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EXAMINING MISCONDUCT AND RETALIATION AT TSA

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CONTENTS

Page

Hearing held on September 26, 2018 1

WITNESSES

The Honorable David Pekoske, Administrator, Transportation Security Administration
- Oral Statement 6
- Written Statement 9

APPENDIX

Staff report submitted by Ranking Member Cummings 44

Letter for the record from the American Federation of Government Employees, submitted by Mr. Lynch 54

EXAMINING MISCONDUCT AND RETALIATION AT TSA

Wednesday, September 26, 2018

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
Washington, D.C.

The committee met, pursuant to call, at 1:04 p.m., in Room 2154, Rayburn House Office Building, Hon. Trey Gowdy [chairman of the committee] presiding.

Present: Representatives Amash, Massie, Walker, Blum, Hice, Grothman, Hurd, Palmer, Comer, Mitchell, Cloud, Cummings, Maloney, Lynch, Connolly, Lawrence, Watson Coleman, Krishnamoorthi, DeSaulnier, and Plaskett.

Chairman GOWDY. The Committee on Oversight and Government Reform will come to order. Without objection, the presiding member is authorized to declare a recess at any time.

We welcome you, Admiral. We have votes that are pending, so Mr. Cummings and I are going to try to get our opening statements in, and then we will recognize you for yours, time allowing, and then we will come back after votes. But welcome

The Transportation and Security Administration is charged with an important mission, which is safeguarding America's aviation system. TSA screens over 2 million passengers daily at over 430 airports. There is no margin for error, so consequently their mission requires constant vigilance in an ever-evolving threat environment.

To meet this demanding responsibility, TSA must run efficiently and effectively. It must directly address security threats. It must encourage open dialogue. It must foster a culture of leadership.

And while Congress recognizes TSA is under relatively new leadership, and while we also acknowledge and recognize that doing your job effectively is not always, in the current environment, noteworthy, those two facts, notwithstanding, TSA, in some instances, has fallen short of the important mission that they have been afforded.

In 2015, the committee received allegations of senior-level misconduct and whistleblower retaliation, and consequently launched an investigation. During the course of the investigation the committee conducted 11 transcribed interviews, and met and spoke with dozens of whistleblowers, and reviewed thousands of pages of documents.

The committee held five public hearings, including today's. Yesterday, the committee released its investigative report, and the result of it's findings. As detailed in the report, the committee's in-

vestigation discovered senior TSA officials engaged in patterns of misconduct, resulting in very minimal consequences.

In December of 2014, TSA's Office of Inspection launched an investigation into Assistant Administrator Joseph Salvator. The complaint alleged Mr. Salvator committed misconduct by having an inappropriate relationship with a subordinate, misusing his official position during the hiring process, and lacking candor with investigators.

Through its investigation, the Office of Inspection determined Salvator committed several acts of misconduct, and recommended that he be fired. Despite the recommendation, TSA leadership chose not to terminate Salvator. In the same hour Salvator received OPR's notice of proposed removal, the Chief Counsel's Office offered a settlement agreement, recommending, instead of dismissal, a 14-day suspension, and a demotion, with no loss in pay. Not surprisingly, Salvator accepted

The department's Office of Inspector General discovered the same pattern, in their report the OIG concluded TSA senior leaders deviated from standard policy and practice in a number of key respects, indicating that the assistant administrator received unusually favorable treatment in the resolution of his disciplinary matter.

The committee also found senior TSA officials used involuntary directed reassignments as a means of retaliating against disfavored employees, including whistleblowers. Initially, directed reassignments, which relocate employees from airport to airport, were intended to improve the workforce, and, thereby, security at airports.

Senior officials at TSA headquarters, however, soon used them as a tool of reprisal to force whistleblowers or disfavored employees to relocate airports, often hundreds of miles away, and in some instances, several states away.

In May of 2018, the Office of Special Counsel settled a set of these retaliation cases with TSA for $1 million. In this case, three TSA employees, who received operational—who raised operational issues at the Honolulu Airport were relocated from Hawaii, where their homes and families live, to mainland U.S. They were forced to report to their new assignment within just a few days.

In a recent briefing, the committee learned TSA is considering implementing another initiative using directed reassignments to improve the TSA workforce. If that is, indeed, the case, TSA needs to reconsider. The last time TSA used directed reassignments, it became a tool to retaliate. And that is one of the reasons we are having the hearing today, to ensure mistakes of the past are not repeated.

Throughout our investigation the committee also faced obstruction, obstruction which prolonged this investigation. Now I am just going to stop right now, and repeat what I sai8d earlier on. I recognize TSA is under new leadership, and most of what I am describing, if not all of what I am describing, did not take place under the Admiral's watch.

Nonetheless, it was TSA then, too, and per our normal investigative practice, the committee requested documents from TSA. TSA refused to produce many of these documents. The committee then issued a subpoena to compel production of the documents, but

under the direction of the department's Office of General Counsel, TSA refused to produce these documents.

In January of 2018, we sent a letter to Secretary Nielsen, requesting a transcribed interview with then DHS acting general counsel, Maher, and demanded the production of the subpoenaed documents. DHS and TSA refused to comply with either request. Finally, after the committee issued a subpoena 2 weeks ago, Mr. Maher agreed to appear before a transcribed interview. TSA, however, has yet to produce the documents. That is, to put it plainly, not going to be tolerated.

As a result, our findings will be shared with leadership in the House and those responsible for appropriating money to the TSA. The documents requested relate to the underlying allegations in this investigation, which are misconduct and retaliation. And yet, the Office of General Counsel withheld them on the basis of a thinly veiled, almost exclusively self-serving privilege that, oh, by the way, is also inapplicable to congressional investigations.

The House of Representatives derives its authority from the U.S. Constitution, and is bound only by the privileges derived therefrom. This committee does not, nor does the House of Representatives, recognize purported nondisclosure privileges associated with common law. That is true even when said privilege is irrelevant.

That was not the case here. Here, TSA sought to rely on inapplicable privileges, which are, in addition to not being recognized by Congress, inapplicable. It appears, at least to this member, TSA sought to withhold this information through DHS general counsel from Congress because TSA simply believed it could.

It is the responsibility of the House, and that includes all members, irrespective of political ideation, to thwart such intransigence. TSA needs to produce these documents to the committee in full. The problems laid out in the committee's report are not simply issues of the past. TSA officials involved in wrongdoing, in some instances, remain in senior positions today.

A number of OSE whistleblower cases have yet to be resolved. TSA and DHS OGC continue to refuse to produce compelled documents and material facts to the committee. TSA must continue to improve its leadership accountability and its culture. As one whistleblower testified, TSA's problems are rooted in the areas of leadership and culture. Ours is a culture of misconduct, retaliation, lack of trust, coverups, and the refusal to hold its senior leaders accountable for poor judgment and maleficence.

And for the safety of our nation, TSA must do better. And I will say, based on my interactions with you, Admiral, I am confident that you are going to be able to provide the kind of leadership, if you are given enough time to do so, which we will get to that during the Q&A part, the term of service.

Further to that, before I recognize Mr. Cummings, I am not going to ask any trick questions. I am going to go last. I am going to ask you about the budget. I am going to ask you about equipment at the screening points. I am going to ask you to the extent you can discuss it publicly, about new emerging threats. I am going to ask you about air marshals.

I am going to ask you about your budget, and whether or not you could use more resources. So I am not going to try to trick you

when it is my time to ask questions. I think that you are the right person to provide leadership, but I know that new leadership is needed. And what happened yesterday, when a committee of Congress sought information related to a really important investigation, is not going to be tolerated. And I think that is true on a bipartisan. For those who like bipartisanship, stay tuned after yesterday.

With that, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. And I want to thank you for calling today's hearing to examine the results of our bipartisan 3-year investigation of the Transportation and Security Administration. This issue is very close to my heart, because I helped launch this investigation, together with our former chairman, Jason Chaffetz, in 2015, after the inspector general of the Department of Homeland Security issued a troubling report on vulnerabilities in TSA's screening operations.

Later that year, we expanded our investigation to examine problems with TSA's personnel management practices, after we received reports that a senior official engaged in serious misconduct was recommended for removal. Instead of being fired, he was given a settlement that included only a 2-week suspension, and no reduction in pay. Since then, we have sent many requests for documents, interviewed witnesses, and held hearings.

However, our oversight efforts have been impaired significantly by the failure and outright refusal of the TSA and the department to produce all the documents and witnesses we need to do our job. For that reason, I fully support the subpoenas to hold those officials accountable.

Now let me make one thing very clear. I supported these oversight efforts regardless of who was in the White House, under the administrations of both President Obama and President Trump. I did that, because the security of the American people should not be a partisan issue.

Today, I am releasing a staff report that sets forth my conclusions and recommendations for how I believe we should move forward in this committee and in Congress.

I ask unanimous consent that my report be made a part of the official record, Mr. Chairman.

Chairman GOWDY. Without objection.

Mr. CUMMINGS. Based on all of our work over the past 3 years, I believe we need urgent reforms in three key areas: Security operations, personnel management, and transparency. First and foremost is security operations.

When we started this investigation, we received troubling testimony from DHS Inspector General about serious vulnerabilities in TSA screening operations. Most recently, the inspector general issued a report that warned of ongoing, and I quote, "Vulnerabilities with TSA's screener performance, screening equipment, and associated procedures."

He also issued a report concluding that the contribution of the Federal Air Marshal Service to aviation security is "Questionable." Based on our 3-year investigation, my recommendation is for Congress to demand sustained accountability from TSA on security measures. We need to press the agency to finally implement nu-

merous unfulfilled security recommendations made by the inspector general, GAO, and others that have languished, in some cases, for years.

I fully understand that many of these unfulfilled recommendations are classified, but I believe Congress needs to lodge a 1-year oversight effort that is focused on ensuring that TSA takes the steps it needs to take and to resolve numerous vulnerabilities in its security operations.

Second, on personnel practices, we have identified many examples of arbitrary and unfair actions against both managers and security officers. We have also found several instances of retaliation against whistleblowers who report security deficiencies. The problem is that TSA employees have fewer protections against these kinds of abuses than any other federal employees. There is a much higher bar for TSA employees to clear; although, they have been doing so.

In fact, just 2 weeks ago I attended an event to honor three TSA whistleblowers who received the Public Servants of the Year award from the Office of Special Counsel.

My second recommendation is for Congress to consider legislative proposals to strengthen Civil Service protections to protect whistleblowers from retaliation, and protect employees against arbitrary personnel actions.

Third is the absolutely critical need for greater transparency. Both TSA and the department repeatedly refuse to cooperate with our investigation. They refuse to provide documents we subpoenaed a year-and-a-half ago, including documents about the same whistleblowers who received those awards.

They also withheld documents from the Office of Special Counsel, and it took an act of Congress, literally, to make sure that they got them. Just yesterday, our staff was finally able to speak with the senior attorney at the department, who was involved with many of these troubling decisions. The department refused to produce them voluntarily, so we had to subpoena them for a deposition.

So, my third and final recommendation is for Congress to consider legislation to significantly enhance transparency at TSA, transparency about whistleblower claims, about settlement agreements, and about nondisclosure agreements employees are forced to sign.

As I close, let me say this. I do not know who will control Congress next year, but based on the results of our 3-year investigation, I believe that we must do everything in our power to produce and redouble our efforts with regard to what we are moving to implement concrete reforms.

With that, let me welcome the administrator. I want to thank you, Mr. Administrator, for being here. I want to thank the chairman for cooperating with us, and working truly in a bipartisan way to get the subpoenas out, and to move this investigation along. And he is absolutely right, this is a bipartisan effort. And, of course, I knew you when I was chairman of the Subcommittee on Coast Guard, and I know the type of man you are, and I know you are a man of your word. And so I look forward to working with you, and I look forward to hearing from you. With that, I yield back.

Chairman GOWDY. They called votes, so we are going to recess to go vote, and then we will come back, and got all the guys that are here in the queue, ready to go. So as soon as Mr. Cummings and I get back, we will recognize you for your opening.

[Recess.]

Chairman GOWDY. The committee will come to order. Thank you for your patience during that vote series.

With that, we are pleased to introduce our witness, the Honorable David Pekoske, Administrator of the Transportation and Security Administration. Welcome.

Pursuant to committee rules, all witnesses will be sworn in before they testify. So, I would ask you to please stand and raise your right hand.

Do you solemnly swear or affirm the testimony you are about to give should be truth, the whole truth, and nothing but the truth so help you God?

Chairman GOWDY. The witness answered in the affirmative.

There is a series of lights that indicate where you are. I am sure you are familiar with that. And with that, we would recognize you for your 5-minute opening statement.

WITNESS STATEMENT

STATEMENT OF DAVID PEKOSKE

Mr. PEKOSKE. Chairman Gowdy, Ranking Member Cummings, and distinguished members of this committee, thank you for the opportunity to appear before you this afternoon. As this is my first appearance before this committee, and some of you don't know me, let me open with a pledge to be responsive to the committee's oversight, and to your recommendations for TSA.

Additionally, given the nature of the topics we will discuss today, and the seriousness of the issues, I would be happy to meet with any member on any matter. And I further offer to meet with the committee staff in the future, if you would find that helpful.

As you know, sir, I have just finished my first year as the administrator, and in this first year I have devoted the majority of my time to be at the front line of TSA, where the vast majority of our employees work. In this first year we have published a strategy and an administrator's intent to continue maturing a relatively young agency.

I want to develop a culture in TSA that is free of retaliation, that values employee input, and results in a very positive work environment, with high employee morale. This is so critical to our long-term success in protecting the nation's transportation systems, and being good stewards of taxpayer dollars.

I think we have addressed current discipline issues well over the past year. This is a positive beginning, and is reflected in data on discipline and whistleblower cases. And it is reflected in the just released FEVS, or Federal Employee Viewpoint Survey, scores for TSA. These scores are the highest in TSA history, and they reflect improvement in every single federal employee viewpoint survey category.

At the same time, we must reflect on and learn from the past. I have read the majority and democratic staff reports that you re-

leased yesterday afternoon, and will study them further in the days ahead, as will all of TSA senior leadership.

Simply put, I am deeply troubled by what I read. All of the individual cases described in your reports occurred before I became the administrator. And I assure you, the outcomes of some would be different today than what they were a few years ago. However, where misconduct has occurred, and the matter is closed, I respect the finality of those decisions even if I would have handled them differently.

You will find, I hope, that I will be very responsive to your work, and importantly, that I will continue to improve TSA culture and processes to ensure we don't repeat the mistakes of the past, and that the change is enduring. And I think that is one of the critical values that I can add as the administrator, is to ensure that whatever changes we put in place are memorialized and become part of the institutional fabric of TSA, so that TSA truly does continue to learn as an organization.

