



March 22, 2017

Perspectives from the DHS Frontline: Evaluating Staffing Resources and Requirements

Committee on Homeland Security and Governmental Affairs, United
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Opening Statement of Chairman Ron Johnson
“Perspectives from the DHS Frontline: Evaluating Staffing Resources and Requirements”
Wednesday, March 22, 2017

As prepared for delivery:

Good morning and welcome. Across our nation, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement agents and officers are working on the frontline to keep us safe. Every day, they help secure our borders and remove individuals who pose a threat to our communities. When we talk about border security, technology and fencing are important components, but manpower may be the most important part of the equation. Today’s hearing will examine the current conditions these agents are facing on the front lines.

President Trump’s recent executive orders on strengthening border security and immigration enforcement signal his firm commitment to secure our borders and enforce our immigration laws. The President’s call for an increase of 5,000 Border Patrol agents and 10,000 ICE officers is meant to improve the Department’s ability to enforce our immigration laws.

We have received early reports that morale is already on the rise. Chris Cabrera, a Border Patrol agent in the Rio Grande Valley Sector, recently stated, “The agents seem to be excited that something’s finally going to change, that we finally have somebody working for us as opposed to working against us.” Another agent, stationed in El Paso, Texas, similarly stated; “There is a feeling of excitement among Border Patrol agents that they finally will be allowed to do their jobs that they were hired to do.”

Beyond improved morale, early data might indicate that the President and Secretary Kelly’s tough stance on security could be resulting in fewer attempts to break our laws and enter this country illegally. In February alone, apprehensions at the southwest border decreased 40 percent—from 31,578 in January to 18,762 in February. This is noteworthy because apprehensions usually spike in February. As Secretary Kelly recently highlighted, “The decrease is also encouraging news because it means many fewer people are putting themselves and their families at risk of exploitation, assault and injury by human traffickers and the physical dangers of the treacherous journey north.”

Secretary Kelly has told Congress that he will hire more people quickly, without lowering standards and training. He also acknowledges that adding an additional 15,000 personnel is not easy and will take several years. Our Committee stands ready to assist the Department in meeting this staffing goal, while ensuring that we maintain the highest hiring and training standards.

Today’s hearing will provide a frontline perspective on the unique hiring and retention challenges these agencies face. We will seek to understand what is causing delays in the hiring process and discuss how Congress can help. We must ensure that the Department has the workforce to achieve its vital mission of securing the homeland.

I thank the witnesses for sharing their recommendations, and I look forward to their testimony.

U.S. Senate Homeland Security and Governmental Affairs Committee
“Perspectives from the DHS Frontline: Evaluating Staffing Resources and Requirements”

March 22, 2017

Ranking Member Claire McCaskill

Opening Statement

Thank you Mr. Chairman.

Thank you for calling this hearing today to talk about this critical issue.

I want to start by thanking Border Patrol agents, Customs and Border Protection—or “CBP”—officers, and Immigration and Customs Enforcement—or “ICE”—personnel. I know that your jobs are not easy and not always appreciated.

In February, I went to see our southern border firsthand, and met some of the men and women tasked with our safety and security. I talked to these hardworking Border Patrol agents, CBP officers, ICE agents and Air and Marine personnel and I heard about the challenges that they face. Every day, these men and women have to secure a border that spans deserts, rivers and mountains, they have to process hundreds of thousands of people, cargo, and vehicles coming into our country, and they have to go toe to toe with cartels, who will stop at nothing to smuggle drugs and—for what is becoming even more obscenely profitable for them—people into this country. These men and women are understaffed, overworked, and seldom

receive the recognition they deserve. Ensuring that the men and women responsible for protecting our border and enforcing our immigration laws have the resources they need is an issue of national security.

When I was at the southern border I asked these men and women what they needed to do their jobs better. Was it resources? Was it technology? Was it additional staff? And yes, I asked if we needed a wall. And you know what they said? They said that they needed better roads to access the border, they needed double fencing in some areas that experience high traffic, they needed more electricity to power their equipment in remote locations, and they needed more agents to help ease some of the overtime. But not one said we needed a 2,000 mile long border wall, and not one said that a wall by itself could secure the border.

We need to think carefully about these men and women and what we can do to help them do their jobs and keep us safe. We should give them more resources, we should give them more roads, and yes we should give them more staff, but we shouldn't just go and build a wall without thinking about it first. These people know firsthand what we need, and they should be listened to.

As everyone here knows, the President has signed executive orders calling for an additional 5,000 border patrol officers and an additional 10,000 ICE agents. And let me just say, that I am for giving these agencies the staff they need, but did

anyone stop and think before the President decided that an additional 15,000 agents alone was the answer? What about 14,000? Or 16,000?

If the President's goal is to increase the number of apprehensions of people crossing the border illegally, simply increasing the number of Border Patrol Agents may not be the most effective strategy. In fact, since 2000, the number of Border Patrol agents has increased by 115%, while the number of apprehensions along the southern border by those Border Patrol agents has decreased by 75%.

Mr. Chairman, I believe that I am going to sound like a broken record on this point, but I would like to see the cost-benefit analysis. Did anyone take the time to calculate how many people we need to do the job right? Right now we have management problems in CBP and ICE where agents are stuck behind desks doing administrative tasks, and the manager to officer ratio needs review. Do we need an additional 15,000 agents, or do we need a shift in structure, or more support staff so that agents can be out there doing their jobs? These are the questions we need to answer.

The other glaring problem with this rush to hire an additional 15,000 agents is that the administration has completely overlooked our ports of entry. Yes, that's right, according to these executive orders not one additional person will be added to the CBP officer ranks. CBP officers serve a critical role screening cargo and

visitors at more than 300 ports of entry. In 2015, CBP collected \$46 billion from duties, taxes and fees at ports of entry across the country. That same year CBP officers arrested 8,246 individuals wanted for serious crimes and seized more than 3.3 million pounds of narcotics at points of entry. Despite this their critical role in securing our border, and the fact that they are understaffed based on CBP's own models, the administration plans to do nothing to ease the burden on them.

