

H.R. XXXX

To enhance aviation security and the stability of the Federal Air Marshal workforce by making the Federal Air Marshal Program a specialty unit within Homeland Security Investigations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER XX, 2023

[Member] of [State] introduced the following bill; which was referred to the Committee(s) on [placeholder]

A BILL

To enhance aviation security and the stability of the Federal Air Marshal workforce by making the Federal Air Marshal Program a specialty unit within Homeland Security Investigations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "Federal Air Marshal Service Reform and Reorganization Act".

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that the Federal Air Marshal Service is critical to aviation security and needs to be strengthened-

- 1) By making the Federal Air Marshal Program a specialty unit/section within Homeland Security Investigations (HSI) America's aviation and transportation security will be more effective and efficient. It will also drastically improve the workforce morale.
- 2) By having the air marshal program housed within a federal law enforcement agency, where most other countries house their air marshal program, this will allow for the ability to augment the air marshal unit with the over 6,000 highly trained HSI Special Agents in times of heightened risk. This will serve as a cost effective means to immediately increase or decrease the size of the force without needlessly adding hundreds of additional positions to the government payroll.
- 3) By having agents assigned to the air marshal unit within HSI for 3-5 years, this will allow agents the ability to transfer into and out of the unit when their service in the Federal Air Marshal Service unit times out. Thus, giving current Federal Air Marshals and HSI Special Agents more opportunity. (*"FAMs cannot sustain a career in an*

airborne position based on such factors such as the frequency of flying and their irregular schedules". GAO 06-203). (Air marshals' most common medical restrictions were due to mental health and cardiac conditions. Shift work schedules, like air marshals' flight schedules, can cause significant acute and chronic sleep deprivation which in turn can adversely affect their personal health, such as increasing the risk of heart disease.) (GAO-20-125).

- 4) By strengthening the workforce by reimplementing the high standards previous generations of air marshals had prior to September 11, 2001. *FAMS significantly lessened their shooting qualifications to increase hiring. (GAO 04-242).*
- 5) By clarifying that "risk based" deployments as defined in 49 USC 44903 (917, Sec 9-10-11), shall not include the Quiet Skies Program, instead deployments should focus on known or suspected risk. Additionally, covering flights based on risk shall include but not be limited to: long haul non-stop flights, passengers that are known or suspected criminals or terrorists, deployments in consultation with the FBI, the airlines, and the intelligence community.
- 6) By accepting the recommendations of the Department of Homeland Security Inspector General report *OIG-18-04 (FAMS Contribution to Aviation Transportation Security is Questionable)*, reducing the size of the agency, and increase the size of air marshal teams on aircraft.
- 7) HSI has a more robust international presence than TSA. which will allow for seamless investigations and liaison with countries that FAMs deploy to.
- 8) Current FAMs assigned to HSI's BEST task force and their early successes demonstrate how seamless FAMs can assimilate into a new role as criminal investigator at HSI.
- 9) HSI recognizes the added-value FAMs bring to the BEST group and want to expand FAMs participation into other HSI investigative groups and specialized teams.
- 10) HSI is the principal investigative arm of the U.S. Department of Homeland Security, responsible for investigating transnational crime and threats, specifically those criminal organizations that exploit the global infrastructure through which international trade, travel, and finance move. HSI's mission is to investigate, disrupt and dismantle terrorist, transnational and other criminal organizations that threaten or seek to exploit the customs and immigration laws of the United States. With FAMs criminal investigators in their ranks, HSI can stand to dominate domestic and foreign travel in terms of identifying and targeting criminals and criminal organizations.
- 11) HSI special agents gather evidence to identify and build criminal cases against Transnational Criminal Organizations (TCOs), terrorist networks and facilitators, and other criminal elements that threaten the United States. The addition of FAMs would be a critical component in HSI, in the U.S. and abroad. Having a "transportation group" at HSI field offices instead of an "airport group" would allow HSI to effectively target all of the various transportation domains and Transnational Criminal Organizations (TCOs).
- 12) By bringing the Federal Flight Deck Officer (FFDO) Program under the authority and direction of a newly created Federal Air Marshal Service specialty unit under Homeland Security Investigations. This transfer will not only strengthen the partnership between FAMs and Federal Flight Deck Officers but being housed within a law enforcement agency will greatly enhance the training and posture of the FFDO Program and its officers.