I would also state that I had the privilege of following a very good friend of mine, Administrator Peter Neffenger, into this position. And the position I have taken since I have been the administrator was to build on the very solid foundation Administrator Neffenger left for me. And so I hope to do that for whom ever succeeds me.

I will also note that several months ago I met with several whistleblowers to hear their stories firsthand. I told them I valued their input, and I will work hard to rid TSA of any behavior that smacks of retaliation, that their experience will have a beneficial impact on TSA.

In my career in the public and private sectors I have always championed equality of treatment, fundamental fairness, transparency, strong leadership, and accountability. I am accountable to you, to the American people, to the secretary, and very importantly, to the TSA workforce. And yes, I am accountable to my workforce, and it is a privilege to hold the position I am in today.

I have personally interacted with thousands and thousands of TSA employees in my first year in locations all around the country, and, indeed, all around the globe. They are, with rare exception, outstanding public servants. They are professional, committed, and they truly are great representatives of America to the millions of travelers we protect each and every day.

I am proud of them, and grateful for the work they do, as I know all of you are as well. I want the American people to know that despite some of the difficult challenges we will discuss today, the vast majority of the men and women of TSA are dedicated, hard-working, and honorable individuals.

Just this morning, for example, we had an example of their service. One of our lead officers at Milwaukee Airport, named Tony D'Amico, rushed to the aid of a traveler who was having a heart attack in the security checkpoint, likely saving that passenger's life. Tony is a great example of the TSA workforce.

After 9/11, TSA adopted a slogan that said, "Not on my watch," reflecting that a repeat of 9/11 would not occur on the watch of any individual TSA man or woman. We changed that slogan very slightly over the past year to say, "Not on our watch." And what

that stands for is that while we are on watch in this agency, we will do everything we can to prevent another terrorist incident from occurring in our transportation system.

That slogan also applies to retaliation against whistleblowers in cases of misconduct. I want everybody in TSA to say, "That won't happen on our watch," and we do this together.

In closing, Mr. Chairman, Ranking Member Cummings, thank you for the opportunity to appear before you this afternoon, and I look forward to responding to your questions. Thank you, sir.

[Prepared statement of Mr. Pekoske follows:]

Statement of David P. Pekoske

Administrator

Transportation Security Administration

U.S. Department of Homeland Security

before the

U.S. House of Representatives

Committee on Oversight and Government Reform

September 26, 2018

Good morning/afternoon Chairman Gowdy, Ranking Member Cummings, and distinguished members of the Committee. Thank you for inviting me here today to testify about the important work of the Transportation Security Administration (TSA). TSA appreciates the Committee's vital role in oversight as we carry out our important security mission.

Established in 2001, TSA is a relatively young and large organization within the Federal government. TSA was created quickly following the 9/11 terrorist attacks and charged with the critically important mission of reducing the chance our nation's transportation systems would be subjected to similar horrors in the future. Our people were essential to effectively standing up TSA then, and continue to drive the successful execution of our mission.

I am honored to lead the 63,000 dedicated professionals who make up TSA's workforce, share our core values of integrity, respect, and commitment, and provide security for millions of Americans using our transportation systems each and every day. Since being confirmed as Administrator a little over a year ago, I have spent a significant amount of my time on the front lines of TSA, visiting numerous airports, and engaging with employees at all levels of the organization. During that timeframe, air travel was also the busiest in TSA history and we are currently projected to screen more than 800 million passengers and crew this year, compared to 771 million passengers in 2017. And we handled nearly four percent annual passenger growth over the last few years without commensurate increases in the size of our Transportation Security Officer workforce, which has impacted both training and morale.

I am committed to ensuring we train, develop, and lead our workforce as effectively as possible. This is why, in addition to engaging my leadership team and reaching out to our personnel, I have personally met with TSA whistleblowers to better understand their perspective and hear their concerns. I also appreciate the work of the U.S. Office of Special Counsel (OSC), Government Accountability Office (GAO), and DHS Office of Inspector General (DHS OIG) to help improve TSA as an organization and have met with them personally on several occasions. I have invested this time because I want to better understand the Agency, its strengths and weaknesses, and what can be done to make it better.

From my perspective, the continued success of TSA is contingent upon our collective ability to rise to the challenge of outmatching dynamic threats to our transportation systems. To be effective and efficient in a changing environment, TSA must continuously learn from its experiences and constantly re-evaluate how it performs its mission. We must not just work hard, but we must also work smarter and more strategically. For this reason, it was a priority for me to issue guidance during my first year to explain to our work force, Congress, and our stakeholders how TSA would continue to strengthen the execution of our mission into the future.

TSA Strategy and Leadership Principles

The 2018-2026 TSA Strategy details the Agency's strategic priorities to be accomplished between now and our 25th Anniversary. The three priorities, which reflect my focus on supporting frontline operations, transitioning to new technologies, and optimizing the use of our limited resources, are:

- Improve Security and Safeguard the Transportation System
- Accelerate Action
- Commit to Our People

I have made Committing to Our People a strategic priority for TSA. Leadership is not restricted to the top tiers of TSA; leaders throughout TSA must make our people their top priority. Our leadership principles as an agency include:

- Caring for Our People
- Communicating Effectively

- Collaborating Early and Often
- Respectfully Disagreeing and Committing to Final Decision
- Taking Reasonable Risks
- Being Curious, Learning, and Improving
- Anticipating Challenges and Driving Results
- Holding Ourselves Accountable
- Being Adaptive and Resilient

Our success depends on how well we attract, hire, train, develop, promote, and equip our workforce at all levels of the organization. To accomplish this, we want to ensure our personnel are trained both technically and as leaders, have job satisfaction and career paths, and are provided a positive workplace environment. Addressing employee concerns in a meaningful way is critical to our leadership principles. TSA has taken the following actions since I became Administrator in August 2017.

U.S. Office of Special Counsel and Whistleblower Protection – *Learning and Collaboration*

In the fall of 2017, TSA developed and implemented live training on the Whistleblower Protection Act (WPA) and Whistleblower Protection Enhancement Act (WPEA) for TSA supervisors and managers from Supervisory Transportation Security Officers in the field to the most senior executives at TSA headquarters, including me. This training provided essential information regarding the responsibilities of supervisors, as well as the rights of employees, under the WPA and WPEA. To date, the training has been provided to nearly 6,000 TSA supervisors and managers. In addition, within the last 12 months, all TSA employees have been informed of all rights and remedies available to them under the WPA and the WPEA, in compliance with OSC's 5 U.S.C. § 2302(d) Certification Program.

Additionally, TSA has worked cooperatively with and timely produced documents to support U.S. Office of Special Counsel (OSC) whistleblower investigations, in accordance with all laws and regulations, including the OSC Reauthorization Act enacted in December 2017. When complaints do arise, TSA also engages with OSC to discuss resolution options so that TSA may address employee concerns.

In February of this year, I invited six individuals who filed complaints with OSC against TSA to speak with me personally to get their input about how TSA can promote a culture of collaboration and engagement in the workplace at TSA. The conversations provided valuable input and gave me a better understanding about how TSA can address whistleblower concerns.

TSA has observed a downward trend in the number of new whistleblower retaliation cases reported by the OSC. The number has decreased from 21 in 2016 to eight in 2017 to six thus far in 2018.

Employee Discipline Process – *Improving and Accountability*

In November 2017, TSA revised its policy and procedures for the administration of discipline. TSA's Professional Responsibility (PR) office is responsible for reviewing internal Reports of Investigation and adjudicating allegations of misconduct involving senior officials, including members of the Transportation Security Executive Service (TSES), law enforcement officers, and any employees investigated by the DHS Office of Inspector General.

TSA also established an Executive Discipline Review Board (EDRB) to serve as the proposing official for disciplinary and adverse actions regarding TSES employees. The EDRB is administered by the PR office and is comprised of two rotating TSES members, one PR staff member, and advisors from the Chief Counsel's office and Civil Rights & Liberties, Ombudsman and Traveler Engagement.

While PR remains responsible for determining whether there is a preponderance of evidence the employee engaged in misconduct and issuing proposed disciplinary and adverse actions, it no longer serves as the deciding official for these actions. The deciding official is now a management official within the employee's supervisory chain. This change is designed to reflect that management is better positioned to analyze the penalty factors, such as an employee's ability to be rehabilitated, an employee's past work record, and the effect of the offense upon the supervisor's confidence in the employee's ability to perform assigned duties.

Anti-Harassment Program – *Caring, Learning and Accountability*

TSA is committed to providing a work environment free of harassment. In August 2017, TSA expanded upon existing efforts and established a comprehensive Anti-Harassment Program (AHP) to make sure allegations of harassment are addressed promptly and appropriately. The AHP is designed to ensure our employees are provided a workplace free from harassment, which has a direct effect on the quality of our work environment. The AHP supplements existing agency policy requirements for employees to report allegations of misconduct.

The AHP requires management officials to report allegations of harassment within three days of becoming aware of the incident. Additionally, under the AHP, which is administered by TSA's Human Capital office, management officials must take immediate corrective action, if necessary, ensure an appropriate fact finding inquiry is conducted promptly, and implement appropriate administrative actions when allegations are substantiated.

The AHP also serves to educate our workforce on types of harassment and the importance of reporting allegations of harassment. Members of the AHP train supervisors and managers on what constitutes harassment, as well as their obligations under the program. The AHP maintains oversight of the fact finding inquiries, and tracks and monitors each harassment complaint, to ensure the inquiries are conducted properly and appropriate administrative action is taken.

Every manager and supervisor is responsible for the professional and appropriate treatment of TSA personnel. From a leadership accountability perspective, supervisors and managers who fail to properly address harassment allegations may be subject to corrective, disciplinary, or adverse action.

Career Progression Plan Implementation – *Learning, Communicating and Improving*

Earlier this summer, TSA announced and began implementing a new comprehensive career progression plan for frontline employees. Training is the foundation of this plan, which includes strengthening technical competencies and also building coaching and leadership skills. Implementation will foster career growth and reflects an expanded investment in our Transportation Security Officers. Through defining career paths and tying pay increases to

enhanced skills, TSA is working to provide greater transparency and opportunity to recognize, reward, and promote those who consistently excel in their role.

This year, TSA has also implemented a new Annual Proficiency Review (APR) process to complement this effort. The APR process, which represents a shift from a performance remediation to coaching model, focuses on improving and sustaining Transportation Security Officers' ability to correctly perform security screening procedures through receiving real time feedback based on observations in a live screening environment.

Federal Employee Viewpoint Survey – *Caring and Accountability*

The Office of Personnel Management's Federal Employee Viewpoint Survey (FEVS) provides general insight into how our employees feel about working at TSA, where we are doing well, and what needs to improve. The 2018 FEVS results showed increases across every survey category, including a three-point increase in the Employee Engagement Index-a metric focusing on engagement and morale. The fact that 76 percent of employees agreed with the statement, "My work unit has the job-relevant knowledge and skills necessary to accomplish organizational goals," which represents an eleven percentage point increase from last year, is particularly encouraging.

Conclusion

Committing to Our People includes soliciting and listening to feedback, addressing issues and holding ourselves accountable for making improvements. TSA strives to remain a learning organization – one that continuously assesses and proactively improves all aspects of how it performs.

Chairman Gowdy, Ranking Member Cummings, and Members of the Committee, thank you for the opportunity to testify before you today. I am honored to serve along with the dedicated men and women of TSA. I look forward to your questions.

Chairman GOWDY. Thank you. The gentleman from Wisconsin is recognized.

Mr. GROTHMAN. I have a few questions for you.

First of all, you know, in the past, the committee's findings at TSA did indicate that whistleblowers were punished. Can you just give me your general overall reaction to that?

Mr. PEKOSKE. I am sorry, sir. I did not get the whole question.

Mr. GROTHMAN. What is your response to the fact, or how do you feel about whistleblowers being retaliated against?

Mr. PEKOSKE. Well, first off, it is against the law. And secondly, I just think that is completely unacceptable behavior. And one of the things that I have tried very hard since I have been the administrator is to ensure that each and every employee in TSA knows that I want their input. They are the ones that do the job of the agency day in and day out. They see passengers. They provide the security service directly. I want their input, and I want to be responsive to their input.

Mr. GROTHMAN. Okay. In the past there have been retaliations. I realize it was before you got there. Has anything happened to the people who retaliated against the whistleblowers? I mean is there something that you can point to that you can say, "This guy did this, this manager did this, and they are out of here," sir?

Mr. PEKOSKE. Well, you know, of course, whenever there—and again, this hasn't happened since I have been the administrator

———

Mr. GROTHMAN. Right.

Mr. PEKOSKE.—but should an employee retaliate against someone else, that would absolutely be reflected in their performance evaluations. And if we considered it serious enough, it would be subject to disciplinary action.

Mr. GROTHMAN. But I mean has that happened in the past, where if I am one of these guys who retaliates, I know that people are going to come down on me. Either your predecessor or you. And I realize you are new up there, although you can still maybe take action against people who did this in the past. Are there things that you can point to that is going to scare people out of this behavior?

Mr. PEKOSKE. I would point to their performance evaluations; although, I can't give you a specific example, sir, of a performance evaluation, just because I don't have knowledge of that. But I would certainly expect that performance evaluations and disciplinary action would be an appropriate remedy.

Mr. GROTHMAN. Okay. But right now, as of today's date, you cannot think of one example where you can say, "This guy was at fault for coming after a whistleblower, and he lost his job," or something.

Mr. PEKOSKE. Not to my direct knowledge.

Mr. GROTHMAN. Okay. One of the ways they punished people was by reassigning people to a different office hundreds of miles away. Will this ever happen again? Are you doing anything to make sure—I mean it is kind of surprising they even have the ability to do that, you know, transfer somebody from, I don't know, Cleveland to Miami, or something.

Will that ever happen again? And are you doing things to even make sure that such long-distance reassignments don't happen?

Mr. PEKOSKE. Yes, sir. First off, to my knowledge, there has not been an involuntary directed reassignment in TSA since 2015. That policy was put in place and we have further strengthened that policy.

Additionally, I have prohibited the use of involuntary directed reassignments for punitive measures. Now I would say that on occasion we will reassign employees based on the needs of the agency, but there are many things we consider in that process. We consider, first, the needs of the agency, second, the cost of that reassignment, and third, the needs of the individual.

And there is a very robust process now, sir, that has oversight for all of those reassignment decisions, so that, you know, we have visibility of what decisions are being made, and can intervene, if need be. But there are no more involuntary directed reassignments for punitive measures.

Mr. GROTHMAN. Okay. Now there was this survey, and I am sure you are aware of, saying that only 47 percent of your employees felt they could go to someone and say, you know, something's wrong. There is a little scandal in this thing, by the way.