I'd like to ask the administration why it made that decision. I'd like to ask the administration how long it will take to hire its new officers and agents. I'd like to know how they plan to use them around the country...but they are simply not here to answer our questions.

Unfortunately, this is the second hearing in a row where, when given an invitation, the administration has failed to provide a witness. I invited the Department to send anyone—anyone!—to testify at today's hearing, and DHS has failed to provide a single representative. The lack of responsiveness by DHS to this Committee is incredibly troubling. I know the Department has already begun issuing acquisition requests to contractors for the President's proposed border wall, yet I am still waiting for information from the Department on the cost-benefit analysis they are supposedly conducting. I refuse to accept that stonewalling is the new normal.

During the past two months the Trump administration has proposed huge changes would impact our budget, our policies, and our national security, but they have shown an unwillingness to answer any questions about them. Our system of government works because there is oversight; because we have checks and balances.

I want to make sure that the CBP and ICE officers and agents out there securing the border, manning our ports of entry, and enforcing our laws have the resources that they need and deserve. I look forward to hearing from our witnesses today about those needs and how we can work to meet them. And after this hearing is done, I will continue to ask the administration questions, and believe me I plan to get answers.



National Border Patrol Council

**Testimony of Brandon Judd
President of the National Border Patrol Council
Before the Senate Homeland Security and Government Affairs Committee
March 22, 2017**

Chairman Johnson and Ranking Member McCaskill, thank you for allowing me to testify before this Committee today. My name is Brandon Judd and I am pleased to testify today from my personal experience as a veteran Border Patrol Agent and on behalf of all rank-and-file Border Patrol Agents whom, as the President of the National Border Patrol Council ("NBPC"), I was elected to represent.

Personal History and Experience

Although I currently serve as the NBPC President, I am first-and-foremost a Border Patrol Agent with 19 and a half years of experience.

As a Border Patrol Agent, I've worked under three different administrations: Clinton, Bush and Obama. President Trump's Administration is now my fourth. I spent the majority of my career in the Tucson Border Patrol Sector, which is the busiest sector in the history of the Border Patrol. As an Agent in the field, I've served as a Canine Handler, Field Interdiction Team Leader, Field Training Officer and Intel Agent.

Background

As you know, the Administration proposed the hiring of 5,000 additional Border Patrol Agents as well as making major investments in border infrastructure. This is welcome news and is a step in the right direction to securing the border.

The Congressionally mandated floor for manpower at Border Patrol is 21,370 Agents. We are currently 1,743 Agents below this floor. To put this figure in perspective, 1,743 Agents is about the size of the St. Louis Police Department and slightly smaller than the Milwaukee Police Department. This lack of manpower is already impacting our operations and the smuggling cartels are exploiting the fact we do not have full coverage.

According to CBP's own figures, in order to bring Border Patrol back up to the Congressionally mandated floor, add 5,000 new Agents and account for our historical 6 percent rate of attrition, the Border patrol will need to hire over 2,700 Agents every year for the next 5 years. Last year we hired, trained and deployed 485 new Agents so you see the cause for my concern this morning.

Although the news of hiring new agents and infrastructure is welcome, we have to take a realistic approach in understanding the hiring and retention challenges Border Patrol has faced over the last 20 years.

Challenges Going Forward

It is one thing to mandate the hiring of Border Patrol Agents, it is another thing to actually do it. Not only is the Federal Government facing a huge problem with the hiring of new Agents, it is facing the larger problem of retaining those they have already hired. There are three main reasons the hiring and retaining of Border Patrol Agents is going to be difficult.

1. Pay Parity
2. Morale
3. Improper administration of the polygraph examination

Pay Parity

Border Patrol Agents are the only Federal Law Enforcement Agency I am aware of that suffered a pay cut over the past several decades. We took this pay cut due to the widely publicized illegal use of Administratively Uncontrollable Overtime (“AUO”) by management. In 2014, Agents had their AUO cut from 25 percent to 20 percent with further cuts that were coming because of its illegal use and because of sequestration.

To address this issue and to try to keep as much pay as possible, this Committee passed the Border Patrol Agent Pay Reform Act (P.L. 113-277) two years ago. This legislation was authored by Senators Tester and McCain and I cannot thank them enough for all their hard work to get this legislation enacted. Well and truly we are eternally grateful for their efforts.

However, through the legislative process, CBP and the Border Patrol refused to support the legislation unless Border Patrol Agents were exempted from the Fair Labor Standards Act (FLSA). Making Border Patrol Agents FLSA exempt cost your average Agent \$5,000 yearly.

ICE Agents on the other hand are not FLSA exempt and this lack of pay parity with a sister agency within DHS is going to be problem. Although Border Patrol is slated to hire an additional 5,000 agents, ICE is also gearing up to hire an additional 10,000 officers. In the last two years Border Patrol has lost 500 Agents to ICE. When ICE starts hiring in earnest, the Border Patrol will lose several thousand Border Patrol Agents overnight if we do not take corrective action. As Congress considers making additional investments in border security, I strongly urge you to consider restoring pay parity with ICE.

Morale

As previously stated, I’ve worked under the past three administrations and I’ve never seen the morale lower than it has been over the past four years. Please understand I do not mean that as a political statement, it is simply a fact. The men and women that I represent felt under resourced and underappreciated.

Over the past 10 years, the Department of Homeland Security has consistently been ranked as one of the worst places to work in the Federal Government and the Border Patrol during this time has been at or near the bottom of DHS. Two examples of the dysfunction are captured in two questions on the most recent Federal Employee View Point Survey, a survey mandated by Congress that all Federal Agencies must administer. When asked if Border Patrol Agents believed their agency was successful in completing its mission, only 39 percent of the

respondents answered in the affirmative. Government-wide this answer was 74 percent. When asked if Border Patrol Agents believed their organization's senior leadership maintain high standards of honesty and integrity, only 32 percent of Agents responded in the affirmative. The government wide average was 52 percent.

