again, some jurisdictions didn't provide any or some. New York, you discovered, was not going to. Therefore, you gave them separate treatment.

Mr. PEREZ. We at the time believed that New York was unique in not providing anything. It was our belief that those—

Mr. CORREA. Couldn't you—

Mr. PEREZ [continuing]. Returns—

Mr. CORREA. Couldn't you check that in your database to show that you had other jurisdictions where the Trusted Traveler Program was being approved despite not having that DMV information?

Mr. PEREZ. That what was we only unearthed later on in July, Congressman. Again, at the time that we shut New York down, it was our understanding and our belief that we were getting the returns on the DMV information complete from every other jurisdiction. It was only after later on, months later, that we discovered otherwise.

Mr. CORREA. Madam Chair, if I can, just a quick concluding statement.

I hear what you are saying. I am bothered, though, because you took action against the State of New York without fully vetting the facts. So it is almost as though you are punishing New York for what they are doing. Yet the other jurisdictions continue to operate and get the benefits of Trusted Traveler Program without providing the DMV information. That to me is an act of punishment against a certain jurisdiction, and in my opinion as elected officials, as Government officials here to serve the public, our citizens, you are supposed to serve the citizens, and for you to take that kind of action without knowing the facts raises a lot of alarms.

The State of New York, like the State of California, we are trying to operate a system or economy or society based on what we have to work with. We have a horrible immigration system. Last time it was we had an immigration reform bill was under the great California President Reagan. Today, in California, what we try to do is make sure that people that drive in our streets know how to drive—that means they have a driver's license—are insured, and

that when the police officer pulls them over, they have an ID, and we know who they are. That is why we want to have people driving with driver's licenses. It is not to provide anybody with any privileges. It is a public policy issue, and that is what we try to do.

You know, I am sad because you took action against the State of New York that you didn't have to, if you kind-of went back and just checked your records and see who was not providing you with DMV records all this time.

Madam Chair, thank you very much.

Miss RICE. I thank you, Mr. Correa.

The Chair now recognizes the gentleman from Mississippi, Mr. Guest.

Mr. GUEST. Thank you, Madam Chairman.

Commissioner Perez, I thank you for being here. I thank you and the men and women that serve underneath you for the service that you provide every day to our country. As we talk about the Trusted Traveler Program, there is actually several different programs underneath the Trusted Traveler Program. Is that correct?

Mr. PEREZ. Correct, Congressman, yes.

Mr. GUEST. I was able to find at least 5: The TSA PreCheck being one, the Global Entry program, the NEXUS program, the SENTRI program, and the FAST program. Would all 5 of those programs be underneath the global umbrella, if you will, of the Trusted Traveler Program?

Mr. PEREZ. They would be, Congressman. The only clarification I will make is that the TSA PreCheck is administered by a different agency other than CBP—TSA, obviously, and the Department of Homeland Security. So we in CBP don't have oversight regarding the implementation of that program. All the other programs you mentioned are run by CBP.

Mr. GUEST. Talk about just the general purpose of these programs, specifically the one that CB—the programs that CBP administered.

Mr. PEREZ. So it really is a risk-management, a very critical, important risk-management tool, that it enables to us identify, again, pre-vetted, low-risk travelers that we can subsequently, you know, approve for this Trusted Traveler status so that, when they are traveling across the borders, whether it be an airport, a seaport, or a land border, they get expedited privilege and the ability to clear the border in a faster manner, thereby reducing the burden on the front-line men and women of the agency and how it is they assess risk, which becomes, again, very critical in an ever-present environment of finite resources when you are trying to identify serious risks to the homeland.

Mr. GUEST. So for an individual to qualify for any of these programs that we just listed, there is a vetting process that you have discussed. Is that correct?

Mr. PEREZ. That is correct, Congressman.

Mr. GUEST. Is information sharing between agencies, is that necessary to properly vet individuals that are applying for any of the programs under the Trusted Traveler Program?

Mr. PEREZ. So, directly so, not so much, only in that the vetting process is very much an internal process in CBP. Nonetheless, because we are querying and leveraging other systems as well. With

respect to performing those background checks, they are, as you might imagine, at times and can be informed by that interagency collaboration.

Mr. GUEST. OK. That is what I want to talk about. So, when I am talking information sharing for the purpose of this, it is important that you and the Federal Government be able to access other information data systems, State systems, Federal systems to properly vet individuals to see if they would be a proper candidate from one of these programs. Is that right?

Mr. PEREZ. It is, Congressman. Again, the vetting program itself for these different programs, the vetting process is something that is CBP-centric, but nonetheless, again, further informed by all that interagency collaboration and how those collaborations, how that data exchange, how that information exchange does inform our other holdings that are leveraged in order to assess risk and do background checks and vetting of anybody who applies into these programs.

Mr. GUEST. Commissioner, let me ask you this: Is DMV-related data information, is that one data set that you rely on to vet applicants for this program?

Mr. PEREZ. It is.

Mr. GUEST. Is it your belief—and I know, based on testimony earlier, is it your belief that, if that DMV information is available that it is always used? There may be times where the information—we know there are certain States that don't—because of State laws that don't provide that information. But when available, that is one of the subsets of data that is used to vet travelers for this program?

Mr. PEREZ. It is, Congressman. In fact, those queries are readily being made, and those are the returns that we get back, as I described earlier.