You rank 332nd out of 336 agencies. The scandal is we have 336 agencies. But that is not what we can deal with today. Given your ranking here, which is just almost beyond belief, what are you doing, other than training sessions, to make sure that agencies feel comfortable coming forth to supervisors?

Mr. PEKOSKE. A couple things to comment on first, sir, is, first and foremost, when I mentioned the Federal Employee Viewpoint Survey, the trend in those surveys has been consistently positive for the last couple of years. So that means that whatever it is we are doing, and I will get to that in just a second, is having a positive effect.

Additionally, the best places to work survey questions that go out to agencies every year, we have the results of those survey questions for 2018, and in every question category, we see an improvement year over year.

Mr. GROTHMAN. Okay. Well, we have only had one since this one, and in 2017, it was 47 percent. Do you have inside information? What is it for 2018?

Mr. PEKOSKE. For 2018, it is—I can tell you that in the category, for example, in the FEVS survey, under "Leaders lead," in 2017, it was—in 2017, it was 40 percent. In 2018, it was 44. Under "Supervisors lead," it was 68 in '17, 70 percent in 2018. That is a pretty good score. And then in the intrinsic work experience, went from 60 percent to 62 percent.

Mr. GROTHMAN. I still have a great deal of concern. If you are at 62 percent, that means 38 percent of the employees are afraid to say, "Something is wrong here," for fear they are going to be in trouble. That is a lot of people.

Chairman GOWDY. The gentleman's time has expired, but you may answer the question.

Mr. PEKOSKE. I think what is really important, though, again, is the trend. And what I would like to see, sir, and I am working very hard to do this, is to see that trend, rather than going linearly up, it starts to take a more steep slope, to see improvement. I think

we are at the position where we will see that in the next couple of years, I hope.

Mr. GROTHMAN. Thanks for coming over.

Mr. PEKOSKE. Thank you.

Chairman GOWDY. The gentleman from Maryland is recognized.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Two weeks ago, administrator, I attended an awards ceremony to honor three TSA employees who have now been named public servants of the year. Here is a photo of Sharlene Mata, Heather Callahan Chuck, and F. Michael Abreu. They reported security concerns at the airport where they worked. But rather than addressing their security concerns, senior managers at TSA retaliated against these employees, employing a practice known within TSA as directed reassignment.

TSA moved them to new duty stations at different airports. They forced them to move their families hundreds of miles away. And eventually, TSA paid nearly $1 million to settle these whistleblower claims with regard to retaliation.

Now I must give you credit, Mr. Administrator, that I know that you were involved with that settlement. And I thank you for doing that. Because so often people who go through these kinds of things unseen, unnoticed, unappreciated, and unapplauded. But you backed us up in a way, members of this committee, who believe very strongly, all of us, in protecting our whistleblowers.

Now Administrator, do you agree with former Special Counsel Lerner, when talks about the fact that she wanted to make sure—she said, "I think that the four protections of Title V applying to TSA would be very helpful, so that there is more of a feeling of fairness in employment actions, so that hiring decisions and promotion decisions are perceived as fair." Would you agree with that?

Mr. PEKOSKE. Sir, under the Aviation and Transportation Security Act, the administrator has broad authority to manage the personnel within TSA. All of the authority I need is already in ATSA to do the things that you describe. And we are taking steps to be able to do that.

One of the things that I mentioned in my opening statement was the conversations I have had with the TSA workforce since I have been the administrator. And I have gotten a lot of good feedback from them, and the things that concern them.

I have also met with the American Federation of Government Employees, the Council 100, that represents TSA employees, twice now. So I understand their perspective. And we will make significant movement in that regard.

The final thing I would add, sir, is that the Whistleblower Protection Act applies to TSA equally. So even though we are not under Title V, that act applies to TSA employees, as does the Enhancement Act.

So I will do whatever I can to ensure that we provide as impartial a personnel review system as we possibly can. That is on my agenda for this fall.

Mr. CUMMINGS. Very good.

I want to talk for a minute about the Transportation Security Officers, or TSOs. Those individuals who work on the front lines to swing passengers' baggage and cargo at our airports, yet are not

covered by many of the Civil Service protections that apply to most other federal employees. In fact, they have far fewer protections than managers do.

A recent GAO report found while TSA, and Customs, and Border Protection Agency had roughly the same number of employees, TSA had more than double the number of misconduct cases that CBP had in fiscal year 2016. GAO also found that between 2014 and 2016 the number of TSA employees declined, but the number of misconduct cases grew from more than 13,000, to more than 17,000.

Administrator, do you have any insight as to why these trends have occurred?

Mr. PEKOSKE. Mr. Cummings, with respect to the data, the 45,000 misconduct cases, part of the reason that number is so high, and I think that number is unacceptably high, let me first state that, is the way that we measured it was a little bit different than the other agencies. So it is not necessarily an apples to apples comparison.

But what we found when we looked at that data was that we were using misconduct for what were really performance issues. So what we have done is we have come out with some direction as to how we separate for our employees what is a performance issue versus a misconduct issue, and to not try to use the misconduct avenue when there is truly a performance issue at play.

The other thing, sir, that is very important to me, it is in my leadership principles, is I want to move TSA away from a discipline-focused organization, where if somebody does something wrong, the first thing we think about is disciplining them, and rather move to more of a coaching and a mentoring system.

My experience with our employees is they want to do a good job. They just sometimes need some extra help in being able to perform, and we should be more coaching and mentoring in that regard.

Mr. CUMMINGS. Well, I see my time has run out, but let me just say this. And the chairman has been very good at this. I think at every hearing that we have had, I have heard him say these words, and I agree. I have had good experiences with the TSA employees at the airports, but as I have told you, that when this committee was addressing the issue of the Secret Service, I had become convinced that they had been lulled into a culture of complacency.

And because of the repetition of this job, I think we have to make—I am just curious, and perhaps you can answer it in somebody else's question, how do we keep their morale up? I saw where we were almost at the bottom, as far as places where people—good places to work. We were like 360, and the bottom was 363. So we are close, just scraping that bottom. And so that is not something that you or none of us would be proud of.

But more importantly, we want to make sure that our constituents are treated right, and they are able to have confidence that when they are being checked that it is—it is needed, and that we want to make sure that they are treated in a courteous way. Like I said, I am a member of Congress. I always get good treatment, but I don't know about all my constituents. Okay?

Mr. PEKOSKE. Yes, sir. And what we have done in that regard is we have changed our core values as an agency. Our core values

now are integrity, respect, and commitment, respect being a very critical part of that, respect for each other in the workplace, respect for the Constitution, of rule of law, privacy rights, and importantly, respect for our passengers.

The other thing that I have been working very, very hard on is to make sure that we introduce the technology tools that our officers need to be able to perform their mission. When I look at the IG reports and our own covert testing, a lot of the solution there involves technology. And so I have been very hard at work in doing that, and have gotten great support out of the U.S. Congress in that regard.

The other thing, sir, is that within ATSA, I have the ability to set pay for the workforce, and ATSA gives me the authority to provide what is called in-band increases every year, which is different than Title V general schedule, which is every two or every three.

Unfortunately, we haven't used that authority, and that is something that I am exploring actively at this point in time. There is also, of course, a financial component to that. But, you know, one of the problems we have in TSA right now, particularly at the entry level, or the first two or three pay bands, is that most employees are at the very low end of the pay band.

There should be a bell curve there. It shouldn't be everybody at the bottom of the pay band. So I am going to work very hard to see if we can't remedy that, at least start moving in a direction, but it is going to require financial resources.

Chairman GOWDY. The gentleman from Alabama is recognized.

Mr. PALMER. Thank you, Mr. Chairman.

Mr. Pekoske, we had hearings about mistreatment of TSA employees in this committee before. And first of all, I want to say that I have gotten to know the TSA employees at the Birmingham Airport, and I think they are outstanding. They do a great job. My concern is, is that we have had this issue of whistleblowers, and as the gentleman from Maryland just pointed out, the retaliation against them.

Have you individually met with any of the whistleblowers who testified for the committee on retaliation at TSA?

Mr. PEKOSKE. Yes, sir. I met with a whole series of whistleblowers a couple months after I came into the position. Very good conversations with each of them. Couple of things that came out in those conversations, no surprise to any of us in this room, first and foremost is they had good ideas that we should have listened to. And I really want, and I encourage every single employee in TSA, if you have a better way to do our mission, or a suggestion as to how we can improve, to please voice it. But we have got to welcome those voices when they are raised.

The other thing that the whistleblowers said was that they are totally dedicated to the TSA mission, even after all they went through with respect to retaliation. That speaks volumes to me to their character. And one of the things that I reflected back to my senior executives after I had those meetings was the fact that we do need to do everything we can to make sure that whistleblowers feel that they can come forward, and not be in the category of whistleblowers, but just employees that have a better way of doing something, and that we seriously consider it.

Additionally, sir, we have trained about 7,000 or 8,000 people in the past year just on whistleblower protection, because I want that word to go out. This is serious business. We do not retaliate. And in fact, we should do something completely different. We should welcome that input into our ——

Mr. PALMER. Let me interrupt you and ask you, in this training that you are doing, how much of that includes the recommendations made by the people who have been punished for being whistleblowers?

Mr. PEKOSKE. It incorporates largely everything they said.

Mr. PALMER. All of the ideas that they brought to you?

Mr. PEKOSKE. Yes, sir. And the point of the training was, just to make sure that the workforce knew that, hey, if somebody has an idea, and they have a better way of doing business, you can't retaliate against them if you think it threatens your position or threatens decisions that you made. You just simply can't do that. So we wanted to raise the awareness.

And we also wanted to raise the awareness for the workforce that if you feel you have been subject to retaliation, there is an easy way to report it.

Mr. PALMER. Well, what concerns me a little bit here is that Deputy Administrator Patricia Cogswell recently informed committee staff that TSA is considering issuing directed reassignments to FSDs as part of its reorganization plans. Are you making sure that in this reorganization plan that none of these reassignments are punitive?

Mr. PEKOSKE. A couple things on the reorganization, sir. First off, no decisions have been taken with respect for that reorganization. I get briefed at the end of this week. But the process we used has been completely open and transparent, and every single senior member of the security organization that runs the security in the airports has been involved every step of the way as to what is going on.

Mr. PALMER. I appreciate that. But what I am really wanting to know is are you taking proactive steps to make sure that people who have been mistreated are not mistreated in this reorganization plan?

Mr. PEKOSKE. Yes, sir. We will do no punitive involuntary reassignments. And that is something that we ——

Mr. PALMER. Will you allow the employees who are being redirected to have an opportunity to speak or to request other assignments?

Mr. PEKOSKE. Yes, sir. And we may need to relocate some employees. I don't know what we are going to approve yet, because I have not seen the plan, but certainly ——

Mr. PALMER. Let me ask you ——

Mr. PEKOSKE.—you know, I want to maintain the management flexibility to put the resources in the right location. But I can assure you that we will have a conversation and a good one with each employee that might be affected.

Mr. PALMER. Well, let me ask you this in the time that I have remaining. In March of last year, the committee requested documents pertaining to the whistleblower cases that had been withheld from the Office of Special Council, and TSA, and DHS, and

OGC still refuse to produce those documents in defiance of a congressional subpoena.

In my time on the Oversight Committee, that has been one of the most frustrating things that we have had to deal with, is the failure of various agencies to respond appropriately to a subpoena. And I want to know why these documents are still being withheld from Congress, and what you are going to do about making sure we get them.

Mr. PEKOSKE. Sir, we provided all the unredacted documents that the Office of Special Counsel requested, based on the law that was passed by Congress in December of last year.

With respect to the Congress, I follow Executive Branch guidance, but I pledge to you that I will do everything I can to accommodate as much as I can with Executive Branch guidance, but I need to follow the guidance within the Executive Branch.

Mr. PALMER. Mr. Chairman, if I may, I have one more question. I was sitting in on the deposition yesterday, with the principal deputy general counsel, Joseph Maher, and despite a bipartisan request, DHS refused to provide the committee with emails the federal security director sent to his son pertaining to a whistleblower retaliation case on the grounds of attorney-client privilege. Do you think this is reasonable?

How can we exercise oversight and really resolve this situation if we are going to have to continue to play these kind of games?

Mr. PEKOSKE. And having a conversation like you did with the department is—I am going to take my guidance from the department with respect to what information I am allowed to release. But like I said, I can assure you that I will do everything I can within that guidance to ensure the committee's informed.

Mr. PALMER. Well, you are supposed to comply with all the laws and regulations, including the Office of Special Counsel's Reauthorization Act, and thus far, as far as I can tell you, you have not produced the documents requested by OSC until the December law required it. When you delay for months, and months, and months, I have a hard time seeing that as cooperative.

With that, Mr. Chairman, I thank you for your indulgence, and I yield back.

Mr. PEKOSKE. And yes, sir, if I could, and I understand your frustration, we did provide all the documents that OSC requested, once the law was in place.

Mr. PALMER. Yeah. Once the law was in place, but when the committee asked for it, I think that you need to provide those documents in a more timely manner.

Mr. PEKOSKE. Sir.

Chairman GOWDY. The gentlelady from the Virgin Island, Ms. Plaskett, is recognized.

Ms. PLASKETT. Thank you, Mr. Chairman, and thank you, sir, for being here.

With respect to my colleagues' questions just a moment ago about those documents, and the request for that, so it is your position that you are following the Executive Branch's guidance. And if that guidance is counter to what your counsel is giving you, then what is your position with respect to us receiving documentation?

Mr. PEKOSKE. Well, the guidance, ma'am, that my counsel is giving me should be absolutely consistent with what the DHs guidance is. In fact, the general counsel is the direct supervisor of the chief counsel in TSA by our organizational structure.

Ms. PLASKETT. And then so if that guidance leads your counsel to refuse to give this committee what it believes under our oversight laws were allowed to receive, then you will follow that guidance, correct, of your counsel?

Mr. PEKOSKE. Yes, ma'am.

Ms. PLASKETT. Which would then probably lead to this committee having to do what it has done in the past, which is then issue a lawsuit under FISA or FOIA request, which seems to me to be really counterproductive to the work of what Congress is supposed to be. Do you see a way for us to work through that without having to go to that extreme?

Mr. PEKOSKE. Ma'am, what we've done, particularly with respect to the last request from this committee, is we have tried to find every accommodation we possibly could. A recent example of that is, you know, we were doing camera side by sides in TSA headquarters, with the redacted and unredacted version of documents. The committee staff had asked for more of a paper version. It would still be at TSA headquarters, but to be able to use a paper copy to make it more expeditious. Because it is hard to look at a screen and compare differences. And so I will find every way I can

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Ms. PLASKETT. Unless you are a teenager who is used to just looking at the screen and not paper, right?

Mr. PEKOSKE. Right.