Furthermore, the survey paints a harrowingly bleak picture of the Border Patrol as an agency. In almost every survey question, the Border Patrol was ranked lower than CBP, who was ranked lower than DHS, who was ranked lower than the rest of the Federal Government. The results of the survey are manifesting themselves in our current and historical attrition rate.

A lot of the recent attrition issues are being placed on operations, and while partly true, it ignores the whole picture. If tackled alone, operations will only yield part of the solution as evidenced during both the George W. Bush and Bill Clinton Administrations. During this time operations were sound and for the most part Border Patrol Agents were allowed to do our jobs, but we still had an extremely high rate of attrition.

This trend obviously must stop, but unless all aspects of the problem are addressed, history shows the trend will continue.

Improper Administration of the Polygraph

It is well documented that the Border Patrol has a polygraph problem. My understanding is that the latest numbers have us failing approximately 70 percent of the applicants. This failure rate is almost three times higher than other federal agencies and unfortunately CBP has been treating prospective job applicants as if they were criminal suspects. We have had police officers who have passed a polygraph for their agency, fail our polygraph. We have had military veterans with impeccable service fail our polygraph. We have even had former Border Patrol Agents who left for other law enforcement agencies fail our polygraph upon trying to return.

Senator Flake of Arizona is currently trying to fix the issues through legislation and I want to thank him for taking an interest in this issue. However, I am left wondering why it takes legislation to fix a problem? Where is the accountability at CBP? I raise this because I want the Committee to know that this is not a new revelation. We, the NBPC, have been raising this issue with CBP for years.

Closing

Being a Border Patrol Agent is an incredibly difficult job. Operationally, we work in some of the most challenging environments imaginable. I have worked in 120 degree heat in Arizona and the dunes of California and 20 degrees below zero in Montana.

The job is physically hard on your body given the terrain we operate in and a career of shift work takes a toll on your family. Sadly, of the 48 Agents who I graduated with from the academy, only 21 are still with the Border Patrol.

All of that being said, I love being a Border Patrol Agent. The work I do is important and I feel lucky beyond words that I have been afforded the opportunity to contribute to its mission.

Although I am sometimes critical of my agency, it is because I believe that we can and must do better.

I want to thank the Committee for having this important hearing and I am happy to answer any questions that you might have about border security, manpower, or concerns we have with the Administration's proposed wall.



**TESTIMONY OF ANTHONY M. REARDON
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION
PERSPECTIVES FROM THE DHS FRONTLINE:
EVALUATING STAFFING RESOURCES AND REQUIREMENTS
BEFORE THE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

March 22, 2017

Chairman Johnson, Ranking Member McCaskill, distinguished members of the Committee; thank you for the opportunity to deliver this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 25,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement personnel stationed at 328 land, sea and air ports of entry (POE) across the United States (U.S.) and 16 Preclearance stations currently in Ireland, the Caribbean, Canada and United Arab Emirates airports.

In addition to CBP's trade and travel security, processing and facilitation mission, CBP employees at the ports of entry are the second largest source of revenue collection for the U.S. government. In 2016, CBP processed more than \$2.2 trillion in imports and collected more than \$44 billion in duties, taxes, and other fees. Thank you for this opportunity to address ongoing issues that affect CBP in fulfilling its critical mission—hiring and funding challenges that contribute to ports of entry being chronically understaffed.

There is no greater roadblock to legitimate trade and travel efficiency and stopping illicit trafficking in people, drugs, illegal weapons and money than the lack of sufficient staff at the ports and the current CBP Officer shortage is staggering. There is an existing vacancy rate of nearly 1,400 funded CBP Officers at the ports and, according to CBP's analytic workload staffing model (WSM), an additional 2,100 CBP Officers need to be funded and hired in order to meet 2017 staffing needs—translating into **a total CBP Officer staffing shortage of 3,500 today.**

The economic cost of this shortage is also staggering. **For every 33 additional CBP Officers hired, the U.S. can potentially gain over 1,000 private sector jobs. If Congress fully staffed the ports with the needed 3,500 additional CBP Officers, 106,000 private sector jobs could be created.** Understaffed ports lead to long delays in travel and cargo lanes and also create a significant hardship for frontline employees. Both involuntary overtime and involuntary work assignments far from home disrupt CBP Officers' family life and destroy morale. Ongoing

CBP staffing shortages directly contribute to CBP's perennial low ranking in federal employee workforce satisfaction surveys.

As you know, the President's January Executive Order calls for hiring 5,000 additional Border Patrol Agents (BPAs) and 10,000 new Immigration and Customs Enforcement (ICE) Agents, **but does not ask for one additional CBP officer new hire, despite the fact that CBP officers at the ports of entry in 2016 interdicted over 274,000 undocumented immigrants and seized over 600,000 pounds of illegal drugs, and over \$62 million in illicit currency, while processing over 390 million travelers and \$2.2 trillion in imports through the ports.**

CBP employees at the ports of entry are not only the frontline for illegal trade and travel enforcement, but their role of facilitating legal trade and travel is a significant economic driver for private sector jobs and economic growth (see attachment 1.) According to CBP Fiscal Year (FY) 2013 data, for every 1,000 CBP officers hired the following estimated outcomes could be expected:

- \$2 billion increase in Gross Domestic Product (GDP)
- \$642 million in opportunity costs saved (the quantification of time that a traveler could be using for other purposes than waiting in line, such as working or enjoying leisure activities)
- 33,148 annual jobs added

If the full 3,500 CBP Officers were funded and hired according to the same study, the impact could be as high as:

- \$7 billion increase in GDP
- \$2 billion in opportunity costs saved
- 115,000 annual jobs added

Noting the positive impact of hiring additional CBP officers, it is troubling that even though Congress actually appropriated funding to hire 2,000 additional CBP Officers in FY 2014, CBP has only realized a net gain of less than 600 Officers as of January 2017, due to attrition and the amount of time it takes to onboard new CBP Officers.

