

# BUSINESS AS USUAL? ASSESSING HOW DHS CAN RESUME OPERATIONS SAFELY

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
OVERSIGHT, MANAGEMENT,  
AND ACCOUNTABILITY  
OF THE  
COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTEENTH CONGRESS  
SECOND SESSION  
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# CONTENTS

	Page
STATEMENTS	
The Honorable Xochitl Torres Small, a Representative in Congress From the State of New Mexico, and Chairwoman, Subcommittee on Oversight, Management, and Accountability:	
Oral Statement .....	1
Prepared Statement .....	2
The Honorable Dan Crenshaw, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Oversight, Management, and Accountability:	
Oral Statement .....	3
Prepared Statement .....	4
The Honorable Bennie G. Thompson, a Representative in Congress From the State of Mississippi, and Chairman, Committee on Homeland Security:	
Oral Statement .....	7
Prepared Statement .....	8
WITNESSES	
Mr. Anthony M. Reardon, National President, National Treasury Employees Union:	
Oral Statement .....	9
Prepared Statement .....	11
Dr. Everett B. Kelley, National President, American Federation of Government Employees, AFL–CIO:	
Oral Statement .....	15
Prepared Statement .....	16
Mr. Brandon Judd, National President, National Border Patrol Council:	
Oral Statement .....	21
Prepared Statement .....	23
APPENDIX	
Questions From Honorable Bonnie Watson Coleman for Anthony M. Reardon	35
Questions From Honorable Bonnie Watson Coleman for Everett Kelley .....	37
Questions From Honorable Bonnie Watson Coleman for Brandon Judd .....	38



## **BUSINESS AS USUAL? ASSESSING HOW DHS CAN RESUME OPERATIONS SAFELY**

**Tuesday, June 16, 2020**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON OVERSIGHT, MANAGEMENT,  
AND ACCOUNTABILITY,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 12:05 p.m., via Webex, Hon. Xochitl Torres Small [Chairwoman of the subcommittee] presiding.

Present: Representatives Torres Small, Titus, Watson Coleman, Barragán, Thompson, and Crenshaw.

Ms. TORRES SMALL. The Subcommittee on Oversight, Management, and Accountability will come to order.

Let me begin by thanking all of my colleagues for joining us today for the first fully remote proceeding for the Committee on Homeland Security.

The COVID-19 pandemic has interrupted all of our daily lives and the ability of the House to safely conduct its business. I want to thank my colleagues for coming together, despite differences and reservations regarding continuing our business in a remote setting, to move forward in a productive bipartisan manner for the benefit of our constituents and our country. I look forward to the day when we can all safely meet together in person, and I am so grateful to have all of you as colleagues.

With that, I turn to the topic of today's hearing, the Department of Homeland Security's DHS plans to resume operations in the wake of the coronavirus pandemic.

First, I want to acknowledge that many of DHS's employees never stopped working during the pandemic. They faced unprecedented challenges, and I thank them for continuing to carry out their important missions during these challenging times. That said, the pandemic has required the Department to significantly adjust its operations in ways it never had to before. Employees that could work remotely shifted to telework, procedures for those that couldn't were altered or suspended altogether. For example, the Federal Law Enforcement Training Center, FLETC, which trains law enforcement officers across DHS and other Federal agencies, halted all in-person trainings for 12 weeks. DHS also closed immigration service centers and enrolled centers for Trusted Traveler Programs, such as the Transportation Security Administration's PreCheck and Customs and Border Protection's Global Entry.

As DHS resumes these operations, it is important that the Department have plans in place to adequately protect the work force's health and safety, such as regularly cleaning facilities, adjusting work spaces to align with social distancing guidelines, and providing personal protective equipment. Since infection rates have begun to rise in some areas of the country, comprehensive testing, especially for front-line operators, and contact tracing is also necessary to minimizing exposure.

Given the Department's mission, most DHS employees have continued to work on the front lines, answering the call to protect our Nation from a variety of threats. But the recent pandemic has required considerable and unparalleled sacrifices from these dedicated public servants. Many have been working around the clock to coordinate assistance and response efforts, and front-line operators face an even greater-than-normal risk of exposure to this deadly virus.

All the while, workers are juggling concerns about the well-being of their loved ones and family commitments, with most schools and day cares closed. I worry about what toll this will have on employee retention and the already low morale, an issue this subcommittee has explored during a hearing earlier this year.

The Department itself is not immune to the virus. To date, DHS has experienced over 1,600 COVID-19 cases, including 10 deaths among its work force. My condolences go out to the families and friends of those employees that have succumbed to the disease.

Now, more than ever, it is important that DHS ensure its work force feels safe and supported as it carries out its vital mission to protect the homeland. To that end, I support providing hazard pay to front-line workers who face increased exposure to the virus while on duty, and look forward to hearing from our witnesses today on their views of DHS's effort to protect the work force and any recommendations for how we in Congress can support the Department as it resumes operations. Thank you again for joining us today.

The Chair now recognizes the Ranking Member of the subcommittee, the gentleman from Texas, Mr. Crenshaw, for an opening statement.

[The statement of Chairwoman Torres Small follows:]

STATEMENT OF CHAIRWOMAN XOCHITL TORRES SMALL

JUNE 16, 2020

Let me begin by thanking all of my colleagues for joining us today for the first fully remote proceeding for the Committee on Homeland Security. The COVID-19 pandemic has interrupted all of our daily lives and the ability of the House to safely conduct it.

While I understand that some of my colleagues may have reservations about continuing with our business in a remote setting, and I look forward to the day when we may all safely meet together in person, I am grateful that we have been able to come together to move forward in a productive, bipartisan manner for the benefit of our constituents and the country.

With that, I turn to the topic of today's hearing, the Department of Homeland Security's (DHS) plans to resume operations in the wake of the coronavirus pandemic.

First, I want to acknowledge that many of DHS's employees never stopped working during the pandemic and I thank them for continuing to carry out their important missions during these challenging times. That said, the pandemic has required the Department to significantly adjust its operations in ways it never had to before. Employees that could work remotely shifted to telework. Procedures for those that couldn't were altered or suspended altogether.

For example, the Federal Law Enforcement Training Centers (FLETC)—which trains law enforcement officers across DHS and other Federal agencies—halted all in-person trainings for 12 weeks. DHS also closed immigration service centers and enrollment centers for trusted traveler programs, such as the Transportation Security Administration’s (TSA) PreCheck and Customs and Border Protection’s Global Entry.

As DHS resumes these operations, it is important that the Department have plans in place to adequately protect the workforce’s health and safety. Such as regularly cleaning facilities, adjusting workspaces to align with social distancing guidelines, and providing personal protective equipment. Since infection rates have begun to rise in some areas of the country, comprehensive testing—especially for front-line operators—and contact tracing may also be key to minimizing exposure.

Given the Department’s mission, most DHS employees have continued to work on the front lines answering the call to protect our Nation from a variety of threats. But the recent pandemic has required considerable and unparalleled sacrifices from these dedicated public servants. Many have been working around the clock to coordinate assistance and response efforts, and front-line operators face an even greater-than-normal risk of exposure to the deadly virus. All the while, workers are juggling concerns about the well-being of their loved ones and family commitments with most schools and daycares closed.

I worry about what toll this will have on employee retention and already low morale—an issue this subcommittee explored during a hearing earlier this year. The Department itself is not immune to the virus. To date, DHS has experienced over 1,600 COVID-19 cases, including 10 deaths, among its workforce.

My condolences go out to the families and friends of those employees that have succumbed to the disease. Now, more than ever, it is important that DHS ensure its workforce feels safe and supported as it carries out its vital mission to protect the homeland.

To that end, I support providing hazard pay to front-line workers who face increased exposure to the virus while on duty.

I look forward to hearing from our witnesses today on their views of DHS’s efforts to protect the workforce and any recommendations for how we in Congress can support the Department as it resumes operations.

Mr. CRENSHAW. Thank you, Chairwoman Torres Small.

I want to start my statement by remembering and commemorating the life and service of Border Patrol Agent Johan Mordan. Agent Mordan’s watch ended last Thursday, June 11, in New Mexico. Agent Mordan volunteered to serve and protect our Nation’s border. While most of America was shut down and many in Government worked from home, Agent Mordan continued to be on the front lines with the many men and women of the DHS whose mission does not allow them to work from home. We are forever grateful to these men and women. I am grateful we can have this hearing today about the important topic of getting all of DHS back to work for the American people.

DHS has over 200,000 employees tasked with protecting the American homeland. Although COVID-19 is a significant threat to the American people, the threat of terrorists, criminals, and others who wish us harm does not diminish simply because our focus may be elsewhere. Because terrorism does not take sick leave, it is essential DHS leadership maintains operational capabilities throughout this pandemic while striving to keep its employees healthy. Although many DHS employees perform duties that do not allow them to telework, for those that are able to telework, DHS quickly initiated telework policies to protect those employees.

As part of the reopening of America, the Office of Management and Budget and the Office of Personnel Management issued guidelines based on information from the CDC for the heads of all Federal agencies to utilize in making decisions regarding returning employees to on-site work. Those guidelines allowed agency heads

to exercise a great deal of discretion. It is my understanding that DHS has been developing plans for return to work that include a lot of flexibility for its work force and take into account underlying conditions as well as specific circumstances of employees.

As DHS begins to transition back to normal operations around the country, the health and safety of the employees returning to on-site work is of the utmost importance. Given that many DHS employees continue to work at their duty stations, the Department should focus its plans on keeping all DHS employees, whether in the office or in the field, safe and healthy as we continue to battle COVID-19.

As we move toward reopening facilities, it is important to realize that the health and safety of employees is intertwined with the health and safety of the American public that they serve. Employees at DHS must be protected from individuals with COVID, but also need to protect individuals visiting DHS facilities from being exposed to COVID. This will require proper screening tools for anyone entering the facilities or work sites, and adequate protective gear and barriers for both the employees and the individuals they serve.

Some DHS employees, such as those at USCIS which operates on a fee-based model, are facing the real possibility of losing their jobs and income due to agency activities having been put on hold during the pandemic. Although it is important to keep people healthy by preventing exposure to COVID, we should keep in mind that health is also tied to having enough money to meet basic needs. The loss of jobs and businesses from the wide-spread closures is a real public health threat that must also be addressed. Unemployment can lead to both physical and mental health issues. There is plenty of evidence for that already. We must get creative in addressing this shortfall as well.

DHS needs to have a plan in place for addressing the needs of employees as well as the public. The plan must have sufficient flexibility built in to allow for modifications as information on containing the virus continues to evolve. I look forward to hearing from our witnesses today on the needs of the employees they represent and the steps DHS should take to protect them.

While I am pleased to participate in this important hearing today, I would prefer we conduct ordinary hearings in person, and I want to be on the record saying that. There is no reason our small subcommittee cannot safely meet in our committee room, and I hope that is what we do next time, and I hope this is the last time we have this virtual hearing and look forward to working together to make that a reality.

I yield back.

[The statement of Ranking Member Crenshaw follows:]

#### STATEMENT OF RANKING MEMBER DAN CRENSHAW

Thank you, Chairwoman Torres Small.

I want to start my statement by remembering and commemorating the life and service of Border Patrol Agent Johan Mordan. Agent Mordan's watch ended last Thursday, June 11 in New Mexico. Agent Mordan volunteered to serve and protect our Nation's border. While most of America was shut down and many in Government worked from home, Agent Mordan continued to be on the front lines with the many men and women of the Department of Homeland Security whose mission does not allow them to work from home. We are forever grateful to these men and women



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As DHS begins to transition back to normal operations around the country, the health and safety of the employees returning to on-site work is of the utmost importance. Given that many DHS employees continued to work at their duty stations, the Department should focus its plans on keeping all DHS employees, whether in the office or in the field, safe and healthy as we continue to battle COVID-19.

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While I am pleased to participate in this important hearing today, I would prefer we conduct OMA hearings in person. There's no reason our small subcommittee cannot safely meet in our committee room. I hope this is the last time we have a virtual hearing and look forward to working together to make that a reality.

I yield back.

Ms. TORRES SMALL. Thank you, Ranking Member Crenshaw.

With that, I will yield to the Ranking Member for the purpose of a colloquy.

Mr. CRENSHAW. Yes, the colloquy.

Thank you, Madam Chairwoman. Could you please explain our agreement on committee procedures during these remote proceedings?

Ms. TORRES SMALL. I thank the Ranking Member. Let me begin by saying that standing House and committee rules and practice will continue to apply during remote proceedings. Members will be expected to continue to adhere to the rules of the committee and the House. During the covered period as designated by the Speaker, the committee will operate in accordance with House Resolution 965 and the subsequent guidance from the Rules Committee in a matter that respects the rights of all Members to participate. The

technology we are utilizing today requires us to make some small modifications to ensure that the Members can fully participate in these proceedings.

Mr. CRENSHAW. Thank you, Madam Chairwoman. Could you elaborate on your plans for rehearsal sessions before remote proceedings?

Ms. TORRES SMALL. Thank you. Given these new circumstances, the committee plans to hold rehearsals before our first remote hearings and markups in the full committee or in the subcommittee, in furtherance of House rules and regulations. These rehearsals should help iron out technical issues and ensure that Members remain connected if they must change devices or locations.

Mr. CRENSHAW. Thank you, Madam Chairwoman. Could you elaborate on how Members may expect to be recognized during a remote proceeding?

Ms. TORRES SMALL. Thank you. First, to simplify an order of questioning, I will recognize Members for their 5-minute questioning based strictly on seniority basis as determined by our committee roster, a departure from our previous procedure. Members must be visible to the Chair in order to be considered as present for the purposes of establishing a quorum or for voting. Members should also make every effort to remain visible on the screen throughout the proceeding. If a Member experiences issues with their video stream, they may proceed with solely audio to ensure connection, provided they have been identified previously.