Mr. GUEST. All right. Let me close with this: When we have States and/or territories that either, No. 1, refuse to provide the information at all or, in some cases, where they severely limit the information that they are sharing, does that have the potential to make the traveling public less safe? It would seem to me one fewer data sets that you or the agency would be able to look at. So, in theory, by refusing to share information with CBP, refusing to share information with the Federal Government, could that put members of the traveling public at risk if an individual was to qualify for one of the programs under the Trusted Traveler Program, but yet, there be information that was withheld that may have flagged that individual and prevented them from being cleared?

Mr. PEREZ. Absolutely, Congressman, and it really takes us to, I think, another very troubling aspect, uniquely troubling aspect of New York's Green Light law, you know, aside from just the Trusted Traveler Programs, the inability to share that information for all sorts of other enforcement purposes and mission sets. Not just for CBP, and not just for the impact it has immediately on us, but the impact it has with our State and local partners and any of those who might otherwise be able to share that information with us over the course of investigations of all types, as I mentioned in my opening statement, that might then further inform not just DMV data

that comes to us but other systems and holdings and investigations that could inform us as to why somebody might not be otherwise eligible or found to be eligible for a low-risk travel program.

Mr. GUEST. One last question: Do you believe that New York State's Green Light law, does it negatively impact public safety?

Mr. PEREZ. My professional opinion is absolutely, yes.

Mr. GUEST. No further questions, Madam Chairwoman. I yield back.

Miss RICE. Thank you, Mr. Guest.

The Chair now recognizes the gentlelady from New York, Ms. Clarke.

Ms. CLARKE. I thank you, Chairwoman Rice, and I thank Ranking Member Higgins.

Today's hearing follows Mr. Wolf's appearance before the committee in March where I asked him several questions about the decision to ban New York residents from participating in the Trusted Traveler Program. For example, I asked, and I quote, "can you please explain how it makes the United States safer to allow residents of several foreign countries to enroll in the Global Entry program but to bar residents of New York State?"

After some back and forth, Mr. Wolf said DHS did not have all of the information it required to vet an applicant from New York. Mr. Wolf also said, and I quote, "what I had to take into account was making sure that the whole Global Entry system was not compromised." Then I asked, "whether there was no other way of doing that other than banning all New Yorkers," and Mr. Wolf eventually said, and I quote, "there isn't; there is not."

You can understand, then, Mr. Perez, how it was a surprise to me when, in early September, you filed a supplemental declaration with the District Court in which you said, and I quote, "while CBP officers responsible for vetting TTP applications, including applications to the Global Entry program, do consider DMV record information in their adjudication of such applications based on information identified by CBP. On July 17, 2020, it is now clear that DMV data is not and was not at the time of my signature or my previous declaration available, either in whole or in part, to the TTP vetting officers for a number of jurisdictions, including New York."

Mr. Perez, how could CBP have been unaware prior to July 17 of the fact that some jurisdictions were not providing some or all of the data that Mr. Wolf claimed were so essential to vetting applicants to the Trusted Traveler Programs that New York residents had to be excluded from the program because New York wasn't providing this data?

Mr. PEREZ. So, thank you, Congresswoman. I will try to explain that again without, you know, getting too far into the technical weeds, as I will say, but I do want to also make one other statement as well, to that end, because Congressman Correa too. I want you all to know that, you know, CBP, we own the fact that we attested to and were under the impression that we were receiving all this data and that we were absolutely convinced that this data was coming back to us and then subsequently unearthed it in back of July. So we own that. That is something we are owning and we are fixing, and I just want to make sure that that gets on the record, that clearly.

So, just to go back again and try to explain to you, Congresswoman, how that played out, the way it was explained to me by our OIT, our Office of Information Technology professionals, is as follows, is that, because of the nature of the queries and how they are typically run in batches, the volume associated with that and then the technical aspects of how those returns come back to the agency when those queries were made, there was nothing readily evident that we were not receiving the data that was being queried from any of those jurisdictions. It was not clear by virtue of the fact that, for most, save the U.S. territories who were not transmitting at all, we were receiving something. We were getting some sort of positive return on those queries whereas with New York, which is still true, we were getting a unique identifier informing the agency that the query and the information therein being asked for was restricted. That was unique then with respect to the queries, and it is my understanding that remains unique.

Ms. CLARKE. Mr. Perez—

Mr. PEREZ. Nonetheless, without again getting into the myriad of the complexities of the IT systems, we are immersed in fixing those and working, again, with the States, with the territories to find a path forward so they can give us the completed information, but that is essentially how that played out to, my understanding.

Ms. CLARKE. Understood.

Mr. PEREZ. I hope that explains it.

Ms. CLARKE. Mr. Perez—understood. Mr. Perez, wouldn't you then agree that there was a serious security breach beyond what you were doing with New York if, in fact, those data points were not being processed by all these other jurisdictions?

Mr. PEREZ. I would not, Congresswoman. I would not characterize it like that at all. In fact, as I mentioned in my—

Ms. CLARKE. I just wanted to get your characterization because you sanctioned New York State while you are now saying that you would not characterize the fact that you didn't have the detailed information coming from all these other jurisdictions. Sounds very contradictory, but let me move on.

