

SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
EXAMINING THE WEAPONIZATION OF THE QUIET SKIES PROGRAM
SEPTEMBER 30, 2025

TESTIMONY OF TRISTAN LEAVITT
PRESIDENT
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Chairman Paul, Ranking Member Peters, and Members of the Committee, thank you for inviting me to testify today. I was last before this Committee in 2021 when it considered my nomination to the Merit Systems Protection Board, and it's a privilege to be with you again.

Empower Oversight provides legal representation to brave whistleblowers across the federal government. We are honored to represent several Air Marshals, including Senior Air Marshal Mark Crowder.

After the terrorist attacks of September 11, 2001, the federal government developed the Terrorist Screening Database, also known as the Terrorist Watchlist.¹ The Federal Bureau of Investigation (FBI), which maintains the Terrorist Watchlist, has acknowledged in the past that the Terrorist Watchlist contains hundreds of thousands of individuals;² however, they claim “[m]ost people on the terrorism watchlist are not Americans, and they have no known connection to the U.S.”³

Of the individuals in the TSDB, a portion are on a “Selectee List” or “Expanded Selectee List” to receiving additional airport screening from TSA.⁴ (An even smaller number of individuals are on TSA’s “No Fly” list and prohibited from flying in or out of the United States.⁵) For individuals on the Selectee List or Expanded Selectee list, TSA assigns Special Mission Coverage (SMC) when they fly. SMC entails additional airport screening, such as canine teams, pat-downs, and luggage search, as well as additional screening at the gate sometimes.⁶ TSA also assigns multiple Air Marshals to surveil SMC subjects inside the airport and monitor them on the flight.

As part of its Secure Flight vetting program, in April 2012 TSA implemented the Quiet Skies program, which assigns SMC to passengers who are not on the Selectee List or Expanded Selectee List—or even on the Terrorist Watchlist at all. Rather, the Quiet Skies rules (which are classified) are criteria under which a passenger is flagged for the additional screening. While an

¹ See *Terrorist Screening Center*, Federal Bureau of Investigation, <https://www.fbi.gov/investigate/terrorism/tsc>.

² See Federal Bureau of Investigation, “Terrorist Screening Center,” <https://archives.fbi.gov/archives/about-us/ten-years-after-the-fbi-since-9-11/just-the-facts-1/terrorist-screening-center-1>.

³ *Terrorist Screening Center*, Federal Bureau of Investigation, <https://www.fbi.gov/investigate/terrorism/tsc>.

⁴ *Step 1: Should I Use DHS TRIP?*, Department of Homeland Security, <https://www.dhs.gov/step-1-should-i-use-dhs-trip>; Government Accountability Office, *AVIATION SECURITY: TSA Coordinates with Stakeholders on Changes to Screening Rules but Could Clarify Its Review Processes and Better Measure Effectiveness*, GAO-20-72, Nov. 2019, at 5, <https://www.gao.gov/assets/gao-20-72.pdf>.

⁵ *DHS Traveler Redress Inquiry Program*, Transportation Security Administration, <https://www.tsa.gov/travel/security-screening/travel-redress-program>.

⁶ See *Security Screening*, Transportation Security Administration, <https://www.tsa.gov/travel/security-screening>.

individual is on the Quiet Skies list, their boarding pass is supposed to display the “SSSS” (so-called “quad-S”), notifying TSA of the additional screening requirement.⁷

TSA described the Quiet Skies program as a “risk-based, intelligence-driven” way to mitigate the threat posed by “unknown or partially known terrorists.”⁸ Yet when TSA expanded the Quiet Skies program in 2018 to include not just TSA screening but also the assignment of Air Marshals for surveillance, Air Marshals blew the whistle to the *Boston Globe*.⁹ Congress and the public were outraged about the extent of the surveillance of ordinary American citizens, who were being treated like terrorists. One Air Marshal, for instance, reported surveilling a Southwest Airlines flight attendant during a Quiet Skies mission, remarking to colleagues, “Cannot make this up.” Air Marshals are required to answer a series of questions about the subject of the Quiet Skies surveillance.¹⁰

In October 2018, as part of the TSA Modernization Act, Congress required that TSA conduct regular assessment of the Quiet Skies rules. In a study mandated by the law, the Government Accountability Office found TSA had not found a way to fully assess the rules’ effectiveness “because it was difficult to measure.”¹¹ But a November 2020 DHS OIG report found that over the three and a half years from October 2015 to February 2019, TSA was unable to confirm that a single passenger who received SMC under Quiet Skies was an aviation security threat.¹²

