



Honorable Joseph V. Cuffari  
Inspector General  
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Inspector General Cuffari,

Please accept this letter as a report of fraud, waste, and abuse of authority and violations of federal law by Transportation Security Administrator (TSA) David Pecoske and Federal Air Marshal Service (FAMS) Director Tirrell Stevenson.

TSA Administrator David Pecoske and FAMS Director Tirrell Stevenson are sending TSA assets, to include highly specialized Federal Air Marshals (FAMs), to the southern border to assist the Border Patrol. The TSA personnel are being sent to El Paso TX, San Diego CA, Laredo TX, McAllen TX, Tucson AZ, and Yuma AZ. According to internal agency documents the highly skilled FAMs are being deployed to perform “Hospital Watch, Transportation, Law Enforcement Searches, Welfare Checks, and Entry Control.” The agency documents never describe or mention that these duties have any relation to TSA’s core mission of transportation security. Instead, the duties relate to assisting migrants who have crossed the border into the United States.

**Administrator Pecoske and Director Stevenson are Acting Outside Statutory Authority**

Under title 49-114 the TSA Administrator shall carry out the following functions:

**(d) Functions**—The Administrator shall be responsible for security in all modes of transportation, including—

- (1)** carrying out chapter 449, relating to civil aviation security, and related research and development activities; and
- (2)** security responsibilities over other modes of transportation that are exercised by the Department of Transportation.



The statute makes it clear that the TSA Administrator shall execute authority in all matters related to transportation security. The statute does not give the Administrator any authority to deploy TSA or FAM employees to the southern border to perform non transportation security related matters. Further, under section (g) the statute describes what the Administrators authority is if an emergency, as defined by the Secretary of Homeland Security, is declared.

**(g) National Emergency Responsibilities. —**

**(1) In general.**—Subject to the direction and control of the Secretary of Homeland Security, the Administrator, during a national emergency, shall have the following responsibilities:

**(A)** To coordinate domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security).

**(B)** To coordinate and oversee the transportation-related responsibilities of other departments and agencies of the Federal Government other than the Department of Defense and the military departments.

**(C)** To coordinate and provide notice to other departments and agencies of the Federal Government, and appropriate agencies of State and local governments, including departments and agencies for transportation, law enforcement, and border control, about threats to transportation.

**(D)** To carry out such other duties, and exercise such other powers, relating to transportation during a national emergency as the Secretary of Homeland Security shall prescribe.

This statute makes clear the legislative intent to only allow TSA to exercise authority and deploy its assets in regards to transportation security. To date Mr. Pecoske nor Mr. Stevenson have declared the deployments to be related to transportation security. Moreover, the duties, “Hospital Watch, Entry Control, Law Enforcement searches, and Transportation”, described in the agency documents could not reasonably interpreted to be contributing to or have any nexus to the TSA core mission of transportation security.

**Unlawful Use of Agency Resources Violates the Appropriations Clause**

Under Article I, Section 9, Clause 7 of the United States Constitution:

*No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.*

The rule of law directs “that no money can be paid out of the Treasury unless it has been appropriated by an act of Congress.” *United States v. Bank of Metropolis*, 40 U.S. 377, 403 (1841). TSA draws its budget from an act of Congress, and Congress has made its intent clear via appropriations and other laws that the monies granted to TSA shall be used for transportation security as a whole with little if any discretion. Even assuming TSA has discretion clearly Congress has not appropriated any funds for TSA to protect the southern border. Furthermore,



Congress has not appropriated funds for Customs and Border Protection (CBP) to use TSA assets to protect the border. Even if TSA or CBP could point to discretionary spending those funds could not be used contrary to federal law or used in a manner outside the authorities granted to the TSA or CBP Administrator.

### **TSA Maybe in Violation of The Antideficiency Act**

Under 31 U.S.C. 1341 (a)(1)(B) TSA cannot authorize or create any appropriation or fund in excess of the amount available or fund unless authorized by law. Additionally, 31 U.S.C. 1517(a) prohibits TSA from making obligations or expenditures in excess of an apportionment or in excess of the amount permitted by agency regulations.

Congress has not appropriated any funds in the TSA budget for border security thus any funds expended toward such would be in violation of The Antideficiency act and as such must be reported to the President and Congress. (See 31 U.S.C. 1351, 1517(b)). Furthermore, Congress has not appropriated any funds for CBP to pay for TSA assets to perform non transportation security duties at the southern border. This is made clear in title 49 where Congress only authorizes TSA to perform duties related to transportation security.

### **Executive Order 14010 Does Not Grant TSA Additional Authority**

Mr. Pekoske references authority granted under President Biden's Executive Order 14010 issued February 2, 2021, "Orderly Processing of Asylum Seekers at the United States Border." The order never grants the DHS Secretary or TSA Administrator any additional authority to deploy TSA assets to the border. Section 4 (I) of the order states:

- i) The Secretary of Homeland Security and the Director of the Centers for Disease Control and Prevention (CDC), in coordination with the Secretary of State, shall promptly begin consultation and planning with international and non-governmental organizations to develop policies and procedures for the safe and orderly processing of asylum claims at United States land borders, consistent with public health and safety and capacity constraints.

TSA Administrator Pekoske and FAMS Director Stevenson are in clear violation of federal law, U.S.C. 49-114, 31 U.S.C. 1341 (a)(1)(B), 31 U.S.C. 1517(a), the Appropriations Clause, and have overstepped their authority. Even if CBP and TSA attempted to enter in to any contract, memo of understanding, or other agreement, that would also violate not only the intent of Congress as made clear in the above statutes. But the agreement itself would be unlawful as it would attempt to circumvent Congressional intent and the authorities granted to the agencies under the law.



We, the AMNC/FSC, would respectfully request your office investigate these allegations of misconduct and put a stop to the illegal deployment of TSA assets to the southern border. If you have any additional questions, please feel free to reach out anytime.

*David Londo*

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David Londo  
President  
Air Marshal National Council

*Sonya Hightower-Labosco*

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Executive Director  
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