Given that Mr. Wolf claimed that New York's DMV data was so essential to determining eligibility for enrollment in the Trusted Traveler Program that New Yorkers had to be thrown out of the program because New York wasn't providing that data, what security risk has CBP created in our Nation by enrolling applicants from U.S. jurisdictions that have provided limited or no DMV data to CBP?

Mr. PEREZ. So, to that point, Congresswoman, not unlike I mentioned in my opening statement, that we would have otherwise and might have approved applications that would have provided for some sort of DMV-related offenses of the Trusted Traveler applicants who would have been found otherwise disqualified by virtue of some DMV-related misdemeanor issues. Other than that, there is no other subsequent consequence of what it is and how it is, you know, with respect to the risks of who it is that was let into that program. However, I must—

Ms. CLARKE. So, essentially, you are saying that there is none. Then why did Mr. Wolf claim that DMV data was needed to vet

applicants in the first place? Was he ignorant of the facts, or was he misleading the committee?

Mr. PEREZ. In order to be approved into a Trusted Traveler Program, Congresswoman, we expect that all those applicants meet the strictest thresholds with respect to what it is those qualifications are. That includes getting the information that we require from DMV, DMVs around the country and from the territories, in order to potentially identify disqualifying data. The inherent risk associated from a National security perspective by virtue of our ability to leverage criminal information by a wide array of other types of sources, including interagency collaboration and our own holdings, is separate and apart in how it is that we go ahead and vet and approve folks for a privilege, a privilege to be able to come across a border in a much more expedited fashion and be deemed low-risk. Nonetheless, that privilege, that privilege also does lean on the DMV information that we get from those DMV locations and their DMV offices from around the country. There may be, again, some violations, particularly for people who drive cars, that are DMV-related that would disqualify you from a Trusted Traveler Program.

Ms. CLARKE. On that note, Mr. Perez, yes, it is a privilege, and it is a privilege that U.S. citizens are afforded. But while New York residents were being prohibited from enrolling in the Trusted Travelers Program, did CBP continue enrolling foreign nationals in the program?

Mr. PEREZ. We were, Congresswoman. Those are by way of bilateral—specific bilateral arrangements made with those foreign governments in order to have some of their nationals apply into the program. They are very strictly, you know, laid out as far as requirements and what need to be met. The vetting capabilities, because of, you know, dealing with different governments and different countries, they are all unique. So, again, those are specific agreements brought to and about by virtue of collaboration with those foreign governments and our counterparts. Then, subsequently, upon approval from both countries of the potential applicants, are those individuals subsequently approved into the program.

I might add that one of the aspects that we do ask the foreign governments to bring to bear and to collate and analyze on their end is related, you know, DMV-like and or driver-related offenses therein as well.

Ms. CLARKE. Madam Chair, I have gone over my time. I will yield back. If there is an additional round, I have some additional questions. Thank you.

Miss RICE. Thank you, Ms. Clarke.

Mr. Perez, if I could just say, you have said numerous times during your testimony here today that—you know, you said you didn't want to get into the technical weeds with Members of Congress, and yet, that is exactly why we are here. In fact, we tried to get transcribed interviews which are a great way to be able to kind-of dive into and get into the weeds not in this setting, and you were not made available for that purpose. So I am imploring you to please feel free to get into the weeds because it is only by getting

to the weeds that we are going to truly understand what happened here, so thank you for that.

The Chair now recognizes the gentlelady from Arizona, Mrs. Lesko.

Mrs. LESKO. Thank you, Madam Chair. I do not have any questions. I will just make a brief comment. I thank the gentleman for coming to testify today. Thank you for your work. Thank you for your employees' work to keep our country safe.

I have to say I continue to be mystified by my Democratic colleagues who somehow think it is awful that, if a State decides not to share information that is vital for National security with a Federal agency in order to get Trusted Traveler Program, which is just a courtesy—it is not, like, a right for everybody to have—that somehow they think that is bad. I think it is a good thing.

So I applaud you for keeping our country safe, keeping our community safe, and standing up for what I believe the majority of Americans would agree with.

With that, I yield back.

Miss RICE. Thank you, Mrs. Lesko.

We will now go into Round 2 of questions, and I will recognize myself for 5—hopefully 5 minutes.

Mr. Perez, on June 22, the committee wrote to DHS seeking documents and information regarding the Trump administration's decision to permit Mr. Nigel Farage to travel to the United States from the United Kingdom despite travel restrictions in place to protect against the spread of the coronavirus pandemic. They allowed him to travel so that he could attend a campaign rally staged by President Trump in Tulsa, Oklahoma. The committee requested these documents by June 26. As with so many of our other document requests, this one too has gone unanswered.

Do you know the date by which the Department will provide to the committee all of the documents it has requested regarding the process of approving Mr. Farage to visit the United States to attend President Trump's political rally?

Mr. PEREZ. Thank you, Madam Chairwoman. I am not, but I will gladly take that back to inquire on your behalf.

Miss RICE. Thank you.

Mr. PEREZ. Uh-huh.

Miss RICE. The decision by CBP to admit to the United States a foreign national who happens to be an ally of the President provides an interesting counterpoint to the administration's efforts to intentionally disadvantage U.S. citizens residing in New York. At the time Mr. Farage was admitted, an Executive Order was in effect suspending the entry into the United States of people who had been in the United Kingdom in the previous 14-day period. I will also note that, at the time, Mr. Farage was the leader of a political party but did not appear to have any official position.

