



Testimony

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Security, House of Representatives

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AVIATION SECURITY

TSA Has Policies That Prohibit Unlawful Profiling But Should Improve Its Oversight of Behavior Detection Activities

Statement of William Russell, Acting Director,
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Chairman Thompson, Ranking Member Rogers, and Members of the Committee:

I am pleased to be here today to discuss mechanisms the Transportation Security Administration (TSA) uses to prevent unlawful profiling while screening passengers using behavior detection techniques. TSA uses behavior detection to identify potentially high-risk passengers who exhibit certain behaviors it asserts are indicative of stress, fear, or deception, and refer them for additional screening or, when warranted, to law enforcement.¹ Although TSA's policies and procedures prohibit unlawful profiling, and screeners are prohibited from selecting passengers for additional screening based on race, ethnicity, or other factors, allegations of racial profiling have raised questions about TSA's use of behavior detection.

My testimony today discusses (1) how TSA trains screeners who engage in behavior detection on policies and procedures that prohibit unlawful profiling; (2) TSA's oversight of behavior detection activities; (3) the number of complaints TSA received alleging violations of civil rights and civil liberties related to passenger screening from October 2015 through February 2018, and actions taken by TSA to address them; and (4) how TSA used complaint data to inform screener training.

This statement summarizes our April 2019 report on TSA's measures to prevent behavior detection activities from resulting in unlawful profiling.² For this work, we reviewed TSA policies and procedures; interviewed

¹We reported in November 2013 that available evidence did not support whether behavioral indicators can be used to identify persons who may pose a risk to aviation security. We recommended that TSA limit future funding support for the agency's behavior detection activities until TSA could provide scientifically validated evidence that demonstrates that behavioral indicators can be used to identify passengers who may pose a threat to aviation security. In 2017, we reported that TSA had reduced funding for behavior detection activities and revised its behavioral indicators. We stated that TSA should continue to limit funding for such activities until it can provide valid evidence demonstrating that behavioral indicators can be used to identify passengers who may pose a threat to aviation security. GAO, *Aviation Security: TSA Should Limit Future Funding for Behavior Detection Activities*, [GAO-14-159](#) (Washington, D.C.: Nov. 8, 2013); and *Aviation Security: TSA Does Not Have Valid Evidence Supporting Most of the Revised Behavioral Indicators Used in Its Behavior Detection Activities*, [GAO-17-608R](#) (Washington, D.C.: July 20, 2017).

²GAO, *Aviation Security: TSA Has Policies that Prohibit Unlawful Profiling But Should Improve Its Oversight of Behavior Detection Activities*, [GAO-19-268](#) (Washington, D.C.: April 23, 2019).

TSA officials; and analyzed civil rights and civil liberties complaints made by passengers from October 2015 through February 2018 and actions taken by TSA to address them.

Further details on the scope and methodology for the April 2019 report are available within the published product. The work on which this statement is based was conducted in accordance with generally accepted government auditing standards.

Background

TSA's Use of Behavior Detection

The Aviation and Transportation Security Act established TSA as the federal agency with primary responsibility for securing the nation's civil aviation system, which includes the screening of all passengers and property transported by commercial passenger aircraft.³ At the approximately 440 TSA-regulated airports in the United States, all passengers, their accessible property, and their checked baggage are to be screened prior to boarding an aircraft or entering the sterile area of an airport pursuant to statutory and regulatory requirements and TSA-established standard operating procedures.⁴ TSA began using behavior detection in 2006 as an added layer of security to identify potentially high-risk passengers.

