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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <https://commerce.senate.gov>

October 3, 2023

The Honorable David Pekoske
Administrator
Transportation Security Administration
3701 Post Office Road
Arlington, VA 22202

Dear Mr. Pekoske:

As the Ranking Member of the U.S. Senate Committee on Commerce, Science, and Transportation (“Committee”), I write regarding the Transportation Security Administration’s (“TSA”) deployment of hundreds of air marshals in the Federal Air Marshal Service (“FAMS”) to the southern border to assist U.S. Customs and Border Protection (“CBP”) in administering aid to illegal aliens. It is concerning that the administration has prioritized ushering illegal immigrants into the country over protecting the lives and safety of the traveling public.

FAMS plays a critical role in ensuring safe air travel. While air marshals have guarded the American skies since 1961, FAMS was expanded significantly after the terrorist attacks of September 11, 2001. Within ten years, the program went from a few dozen air marshals to a few thousand¹ as Congress authorized the TSA to deploy air marshals on “every [passenger] flight determined by the Administrator to present high security risks.”²

Today, many miles below the skies that the air marshals are charged to protect, the situation at the U.S.-Mexico border has devolved into chaos. Since President Biden took office, CBP officials have encountered over 6.2 million illegal aliens along the southern border.³ That figure is in addition to the more than 1.6 million illegal alien “gotaways” who have successfully crossed the southern border undetected, for a total of more than 7.8 million illegal crossings.⁴ Moreover, more than 150 individuals on the FBI terror watch list have been apprehended at the

¹ *From Hijacking to Covid-19: 60 Years of Federal Air Marshal Service*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (Mar. 29, 2022), <https://www.gao.gov/blog/hijacking-covid-19-60-years-federal-air-marshall-service>.

² 49 U.S.C. § 44917(a)(2).

³ *Southwest Land Border Encounters*, U.S. CUSTOMS AND BORDER PROTECTION (Oct. 3, 2023), <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>; Adam Shaw, et al., *Migrant Numbers Hit Highest Ever Recorded in One Month: Sources*, FOX NEWS (Sept. 30, 2023), <https://www.foxnews.com/politics/migrant-numbers-hit-highest-recorded-month-sources>.

⁴ Bethany Blankley, *The Border Report: Nearly 1.6 Million ‘Gotaways’ in U.S. Since January 2021*, THE CENTER SQUARE (Aug. 26, 2023), https://www.thecentersquare.com/national/article_39ac2a1e-427c-11ee-b491-8f09038b3e88.html; see also *Failure by Design: Examining Secretary Mayorkas’ Border Crisis: Field Hearing Before the H. Comm. on Homeland Security*, 118th Cong. 28 (2023) (Statement of Raul L. Ortiz, Chief, U.S. Border Patrol), <https://www.govinfo.gov/content/pkg/CHRG-118hhr52122/pdf/CHRG-118hhr52122.pdf>.

southern border since the beginning of the current fiscal year.⁵ The Biden administration nevertheless refuses to declare the crisis at our southern border a national emergency or even publicly admit that it is indeed a crisis, a fact even the liberal news media is now willing to acknowledge.⁶ Department of Homeland Security (“DHS”) Secretary Alejandro Mayorkas stubbornly insists the border is “secure” and that the Biden administration maintains “operational control,” a claim his own border patrol chiefs dispute.⁷

Compounding the hypocrisy, while the administration maintains that the border is secure, it also continues to reassign air marshals from protecting the skies to the southern border. Reports show that deployed air marshals are not even performing tasks related to safety and security like they would be if they were still in the air. Instead, they are performing administrative functions, conducting welfare checks, and escorting aliens to processing centers.⁸ Despite what the TSA has told Committee staff, it appears that most air marshals are not voluntarily choosing to go to the border but rather are being forced to—either explicitly or implicitly—by TSA. These actions have attracted the attention of the DHS Office of the Inspector General, and an investigation is currently underway concerning TSA’s management of taxpayer resources.

Security incidents continue to occur in the sky, meaning TSA’s decision to take air marshals off flights and deploy them to the border may be putting the traveling public at risk. For example, during a Jet Blue flight from New York to Salt Lake City last November, a passenger held a straight edge razor to another passenger’s throat and threatened her life.⁹ In March of this year, a passenger on a United Airlines flight from Los Angeles to Boston attempted to open the emergency door and kill everyone on board.¹⁰ Thankfully the other passengers and crew subdued the individuals, but these events should never have happened in the first place.

⁵ *CBP Enforcement Statistics Fiscal Year 2023*, U.S. CUSTOMS AND BORDER PROTECTION (Oct. 3, 2023), <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

⁶ Stephen Collinson, *Everyone Can Now Agree – the US Has a Border Crisis*, CNN (Dec. 16, 2022), <https://www.cnn.com/2022/12/16/politics/biden-immigration-crisis-title-42/index.html>; see also Priscilla Alvarez, *Migrant Crossings Along the Southern US Border Are Rising, Reaching More than 8,000 Apprehensions*, CNN (Sept. 19, 2023), <https://www.cnn.com/2023/09/19/us/migrant-crossings-us-southern-border-rising/index.html>.