When committee staff requested further information from CBP regarding Mr. Farage's travel to the United States, CBP provided an email that stated that Mr. Farage was initially, "denied boarding while attempting to fly from the United Kingdom to the United States," but, "after conducting a thorough review of the relevant facts and circumstances," DHS determined Mr. Farage's travel would be permissible under an exemption that allowed entry to,

“any alien whose entry would be in the National interest.” Do you know what National interest was served by permitting Mr. Farage to enter the United States?

Mr. PEREZ. I am not aware, Madam Chairwoman, of the exact exemptions that were applied when Mr. Farage was allowed to enter.

Miss RICE. Well, I just told you.

Mr. PEREZ. Right.

Miss RICE. I quoted that his travel was determined to be permissible under an exemption that allowed entry to, “any alien whose entry would be in the National interest.”

Mr. PEREZ. So, pardon me, Madam Chairwoman. So, just for clarification, what I am not aware of are the particular details that would have led to him being eligible for that exemption. I was not aware of his travel.

Miss RICE. Were you part of that decision making, determining that it was in the National interest to allow him into the United States?

Mr. PEREZ. Not that I recall, Madam Chairwoman.

Miss RICE. Do you know who made that decision?

Mr. PEREZ. It would have been either—depending on the exemption, if I am not mistaken, it would have been either senior staff at the agency, meaning CBP or the Department, depending on the waiver. So I would have to go back and get that.

Miss RICE. So, when you say senior staff at CBP, who specifically would you be referring to?

Mr. PEREZ. It would have been in the Office of Field Operations which is, again, the entity within CBP that oversees entry into the ports of entry for travelers.

Miss RICE. If it wasn't CBP, as you said it could have been CBP or people at the Department, meaning DHS, who would have made the decision at DHS?

Mr. PEREZ. Well, it would have been hinged upon—my understanding is it hinged upon the authority that was being leveraged. Again, my presumption is it would have been more so ours, but there may be other exemptions, again, depending on which one was being utilized that fall under the purview of the Department's authority, but I would have to go back to double check that, Madam Chairwoman.

Miss RICE. So, just to clarify, it seems that if you are allowing entry into this country based on it being in the National interest, that that is a decision, applying that exemption is a decision that would have to be made, according to you, at the very top of either CBP or DHS?

Mr. PEREZ. Well, it would have been made at a senior level within our agency, not necessarily having to come to my level. That authority would have been and was subsequently delegated down, again, at an Executive level, nonetheless.

Miss RICE. Did Mr. Wolf make this decision, as far as you know?

Mr. PEREZ. I have—that is nothing that I am aware of at all. That would not be typical at all.

Miss RICE. Are you aware of any communication with the Trump campaign vis-à-vis the decision making, finding this to be in the National interest?

Mr. PEREZ. Not at all. None that I am aware of, Madam Chairwoman.

Miss RICE. Thank you. I don't have any further questions.

I will now recognize the gentleman from Louisiana, the Ranking Member, Mr. Higgins.

Mr. HIGGINS. Thank you, Madam Chair.

Deputy Commissioner, it occurs to me about our task force. The amendment of the New York law earlier this year which, perhaps, was a good-faith intention to fix this thing, I readily admit that, but I don't know of any interactions that were requested at the time that the legislature, the State legislature, was making those amendments to the law. I don't know if there was a great deal of interaction with CBP or ICE or DHS in general to arrive at a language of the law, as amended, that would fix the thing.

Because to make it a felony to share DMV information with CBP or ICE outside of narrow exceptions, how does that impact our task force activities with other Federal law enforcement agencies like DEA, U.S. Marshals? Can you explain how the Green Light law, as amended, has impacted DHS's relationships with other Federal law enforcement agencies, specifically regarding joint terrorism task forces, et cetera?

Mr. PEREZ. Thank you, Ranking Member, and that was as troubling as any development that came up subsequently with respect to the evolution of New York's Green Light law, the lack of the ability to share information. But then, you know, frankly, the cooling effect, if you will, from a practical perspective of now the consequence, potentially, for anybody to share that information by virtue of the class E felony.

Mr. HIGGINS. Please explain to America because—I know because of my background, and maybe many in Washington here and Congress do as well, but clarify, a task force, as it meets and moves forward, it is a bunch of guys in a room, you know, at some undisclosed location talking about the developments in the case. So how could another Federal law enforcement agent not share data that he had access to with members of the task force that included ICE or Customs and Border Protection? This information is designed to be shared. That is what the task force does, to combine their investigative conclusions and what their suspicions are, et cetera, to arrive at the next step in that task force investigation. So how has it impacted the realities of your task force operations? I am very curious about that.

Mr. PEREZ. So, thank you, Ranking Member. I guess I would describe it in this way. As you alluded to, those task force environments are dynamic environments, and in many respects, they are imperfect. They are imperfect insofar that it is by bringing the task force and all of those varying elements together that one enables the other in a very dynamic way. Over the decades that I have been in this profession, I've seen the evolution of the utility and being able to readily share on the front line what it is and all that it is that each and every agency, law enforcement professional, can bring by way of experience and actual information and data to bear when looking for solutions, answers, and leads, if you will, on the multitude of threats that we are pursuing in the interest of public safety.

The impact of not being able to share readily, you know, again, at the very least, I would imagine that it is awkward for those who are involved in that, if not quite difficult and concerning because, again, now, in the case of New York, there is a very real consequence by way of a criminal conviction.