Through the end of fiscal year 2016, TSA's behavior detection screening process was a stand-alone program that used specially trained behavior detection officers to observe passengers at the screening checkpoint and engage them in brief verbal exchanges. If the behavior detection officers determined during this interaction that a passenger exhibited a certain number of behavioral indicators, the behavior detection officer was to refer the passenger for additional screening or, if circumstances

³See Pub. L. No. 107-71, § 101(a), 115 Stat. 597 (2001); 49 U.S.C. § 114. For purposes of this statement, "commercial passenger aircraft" generally encompasses the scheduled passenger operations of U.S.-flagged air carriers operating in accordance with their TSA-approved security programs and foreign-flagged air carriers operating in accordance with security programs deemed acceptable by TSA. See 49 C.F.R. § 1544 (governing U.S.-flagged air carriers) and 1546 (governing foreign-flagged air carriers).

⁴See 49 C.F.R. § 1540.5 (defining the sterile area of the airport as, in general, an area of an airport that provides passengers access to boarding aircraft and to which access is controlled through the screening of persons and property).

warranted, contact a law enforcement officer. The law enforcement officer then would determine next steps, which could include questioning the passenger or conducting a criminal background check. The law enforcement officer then would determine whether to release the passenger, refer the passenger to another law enforcement agency, or arrest him or her.

In fiscal year 2017, consistent with the Aviation Security Act of 2016, TSA eliminated the stand-alone behavior detection officer position.⁵ TSA transferred the former behavior detection officers to serve as part of the screener workforce and began assigning them to the checkpoint to screen passengers. According to TSA officials, when screeners trained in behavior detection are assigned to a position, TSA policies and procedures permit them to use behavior detection when applicable. Furthermore, some screeners trained in behavior detection work in conjunction with canine teams to observe passenger behavior and identify passenger behaviors that may indicate that a passenger poses a higher risk to the aviation system.⁶

TSA's Oversight of Behavior Detection

TSA's Security Operations is responsible for overseeing the use of behavior detection. TSA's behavior detection policies and procedures prohibit screeners from selecting passengers for additional screening based on race, ethnicity, religion, and other factors, whether through behavior detection or other security measures. This responsibility includes overseeing officers trained in behavior detection to ensure they conduct behavior detection without regard to race/ethnicity, color, gender/sex, gender identity, religion, national origin, sexual orientation, or disability, in accordance with constitutional, statutory, regulatory, and

⁵See Pub. L. No. 114-190, § 3304(a)(1), 130 Stat. 615, 655 (2016) (requiring that TSA, not later than 30 days after enactment (enacted July 15, 2016), utilize behavior detection officers for passenger and baggage security screening, including the verification of traveler documents, particularly at designated TSA Pre✓® lanes to ensure that such lanes are operational for use and maximum efficiency).

⁶TSA deploys passenger screening canine teams that are trained to detect explosives being carried by or worn on a person. TSA uses combinations of behavior detection and passenger screening canine teams to help ensure that individuals who have been selected for expedited screening do not exhibit high-risk behaviors or otherwise present a risk to the traveling public. Expedited screening is a process that TSA uses to assess a passenger's risk to aviation security prior to the passenger arriving at an airport checkpoint. GAO, *Aviation Security: TSA's Managed Inclusion Process Expands Passenger Expedited Screening, but TSA Has Not Tested Its Security Effectiveness*, [GAO-15-465T](#) (Washington, D.C.: Mar. 25, 2015).

other legal and Department of Homeland Security (DHS) policy requirements to protect the civil rights and civil liberties of individuals. Although the stand-alone behavior detection officer position was eliminated and the program ended in 2017, the requirement to conduct oversight and verify compliance with TSA policies still applies when behavior detection is used, such as when behavior detection is used in conjunction with passenger screening canine teams.