SEC. 3. TRANSFER OF FEDERAL AIR MARSHAL SERVICE TO IMMIGRATION AND CUSTOMS ENFORCEMENT

- (a) Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall transfer all programs, operations, equipment, personnel, facilities and necessary items of the Federal Air Marshal Service under the authority of the Administrator of the Transportation Security Administration to the authority of the Director of Immigration and Customs Enforcement.
- (b) Upon completion of the transfer in subsection (a) the Director of Immigration and Customs Enforcement shall establish the Federal Air Marshal Service as a specialty unit within Homeland Security Investigations.

SEC. 4 TRANSFER OF FEDERAL FLIGHT DECK OFFICER PROGRAM TO FEDERAL AIR MARSHAL SERVICE

- (a) Not later than 60 days after the establishment of the Federal Air Marshal Service as a specialty unit within Homeland Security Investigations, the Secretary of Homeland Security shall transfer all operations, equipment, personnel and necessary items of the Federal Flight Deck Officer Program (49 USC 44921) to the Federal Air Marshal Service specialty unit established under Homeland Security Investigations.

SEC. 5. CONVERSION OF FEDERAL AIR MARSHALS TO HOMELAND SECURITY INVESTIGATIONS.

- a) Upon transfer to Homeland Security Investigations, all Federal Air Marshals will:
 - (1) Convert to the General Schedule pay scale to the appropriate step based on time of service in accordance with 5 U.S.C. 5376 and 5 U.S.C. 5332.
 - A) Provided that no Federal Air Marshal will suffer a reduction of pay as a result of such a conversion;
 - (i) Including if a conflict arises between the employee's current salary under the Transportation Security Administration and Homeland Security Investigations due to any pay cap issues, any Office of Personnel Management (OPM) and agency pay caps shall be lifted to ensure no employees receive a reduction in pay.
 - (2) Not later than 5 years after the date of enactment of this Act, be converted to a special agent employment position within criminal investigation series 1811.
- b) Transition Rules
 - (1) Nonreduction In Pay And Compensation.—Under pay conversion rules as the Secretary may prescribe to carry out this Act, a covered employee converted from a TSA personnel management system to the provisions of title 5, United States Code, pursuant to section 31(1)(F)—

(A) shall not be subject to any reduction in either the rate of adjusted basic pay payable or law enforcement availability pay payable to such covered employee; and

(B) shall be credited for years of service in a specific pay band as if the employee had served in an equivalent General Schedule position at the same grade, for purposes of determining the appropriate step within a grade at which to establish the employee's converted rate of pay.

(2) Retirement Pay.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit to the appropriate congressional committees a proposal, including proposed legislative changes if needed, for determining a covered employee's average pay for purposes of calculating the employee's retirement annuity, consistent with title 5, United States Code, for any covered employee who retires within three years of the conversion date, in a manner that appropriately accounts for time in service and annual rate of basic pay following the conversion date.

(3) Limitation On Premium Pay.—Notwithstanding section 5547 of title 5, United States Code, or any other provision of law, a Federal Air Marshal or criminal investigator hired prior to the date of enactment of this Act may be eligible for premium pay up to the maximum level allowed by the Secretary prior to the date of enactment of this Act. The Office of Personnel Management shall recognize such premium pay as fully creditable for the purposes of calculating pay and retirement benefits.

(4) Preservation Of Law Enforcement Availability Pay And Overtime Pay Rates For Federal Air Marshals.—

(A) LEAP.—Section 5545a of title 5, United States Code, is amended by adding at the end the following:

“(1) The provisions of subsections (a)–(h) providing for availability pay shall apply to any Federal Air Marshal who is an employee of the Transportation Security Administration and converted to Homeland Security Investigations.”