That same DHS OIG report concluded TSA “did not properly plan, implement, and manage the Quiet Skies program[.]”¹³ Specifically, DHS OIG found TSA “lacked sufficient, centralized oversight to ensure the Quiet Skies program operated as intended” and therefore “did not . . . always adhere to its own Quiet Skies guidance.”¹⁴ For example, the DHS OIG found “TSA may not have always removed passengers from the Quiet Skies list” like its implementation plan required.¹⁵ According to the DHS OIG, “The removal guidelines are intended to preserve travelers’ privacy, civil rights, and civil liberties[.]”¹⁶ The DHS OIG also criticized TSA for using SMC guidance for the Quiet Skies program, which “applies to high-risk travelers on active Federal Government watchlists and is not designed for Quiet Skies passengers who are unknown risks.”¹⁷

⁷ Department of Homeland Security, Office of Inspector General, *TSA Needs to Improve Management of the Quiet Skies Program (REDACTED)*, OIG-21-11, Nov. 25, 2020, at 8,

<https://www.oig.dhs.gov/sites/default/files/assets/2020-11/OIG-21-11-Nov20-Redacted.pdf>.

⁸ Transportation Security Administration, *Facts About the “Quiet Skies,”* Aug. 22, 2018, <https://web.archive.org/web/20201020122942/https://www.tsa.gov/blog/2018/08/22/facts-about-quiet-skies>.

⁹ Jana Winter, *In ‘Quiet Skies’ Program, TSA is Tracking Regular Travelers Like Terrorists in Secret Surveillance*, *Boston Globe* (July 28, 2018), <https://apps.bostonglobe.com/news/nation/graphics/2018/07/tsa-quiet-skies>.

¹⁰ *Id.*

¹¹ Government Accountability Office, *AVIATION SECURITY: TSA Coordinates with Stakeholders on Changes to Screening Rules but Could Clarify Its Review Processes and Better Measure Effectiveness*, GAO-20-72, Nov. 2019, at 15, <https://www.gao.gov/assets/gao-20-72.pdf>.

¹² Department of Homeland Security, Office of Inspector General, *TSA Needs to Improve Management of the Quiet Skies Program (REDACTED)*, OIG-21-11, Nov. 25, 2020, at 30, <https://www.oig.dhs.gov/sites/default/files/assets/2020-11/OIG-21-11-Nov20-Redacted.pdf>.

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 7.

¹⁶ *Id.*

¹⁷ *Id.* at 10.

After January 6, 2021, the FBI contacted TSA to obtain flight manifests for all individuals who traveled into Washington, D.C. surrounding that date. Our client Mr. Crowder's wife attended President Trump's January 6, 2021 speech at the Ellipse, but did not go near the U.S. Capitol building or even pass the Capitol Reflecting Pool. In the summer of 2021 Mr. Crowder learned his wife Christine had been added to the Terrorist Watchlist and assigned SMC; her TSA file falsely stated she "unlawfully entered the United States Capitol Building on 1/06/2021." Mrs. Crowder filed a complaint with the Department of Homeland Security (DHS) Office of Inspector General (OIG), but received no response.

Mr. Crowder approached Empower in 2022 through Air Marshal National Council Executive Director Sonya LaBosco. With Empower's support, Mr. Crowder made disclosures to the U.S. Office of Special Counsel of the false federal record, the complete waste of funds in designating her a "domestic terrorist" to be monitored by law enforcement, and the abuse of authority in keeping her on the list. OSC's only response to the complaint was: "While you disagree with the decision to keep your wife on the list of domestic terrorists, we could not determine that such actions go beyond the discretion afforded to agency management."

OSC recommended contacting the DHS OIG if Mr. Crowder wanted to pursue the matter further, so he did. This time, the OIG wrote back in January 2023 that it was forwarding his allegations to its Office of Investigations for review. Fortunately, in the spring of 2023 the Crowders were able to get the FBI to remove Mrs. Crowder from the terror watchlist she never should have been on. But disappointingly, in the nearly three years since the DHS OIG received Mr. Crowder's filing, there has been no indication they performed any investigation, such as into why TSA's protocols didn't firewall Mr. Crowder from learning of his wife's monitoring if she was indeed some "domestic terrorist."