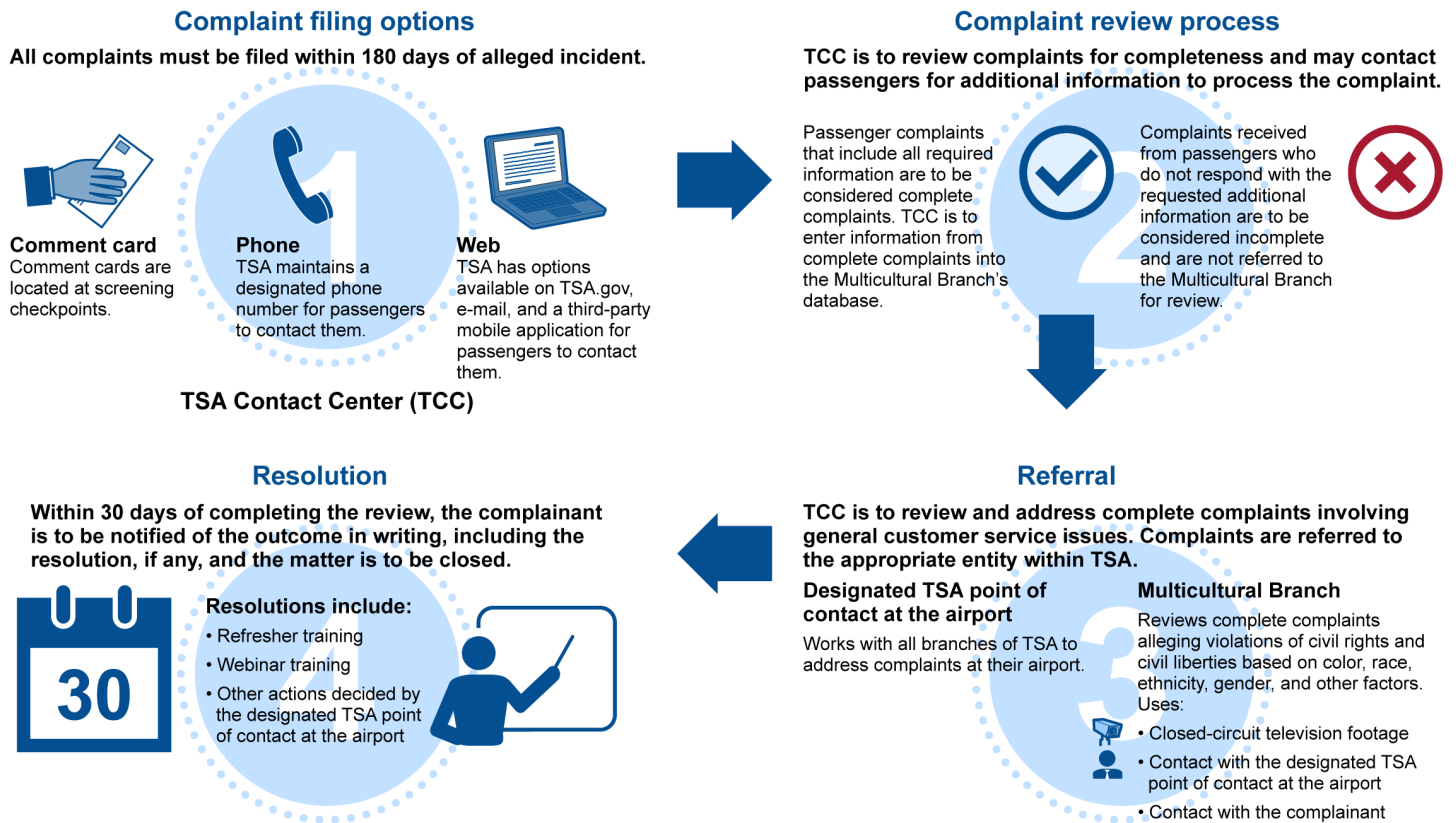
Passenger Complaint Review and Referral Process

The TSA Contact Center (TCC) is the primary point of contact for collecting, documenting, and responding to public questions, concerns, or complaints regarding passengers' screening experience; reports and claims of lost, stolen, or damaged items; and complaints submitted by TSA employees.⁷ The TCC may refer screening complaints for resolution to other TSA headquarters offices, depending on the specific allegation. For example, complete complaints alleging violations of civil rights and civil liberties, which include allegations implicating color, race, ethnicity, gender, genetic information, national origin, religion, sexual orientation, and parental status, must be referred to the Multicultural Branch.⁸ Figure 1 describes the TCC's complaint review process.