Ms. PLASKETT. Okay. All right. Thank you.

Mr. PEKOSKE. Thank you.

Ms. PLASKETT. This a conversation that you and I had before the hearing started, and thank you for reminding me about our last encounter personally with each other, which was immediately after the storms in the Virgin Islands.

But one of the things I wanted to talk with you about is an attempt my office is making to act as an intermediary between the local government, and TSA, and Customs, and Border Protection. I have had conversations—my staff has had conversations with numerous people in both of those agencies, as well as me speaking with Secretary Nielsen during her last visit to St. Croix in the beginning of August, in which we have found that we had—so in the Virgin Islands we have a lot of individuals who come in from the Eastern Caribbean, and we try to segregate those individuals from American citizens and others coming from domestic flights. Because we are outside of the Custom zone, people have to be screened separately.

Screening equipment was taken out of the St. Thomas office—out of the St. Thomas Airport, and we still have equipment on the St. Croix Airport, but we have been told that that is scheduled to leave as well. And I know that there has between some meetings the local government, Customs, and Border Protection, and TSA.

The resolution that they came up with, meaning the federal agencies, is not satisfactory to our partner airlines that are bringing people in. We are not in a position at this time to purchase

equipment on our own, nor can we afford to lose our traffic coming from the Eastern Caribbean. These are individuals who are not coming just for tourism. They are coming to use our hospitals, other types of facilities. These are serious revenues that are coming into the Virgin Islands.

And I have told you personally that I find it very frustrating that I cannot get TSA to agree to a meeting with the local officials, my office, and Customs, and Border Protection. It is frustrating at the most basic level, but more personally, I find it very disrespectful that a member of this committee, in particular, a member who has gone through what we have gone through in the Virgin Islands, cannot get TSA to agree to sit down and have a meeting, and continually, between Customs, and Border, and TSA, pointing the finger to each other as being responsible.

I am glad that you have committed that you are going to have someone from your office have a facilitated discussion, so that we can come to a resolution that we don't continue to lose air traffic into the Virgin Islands.

Mr. PEKOSKE. Yes, ma'am. And we will certainly have somebody from TSA at that meeting, and then I will personally follow-up ——

Ms. PLASKETT. And that will be sooner rather than later, correct?

Mr. PEKOSKE. That will be as soon as you want.

Ms. PLASKETT. Okay.

Mr. PEKOSKE. And then I will personally follow-up with you on that issue after that meeting is over. I would also just like to add briefly that I saw your leadership in action following Hurricane Irma in St. Thomas, and I really credit you for that. And thank you.

Ms. PLASKETT. Thank you. Thank you so much.

I yield back.

Chairman GOWDY. The gentleman from Kentucky is recognized.

Mr. COMER. Thank you, Chairman Gowdy.

My first question, whistleblowers have alleged that some previous TSA leaders prioritize wait times at screening tech points at the expense of security. In 2015, TSA implemented changes to its screening procedures to reemphasize security. Have you continued this approach?

Mr. PEKOSKE. Yes, sir. The first thing I said when I got into the job is our main job is security effectiveness, and it wasn't the job of our officers to worry about wait times. It was the job of management.

Mr. COMER. Okay. What would you say to TSA employees in the field to reaffirm that security is their first priority?

Mr. PEKOSKE. I say it every time I have an opportunity to talk to my workforce, and I put it out in documents. Now that is the most important thing we do. It makes no sense to have a lot of people moving through a security line very quickly with bad security.

Mr. COMER. The House recently passed a bill requiring TSA to only allow members of trusted traveler programs to use Precheck lanes. If this legislation becomes law, is TSA prepared to implement it without any delay?

Mr. PEKOSKE. We have had extensive discussions with our oversight subcommittee Chairman Katko, and we are prepared to start prototyping that actually in the next 6 months, or so, just to see

how it works, and to make sure we have the right procedures in place. And I would add, sir, that this will improve security. It will add security.

Mr. COMER. What type of turnover does TSA have? If your labor situation—do you have challenges finding TSA workers and retaining them, or is it pretty stable?

Mr. PEKOSKE. Yes, sir. I think the attrition rate, the rate at which we lose people, is still way too high. It is a little bit below 20 percent, but that is still way too high. And that drive a lot of costs, you know, cost of recruiting, cost of training new employees, and also has a security effect, because you have got the experience that is just not continuing to be built up. So that is a big concern of mine.

The other thing I would just add is that the economy is doing very well in this country, which is a great thing, but, you know, it challenges us sometimes, given the wages that we pay for entry-level people, to attract them in some markets around the country. So within the Aviation Transportation Security Act, I have the ability to put pay incentives in there, and I have done that, but that comes at some financial costs.

Mr. COMER. Okay. Thank you, Mr. Chairman. I yield back.

Chairman GOWDY. The gentleman from Kentucky yields back. The gentlelady from Michigan is recognized, Ms. Lawrence.

Ms. LAWRENCE. Thank you.

At this committee hearing in March 2017, the former DHS Inspector General Roth testified that arbitrary personnel practices can have a chilling effect on whistleblowers, who might otherwise speak out about security deficiencies. At that hearing, I asked the inspector general, "If TSA employees are reluctant to raise these security deficiencies they observe, couldn't that put aviation security at risk?" And Inspector General Roth answered, and I quote, "Well, that is absolutely the case."

So administrator, do you agree with Inspector General Roth, and can arbitrary personnel practices chill whistleblowers, and put aviation security at risk?

Mr. PEKOSKE. I completely agree with him, and it can absolutely put aviation security at risk. That is why I am so focused on it.

Ms. LAWRENCE. So would you agree with me that is critical that this nation's security—for our nation security, that the TSA have a personnel system in place that protects whistleblowers from retaliation, and protect employees from arbitrary personnel decisions.

Mr. PEKOSKE. We have the authority already in law, ma'am, and it is against the law in TSA, as it in every other agency to retaliate against whistleblowers. Additionally, we do not do punitive involuntary reassignments at all.

Ms. LAWRENCE. So I want you to know that we have had, I guess, previous hearings about this. The concern for having a strong TSA workforce, with integrity and the protections for their job, is a critical element of our security. And I appreciate you being here and agreeing, so when you lead, I expect for you to continue your commitment you are making here today. Because if there are some discrepancies or deficiencies, how are we ever going to get better, if we don't have an environment where we are nurturing the fact of us all being on one team.

And I just wanted to congratulate you on something else you said, that we need to mentor and teach, instead of beating up or disciplining every employee.

I thank you, and I yield back.

Chairman GOWDY. The gentleman from Iowa is recognized.

Mr. BLUM. Thank you, Chairman Gowdy. Good to see you, my friend.

A couple questions here for you. Have you individually met with any of the whistleblowers who testified before the committee on retaliation at TSA in 2016?

Mr. PEKOSKE. I don't have the list of those that testified, but I have individually met with whistleblowers. In fact, it was at my initiative that we had those meetings. And so I met with several whistleblowers several months ago just to have a dialog with them, see how they were doing, what their experience was, so that I could—to the extent I ——

Mr. BLUM. What was their experience?

Mr. PEKOSKE. Their experience was one of great frustration, as I completely empathize with. I mean they thought they were offering up good ideas, and they got stymied by the organization almost every step of the way.

Mr. BLUM. But not retaliated against.

Mr. PEKOSKE. Well, the folks that I talked to, I think in every conversation there is always a feeling of some level of retaliation. And what I want to make sure we do is that not only do we not retaliate, I don't think that is enough, personally, I think we should welcome different perspectives, and importantly, give our employees feedback as to what we think. Because not every idea is something that we can implement, but to have that dialog.

Mr. BLUM. I am from the private sector, and culture in companies is important a lot. What is the culture at TSA?

Mr. PEKOSKE. The culture is something I am totally focused on. In fact, when I published the strategy, when I published the administrator's intent, if you read those, it is a guidance to the culture that I want to develop within TSA. And based on input I received from a lot of people ——

Mr. BLUM. What is that culture? What are you trying to develop?

Mr. PEKOSKE. I am trying to develop a culture where we all work together, where we support each other, where different points of view are respected, and we lift each other up, and we care for our people. And I want a culture where people look at their employment in TSA and say, "I can't wait to get to work today."

Mr. BLUM. And that culture starts at the top.

Mr. PEKOSKE. It does.

Mr. BLUM. What do you personally do to make sure that that culture starts at the top?

Mr. PEKOSKE. Yes, sir. What I personally do is, one, I talk about it a lot. And every time I—you know, I visit TSA men and women almost every single week, sometimes multiple times a week. In fact, I have just gotten back from like a 2-and-a-half-week trip throughout TSA. And I want to have that engagement with my employees, so I can reinforce those messages, and also very importantly, get a sense for how it is going out there.

And when I meet with employees, I don't just meet with them in a big group. I walk around the checkpoint and I talk with people person to person. Because it is only during those encounters really that you are going to get some feedback that is of particular value.

And so I want to ensure that I don't lose touch with the workforce, and I also want the workforce to know that I work for them. You know, my job is to make sure that they have ——

Mr. BLUM. Servant leadership.

Mr. PEKOSKE. Yes. Absolutely. That, you know, they have the tools, and the direction, and the support, and importantly, when something happens that lands a transportation security officer or a federal air marshal in the news, if they followed our procedures, I need to be right behind them, and be out in front, and we have done that.

So I think that is a very strong message and that is certainly what I will continue. I have done it for—you know, this is the way I have worked for 40 years.

Mr. BLUM. How would you say the morale is?

Mr. PEKOSKE. I would say the morale actually is not what the public perceives it is. If you read reports and things like that, you think, "Wow, the morale must be really terrible." I don't see it as being really terrible. I think we can make some improvements. And I think that we just need to have a concerted leadership effort to do that. But I also ——

Mr. BLUM. Why is the perception not good then?

Mr. PEKOSKE. Because, in a lot of ways—I will give you an example. On the Federal Employee Viewpoint Survey, yes, you know, we scored more towards the bottom than on the top, but it is important that everybody recognize we are improving. And, in fact, if you look just inside the DHS components, we are actually improving quite well compared to our other DHs partners. And we all want to move as far forward as we possibly can.

But the story that doesn't get out is the positive things that are going on, and that is a large part of what I try to do.

Mr. BLUM. To get that story out.

Mr. PEKOSKE. Absolutely

Mr. BLUM. Get it out.

Mr. PEKOSKE. Yes.

Mr. BLUM. Are you trying to do that?

Mr. PEKOSKE. I am. In fact, in my ——

Mr. BLUM. In marketing 101, perception is reality.

Mr. PEKOSKE. Yes. Right. And so every chance I get, I speak to that. I did it today in the opening statement. Every chance I get to address the media, and I do that often, I talk about the quality of the workforce that we have. Every chance I get, when I see an employee did something particularly good, I personally call them, and tell them, because that telegraphs throughout the organization.

And as you know, sir, from your private sector experience, once you turn the corner and things start to move in the right direction, it tends to multiply, going forward. And that is really what I hope happens over the next several years.

Mr. BLUM. I agree with that, and also, I just end with, again, it starts at the top, with you, and your leadership ——

Mr. PEKOSKE. Mm-hmm.

Mr. BLUM.—team. And you would agree with that, correct?

Mr. PEKOSKE. Totally agree with that. Yes, sir. Thank you.

Mr. BLUM. Mm-hmm. I yield back, Mr. Chairman.

Chairman GOWDY. The gentleman from Massachusetts is recognized. Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman, and the ranking member, for holding this hearing. I have a couple of unanimous consent requests to enter into the record. A letter from the American Federation of Government Employees.

Chairman GOWDY. Without objection.

Mr. LYNCH. Thank you.

Mr. LYNCH. Thank you.

Welcome, Administrator Pekoske. We really appreciate you coming here to help the committee with its work.

We had had a choppy relationship on this committee with TSA in the past. And that has been because of a lack of cooperation in our request for documents, and testimony, in some cases.

I will say that it is bipartisan non-cooperation, from your standpoint. You have refused to give the democrats and the republicans helpful information. So I am just asking you to try to change that as well when you change the culture there at TSA.

In the past, John Roth, who was the inspector general for TSA, a great American in our opinion, wonderful public servant, did wonderful work, he had red teams going out there, and—you know, red teams. They would strap weapons on their legs and go through the screening stations. It was his work that disclosed that we had like an 80 percent or 84 percent failure rate going through screening.

So I am hoping that acting inspector general, John Kelly, who I understand is also very good, will continue to test our defenses and our security at those stations, and hopefully, our success rate will climb.

We have got some outstanding issues. One, we have got this so-called Quiet Skies program, where air marshals were reportedly surveilling the general public. So this is not the case where in the usual context air marshals will be placed on planes when we know that someone who is on the no-fly list or someone who is a suspect is going to travel. This is a case where the general public is surveilled, and there is no probable cause to do so. So that doesn't really fly with me, in terms of what our air marshals should be doing.

So I don't know how much you can say in this setting, but we need to re-engineer that program, so that we comply with the constitutional rights that Americans have, right?

Mr. PEKOSKE. Yes, sir. If I can address both parts of your comments, please.

Mr. LYNCH. Yeah.

Mr. PEKOSKE. First, on covert testing, I agree. Inspector General Roth was a great partner to work with, and he helped TSA out a lot. And you could imagine being in my position when those covert test results are ——

Mr. LYNCH. I am only giving you a minute now. So when we get down to one minute, I am taking my time back.

Mr. PEKOSKE. Okay. Got it. So anyway, we took his results, and we took action on them. And if you look at all the procurements we have going on right now, it is to bring the technology that both his testing and my own testing revealed.

With respect to Quiet Skies, Quiet Skies is a risk-based program. It does not surveil the general public. It surveils, and puts air marshals on flights of people that we think present more risk in flight. It is a risk-based program consistent with all the law and direction that we have received from the Congress. And importantly, it is not a new program either.

Quiet Skies has been around since 2012. The privacy impact statements have been published, and, you know, that information is out there available for the public to see. But to me, it is a very beneficial intelligence-driven risk-based program that results in better utilization of the Federal Air Marshal Service.

Mr. LYNCH. Okay. Well, maybe we need to talk about that in a different ——

Mr. PEKOSKE. Mm-hmm.

Mr. LYNCH.—setting, in a secure setting then.

The other piece that you are responsible for, you are the lead agency on pipeline infrastructure security. And in Massachusetts we just had a horror show up in Andover, and North Andover, and Lawrence, where we had I think upwards of 70 homes explode, because the gas company there, Columbia Gas, had put something in order of ten times the gas pressure through those lines. Went through all the checks and balances that we have in that system, and cased major damage, and at least one fatality.

Now I know that you have just issued guidelines on pipeline safety. I also have been fighting in my own district, in West Roxbury, and in Weymouth, a couple of pipelines are going in there in very thickly settled residential areas, high-pressure gas lines.