Mr. HIGGINS. Yes. Orange is awkward.

Mr. PEREZ. Thank you.

Mr. HIGGINS. Orange is awkward. So let me ask in the interest of, perhaps, moving toward some potential resolution here. If the criminal impact of sharing information under the amended New York law was further amended based upon deeper communications between CBP, DHS, ICE, and the New York legislature, do you see—can you just answer us candidly, is there a way forward there if all parties were willing to address the amended law?

Mr. PEREZ. I believe so, Ranking Member. In fact, we have—amongst the outreach we have done, as I mentioned earlier, to all those other jurisdictions with respect to the DMV information, we have reached back to New York now as well and asked them, frankly, because back in April, part of their amendment was to turn some information back on in the interest of being able to vet for Trusted Traveler. So we have done that outreach at least to begin with that. They have yet to respond to us and turn that information on. But to your question, I believe so. There is always a path forward in order for people to understand more acutely what the perhaps unintended consequences of some of what it is they have done truly are.

Again, as somebody who worked in New York City directing this agency for over 8 years, I will tell you that, particularly in that State, but throughout the country because that information is being leveraged and utilized throughout the country at times by virtue of the nature of the investigations that are being had and the linkages that are being made by officers and agents in this role all over the country, that has a very, very serious impact on our ability to, again, do all the other type of work that we do in order to keep our communities safe.

Mr. HIGGINS. So thank you for your answers.

Madam Chair, thank you for holding this hearing today, and I close my questions on that hopeful note.

Miss RICE. Thank you, Mr. Higgins.

The Chair now recognizes the gentleman from California, Mr. Correa.

Mr. CORREA. Thank you, Madam Chair.

If I can, sir, I just had a couple of follow-up questions. I agree with Mr. Higgins; the more information, the better. I believe a lot of the bad guys that would do us harm are outside the country and inside the country too. We have got a lot of domestic terrorism, a rise in domestic terrorism, so I think the share of information is important. I hope we can get there respecting the objectives of the States in terms of their public safety objectives as well as yours as well.

You touched on something interesting, which was the Foreign Traveler Program under the Trusted Traveler Program, and you mentioned something about the DMV-like data. So I think there is, like, 11 countries that we have the—kind-of a Foreign Trusted

Traveler program. Is that correct? So is that sharing of the information with those 11 countries similar DMV data? Tell me. Is that—first of all, do we have treaties with those countries? Do we have sharing agreements, sharing data agreements with them? Help me understand a little bit more about how we work with these foreign nations to make sure we are all secure.

Mr. PEREZ. Absolutely, Congressman. I don't have the list readily available. I am looking to see—

Mr. CORREA. Assume it is 11.

Mr. PEREZ. Yes. It is a little more than a dozen different countries, and what it is, essentially, these are, again, very specific bilateral agreements made with those—

Mr. CORREA. They are bilateral per Nation?

Mr. PEREZ. Right. With us per Nation, you know, directly with our counterparts to, in fact, not just meet but oftentimes exceed what it is that we typically would require with respect to Trusted Traveler, you know, Program vetting.

Now, again, when we are talking to foreign countries, not all of them are created equal in what it is that they can provide, meaning the data and the information that they are able to procure, the data sharing arrangements that we have. So, again, it is a very select group that actually has gotten to that point where we have been able to make these arrangements.

What I was referring to, because it is one of the questions that I particularly asked myself as we were expanding, and I was learning more about that type of expansion, was whether or not DMV-like and/or driver-associated histories and driver-associated information by way of violations and misdemeanors, not unlike we weigh those details into consideration for vetting into our TTP programs here in the United States, if that was something we were asking the foreign countries to vet on their side as well as part of these bilateral arrangements, and it is. Now, they are the ones, again, ultimately who are verifying all those checks for us. We are doing our verifications from our end. It is, once both, countries agree to a certain applicant being eligible to join the program that that applicant is ultimately let in.

Mr. CORREA. When I was in the State legislature, we addressed the issues of criminal code across State lines and trying to figure out whether what you did in one State—

Mr. PEREZ. Right.

Mr. CORREA [continuing]. Applied to the State of California, if it would meet the elements of a crime. In thinking about your job across international lines, DMV type of data, is that kind-of something that you do, try to figure out whether a person who is applying for a Trusted Traveler Program from another country, they would meet your qualifications in terms of similar behavior that you would find objective in the United States and in another country? Do you have specific elements or things that you look at?

Mr. PEREZ. So the answer—the short answer is yes, Congressman. Your understanding, how you described it, is my understanding as well. But again, a lot of that criteria, a lot of all of that is done in the front end to make sure that both countries understand exactly what the expectation is on the applicants.

Without getting into too much detail on the specific vetting, which we gladly will provide much more greater detail to the committee in a closed session because I would rather not get into specifics because of the—

Mr. CORREA. We would like—I would like that. I would like that, yes.

Mr. PEREZ. We will gladly share that. But what I can give you just, you know, kind-of, you know, minor points, generally, you know, the different types of violations that are associated with, you know, a motor vehicle, you know, Division of Motor Vehicle or something therein that might not otherwise rise to being a criminal violation, you know, necessarily. Or, you know, there could be some sort of presentation that was less than accurate. It might have been, you know, some other type of, you know, driving and/or vehicular violation or license-related violation that administratively raises some red flags with respect to potential eligibility into the programs. But, again, there is a longer, more detailed list there that, again, we will gladly share in a closed session.