⁷Questions, concerns, or complaints submitted to the TCC regarding passengers' screening experience may relate to any and all aspects of the screening process and are not necessarily specific or related to behavior detection activities. In this statement, we use "employees" to refer to current and former TSA employees who submitted complaints alleging civil rights and civil liberties violations related to TSA employment to the TCC. The TCC is responsible for receiving these employee complaints and referring them to TSA's Equal Employment Opportunity office for review.

⁸ According to the TCC standard operating procedures, TCC analysts review the complaints to ensure that they contain the necessary information to be considered complete, including the airport, passenger's name, date of the alleged incident, and description of the alleged civil rights and civil liberties violation.

Figure 1: The Transportation Security Administration (TSA) Contact Center Complaint Process



Source: GAO analysis of TSA information. | GAO-19-490T

The Multicultural Branch, in consultation with Security Operations, determines whether a screener followed standard operating procedures while screening the complainant by reviewing available video of an incident or interviewing witnesses. Following the outcome of the complaint review and any resulting corrective actions, the TSA headquarters unit or the TSA customer support manager at the airport is to communicate the status of the resolution, if any, to the complainant—such as by using a template letter that explains TSA’s policies and procedures or issuing an apology.

Screeners Conducting Behavior Detection Receive Training on TSA's Policies and Procedures That Prohibit Unlawful Profiling

As we reported in April 2019, before screeners are eligible to conduct any behavior detection activities, they must first complete a 5-day Optimized Behavior Detection Basic Training course, and undergo on-the-job training at their local airport. This course includes an overview of DHS and TSA policies that prohibit unlawful profiling, and trains screeners to apply behavioral indicators to passengers without regard to race/ethnicity, color, gender/sex, gender identity, religion, national origin, sexual orientation, or disability.⁹ In addition, TSA's 2018 National Training Plan required behavior detection-trained screeners to complete four recurrent technical training courses related to behavior detection, including two that contain material reinforcing DHS's and TSA's policies prohibiting unlawful profiling.¹⁰

TSA Has Oversight Policies for Behavior Detection and Prohibits Unlawful Profiling but Does Not Specifically Assess Whether Profiling Occurs

In April 2019, we reported that TSA policy and guidance requires managers to ensure behavior detection is conducted without regard to race or ethnicity, among other factors. TSA uses seven oversight checklists to assess whether behavior detection activities are conducted in accordance with TSA policy, such as monitoring whether screeners trained in behavior detection observe and engage passengers correctly. However, our review of these checklists found that they do not instruct supervisors to monitor for indications of profiling. According to TSA officials, TSA's guidance and checklists do not include this type of monitoring because TSA officials believe that the training screeners receive, adherence to its operating procedures, and general supervisory oversight are sufficient to alert supervisors to situations when unlawful profiling may occur. However, a 2013 DHS memorandum addressing unlawful profiling states that each component, including TSA, should both implement specific policy and procedures on racial profiling, and ensure all personnel are trained and held accountable for meeting the standards

⁹According to TSA policy, screeners may only use discernible traits to screen passengers when three conditions are met: (1) they are directed to do so by their Federal Security Director; (2) the directive is based on specific intelligence information; and (3) the directive is time-limited.

¹⁰The National Training Plan, which is developed annually, guides the training requirements for all screeners for a given year.

set forth in DHS policy.¹¹ For TSA, such a policy or procedure could be an item added to a checklist for supervisors to document, based on their observations, whether screeners selected individuals for additional scrutiny in a manner consistent with policies and procedures related to behavior detection activities and unlawful profiling. Developing a specific mechanism to monitor behavior detection activities for compliance with policies prohibiting unlawful profiling would provide TSA with greater assurance that screeners are adhering to such policies.