At the beginning of this hearing, Members are on mute. Members may unmute themselves in order to be recognized for purposes of their 5-minute questioning of witnesses. At the conclusion of speaking, Members will be expected to then mute themselves to prevent excess background noise. If a Member does not mute themselves after speaking, the clerk has the directive to mute Members to avoid inadvertent background noise. Should a Member wish to be recognized to make a motion, they must unmute themselves and seek recognition at the appropriate time.

Mr. CRENSHAW. Thank you, Madam Chairwoman. What could a Member expect should they encounter technical issues during a remote event?

Ms. TORRES SMALL. In the event a Member encounters technical issues that prevent them from being recognized for their questioning, I will move to the next available Member of the same party, and I will recognize that Member at the appropriate time slot provided they have returned to the proceeding. Should a Member's time be interrupted by technical issues, I will recognize that Member at the next appropriate spot for the remainder of time once their issues have been resolved. If I should encounter technical issues myself, the Vice Chair of the committee, if available, or the next most senior Member of the Majority shall assume the duties of the Chair until I am able to return to the proceeding.

Mr. CRENSHAW. Thank you, Madam Chairwoman. What should Members expect regarding a decorum during a remote event?

Ms. TORRES SMALL. Thank you. Members are reminded that they are only allowed to attend one virtual event at a time. Should they need to attend another committee's proceedings, please fully exit

the hearing before entering another proceeding. Finally, all Members are reminded that they are expected to observe standing rules of the committee decorum for appropriate attire and should have a professional and apolitical background when they are participating in any remote event.

Mr. CRENSHAW. Thank you, Madam Chairwoman. What should Members expect if a witness loses connectivity?

Ms. TORRES SMALL. Thank you. In the event a witness loses connectivity during testimony or questioning, I will preserve their time as staff address the technical issue. I may need to recess the proceedings to provide time for the witness to reconnect.

Mr. CRENSHAW. Thank you, Madam Chairwoman. Finally, what should Members expect if a vote is called during a remote event?

Ms. TORRES SMALL. Thank you. House Resolution 965 requires Members to be visible, present, to have their vote recorded during a remote event. Members who join the proceeding after a vote is called and who are not called upon for their vote should seek recognition from the Chair to ensure their vote is recorded. Should a Member lose connectivity during a roll call vote, I will hold the vote open for a period of time to address the technical issue and provide Members with an opportunity to have their vote recorded.

Mr. CRENSHAW. Thank you. I yield back.

Ms. TORRES SMALL. With that, I ask unanimous consent to waive committee rule 8(A)(2) during committee remote proceedings under the covered period designated by the Speaker under House Resolution 965.

Without objection, so ordered.

The Chair now recognizes the Chairman of the full committee, the gentleman from Mississippi, Mr. Thompson, for an opening statement.

Mr. THOMPSON. Thank you, Chairwoman Torres Small and Ranking Member Crenshaw, for holding this hearing today. It is fitting we are here to discuss the Department of Homeland Security's efforts to resume operations. The fact that we are holding this hearing remotely demonstrates that we have all had to adapt to operate because of coronavirus pandemic.

Many of our Nation's communities are still experiencing increased rates of COVID-19 infections and death. Even in areas where rates have improved, public health officials warn of future outbreaks if people do not continue smart practices. These include social distancing, wearing a mask or facial covering, and frequent hand washing. Yet the President refuses to do these things. Time and time again, we see him fail to take advice of medical professionals seriously.

I fear that in his haste to reopen America ahead of doctors' advice, President Trump will try to force Federal workers back to their offices in an attempt to convince Americans it is safe to return to business as usual, but it is not safe. Pushing Federal workers to resume operations without taking measured precaution needlessly puts them at risk.

This is especially true of DHS, whose work force is already in harm's way with 85 percent working on the front lines. Tragically, 2 of DHS's component agencies have some of the highest infection and deaths rates among Federal Government agencies. The Trans-

portation Security Administration has announced that 667 employees have tested positive and 5 have died from COVID-19 on this website. Customs and Border Protection has publicly posted that 482 of its employees have tested positive and 5 have died.

Therefore, it is critical that DHS have a plan in place to protect the health of its employees before reopening facilities or resuming operations. That plan should allow employees who have proven that they can do their jobs from home can continue to work from home. This is especially important in metropolitan areas such as Washington, DC, and New York City, where many workers rely on public transportation. If employees cannot work at home, DHS must take every precaution to keep them safe.

That is why I supported TSA's request for supplemental appropriations of personal protective equipment, which was included in the CARES Act. I also join several of my colleagues on this subcommittee to co-sponsor H.R. 6655, the Hazardous Duty Pay for Frontline Federal Workers Act. This bill will create a separate pay category to compensate front-line workers, including TSA employees, for their increased risk of exposure to COVID-19 while on duty.

I welcome and appreciate our witnesses for joining us today. I look forward to hearing their thoughts on how we can best support the Department's work force during these challenging times. I urge the administration to ensure all Federal agencies protect the health of America's public servants.

I yield back, Madam Chair.

[The statement of Chairman Thompson follows:]

STATEMENT OF CHAIRMAN BENNIE G. THOMPSON

JUNE 16, 2020

It is fitting we are here to discuss the Department of Homeland Security's (DHS) efforts to resume operations. The fact that we're holding this hearing remotely demonstrates that we have all had to adapt how we operate because of the coronavirus pandemic.

Many of our Nation's communities are still experiencing increasing rates of COVID-19 infections and deaths. Even in areas where rates have improved, public health officials warn of future outbreaks if people do not continue smart practices. These include social distancing, wearing a mask or facial covering, and frequent hand washing. Yet, the President refuses to do these things.

Time and time again, we see him fail to take the advice of medical professionals seriously. I fear that in his haste to reopen America ahead of doctors' advice, President Trump will try to force Federal workers back to their offices in an attempt to convince Americans it is safe to return to business-as-usual. But it is not safe. Pushing Federal workers to resume operations without taking measured precautions needlessly puts them at risk. This is especially true of DHS, whose workforce is already in harm's way, with 85 percent working on the front lines. Tragically, two of DHS's component agencies have some of the highest infection and death rates among Federal Government agencies.

The Transportation Security Administration (TSA) has announced that 667 employees have tested positive and 5 have died from COVID-19 on its website. Customs and Border Protection (CBP) has publicly posted that 482 of its employees have tested positive and 5 have died.

Therefore, it is critical that DHS have a plan in place to protect the health of its employees before re-opening facilities or resuming operations. That plan should allow employees who have proven they can do their jobs from home to continue to work from home. This is especially important in metropolitan areas, such as Washington, DC and New York City, where many workers rely on public transportation.

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I welcome and appreciate our witnesses for joining us today. I look forward to hearing their thoughts on how we can best support the Department’s workforce during these challenging times. And I urge the administration to ensure all Federal agencies protect the health of America’s public servants.

Ms. TORRES SMALL. I now welcome our panel of witnesses and thank them for joining us today. Our first witness is Dr. Everett Kelley, national president of the American Federation of Government Employees, which is the largest union representing Federal employees Nation-wide. AFGE represents nearly 100,000 employees across DHS headquarters and several of its components, including the Transportation Security Administration, Customs and Border Protection, U.S. Citizenship and Immigration Services, and U.S. Coast Guard.

I apologize that, unfortunately, we have lost the AFGE witness, and he is trying to reconnect. So I think we may—let’s see. We are trying to reconnect now. I will continue reading his bio, and if we are unable to get him by that point, we will take on this first challenge of a remote hearing. I think we are going to go ahead and move to our first—our second witness from NTEU. OK. I will read the AFGE—I will read Dr. Kelley’s bio as well.

Dr. Kelley has been a member of AFGE since 1981 and became national president in February 2020.

Our second witness, Mr. Tony Reardon, serves as the national president of the National Treasury Employees Union. NTEU represents 150,000 Federal employees, including personnel at Customs and Border Protection and the Federal Law Enforcement Training Center, or FLETC. Mr. Reardon has been with NTEU for 30 years and was elected national president in August 2015.

Our final witness, Mr. Brandon Judd, serves as the president of the National Border Patrol Council, which represents more than 16,500 Border Patrol agents. Mr. Judd is a Border Patrol agent with over 20 years experience and is currently assigned in Montana.

Without objection, the witnesses’ full statements will be inserted into the record.

I now ask each witness to summarize his statement for 5 minutes, and we are going to begin with Mr. Reardon. Please proceed.

**STATEMENT OF ANTHONY M. REARDON, NATIONAL  
PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION**

Mr. REARDON. Chairwoman Torres Small and Ranking Member Crenshaw, thank you very much for the opportunity to testify on behalf of over 27,000 front-line Customs and Border Protection officers, agriculture specialists, and trade enforcement specialists at CBP. These men and women are stationed at 328 air, sea, and land ports of entry and in preclearance operations overseas. They ensure the efficient processing of legitimate trade, travel, and asylum seekers who present themselves at the ports, and stop illicit trafficking of people, drugs, weapons, and money.

Throughout the pandemic, most ports of entry remained open and staffed by CBP Office of Field Operations, or OFO, employees, 24 hours a day, 7 days a week, at great risk to their health and safety. The CBP work force, as of June 9, has more than 459 confirmed COVID-19 cases, according to CBP-wide figures, and many more employees in quarantine. Of these employees, 5, who have worked for OFO at the international ports of entry, have died after contracting COVID-19, so I want to honor these NTEU members by name.

CBP technician Van Dong worked in agriculture secondary at Los Angeles International Airport. CBP Officer Richard McCoy worked at the Fort Lauderdale/Port Everglades port of entry in Florida. CBP Officer Omar Palmer, CBP Officer CK Yan, and field technology officer James Taylor, who all worked at John F. Kennedy International Airport. NTEU mourns the losses with the families and friends of these officers and appreciates their service to our country.

In my written testimony, I have listed workplace safeguards that, absent the development of a successful vaccine, are needed at the international ports of entry. These safeguards include free on-site testing, contact tracing, increased work area cleaning, plexiglass barriers, sufficient PPE, and social distancing protocols.

In addition to ensuring workplace safeguards, one of the most critical pandemic-related issues facing CBP employees at the ports of entry is the reduction in user fees collected due to the drastic drop in international commercial travel, and to a lesser extent, trade volume since March 2020. These user fees fund 40 percent of CBP OFO's budget, including 8,000 CBP officer positions. That is roughly one-third of the entire CBP work force at the ports of entry.

Without supplemental appropriated funding to support these CBP officers between now and the end of fiscal year 2020, we are greatly concerned that this loss of user fee funding will result in furloughs at a time when this work force is most needed to facilitate the flow of legitimate travel and trade as the economy recovers.

Recently, NTEU and 15 leading court leaders asked House and Senate appropriators to provide funding in either a DHS supplemental funding bill or in the next COVID recovery package to make up for user fees lost because of the pandemic and to help CBP respond effectively to the COVID-19 related challenges they must overcome now and in the future.

It is our understanding that new trade and travel volume data collected by CBP shows a user fee funding shortfall of over \$400 million in fiscal year 2020 and the need for over \$1.5 billion through fiscal year 2021 to cover the user fee shortfall through the next fiscal year. This supplemental funding would help to ensure that current CBP officer staffing levels are maintained and that CBP does not lose the hiring and staffing advances that they finally started to gain after years of effort and much appreciated funding support by Congress as trade and traffic volumes increase.

So NTEU implores you to support additional funding now so that CBP officers can stay on the job during the economic recovery. CBP employees at the ports of entry already face many challenges in the

course of their work, and concerns about their health and safety or being furloughed as the country reopens for business should not be among them.

Thank you very much, and I am happy to answer any questions that you may have.

[The prepared statement of Mr. Reardon follows:]

PREPARED STATEMENT OF ANTHONY M. REARDON

JUNE 16, 2020

Chairwoman Torres Small, Ranking Member Crenshaw, and distinguished Members of the subcommittee, thank you for the opportunity to testify before you today. As national president of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 27,000 Customs and Border Protection (CBP) Office of Field Operations (OFO) employees, including CBP officers, agriculture specialists and trade enforcement personnel stationed at the 328 land, sea, and air ports of entry across the United States (U.S.) and 16 PreClearance stations at airports in Ireland, the Caribbean, Canada, and the United Arab Emirates. CBP's OFO pursues a dual mission of safeguarding American ports, by protecting the public from dangerous people and materials, while enhancing the Nation's global and economic competitiveness by enabling legitimate trade and travel. CBP OFO employees are responsible for border security, including anti-terrorism, immigration, anti-smuggling, trade compliance, and agriculture protection at U.S. ports of entry.

I commend the committee for holding this hearing and closely monitoring the Department of Homeland Security's (DHS) plans for bringing more employees back to their worksites, their implementation of guidance, and how they are keeping employees safe. As more Federal agencies begin to call employees back to their workplaces, many employees have expressed a significant amount of anxiety and fear about their ability to return to work safely. Their fears are understandable as more than 2 million Americans have been infected with COVID-19 and more than 115,000 U.S. residents have already died from this virus.

As coronavirus began to spread in the United States, the ports—including airports and land border crossings—were fully staffed and personnel were interacting with international travelers, many of whom came directly from or had recently traveled to places where the virus was already being widely transmitted between individuals. As volume of travelers fell, CBP OFO began adjusting work schedules by providing some Weather and Safety Leave (WSL) for CBP Officers and Agriculture Specialists. These temporary CBP OFO work schedules allowed CBP port of entry employees to limit exposure to the virus and were the product of urgent discussions between employee representatives and management, with the twin goals of delivering the mission while promoting the health of these employees. Indeed, those two goals merge, because effective mission delivery is not possible without a healthy workforce.

