

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-1101**

May 13, 2020

The Honorable Steve Dickson  
Administrator  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, DC 20591

Re: Protecting Hawai'i Public Health; Required COVID-19 Testing of All Passengers Prior To Boarding Direct Flights to Hawai'i

Dear Administrator Dickson:

As we all continue to address the COVID-19 global pandemic, I write to request your cooperation in confirming Hawaii's ability to impose and enforce conditions on air travel to Hawai'i which are critical to ensuring (a) the health of Hawai'i residents and visitors and (b) the safe recovery of Hawaii's economy and in particular our travel and tourism industry.

These conditions would be as reasonably determined by the State of Hawai'i as necessary to protect public health. This could include requiring testing of all intended passengers (including in this letter crew) on any direct air travel to Hawai'i before boarding. Such testing could include at least fever testing and, as available, on-site rapid COVID-19 testing, as now required by international airlines such as Emirates on some flights. The requirement for enforcing these conditions would be borne by the airlines as a condition of accepting any intended passenger on any direct flight to Hawai'i, and any airline would be required to deny boarding to any intended passenger with a fever which, under Centers for Disease Control and Prevention (CDC) guidelines, indicates potential COVID-19 infection or who tests positive.

By way of background, almost all passenger transportation into Hawai'i, both domestically and internationally, is by air. In 2019 there were some: (i) 13,620,000 total air seats operated to Hawai'i, (ii) 10,280,000 visitor arrivals; (iii) 7,250,000 domestic visitor arrivals; (iv) 3,030,000 international visitor arrivals; and (v) an average daily visitor count of 250,000 (against a resident population of 1,400,000). In short, prior to the COVID-19 crisis, the great majority of passenger air arrivals in Hawai'i were non-resident, discretionary visitors (tourists), who arrived at a rate of close to 30,000 per day, and on any given day they constituted close to 20% of our de facto population.

This is, of course, a recipe for the rapid spread of COVID-19 among Hawaii's population (and, for visitors returning to their homes and residents exiting elsewhere, back to their destinations). And, in fact, in the stages of the spread of COVID-19 to date in Hawai'i, a major contributor

(especially in the first few weeks of the pandemic, when it was virtually the sole contributor) has been travel-related from both returning residents and visitors.

Hawaii's response has been among the most restrictive in the nation. A statewide work-at-home, stay-at-home order except for essential services has been in effect since March 26<sup>th</sup>. And a mandatory 14-day quarantine for any air passenger arriving in Hawai'i has been in effect since March 26<sup>th</sup> as well.

As applied to returning residents and visitors staying in resident homes, the quarantine requires them to remain in those home for the fourteen days. As applied to non-resident visitors not staying in residences but instead in hotels or other transient accommodations (tourists), the mandatory 14-day quarantine requires such visitors to stay in their hotel or accommodation rooms for the full period.

This and the other impacts of COVID-19 have had the effect of significantly reducing air travel to Hawai'i. From institution of the air passenger quarantine on March 26<sup>th</sup> through April 30<sup>th</sup> there were 23,302 arrivals, of which 8,224 were returning or intended residents and 4,508 were visitors.

However, these numbers have been increasing rapidly in May, especially the visitor count, reflecting that the quarantine is not operating as any real deterrent. Moreover, it is very evident that these air passengers, especially the visitors, are generally not honoring the 14-day post-arrival quarantine.

These air passengers arrive from various destinations with widely varying efforts to mitigate the public health effects of COVID-19. Some jurisdiction are just as stringent as Hawai'i, if not moreso, while most others are not. Their continued arrival in Hawai'i, at increasing numbers, with an ineffective post-arrival quarantine, constitutes an unacceptable risk, and it is reasonable for Hawai'i to seek to institute pre-boarding conditions to minimize this risk wherever and however possible.

In my discussions with Federal Aviation Administration (FAA) personnel to date, I understand that FAA does not question restrictions imposed on air passengers once they arrive in Hawai'i as an exercise of Hawaii's general police powers. But that is a far more cumbersome, unworkable, resource-intensive effort (diverting critically stretched and needed first responders to tracking and enforcement efforts), with far more public health risk, than straightforward pre-screening of intended passengers for compliance with reasonable restrictions before they board airplanes and denial of boarding for non-compliance.

I further understand that FAA has expressed some concerns as to who would enforce airline compliance with reasonable pre-board restrictions. I believe most if not all airlines would take the restrictions and their responsibility for enforcement very seriously, and do not in any event see a requirement that each intended passenger submit to a basic test as imposing any significant requirement on the airlines (in the same way as is true currently for many international airlines and travelers to Hawai'i or other domestic destinations). The first domestic carrier, Frontier Airlines, has announced it will implement a similar restriction requiring temperature screenings for all passengers and crew prior to boarding flights beginning June 1<sup>st</sup>. Airlines for America, the

industry trade group for the largest American passenger carriers, has endorsed requiring temperature screenings as well.

I further understand that the State of Hawai‘i imposed the 14-day incoming quarantine requirement in large part because it understood from the FAA, in its March and April guidance and otherwise, that the imposition of such pre-board conditions was not authorized by existing statutes and regulations and would jeopardize federal funding. I also understand from my discussion with the FAA to date that in fact the FAA is focused on the safe and efficient use of the nation’s airspace (with safe not generally including protection of general ground populations from COVID-19 and efficient generally referring to maximum use), that the protection of the general public health in addition to air-related risks is not within FAA’s mandate, and that absent superseding authority in other federal agencies such as the CDC, the FAA is unwilling or unable to authorize the State of Hawai‘i to impose reasonable public health-related restrictions on travelers as a condition of travel to Hawai‘i.

I ask and urge you to revisit these issues and assist me, the State of Hawai‘i, the people I represent, the visitors to Hawai‘i and the destinations to which they will return in finding a solution allowing the State of Hawai‘i to impose reasonable public health pre-board conditions on intended passengers to Hawai‘i. This could include flexibility within existing statutes and regulations, identification of superseding authority in other federal agencies, and proposed changes to existing regulations and statutory authority. In the latter case, I ask that you initiate any required rule changes under expedited authority, and propose to me specific statutory amendments which would provide you with the necessary authority.

I ask that you do so on an emergency basis considering the continued public health threat to Hawai‘i from our inability to impose and enforce effective mitigation requirements. But I also ask that you do so because these questions will have to be answered and the necessary changes will have to be made for Hawai‘i to reopen to any great extent to air travel. Simply put, if passengers do not feel safe coming to Hawai‘i because they fear contracting COVID-19 on the flight or in Hawai‘i, or if Hawai‘i residents do not feel safe with passengers getting off planes in Hawai‘i, air travel to Hawai‘i will not recover leading to many consequences to include FAA and airport-supportive revenues. The same is true throughout the country and so the necessity of safe travel is in all respects a national one which FAA should better face now.

Considering the urgency of protecting Hawaii’s current and future public health, I ask for your specific response by no later than Wednesday, May 20<sup>th</sup>. I stand ready, together with the State of Hawai‘i and other interested parties both in Hawai‘i and nationally, to work with you on fashioning an effective solution to this critical matter.

I appreciate your prompt and full attention. Please call on me for any questions or needs.

Sincerely,



Ed Case  
Hawai‘i-First District