In our April 2019 report, we recommended that the TSA Administrator direct Security Operations to develop a specific oversight mechanism to monitor the use of behavior detection activities for compliance with DHS and TSA policies that prohibit unlawful profiling. DHS agreed with our recommendation and stated that TSA plans to take additional steps to continue to ensure behavior detection activities adhere to policies that prohibit unlawful profiling. Specifically, TSA plans to modify existing oversight checklists used by managers and supervisors to include specific terminology for monitoring unlawful profiling. DHS estimates that this effort will be completed by September 30, 2019.

¹¹Department of Homeland Security, *Memorandum for Component Heads from Secretary Napolitano: The Department of Homeland Security's Commitment to Nondiscriminatory Law Enforcement and Screening Activities* (Apr. 26, 2013). The DHS memorandum further states that DHS "has explicitly adopted" the Department of Justice's "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," issued in June 2003. According to the DHS memorandum, "[i]t is the policy of DHS to prohibit the consideration of race or ethnicity in [its] daily law enforcement and screening activities in all but the most exceptional instances," as defined in Department of Justice guidance. See United States Department of Justice, Civil Rights Division, *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* (Washington, D.C.: June 2003).

TSA Received 3,663 Complaints Alleging Civil Rights and Civil Liberties Violations Involving Passenger Screening in Recent Years, and Recommended Training in Certain Cases

The TCC Received 3,663 Complaints Related to Passenger Screening and a Majority Alleged Discrimination or Profiling Based on Personal Attributes and Characteristics

In April 2019, we reported that the TCC received 3,663 complaints related to passenger screening alleging violations of civil rights and civil liberties from October 2015 through February 2018. These complaints are not specific to behavior detection activities and generally reflect alleged conduct occurring at the screening checkpoint through the application of screening measures. We analyzed the 3,663 complaints and found that the majority (2,251 of 3,663) of the complaints alleged discrimination or profiling based on personal attributes and characteristics.¹² For example, the TCC received complaints alleging discrimination that involved assertions by passengers that they had been selected for pat-downs based on race and ethnicity, among other reasons, when the passengers believed they did not trigger an alarm prompting the pat-downs.¹³ The TCC also received complaints related to passengers' transgender identity alleging selection for additional screening because of their transgender

¹²These complaints alleged discrimination or profiling based on personal attributes and characteristics related to, among other things, an individual's race, ethnicity, national origin, language, gender, age, and hair.

¹³Standard screening typically includes passing through a walk-through metal detector or advanced imaging technology (AIT) machine, which identifies objects or anomalies on the outside of the body. Passengers may be subject to a pat-down if they are screened by the AIT or walk-through metal detector and the equipment alarms. Pursuant to TSA standard operating procedures for screening at the checkpoint, triggering an alarm is not the only reason why a passenger may be selected for a pat-down or additional screening measures.

status. Additionally, the TCC received passenger complaints alleging that screening procedures were aggressive or inappropriate for senior citizens. Table 1 provides a list of complaint types based on our analysis. In addition, our April 2019 report provides additional detail about our content analysis of complaints alleging civil rights and civil liberties violations.¹⁴

Table 1: Complaints Received by the Transportation Security Administration (TSA) Contact Center (TCC) Alleging Civil Rights and Civil Liberties Violations Related to Passenger Screening and Categorized by Personal Attributes and Characteristics or by Alleged Adverse Actions, October 2015 through February 2018