These temporary schedule adjustment agreements were reached in late March as the number of international travelers at airports fell by over 90 percent and crossings at the northern and southern ports of entry dipped by as much as 75 percent. This allowed CBP to adjust schedules to limit the number of CBP personnel at ports while still meeting operational needs. It additionally allowed OFO personnel to more fully comply with Centers for Disease Control and Prevention (CDC) guidance to limit the spread of coronavirus by staying home, social distancing, and avoiding groups as much as possible. The agreements were a smart way for local port officials to protect their employees, follow public health recommendations and respond to the lower volumes of international travelers. Under the revised schedules, CBP employees who were on leave were subject to recall and ready to return to the port at a moment's notice, should the need arise.

After initially permitting WSL at the Northern and Southwest Border land ports, to NTEU's great consternation, in early April CBP unilaterally canceled the use of WSL at the land ports. Therefore, for the most part, CBP officers at these land border crossings have continued to work throughout the last 3 months of the pandemic at great risk to their health and safety. The CBP workforce as of June 9 has more than 459 confirmed COVID-19 cases, according to CBP-wide figures, and many more employees in quarantine.

Sadly, we have lost 5 officers who worked at the international ports of entry to COVID-19. I want to take a moment to honor these NTEU members by name: CBP Technician Van Dong worked in Agriculture Secondary at the Tom Bradley International Terminal, Los Angeles International Airport; CBP Officer Richard McCoy

worked at the Fort Lauderdale/Port Everglades Port of Entry in Florida; and CBP Officer Omar Palmer, CBP Officer Ching Kok 'CK' Yan, and Field Technology Officer James Taylor all worked at John F. Kennedy International Airport. NTEU mourns these losses with the family and friends of these officers and appreciates their dedicated service to our Nation.

The pursuit of the safest possible working environment for CBP employees at all ports of entry, trade, enterprise services, and operations support facilities has been NTEU's paramount concern during the COVID-19 crisis. Throughout the pandemic, most international air, sea, and land ports of entry remained open and are staffed by CBP OFO employees 24 hours a day, 7 days a week, 365 days of the year. There are unique, on-going challenges to make sure health and safety precautions at all CBP worksites are comprehensive and effective. As international trade and travel struggles to return to normal, our CBP members deserve every possible safety precaution CBP can implement.

NTEU is working with CBP to ensure the following safeguards:

- On-site, free wide-spread COVID-19 and antibody tests for CBP employees. To date, DHS has not provided on-site testing and will not until there is a Government or DHS-wide policy. NTEU also requested that CBP provide real-time notification of positive cases among employees.
- A contact tracing protocol that requires notification of CBP OFO employees exposed to asymptomatic travelers who subsequently test positive for the virus. NTEU is seeking a less restrictive time exposure requirement. NTEU has concerns that current DHS Guidance that CBP follows is insufficient to precisely define the duration of time that constitutes a prolonged exposure. Recommendations vary on the length of time of exposure from 10 minutes or more to 30 minutes or more. Brief interactions are less likely to result in transmission; however, symptoms and the type of interaction (e.g., did the person cough directly into the face of the individual) remain important.
- Increased cleaning of all terminals and work areas, including shared vehicles, staggering lanes, and cleaning booths between officer rotations, not just between shifts. CBP has told us that staggering lanes and cleaning booths between rotations is a "best practice," but acknowledged that it may be cost-prohibitive at some ports.
- Plexiglass barriers on primary booths and in detention areas and promoting social distancing where possible. CBP acknowledged NTEU's concerns about limited space in soft-secondary areas which may prevent maintaining safe social distances. They will do what they can to maintain such distances, particularly to ensure that safe distances exist between members of the public and officers working the counter.
- Proper and sufficient Personnel Protective Equipment (PPE)—masks, gloves, sanitizer, and wipes—for all employees, including agriculture specialists, and non-uniformed trade personnel. To promote officer safety, CBP requires N95 masks be worn in secondary when working in close proximity to others and that surgical masks be worn in primary booths. NTEU also strongly supports requirements for travelers to wear masks while being processed in air, sea, and land port primary booths.
- Adequate notice of return to work and adjusted work schedule policies to ensure appropriate physical distancing and staggered shift arrivals and departures.
- Maximize telework and other flexibilities, particularly for employees with children whose schools or child-care facilities are closed and those who rely on public transportation where social distancing may not be possible to get to work.
- Authorize telework or WSL for "high-risk" CBP employees and for employees whose work is portable and are not assigned to front-line work at the ports.
- Allow WSL for quarantined and symptomatic employees who are still able to work. CBP has resisted providing WSL to symptomatic employees who are still working from home, saying they must take sick leave.
- Provide safety suits for CBP officers and agriculture specialists entering confined spaces, such as ship holds.
- Provide parking subsidies to reimburse employees who choose to drive to work because of concerns with using public transportation.

In addition to Congressional support needed to ensure the above safeguards are in place and sustained at the ports of entry until an effective vaccine is made available, legislation is also needed to further support employees. NTEU applauds the House for passing last month a fourth coronavirus legislative relief package that includes NTEU-backed provisions supporting and protecting Federal employees during the pandemic. The Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, H.R. 6800, includes several NTEU-supported provisions that would impact Federal employees, including:



- Creating a HEROES Fund that would provide Federal employees with additional premium pay of \$13 per hour, up to a maximum \$10,000 for those whose basic pay is less than \$200,000, for either those who have regular or routine contact with the public or those who must report to a worksite where social distancing is not possible and other preventative measures are not available;
- Continued telework for all eligible Federal employees throughout the pandemic, plus incentives for agencies to expand their telework programs.
- Allowing Federal first responders, including CBP officers, to stay in their current law enforcement retirement plans even if they are unable to meet the physical requirements of their position due to exposure to coronavirus and are moved to other civil service jobs.
- A presumption that Federal employees who work with the public and are diagnosed with COVID-19 contracted it in the workplace, for workers' compensation purposes.
- Eliminating out-of-pocket costs for COVID-19 treatment under the Federal Employee Health Benefit Program.
- Extending the emergency leave provisions in the Families First Coronavirus Relief Act to all Federal employees.

As Congress continues negotiations on legislation to respond to the impacts of the COVID-19 pandemic, we ask that you include additional language supporting Federal workers on the front lines who bear a significant share of the burden in responding to this crisis.

Legislation is needed to address the need for expansion of carry-over annual leave hours due to the inability of Federal workers to take annual leave during the pandemic. Under current law, carry-over hours are limited to 240. Many CBP families have canceled their scheduled vacations this year due to pandemic-related inability to travel, destination shutdowns, and required quarantines. We believe the earned annual leave of employees who are unable to take leave as they continue the important work of Government and adhere to stay-at-home orders should be protected beyond the 240-hour limit. NTEU supports Rep. Wexton's bill (H.R. 6733) to ensure at least front-line workers responding to the pandemic can carry over excess annual leave. We urge Congress to pass it and to extend this benefit to all Federal workers.

While many CBP personnel would be eligible for additional pay from the Heroes Fund included in the HEROES Act if it were enacted, NTEU believes CBP employees and other Federal personnel should already be eligible to receive hazardous duty pay under existing law. Because of the nature of their jobs, many CBP employees have regular contact with the public and difficult to practice social distancing while working at the air, sea, and land ports of entry. According to the Schedule of Pay Differentials Authorized for Hazardous Duty Pay, one such hazard is: "Exposure to Hazardous Agents, work with or in close proximity to . . . (5) Virulent biologicals. Materials of micro-organic nature which when introduced into the body are likely to cause serious disease or fatality and for which protective devices do not afford complete protection." NTEU submits that COVID-19 exposure falls within this hazard, but to date, CBP has said that it does not, and has not paid either Hazardous Duty Pay or Environmental Differential Pay to those employees that are exposed to COVID-19 because of their work for CBP. NTEU urges Congress to pass a provision, like that in H.R. 6379, which would clarify that employees who have contact with the public and may be exposed to an individual who has or has been exposed to COVID-19 are eligible for this pay differential.

Last, the Federal Law Enforcement Training Center (FLETC) has reopened on a limited basis. NTEU has been told that students will be screened upon returning, quarantined for 14 days prior to the commencement of formal class training, tested twice during the quarantine period, and be provided ample PPE. In addition, class sizes will be smaller and other additional new practices have been put in place to ensure social distancing. Nevertheless, we have concerns about staff and instructors leaving at the end of each day and the chance that they could then bring the virus into the classrooms. We have raised those concerns and now FLETC will be testing high-contact instructors (e.g. PT and Firearms) weekly.

#### FISCAL YEAR 2020 CBP BUDGET SHORTFALL

One of the most critical pandemic-related issues facing CBP OFO is the reduction of user fee funding that is threatening Nation's economic recovery as international trade and travel struggles to return to normal. This budget shortfall is a result of the reduction in customs and immigration user fees collected due to the drastic drop in international commercial travel, and to a lesser extent, trade volume since March 2020. As you know, CBP collects fees under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and immigration inspection user fees to recover

certain costs incurred for processing air and sea passengers and various private and commercial land, sea, air, and rail carriers and shipments. The source of these user fees are commercial vessels, commercial vehicles, rail cars, private aircraft, private vessels, air passengers, sea passengers, cruise vessel passengers, dutiable mail, customs brokers, and barge/bulk carriers.

COBRA and immigration user fees together fund 40 percent of CBP's OFO budget, including 8,000 CBPO positions. That is roughly one-third of the entire CBP workforce at the ports of entry.

Due to the COVID-19 pandemic, travel and trade volume has fallen precipitously resulting in a significant reduction in the amount of user fees collected and a massive user fee shortfall of several hundreds of million dollars for CBP in fiscal year 2020. CBP is projecting that they will spend all the fees they collect this year as well as any surplus from prior years before the end of fiscal year 2020.

Further, the agency anticipates low fee collections due to a continued diminishment of travel volumes into fiscal year 2021 due to the pandemic's continued disruption of fee generating commerce. The length and degree of disruption caused by the pandemic is still unknown. Without appropriated funding to support these CBP officers in fiscal year 2020, we are gravely concerned that this loss of user fee funding could result in furloughs at a time when trade and travel will be struggling to return to normal.

U.S. businesses rely on the safe and efficient movement of goods and people across our borders and are all working to safely resume international travel and travel. Keeping current CBP officer staffing levels will be necessary to successfully transition into a more robust, safe, and delay-free travel environment and improve cargo movement. Also, CBP will likely lose the hiring and staffing advances that they finally started to gain, after years of effort and much appreciated funding support by Congress, which will negatively impact cross-border travel, passenger processing and trade facilitation in future years as the economy returns to normal.

The critical issues that American businesses are facing to recover from this pandemic require quick, decisive action so that our Government can best facilitate the flow of travel and trade as the economy recovers. Without supplemental appropriated funding to support these CBP officers between now and the end of fiscal year 2020, we are gravely concerned that this loss of user fee funding will result in furloughs at a time when this workforce is most needed to facilitate the flow of legitimate travel and trade as the economy recovers. Recently, NTEU and 15 industry leaders, including air and seaport authorities, the Border Trade Alliance and the U.S. Chamber of Commerce, have asked House and Senate appropriators to provide funding in either a DHS supplemental funding bill or in the next COVID recovery package to make up for user fees lost because of the pandemic and to help CBP respond effectively to the COVID-19 related challenges it must overcome now and in the future. It is our understanding that new trade and travel volume data collected by CBP shows a shortfall of over \$400 million through fiscal year 2020 and a need for over \$1.5 billion in fiscal year 2021 appropriations to cover user fee shortfall through the next fiscal year.

This fiscal year 2020 CBP OFO supplemental funding request will help to ensure that current CBP officer staffing levels are maintained as trade and traffic volumes increase. NTEU implores you to seek additional funding now so that CBP officers can stay on the job during the economic recovery. CBP employees at the ports of entry already face many challenges in the course of their work and concerns about their health and safety or of being furloughed as the country reopens for business should not be among them.

In closing, we all understand Federal workers' anxiety about their own safety during this pandemic as they work to keep our country safe. As leaders, it is important that we continue to do everything we can to mitigate the risks they face, and we need to encourage them to do so on an individual basis, for their own safety as well as their coworkers.

We deeply appreciate your efforts to support and protect Federal employees throughout this crisis and encourage you to continue to provide strong oversight to help ensure the safety of all Federal employees in this unprecedented time.

Ms. TORRES SMALL. Thank you for your testimony.

I now recognize Dr. Kelley to summarize his statement for 5 minutes.

**STATEMENT OF EVERETT B. KELLEY, NATIONAL PRESIDENT,  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,  
AFL-CIO**

Mr. KELLEY. OK. Thank you so much.

Chairwoman Torres Small, Chairman Thompson, Ranking Member Crenshaw, and Members of the subcommittee, my name is Everett Kelley, and I am the national president of American Federation of Government Employees. Thank you for the opportunity to testify today. However, I first of all want to recognize Border Patrol Agent Mordan who lost his life recently in the line of duty, and would like the privilege of taking 10 seconds of my allotted time just to think about him for a moment.

[Moment of silence observed.]

Mr. KELLEY. Thank you so much. Just want to remember him and pray for his family.

For those on the front line, the decision to reopen should be about preventing additional dangers to the health and safety of this vital work force. These are people who show up and do their jobs with their lives on the line, when the safety of their families is not ensured, even when they don't take practical steps to protect them.

We are learning a lot about what it takes to beat the pandemic and provide protection until there is an effective vaccine or treatment, social distancing, wide-spread testing, contact tracing, and rapid response to new outbreaks. Without these, we don't want to experience repeated resurgence where thousands more will suffer and die. Every effort should be made to avoid this outcome, not only at DHS, but throughout the United States and the world.

