

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Sixteenth Congress

February 6, 2020

The Honorable Chad Wolf
Acting Secretary
Department of Homeland Security
301 7th Street, SW
Washington, D.C. 20528

The Honorable Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Dear Acting Secretary Wolf and Acting Commissioner Morgan:

We write to express serious concern with the Department of Homeland Security's (DHS) recent announcement preventing New York state residents from enrolling or re-enrolling in Customs and Border Protection's (CBP) Trusted Traveler Programs (TTPs). On the evening of February 5, 2020, Acting Secretary Wolf gave an exclusive interview to Fox News where he announced DHS's decision to punish New York state for passing the Driver's License Access and Privacy Act.¹ Acting Secretary Wolf followed up with a letter to the New York State Department of Motor Vehicles, stating the Department's decision and citing to no legal authority.²

DHS's decision is yet another attempt to retaliate against states and localities that refuse to be commandeered by the federal government. From the earliest days of the Trump Presidency, this Administration has attempted to punish so-called "sanctuary" cities and states—localities that refuse to implement the President's restrictive immigration agenda. Five days after his inauguration, President Trump issued an Executive Order threatening "appropriate enforcement action" and withholding of federal funds for various jurisdictions.³ In 2018, the Department of Justice (DOJ) sent letters to several jurisdictions threatening to subpoena documents relating to state and local law enforcement coordination with federal immigration authorities.⁴ Over the last

¹ N.Y. Veh. & Traf. § 201 (2019).

² Letter from Acting Secretary Chad Wolf

³ Executive Order 13768, Enhancing Public Safety in the Interior of the United States (Jan. 25, 2017).

⁴ *Major Developments Relating to Sanctuary Cities Under the Trump Administration*, AM. CIVIL LIBERTIES UNION 6 (Aug. 27, 2018) <https://www.aclu.org/other/major-developments-relating-sanctuary-cities-under-trump-administration>.

two years, federal judges around the country have repeatedly barred this Administration from withholding federal funds from such jurisdictions.⁵ Now, unable to overcome these legal obstacles, this Administration has embraced a new, lawless path.

As noted, DHS cites to no legal authority in support of its decision to prevent New York residents from enrolling or re-enrolling in TTPs. Federal regulations relating to these programs, such as Global Entry⁶ and the Secure Electronic Network for Travelers Rapid Inspection (SENTRI),⁷ do not include any provision for categorical disqualification of applicants based on their state of residence.

With yesterday's decision, DHS has barred millions—including those travelling to and from one of America's financial hubs, New York City—from TTPs. These programs promote national security and efficient travel. Applicants undergo rigorous security screening, including a background check and submission of biometric information. This decision was not motivated by our national security interests, but instead by partisan politics and a blatant disregard for states' rights.

We request answers to the following questions:

1. What statute or regulation authorizes DHS to prevent all New York state residents from enrolling or re-enrolling in TTPs?
2. Will this decision impact New York state residents currently enrolled in TTPs? Will any New York state residents be disenrolled from these programs as a result of the suspension?
3. Will DHS be amending its regulations regarding TTPs to implement this decision?
4. Will DHS be providing a detailed explanation to the public regarding implementation of this decision?
5. Did DHS make any efforts to coordinate with state and local officials to address the agency's concerns, prior to sending the letter to the New York State Department of Motor Vehicles?
6. Did DHS explore alternatives for obtaining information purportedly collected by the New York State Department of Motor Vehicles?
7. When will the suspension of enrollment and re-enrollment come into effect?

⁵ *City of Philadelphia v. Attorney General United States*, No. 18-2648 (3d Cir. 2019) (holding that the Attorney General could not condition federal Justice Access Grants on greater coordination with federal officials on matters of immigration); *City of Los Angeles v. Barr*, No. 18-56292 (9th Cir. 2019) (same).

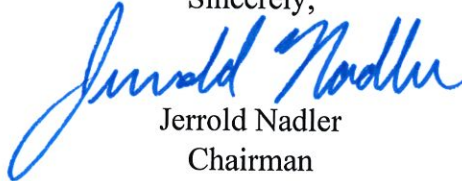
⁶ 8 C.F.R. § 235.12.

⁷ 8 C.F.R. § 235.7 (describing the Port Passenger Accelerated Service System (PORTPASS), a legacy system of the former Immigration and Naturalization Service; SENTRI is a PORTPASS program).

8. It appears that applications for certain TTPs, such as Global Entry, are experiencing months long backlogs. How will current applicants be affected?

Thank you for your prompt attention to this matter.

Sincerely,



Jerrold Nadler

Chairman

House Committee on the Judiciary