



One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

March 20, 2019

The Honorable David Pekoske
Administrator
Transportation Security Administration
601 South 12th Street
Arlington, VA 20598-6001

Dear Administrator Pekoske:

Thank you for testifying before the Subcommittee on Transportation and Maritime Security on March 11th regarding the President's Fiscal Year (FY) 2021 budget request.

The night before the hearing, the Transportation Security Administration (TSA) announced that three Transportation Security Officers (TSOs) had tested positive for COVID-19. Since then, as of today, TSA has reported an additional 12 employees who have tested positive, for a total of 15 employees across 7 states—California, Florida, Georgia, Ohio, New Jersey, New York, and Illinois. For each TSA employee who tests positive, several others must self-quarantine due to likely exposure, and an untold number of passengers, flight crewmembers, and airport workers risk exposure as well.

TSOs, Federal Air Marshals (FAMs), and other frontline TSA employees continue to exhibit bravery and commendable dedication to TSA's mission as they report for duty during this pandemic. The quickly increasing number of TSA employees testing positive and being exposed to the virus raises a number of concerns related to the health and safety of the agency's workforce as well as the benefits and protections afforded them. Unfortunately, given current trends, the scale of TSA employees' interactions with the traveling public, and the nationwide lack of sufficient testing for the virus, many more employees will likely contract the virus in the coming days and weeks. While the spread of this virus has been quick, it is clear that TSA's efforts to protect its workforce to date have fallen short.

We must make every effort to ensure TSA employees are kept safe from this virus. They are on the front lines of aviation security, keeping the traveling public secure from threats to transportation during a vulnerable time for our country. Failure to keep TSA employees safe will not only risk our national security, but will also contribute to the exponential spread of the virus. The answers you provided during the hearing did little to allay our concerns that your agency is doing all that it can to protect TSA employees.

Therefore, please respond in writing to the below questions at your earliest convenience. In the meantime, we request that you brief Committee Members on these issues via conference call as soon as possible.

1. What guidance and personal protective equipment has TSA provided its employees to ensure they are protected from the virus and limiting its transmission to others?
2. What is TSA doing to ensure employees exhibiting symptoms of COVID-19 do not come to work and are incentivized to stay home?
 - a. Has TSA assured employees that they should stay home if sick and will continue to be paid even if they have expended all accrued sick leave?
 - b. Has TSA considered checking employee temperatures and providing a health assessment upon each employee's arrival for duty?
3. According to TSA, passenger volume at TSA checkpoints yesterday was only about 25-percent of the passenger volume on a comparable Thursday a year ago. Will you commit that TSA will not terminate the employment of any employees due to the reduction in passenger volume?
 - a. As passenger volume continues to decrease, is TSA minimizing staffing to the greatest extent possible to reduce the spread of the virus? If so, are TSA employees who are directed to stay home continuing to be paid without having to use accrued annual or sick leave? Under what leave category are they being paid?
 - b. How has TSA communicated its plans for reduced staffing and paid leave to the workforce? Please provide the Committee copies of all workforce communications regarding the coronavirus and related plans.
4. TSA employees interact more intimately and frequently with the traveling public than any other workforce, yet TSA has done little to provide its employees with health care benefits and other protections to recognize the risk employees face during a pandemic. You have touted that the unique personnel management authorities afforded the TSA Administrator allow you to respond effectively during a crisis, yet 13 TSA employees have now contracted the coronavirus, with more likely to follow. How have you used your unique authorities to protect the frontline workforce during the COVID-19 outbreak?
 - a. How have you sought input from the TSA workforce on its unique needs and concerns at this time? How have you engaged with the American Federation of Government Employees, the exclusive labor representative of the workforce?
 - b. TSA has directed employees who must self-quarantine after exposure to someone who has tested positive for COVID-19 to use safety leave, which allows them to continue getting paid without affecting accrued leave. Is TSA also allowing older employees, pregnant employees, or other employees at a high risk of infection to use safety leave? Is TSA allowing employees who care for or live with high-risk people to use safety leave?
 - c. Under the Federal Employees' Compensation Act and Office of Workers' Compensation Programs processes, it can be difficult for employees to prove that a sickness or injury was caused by their work. Will you commit to providing a presumption of workplace causation for any TSA employees unable to telework during the pandemic?