Resuming operations safely must be considered broadly, both in terms of what is safe for the public we serve and what is safe for the DHS employee and work force. If it only occurs when new cases and deaths rates are still increasing, we risk further infection among the great men and women who are working to keep our country safe.

On April 20, OMB released its only guidelines—or guidance on reopening. The guidance was planned for a three-phase reopening based first on 14 days of declining case of COVID-19, adequate testing, and hospital capacity. It didn't call for provisions or personal protective equipment, but did indicate that agencies should not move from one thing to the next until work spaces were equipped with protective measures, such as high dividers and more frequent cleaning.

The guidance indicated that, in the first phase, employees with vulnerable health conditions were to be provided telework or weather or safety leave. AFGE responded to OMB by setting forth 6 preconditions for reopening we believe should be met, emphasizing that the administration's efforts to promote reopening were premature and unwise. The preconditions outlined were universal testing, use of science-based standard for a safe return to work, equal treatment of the work force in implementing preventive measures making our workplace safe, including the provision of personal protective equipment, sending home symptomatic employees, and working with unions to battle this pandemic.

To this last point, DHS employees on the front line and those who are teleworking are safer when the Department demonstrates a willingness to engage with the work force and their unions in order to gain their views, hear their concerns, and entertain their suggestions on how best to proceed in the context of the risk created by the pandemic.

Time doesn't allow me or permit me to go into details about the experience our members have faced during this pandemic, but what I will tell you is FEMA employees still need FDA-approved PPE as hurricane season has started. Both passengers and TSOs must be required to wear masks, and TSOs need FDA-approved surgical masks to be provided by TSA.

CIS employees need to stay on the job. They couldn't—they shouldn't, rather, be furloughed or RIF'd. Law enforcement officers need full retirement benefit if they become disabled and their families need support, and survivors, if they lose their lives during the COVID-19. And all of the front-line DHS work force need premium pay, automatic resumption of workplace illnesses, and the stringent application of workplace safety standard.

Let me emphasize my point about CIS. This crisis looms immediately before us. I urge this committee to work with leadership and appropriations members to make sure that this threat of RIF and furloughs does not happen and CIS is provided funding in the next COVID administration passed by Congress.

Although CIS is characterizing the layoff as furlough, their process in their layoff actions in accordance with work procedures. Such procedure requires that RIF notice to be issued to employees if the furlough may last more than 30 calendar days. By using RIF notices rather than furlough notices, CIS can extend their layoffs up to 1 year. The bottom line is that CIS is placing employees in the status of being furloughed and potentially RIF'd at the same time.

Now, such action to prevent these CIS furloughs or RIFs is extremely urgent, and I ask you to act on those. I thank you for the time that you have given me today. Thank you so very much.

[The prepared statement of Mr. Kelley follows:]

PREPARED STATEMENT OF EVERETT B. KELLEY

JUNE 16, 2020

Chairwoman Torres Small, Ranking Member Crenshaw, and Members of the subcommittee: My name is Everett Kelley, and I am the national president of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the 700,000 Federal and District of Columbia employees represented by our union, I thank you for the opportunity to testify today on the subject of reopening the Department of Homeland Security (DHS) in a safe and responsible manner.

AFGE represents employees in several DHS components, including Border Patrol, the Coast Guard, Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), the Federal Emergency Management Agency (FEMA), the Citizenship and Immigration Service (USCIS), and the Federal Marshalls Service. Employees in all of these components have been working bravely and courageously throughout the pandemic, most on the front lines at their regular duty stations, and many more who have been working remotely to carry out the mission of their agencies. In fact, we estimate that just 20 percent of the DHS employees we represent have been working remotely or have been on some kind of leave during this pandemic.

Three months of data have produced a good amount of knowledge regarding what it takes to beat the pandemic and provide protection until there is either an effective vaccine or an effective treatment. First, there must be consistent and strict fa-

cilitation and enforcement of social distancing, and social distancing has to be in place for a period of sufficient length so that the number of infected people is reduced to a small fraction of the population. In addition to social distancing, we need testing, tracing, and the ability to isolate so new outbreaks can be identified and everyone who has been exposed can be quarantined. A premature end of social distancing, a failure to follow through with testing, contact tracing, and isolation is a guarantee of resurgence and a guarantee that thousands more will suffer and die. Every effort should be made to avoid this outcome, not only for DHS but throughout the United States and the world.

We do not have firm data on the number of DHS employees who have contracted the virus and we do not know how many DHS employees have died from COVID-19. TSA reports that infections among its workforce number 667 and 5 TSA employees and 1 TSA contractor have died from the virus. TSA also reports that over the past 2 weeks, 19 airports have reported the existence of new infections.

We do not have data on infections or deaths from the other DHS components, but it is reasonable to believe that there are large numbers of infections. And of course, one infected individual is likely to have transmitted the virus to others so the number of DHS-related cases will be larger than reported infections.

As such, “Resuming Operations Safely” must be considered broadly, both in terms of what is safe for the public we serve and what is safe for the DHS workforce. In each case, it would be wrong to rush into reopening because no matter how scrupulously safety protocols might be followed, if DHS components resume operations that have been closed in order to mitigate the spread of COVID-19 when the virus is still spreading, when new cases and death rates are still increasing, it will have been too soon.

#### OMB GUIDANCE AND AFGE RESPONSE

On April 20, the Office of Management and Budget (OMB) released the only Government-wide guidance to date on reopening. Importantly, even OMB said that its phased reopening should not proceed until 3 important criteria were met: 14 days of declining numbers of reports of flu and COVID-19 symptoms, 14 days of declining confirmed cases of COVID-19 or 14 days of a declining percentage of positive tests, assuming a steady or rising number of tests, and third, the existence of adequate capacity at local hospitals to treat all cases of COVID-19 without having to resort to crisis triage and the availability of robust testing of health care workers.

In addition to these criteria for entering the first phase of reopening, OMB emphasized that Federal agencies would have broad discretion to reopen on their own terms, and that reopening should occur on a local and regional basis.

No reopening was to occur until the OMB criteria had been met, and reopening was to occur when the criteria had been met on a regional basis.

There were to be 3 phases of reopening. During the first phase, maximum telework would continue, return to work sites would be staggered by hours and/or by days, managers were “encouraged” to continue to approve weather and safety leave for those are not telework-eligible or are in Centers for Disease Control and Prevention (CDC) identified categories of “most vulnerable.” This last includes people over the age 65 and “people of all ages with underlying medical conditions, particularly if not well controlled, including:

- People with chronic lung disease or moderate to severe asthma
- People who have serious heart conditions
- People who are immunocompromised
- Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune-weakening medications
- People with severe obesity (body mass index [BMI] of 40 or higher)
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease.

During phase one, employees “may” wear face coverings at work; they are not required, and they would not be supplied by the employer. “Customer-facing” operations are to put in place entry protocols like visual and temperature checks, and agencies are supposed to have adequate supplies of disinfectant, hand sanitizer, paper towels, soap, and hot water. Buildings are supposed to be cleaned more frequently than usual and efforts are to be made to facilitate social distancing at work. Case-by-case accommodations for employees are supposed to be made. The second phase would be entered when all the criteria for entry into phase one continue to be met, but agencies are supposed to take steps to alter office and work sites to pre-

vent the spread of the virus such as building higher walls on cubicles and changing the configuration of “public use” areas of work sites such as locations where copiers and supplies are stored and utilized. Maximum telework should be continued. Again, accommodations for particular employees are supposed to be made on a case-by-case basis.

Phase three as discussed in the OMB memorandum is supposed to be entered when all the phase one criteria continue to be met. Phase three includes a return to pre-pandemic rules for telework, with face coverings and social distancing optional. Accommodations for individuals would be permitted, again on a case-by-case basis.

I responded to the OMB guidance with a letter to Acting Director Voughton April 22. I have received no response to this letter. My response set forth 6 preconditions for reopening that AFGE members believe should be met prior to reopening. I emphasized my view that the administration’s efforts to promote reopening were premature and imprudent. It is now almost 9 weeks later and in States that reopened too early such as Texas and Florida, the data are showing a resurgence of the pandemic. We are not seeing, however, a reversion to “stay at home” directives that are supposed to precede any reopening.

In my letter on behalf of AFGE members, I called for the following:

1. Universal testing for COVID-19 because we cannot assess correctly the risk of transmission until we know the extent of infection. I argued that only with universal testing will it be possible to implement prudent policies for the use of public transportation, for social distancing inside Federal offices and other work sites, and other appropriate precautions, especially those that involve direct interaction with the general public.
2. Science-based standards for the safe return to work because the administration has politicized its response to the pandemic from the earliest days, at first denying its existence, later minimizing its severity, and then rushing to reopen even while cases are increasing, when effective treatment does not exist, and a vaccine is still months or even more than a year away. Based on our own research, we follow the recommendations of epidemiologists and other public health experts who cite 14 days of exponential decline in new cases within a region before easing quarantine and shelter-at-home restrictions. With regard to the definition of a local area, we urged Federal employers, including DHS, to use the areas defined in the General Schedule locality pay system. For areas within the “Rest of US” locality, regions should be defined by Census data on commuting used to describe Combined Statistical Areas or Metropolitan Statistical Areas.
3. Treat all workers equally, because no one is low-risk, tens of thousands have died who were young and healthy before contracting the virus. We also urged full accommodation be provided to anyone who needs measures to ensure that individual’s safety and health.
4. Federal workplaces must be safe workplaces, because we want to be certain not only that no one contracts the virus at work; we want Federal employees to know that they will not be bringing the virus home with them after work. We asked that all Federal work sites be supplied with items that help minimize the spread of infection such as employer-supplied FFDA-approved masks and other PPE, hand sanitizer, facilities for hand washing including soap and hot water, tissues, interior infrastructure that meets safety and health standards to allow proper distancing, dividers, regular disinfecting of work spaces, and areas for isolation, and filtering systems for air circulation. We asked that Federal work sites be fully OSHA-compliant and operated within CDC guidelines, even as OSHA has failed to issue any emergency standards to protect workers from COVID-19.
5. Symptomatic employees be sent home on leave because in order to protect workers at the work site, employees or on-site contractors who develop a COVID-19 infection, or who display any symptom known to be related to COVID-19 must be removed from the workplace immediately and all remaining employees must be notified immediately. We further urged that contact tracing be employed and all those who report contact with the symptomatic employee must be removed from the workplace as well and permitted either to work remotely or receive weather and safety leave for a minimum of 14 days.
6. Last but certainly not least, we reminded Mr. Vought that all agencies must comply with their obligations with their union. In DHS, like other agencies, there has been much variation among the components regarding willingness to engage with front-line employees in order to gain their views, hear their concerns, or entertain their suggestions for how best to proceed in the context of the risks created by the pandemic.

The DHS Chief Human Capital Officer has had weekly calls with union representatives to keep us apprised of the agency's overall plans, but as useful and constructive as these conversations have been, they are no substitute for real cooperation and dialog on a local level. Reports from the AFGE bargaining councils representing employees of DHS's various components indicate that they have not responded to demands to bargain over the return to work.

#### DHS COMPONENTS' RESPONSE SO FAR

AFGE's FEMA Council reports that its top priority is that testing becomes available for all employees prior to return to work. As hurricane season approaches, it is important to recognize that FEMA employees will be traveling from all over the country, from different States with vastly different levels of infection, social distancing rules, and use of PPE. They are concerned not only that they might be bringing infection with them, but they also believe that without universal testing they will be at risk of contracting the virus from others. Further, FEMA employees report that the agency has been promising to provide masks to employees for more than a month and so far, employees have received no masks. Cloth masks will, however, be entirely inadequate to protect FEMA employees.

FEMA employees, like all other DHS employees, need FDA-approved surgical masks to help prevent them from transmitting the virus and to protect them from others who may be emitting droplets or particles that contain the virus. Notably, the Occupational Safety and Health Administration (OSHA) published information last week that said, regarding cloth face masks, that they "are not considered personal protective equipment (PPE)" and they will "not protect the wearer against airborne transmissible infectious agents due to loose fit and lack of seal or inadequate filtration." (<https://www.osha.gov/SLTC/covid-19/covid-19-faq.html>). As such, we are asking that adequate supplies of FDA-approved masks, not cloth masks, be provided to all DHS employees returning to or continuing to work at their regular duty stations.

#### USCIS AND THE THREAT OF FURLOUGHS

What could be worse than a return to work that is poorly planned and inexpertly executed? No return at all. We received notice that as many as 13,400 of the agency's 18,700 employees (71.7 percent) would be furloughed beginning August 3, 2020 if USCIS does not receive an emergency supplemental appropriation from Congress. The agency claims that a reduction in fee revenue caused at least in part by the COVID-19 pandemic is the rationale for these threatened furloughs.

We urge you in the strongest possible terms to take action to provide funds to USCIS specifically to prevent furloughs and keep the agency functioning. Furloughs of this magnitude would make it entirely impossible for the agency to carry out more than a tiny fraction of its mission. With a loss of nearly three-fourths of its workforce, work, student and visitor visa petitions, asylum and citizenship/naturalization applications, green cards, and refugee applications will not be processed. Please note that USCIS facilitates lawful immigration, it helps law-abiding immigrants attain a legal status as permanent residents and when and if they meet all legal criteria, eventually become U.S. citizens.

USCIS has worked with House and Senate Appropriations staff to identify the need for an emergency supplemental appropriation of \$1.2 billion to prevent these furloughs. The agency would use \$571 million to fund the jobs for the remainder of the current fiscal year and would use the additional \$650 million for the start of fiscal year 2021. The \$1.2 billion would compensate the agency solely for the amount already budgeted for operational needs and to allow it to continue to meet payroll for the 13,400 Federal employees currently under threat of furlough. We recognize the enormous economic pain that the COVID-19 pandemic has caused throughout our Nation and the world. But the United States should not and need not discontinue its capacity for administering legal immigration processes. But without this supplemental appropriation, that is exactly what will happen.