CBP Officer Hiring Challenges

NTEU continues to have significant concerns about the slow pace of hiring at CBP. CBP has struggled to fill the initial 2,000 positions Congress authorized in 2014. One factor that may be hindering hiring is that CBP is not utilizing available pay flexibilities, such as recruitment awards and special salary rates, to incentivize new and existing CBP Officers to seek vacant positions at these hard to fill ports, such as Nogales.

Another major impediment to fulfilling CBP's hiring goal is that CBP is the only federal agency with a congressional mandate that all front-line officer applicants receive a polygraph test. Two out of three applicants fail its polygraph—about 65 percent--more than double the average rate of eight law enforcement agencies according to data provided to the Associated Press. The eight law enforcement agencies that supplied information showed an average failure rate of 28 percent. As an example, the U.S. Drug Enforcement Administration failed 36 percent of applicants in the past two years.

NTEU commends Congress for including in the FY 2017 Defense authorization bill a provision that authorized the CBP Commissioner to waive polygraph examination requirements for certain veterans applying for CBP job openings. NTEU also commends the Chairman, and Senators McCain (R-AZ) and Flake (R-AZ), for introducing S. 595, a bill that expands the authority to waive polygraph examinations to expand exemptions for veterans and allow exemptions for existing state and local law enforcement officers who apply for these positions at CBP.

NTEU does not seek to reduce the standards used by CBP in their hiring process, but believes that there is a problem with how the polygraph is currently administered. We ask for CBP to review its current polygraph policy to understand why CBP is failing applicants at a much higher rate than individuals applying to work at other federal law enforcement agencies. Also, because ICE does not require polygraphs for job applicants, it is likely that CBP will not be competitive with ICE in attracting new hires.

Improving the current polygraph program should help in expediting the CBP Officer hiring process so that the existing 1,400 vacancies can be filled and CBP can move forward with funding and hiring the 2,107 additional Officers as required by the WSM. NTEU also recommends that CBP allow immediate polygraph re-testing opportunities to those with a No Opinion or Inconclusive result, including those with a No Opinion Counter Measures finding.

Lastly, the best recruiters are likely current CBP Officers. Unfortunately, morale continues to suffer because of staffing shortages. In addition to being overworked due to excessive overtime requirements, temporary duty assignments are a major drag on employees, especially those with families. Based on their experiences, many officers are reluctant to encourage their family members or friends to seek employment with CBP. I have suggested to CBP leadership that they look at why this is the case.

CBP Officer Overtime

Also due to this ongoing current staffing shortage of over 3,500 CBP Officers, CBP Officers nationwide are working excessive overtime to maintain basic port staffing. Currently, CBP Officer overtime pay is funded 100% through user fees and is statutorily capped at \$35,000 per year. All CBP Officers are aware that overtime assignments are an aspect of their jobs. However, long periods of overtime hours can severely disrupt an officer's family life, morale and ultimately their job performance protecting our nation.

Because of the ongoing staffing shortages, CBP Officers are required to regularly work overtime which results in individual Officers hitting the \$35,000 overtime cap very early in the fiscal year. This leaves no overtime funding available for peak season travel, holidays and other times when CBP Officers are expected to work overtime resulting in critical staffing shortages in the third and fourth quarter of the fiscal year that usually coincide with peak travel at the ports.

At many ports, CBP has granted overtime exemptions to over one half of the workforce to allow managers to assign overtime to Officers that have already reached the statutory overtime cap, but cap waivers only force CBP Officers already working long daily shifts to continue working these shifts for more days. Officers are required to come in hours before their regular shifts, to stay an indeterminate number of hours after their shifts (on the same day) and compelled to come in for more overtime hours on their regular days off as well. Both involuntary overtime--resulting in 12 to 16 hour shifts, day after day, for months on end--and involuntary work assignments far from home disrupt CBP Officers' family life and erode morale.

There are some CBP Officers who want to work as much overtime as possible, but are thwarted from this goal because of the \$35,000 cap on overtime. Last Congress, the House Homeland Appropriations Committee approved a raise of the overtime cap to \$45,000, but the Senate did not include this provision in its FY 2017 appropriations bill. Neither bill made it to the floor in either the House or Senate.

NTEU supports raising the annual overtime cap to \$45,000 and asks Congress to add this provision to its FY 2018 appropriations legislation.

Temporary Duty Assignments at Southwest Land Ports of Entry

Due to CBP's ongoing hiring delays, CBP has been diverting CBP Officers from other air, sea and land ports to the severely short-staffed Southwest land ports, such as the San Ysidro land POE (see attachment 2.) Since 2015, CBP has diverted Officers from their assigned ports to San Ysidro and more recently to Nogales POEs for 90-day temporary duty assignments (TDYs.) In November 2016, CBP issued an updated TDY solicitation that directs 14 CBP Field Offices to provide 200 CBP Officers for TDYs to the San Diego and Tucson Field Office. For example, in this solicitation, CBP directed the Detroit Field Office to send 7 CBP Officers to the San Diego Field and 6 CBP Officers to the Tucson Field Office from January 9 through April 7, 2017.

To encourage volunteers for these TDYs and avoid forced TDYs, NTEU suggests Congress ask CBP to supplement the TDY solicitation to include:

- The size of the TDY pool should be immediately increased by including non-bargaining unit personnel such as qualified Headquarters staff, supervisors, and other employees on special teams such as the Tactical Terrorism Response Team and the Strategic Response Team, and by including all Officers who have graduated from the Federal Law Enforcement Training Center and who have received a sufficient amount of post-academy training;

- CBP should schedule TDYs in such a way that the supplemental staffing through TDYs remains constant, so there is not a gap between the departure of one round of TDYs and the arrival of the next;
- CBP should establish an advertised cash award for individuals who volunteer for a TDY and should offer available incentives such as student loan repayments, overtime cap waivers, and home leave;
- A surplus of volunteers for a TDY from one Field Office should be allowed to make up for a shortage of volunteers in another Field Office; and
- Approved leave should continue to be allowed during a TDY.