Mr. CORREA. Madam Chair, if you will again indulge me with one further question.

Interesting that we talk about DMV-like data, bilateral agreements with other countries, sharing of data. Again, from my State experience, we used to have the State attorney general in the State of California working with foreign Attorney Generals and sharing other data because this is an interesting area. Bad guys, bad people all over the world, and you want to make sure you have those folks under surveillance. So do you look at other data beyond just DMV data when it comes to the Trusted Traveler Program?

Mr. PEREZ. Oh, very much so, Congressman. Very much so. Not only here, but with respect to those same bilateral arrangements. That is, frankly, a huge part of what it is we do when we vet for these Trusted Traveler Programs. We are leaning on a multitude of holdings, not just our own but in the interagency, to make sure that people, you know, actually are—that we can confidently, frankly, afford the privilege for those who we deem low-risk. It is a terrific tool. We have over 9½ million participants in the Trusted Traveler Programs now, and it is a terrifically important tool for us to manage risk. So, again, those thresholds, those expectations are high, and we do leverage a multitude of law enforcement information to make those decisions.

Mr. CORREA. Madam Chairwoman, I want to thank you very much, and I would just ask that we consider having a private discussion on some of the details of the Foreign and Trusted Traveler Program.

With that, I yield.

Miss RICE. I absolutely agree, Mr. Correa, absolutely, and thank you.

The Chair now recognizes the gentlelady from New York, Ms. Clarke.

Ms. CLARKE. I thank you again, Madam Chair. I thank Ranking Member Higgins.

Mr. Perez, my time is short. I have a number of questions about the decision-making process. When did you first become aware that

New York had enacted the Green Light law and that it would cut off CBP's access to the DMV database?

Mr. PEREZ. So, Congresswoman, to the best of my recollection, when I personally became aware was in December of last year when it was reported to me that we were, as an agency, making these queries into New York's DMV database via the Nlets system which is the segue into those queries and receiving the negative returns that we were receiving. So I was made aware or I recall being made aware in December last year.

Ms. CLARKE. So how did you become aware? Can you be more explicit about that?

Mr. PEREZ. To the best of my recollection, Congressman, it was shared with me by staff at the agency.

Ms. CLARKE. OK. According to a few documents produced by the Department to the committee, on December 30th of 2019, a memo was sent to the heads of DHS operational components stating that, and I quote, "certain State legislatures have passed laws restricting their respective Department of Vehicles, DMV agencies, from sharing information with the Department." This memo went on to instruct, "each operational component to conduct an assessment of the impact of these laws and respond by January 15, 2020."

Did you have any role in developing or reviewing CBP's response to DHS's query?

Mr. PEREZ. I don't recall, Congressman. As you mention it, I do have a vague recollection of the ask, but I don't recall that I actually reviewed the response that went back to the Department. It would have been an Executive subordinate to me that would have been tasked with providing and compiling that information.

Ms. CLARKE. The limited production provided to the committee includes assessments returned by several DHS agencies, including a memo from the U.S. Secret Service. The Secret Service memo clearly acknowledges that there were limitations on that agency's access to DMV information.

For example, the Secret Service memo states that, and I quote, "all States participate in driver history sharing except Illinois, Puerto Rico, and the U.S. Virgin Islands." As such, it is clear that DHS knew very early this year, and perhaps even earlier, that there were at least some limitations on the sharing of data related to driver's license with at least one DHS operational component.

Were you aware in January that there were limits on at least the Secret Service's access to some DMV data, and if not, when did you become aware?

Mr. PEREZ. So I was not, Congresswoman, and I have only become aware, frankly, of some of these other agencies other than ICE, you know, and some of their limitations, you know as—over the last couple of months as I have, you know, been really, really having to, you know, familiarize myself with the totality of particularly the court proceeding and what has been going on with the court case up in New York.

But a very important point here is that there is a clear distinction and can be a clear distinction with respect to what a State, you know, might be sharing with one agency versus what a State is, in fact, sharing with another. In other words, meaning that by virtue of the Secret Service, as you mentioned, not being able to get

returns or get information or some types of information for certain States would not necessarily preclude and/or mean that CBP wasn't actually getting that information.

Ms. CLARKE. A document dated January 8, 2020, and labeled Memorandum for the Acting Deputy Secretary for Mark Morgan, Acting Commissioner, with the subject, and I quote, "New York Green Light law, Implications and Recommendations," was produced to the committee. Again, much of it is redacted. Did you have any role in composing or reviewing this document or in making any of its recommendations regarding possible response to the Green Light law? If so, what was your role?

Mr. PEREZ. So I do not recall the specifics, but if it was signed by the Commissioner, the Acting Commissioner of the agency, I would absolutely expect that I did review that memo and approved it to be put forth for his signature. Again, I just don't have recollection, and I don't have it with me. I don't have recollection of the particular aspects of what was included there, but I absolutely would have reviewed, more likely than not, that document.

Ms. CLARKE. The document states, and I quote, "CBP first recommends engaging with the State of New York to resolve the restricted access prior to implementing any of the recommendations identified below."

To your knowledge, did that happen? If not, why not?