Please also recall that the employees of USCIS, 14,500 of whom are in AFGE bargaining units, are middle-class Americans who live and work in communities all across the Nation. They take great pride in the work they do on behalf of DHS and the mission of their agency. They earn modest salaries in return for public service. These furloughs would completely destroy their ability to support themselves and their families and worsen the already precarious economic situation of their communities.

Although we have asked USCIS to share with us the specifics of how and why they came to need the \$1.2 billion and how exactly they would spend the money once it is appropriated, they have declined, to date, to share this information. One

verbal response indicated that a substantial portion of the requested funds would be devoted to paying contractors. We want to make sure that if the supplemental appropriation is granted, that it be conditioned on it being spent at least in part to ensure that there be no furloughs of any of USCIS's Federal employees. The emergency appropriation supplement should not be granted if the agency intends to use the money solely or even primarily to pay contractors and proceed with its plan to furlough its own workforce. Thus, we urge you to require USCIS to forgo furloughing any of its own workforce as a condition of receiving the supplemental appropriation it has requested.

#### LEGISLATIVE MEASURES TO PROTECT THE DHS WORKFORCE FROM THE IMPACT OF COVID-19

AFGE strongly supports the provisions of the HEROES Act that would affect Federal employees. In particular we support the extension of paid emergency sick leave and partially-paid emergency leave under the Family Medical Leave act to first responders. We also strongly support the HEROES Act's provision of a \$13 per-hour pay differential for front-line employees which would benefit the almost 80 percent of DHS employees who, by virtue of their duties, were required to continue working at their regular duty station throughout the pandemic.

The HEROES Act also created a presumption of workplace illness for COVID-19 so that Federal employees who are working on the front lines and contract the virus during the pandemic will be eligible for Federal workers' compensation benefits without having to prove that they contracted the disease at work. The HEROES Act also includes a provision that would allow certain law enforcement officers (LEOs) to retire and retain LEO retirement eligibility if they contract COVID and are unable to fulfill the duties of their jobs but are employed in other Federal work.

There are several additional measures that were not included in the HEROES Act that we urge Congress to enact in subsequent legislation. We ask that Congress intervene to allow Federal employees who are not currently enrolled in a Federal Employees Health Benefits Program (FEHBP) health plan the opportunity to purchase and join the program during this public health emergency. This provision is especially necessary for the part-time work force at TSA. Up until this year, TSA provided a full employer subsidy for its large part-time workforce. In 2019, the TSA administrator announced abruptly that the agency would end this practice, cutting compensation for this already poorly-paid work force and making health insurance coverage unaffordable for them and their families.

Transportation Security Officers are also under a separate and unequal personnel management system that provides no due process in the work place and no ability to appeal to an independent arbitrator. This has been a problem since the inception of TSA 18 years ago, but the pandemic sheds a new light on the unfairness of lacking basic work place rights, whistle-blower protections and a voice to protect jobs and lives. This committee, through the leadership of Chairman Thompson led the full House to pass H.R. 1140, the "Rights for Transportation Security Officers Act" in March. This bill should be a part of COVID response legislation and considered in the process of reopening DHS.

Many DHS employees likely had approved annual leave denied or canceled because they were required to work because of the exigencies of the pandemic; it is unclear whether they will be permitted to reschedule this leave because the pandemic's future remains uncertain. These employees face the possibility of having to forfeit unused annual leave unless Congress intervenes to permit additional carry-over (higher maximum ceilings) of leave due to COVID-19. A similar problem could arise due to employees' illness rendering them unable to use annual leave. Thus, we ask that future COVID-19-related legislation include permission for increased carry-over of unused annual leave for front-line employees who are unable to use their leave for reasons directly related to leave having been denied due to scheduling issues connected to the pandemic.

#### COLLECTIVE BARGAINING AND COVID-19

The eventual return to work for DHS employees, regardless of which component of the agency they work for and regardless of the standards by which component management makes its decisions, will require collective bargaining with the affected employees. Notice to employees of impending changes in practices and procedures regarding numerous issues ranging from work place health and safety to PPE to issues surrounding transportation to and from work, telework, scheduling of work, accommodations of pre-existing health conditions or new risks arising from COVID-19, issues arising out of work-related travel, performance, training, leave, and pri-



vacy concerns with regard to contact tracing are but a few of the issues that agencies will be asked to bargain over with AFGE.

Throughout the pandemic, at agencies throughout the Government, AFGE has asked management to restore labor-management committees so that front-line workers can be made aware of new information affecting their work and their agency's operations, and management can benefit from the insight and experiences of those carrying out the agency's mission. In most if not all cases, the administration's formal hostility to recognizing the value of cooperative labor-management relations has won out over the common-sense notion of working together to promote the best interests of the agency and its workforce. We ask the committee to use its authority to try to persuade the agencies to set aside the anti-union, anti-collective bargaining stance that the administration has advocated in order to make the return to normal operations, when it occurs, as safe as possible for both the DHS workforce and the American public we serve.

#### CONCLUSION

One of the worst tragedies associated with this pandemic is that now that we have sufficient knowledge of what is necessary to stop the spread of the disease, it is likely that the Federal Government will move forward with reopening too soon. As a consequence, instead of stopping the spread of COVID-19, the Government itself will contribute to the continuation and possible worsening of the pandemic. The vast majority of DHS's workforce are front-line, "essential" employees who have been at their regular-duty stations throughout the pandemic. Taking the necessary steps to protect them—universal testing, strict social distancing, provision of adequate Personal Protective Equipment—might at one point have been impossible due to insufficient supplies. But today there is no excuse.

There should be no re-opening unless and until it is genuinely safe to return. There should be no re-opening unless and until DHS and other Federal agencies have the full capacity to test, protect, trace, and inform their workforces, and unless and until genuine, objective data on the status of the pandemic shows it has subsided.

Ms. TORRES SMALL. Thank you for your testimony.

As I recognize Mr. Judd to summarize his statement for 5 minutes, please allow me to add to the condolences and extend my own very personal ones because of the work that Agent Mordan did in my district and the hard work that is called upon for Border Patrol agents. Thank you for your presence here today, thank you for your representation of them, and my deepest condolences to the family as well and gratitude for their work.

#### **STATEMENT OF BRANDON JUDD, NATIONAL PRESIDENT, NATIONAL BORDER PATROL COUNCIL**

Mr. JUDD. I would like to start by thanking both Congressman Crenshaw and Congresswoman Torres Small for extending that heartfelt condolences to the family of Agent Mordan. This was a great individual who was working to protect his country when he passed away. Unfortunately, we have buried way too many Border Patrol agents who have been out trying to do the best that they can to protect this Nation.

I want to thank you for having this hearing, both Congresswoman Torres Small and Congressman Crenshaw. As you already said, the NBPC represents 14,500 rank-and-file agents of the Border Patrol. On behalf of these men and women, I would like to thank you for having this hearing.

During this time of great civil unrest, I would be remiss—because I am a uniformed law enforcement officer, I would be remiss if I did not recognize the situation surrounding George Floyd. I was thoroughly disgusted to see video of Officer Chauvin with his knee on George Floyd's neck. I was even more disgusted when I watched as Officer Chauvin failed to show the slightest modicum of human

decency as Mr. Floyd begged for his life. I was mortified that a person who was supposed to be the good guy was worse than the criminals law enforcement officers come in contact with on a daily basis. Officer Chauvin's actions can never be repeated, but just as important, the men and women in law enforcement must understand and believe that we are not above the law, and we all must believe that racism has no place in society, especially in law enforcement.

With that being said, it would be absolutely unfair to paint a picture of all law enforcement simply because of what one man did. That individual must be held accountable. All law enforcement also must look at this, learn, and try to do better.

I would like to address the topic of this hearing. Border security has gone completely uninterrupted during this pandemic, and I want to thank DHS for doing all that they can to make that happen. While the men and women of the Border Patrol are no strangers to dealing with extraordinary circumstances, including communicable diseases, in their everyday jobs, the COVID-19 pandemic has created unique challenges. I am proud to say Border Patrol agents across the country have risen to the occasion to protect our borders, even in the face of unprecedented circumstances, but we could not do it alone.

After nearly 23 years in the Border Patrol, I can emphatically say that without the support of this administration, we would not succeed, and President Trump's quick action to initiate Title 42 authorities has driven illegal immigration numbers to the lowest levels in my career. This has allowed us to detect and apprehend the vast majority of those that have entered our country illegally over the past few months, and it has undoubtedly prevented additional cases of COVID-19 from coming to U.S. communities.

As you are undoubtedly aware, and as I previously stated, since the onset of COVID-19 pandemic, the Border Patrol has generally fared well along the Southwest Border from a border security's perspective. Additionally, from a health and safety perspective, we have also generally fared well and have been incredibly fortunate that the number of COVID-19 cases among agents has thus far been low. The men and women of the Border Patrol have been able to continue border security missions while also protecting our agents with little to no disruptions.

With the Border Patrol as an example, I believe the Federal Government can operate at high levels while also managing the spread of COVID-19. As a microcosm, I think that we can look at the Border Patrol and we can say, because of all of the different ways that we patrol the border, we are also in office settings. We are in the field. We deal with individuals that come in the most dire of circumstances. They are held in stash houses, in locations that have diseases that run rampant. Yet because of the actions that have been taken, the simple, little actions that do not cost money, the Border Patrol has been able to continue to operate. I believe that in office settings, the Federal Government can also continue to operate and exceed the levels of service that the U.S. citizens require and expect of the Federal Government.

There are certain concerns that we have that we need to address. The need for additional space is going to be critical. Even if Border

Patrol continues to expel illegal immigrants under Title 42, the size of a potential surge of the country of origin of illegal immigrants, the willingness of countries to take their own citizens, and the health status of the individuals we apprehend are all factors that are going to drive the need for more capacity. Catch and release in a pandemic is simply not an option.

We have had good success processing detainees in the field. This is one of the reasons I believe we have kept our COVID-19 infections low. By processing in the field, we are not exposing an entire Border Patrol station to a potential infected individual.

One limiting factor is internet connection. Without proper connection, we cannot conduct criminal background checks and enter biometric data on the detainees. As you know, internet connectivity is spotty at best along the border. However, with the military technology available, it could give us this connection, and it is my understanding that it can be done at minimal cost.

Border Patrol currently does not have any testing capacity for agents. Instead, we must rely on local medical facilities, which in border communities are already overstretched. Given that COVID-19 will remain a threat until a vaccine is developed, Border Patrol leadership needs either develop this capacity in-house or contract out the function, the most effective method available.

Ms. TORRES SMALL. Mr. Judd, I apologize. Your time has expired. If you wouldn't mind just wrapping up.

Mr. JUDD. Absolutely.

There are many things that can be done in the Federal Government that don't cost the taxpayer money that will allow us to continue to operate as the Federal Government.

I appreciate your time and look forward to answering any of your questions.

[The prepared statement of Mr. Judd follows:]

#### PREPARED STATEMENT OF BRANDON JUDD

TUESDAY, JUNE 16, 2020

Chairwoman Torres Small and Ranking Member Crenshaw, my name is Brandon Judd and I am the president of the National Border Patrol Council (NBPC). The NBPC represents the 14,500 rank-and-file field agents in the Border Patrol. On behalf of these men and women, I would like to thank you for both having this important hearing on how we can safely operate in a COVID-19 environment and for being such stalwart supporters of the men and women of the Border Patrol.

During this time of great civil unrest, and because I am a uniformed law enforcement officer, I would be remiss if I did not address the senseless murder of George Floyd.

I was thoroughly disgusted to see the video of Officer Chauvin with his knee on George Floyd's neck. I was even more disgusted when I watched as Officer Chauvin failed to show the slightest modicum of human decency as Mr. Floyd begged for his life. I was mortified that a person who was supposed to be the "good guy" was worse than the criminals law enforcement officers come in contact with on a daily basis. Officer Chauvin's actions can never be repeated, but just as important, the men and women in law enforcement must understand and believe that they are not above the law; and we all must believe that racism has no place in society, especially in law enforcement.

I hope you will judge me by my actions and not my words.

Throughout my career, and as the head of the NBPC, I have personally led the charge for accountability in the Border Patrol. Last Congress, I worked with Senator Kamala Harris' staff on Body Worn Camera legislation. Well before ProPublica exposed the reprehensible Facebook postings by Border Patrol agents, I notified career Border Patrol managers at the highest levels of the inappropriate and unpro-

fessional content that was being posted. I've filed numerous reports of misconduct, including one report of a high-level manager ordering his agents to target individuals of Muslim decent, regardless of whether or not they were U.S. citizens. Thankfully, not one rank-and-file agent, that I know of, followed through on the career supervisor's order. I've also helped other Border Patrol agents file reports of misconduct that they witnessed in the workplace.

I have been entrusted to enforce the immigration laws of the United States. This charge is a great responsibility and it should mean that I am more accountable to the law and certainly not above it. No law enforcement officer is above the law and thankfully, the vast majority of my colleagues believe the same. We believe those officers that would put themselves above the law like Officer Chauvin, have no place in law enforcement and I will re-emphasize that racism has absolutely no place in society, especially in law enforcement.

In light of the aforementioned, I hope you will judge my testimony accordingly.

#### BORDER SECURITY UNINTERRUPTED

While the men and women of the Border Patrol are no strangers to dealing with extraordinary circumstances, including communicable diseases, in their everyday jobs, the COVID-19 pandemic has created unique challenges and I am proud to say that Border Patrol agents across the country have risen to the occasion to protect our borders even in the face of unprecedented circumstances. But we could not do it alone.