Impact of Staffing Shortages

As cited in a 2008 GAO report, "[CBP] officers and managers told us that not having sufficient staff contributes to morale problems, fatigue, lack of backup support and safety issues when officers inspect travelers--increasing the potential that terrorists, inadmissible travelers and illicit goods could enter the country." (See GAO-08-219, page 7.)

"Due to staffing shortages, ports of entry rely on overtime to accomplish their inspection responsibilities. Double shifts can result in officer fatigue...officer fatigue caused by excessive overtime negatively affected inspections at ports of entry. On occasion, officers said they are called upon to work 16-hour shifts, spending long stints in primary passenger processing lanes in order to keep lanes open, in part to minimize traveler wait times. Further evidence of fatigue came from officers who said that CBP officers call in sick due to exhaustion, in part to avoid mandatory overtime, which in turn exacerbates the staffing challenges faced by the ports." (See GAO-08-219, page 33.)

These impacts, as reported to Congress by GAO, have changed little as CBP Officer staffing continues to lag far behind pedestrian, vehicle and commercial traffic volume at the ports. In fact, with 1,400 vacancies and 2,100 CBP Officer positions yet to be authorized and funded, the situation is even worse today.

Staffing shortages have also reduced the number of CBP Officers available to conduct more in depth secondary inspections. In the past, there were three inspectors in secondary processing for every one inspector in primary processing. Now there is a one to one ratio.

Without adequate personnel at secondary, wait times increase and searches are not done to specification. This is a significant cargo security issue. For example, a full search of one vehicle for counterfeit currency will take two officers on average a minimum of 45 minutes. Frequently, only one CBP Officer is available for this type of search and this type of search will then take well over an hour.

Ongoing staff shortages directly contribute to CBP's perennial ranking at the very bottom of the Partnership for Public Service's "Best Places to Work" Survey--291 out of 305 agency subcomponents on the latest survey.

Diversion of Customs User Fees

In addition to appropriated funding, CBP collects customs user fees which include fees authorized by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to recover certain costs incurred for processing, among other things, 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 fees are deposited into the Customs User Fee Account and are designated by statute to pay for services provided to the user, such as 100% of inspectional overtime for passenger and commercial vehicle inspection during overtime shift hours. **Of the 23,775 CBP Officers currently funded, customs user fees fund 2,859 full-time equivalent CBP Officers.**

In addition to the ongoing staffing shortage of over 1,400 CBP Officer funded positions, CBP estimates that it would need an additional 2,107 CBP Officers, over and above the 2,000 Officers funded in FY 2014, through FY 2017 to meet optimal staffing. In the Administration's past budget submission, CBP proposed to pay for these additional Officers with a \$2 increase in both the immigration and customs user fees. NTEU reiterates that any increases to the Customs User Fee Account should be properly used for much-needed CBP staffing and not diverted to unrelated projects and should not result in any reduction in CBP appropriated funding.

The highway bill enacted into law in 2015, indexed customs user fees to inflation, but diverted this increase in fees to pay for infrastructure projects and not to CBP Officer pay and staffing, as intended. Indexing customs user fees to inflation raises \$1.4 billion over ten years--creating a \$140 million per year funding stream that could have helped pay for the hiring of additional CBP Officers to perform CBP's national security, law enforcement and trade and travel facilitation missions.

By diverting this fee, while \$140 million a year in additional customs user fees are still being collected, CBP is not receiving one additional dime to fund much needed new CBP Officer personnel needed to provide inspection and enforcement services to the users of these services.

On February 1, 2017, Senator Deb Fischer (R-NE) introduced a bill that diverts the first \$21.4 million of annual customs user fees collected to the Highway Trust Fund beginning in 2020. NTEU strongly opposes any attempts by Congress to raid customs user fees to pay for infrastructure projects.

If Congress is serious about border security, wait times, international trade, travel enforcement, and job creation, Congress must reject any further attempts to divert custom user fees to fund other programs and restore the use of the fees collected from indexing to inflation to their original purpose.

Agriculture Specialist Staffing

CBP employees also perform critically important agriculture inspections to prevent the entry of animal and plant pests or diseases at ports of entry. For years, NTEU has championed the CBP Agriculture Specialists' Agriculture Quality Inspection (AQI) mission within the agency and has fought for increased staffing to fulfill that mission. The U.S. agriculture sector is a crucial component of the American economy generating over \$1 trillion in annual economic activity. According to the U.S. Department of Agriculture, foreign pests and diseases cost the American economy tens of billions of dollars annually.

NTEU believes that staffing shortages and lack of mission priority for the critical work performed by CBP Agriculture Specialists, CBP agriculture detector dog teams and CBP Technicians assigned to the ports is a continuing threat to the U.S. economy.

NTEU worked with Congress to include in **the recent CBP Trade Facilitation and Enforcement Act (P.L. 114-125) a provision that requires CBP to submit, by the end of February 2017, a plan to create an agricultural specialist career track that includes a "description of education, training, experience, and assignments necessary for career progression as an agricultural specialist; recruitment and retention goals for agricultural specialists, including a timeline for fulfilling staffing deficits identified in agricultural resource allocation models; and, an assessment of equipment and other resources needed to support agricultural specialists."**

CBP's FY 16 Agriculture Resource Allocation Model (AgRAM), shows a need for an additional 631 frontline CBP Agriculture Specialists and supervisors to address current workloads through FY 2017; however, even with the 2016 increase in AQI user fees, **CBP only will fund a total of 2,414 CBP Agriculture Specialist positions in FY 2017, not the 3,045 called for by the AgRAM.**

Because of CBP's key mission to protect the nation's agriculture from pests and disease, NTEU urges the Committee to exempt CBP Agriculture Specialist positions from the hiring freeze and authorize the hiring of these 631 CBP Agriculture Specialists to address this critical staffing shortage that threatens the U.S. agriculture sector.