⁷ *A Review of the Fiscal Year 2024 Budget Request for the Department of Homeland Security: Hearing Before the H. Comm. on Homeland Security*, 118th Cong. 18–20, 24 (2023) (Statement of Alejandro N. Mayorkas, Secretary of Homeland Security), <https://www.govinfo.gov/content/pkg/CHRG-118hhr52831/pdf/CHRG-118hhr52831.pdf>; *Oversight of the Department of Homeland Security: Hearing Before the H. Comm. on the Judiciary*, 117th Cong. 115 (2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhr49702/pdf/CHRG-117hhr49702.pdf> (Statement of Alejandro N. Mayorkas, Secretary of Homeland Security); *Failure by Design*, *supra* note 5 at 20; Morgan Winsor, *US Border Agency Chief Meets with Authorities in Mexico over Migrant Surge*, ABC NEWS (Sept. 25, 2023), <https://abcnews.go.com/International/us-mexico-border-cbp-meeting-migrant-surge/story?id=103456837> (“[I]t’s about as bad as I’ve ever seen it.”).

⁸ *As Busy Summer Travel Looms DHS Sends Air Marshals Back to Mexican Border*, JUDICIAL WATCH, INC. (May 10, 2023), <https://www.judicialwatch.org/dhs-sends-air-marshals-to-border/>.

⁹ Marina Pitofsky, *Utah Man Arrested After Allegedly Holding Straight Edge Razor near Woman’s Throat on JetBlue Flight*, USA TODAY (Nov. 25, 2022), <https://www.usatoday.com/story/travel/airline-news/2022/11/25/utah-man-arrested-razor-woman-jetblue-flight/10773133002/>.

¹⁰ Letter from the Air Marshal National Council to Ranking Member Ted Cruz (Mar. 27, 2023) (On file with the Committee).

While it is unknown whether air marshals would have been on those particular flights, what is known is that on both occasions at least 200 air marshals were busy assisting at the southern border and would not have been available to protect those flights.¹¹

Since the beginning of September, illegal aliens have crossed the U.S.-Mexico border at alarmingly high rates, and the number of air marshals dispatched to the border has increased, with numerous requests for medical leave reportedly being denied by supervisors.¹² Given the administration's failed immigration enforcement approach, it seems likely that TSA's deployment of air marshals to the border—instead of to high-risk passenger flights—will unfortunately continue.

So that I may better understand why TSA deployed hundreds of air marshals to the southern border, please provide written responses and documents to the following requests no later than October 17, 2023, according to the attached instructions. Please provide unclassified responses to the maximum extent possible. Should a complete answer to any question require production of classified national security information, as defined in Executive Order 13526, please answer the question as fully as possible at the unclassified level and provide the classified information under separate cover via the Office of Senate Security.

1. What is the total number of air marshals in the FAMS program?
2. What is the total number of air marshals that have been deployed to the southern border from March 27, 2019, to present? In answering this question, please provide the number of air marshals deployed to the southern border each month from March 27, 2019, to present.
3. TSA informed Committee staff that many of the air marshals were deployed on a “voluntary” basis.
 - a. How does TSA define a “voluntary” deployment?
 - b. How does TSA define a “mandatory” deployment?
4. TSA informed Committee staff that there have been several “rounds” of deployments of air marshals to the border.
 - a. How does TSA define a “round” for purposes of deployment?
 - b. How many rounds of deployments of air marshals to the southern border have there been since January 20, 2021?

¹¹ *Id.*

¹² Briefing by Air Marshal National Council to Committee Staff (Sept. 20, 2023); *accord* Letter from Air Marshal National Council to Boston Field Office (May 30, 2023) (On file with the Committee).

- c. When did each of those rounds occur?
 - d. How many air marshals were deployed in each round?
 - i. Of those deployed in each round, how many were deployed voluntarily?
 - e. What was the duration of each deployment?
5. Does TSA have plans for additional deployment rounds?
- a. If so, describe those plans in detail, providing the number of air marshals expected to be deployed in each round.
6. How does TSA designate flights as “high risk”?
- a. Does TSA identify all long haul domestic and international flights as “high risk” flights?
 - b. Were the two flights mentioned in this letter—the November 2022 Jet Blue flight from New York to Salt Lake City and the March 2023 United Airlines flight from Los Angeles to Boston—designated as “high risk” flights prior to their scheduled departures?
 - i. If these flights were designated as “high risk” prior to departure, why were there no air marshals assigned to those flights?
 - c. Please provide documentation sufficient to show flights considered high risk, and coverage of those flights by FAMS, since March 27, 2019.
7. Provide the number of airborne incidents each month from January 1, 2017, to present.
8. Identify the individual or individuals within DHS who authorized or approved the deployment of additional air marshals to the southern border since January 20, 2021.
- a. Provide all service-wide communications from former FAMS Director Tirrell Stevenson regarding the deployment of air marshals to the southern border.
 - b. Provide all service-wide communications from acting FAMS Director Brian Belcher regarding the deployment of air marshals to the southern border.
9. Identify the tasks assigned to air marshals who have assisted at the border.

10. Provide all complaints from air marshals regarding deployments to the border or the effect of such deployments on passenger safety.

Thank you for your attention to this matter.

Sincerely,



Ted Cruz
Ranking Member

Cc: Brian C. Belcher
Acting Director, Federal Air Marshal Service