| Category | Frequency | Percentage | General description |
|--|--------------|------------|--|
| Discrimination/profiling—national origin, language, race/ethnicity | 1,532 | 42 | Questions, concerns, or allegations about profiling or discrimination based on the individual's national origin, language, race, or ethnicity, or discrimination/profiling in general (no reason specified). |
| Pat-down | 493 | 13 | Questions, concerns, or allegations about a pat-down that was possibly invasive or overly aggressive, including pat-downs that the passenger alleges occurred due to their race/ethnicity. |
| Hair | 279 | 8 | Questions, concerns, or allegations about receiving a hair pat-down. |
| Sex/gender/gender identity, excluding transgender | 271 | 7 | Questions, concerns, or allegations of discrimination based on gender, including gender identity concerns: e.g., the passenger asserts that a screener of the wrong gender started to conduct the pat-down. Also includes allegations of differential treatment based on their sex/gender. No mention of race/ethnicity. |
| Religion | 200 | 5 | Questions, concerns, or allegations of discrimination based on perceived religion, e.g., a passenger alleges being subjected to additional screening because he or she appears to be part of a religious group or has a name that may make him or her appear to be part of a religious group. |
| Transgender | 169 | 5 | Questions, concerns, or allegations about transgender screening, e.g., a transgender passenger alleges that she always has to undergo a pat-down because TSA's technology is based on a binary male/female system. |
| Other—civil rights and civil liberties related | 316 | 9 | Combination of categories such as age, sexual orientation, and constitutional rights, among others. ^a |
| Other—not related to passenger screening | 403 | 11 | Combination of categories such as employee complaints, or those not related to passenger screening. ^b |
| Total | 3,663 | 100 | |

Source: GAO analysis of TSA complaint data. | GAO-19-490T

Note: We use the term “passengers” to refer to individuals—including ticketed passengers, individuals accompanying ticketed passengers, and any other individuals not considered an employee for purposes of this statement—who submitted complaints alleging civil rights and civil liberties violations related to TSA screening procedures to the TCC. In addition, we use “employees” in this table to refer to current and former TSA employees who submitted complaints alleging civil rights and civil liberties violations related to TSA employment to the TCC. The TCC is responsible for receiving these employee complaints and referring them to TSA’s Equal Employment Opportunity office for review.

¹⁴ [GAO-19-268](#).

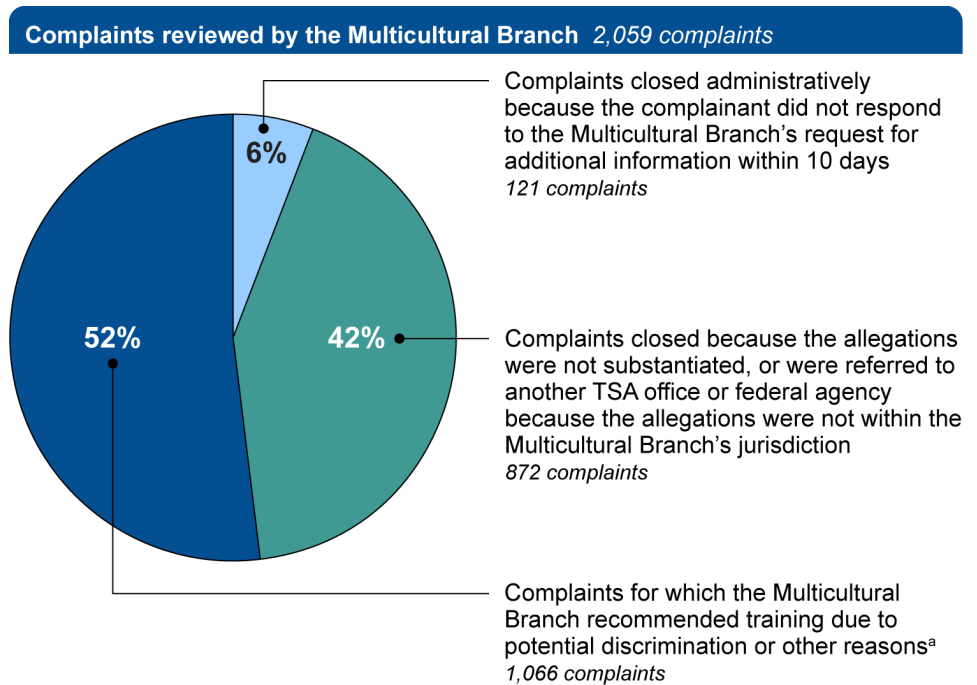
^aConstitutional rights may include questions, concerns, or allegations raising freedom of speech or unreasonable search and seizure issues.