Mr. PEREZ. I don't recall to what extent, and again, the timing, Congresswoman. I do understand that there was some engagement between the Department and the State of New York, but I don't recall that we in CBP had any subsequent discussions and/or back and forth with the folks in the State of New York.

Ms. CLARKE. Much of the memo is redacted. Will you tell us what all the different recommendations presented to the Acting Deputy Secretary were?

Mr. PEREZ. I don't recall, again, the content of the memo, Congresswoman, and again, not familiar with the redactions made. Nonetheless, again, I gladly could take back your question and see what, if anything, more can be provided to you other than what has already been shared.

Ms. CLARKE. Were you ever involved in any discussion with personnel from CBP or DHS regarding how the Department would respond to New York's enactment of the Green Light law? If so, what discussions were you involved in, and when did they occur, who participated, and what was discussed?

Mr. PEREZ. So I was personally involved with several discussions, and I was sharing with the DHS—my DHS counterparts and superiors as well as agency, you know, superiors and counterparts the facts as I knew them and how the Green Light law in New York affected and continues to affect CBP. Again, there was several conversations. I don't—I couldn't tell you specifically how many and when. I would have to go back and try to take a look at that. But, nonetheless, I assure you that I was involved in those conversations providing the facts as I knew them with respect to the New York Green Light law. Pardon me.

Ms. CLARKE. Was Mr. Wolf involved in any of these conversations?

Mr. PEREZ. Pardon me?

Ms. CLARKE. Was Mr. Wolf involved in any of these conversations?

Mr. PEREZ. To the best of my recollection, yes. I would have been at times briefing the then-Acting Secretary along with, again, other superiors of the Department and of the agency.

Ms. CLARKE. When did you first become aware that New York residents might be excluded from the Trusted Traveler Program, and how did you become aware?

Mr. PEREZ. So, really, Congresswoman, I am going to respectfully say I'm not—you know, because that Department came from—or that decision came from the Department, I really don't feel it appropriate for me to get into the particular details of the deliberative process of how that decision came about. What I can share with you is that, ultimately, DHS made the decision.

Ms. CLARKE. No. My question was, when did you first become aware?

Mr. PEREZ. To the best of my recollection, I became aware when the decision was made and was shared with the State of New York. That is to the best of my recollection.

Ms. CLARKE. How did you become aware?

Mr. PEREZ. Again, to the best of my recollection, I was made aware of the decision when the decision was ultimately made and shared with the State of New York. I may have—it may have been shared with me somewhat previously to that, but I just don't recall.

Ms. CLARKE. Who informed you?

Mr. PEREZ. Again, Madam Congresswoman, I am going to respectfully just say that I don't believe it appropriate for me to get into the particulars of the deliberative process of that decision making within the Department, and I just, candidly, don't have a recollection of who particularly would have informed me. What I can assure you is that I was—I was—on behalf of this agency, providing facts that would have informed the ultimate decision makers in what it is that we would and should be considering with respect to that decision.

Ms. CLARKE. Respectfully, I am not asking about your deliberations. Someone had to have informed you that this decision to exclude New York was moving forward. All I am asking is, who informed you?

Mr. PEREZ. I don't—I just don't recall, Congresswoman. That would have come—that would have come from the Department. A decision was made by the Department. Who specifically informed me, I just don't recall.

Ms. CLARKE. All right. Who made the decision that the response would be to exclude New York residents from the Trusted Traveler Program? You don't recall?

Mr. PEREZ. That decision ultimately—I believe it is a matter of public record. I believe it was a letter that was received by the State of New York from the Acting Secretary, so, again, the decision ultimately came from the Department.

Ms. CLARKE. So it came from Mr. Wolf?

Mr. PEREZ. I believe that that was the written correspondence. I believe it was his signature on the written correspondence. That is to the best of my recollection.

Ms. CLARKE. Were you told why this action would be taken, and if so, what were you told?

Mr. PEREZ. Congresswoman, again, with all due respect, I think that is particularly—you know, it is directly about the deliberative process, and I am just letting you know that I was, you know, providing the advice and the facts as I knew it as best I could from CBP's perspective on what should inform the ultimate decision that was made. At the time, I, you know, gave those facts as best as I could and with everything that we had available to us in order to provide to the decision makers the most amount of information that they could possibly have prior to making that decision.

Ms. CLARKE. So what actions did you take or order within CBP to implement this decision?

Mr. PEREZ. Once the decision was made, we immediately stopped accepting new applications for the Trusted Traveler Programs and renewals from residents from the State of New York.

Ms. CLARKE. Madam Chair, with all due respect, we are the oversight body of this agency, and I am highly insulted by the fact that we could have an officer from this agency say to me that he does not have to share with us the information of their deliberations. This is the height of insult to the American people, and I believe that this requires that we have a secured environment in which to have this conversation. If this can happen to New York State, it can happen to any State in the Union at the whim of any individual within any administration, and this is not what the American people have asked of us to do.

I yield back to you, Madam Chair, but I have to say that, Mr. Perez, you have to be better than this. I yield back.

Miss RICE. Thank you, Ms. Clarke. I agree that, given the limited answers that we have gotten here today, I think it would be a good idea to continue this conversation in a secure location.