In one case, the gas line goes through a rock quarry that is blasting. You can't make this stuff up. Going through an active blasting area, and I can't get them to relocate that high-pressure pipeline out of that quarry, which is right next to a residential area in my district. I have tried everything. We have gone to court, and I still cannot beat the gas companies.

What are you doing—in light of the dangers that we have now seen happening, is there any interest or initiative to take a closer look at the pipeline security guidelines that you have issued?

Mr. PEKOSKE. So the pipeline security guidelines were just recently published, and actually, they are quite up to date, and represent a really good effort on the part ——

Mr. LYNCH. It would be before these explosions, though.

Mr. PEKOSKE. That is right, but the explosion really is a safety, not a security issue, as I understand it. It was an over-pressurization by the ——

Mr. LYNCH. What is the difference ——

Mr. PEKOSKE. Well, security would mean you have ——

Mr. LYNCH.—between safety and security?

Mr. PEKOSKE.—you have an actor who is trying to disrupt the system and cause a lot of harm to a lot of people. A safety issue is a misuse of a procedure that creates a safety situation that can also result in injuries to folks. But it is not by an actor.

And we work very closely with our Department of Transportation agencies in that regard. They have safety responsibility. We have security responsibility.

Mr. LYNCH. Well, I don't care who blows up my neighbor's house ——

Mr. PEKOSKE. Right.

Mr. LYNCH.—if it is a terrorist or it is the gas company, it is a problem ——

Mr. PEKOSKE. I agree with that.

Mr. LYNCH.—right? So we need to eliminate the vulnerability in the system that allows that to happen.

Mr. PEKOSKE. Mm-hmm.

Mr. LYNCH. Whether it is, you know, stupidity or a nefarious intent that blows up the house, we need to secure the system and make sure that there is some countermeasures and safeguards against either actor, is what I am saying.

So I think we ought to take another look at that, and I know, Mr. Chairman, you have been very indulgent, and I appreciate that. You haven't cut me off, so I will yield back the time that I don't have.

Mr. PEKOSKE. Yes, sir, Mr. Lynch, I would like to come chat with you about Quiet Skies. I would enjoy that opportunity. Thanks. Thanks.

Chairman GOWDY. The gentlelady from New Jersey is recognized.

Ms. WATSON COLEMAN. Thank you, Mr. Chairman. Thank you, Mr. Pekoske for being here.

As always, I am impressed with the kind of commitment you have made to try to make this agency more respectful of its employees. I still think we need to talk about some structural deficiencies, as it relates to whether or not there should be a Title V coverage of your employees. But you have made progress, and I think that that is notable.

I want to just talk to you about something else, though. I understand that you are considering organizational changes to the TSA that would majorly scale back the duties of the TSA's international office, the Office of Global Strategies, by assigning many of its duties to other offices.

Now given the grave threats to aviation emanating from overseas, cohesive international security efforts are as important as ever. And so I am wondering what is the impetus for these changes?

Mr. PEKOSKE. Yes, ma'am. Thank you for your comment. And, if anything, I want to put more emphasis on international engagement. We have done a lot of work in TSA over the past year to raise the global bar on aviation security. I just came back on Monday from a meeting with, ICAO, the International Civil Aviation Organization.

I just had a townhall yesterday, where I told all of my employees that I want to put more TSA men and women in significant positions internationally, because they can help us.

Ms. WATSON COLEMAN. Okay. Then perhaps what I need to ask you is that before you engage in a restructuring, would you have

a conversation with Congress about how that does, indeed, enhance the international oversight that we are concerned about?

Mr. PEKOSKE. Yes, ma'am. I would be happy to meet with you, or whatever group you would like to convene.

Ms. WATSON COLEMAN. Great. Because it just seems to me that, you know, perhaps we are misreading what your ——

Mr. PEKOSKE. Mm-hmm.

Ms. WATSON COLEMAN.—what it means by taking this agency, this office, and dispersing some of its employees and resources elsewhere.

I also have a question to ask you regarding the long-awaited solicitation for the CT machines. You know, we have all just been waiting so much for this. But I was sort of disappointed to hear that you all are considering a single vendor.

I am very concerned about a single vendor for a number of reasons. Number one, I think that it could possibly eliminate or reduce the innovations that come from competition. Number two, it sets somebody up to be the big dog that we are dealing with, and that reduces competition, and it might also reduce innovation.

And number three, I think it has a negative impact on minorities and women, who are in that field, and are working very hard, but just don't have the kind of resources to be the big dog that we are considering.

So tell me, you know, your thinking about this. I know we are anxious to get these machines out. I know. I know. I know. But still and all, this short-term gain may have long-term implications, and I want to know what your response would be to that.

Mr. PEKOSKE. Yes, ma'am. Thanks for the question. The initial solicitation, the RFP, was just released a couple of weeks ago, and it closes a couple weeks from now. We have five vendors, four very active, involved in the competition. The RFP says that we intend to select one, but reserve the option to select additional vendors for the award.

But the important thing to keep in mind with this is, this is just the first procurement. This is using the fiscal year '19 funds that has received great support from the Congress. Roughly 200 CT machines. We need to replace 2,000.

And this is for the existing standard made better rather than an entirely new standard. So my point is, is that the much larger procurements are in the out-years, not in fiscal '19.

Ms. WATSON COLEMAN. Okay. So I am going to watch it closely. I hope I get reelected, so that I can.

Mr. PEKOSKE. Okay.

Ms. WATSON COLEMAN. But I want to hold you—I want to hold you accountable, that we are going to increase the diversity of vendors, particularly women and minorities, who just don't get a chance to work in this field, and also that we can ensure that there is a kind of innovation, because things are changing so quickly. As soon as we figured it out, they figured it out, and we have to figure it out differently.

I know you are committed to that in sort of a holistic way. I would like for you to make sure that your organization drills down, and understands that you are committed to diversity and competition here.

Thank you very much. And with that, I yield back.

Chairman GOWDY. The gentlelady yields back. The gentlelady from New York is recognized. Ms. Maloney.

Ms. MALONEY. Thank you for your testimony today. As a part of good news, 2 weeks ago, three TSA employees received the Office of Special Counsel's Public Servants of the Year Award. And there is a photo of them up there, a photo of Sharlene Mata, Heather Callahan Chuck, and Michael Abreu. And they reported security concerns at the airport where they worked, but rather than addressing their concerns, senior managers at TSA retaliated against these employees.

They moved them to a new duty station at different airports. They forced them to move their families hundreds of miles away. But these whistleblowers fought this retaliation, and TSA ended up paying them $1 million as part of a settlement agreement. That money came from the United States taxpayers, and those were tax dollars.

So my question, Admiral, is, I am sure you agree, that the American taxpayers should not have to pay $1 million because senior TSA managers retaliated against employees reporting security concerns. Is that right?

Mr. PEKOSKE. Well, the other part of it, ma'am, is that, you know, when we make a decision as to whether to engage in settlement negotiations, we also consider the cost of litigation on the part of the government. And that is a factor, is if the cost of litigation would cost us close to that amount or more, it might make more sense to settle the case. I am not saying that was a play in this case, necessarily, but that is also a factor when we look at settlement negotiations.

I would say, too, that we appreciate what each one of the three of them contributed to TSA, based on what they—the information they provided. And additionally, the directed—the involuntarily directed reassignments, we don't do anymore, based on this.

Ms. MALONEY. Well, another approach is not to retaliate against people who are trying to make the airlines more safe.

Mr. PEKOSKE. Mm-hmm.

Ms. MALONEY. I would say you should be giving them an award if they are trying to make it—have a legitimate concern about safety. After 9/11, creating TSA was a prime goal of this Congress, and there are good men and women working there, and the security can save lives.

But these funds, you know, if you hadn't gotten into the fights with them, these funds could have been used to increase airport security, or even address the security deficiencies that these employees warned about. But there was a bigger problem.

These employees filed whistleblower retaliation claims with the Office of Special Counsel, which is the federal office that handles these issues. But TSA refused to provide documents to the Office of Special Counsel about the case. So we actually had to pass a law, now that is an extreme, when you have to pass a law to force TSA to turn over those documents. And it was after the Office of Special Counsel got those documents. After they saw this retaliation, the TSA agreed to settle the case for $1 million.

The problem is that even now TSA is withholding these very same documents from this committee. We issued a subpoena for them a year-and-a-half ago, but the agency will not turn them over.

So Admiral, why is TSA defying this committee's bipartisan subpoena? What is the legal basis?

Mr. PEKOSKE. Ms. Maloney, first and foremost, we don't tolerate whistleblower retaliation. That has been my stance since I have been the administrator, so ——

Ms. MALONEY. But this happened.

Mr. PEKOSKE. It happened before I got into TSA, and I am not saying I am the magic wand that is going to fix all those problems, but I want people to know that that is not acceptable, and I will take action when those cases occur, if they do.

Additionally, in my opening statement I said that, hey, I am responsible for good stewardship of public funds, and I would prefer not to spend a million dollars. I agree with you 100 percent ——

Ms. MALONEY. But sir, Admiral, my question is right now you can hand these documents over. We have a subpoena for the documents. TSA is not handing the documents over.

Now I know the members of this committee. If you don't hand them over, they will pass a bill, forcing you to hand them over. They are not going to stop. So why are you not handing these documents over? They have a subpoena, a legitimate subpoena.

Mr. PEKOSKE. Yes, ma'am. And I appreciate your concern. I am following Executive Branch guidance in that regard. So that is, you know, I will do everything I can to provide information to this committee. I believe very strongly in your oversight function, but I have limitations within the Executive Branch as to what I will provide ——

Ms. MALONEY. No. No. No. The subpoena is not to the Executive Branch.

Mr. PEKOSKE. Mm-hmm.

Ms. MALONEY. The subpoena is to you. It is to you.

Mr. PEKOSKE. Right. And I have not been subpoenaed. And I hope ——

Ms. MALONEY. To TSA. To TSA.

Mr. PEKOSKE. Right. Right. And I hope not to be. And, you know, I will continue to follow the guidance that the Executive Branch provides.

Ms. MALONEY. But the Executive Branch and President Trump has not asserted any executive privilege. And not executive privilege, no deliberative privilege. Nothing. So they are not holding you up. They are not holding you up.

And this was issued to TSA, and not the President, not the Executive Branch, not DHS. That means that you, as the administrator, have the ultimate obligation to comply with it.

Mr. PEKOSKE. I understand all that. I am not an attorney. I am not going to wade into all the legal issues that are involved here. I will follow the guidance that the Department of Homeland Security provides.

Ms. MALONEY. Okay. Well, you have two choices, according to the law.

Mr. PEKOSKE. Mm-hmm.

Ms. MALONEY. Either produce the documents that have been subpoenaed, or produce a letter showing that President Trump has formally put forward executive privilege over them. That is it.

So my question is, will TSA produce the documents that this committee subpoenaed more than a year ago, relating to the claims of those whistleblowers, who were clearly wronged?

Mr. PEKOSKE. And I repeat my answer. I will follow the guidance that the Executive Branch and the Department of Homeland Security provide me, and I will try to find ——

Ms. MALONEY. But the subpoena went to you. There is no guidance from DHS. And I doubt the President even knows about this.

Mr. PEKOSKE. Mm-hmm.

Ms. MALONEY. And he hasn't exerted executive privilege. The paper is on your desk. Are you going to produce these documents to the committee, or not?

Mr. PEKOSKE. I haven't seen the paper.

Ms. MALONEY. Well, this is the most—this is very annoying to me. So how are we going to handle this? We will make sure that the papers are on your desk tomorrow morning. Can you get back to the chairman with whether or not you are going to comply with the subpoena?

Mr. PEKOSKE. The answer remains the same that I have just provided. I will follow the guidance of the Department of ——

Ms. MALONEY. Excuse me. There is no guidance from the Department of Homeland Security.

Mr. PEKOSKE. I receive guidance ——

Ms. MALONEY. There is none. There is none from President Trump, there is nothing from the Executive. You can't say I am going to follow their guidance. They are not giving you any guidance. They probably don't even know anything about it. It is on your desk. Are you going to comply with the government subpoena, or not?

Mr. PEKOSKE. I assure you, ma'am, that the department is aware of the issue. This is not my decision. This is a decision from my superiors in the Department of Homeland Security, and I will respect the ——

Ms. MALONEY. No. No. We didn't subpoena Homeland Security.

Mr. PEKOSKE. Mm-hmm.

Ms. MALONEY. We subpoenaed TSA. We subpoenaed TSA. Now do we have to have another hearing, where you come back and say, "I talked to everybody, including the President of the United States, and they aren't doing Executive privilege, so now I am going to hand over the documents."

I mean this is talk around—this is why people hate bureaucracy, and why they hate government. We subpoenaed. Do you know how hard it is to get a subpoena from the chairman? It was agreed to in this committee. We have asked for the information, and you are denying the information for legitimate oversight, which is the job of this committee.

Mr. PEKOSKE. My understanding is that we have provided every accommodation we can.

Ms. MALONEY. You have provided no accommodation.

Mr. PEKOSKE. Yes, we did.

Ms. MALONEY. There is no way you can accommodate anything. You let us photograph something.

Mr. PEKOSKE. That is right.

Ms. MALONEY. But that is not what we asked for. We want the documents.

Mr. PEKOSKE. We have worked ——

Ms. MALONEY. You have not accommodated. We didn't ask for a photograph. We asked for the documents.

Mr. PEKOSKE. Right.

Ms. MALONEY. And we have a subpoena, not for a photograph. We have a subpoena for the documents. And this is the national security of our country. And let me tell you, your whole office was created by this Congress.

Mr. PEKOSKE. Mm-hmm.

Ms. MALONEY. And there was a whole effort not to create it, not to—or to contract it out, but we said if police are protecting us, TSA should have the same standing.

Mr. PEKOSKE. Mm-hmm.

Ms. MALONEY. And it was a huge fight. And now the body that created you is now asking for some common-sense oversight, and you are denying us. And I find it outrageous and disrespectful, and you are running around the bush, saying a lot of gobbledygook, instead of coming forward with a—it is just a simple subpoena for some documents. In fact, I find your response so shocking, because I don't understand why you would not comply with it.

And then I have another question here real quick. I understand that we may hold a vote at tomorrow's business meeting on this matter, and I plan to support measures to obtain these documents.

And my final question is: Will TSA produce the documents that this committee subpoenaed more than a year ago relating to the claims of these whistleblowers, who were clearly wronged. It is the question I asked earlier. Are you going to produce them or not?

Chairman GOWDY. The gentlelady is out of time, but you may answer her question.