In the beginning of August 2024, Ms. LaBosco contacted Empower Oversight again when Air Marshals wanted to blow the whistle on the addition of Tulsi Gabbard to the Quiet Skies program. As we interviewed those whistleblowers, we learned Ms. Gabbard was added on July 23, 2024—just one day after she made statements on Fox News critical of Vice President Kamala Harris, who had just become the presumptive Democratic Party presidential nominee. Rather than using Ms. Gabbard's passport photo per protocol, the person who placed her on the list used her official congressional photo, removing any doubt that they knew her identity as a former Member of Congress. And the whistleblowers understood that despite being a Lieutenant Colonel in the Army Reserves, TSA protocol did not involve informing a Quiet Skies target's unit, strongly undermining the idea that they posed any threat.

These initial whistleblower disclosures were made to the outlet UncoverDC, which resulted in an article by Wendi Strauch Mahoney. Despite our experience with the OIG failing to investigate the Crowders' situation, we immediately wrote to them about Ms. Gabbard's monitoring.¹⁸ We also wrote a six-page letter making protected disclosures to Congress, including this

¹⁸ Empower Oversight, "Whistleblowers: Air Marshals Improperly Targeting Americans for Surveillance," Aug. 6, 2024, <https://empowr.us/whistleblowers-air-marshals-improperly-targeting-americans-for-surveillance>.

Committee.¹⁹ That letter resulted in several Members writing to DHS demanding explanations. We deeply appreciate that Chairman Paul didn't give up on asking those questions. His persistence was critical to ensuring Secretary Noem became aware of the program and ended it once and for all.

However, this victory could prove temporary if we fail to process certain lessons.

The first is that protecting civil liberties always requires oversight. Any program that invokes national security to shroud government action in secrecy has the potential for abuse. Independent oversight is crucial to shining a light to detect or prevent such abuse.

On January 28, 2025, *The New York Times* published a large amount of information leaked from the government about Ms. Gabbard being added to Quiet Skies.²⁰ The article claimed Ms. Gabbard wasn't targeted for political reasons, but rather because she traveled to the Vatican and attended a conference organized by a private equity investor she didn't know was on an FBI watch list. Yet the article said the meeting took place under the auspices of Pope Francis' second-in-command, and also that she was invited by and attended the conference with former OMB Director Mick Mulvaney. TSA's self-serving leak begs the question: If Ms. Gabbard wasn't targeted, why wasn't Mr. Mulvaney also added to Quiet Skies when he flew back to the U.S.? Was it because Mulvaney didn't speak out on Fox News about Kamala Harris's nomination? Or because he had not run in the last Democrat primary against the sitting president and vice president? Any report into what happened here has to address that central question.

And there must be a report. Secretary Noem announced that "the Quiet Skies program was used as a political rolodex of the Biden Administration,"²¹ but provided few other details besides confirming reports that one elected official had her husband removed with a simple phone call.²² The full story of what happened here and how must be documented and told to the American people.

Empower Oversight recently called on the DHS OIG to finish its work and make its report on Ms. Gabbard public.²³ Though inspector general reports with personal information are often only released internally to the agency, there is a clear public interest here given Ms. Gabbard's prominence, the allegations of political targeting, and the large amount of information the

¹⁹ Empower Oversight, *Air Marshal Whistleblowers Allege Gross Waste and Abuse of Authority in Protected Disclosures to Congress*, Aug. 14, 2024, <https://empowr.us/air-marshall-whistleblowers-allege-gross-waste-and-abuse-of-authority-in-protected-disclosures-to-congress>.

²⁰ Mark Walker, et al., *A Vatican Meeting Added to Scrutiny of Tulsi Gabbard's Foreign Travels*, New York Times (Jan. 28, 2025), <https://www.nytimes.com/2025/01/28/us/politics/tulsi-gabbard-trump-intel-pick-watch-list.html>.

²¹ Department of Homeland Security, *Secretary Noem Ends Politicized TSA Watchlist Program That Has Failed to Prevent a Single Terrorist Attack in its Existence; Calls for Congressional Investigation*, Jun. 5, 2025, <https://www.dhs.gov/news/2025/06/05/secretary-noem-ends-politicized-tsa-watchlist-program-has-failed-prevent-single>.

²² Jennifer Jacobs, *When a U.S. senator's husband landed on a travel watchlist, a phone call had him removed*, CBS News (Jun. 3, 2025), <https://www.cbsnews.com/news/senator-jeanne-shaheen-husband-travel-watchlist-phone-call-had-him-removed>.