CBP Canine Program

The CBP Canine Program is also critical to CBP's mission. The primary goal of the CBP Canine Program is terrorist detection and apprehension. The working CBP canine team is one of the best tools available to detect and apprehend persons attempting entry to organize, incite, and carry out acts of terrorism. The Canine Program's secondary goal is detection and seizure of controlled substances and other contraband, often used to finance terrorist and/or criminal drug trafficking organizations.

Currently, there are 1,500 authorized canine teams but, as with all CBP resources, there is a shortage of canine teams at the ports of entry. At one high-volume southwest border port, NTEU was told that they only have 24 of the 38 authorized canine teams. By CBP's own

allocation, this port is short 14 dogs and handlers. NTEU supports Congress fully funding and staffing the CBP canine detection program.

Reimbursable Service Agreements

In recent years, in order to find alternative sources of funding to address serious CBP Officer and Agriculture Specialist staffing shortages, CBP received authorization and has entered into Reimbursable Service Agreements (RSAs) with the private sector as well as with state and local governmental entities. These stakeholders reimburse CBP for additional inspection services including overtime pay and the hiring of new CBP Officer and Agriculture Specialist personnel that in the past have been paid for entirely by user fees or appropriated funding. According to CBP, since the program began in 2013, CBP has entered into agreements with 36 stakeholders, providing more than 106,000 additional processing hours for incoming commercial and cargo traffic.

The Cross-Border Trade Enhancement Act signed into law on December 16, 2016, amended the Homeland Security Act of 2002 to expand CBP's RSA program by making CBP's ability to enter into RSAs permanent; removing the annual limit on the number of agreements at air ports of entry; and allowing small air ports of entry with fewer than 100,000 international passenger arrivals annually to offset CBP for the salaries and expenses of up to five full-time officers.

NTEU's RSA Concerns

NTEU believes that the RSA program would be entirely unnecessary if Congress, when it authorized CBP user fees collected to be indexed to inflation, had provided that the \$140 million a year funding stream be used to increase CBP overtime, staffing and other resources, as set forth in existing statute. NTEU also believes that the RSA program is a band aid approach and cannot replace the need for Congress to either appropriate new funding or authorize an increase in customs and immigration user fees to adequately address CBP staffing needs at the ports.

Further, NTEU strongly believes that CBP should not enter into a RSA if it would negatively impact or alter services funded under any Appropriations Acts, or services provided from any Treasury account derived by the collection of fees. **RSAs simply cannot replace CBP appropriated or user fee funding--making CBP a "pay to play" agency. NTEU remains concerned with CBP's new Preclearance expansion program that also relies heavily on "pay to play".**

NTEU also believes that the use of RSAs to fund CBP staffing shortages raises significant equity and other issues, which calls for an engaged Congress conducting active oversight.

For example:

- How does CBP ensure that RSAs are not only available to ports of entry with wealthy private sector partners? (When RSAs were first considered, there was a proposal to require 30% of the total RSA funds collected be reserved for ports with greatest need, not just those that have partners with the greatest ability to pay.)
- How does CBP ensure that RSA funds pay for the hiring of new CBP Officer and Agriculture Specialist personnel and are not simply used to pay for relocating existing CBP personnel from other ports (robbing from Port A to staff Port B without hiring additional staff)?
- How does CBP ensure a long-term public-private funding stream? (When RSAs were first considered, there was a proposal to have RSA pay up front for ten years over 3 installments.)

Ratio of Supervisors to Frontline Personnel

Another concern is that CBP continues to be a top-heavy management organization. In terms of real numbers, since its creation, the number of new managers has increased at a much higher rate than the number of new frontline CBP hires. CBP's own FY 15 end of year workforce profile (dated 10/3/15), **shows that the Supervisor to frontline employee ratio was 1 to 5.6 for the total CBP workforce, 1 to 5.7 for CBP Officers and 1 to 6.6 for CBP Agriculture Specialists.** Prior to 2003, supervisor to frontline ratio was closer to 1 supervisor to 12. It is also NTEU's understanding that nearly 1,000 CBP Officers are serving either at CBP headquarters or non-Office of Field Operations locations. This means that nearly 4,000 CBP Officers are serving in supervisory positions.

The tremendous increase in CBP managers and supervisors has come at the expense of national security preparedness and frontline positions. Also, these highly paid management positions are straining the CBP budget. CBP's top heavy management structure contributes to the lack of adequate staffing at the ports, excessive overtime schedules and flagging morale among the rank and file.

FY 2017 Supplemental Appropriations and FY 2018 Budget Requests

The Administration released its FY 2018 budget submission to Congress that recommends \$44.1 billion in discretionary budget authority for DHS. This is an increase of \$2.8 billion or 6.8 percent over the 2017 annualized Continuing Resolution level.

The bill requests \$314 million to recruit, hire and train 500 new Border Patrol Agents and 1,000 new Immigration and Customs Enforcement Agents and support personnel. There is no mention of new funding to hire additional CBP Officers at the ports of entry.

In addition to the FY 2018 budget request, the Administration submitted a \$30 billion supplemental appropriations request for the remainder of FY 2017. This appropriations request

would provide an additional \$3 billion for DHS implementation of the President's January 25, 2017 "Border Security and Immigration Enforcement Improvements" Executive Order. Of this \$3 billion increase, \$1.4 billion will be used to fund planning, design and construction of a physical wall along the southern border, \$1.2 billion to increase immigration detention and removal facilities, and \$286 million for CBP's border surge operations. The remainder of the \$3 billion supplemental appropriations request will be used to fund other programs related to meeting the goals of the President's January 25th Executive Order.

NTEU is asking Congress to also prioritize and fund CBP staffing at the nation's air, sea and land ports by appropriating additional funding in the final months of FY 2017 and in the FY 2018 DHS appropriations bill to fully meet CBP staffing, resource and new mission needs at the 328 U.S. ports of entry.