Ms. MALONEY. I have been out of time for about 10 minutes. But I was trying to pin him down, and ——

Chairman GOWDY. I had noticed it, also, but ——

Ms. MALONEY. I tried to get an answer from him, and I have not gotten an answer.

Chairman GOWDY. That is why I had a very slow trigger finger.

You may answer the question.

Mr. PEKOSKE. Ma'am, I will do everything I can to accommodate the committee's request. We did provide screen side-by-sides, not a camera shot, but a screen side-by-side of a number of redacted documents.

We have also agreed to provide paper copies in our headquarters for committee staff to go over the documents. And ——

Ms. MALONEY. Respectfully, that is not what we asked for. We will be holding another vote on this ——

Mr. PEKOSKE. Mm-hmm.

Ms. MALONEY.—tomorrow.

Mr. PEKOSKE. Okay.

Ms. MALONEY. I yield back.

Chairman GOWDY. The gentleman from New York—excuse me, North Carolina is recognized.

Mr. WALKER. We are all a little shook up.

Chairman GOWDY. They are both states, and they are close by. North Carolina.

Mr. WALKER. Oh, well, thank you, Mr. Chairman, and once again, you have continued to prove your more than fairness in that chair, since you have taken over.

Ms. MALONEY. I am going to say it publicly. I am going to miss him. I really am. I am sorry that he is retiring and leaving. I think he has been a great member of Congress.

Mr. WALKER. Well, I think what she was saying without the microphone was that she was going to miss Trey Gowdy. So make sure that is on the record there. Okay? All right.

(Laughter.)

Mr. WALKER. Administrator Pekoske, let's get back to the matter at hand. The committee did find numerous instances of senior TSA managers sexually harassing female employees, with varying degrees of punishment.

So let me just start with a broad question. Do you believe that TSA has a sexual harassment problem?

Mr. PEKOSKE. I believe we have employees that have violated our sexual harassment guidelines, and those employees should be held accountable.

Mr. WALKER. Well, I agree, but I think that answer to the question would, if there is an issue, that overall it would be yes. And obviously, with what, a little over a year that you have been there

——

Mr. PEKOSKE. Yes.

Mr. WALKER.—just barely, and from what we see, administrator, we do believe you are making great strides to that. But to say in the past that TSA has had a sexual harassment problem I think is a fair assessment. Would you agree?

Mr. PEKOSKE. I would say yes. That is an issue for us, and we are aggressively addressing it.

Mr. WALKER. Okay. This past November, TSA removed an assistant federal security director after he was found to have engaged in sexual harassment. Actually, made both sexist and racist remarks.

His victim said he had been sexually harassing since 2010, and made inappropriate comments in the presence of other officials, including the airport's federal security director. Is it acceptable for a pattern of harassment to go and in check for—well, for years, in that case.

Mr. PEKOSKE. Totally unacceptable.

Mr. WALKER. And do you think that whistleblower retaliation contributed to the victim not coming forward?

Mr. PEKOSKE. Perhaps did, and that is really why I place such an emphasis on that. I want people to come forward. Otherwise, we will never address the problem.

Mr. WALKER. You understand that the security, and the safety, and the protection, if you are going to root out a problem, these folks have to have the assurance that from the top administrator, down, that the retaliation has to cease and desist immediately. Is that a fair statement?

Mr. PEKOSKE. That is a fair statement, and I have done everything I can as the administrator to provide that assurance to our employees. We just need to continue to keep that message going, and our actions are going to speak louder than words.

Mr. WALKER. Will you answer my question? Because I was going to ask you, how do you detect and prevent sexual harassment at TSA, including allowing victims to come forward with their claim or claims. Are there specific things, or is it just a culture you are trying to change? What are you trying to do there?

Mr. PEKOSKE. Yes, sir. Great question. At the end of the day it is the culture I am trying to change. That is what will address this issue most completely. And really, from my perspective, I don't think it should be just leader-based. In other words, when I leave this position, I want to leave a culture that was better than the culture I found.

Mr. WALKER. You may be familiar with the OIG report on the TSA's handling of a 2015 disciplinary matter involving a TSES employee.

Mr. PEKOSKE. Yes.

Mr. WALKER. DHS allegedly reviewed the disciplinary process that allowed an assistant administrator to stay at the agency after initially being recommended for termination. Specifically, the IG, the inspector general found, "TSA senior leaders deviated from standard policy and practice in a number of key respects, indicating that TSES employee received unusually favorable treatment in the resolution of his disciplinary matter."

Do you agree TSA's handling of these cases are acceptable?

Mr. PEKOSKE. Handling of those cases? No. Not acceptable.

Mr. WALKER. Okay. And that is part of what you are saying here on record today, that you are committed to looking into this, and changing the culture as what we've seen as despicable behavior in the past.

Mr. PEKOSKE. Yes, sir. Changing the culture, and then also putting written management directives in place, so that the process is memorialized and followed.

Mr. WALKER. It is very frustrating, to Ms. Maloney's point, of something that was created, and not too many years ago, by the House, by Congress itself, and to see this kind of rampant behavior. In this situation, we are talking about even after the lady came forward, the perpetrator sent her another sexually explicit email, I mean just really intimidating. So we want to make sure that this is a complete behavior change from here, going forward.

Mr. PEKOSKE. Yes, sir. It is, and as I stated in my opening statement, the outcome of these cases would be different if they were before me.

Mr. WALKER. Why, and I want to get off my script a little bit in my last 40 seconds, I want to know to you personally, why is it important to you personally, outside of the job description, that as the administrator of this organization, that this area is important to you, as far as creating this kind of work environment?

Mr. PEKOSKE. Well, because it is fundamentally wrong to treat people this way. And one of the core values of TSA is respect. We have to have respect for each other, and I want to create a workplace environment that people look forward to come to work every

day, have high job satisfaction. I can't do it if people feel like they are being retaliated against. Additionally, it has a very negative effect on security, and my mission is to ensure the security of the transportation system.

My focus is always going to be on our employees, and doing whatever I can to make our employees' job better for them, and their job satisfaction higher, and for them to look back at the senior leadership at TSA, and say, "Okay. They get it, and they're supporting me, and they've added value to my ability to do the very important job I have."

Mr. WALKER. Thank you for your remarks, administrator. With that, I yield back to the chairman. Thanks.

Chairman GOWDY. The gentleman from Illinois is recognized.

Mr. KRISHNAMOORTHI. Thank you, Mr. Chair. Thank you, administrator for coming in today.

First of all, I understand that TSA performs just a vital role for our national security. So thank you to you and the men and women of the TSA for doing what you do every day.

And I also think that the vast majority of your personnel try to do their job commendably. However, I am concerned about some of the issues that have been raised by my colleagues, and I would like to bring up another issue.

I represent the 8th congressional district of Illinois. This is the district that is bordering on the west and northwest borders of O'Hare International Airport. I happen to have the runways, but not the terminal in my district. However, what happens at the terminal affects a lot of my constituents.

One of the things that I have heard repeatedly from my constituents, especially Muslim-American constituents, is a real concern about bias, and the way that they are screened. And it doesn't just include Muslim-Americans, it includes people of South Asian heritage.

And I want to hear from you whether you have heard these concerns as well. What are you doing about this? Because this is very serious, and it seems to be protracted. I have heard this now for years. And I would like to hear, also, after you finish, about a specific incident that a lot of people are discussing. So go ahead.

Mr. PEKOSKE. Sir, thanks for the question. Thanks for your comments about the workforce.

I would tell you that yes, I have heard those comments before as well. And what we have done as an agency is actively engaged with community groups around the country to make sure that we understand their perspective, feedback that perspective to our workforce, and train our workforce on the—how they might come across at times, however unintentional, perhaps.

Additionally, as I travel around the country visiting airports, where I do find communities of Muslim-Americans, for example, I make an effort to reach out to those communities so that I can personally engage with them to understand their perspective.

We also, from TSA headquarters every year, have a multicultural day, where we bring in representatives from across the spectrum of the cultures of the United States, and we have a discussion with them. I was able to have a good conversation with folks that were in attendance just about 2 months ago. Very good gathering. And

the feedback that I got from the attendees there, because I spent some time to walk around and chat as much as I could individually with them, was they appreciated actually the progress that TSA has made over the course of time.

And the final thing I will say, sir, because I don't want to consume too much time, is that we do provide very quick website access for any issues that any passenger might have with what they could expect at TSA, and importantly, to provide us feedback on their experience.

Mr. KRISHNAMOORTHI. I understand. I am glad that you are concerned about this, as I am, but I think that we need to see more action on this front, because I am hearing persistent complaints about this. And specifically, this was actually brought to my attention by my wife the other day, and it happened just recently, where a Muslim-American woman says that TSA basically strip searched her, and forced her to show her pad.

"In a complaint filed by the ACLU, 27-year-old Zainab Merchant said that TSA agents subjected her to a 2-year program of enhanced intrusive and humiliating security checks at airports around the United States simply for being a Muslim-American." This appeared in the Washington Post, and then in other outlets as well.

And this really bothers me a lot. This bothers me to no end, because, you know, we cannot in 2018 be discriminating against people based on their religion, or their ethnicity, or the color of their skin, or any other feature. And I hear from business people routinely that now they have to allot, I am talking about Muslim-American business people, who are traveling through O'Hare constantly, all over the place, that they have to allocate an additional two, three hours to make sure that they can get through TSA, even when they have TSA Precheck sometimes. And they have just come to accept it. And to me, that is not acceptable.

So I need to have a commitment from you to work with my office to investigate these things, and to try to do something about it, because it is getting out of hand. And it is not just Muslim-Americans. It is people who are not—I mean they are just of a different heritage than the mainstream.

Mr. PEKOSKE. Yes, sir. I agree with you 100 percent. What I would offer is that I would like to come out, and if you could, or your staff could arrange an engagement for me with those communities, I would be most happy to do that, because I want to hear their perspectives.

Our policy is we absolutely do not discriminate. If somebody has to plan three hours routinely to get through the security checkpoint, there is an issue there, and I want to understand it.

Mr. KRISHNAMOORTHI. Yeah. I mean the worst part is some of them have just kind of resigned themselves to this.

Mr. PEKOSKE. Yeah, they shouldn't.

Mr. KRISHNAMOORTHI. And they are not complaining anymore, because it is like, oh, well, you know ——

Mr. PEKOSKE. Right.

Mr. KRISHNAMOORTHI.—that is the way it is. And I find that unacceptable. So I am glad that you are willing to work with us, and we will follow-up. And we have got to root this out. As I believe

there is some bias here, we have got to root it out, because that is not good for our community, our country, or national security, at the end of the day.

Mr. PEKOSKE. Yes, sir, and I appreciate your help.

Mr. KRISHNAMOORTHI. Thank you.

Mr. PEKOSKE. Thank you.

Chairman GOWDY. Admiral, I am last, so thank you for your patience. I will get the bad part out of the way first.

Yesterday, DHS managed to do something that really I wasn't sure even God could do in this political environment, which is unite republicans and democrats. So proportionality is important. Protecting witnesses is important. You know, each of the members on both sides, we have friends on Appropriations on both sides of the aisle, and I understand privilege probably, I guess, maybe as well as anybody in the House. But we are not going to go away, so to the extent that you could deliver that message back.

And I realize that you are not making the decision. Somebody else is. But Congress becomes very apolitical and bipartisan when documents we believe we are entitled to are withheld for a long period of time with a dearth of legal justification. So if you can help us communicate that.

I realize you are not the decisionmaker. I am not going to beat you up over it, but if you can help us deliver that message. I don't know who will sitting here. I know it will not be me, but somebody will be sitting here in January, and I don't think the issue is going to go away.

So with that, a couple of things I want to ask you about. I want to ask you about equipment at your security checkpoints, what you need. Do you have it? Are you excited about what is coming? And given the setting we are in now, there may be things you can discuss in another setting, but what could you tell us from an equipment standpoint that would help you?

Mr. PEKOSKE. Yes, Mr. Chairman. Thanks for the question. And we are in the very beginning stages of a massive technology refresh at our security checkpoints. And it is basically the result of the covert testing results that we saw, that indicated that the equipment that we had was not up to the task that was in front of us.

And so we have started with replacing the X-ray machines at our security checkpoints for carry-on bags. And the technology is the CT, or CAT scan, technology, which is not just a little bit better, but a lot better than the current technology we have in place.

And additionally, and very important to me, is that it provides an interface for our employees that is, again, much, much better than what we have in place. Rather than a two-dimensional image, and trying to discern what is in somebody's carry-on bags in 2D, the CT machines give you 3-dimensional images, which will mean, for us, it is better security, and for passengers, it is going to be much more convenient for them. Because already, where those CT machines are deployed, passengers don't have to take laptops out of their carry-on bags. Ultimately, they won't have to take out anything from their carry-on bags, because we will be able to see that.

The next thing that we are looking at at our security checkpoints is a way to get better at identity for verification and risk management off of passengers that come through the checkpoint. We are

trying very hard to ensure that, you know, to the extent we have information that we can use to identify risk by passenger, for example, the risk in a Precheck-lane passenger, is, by definition, less, because a Precheck passenger has given more information to the government, as provided by a metric to the government. And, therefore, we recognize that we have more knowledge of that person's background, and provide them a different level of screening than a passenger who didn't provide that information.

And so this new technology will allow us to, one, better validate that the driver's license you provide, or the passport you provide is, in fact, authentic. And so rather than the officer looking down and just examining visually the credential, the machine will verify the authenticity of the credential.

Additionally, the machines are connected to our secure flight database, which basically allows us to see what the risk of that passenger is, Precheck, standard lane, or perhaps a selectee, and also gives us the flight information for that passenger.

So for passengers, once this technology is fully deployed, they won't have to display a boarding pass, because we do have cases nearly every single month where we have a fraudulent I.D. or fraudulent boarding pass presented at the checkpoint.

And then finally, from a technology perspective, sir, we are working to improve the on-body alarm system that we have, where you walk through and you put your hands over your head. There is updates to that technology, and in different technologies that we are examining.

So my hope is that over the next 5 years, passengers will see an entirely different suite of technology, and importantly, our adversaries will recognize that our detectability is continuing to improve.

The one thing that I will add is that we have deployed more and more canine teams at our security checkpoints. Canines are very effective at detection, very effective deterrents value as well. And thanks to the support of the Congress, both the House and the Senate, again, a very bipartisan issue is a stronger support for our canine programs in terms of numbers.

And so I expect we have both House and Senate marks in our fiscal '19 appropriation bill that increases the number of teams by 50, which is a very good and significant add, and I appreciate that support.

Chairman GOWDY. I appreciate you bringing up canines. I was going to ask you about them in honor of our former chairman, Jason Chaffetz, who never missed an opportunity to advocate for them. So in honor of him, thank you for addressing that.