²³ Empower Oversight, *Empower Oversight Urges DHS Inspector General to Complete Investigation into Politicized TSA Surveillance Programs*, Jun. 25, 2025, <https://empowr.us/empower-oversight-urges-dhs-inspector-general-to-complete-investigation-into-politicized-tsa-surveillance-programs>.

government already leaked to *The New York Times*. DHS OIG has released similar reports in the past when they involved public figures.²⁴ Accountability cannot be guaranteed if this is swept under the rug in a private report.

Any investigation should not be limited to Ms. Gabbard's case. There should also be individual accountability for anyone found to have violated TSA protocols to add individuals for Special Mission Coverage—or given special treatment for political reasons as a favor or otherwise. While DHS could implement that accountability on its own, a thorough report will aid in proposing discipline to any who committed misconduct.

Finally, we have to continue protecting brave government whistleblowers. It was obviously no secret to Ms. Gabbard that she had to go through extra screening when she was added to the Quiet Skies list.²⁵ But without courageous whistleblowers stepping forward, she might never have known it wasn't just a random selection, but rather the result of being placed in a government program.

After the whistleblowers made their anonymous disclosures, we were alerted that TSA had opened an investigation to determine who disclosed the information to the press.²⁶ The exact legal question of whether whistleblowers are allowed to disclose so-called Sensitive Security Information (SSI) to the media came up in the case of Air Marshal Robert MacLean. When his case went before the Supreme Court in 2013, I organized a bicameral, bipartisan amicus brief noting TSA's regulations could not trump the statutory guarantees of the Whistleblower Protection Act.

We wrote:

As a practical matter, moreover, Congress commonly learns of agency misconduct indirectly, when employees blow the whistle to the media or other intermediaries first. Some whistleblowers may view Congress as too politicized or intimidating. But they may see the media as a disinterested Fourth Estate willing to take up a cause in the public interest, or as the quickest and surest way to impose accountability. Other whistleblowers may want to convey information to Congress but not see a clear route to the right offices or committees. In such cases, disclosure to the press is an effective way to disseminate information widely to Members of Congress and their staffs. It can also attract public attention and generate

²⁴ See, for example, DHS OIG's report on the improper accessing of House Oversight Chairman Jason Chaffetz's personal data by the U.S. Secret Service. Department of Homeland Security, Office of Inspector General, *Investigation into the Improper Access and Distribution of Information Contained Within a Secret Service Data System*, Sep. 25, 2015, https://www.oig.dhs.gov/sites/default/files/assets/Mga/2016/OIG_mga-092515.pdf.

²⁵ See Matt Taibbi, *American Stasi: Tulsi Gabbard Confirms "Quiet Skies" Nightmare*, Racket News (Aug. 7, 2024), <https://www.racket.news/p/american-stasi-tulsi-gabbard-confirms>.

²⁶ See Empower Oversight, *Empower Oversight: TSA Opens "Leak" Probe to Hunt Whistleblowers on Gabbard Surveillance*, Aug. 7, 2024, <https://empowr.us/empower-oversight-tsa-opens-retaliatory-investigation-to-punish-whistleblower-in-release-of-gabbard-surveillance-information>.

momentum for Congressional oversight in a way that contacting Congressional offices privately might not.²⁷

A Supreme Court majority agreed with us about the supremacy of the whistleblower protection law.²⁸ They did note:

Finally, the Government warns that providing whistleblower protection to individuals like MacLean . . . would make the confidentiality of sensitive security information depend on the idiosyncratic judgment of each of the TSA's 60,000 employees. And those employees will "most likely lack access to all of the information that led the TSA to make particular security decisions." . . . Those concerns are legitimate. But they are concerns that must be addressed by Congress or the President, rather than by this Court.

Yet neither Congress nor the President has elevated the status of SSI in the decade since. Needless to say, we cited the Supreme Court precedent when making clear that investigating our clients' whistleblower disclosures as a breach of SSI would be very unwise.

While TSA did drop its leak investigation, it is imperative that everyone understand that holding government accountable requires protecting whistleblowers. They are the first line of defense against waste, fraud, and overreach by the federal government.

Thank you.

²⁷ Brief for Members of Congress as Amici Curiae Supporting Respondent at 6, *Dep't of Homeland Sec. v. MacLean*, 575 U.S. 383 (2015) (No. 13-894),

<https://www.wyden.senate.gov/imo/media/doc/Members%20of%20Congress%20MacLean%20Amicus%20Brief.pdf>.

²⁸ *Dep't of Homeland Sec. v. MacLean*, 575 U.S. 383 (2015).