Recommendations

To address the dire staffing situation at the Southwest land ports, as well as other staffing shortages around the country, it is clearly in the nation's interest for Congress to authorize and fund an increase in the number of CBP Officers, CBP Agriculture Specialists and other CBP employees as stipulated in CBP's WSM.

Over the years, NTEU has worked with Congress on a variety of proposals that would increase CBP's funding to support additional personnel, as well as to address other hiring challenges that create barriers to adding staff in a timely and efficient manner. For instance, we are hopeful that the recently enacted NTEU-supported legislation that allows recent military personnel to be hired as CBP Officers without undergoing a polygraph will result in an increase in new hires.

In order to achieve the long-term goal of securing the proper staffing at CBP to address workloads, NTEU recommends that Congress take the following actions:

- Fix the broken and segmented hiring process;
- Address the reason for excessive (60%) applicant polygraph failures;
- Fill 1,400 CBP Officer current vacancies;
- Fund the additional 2,100 CBP Officer needed new hires;
- Fund 631 CBP Agriculture Specialists needed new hires;
- Restore recruitment and retention awards, and other incentives;
- Raise the yearly CBP Officer overtime cap from \$35,000 to \$45,000; and
- Restore cuts in mission support personnel that will free CBP Officers from performing administrative duties such as payroll processing, data entry and human resources to increase the numbers available for trade and travel security and facilitation.

Congress should also redirect the recently enacted increase in customs user fees from offsetting transportation spending to its original purpose of providing funding for CBP Officer staffing and overtime and oppose any legislation to divert additional fees collected to other uses or projects.

The employees I represent are frustrated and their morale is indeed low. These employees work hard and care deeply about their jobs. The more than 25,000 CBP employees represented by NTEU are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs, and our economy safe from illegal trade, while ensuring that legal trade and travelers move expeditiously through our air, sea and land ports, but frontline CBP Officers and Agriculture Specialists at our nation's ports of entry need relief. These men and women are deserving of more staffing and resources to perform their jobs better and more efficiently.

Thank you for the opportunity to deliver this testimony to the Committee on their behalf.

Table 8

Studies of the Costs of Border Wait Times and Congestion to U.S. and Mexican Economies						
Region of Crossings	Region of Economic Impact	Wait Time (min.)	Year of Potential Impact	Cost to Regional Economy (billions of USD)	Costs in Jobs	Source
San Diego - Tijuana	U.S. and Mexico	...	2007	\$7.2	62,000	SANDAG, 2007 Update
Imperial Valley - Mexicali	U.S. and Mexico	...	2007	\$1.4	11,600	HDR/HLB IVAG 2007
Tijuana	Mexico	180	2007-2008	\$1.9	57,000	Del Castillo Vera, COLEF, 2009
Ciudad Juarez	Mexico	132	2007-2008	\$1.5	87,600	Del Castillo Vera, COLEF, 2009
Nuevo Laredo	Mexico	174	2007-2008	\$3.7	133,800	Del Castillo Vera, COLEF, 2009
Nogales	Mexico	66	2007-2008	\$0.2	18,000	Del Castillo Vera, COLEF, 2009
US-Mexico Border	U.S.	63	2008	\$5.8	26,000	Accenture Draft, March 2008
US-Mexico Border	U.S.	99	2017	\$12.0	54,000	Accenture Draft, March 2008
El Paso/Cd. Juarez	El Paso/Cd. Juarez	2008 peak times: ~45 - 220	2035	\$54.0	850,000	Cambridge Systematics Inc., June 2011

Note: Year of Potential Impact refers to the year in which the listed monetary and employment effects take place. For dates before 2009, this refers to the estimated costs for the year of the study. For future years, this refers to the estimated cost that will take place if the border is not made more efficient.

Sources: Cambridge Systematics, *El Paso regional Ports of Entry Operations Plan*, Texas Department of Transportation and Cambridge Systematics, June 2011; Gustavo Del Castillo Vera, "Tiempos de espera en los cruces fronterizos del norte de México: una barrera no arancelaria," *Comercio Exterior*, Vol. 59, No. 7, July 2009, 555; SANDAG, *Economic Impacts of Wait Times in the San Diego-Baja California Border Region Fact Sheet: 2007 Update*, Accenture, *Draft: Improving Economic Outcomes by Reducing Border Delays*, Accenture and Department of Commerce, March 2008; HDR/HLB, *Imperial Valley - Mexicali Economic Delay Study*, HDR, Imperial Valley Association of Governments and California Department of Transportation, District 11, November 19, 2007.

San Ysidro Port of Entry



By the summer of 2019, the San Ysidro port of entry expects completion of an expansion project that will increase its northbound vehicle lanes from 26 to 32 and primary inspection booths from 50 to 62. The proposed FY 2018 budget recommends no new CBP Officer hires.

- 50,000 northbound vehicles processed each day
- 25,000 northbound pedestrians cross each day
- The port has over 350 CBP Officer vacancies
- The port has a maximum of 26 vehicle lanes with 50 primary inspection booths and 20 pedestrian lanes
- The port lacks staff to keep all 50 booths open daily causing backups
- The economic cost in lost commerce due to staffing shortages is in excess of \$7.2 billion and 62,000 jobs

Statement by Chris Crane, President,
National Immigration and Customs Enforcement Council 118
of the
American Federation of Government Employees

Before the
Senate Committee on Homeland Security and Government Affairs

March 22, 2017

Good morning,

President Trump and DHS Secretary John Kelly have been unapologetic in their commitment to enforce the laws enacted by Congress. We believe that recent statistics released by CBP showing a sharp decline in illegal entries is a direct result of their leadership, and that in the long term illegal entries will continue to decline if strong interior enforcement and proper international messaging on U.S. immigration policy continues.

