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President Trump's Actions to Protect America by Ensuring Pay for TSA Officers During DHS Shutdown Are Legal and Constitutional

Washington, D.C. | March 30, 2026

Overview

In the face of a prolonged shutdown of the Department of Homeland Security (DHS), President Donald J. Trump took decisive action to protect the American people and support the frontline officers who secure the Nation's airports. The President's [March 27, 2026 memorandum](#) directs DHS and the Office of Management and Budget (OMB) to ensure that Transportation Security Administration (TSA) employees receive the pay and benefits they have earned, despite Congress's failure to act. A presidential memorandum is not an executive order, but both are lawful tools the President uses to direct agencies when grounded in constitutional or statutory authority.

This action is not only necessary but also legally justified. The President's directive to compensate TSA employees during a DHS funding lapse rests on three clear legal foundations: (1) Article II authority, (2) the Antideficiency Act's emergency exception, and (3) the Separation of Powers.

A National Security Emergency Requires Immediate Action

TSA officers are not ordinary federal employees. They are the first line of defense in protecting Americans from threats to transportation security. As the shutdown stretched into its sixth week, the President properly determined that this situation constitutes an emergency. Recent [congressional testimony](#) confirms just how severe the threat has become. TSA is still screening nearly three million passengers on peak travel days, yet more than 95% of its workforce, over 61,000 employees, have been required to work without pay during the shutdown. This is not a sustainable model for maintaining national security. The operational consequences are already clear. Attrition has risen sharply, with over 1,100 officers leaving during a prior

shutdown and hundreds more already departing during the current one. Call-out rates at airport checkpoints have more than doubled nationwide, and some airports are seeing absenteeism as high as 40 to 50 percent. These shortages are not just administrative issues. They reduce screening capacity, increase wait times, and heighten the risk of security failures in a sector that remains a top target for terrorist threats.

Under Article II of the Constitution, the President is responsible for ensuring that federal law is faithfully executed and for protecting national security. While TSA is a civilian agency, airport security is closely tied to national defense and public safety. The Supreme Court has consistently recognized that executive authority is strongest in matters of national security. TSA operations, screening passengers, and preventing threats to airports fall squarely within this core responsibility. Ensuring that those operations continue in a functional and stable manner is therefore within the President's constitutional authority.

Additionally, under Article II, the President not only possesses the executive power, but also bears the constitutional duty to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. That duty necessarily includes ensuring the continued enforcement of federal airport security laws.

The Law Allows Emergency Action to Protect the American People

Federal law, specifically the [Antideficiency Act](#), usually prevents the government from spending money if Congress has not approved funding. But Congress built in an important exception in 31 U.S.C. § 1342 for situations involving emergencies that threaten the safety of human life or the protection of property. That is the situation here. Airport security is not a routine government function, but rather a frontline protection system that keeps dangerous threats out of airports and off airplanes. If TSA officers stop working or begin leaving in large numbers, the risk to travelers becomes immediate. That is why TSA employees are required to keep working during shutdowns in the first place.

The Department of Justice's [Office of Legal Counsel](#) has already addressed this. In a foundational 1981 opinion, the Office of Legal Counsel explained that agencies may continue operations during a funding lapse, and even incur obligations, when there is a "reasonable connection" between the

activity and protecting human life or property. Simply put, if the law requires TSA to operate to protect lives, it also allows actions needed to keep that operation from breaking down.

That is what the President's directive accomplishes. It ensures that a critical national security function does not collapse due to congressional inaction, while recognizing that the men and women responsible for protecting our airports cannot be expected to sustain that burden indefinitely.

Executive Authority When Congress Fails to Act

While the Constitution gives Congress control over spending, it also gives the President the responsibility to carry out the law and protect the Country under U.S. Const. art. II, § 3. [The Supreme Court](#) has recognized that the President may act within the law in situations where Congress has not clearly prohibited the action.

Congress created TSA and charged it with protecting the traveling public. It also made clear that these operations must continue during emergencies, even during funding gaps, and it did not prohibit the use of related funds to sustain those operations. That matters. It means the President is not acting against Congress, but carrying out the system Congress itself put in place when Congress has failed to follow through.

The bottom line is straightforward. The law requires TSA to keep protecting the American people. The law allows the government to take the steps necessary to make that protection real. And the Constitution allows the President to act when Congress leaves a gap.