Your term of service, like the FBI director's there for 10 years. I guess Mick Mulvaney's an at-will employee. What are the terms of your service? Do you have a time period that you are nominated and confirmed to serve?

Mr. PEKOSKE. No, sir. I serve with the pleasure of the president, but there is legislation that is before the floor of the House, I believe this afternoon, that includes a provision to make the administrator of TSA a 5-year term. And it also makes that retroactive to my start of office.

I 100 percent support that. As we have seen, and we have talked about over the course of this afternoon, we do need to continue to

improve the culture in TSA. We do need to make continued sustained improvements in the agency. I think it is a terrific agency, as it sits right now. It can be much better. And having a longer period of time to be able to put those changes in place I think is very valuable.

I am the seventh confirmed administrator for TSA, but over the course of time, and in the course of your investigation, you saw a number of acting officials that were in place. And this is not a criticism of those acting officials, it is just when you come in, and you are only there for a short period of time, and not necessarily familiar with TSA, it does make the decision process a little bit more challenging.

So I think it is very important to provide the TSA administrator a 5-year term, and I 100 percent support that. And I hope you will vote in the affirmative on that.

Chairman GOWDY. My friend from Maryland made reference to air marshals in his opening statement. What update can you give us on the advocacy of that program? From time to time I bump into them in travels. Personally speaking, I find it very reassuring to know that they are on airplanes, but I am not an expert on whether or not that is where the trends are going in the future. What is your position on that, and how are they being used now?

Mr. PEKOSKE. Yes, sir. Thanks for that question. I think the Federal Air Marshal Service is an outstanding component of TSA. They provide all of our in-flight security, and also provide landside security in the form of the VIPR teams, the Visible Intermodal Protection Response teams that you may see at a transportation hub like Washington Metro, for example, or Amtrak, supporting state, and local, and industry enforcement mechanisms.

But with respect to the Federal Air Marshal Service, in-flight security is still very important. And one of the strengths of the TSA system are the multiple elements of security we have. And so when a passenger starts out, and they buy a ticket, our security process starts, in terms of our vetting of that passenger. And then there are several layers, including canines, that a passenger encounters in the course of proceeding to the gate of an aircraft.

But the air marshals provide our in-flight security. And even though we have had advancements in reinforced cockpit doors, and we do have a very effective, I think, and very beneficial federal flight deck officer program, where first officers and pilots volunteer their time to be trained by TSA to handle weapons to protect a cockpit, and are, in fact, deputized by us when they are onboard an aircraft, even though we have those two mitigations in place, the risk in flight is still there.

Of course, I look at the intelligence every single day, and that indicates to me that we still very much need to have a Federal Air Marshal Service in place. And so what I have done since I've been the administrator is really look at how we deploy our federal air marshals, and have published a new concept of operations that deploys federal air marshals primarily on flights where we think the most risk is represented by the people on board those flights.

And in my view, that is a better risk mitigation process, and also allows us to use all the tools that have been developed by TSA over time to ensure that we can assess risk by passenger.

And I am really very happy with the performance of the Federal Air Marshal Service. I will tell you, sir, that sometimes people think that being a federal air marshal is an easier job. It is not. It is a very difficult job to do. And air marshals have significant challenges. And one of the things that I have done in this regard is to look at the fatigue of just flying all day long, and particularly when you are on a domestic flight, where you are doing maybe three flights a day, where you are going up and down, that can be very fatiguing if you do it three, four, five days in a row.

And so we backed off some of our pace to ensure that we address the fatigue issues that many air marshals highlighted for me when I either talk to them just before or just after a flight, or talk to them at their field offices.

But, you know, bottom line for me is it is a very, very important layer of TSA security. I really appreciate the professionalism of our Federal Air Marshal Service, and I am doing everything I can to ensure we take a more risk-based approach to how we deploy our resources.

Chairman GOWDY. Well, Admiral, I am out of time. We are all kind of creatures of our own personal experience, and I don't pretend that it is anybody else's, but I fly a lot, and I don't wear a member pin. So I guess I will maybe possibly understand my colleagues to think that that impacts how TSA employees treat them.

I don't wear one. So unless they watch really old episodes of Forensic Files, my guess is they have no idea who I am, and I have never been treated anything other than professionally, all the airports I have been at, particularly, obviously, Charlotte, and Greenville, and DCA, the most. But never had a negative experience in 8 years that I have been flying on an almost weekly basis. So that doesn't mean other people haven't. I am sure they have, but they have been great.

Appreciate all the service you have given our country, and all the different ways that you have done it. And I am sure that you will agree with me, as you try to kind of change the culture, and take the agency in a different direction, employees have got to have confidence that there is just one set of rules. It is not two different sets of rules, dependent on whether or not you know the right people.

And that report was hard for me to read. I am glad the folks did it. I read every word of it. That is not what I think of when I think of folks in leadership positions in public service. So all the best to you as you try to sort that out, and appreciate your service, and thank you for being here today.

Mr. PEKOSKE. Thanks, Mr. Chairman. Appreciate it.

Chairman GOWDY. With that, we are adjourned.

[Whereupon, at 3:48 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD



Urgent Reforms Needed at TSA

Prepared for Ranking Member Elijah E. Cummings

Democratic Staff Report
Committee on Oversight and Government Reform
U.S. House of Representatives

September 2018

democrats-oversight.house.gov

EXECUTIVE SUMMARY

On Wednesday, September 26, 2018, the Committee on Oversight and Government Reform will hold a hearing with the Administrator of the Transportation Security Administration (TSA), Vice Admiral David Pekoske. The purpose of the hearing is to review the results of the Committee's three-year investigation into security deficiencies and personnel management practices at TSA.

This report was prepared by the Democratic staff of the Committee at the request of Ranking Member Elijah E. Cummings to briefly summarize the key results of the investigation and offer concrete proposals for reforms that are critical to safeguarding the American people and protecting TSA whistleblowers from retaliation.

In June 2015, the Inspector General of the Department of Homeland Security (DHS) issued a classified report on TSA screening operations. In response, Ranking Member Cummings and then-Chairman Jason Chaffetz issued a request for documents regarding the Inspector General's findings and the results of TSA's own internal covert tests.[1]

In November 2015, Ranking Member Cummings and then-Chairman Chaffetz expanded their investigation to include a review of TSA personnel management, including reports that a senior official who engaged in serious misconduct—and was recommended for removal—was given a settlement that included only a two-week suspension and no reduction in pay.

Ranking Member Cummings worked closely with then-Chairman Chaffetz and, subsequently, Chairman Trey Gowdy, across the administrations of both President Obama and President Trump to send more than a dozen letters requesting documents and information from TSA, conduct multiple hearings, interview whistleblowers and agency personnel, and review thousands of pages of documents.

In March 2017, Ranking Member Cummings supported then-Chairman Chaffetz' subpoena to TSA after the agency refused to provide documents to the Office of Special Counsel (OSC), and Ranking Member Cummings subsequently wrote to Chairman Gowdy in November 2017 to "request that the Committee take steps to enforce its subpoena."[2]

Ranking Member Cummings also requested that the Committee "issue subpoenas to compel depositions with three TSA officials—Deputy Administrator Huban Gowadia, Chief Counsel Francine Kerner, and former Acting Assistant Administrator Steven Colon—who have

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[1] Letter from Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Acting Deputy Administrator Mark Hatfield, Transportation Security Administration (June 4, 2015) (online at https://oversight.house.gov/wp-content/uploads/2015/06/2015-06-04-JC-EEC-to-Hatfield-TSA-Covert-Testing-due-6-18-resp-6-12-briefing.pdf).

[2] Letter from Ranking Member Elijah E. Cummings to Chairman Trey Gowdy, House Committee on Oversight and Government Reform (Nov. 14, 2017) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2017-11-14.EEC%20to%20Gowdy%20re.TSA_.PDF).

all declined to participate voluntarily in transcribed interviews since May." Following this request, the Committee conducted transcribed interviews with Ms. Kerner on December 5, 2017, Mr. Colon on December 7, 2017, and Dr. Gowadia on December 20, 2017.

Most recently, Ranking Member Cummings supported a subpoena issued by the Committee to depose DHS Principal Deputy General Counsel, Joseph Maher, following his months-long refusal to appear voluntarily for a transcribed interview.

Despite the failure of TSA and DHS to fully cooperate with the Committee's investigation, this staff report summarizes serious security deficiencies identified during the investigation, as well as numerous examples of arbitrary personnel practices and whistleblower retaliation at TSA.

This report also identifies the need for urgent reforms in three areas—security operations, personnel management, and transparency—to help ensure the safety of the American people, and it sets forth three key recommendations from Ranking Member Cummings:

Recommendation #1—Security Operations:

Based on the classified and unclassified information obtained by the Committee as part of its three-year investigation, Ranking Member Cummings recommends that Congress demand sustained accountability from TSA officials to finally implement unfulfilled security recommendations made by the Inspector General, GAO, and others that have languished in some cases for years.

Although many of these unimplemented recommendations are classified, Congress should launch a one-year oversight effort—including regular meetings, briefings, and if necessary, hearings—to ensure that TSA finally implements these recommendations and resolves security vulnerabilities.

Recommendation #2—Personnel Management:

Ranking Member Cummings recommends that Congress consider legislative proposals to strengthen civil service protections at TSA to prevent retaliation against whistleblowers who report security deficiencies and to ensure that employees are not subject to arbitrary personnel actions, which ultimately degrade security.

Recommendation #3—Transparency:

Ranking Member Cummings recommends that Congress continue oversight and consider legislation to significantly enhance transparency regarding whistleblower claims, settlement agreements, and non-disclosure agreements.

I. REFORMS URGENTLY NEEDED FOR TSA SECURITY OPERATIONS

In November 2015, DHS Inspector General John Roth testified before the Committee regarding his assessment of TSA's security vulnerabilities. He stated:

> [W]hat we found in a series of tests, which took place across the country at different airports of different sizes, using a variety of concealment methods by individuals who are auditors with no specialized training or skill, is a universal, disappointing performance by the TSA screening checkpoint.[3]

When asked by Rep. Gerald Connolly, "Would it be fair to say, without compromising security, that some significant breaches occurred," Inspector General Roth answered, "Yes."[4]

Last fall, two years after Inspector General Roth's testimony, his office issued two new reports: one on TSA security operations, and another on the Federal Air Marshals Service (FAMS). Both reports are classified, but the Inspector General's office issued unclassified executive summaries of the reports.

Regarding TSA's screening operations, the Inspector General warned, "We identified vulnerabilities with TSA's screener performance, screening equipment, and associated procedures."[5] Regarding its report on air marshals, the Inspector General's unclassified summary did not discuss specific findings, but it did have the following unclassified title: *FAMS' Contribution to Aviation Transportation Security is Questionable.*[6]

On September 11, 2017, the Government Accountability Office (GAO) issued its own report on TSA security measures. With respect to the air marshal program's ability to deter attacks, the unclassified version of the report warned:

> TSA does not have information on its effectiveness in doing so, nor does it have data on the deterrent effect resulting from any of its other aviation security countermeasures.[7]

Ranking Member Cummings, then-Chairman Chaffetz, then-Subcommittee Chairman John Mica, and then-Subcommittee Ranking Member Tammy Duckworth requested that GAO

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[3] House Committee on Oversight and Government Reform, Testimony of John Roth, Department of Homeland Security Inspector General, *Hearing on TSA: Security Gaps*, 114th Cong. (Nov. 3, 2015).

[4] *Id.*

[5] Department of Homeland Security, Office of Inspector General, *Covert Testing of TSA's Screening Checkpoint Effectiveness (Redacted)* (Sept. 27, 2017) (online at www.oig.dhs.gov/reports/2017/covert-testing-tsas-screening-checkpoint-effectiveness/oig-17-112-sep17).

[6] Department of Homeland Security, Office of Inspector General, *FAMS' Contribution to Aviation Transportation Security is Questionable (Redacted)* (Oct. 24, 2017) (online at www.oig.dhs.gov/reports/2018/fams-contribution-aviation-transportation-security-questionable-unclassified-summary).

[7] Government Accountability Office, *Actions Needed to Systematically Evaluate Cost and Effectiveness Across Security Countermeasures* (Sept. 11, 2017) (online at www.gao.gov/products/GAO-17-794).

"assess TSA's covert testing program to determine whether it is being fully utilized and integrated into relevant decision-making process."[8] GAO's classified report is due later this year.

According to the Office of Inspector General, 20 recommendations arising out of eight Inspector General reports involving TSA remain open. In one example, eight recommendations remain open from the Inspector General's September 2017 classified report titled, *Covert Testing of TSA's Screening Checkpoint Effectiveness*.

In addition, according to GAO's "Recommendations Database," numerous recommendations regarding TSA security operations remain open, including recommendations from the following GAO reports: *Federal Air Marshal Service: Additional Actions Needed to Ensure Air Marshals' Mission Readiness; Federal Air Marshal Service: Actions Needed to Better Incorporate Risk in Deployment Strategy; and Aviation Security: Actions Needed to Systematically Evaluate Cost and Effectiveness Across Security Countermeasures.*[9]

Recommendation #1:

Based on the classified and unclassified information obtained by the Committee as part of its three-year investigation, Ranking Member Cummings recommends that Congress demand sustained accountability from TSA officials to finally implement unfulfilled security recommendations made by the Inspector General, GAO, and others that have languished for years.

Although many of these unimplemented recommendations are classified, Congress should launch a one-year oversight effort—including regular meetings, briefings, and if necessary, hearings—to ensure that TSA finally implements these recommendations and resolves security vulnerabilities.

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[8] Letter from Chairman Jason Chaffetz, Ranking Member Elijah E. Cummings, et al., House Committee on Oversight and Government Reform, to Comptroller General Gene L. Dodaro, Government Accountability Office (June 1, 2016) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2016-06-01%20JEC%20EEC%20JLM%20TD%20to%20Dodaro-GAO%20-%20Red%20Team%20Evaluation%20Request.pdf).

[9] Government Accountability Office, *Recommendations Database* (Apr. 18, 2018) (online at www.gao.gov/recommendations/?q=%22Transportation+Security+Administration%22&field=agency_part_ss&list=1&rec_type=all_open#results).

II. REFORMS URGENTLY NEEDED FOR TSA PERSONNEL MANAGEMENT

The Committee's investigation has revealed a pattern of mismanagement at TSA and DHS, including arbitrary and retaliatory personnel practices. The lack of uniform civil service protections has led to numerous deviations from agency and department policy and from government-wide standards, which in turn has chilled whistleblowers, harmed morale, and negatively affected agency operations.