For the last eight years, our organization has communicated clearly to the American public and members of Congress regarding what we believe is needed to stop illegal immigration into the United States. While many have tried to make the strategy for stopping illegal immigration a complicated matter, it is not. Border security must continue, but in addition to that the United States must enforce its laws on the interior of the country, and as a nation send a very clear message to the rest of the world that illegal entry into the United States and overstay will not be condoned or permitted. The United States must stop dangling a carrot and drawing people into this country, encouraging them to violate U.S. laws. Interior enforcement is the key to effective border security, which up to this point has been ignored.

During my career at ICE I have never had the opportunity to commend a sitting U.S. President, or DHS Secretary, but I'm doing so today. Amidst all of the hammering from the media, and protests from special interest groups, President Trump and Secretary Kelly haven't wavered, but instead continued steadfast in their support of the rule of law and our officers in the field. If they continue on that course, countless lives will be saved and the victimization now seen so often, as the result of illegal immigration, will dramatically decline. Law enforcement saves lives. If Congress will support ICE officers and allow them to perform their mission, they'll prove it to you.

We need more officers and staff in ICE Enforcement and Removal Operations (ERO) – the group within ICE carrying out the majority of ICE’s immigration mission. Currently ERO has around 5,000 officers to police approximately 11 million illegal aliens, as well as millions of other lawfully admitted foreign nationals, in 50 states, Guam, Puerto Rico, Saipan and the U.S. Virgin Islands. We are set up for failure. Compare ICE ERO’s 5,000 officers to the approximately 35,000 officers on the New York City Police Department alone.

We enthusiastically support the additional officers identified in President Trump’s executive order on interior enforcement. However, we have very little faith in the ability of ICE leadership to most effectively implement these additional officers and support staff. From our perspective, ICE should be making every effort to provide U.S. taxpayers the biggest bang for the buck. As staffing increases are considered and planned, ICE leadership should be thinking outside the box and innovating – looking at new ways, for example, to have our officers do less paperwork and data entry, and more law enforcement. ICE needs to adjust duties and change position descriptions for certain support staff, allowing for the expansion of the law enforcement duties our officers currently perform in the field. These types of changes could dramatically affect staffing models and costs submitted to Congress. However, from what we’ve seen thus far, proposed staffing increases at ICE have simply become a numbers drill at ICE. No changes, no innovation, and no improvements, just basically double our staffing numbers and call it a day. The only positive takeaway for us at this point is that the agency and union appear in agreement conceptually on the need to not only maintain our current hiring and academy standards, but increase standards in some areas prior to the beginning of any significant hiring.

While there is no question that morale within ICE is at its highest in many years, the President’s emphasis on enforcing the nation’s laws will not completely solve the overall

employee morale crisis within the agency. As with DHS in general, and other component agencies within DHS, such as TSA, the Secret Service and Border Patrol, ICE is suffering from a toxic and failed management culture; an absence of leadership. In 2014 ICE was dead last in morale among 314 federal agencies surveyed; in 2015 ICE was second from last, and last year sixth from last. As a point of comparison, while many DHS agencies like ICE hover at the bottom of government wide morale, around the 300 range in surveys, last year the U.S. Marshals Service was ranked 80th, and the DEA and FBI tied for 90th place. Congress, the American public, incoming DHS leadership, and indeed the White House, should all be alarmed by the state of morale within DHS and its law enforcement agencies that are all so critical to America's public safety and national security.

“Screw up and move up” is the general term used by many ICE employees to describe their supervision from their first-line supervisors all the way up to the Director of ICE. “Screw up and move up” obviously denoting that our worst employees are the ones promoted to supervisory and leadership positions. Most employees refuse to report misconduct committed by supervisors because employees have zero trust in DHS and ICE internal affairs offices to effectively carry out investigations against ICE supervisors. Likewise, most employees have zero faith in the integrity of ICE leadership to issue appropriate discipline to subordinate managers who have committed misconduct. At ICE it's a “good ol' boy network” in which supervisors cover for supervisors, and only rank and file employees are held accountable. Subordinate supervisors are not managed by their superiors; supervisors are permitted to harass, discriminate and retaliate at will. The workplace in many areas within ICE is toxic. Established in 2003, ICE has practically no policies. The agency generally depends on INS policies from 20 years ago or

more, or no policy at all. Law enforcement officers within ICE generally do not believe they have the full support of ICE leadership to carry out the agency mission.

During the last eight years, ICE employees and officers have been publicly demoralized by their own government. Many lawmakers, pundits for political parties, and the previous Administration, have consistently made disparaging remarks about ICE employees, their mission, and the laws they are sworn to uphold. In fact, these actions continue as ICE officers and their arrest activities are incorrectly portrayed and referenced publicly in the media by political pundits as “gestapo” tactics and other Nazi references and false and hateful accusations. It’s pretty hard every day to maintain morale when your own government and the media turn on you for enforcing the laws enacted by Congress. Perhaps more importantly, this rhetoric places the safety and lives of our officers at risk. When our nation’s lawmakers and government show no respect for the rule of law and the officers who enforce it, criminals feel empowered to become resistant and aggressive, and likewise lose respect for law enforcement officers. As Secretary Kelly spent 40 years of his life leading within an organization with one of the world’s greatest leadership traditions, we are hopeful that he will work hand in hand with us in making dramatic changes to the leadership and management cultures within ICE. We hope that he will have the full support of the President in doing so. We need our piece of the swamp drained.

At the Congressional level, our officers and employees desperately need your support. We need your support in terms of additional officers, staff and equipment, but we also need you to support the rule of law and the officers who enforce it. Everything you say and do has consequences. Talk of amnesty will create another run on the border. Disparaging comments about our officers will put their safety at risk. If you don’t show respect for the laws enacted by Congress, neither will our state level leaders, citizens, or those from other countries. We can

significantly stop the flow of illegal immigration into the United States, and with it much of the needless death and victimization that accompanies it, if we have the support of our government in enforcing our nation's laws.

Thank you and that concludes my testimony.