After nearly 23 years in the Border Patrol, I can emphatically say that without the support of this administration we would not succeed, and President Trump's quick action to initiate Title 42 authorities has driven illegal immigration numbers to the lowest levels in my career. This has allowed us to detect and apprehend the vast majority of those that have entered our country illegally over the past few months and it has undoubtedly prevented additional cases of COVID-19 from coming to U.S. communities.

I also want to highlight the dedication to the border security mission exhibited by members of the National Border Patrol Council during this pandemic. For the first 2 months of the pandemic, members of the National Border Patrol Council who are designated to be on 100 percent official time, voluntarily took themselves off of official time and returned to their regular duty assignments in the field. To my knowledge, we are the only Federal employee union in the Nation that took this action.

As you are undoubtedly aware and as I previously stated, since the onset of the COVID-19 pandemic, the Border Patrol has generally fared well along the Southwest Border from a border security perspective. Additionally, from a health and safety perspective, we have also generally fared well and have been incredibly fortunate that the number of COVID-19 cases among agents has thus far been low. The men and women of the Border Patrol have been able to continue our border security mission while also protecting our agents with little to no disruptions. With the Border Patrol as an example, I believe the Federal Government can operate at high levels while also managing the spread of COVID-19.

#### PREPARING FOR THE WORST

While the border security and public health picture amongst agents is currently positive overall, I want to implore the subcommittee not to assume that everything will be "just fine" going forward. I am hopeful that the situation along the Southwest Border will remain as it is but I am deeply concerned that due to the uncertain and complex nature of COVID-19, the situation along the border could spiral out of control and turn dangerous and deadly soon; and it could happen with little to no warning. The evolving and ever-changing scientific, public health, and economic landscape of this pandemic has made forecasting what comes next nearly impossible—even for our Nation's top experts. This uncertainty leaves the Border Patrol with only one option—to hope for the best and prepare for the worst. Now is the time to plan and prepare for the worst-case scenarios.

Unfortunately, there is a long history of Border Patrol leadership not leading and not preparing for what lies ahead. In fact, whether it was the 2014 Unaccompanied Alien Children (UAC) crisis or the 2019 surge that we just experienced this past summer, recent history has shown that the agency rarely has contingencies for worst-case scenarios and is ill-prepared to deal with crises along the border.

I am deeply concerned that Border Patrol leadership is again not taking adequate steps now to prepare for what could very likely come our way in the near future. Whether it's the draw of our economic recovery or the downturn of the Mexican economy; an overwhelmed health care system in Mexico due to a COVID-19 out-

break among Mexican communities or the draw of excess hospital capacity in the United States; there are many plausible scenarios that could lead to a massive surge in illegal immigration and a resulting crisis along our Southwest Border.

As I just stated, now is the time to plan and prepare for the worst-case scenarios. If we keep operating under the same model, I am afraid that we will sadly once again fail to protect our citizens, employees, and individuals crossing our border. And with the grim realities of COVID-19, the consequences of not planning and preparing could be catastrophic and heartbreaking.

The NBPC is eager to begin preparations immediately and in that spirit, I am pleased to share with the subcommittee the below recommendations that we believe will make a significant difference in Border Patrol operations, the health and safety of our agents and the individuals that we encounter, if implemented. We welcome your feedback and would greatly appreciate your support for these measures.

#### STEPS WE NEED TO BE TAKING NOW

*Additional detention capacity.*—The need for additional space is going to be critical even if Border Patrol continues to expel illegal immigrants under Title 42. The size of a potential surge, the country of origin of the illegal immigrants, the willingness of countries to take back their own citizens, and the health status of the individuals we apprehend are all factors that are going to drive the need for more capacity. Catch-and-release in a pandemic is simply not an option.

*In-field processing.*—We have had good success processing detainees in the field. This is one of the reasons that I believe we have kept our COVID-19 infections low. By processing in the field we are not exposing an entire Border Patrol station to a potentially infected individual. One limiting factor is internet connection. Without proper connection we cannot conduct criminal background checks and enter biometric data on the detainees. As you know, internet connectivity is spotty at best along the border. However, there is military technology available that could give us this connection and it is my understanding that it can be done at a minimal cost.

*Testing.*—Border Patrol currently does not have any testing capability for agents. Instead, we must rely on local medical facilities which in border communities are already overstretched. Given that COVID-19 will remain a threat until a vaccine is developed, Border Patrol leadership needs to either develop this capability in-house or contract out the function.

*Temperature screening.*—The most effective method available to quickly determine whether an individual may be symptomatic is body temperature screening. There are numerous vendors that make thermal cameras that can determine, at a safe distance, whether an individual is running a fever. We need to acquire this capability to both protect the agents and ensure that detainees who are sick are properly segregated from other detainees and treated.

*Preparing OFO officers to back up Border Patrol.*—The Border Patrol has a long history of sending agents to assist at ports of entry when the Office of Field Operations is overwhelmed. Apart from the 2019 crisis and only in the Rio Grande Valley, OFO has rarely been deployed to assist the Border Patrol. We need to be prepared to redeploy OFO officers to deal with a potential surge of illegal immigration. OFO officers have the same legal authorities that I have as a Border Patrol agent. They are terrific partners that can be helpful with detainee processing, transportation, and detention while the port traffic remains at low levels.

I hope you will take these suggestions into consideration, some of which come at no cost to the taxpayer.

Again, I would like to thank you for the opportunity to testify on behalf of rank-and-file Border Patrol agents and I am happy to answer any questions that you might have.

Ms. TORRES SMALL. Thank you very much, Agent Judd.

I thank all of the witnesses for their testimony. I will remind each Member that he or she will have 5 minutes to question the panel. I will now recognize myself for questions.

I understand that DHS headquarters developed guidance for resuming operations, but it is allowing individual components to take the lead on when and how they reopen facilities and resume functions that were paused or modified due to the coronavirus pandemic. As we have noted just recently, we are on limited time here, so I would ask each witness, starting with Mr. Judd, to just very briefly describe the level of engagement your representatives have

had with individual DHS components on their plans for reopening, just how you have engaged.

Mr. JUDD. We have had a high level of engagement. I continue to communicate with Commissioner Morgan as well as Chief Scott on a regular basis. As far as what needs to be done, Chief Scott has done a very good job of allowing his sector management to determine what needs to be done to reopen facilities fully. Again, I appreciate the level of commitment that he has shown to making this happen.

Ms. TORRES SMALL. Thank you, Mr. Judd.

Dr. Kelley, your extent of engagement with representatives?

Oh, I apologize. If you can go off mute. There you go.

Mr. KELLEY. Thank you so very much, OK. Let me just say, first of all, you know, unlike Council President Judd, we have had, you know, any number of attempts to try to get the various agencies to communicate with us and work with us, you know, however, we have been unsuccessful. Most of DHS, you know, we have just not been able to get them to allow us to come to the table and share, you know, in the responsibility, I am going to call it responsibility because I think that is what we all have, you know, getting our workers back to work safely, you know. I would leave it with that.

Ms. TORRES SMALL. Thank you, Dr. Kelley.

Mr. Reardon.

Mr. REARDON. Yes. Thank you for the opportunity to answer this question. We have had, actually, a pretty high level of discussion with CBP. We talk to DHS on a weekly basis, you know, with Angie Bailey, the NCO, and we have had engagement with her, and also just directly with the Acting Commissioner Morgan, who I personally met with on a couple of occasions. We have routine and on-going conversation with the leadership, among other folks that comprise the leadership at CBP. So we have had a considerable amount of interaction with them.

Ms. TORRES SMALL. Thank you, Mr. Reardon.

I understand that the Federal Law Enforcement Training Center, FLETC, put a significant amount of time and effort into developing its plans to resume operations. These plans require students to arrive on campus 14 days before resuming in-person trainings. FLETC also plans to test students at least twice for COVID-19 during that 14-day period and test staff who engage regularly with students weekly. However, not all staff will be tested, and staff do not stay on campus housing, which means they must travel in and out between the campus daily.

Mr. Reardon, do you believe FLETC has done everything it can to mitigate infection risks to its employees' and students' health before resuming operations?

Mr. REARDON. Well, you know, I think that they have done—they have certainly put together a plan, and I think you articulated certainly my understanding of the plan that they put in place pretty well. You know, one of the concerns that I do have, however, and you mentioned it, is you have got staff who are going home. They are going out into the community, and then they are coming back in and, you know, it seems to me that it would probably be pretty—it would be appropriate to ensure that they are being tested as well. I think, you know, furthermore, it is important that there is

a robust testing and contact tracing program put in place at FLETC as well.

Ms. TORRES SMALL. Thank you, Mr. Reardon.

Mr. Judd, in the remaining 40 seconds, do your agents have enough PPE for themselves and the people they interact with to keep themselves safe right now?

Mr. JUDD. That is one of the things I am very grateful that DHS did well ahead of time. They gave us plenty of PPE. We have been able to protect ourselves as well as those individuals that we come in contact with. If this is what has been done Department-wide, I think that we are in a very good place.

Ms. TORRES SMALL. Thank you, Mr. Judd.

I yield the remainder of my time, and now recognize the Ranking Member of the subcommittee. Oh, I apologize. Yes. I now recognize the Ranking Member of the subcommittee, the gentleman from Texas, Mr. Crenshaw, for questions.

Mr. CRENSHAW. Thank you, Madam Chairwoman. I do need to say I hope in the future, if we are going to do oversight of DHS and see how they are going to get back to work, we need to have someone from DHS present, and I need to be on record saying that. It should not be up to the Minority with our one witness to make sure that there is somebody from the Department to come to the hearing.

The other thing I need to say, and it is in response to the Chairman's very partisan comments about the President trying to ignore doctors' advice every single day as he doesn't wear a mask. He knows very well that the President gets tested sometimes multiple times a day and, therefore, there is no need to wear a mask.

If we are going to talk about science-based getting back to work, then we actually have to use some science, and we actually have to ask some doctors. Doctors have told us over and over again the reason you wear a mask is to prevent you from sneezing or coughing on somebody else and possibly getting them infected. It doesn't prevent you from getting infected. We have to remember these very basic things.

We have learned a lot in the last few months. We made a lot of mistakes, and we continue to apparently advocate for those mistakes. The Chairman said we are getting back to work too early, that we opened up too early. That is nonsense. If anything, the data shows that we opened up way too late, way too late. We know this in hindsight. I am not blaming anybody for this.

But this notion that we should continue instilling fear in people is very, very harmful to our society. There is risk in this world, and we are never going to get around to fully mitigating every possible cause of harm.

Since the start of stay-at-home orders and social distancing, America's grocers and nurses and other essential workers have continued to go to work. They felt a sense of duty to actually do that, so I am going to be asking some questions here about why. Some of these demands are very reasonable. Some of them go well beyond what our private industry and what our grocers have been doing every single day.

I also have to point to some more data which shows that the vast majority of cases that we see come from residential origins. They

are not coming from health care workers. They are not coming from first responders. This is coming—this is all from New York. We have got the most cases. We have the most data. They are not coming from transit workers either. This tells us something. This informs us about how this disease is actually spread, and it is probably not spreading in office spaces where people are separated by cubicles and offices.

OK. Dr. Kelley, I want to start with you. There was—again, many of the things you guys are asking for are perfectly reasonable and understandable, but some of it is, I think, unattainable. For instance, the 14 days of exponential decline. Do you mind expanding on exactly what you mean by that, because that goes a bit beyond what even CDC guidelines are, which I also think are misguided? But please explain how that is possible and how you might compare that demand to a geographic area that has decided to open. Will you not send your Federal workers back in an area because you might see a daily spike or something even though everybody else in that area might be back at work?

Mr. KELLEY. I think, first of all, you know, we should be very concerned about the entire population of the United States of America, you know. Certainly, I am personally concerned about the welfare and well-being of the members that I represent. But after universal testing and the identification of the extended risk by location, the Federal Government should apply prudent apolitical science-based standard on the safe return of Federal employees to their work site.

Now, you know, entomologists and other public health experts recommend the standard of 14 days of exponential decline in new cases within a region before erasing quarantines and shelter-at-home restrictions. For Federal employees, the region should be defined by community areas—

Mr. CRENSHAW. I understand the guidance. I understand the guidance. I am asking you to think through it. Because here is the thing: In Houston, you could have, you know, a plateau of 100 cases a day, which is basically what we have, between 100 and 200 cases a day. We have never really changed. So you are saying we can never go back to work here?

Mr. KELLEY. No, I am not saying that.

Mr. CRENSHAW. That is 4 million people, right? Because I mean, that is what I mean, like, we have to think through some of these guidelines.

Mr. KELLEY. I certainly think that we have to think through the guidelines. However, I think that because there have been so much, you know, inconsistencies across the board, you know, and we have to be consistent as the Federal Government. That is all that I am saying. We should be consistent. We should make sure that our entire Federal Government system is ready to go back.

Mr. CRENSHAW. But, sir, you are implying allowing for some flexibility, right, just based on that simple thought experiment that I just gave you? Because you could have New York City declining by thousands every single day, but they still might have another 5,000 cases a day. Do you see what I am saying? Like, sir, I just want to—I think—and I think maybe we are agreeing that there must be some flexibility within those guidelines.



It looks like I am already out of time. That went fast. I yield back.

Ms. TORRES SMALL. Thank you, Ranking Member.

The Chair recognizes for 5 minutes the gentleman from Alabama, Mr. Thompson.

Mr. THOMPSON. Well, I will be from Mississippi, but—

Ms. TORRES SMALL. I am so sorry.

Mr. THOMPSON. Oh, that is all right.

Ms. TORRES SMALL. I am so sorry.