(2) OVERTIME.—Section 5542 of such title is amended by adding at the end the following:

“(i) Notwithstanding any other provision of law, a Federal Air Marshal who is an employee of the Transportation Security Administration after conversion to Homeland Security Investigations shall receive overtime pay under this section, at such a rate and in such a manner, so that such Federal Air Marshal does not receive less overtime pay than such Federal Air Marshal would receive were that Federal Air Marshal subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938.”

(5) Any annual leave, sick leave, or other paid leave accrued, accumulated, or otherwise available to a covered employee immediately before the conversion date shall remain available to the employee until used, subject to any limitation on accumulated leave under chapter 63 of title 5, United States Code.

SEC. 6 ENHANCING AVIATION SECURITY BY CLARIFYING RISK-BASED MISSIONS

- (a) Section 44917 of Title 49 U.S.C. is amended by –
 - (1) In subsection (a) after subparagraph ‘(12)’ adding ‘(13) shall make the decisions in subparagraphs (9) through (12) based on known or suspected risk and not based on guidance, policies or procedures under the Quite Skies Program or any successor program.’
 - (2) In subsection (a) after the new subparagraph ‘(13)’ adding ‘(14) shall make the risk-based decisions in subparagraphs (9) through (12) by prioritizing:
 - (A) Long haul non-stop flights;
 - (B) Passengers that are known or suspected criminals or terrorists; and
 - (C) Missions based on information sharing and consultation with the Federal Bureau of Investigation, agencies of the intelligence community and commercial air carriers.’

SEC. 7 TECHNICAL AND CONFORMING AMENDMENTS

- (a) Section 1402(c)(2) of the Homeland Security Act of 2002 (6 U.S.C. 513) is amended by striking ‘Under Secretary of Transportation for Security’ and replacing it with ‘Director of Immigration and Customs Enforcement’.
- (b) Chapter 449—Security of Title 49 U.S.C is amended by striking ‘Administrator of the Transportation Security Administration’ and ‘Administrator’ where they appear and inserting ‘Director of Immigration and Customs Enforcement’.
- (c) 49 USC 44921 is amended by striking ‘Administrator’ where it appears and replacing it with ‘Director’.
- (d) Subsection (l)(1) of 49 USC 44921 is amended by striking ‘Administrator of the Transportation Security Administration’ and inserting ‘Director of Immigration and Customs Enforcement’.
- (e) Subsection (l)(3) of 49 USC 44921 is amended by striking ‘Transportation Security Administration’ and inserting ‘Homeland Security Investigations’.

1. The first part of the report deals with the general situation of the country and the progress of the work during the year.

2. The second part of the report deals with the results of the work during the year and the progress of the work during the year.

3. The third part of the report deals with the results of the work during the year and the progress of the work during the year.

4. The fourth part of the report deals with the results of the work during the year and the progress of the work during the year.

5. The fifth part of the report deals with the results of the work during the year and the progress of the work during the year.

6. The sixth part of the report deals with the results of the work during the year and the progress of the work during the year.

7. The seventh part of the report deals with the results of the work during the year and the progress of the work during the year.

8. The eighth part of the report deals with the results of the work during the year and the progress of the work during the year.

9. The ninth part of the report deals with the results of the work during the year and the progress of the work during the year.

10. The tenth part of the report deals with the results of the work during the year and the progress of the work during the year.

11. The eleventh part of the report deals with the results of the work during the year and the progress of the work during the year.

12. The twelfth part of the report deals with the results of the work during the year and the progress of the work during the year.

13. The thirteenth part of the report deals with the results of the work during the year and the progress of the work during the year.

14. The fourteenth part of the report deals with the results of the work during the year and the progress of the work during the year.

15. The fifteenth part of the report deals with the results of the work during the year and the progress of the work during the year.