- d. Last year, TSA ceased paying a full share of health care insurance premiums for part-time employees. You have stated that this decision aligns with how other public and private employers handle health care insurance costs for part-time employees. Your position ignores that part-time workers at TSA face unique exposure to public health risks. Will you immediately reverse your decision and provide part-time workers with full-time health care benefits for the full Fiscal Year? If so, will you also provide employees with an immediate open season so that those who switched to insurance plans offering less coverage due to increased costs can switch back to better plans?
 - e. Will you provide hazardous duty pay for all employees who regularly interact with the traveling public to recognize the risks they assume by continuing to report to duty during a global pandemic?
5. The Committee has been notified that TSA may be requiring some employees to sign a Non-Disclosure Agreement (NDA) regarding employees who have tested positive for COVID-19. Has TSA required any employees to sign an NDA for any reason related to the pandemic or employees affected by it?
 - a. If so, how many employees have been required to sign an NDA and for what reason?
 - b. Have all NDAs included language allowing for communications to Congress and the Inspector General, as required by the *Whistleblower Protection and Enhancement Act of 2012*?
 - c. Please provide the Committee a blank copy of any and all NDA forms that have been used for these purposes.
6. Last year, TSA also ceased paying for airport janitorial services at security checkpoints. Since TSA now relies on airport owners and operators to provide janitorial services, how is TSA ensuring appropriate sanitation in high-traffic areas during a global pandemic?
 - a. How often are checkpoints currently required to be cleaned? Will TSA provide or require airports to provide increased cleanings of checkpoints?
 - b. The Occupational Safety and Health Administration recommends limiting, if not discouraging, shared use of work tools and equipment to limit the spread of the virus. Since TSOs rotate positions regularly, how is TSA keeping workstations and equipment clean?
7. Has TSA conducted a risk analysis to weigh the risks of a terrorist attack against a passenger flight against the risks posed by the transmission of the coronavirus in the midst of a global pandemic? If so, please provide the results of such an analysis to the Committee.
8. After the number of TSA employees that have tested positive has quadrupled in one week, how will TSA adjust its checkpoint Standard Operating Procedures to reduce human-to-human contact? Has TSA considered methods to increase remote screening and reduce patdowns and Explosive Trace Detection swabbing while maintaining security?
9. Congress has vested in the TSA Administrator significant authority to take such actions necessary to protect the security of transportation systems, including the authority to immediately issue security directives and emergency amendments (SD/EAs) to security programs, which carry the full force of regulations. We understand you have issued SD/EAs

to enforce restrictions on international travel to the United States from certain high-risk countries to attempt to limit the spread of the coronavirus. What factors are you considering as you determine whether to issue additional SD/EAs to further restrict travel, including, if necessary, limiting or prohibiting domestic air travel?

- a. Under statute, you have the authority to issue security directives even “without prior approval of the Secretary” of Homeland Security.¹ Are you prepared to take whatever actions you deem necessary to protect transportation even if not directed by the Secretary or President?

Thank you for your prompt attention to these critical issues.

Sincerely,



BENNIE G. THOMPSON
Chairman



J. LUIS CORREA
Chairman
Subcommittee on Transportation and
Maritime Security

On behalf of:

James R. Langevin
Cedric L. Richmond
Donald M. Payne, Jr.
Xochitl Torres Small
Max Rose
Elissa Slotkin
Emanuel Cleaver
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Yvette D. Clarke
Bonnie Watson Coleman
Nannette Diaz Barragán
Val Butler Demings

¹ See 49 U.S. Code §114.