Mr. THOMPSON. I have been called a lot worse.

Let me be clear. Whatever we do in bringing the work force back, it should be with the advice and guidance of the medical experts. We can't assume anything else other than what the medical experts say.

Our President toured a facility in Maine last week without a mask on. All the work that plant did last week they had to throw out because he didn't wear a mask. So I am clear about wearing masks. I am clear about setting an example. The notion that we now have a colleague who came back to Washington last week and sat on the floor of the House of Representatives without a mask, and his whole family now has COVID-19, puts the entire U.S. House of Representatives at risk.

So with that as a backdrop, I want us to all recognize that this is a serious, serious matter. Wearing a mask is not a sign of weakness. It means that you understand the challenges that you are confronted with. So I look forward to us making sure that as we bring the work force back, we do it in a manner that we consult with the medical experts and get the proper guidance, so we don't put those individuals at risk or the people they come into contact with. I compliment the Chairwoman for having this kind of discussion.

So, Mr. Reardon, do you see a need for more engagement at the DHS headquarters level around how do we bring people back and clear guidance or are you satisfied with the engagements that is going on now?

Mr. REARDON. Well, Mr. Chairman, I will say that I am somebody who always believes that more engagement rather than less is good. I think there are opportunities in terms of guidance that goes out. You know, for example, I think the guidance that exists around how long you need to be face-to-face with somebody, you know, before you—that later on has been determined to have COVID-19, is—I think it is important to figure out, you know, how we deal with that.

Right now, the guidance says, well, it is anything from you talked to the person for 10 minutes to 30 minutes. I know after a lot of conversations that I have had with a lot of my chapter leaders around the country, they don't have a real good understanding of, so what is the guidance really saying? What does it mean?

So I think that anything that can be done to increase the amount of communication. You know, I think it is one thing to put out guidance, and I think CBP and ultimately DHS have done a decent job of putting out some guidance, but I think there needs to be some follow up so that people understand exactly what does that

guidance mean, and how do I use that in certain situations? You can't deal with every situation, I get that.

Mr. THOMPSON. So are you saying that sometimes the guidance is not clear to the people you are sharing it with?

Mr. REARDON. My sense is that at times, the guidance isn't completely clear, and folks don't know exactly how to implement the guidance. So I think more conversation around that, more communication is helpful.

Mr. THOMPSON. So, Dr. Kelley, what has been your experience with the guidance coming either from DHS or TSA or any of your other members?

Mr. KELLEY. We have participated in some weekly meetings, but we do believe that more engagement and consideration of workers' influence is very much needed in this particular situation. The guidance has been, you know, kind-of—you know, many of them are unsure what the guidance says, just like Brother Reardon said. But if there would be more engagement, I think we can get a better sense of exactly what the guidance is saying.

Mr. THOMPSON. Thank you.

I yield back, Madam Chair.

Ms. TORRES SMALL. Thank you, Mr. Chair. We appreciate your understanding.

The Chair recognizes for 5 minutes the gentlewoman from Nevada, Ms. Titus.

Ms. TITUS. Well, thank you very much, Madam Chairwoman. Thank you for holding this committee.

I would like to just ask Dr. Kelley some questions. Lou Correa, who is Chairman of the Subcommittee on Transportation and Maritime Security of this committee, and I wrote to the TSA administrator about health care for part-time TSA workers, and we had the Chairman's support in this, and I thank him very much for that, Mr. Thompson. We then introduced a bill that is H.R. 6647, Health Care Opportunities for Transportation Security Administrative Employees. We believe that if you are on the front lines, even if you are part time, during these dangerous days where you are really getting exposed, that you should be entitled to health care.

We see it here in Las Vegas that air travel is picking up. More people are going through our airports. Our TSOs are more in danger of being exposed. Could you address what some of the challenges are that they are facing, and give us your opinion about part-time employees receiving that kind of coverage like everybody else?

Mr. KELLEY. Thank you. Yes. I appreciate you and the Chairman on your efforts to make sure that these employees have the necessary protection that they need. You know, in these, so many times, the employees are put in a lot of stressful situations. They are constantly concerned about their welfare, their well-being, whether or not they are going to carry some illness home to their family, you know, because in their mind, and in my mind as well, it doesn't matter if you work 20 hours a week, you know you are still exposed for those 20 hours, or if you work 40 hours a week. So the exposure is still there. So we are hoping that we can get funding down the road with this particular issue.

Ms. TITUS. Well, thank you. I hope so too because you are right, they are exposed when they are there.

I would also ask you, we are hearing more about, as we reopen, how we are going to do it in the airports? Are we going to take people's temperature? What happens to somebody who has found to have a fever? Where do they go? Who is responsible? The airlines, of course, don't want that responsibility. The airports don't especially want it, and they are starting to want to push it off to TSOs, but their job is more security than it is health care. Could you talk about that as well?

Mr. KELLEY. Well, you know, once again, I do applaud the work that the TSOs do every single day, they are very patriotic employees, and we have seen it over and over again, but they are not medical professionals. I think that this is a task that needs to be assigned to a medical care professional and not a TSO officer. They do an outstanding job at, you know, making sure that the public fly safely, but I don't know how well they will fare if they have to become a medical professional.

Ms. TITUS. Thank you. Those are my questions.

I will yield back, Madam Chairwoman.

Ms. TORRES SMALL. Thank you, Congresswoman Titus.

The Chair recognizes for 5 minutes the gentlewoman from New Jersey, Mrs. Watson Coleman.

Mrs. WATSON COLEMAN. Thank you very much, Chairwoman. I appreciate this hearing. Thank you to each of the witnesses for the information that you shared.

I first want to respond to the Ranking Member's concerns about not having administration representatives at the committee meetings. We have consistently invited members of this administration, the DHS administration, and other offices to come before us, and they have declined to do so. So it isn't that we don't want to hear from them, because we most assuredly want to hear from them. Ultimately, they are the ones that are going to be held responsible, and we want to make sure that we are doing all the work that we need to do to ensure that when we do reopen, we reopen safely, that the people we serve are safe, that the people who are doing the work are safe, and that we know what to do should there become a re-shutdown. So I just want to put that on the record so that the record represents more than just sort-of one perspective on what is happening in the world.

I have a question. There was a question that was raised to Mr. Judd, Mr. Kelley, and Mr. Reardon regarding their interaction with the Department of Homeland Security, and Mr. Judd responded good interaction, strong. Mr. Reardon said high level with CBP and DHS, routine interaction with DHS leadership. Mr. Kelley said not very successful in working with DHS. So I want to drill down a little bit. I want to know a couple of things, and if they can just be ripped off really quickly, that would be fine.

So, Mr. Judd, Mr. Kelley, and Mr. Reardon, tell me the components, the offices that you deal with, and then tell me the individuals that you have been seeking or having interaction with. Mr. Kelley in particular, I want to know from you, where have you not gotten the kind of feedback and from whom that you thought you

needed in order to have this discussion about how we move forward safely?

Those are my questions, Madam Chair. I want to hear from everyone. We can start with Mr. Judd, and then we can go to Mr. Reardon, and then we can end with Mr. Kelley.

Mr. JUDD. Thank you. I will be glad to answer. I have communications with the top level in Border Patrol. That is directly with Chief Scott. I have had communication with the top level in CBP, which is Acting Commissioner Morgan. If need be, I can go to DHS and speak with the DHS chief of staff, John Gountanis but I haven't needed to go there. I haven't needed to exercise that privilege. I have been able to work through the issues with Chief Scott and Acting Commissioner Morgan.

Mrs. WATSON COLEMAN. Thank you.

Mr. REARDON. This is Tony Reardon. I will jump in there. At DHS, as I think I mentioned earlier, I have a weekly call with Angie Bailey, the CHCO at DHS. With regard to—you are on mute.

Mrs. WATSON COLEMAN. Here we go.

Mr. REARDON. Still muted. I can't hear you.

Chief Human Capital Officer. Sorry.

Mrs. WATSON COLEMAN. Thank you. Your employees work under—

Mr. REARDON. Yes. The Office of Field Operations within CBP, and we also represent some employees at the Federal Law Enforcement Training Center.

So Angie Bailey I deal with, as I said, weekly. I also have had quite a few interactions with Acting Commissioner Morgan, as well as Deputy Commissioner Robert Perez. We have, I don't know if I would say daily, but we have very frequent interactions with Executive Assistant Commissioner Todd Owen at CBP in the Office of Field Operations. Then, of course, you know, we have chapter leadership locally around the country, and they deal with local management and the DFOs that are around the country, so we have, I mean, quite a bit.

Mrs. WATSON COLEMAN. Thank you.

Mr. Kelley.

Mr. KELLEY. OK. Can you hear me now? OK.

Well, first of all, you know, as I have mentioned, you know, we have participated in some weekly calls, but we would like to have more communication between the agency leadership and the workers. We should have more communication between agency leadership and—like the TSO counsels, TSA counsels, or the FEMA counsel, or—you know, we are just not getting that level of communication, and I think we need that if we are going to be successful.

Ms. TORRES SMALL. Thank you, Mrs. Watson Coleman. I apologize, but your time has expired and I appreciate the questions.

Now, the Chair recognizes for 5 minutes the gentlewoman from California, Ms. Barragán.

Ms. BARRAGÁN. I thank you, Chairwoman Torres Small, for convening this hearing.

As the States and the local governments begin to reopen and people start to physically return to work, we must keep in mind that the pandemic is not over. The coronavirus is still impacting all aspects of life daily. Cases are still on the rise, and health experts

predict a second wave of infections. You don't have to look any further than to look and hear Dr. Fauci and his concerns that he has expressed and the medical data that he is relying upon.

I want to, you know, say that, in California alone, we have seen infections top 151,000, and nearly 5,100 people just in Los Angeles county have died. That accounts—that accounts for lots of lives that are being impacted. So I think it is critically important that we are having this conversation on workers and asking what can be done to make sure that when we try to go back to some sense of normalcy, that we do so safely.

Mr. Judd, I would like to start a question to you. In your statement, you advocated for Border Patrol to get thermal scanners in an effort to screen the health of migrants at the border. However, makers of these scanners have cautioned that they are not intended for medical use and can only scan for elevated skin temperatures, which can be caused by a variety of other factors, for example, physical exertion while outside in warm climate like the Southern Border.

Mr. Judd, what information has led you to believe that this would be an effective screening measure for the Border Patrol?

I think you are on mute, sir.

Mr. JUDD. Can you hear me now?

Ms. BARRAGÁN. I can hear you now. Thank you.

Mr. JUDD. OK. I went to my personal doctor. I have been to the doctor several times during the pandemic, and they have told me that these scanners work very well. We have also done our own personal research. Again, I am not saying that it is the be-all, end-all, but it is one of those indicators that we need to look at. We need to be available to identify when somebody is showing certain symptoms of the pandemic, of COVID-19, to ensure that it is not spread throughout the United States. So we need to look at all of the different things that we can possibly use, and that is just one tool that would help us look for indicators.

Ms. BARRAGÁN. OK. Well, thank you. I guess my caution is, if the makers of the devices themselves are warning they are not for medical use, would that be the best use of our resources? But thank you for your insight on that.

Mr. Judd, one more question for you. We have certainly seen the reports about the use of CBP agents and ICE agents at protests nationally, certainly in Washington, DC. What are CBP agents doing at these protests? Can you shed some light? It certainly instills fear amongst immigrants who want to exercise their First Amendment rights, and the militarized exercise, you know, scares citizens too.

I believe that DHS has confirmed that CPB will be active in Arizona and California. Can you give me some insight on what CBP officers are doing there?

Mr. JUDD. Yes. First and foremost, we don't make that decision on our own. We are not the ones who decide whether or not we are going to go in and help. What we do is, when we receive requests for assistance from other law enforcement agencies, then we go in and we assist them, under their authority, not under—not under any authority under any immigration authority. So we are not there to arrest anybody for immigration violations. We are not the military, so we are not militarizing anything. We are law enforce-

ment, so we are assisting our local law enforcement partners when they ask for assistance.

Ms. BARRAGÁN. OK. Thank you, sir.

Mr. Kelley—Dr. Kelley—I apologize for that—U.S. Citizenship and Immigration Services, which is funded by fees paid by applicants, recently announced it expects to run out of funding by the end of this summer. The agency noted a drop-off in applications during the pandemic, which likely exacerbated issues caused by the administration's policy aimed at curbing legal immigration over the past several years.

Dr. Kelley, how do you think this budget shortfall will affect the components' ability to adequately provide staff with PPE and modified facilities to adhere to social distancing guidelines?

Mr. KELLEY. I think that it vastly affects the ability to provide that care for those employees and immigrants. I think that we have to make sure that they are funded adequately so that we can ensure that the protection is there.

Ms. BARRAGÁN. All right. Thank you, sir.

I yield back.

Ms. TORRES SMALL. Thank you.

I thank the witnesses for their valuable testimony and the Members for their questions. I also thank everyone for their patience as we work through the bugs that we have seen in the midst of all of this and, again, reiterate my gratitude for everyone's willingness to do this on-line forum hearing.

I also want to thank the committee staff, both the Majority and the Minority, for working on this issue. We will continue to work to find ways to make sure that relevant witnesses are able to attend these formats, and I look forward to working on that with the Minority as well.

The Members of the subcommittee may have additional questions for the witnesses, 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 1:15 p.m., the subcommittee was adjourned.]

## APPENDIX

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QUESTIONS FROM HONORABLE BONNIE WATSON COLEMAN FOR ANTHONY M.  
REARDON

*Question 1.* During the hearing, you were asked about the level of engagement your representatives have had with DHS and individual components on their plans for re-opening.

In instances where you described the level of engagement as positive, please provide more details on the type of information your representatives received. How frequently and in what format was this information provided?