So, Mr. Perez, let me just say this: I thank you for showing up today because that is more than Mr. Acosta—who is the actual director of the TTP, the Trusted Traveler Program—it is more than he did. It is more than Mark Morgan, who is the acting commissioner of CBP, did. It is more than Scott Glabe who is, get ready for this, the senior official performing the duties of under secretary for strategy policy and plans and assistant secretary for trade and economic security, Department of Homeland Security. That is a mouthful. So you have done more than those 3 have done. What I take exception to is that you have consistently downplayed your own title. You are the deputy commissioner of CBP. That is a job with enormous responsibility, enormous discretion, and enormous access to how decisions are made within the Department. You, in fact, are listed multiple times, seemingly in 4 different email discussions in the privilege log, in court documents, which indicate that you were fairly involved in the process of how all of these decisions were made. So I just want to be clear that we know that there are many documents that are likely responsive to the requests that this committee made in July. We know this because a report, dated September 4, 2020, and filed by the office of the acting U.S. attorney for the Southern District of New York with the district court indicates that Department of Justice officials reviewed, and I quote, “more than 2,000 emails and documents” re-

garding this issue. It is extremely likely that many of these materials would be responsive to the committee's 4 categories of requests.

Let me also be clear that the existence of any type of litigation is not relevant—is not relevant—to the Department's obligation to provide to this committee the documents the committee has requested. You make it very difficult for us to engage in our Constitutional responsibility of having oversight over these agencies, and I hope that the Ranking Member will agree with me that this is not a political issue. This is an issue of allowing committees, Congressional committees, to do their required oversight.

So I am asking you specifically, Mr. Perez. By what date, and I need a specific date, will you provide to the committee all the documents that we have requested, noting that these documents have already been identified and likely assembled, given the statement that was made by DOJ through the Southern District in its report to the district court?

Mr. PEREZ. I will gladly take that back, Madam Chair, to find out when, exactly, you should all expect us to be able to provide that. Right now, I can't give you a specific date, but I will gladly take that back to give you—in an attempt to give you a specific date of when it is you should expect those responses to be provided.

Miss RICE. I think that you are in a high enough position to be able to give me that answer now, but I will give you, let's say, I don't know, until the end of the week so you can tell us because these documents have been requested. We know that they have been reviewed. We know that they have been collated. We know that the Southern District has access to them as well. Again, they said that they reviewed more than 2,000 emails and documents specifically on this issue that we are inquiring about.

So, again, I want to thank you for showing up. I want to thank you for your patience here today and for giving answers that, although I think could have been fleshed out a little more, I respect the fact that you are agreeing to give us answers that will go deeper into the weeds, to use your language, in a secure setting, and we will take you up on that.

I am going to defer to the Ranking Member for any closing comments he would like to make.

Mr. HIGGINS. Just briefly.

Deputy Commissioner Perez, are you deputy commissioner of Customs and Border Protection?

Mr. PEREZ. I am, sir.

Mr. HIGGINS. Are you the Acting Secretary of the Department of Homeland Security?

Mr. PEREZ. No, I am not, sir.

Mr. HIGGINS. Is it righteous that this committee would ask you questions regarding your own personal knowledge and actions of the performance of your duty as the deputy commissioner of Customs and Border Protection?

Mr. PEREZ. Absolutely. Glad to respond to those.

Mr. HIGGINS. Would you consider it righteous or within the parameters of appropriate questioning of chain of command for us to ask you as the deputy commissioner of Customs and Border Protec-

tion about internal discussions and deliberations of the Acting Secretary of the Department of Homeland Security?

Mr. PEREZ. Again, I would respectfully say that I do not believe so. Nonetheless, having to provide a response and take the question, that is why I am here, and I gladly take the question, nonetheless.

Mr. HIGGINS. Yes, sir.

Mr. PEREZ. I don't believe—

Mr. HIGGINS. I am an elected representative of the House of Representatives for the Third District of Louisiana, south Louisiana. We have seniority chain of command, so to speak, within our Conference, the Republican Conference. My colleagues have a similar chain of command within the Democratic Caucus. My own office has internal deliberations that are unknown to other offices, you could imagine. There is no way that I can answer questions regarding the deliberations and the internal communications of our leadership's—the means by which they arrive at conclusions. That would be Leader McCarthy or my colleague, Representative Steve Scalise. They issue their statements, and we are included because we are part of that Conference. The same thing happens across the aisle. But if someone asks me how Leader McCarthy—what the deliberations were and the specifics were, what the conversations were within his office, I wouldn't be able to answer it because I wasn't there. So I think that my colleague earlier indicated that you were somehow withholding data that you should divulge, but within every organization where a chain of command exists, there are parameters that we should stay within regarding responding to questions.

So I thank you for appearing before us today. I think you have been candid and forthright in your answers.

I thank my colleague and friend, Madam Chair, for holding this hearing today.

Miss RICE. Thank you, Mr. Higgins.

Mr. Higgins, my friend, I think that we all know how our individual leaders come to the conclusions that they come to. We just choose not to express them publicly, and that may be the case here as well.

So, Mr. Perez, again, thank you so much for attending. With that, I want to thank you for your testimony and the Members for their questions.

The Members of the subcommittee may have additional questions for the witness, and we ask that you respond expeditiously in writing to those questions.

Without objection, the committee record shall be kept open for 10 days.

Hearing no further business, the subcommittee stands adjourned. [Whereupon, at 11:56 a.m., the subcommittee was adjourned.]