



# **CONGRESSIONAL TESTIMONY**

**STATEMENT BY**

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**BEFORE THE  
HOUSE HOMELAND SECURITY COMMITTEE  
SUBCOMMITTEE ON OVERSIGHT, MANAGEMENT AND  
ACCOUNTABILITY**

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

**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 facilitation 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 five TSA employees and one TSA contractor have died from the virus. TSA also reports that over the past two 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 governmentwide guidance to date on reopening. Importantly, even OMB said that its phased reopening should not proceed until three 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 healthcare 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 three phases of reopening. During the first phase, maximum telework would continue, return to worksites 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 worksites to prevent the spread of the virus such as building higher walls on cubicles and changing the configuration of “public use” areas of worksites 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 Vought on April 22. I have received no response to this letter. My response set forth six 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 nine 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 worksites, 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 worksites 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 workspaces, and areas for isolation, and filtering systems for air circulation. We asked that federal worksites 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 worksite, 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 dialogue 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%) 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 frontline 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 frontlines 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 workforce 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 workforce 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 workplace 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 workplace rights, whistleblower 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 cancelled 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 carryover (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 carryover of unused annual leave for frontline 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 workplace 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 privacy 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 frontline 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 commonsense 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 frontline, "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.