Answer. NTEU has had frequent conversations (at least once a week) with CBP Office of Field Operations leadership and two meetings with the CBP Commissioner since mid-March 2020 where we were able to discuss employee health and safety issues.

For non-uniformed personnel, our engagement has and continues to be positive. OFO continues to maximize telework for employees whose work is portable.

For uniformed personnel, initially, the CBP Field Offices and Port Directors worked collaboratively with employee representatives toward the objective of safeguarding CBP employees at the ports which sent an encouraging and strong message to CBP employees that CBP cares about their well-being and that of their families. This collaboration boosted employee morale.

As a result of these discussions and collaboration, in late March OFO worked with NTEU to use weather and safety leave (WSL) to temporarily revise work schedules and reduce staffing at ports of entry when and where appropriate to protect the health of the work force while still meeting operational demands. This created opportunities for social distancing at ports of entry in accordance with Centers for Disease Control recommendations while maintaining operational capacity and ensuring there would be a cadre of healthy CBP officers available, as necessary. The revised schedules were carefully designed to ensure that operational demands were still being met. In addition, CBP personnel placed on WSL were on standby and were required to remain ready to report to work at any time.

On April 6, 2020, CBP implemented reduced hours of operations at 45 ports of entry along the Northern and Southern Borders due to diminished cross-border traffic. However, on that same day CBP announced that it was immediately canceling WSL for CBP officers at Northern and Southern land border ports of entry and requiring full staffing.

The stated rationale for the decision was that CBPOs are needed to be ready to assist Border Patrol should they need assistance stopping an anticipated influx of COVID-19 infected migrants crossing the borders between ports. Aside from the fact that there is no evidence that such a threat exists, this is a short-sighted decision, to say the least, from a health and safety perspective. As we all know, taking advantage of reduced traffic at the border by reducing staffing reduces the overall exposure of the workforce to the coronavirus. There is a scientific and medical consensus that the spread of the virus is slowed by safe social distancing and limiting interactions between potentially-infected individuals and others. This is particularly true now that it is widely accepted that asymptomatic individuals may transmit the virus.

Requiring CBP officers to show up to work when it is not operationally necessary runs directly counter to this consensus. It puts at grave risk the long-term health of the CBP workforce as this country fights the pandemic, which in turn puts the security of this country at risk. This decision unnecessarily puts the health and safety of CBP officers at risk, potentially undermining their mission and exacerbating community spread of COVID-19 at our borders.

After consultation with NTEU, CBP agreed to continue 1 day of WSL per week for CBP agricultural specialists on the Northern and Southern Borders, but NTEU was not able to convince CBP to reinstate WSL to all CBP officers.

NTEU never expected the current rate of WSL usage would continue indefinitely so it was not surprising that we were notified by OFO in late May that it would begin to reduce the amount of WSL used by CBPOs and agriculture specialists in conjunction with reopening the economy. Field Offices were expected to start discussions with local NTEU chapters about the drawdown process and those with high-risk medical conditions would remain on WSL and teleworkers would continue working from home.

Despite assurances from the agency that it would be a gradual process, some ports abruptly canceled weather and safety leave as of Monday, June 8, without consulting local NTEU chapters. NTEU has raised this issue with CBP, which agreed that WSL hours must be gradually reduced in accordance with discussions between local NTEU chapters and local port management and give employees enough notice to adjust their personal and family obligations and schedules.

We strongly opposed the agency's decision to not provide the WSL to all ports during the COVID-19 pandemic. It was a smart way to reduce employee contacts with the public and limit their time in crowded facilities, and it should not be revoked unless the workload at the port demands it. Local port arrangements on WSL was a smart way to help protect employees and their families from the coronavirus risk. That risk has not gone away (and in many border States has increased) as the economy reopens and that is why NTEU will continue to insist that all health and safety protocols, including reinstating WSL where appropriate, are followed at the ports.

NTEU has also had weekly or bi-weekly calls with the DHS chief human capital officer to raise issues and hear what they are planning agency-wide. We have consistently used these calls as an opportunity to ask when DHS will be implementing testing for all employees whose jobs require them to be at the work site and an effective contact tracing protocol based on the testing. Unfortunately, while DHS has been talking about piloting an app for contact tracing, nothing has been rolled out yet. And currently, the only place DHS is conducting wide-spread testing is at FLETC and they seem to be nowhere near able to conduct wide-spread testing across DHS. We are concerned that this lack of testing and contact tracing, coupled with DHS's policy to require potentially exposed personnel to continue to report to work and self-monitor for symptoms rather quarantine unless they have an unprotected exposure within 6 ft for at least 15 minutes, could lead to significant spread of the virus. DHS is not acting fast enough in this area.

*Question 2.* In instances where you would not describe the level of engagement as positive, please provide more details on how these DHS offices or components were non-responsive to your representatives. What information would have been helpful to your organizations?

*Answer.* On June 19, NTEU was informed that OFO would be required to provide 810 CBP officers to work at Border Patrol checkpoints in the Río Grande Valley (RGV) and Laredo Sectors, for 120 days. Deployed officers would also be monitoring border surveillance cameras for illegal crossings. Deployments were to commence as early as June 29, with solicitations beginning June 22. NTEU had been in regular contact with CBP OFO and we were given no warning that this was being discussed. It appears that the decision was made quickly, at the Department level, with OFO only being informed on June 19, as well.

The justification for the deployment, as explained to NTEU, is the increasing numbers of apprehensions and "got aways" in these areas. DHS/CBP wants to decrease the number of "got aways" by having more Border Patrol agents on patrol, which creates the need for more checkpoint and surveillance camera staffing. Apprehended individuals are immediately deported under Title 42 authority.

CBP OFO plans to meet the directive by detailing 810 SCPBOs and CBPOs in 2 separate 60-day temporary duty assignments—505 to the RGV and 305 to Laredo. Additional Air and Marine, ICE, and DOD personnel will also be deployed to the 2 sectors. Detailed CBP officers will assist Border Patrol by manning 3 Border Patrol checkpoints, 2 in the RGV and 1 in Laredo. Because of COVID-19 infection concerns at these hotspots, detailed officers will be required to wear surgical masks at the primary checkpoints and N95s in secondary.

Volunteers were solicited from the major airports, the numbers, which include supervisors and front-line officers, currently breakout as follows: ATL (36); Dulles (35); ORD (32); DFW (20); Houston (46); LAX (100); FLL (30); MIA (148); Orlando (12); JFK (170); NY/Newark (90); SFO (60). Officers from Brownsville and Laredo currently assisting the Border Patrol make up the difference between these numbers and the 810 officers that OFO is required to provide.

NTEU and OFO have been discussing deployment details, including excusals for involuntary deployments should there be insufficient volunteers. CBP officers who are high-risk because of underlying medical issues will not be detailed. Officers detailed for 60 days will be allowed to volunteer for a second 60-day assignment. There



will be no opportunity to return home during the 60-day assignments. Detailed officers will be flown to San Antonio or smaller airports (e.g., McAllen) near the border. They will be housed in hotels and assigned 4 officers per rental car.

There are several issues surrounding this deployment that are worth noting:

1. NTEU questions the necessity of any deployment and the quick turnaround. NTEU has seen no justification or data that indicates a need for this. We have anecdotal reports of Border Patrol agents at the Southwest Border with not enough work to do—which begs the question about whether this deployment is even justified. It is true there has been an increase in Border Patrol arrests in the last month or so, as well as reported “got-aways” but we are still nowhere near the activity of 1 year ago. NTEU has asked CBP for more information about why they need to do this, and we urge the committee to do the same.
  2. It is NTEU’s understanding the funding for these Temporary Duty Assignments (TDYs) will come from other CBP programs. Reportedly, DHS “found” available funds and submitted a reprogramming request to House and Senate appropriators on June 30. Appropriators have 15 days to review this request.
- As with any TDY, there is concern about leaving home ports understaffed. Travel volume remains down but as it starts to pick up, airport and airline officials are not going to want long lines of international travelers. This deployment not only pulls people away from their homes, but it moves officers from around the country to this COVID-19 hotspot. Between traveling, staying in a hotel, sharing vehicles, etc., the risk to our members is potentially catastrophic.

As of July 5, CBP has had 1,058 Federal employees test positive for COVID-19. Five CBP officers at airports of entry have died as a result of the virus and many more are quarantined due to exposure. This deployment increases the odds of the virus spreading among CBP’s workforce at the ports of entry as well as to the public.

This deployment has been postponed for now, presumably until this reprogramming funding is approved. It is important that appropriators know that these TDYs are a waste of money and unnecessarily expose CBP officers to greater risk of contracting and spreading the coronavirus.

NTEU urges the committee to contact your colleagues on the House Appropriations Committee and ask them to deny the fiscal year 2020 reprogramming request to fund these TDYs.

In sum, NTEU’s engagement with CBP’s OFO has been positive, overall. Unfortunately, OFO has been directed by CBP and DHS to take actions, with little to no notice, which has negatively impacted our ability to collaborate on reopening plans that accomplish CBP’s mission while also addressing the health and safety interests of the workforce.

#### QUESTIONS FROM HONORABLE BONNIE WATSON COLEMAN FOR EVERETT B. KELLEY

*Question 1.* During the hearing, you were asked about the level of engagement your representatives have had with DHS and individual components on their plans for re-opening.

In instances where you described the level of engagement as positive, please provide more details on the type of information your representatives received. How frequently and in what format was this information provided?

*Question 2.* In instances where you would not describe the level of engagement as positive, please provide more details on how these DHS offices or components were non-responsive to your representatives. What information would have been helpful to your organizations?

Answer. Most of the engagement I would describe as “positive” has been limited to communications between AFGE staff in our National office and officials at DHS tasked with engagement with the union. The DHS chief human capital officer has met regularly with National union representatives and provided very limited information about the components’ plans regarding COVID-related policies. While they have shared reopening protocols, they have been far less forthcoming with information regarding the rationale and underlying data connected with the impending CIS furloughs/layoffs.

With respect to engagement that I would not describe as positive, it would be the engagement with the workforce, including elected union representatives by the agencies within DHS. Unless it serves their motives, agencies have been quite rigid with respect to workforce communications and engagement with union representatives. Because of the President’s Executive Orders issued in May 2018, union representatives have little or no official time to provide representation to the bargaining units. In 2017, he issued an Executive Order ending labor-management relations. As a result, even as USCIS is preparing to furlough over 70 percent of its

work force, it has forced union representatives to be on leave status when discussing the terms of the furlough and its impact on represented employees. At the Coast Guard, the union has suggested a different staffing rotation for return-to-work than the agency has proposed, but the union's request has been ignored. Coast Guard management proposes rotating every other day between being in the office and on telework, dividing the workforce into two separate groups to allow for spacing. The union proposed every other week. This provides for more continuity of work and allows for a thorough cleaning between rotations of one group of staff and the other. At TSA, even as the virus is raging, the agency has decided that those personnel with compromised health conditions must return to work. Early attempts to engage with all DHS components with respect to provision of personal protective equipment and other safety measures were widely ignored and most communications from the union had to be conducted on leave status. These are discussions about measures to protect the health and the lives of the workforce. They should not have to be conducted on leave status. Agency representatives are able to communicate with the workforce on agency time; union representatives cannot suggest ways to keep people from dying without taking annual leave to do so. In every coronavirus relief package that Congress has taken up thus far, AFGE has proposed that labor-management relations resume for the purpose of addressing workforce needs during the pandemic. For agencies within DHS, this involves thousands of workers on the front lines. Insisting on this communication is essential to the lives and health of our workforce.

Thank you for the opportunity to provide a more thorough response to the committee's questions and thereby assist in your important conduct of oversight. Should you have additional questions, please contact Julie Tippens, [julie.tippens@afge.org](mailto:julie.tippens@afge.org).

#### QUESTIONS FROM HONORABLE BONNIE WATSON COLEMAN FOR BRANDON JUDD

*Question 1.* During the hearing, you were asked about the level of engagement your representatives have had with DHS and individual components on their plans for re-opening.

In instances where you described the level of engagement as positive, please provide more details on the type of information your representatives received. How frequently and in what format was this information provided?

Answer. I do not have regularly-scheduled meetings with agency leadership to discuss operational issues confronting the Border Patrol. However, I have had multiple conversations with leadership at Border Patrol, CBP, and DHS throughout the pandemic to address concerns I have had. This includes Acting Secretary Wolf, Acting Commissioner Morgan, and Chief Scott and overall, I would describe these interactions as positive. At the sector and station level, local presidents and shop stewards have an on-going dialog with their respective leadership to address their specific concerns.

*Question 2.* In instances where you would not describe the level of engagement as positive, please provide more details on how these DHS offices or components were non-responsive to your representatives. What information would have been helpful to your organizations?

Answer. Let me give you 2 concrete examples. The first is a larger DHS issue and involves the process under which agents would be eligible for hazardous duty pay given their exposure to COVID-19. Right now, it is almost impossible for agents to establish exposure. This is because there is no testing capability for either the agents or the illegal immigrants we detain. Moreover, most of the detainees are expelled under Title 42 back to Mexico within 2 hours of apprehension. This is a classic Catch-22 by design. The agents are being exposed but do not have the documentation to establish the exposure. Although this issue is currently being litigated, I have asked DHS leadership proactively address this issue to allow agents to receive the hazardous duty pay they are entitled to under the law.

On a more local level, there have been issues with individual agents not being allowed to self-quarantine. Currently there are almost 1,000 agents who have been exposed to COVID-19 that are under self-quarantine. However, we have had multiple instances of agents who have been exposed to COVID-19 who were denied the ability to self-quarantine by their supervisors. The union has raised this issue with their respective leadership with inconsistent results.