

ONE HUNDRED SIXTEENTH CONGRESS

# Congress of the United States

## House of Representatives

### COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

April 12, 2019

The Honorable Kevin K. McAleenan  
Acting Secretary  
Department of Homeland Security  
Washington, D.C. 20528

Dear Acting Secretary McAleenan:

We write to request a briefing from the Department of Homeland Security (DHS) to discuss the basis for installing a new system called BioDetection 21 to replace BioWatch, and the status of the deployment. Concerns about BioDetection 21 were recently raised in the February 15, 2019, article in the *Los Angeles Times*, "Homeland Security replacing troubled biodefense system with another flawed approach."<sup>1</sup>

This Committee has an ongoing bipartisan interest in biosurveillance programs that involve the Centers for Disease Control and Prevention (CDC), and the state and local public health laboratories that are members of the CDC Laboratory Response Network. Since 2012, the Committee has been investigating the effectiveness and efficiency of BioWatch, an early warning system designed to detect a large-scale, covert attack that releases anthrax or other agents of bioterrorism in the air.<sup>2</sup> At that time, concerns were raised about the BioWatch system generating false positive results or indicating the potential occurrence of an attack when none had occurred. The Committee held a hearing to examine these concerns and other issues related

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<sup>1</sup> *Homeland Security replacing troubled biodefense system with another flawed approach*, *Los Angeles Times* (Feb. 15, 2019).

<sup>2</sup> Letter from Rep. Fred Upton, Chairman, House Committee on Energy and Commerce, and Rep. Cliff Stearns, Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce to Dr. Thomas Frieden, Director, Centers for Disease Control and Prevention (July 19, 2012); Letter from Rep. Fred Upton, Chairman, House Committee on Energy and Commerce, and Rep. Cliff Stearns, Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce to Janet Napolitano, Secretary, U.S. Department of Homeland Security (July 19, 2012)

to BioWatch in June 2013, and has held subsequent hearings to examine this and other biopreparedness matters in February 2016 and June 2018.<sup>3</sup>

Following the hearing in 2013, the Committee followed up with a bipartisan request, along with bipartisan Senate requesters, to the Government Accountability Office (GAO) to review the technical capabilities of the deployed BioWatch system as well as the testing efforts for an upgraded system and characteristics of an autonomous detection to replace BioWatch. GAO found that DHS lacked reliable information about the deployed BioWatch system's (Gen-2) technical capabilities to detect a biological attack and therefore, lacked the basis for informed cost-benefit decisions about upgrades to the system.<sup>4</sup> GAO recommended DHS not pursue upgrades or enhancements for Gen-2 until it reliably establishes the system's current capabilities.<sup>5</sup> GAO also recommended that DHS incorporate best practices for testing in conducting any system upgrades.<sup>6</sup> DHS generally concurred with GAO's recommendations.<sup>7</sup>

On January 8, 2019, the U.S. House of Representatives overwhelmingly passed the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019 (PAHPA) by a vote of 401-17.<sup>8</sup> Included within the legislation, which is currently pending before the United States Senate, is a requirement that the Secretary of Health and Human Services, in coordination with the Secretary of Homeland Security and the Secretary of Defense, report to this Committee and others on the state of federal biological threat detection efforts.<sup>9</sup>

The February 15, 2019, *Los Angeles Times* article raises questions and concerns about whether DHS is following through on the GAO recommendations. The new Biodetection 21 system reportedly will depend on so-called trigger devices that use fluorescent light to identify

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<sup>3</sup> House Committee on Energy and Commerce, Hearing on Continuing Concerns Over BioWatch and the Surveillance of Bioterrorism, 113<sup>th</sup> Cong. (Jun. 18, 2013); House Committee on Energy and Commerce, Hearing on Outbreaks, Attacks, and Accidents: Combatting Biological Threats, 114<sup>th</sup> Cong. (Feb. 12, 2016); House Committee on Energy and Commerce, Hearing on The State of U.S. Public Health Biopreparedness: Responding to Biological Attacks, Pandemics, and Emerging Infectious Disease Outbreaks, 115<sup>th</sup> Cong. (June 15, 2018).

<sup>4</sup> U.S. Government Accountability Office, *Biosurveillance: DHS Should Not Pursue BioWatch Upgrades or Enhancements Until System Capabilities Are Established* (October 2015) (GAO-16-99).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> U.S. House of Representatives, Roll Call Vote on Agreeing to H.R. 269, Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019 (Jan. 8, 2019) (401 yeas, 17 nays).

<sup>9</sup> H.R. 269, Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019, 116<sup>th</sup> Cong. (2019).

potentially dangerous biological agents in the air. Once the devices trigger a warning, officials would seek confirmation with handheld equipment. However, a report commissioned by DHS found that the trigger devices “have clear limitations . . . for detection of smaller particles and some biological threat categories.”<sup>10</sup> According to the *Los Angeles Times*, the report showed that the four trigger devices failed in testing to detect anthrax spores, and only correctly detected small particles of viral material in just eight of 168 attempts, or less than five percent. The report also recommended against using the handheld devices.<sup>11</sup> If this information is correct, this would raise concerns that DHS would be replacing BioWatch with an even less reliable system, with the risk of State and local authorities being burdened with responding to more false positive results.

We request that DHS provide a briefing to Committee staff regarding the apparent replacement of BioWatch, including the current status of the implementation of GAO’s recommendations, the Biodetection 21 system, and the report commissioned by DHS’s scientific staff.

We appreciate your attention to this matter. If you have any questions, and to schedule the requested briefing for Committee staff, please contact Kevin Barstow of the Majority Committee staff at (202) 225-2927 and Alan Slobodin of the Minority Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.  
Chairman



Greg Walden  
Ranking Member



Diana DeGette  
Chair  
Subcommittee on Oversight  
and Investigations



Brett Guthrie  
Ranking Member  
Subcommittee on Oversight  
and Investigations

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<sup>10</sup> See note 1.

<sup>11</sup> *Id.*