During a transcribed interview with Committee staff on February 23, 2017, former TSA Deputy Administrator Mark Hatfield explained the effect of the agency's structure on TSA in this way:

> The structure that gave it the flexibility and the facility and the power to make the extraordinary moves it did when it was created should have evolved, and, unfortunately, some of them have just led to toxicity rather than a healthy agency.[10]

Former Deputy Administrator Hatfield also testified that TSA's practice of involuntarily reassigning personnel to new duty stations (referred to as "directed reassignments") was used by at least one senior manager to "manipulate positions in the field and to both help people that were in favor and to punish people that were out of favor."[11]

In March 2017, Inspector General Roth testified at a Committee hearing regarding the potential security impacts of TSA's arbitrary personnel practices in response to questions from Rep. Brenda Lawrence:

> Rep. Lawrence: Inspector Roth, do arbitrary personnel practices deter whistleblowers from speaking out about security deficiencies?
>
> Inspector General Roth: I believe that it's got a chilling effect. Any time there is the threat of some sort of improper personnel practice as a result of making a protective disclosure, for example, of a safety situation or other kind of misconduct on the part of the agency, that there is always that fear that there is a chilling effect that something will happen to that person.
>
> Rep. Lawrence: So if TSA employees are reluctant to raise these deficiencies they observe, couldn't this put aviation security at risk?
>
> Inspector General Roth: Well, that's absolutely the case.[12]

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[10] House Committee on Oversight and Government Reform, Interview of Mark Hatfield (Feb. 23, 2017).

[11] *Id.*

[12] House Committee on Oversight and Government Reform, Testimony of Department of Homeland Security Inspector General John Roth, *Hearing on Transparency at TSA* (Mar. 2, 2017).

At the same hearing, former Special Counsel Carolyn Lerner explained how the civil service protections afforded under Title V of the U.S. Code, which currently do not fully apply to TSA employees, could benefit the agency:

> I think the full protections of Title V applying to TSA would be very helpful so that there's a—more of a feeling of fairness in employment actions so that hiring decisions and promotion decisions are perceived as fair.[13]

In May of this year, the Office of Special Counsel (OSC) announced that it had obtained a settlement with TSA on behalf of three agency employees who were given directed reassignments that required them to move from Hawaii to the U.S. mainland "after making disclosures related to airport operations and safety." The settlement included "compensatory damages of approximately $1 million" and required TSA to reassign the two individuals still employed by the agency back to their previous duty stations.[14]

Recommendation #2:

Ranking Member Cummings recommends that Congress consider legislative proposals to strengthen civil service protections at TSA to prevent retaliation against whistleblowers who report security deficiencies and to ensure that employees are not subject to arbitrary personnel actions, which ultimately degrades security measures.

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[13] House Committee on Oversight and Government Reform, Testimony of Special Counsel Carolyn Lerner, *Hearing on Transparency at TSA* (Mar. 2, 2017).

[14] Office of Special Counsel, *OSC Obtains Settlements for TSA Whistleblowers in Three Involuntary Reassignment Cases* (May 23, 2018) (online at https://osc.gov/News/pr-18-30%202.pdf).

III. REFORMS URGENTLY NEEDED TO IMPROVE TRANSPARENCY AT TSA

During the Committee's multi-year investigation, TSA has repeatedly attempted to limit or prevent oversight from Congress, OSC, and the public.

During the Committee's March 2, 2017, hearing entitled "Transparency at TSA," Inspector General Roth testified:

> We have found that TSA has a history of taking an aggressive approach to restricting information from being made public, especially with respect to a category of information known as sensitive security information, commonly known by its acronym as SSI. This problem is well documented.[15]

He added: "In addition to these inconsistent SSI designations, we have encountered instances in which TSA redacted information so widely known that redaction bordered on absurd."[16]

During the same hearing, former Special Counsel Lerner explained how TSA was withholding information from OSC that limited the office's ability to enforce whistleblower protections. Ms. Lerner testified:

> [Y]ou need robust enforcement of the law, and the law has no meaning unless it's enforced, and it really hinders our ability to make findings when we're not getting full information from the agency.[17]

Documents pertaining to the three whistleblowers with whom TSA reached the $1 million settlement discussed above were among those withheld by TSA until Congress enacted a statutory change to ensure OSC's access to all agency documents relevant to its investigations of whistleblower retaliation allegations.

On March 6, 2017, the Committee requested documents related to TSA's decision to withhold documents from OSC.[18] On March 17, 2017, after TSA refused to produce the documents, the Committee issued a subpoena requiring production of the documents by March 31, 2017.[19] To date—more than eighteen months later—TSA has still not produced the full set

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[15] House Committee on Oversight and Government Reform, Testimony of Department of Homeland Security Inspector General John Roth, *Hearing on Transparency at TSA* (March 2, 2017).

[16] *Id.*

[17] House Committee on Oversight and Government Reform, Testimony of Special Counsel Carolyn Lerner, *Hearing on Transparency at TSA* (Mar. 2, 2017).

[18] Letter from Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Acting Administrator Huban Gowadia, Transportation Security Administration (Mar. 6, 2017) (online at https://oversight.house.gov/wp-content/uploads/2017/03/2017-03-6-JEC-to-Gowadia-TSA-Hearing-Follow-up-due-3-10.pdf).

[19] Subpoena to Huban Gowadia, House Committee on Oversight and Government Reform (Mar. 17, 2017).

of subpoenaed documents, which include documents related to the three whistleblower cases TSA just settled with OSC.

According to both TSA and DHS, the decisions to not produce this information to OSC and to Congress was made by DHS, raising significant concerns regarding a more widespread problem with transparency at DHS.

During a transcribed interview on December 5, 2018, the Chief Counsel of TSA, Francine Kerner, informed Committee staff that then-DHS Acting General Counsel Joseph Maher instructed TSA to withhold documents from OSC. Ms. Kerner stated that "the acting general counsel has made the determination" to withhold documents from OSC on the basis of attorney-client privilege. Ms. Kerner was asked, "Did you participate in that decision at all?" She responded: "No. It's the decision of the Department."[20]

On May 26, 2017, Acting General Counsel Maher confirmed Ms. Kerner's statements in a letter to the Committee "regarding your May 2, 2017 letter, and your March 17, 2017, subpoena to the Acting Administrator of the Transportation Security Administration (TSA)." He wrote: "The Department—not Dr. Gowadia [then-Acting TSA Administrator]—is making determinations on the handling of the documents." He asserted that "the Department's practice is not to release internal, deliberative communications between officials seeking and providing legal advice absent an extraordinary basis for releasing such documents."[21]

In addition, on February 7, 2017, Ranking Member Connolly and Chairman Mark Meadows of the Subcommittee on Government Operations requested documents from DHS regarding its use of non-disclosure agreements.[22] To date, no documents have been produced.

This month, the Inspector General issued a report finding that DHS' non-disclosure forms and settlement agreements did not always meet the requirements of the Whistleblower Protection Enhancement Act because they did not include a required statement to notify employees that the non-disclosure agreement does not supersede certain rights, including the right to communicate with Congress.[23] TSA issued three of the nine nondisclosure agreement forms that the Inspector General found to be missing the required statements.[24]

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[20] House Committee on Oversight and Government Reform, Interview of Francine Kerner (Dec. 5, 2017).

[21] Letter from Acting General Counsel Joseph B. Maher, Department of Homeland Security, to Chairman Jason Chaffetz, House Committee on Oversight and Government Reform (May 26, 2017).

[22] Letter from Chairman Mark Meadows and Ranking Member Gerald Connolly, Subcommittee on Government Operations, House Committee on Oversight and Government Reform, to Secretary John Kelly, Department of Homeland Security (Feb. 7, 2017) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2017-02-07%20Connolly%20Meadows%20to%20Kelly-DHS%20on%20NDAs.pdf).

[23] Department of Homeland Security, Office of Inspector General, *DHS Non-Disclosure Forms and Settlement Agreements Do Not Always Include the Required Statement from the Whistleblower Protection Enhancement Act of 2012* (Aug. 10, 2018) (online at www.oig.dhs.gov/sites/default/files/assets/2018-08/OIG-18-73-Aug18.pdf).

[24] *Id.*

Recommendation #3:

Ranking Member Cummings recommends that Congress continue oversight and consider legislation to significantly enhance transparency regarding whistleblower claims, settlement agreements, and non-disclosure agreements.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Dr. Everett B. Kelley
National Secretary-Treasurer

J. David Cox, Sr.
National President

Jeremy A. Lannan
NVP for Women & Fair Practices

September 26, 2018

The Honorable Trey Gowdy
Chairman
House Oversight and Government
Reform Committee
Washington, DC 20515

The Honorable Elijah E. Cummings
Ranking Member
House Oversight and Government
Reform Committee
Washington, DC 20515

Dear Chairman Gowdy and Ranking Member Cummings:

On behalf of the over 44,000 Transportation Security Officers (TSOs) represented by the American Federation of Government Employees, AFL-CIO (AFGE), in light of today's hearing of the Committee on Oversight and Government Reform (the Committee) entitled "Examining Misconduct and Retaliation at TSA," I am writing to provide additional information regarding workforce issues at the Transportation Security Administration (TSA). TSOs are not just the face of TSA—they are the hands and minds that implement security measures that keep the flying public safe. Management misconduct should not be tolerated at any federal agency, especially those charged with aviation security.

We believe it is a mistake for the Committee to emphasize the rights of Transportation Security Administration (TSA) management with full access to appeal adverse personnel decisions to the Merit Systems Protection Board (MSPB) while barely addressing the workplace issues of 44,000 TSOs. The confluence of unfair treatment, low pay, and staffing shortages makes it harder for them to carry out their duties to protect our nation from a repeat of another attack like the terrible events of September 11, 2001. TSOs do not decide the procedures they execute, allocate funding, or propose unrealistic staffing levels. TSA has created a situation where the workers with the least authority bear the brunt of any and every problem created by management decisions.

This statement focuses on serious personnel issues at TSA impacting the majority of TSA employees, the TSO workforce

TSA's Separate and Unequal Personnel Systems

Since Congress created TSA in November 2001, the agency has operated two separate personnel systems: TSA provides supervisors, administrative staff, and all other TSA employees appeal rights to the Merit Systems Protection Board (MSPB). In comparison, the "review" process TSA created for the TSO workforce does not include the right to an in-person hearing on the action or review by an objective body outside of TSA, all of which are available through the MSPB. In a January 2018 report, the Department of Homeland Security Inspector General

found that TSA senior leadership operated "a shadow disciplinary process for senior management," deviating from and interfering with TSA's standard disciplinary practice to reduce a penalty against a favored senior management employee. TSOs face discipline that is swift and severe without the ability to testify and challenge witnesses. The TSO workforce is not the beneficiary of TSA management assistance. To the contrary, AFGE currently is litigating 19 cases of retaliation against TSOs who filed discrimination complaints against the agency. Over 44,000 TSA employees are denied the protections of the Fair Labor Standards Act and the Back Pay Act simply because their job classification is that of Transportation Security Officer and TSA has blocked the application of the law to them. Denial of common-sense statutory workplace rights and protections was unnecessary to stand up TSA in 2001, and it is wrong to continue this unfair system almost 17 years later.

Misconduct, retaliation, and obstruction at TSA runs deep within the organization and is a direct result of the lack of accountability and transparency within TSA's personnel systems. The nation's security is enhanced when the workers who contribute to our protection have a personnel system that is fair, transparent, and consistent. For this reason, AFGE strongly supports H.R. 2309, the Rights for Transportation Security Officers Act, introduced by Representatives Bennie Thompson (D-MS) and Nita Lowey (D-NY). The Rights for Transportation Security Officers Act would apply title 5 of the U.S. Code that provides workplace rights and protections to the entire TSA workforce in the same manner as other security employees at the Department of Homeland Security (DHS). We strongly urge the Committee to hold a hearing on H.R. 2309 and favorably report out the bill. This is the most effective action to advance TSA's mission of aviation and transportation security.

High Rates of Attrition of the TSO Workforce

The TSO attrition rate far surpasses attrition rates of the entire Federal Government workforce. A September 19, 2018 Bloomberg BNA article entitled *Airport Screeners Often Take Off Shortly After Arrival* reported that a Freedom of Information Act (FOIA) request for information regarding screener employment at 10 large airports found turnover rates ranging "from 30 percent to more than 80 percent" between 2012 and 2016. TSA's response to AFGE's own FOIA request showed between 2007 and July 2018 roughly the entire agency was replaced due to attrition. During this time 45,576 TSOs resigned from the agency. These numbers are a strong indication that TSA does not have a misconduct problem. TSA has a quitting problem. These high attrition rates do not occur in other DHS components where the rank and file workforce are afforded workplace rights and protections and a transparent pay system under title 5 of the U.S. Code.

TSA Should Adequately Staff Checkpoint and Baggage Screening

In response to long checkpoint lines during the spring and summer of 2016, former DHS Secretary Jeh Johnson redirected $34 million in reprogrammed funds to TSA. Most of this funding was used by TSA for overtime that was forced on its existing TSA Officer workforce, and for TSOs, a repeated pattern. TSA's failure to adequately staff checkpoint and baggage

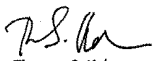
screening areas leads to overworked officers and less security for the flying public. TSOs at some airports are subject to ongoing mandatory overtime due to short staffing, while other full time TSOs are working split shifts between two airports because of shortages. AFGE is especially concerned that female TSOs continue to face denial of shift or line bids or delayed breaks due to chronic underrepresentation of women among the TSO ranks. All 2 million passengers departing on flights from U.S. airports daily must be screened by a person, not by canines or solely by use of technology. Staffing issues can be resolved by full funding to cover the cost of hiring the full time TSOs necessary to screen passengers and addressing TSA's retention issues by providing workplace rights and protections and fair pay.

TSO Pay is Too Low to Build the Workforce

The TSO workforce is underpaid. TSA invented its own pay band system lacking the stability and transparency of the General Schedule pay system of compensation used by most Federal agencies. In 2017, the average TSO pay increase was $244, or about $9.38 a paycheck. TSOs are largely clustered in the E pay band by TSA, the third lowest at the agency, and TSA recently eliminated the ability of TSA Officers to achieve the higher G pay band, a difference of thousands of dollars. TSA has promoted a Career Progression program, but there is no assurance of being promoted to a vacant, available position with higher wages for TSOs who complete training and certification requirements for various career paths. TSOs face constant training and changing procedures and are required to pass more certifications than armed federal law enforcement officers. The screening workforce deserves a pay system that is fair and adequately reflects their training, complexities of tasks, and seniority.

With the assistance of Congressional oversight, AFGE has successfully worked with countless agencies to accomplish the goal of representing our members and helping the Federal government function at the highest level for the U.S. public. There is no good reason why our union cannot have the same relationship with TSA. Thank you for the opportunity to share AFGE's views on this important issue.

Sincerely,



Thomas S. Kahn
Director, Legislative Affairs

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