^bMatters not related to passenger screening may include information received by the TCC that TSA characterizes as conspiracy theories or other information unrelated to TSA screening processes.

TSA's Multicultural Branch Reviewed More Than 2,000 Complaints and Recommended a Range of Screener Training

From October 2015 through February 2018, the Multicultural Branch received 2,059 complaints, including approximately 1,900 from the TCC as well as complaints referred from other TSA offices, alleging violations of civil rights and civil liberties, as shown in figure 2.¹⁵

Figure 2: Complaints Reviewed by the Transportation Security Administration (TSA) Multicultural Branch from October 2015 through February 2018



Source: GAO analysis of TSA's Multicultural Branch passenger complaint data received from October 2015 through February 2018. | GAO-19-490T

Note: TSA's Multicultural Branch is responsible for collecting, monitoring, and adjudicating passenger complaints alleging civil rights and civil liberties violations at the passenger screening checkpoint, including complaints alleging unlawful profiling and discrimination, among other things.

^aAccording to TSA officials, the Multicultural Branch recommends training when standard operating procedures for screening were not followed, or when it determines that the proactive measure of refresher training would be useful.

¹⁵ TSA's Multicultural Branch receives complaint referral from multiple sources, including the TCC, DHS's Office of Civil Rights and Civil Liberties, TSA's Disability Branch, and TSA personnel at airports.

For about half of the complaints (1,066) the Multicultural Branch reviewed, it found indications of potential discrimination and unprofessional conduct that involved race or other factors and recommended a range of refresher training across airports or for screeners at individual airports identified in the complaints. As we reported in April 2019, Multicultural Branch officials told us that it is its policy is to recommend refresher training as a proactive measure when, for example, they are unable to determine if the alleged civil rights and civil liberties violations occurred. Multicultural Branch officials said these trainings were provided through National Shift Briefings, which were circulated across TSA, or through training provided at a particular airport.¹⁶

In addition, TSA's office of Human Capital Employee Relations reported that it took a range of disciplinary actions—from letters of reprimand to termination—for 100 screeners from October 2015 through February 2018, in part in response to passenger complaints alleging civil rights and civil liberties violations.¹⁷

TSA's Multicultural Branch Analyzes and Shares Passenger Complaint Data to Inform Screener Training

In April 2019, we reported that TSA's Multicultural Branch regularly collects and analyzes data on passenger civil rights and civil liberties and discrimination complaints and their resolution status, and shares this information with TSA executive leadership, TSA airport customer service managers, and screeners in the field, among others. According to TSA officials, the Multicultural Branch uses its analysis of passenger complaints and the results of complaint investigations to develop training aids and materials on areas where they determine screeners need more training, such as multicultural awareness or screening of transgender passengers. For example, the Multicultural Branch has developed briefings focusing on unlawful profiling and unconscious bias which reiterated that unlawful profiling is against TSA policy, defined unconscious bias, and provided scenario-based examples. Additionally,

¹⁶National Shift Briefings provide a reminder to all screening personnel of their role in ensuring that security measures are appropriately applied in accordance with TSA policies and procedures.

¹⁷TSA officials reported that none of the complaints that resulted in the disciplinary actions were specific to behavior detection. TSA's Human Capital Employee Relations officials determined that more than 60 percent of the 100 screeners used inappropriate comments or were engaged in misconduct, including offensive comments or actions based on another's race, national origin, and/or sex, among other factors.

members from the Multicultural Branch hold on-site training for screeners at selected airports each year based on complaint data analysis and other factors. These training sessions last three days, include topics stemming from complaint data TSA has analyzed, and can include webinars, role-playing, and other forms of instruction.

Chairman Thompson, Ranking Member Rogers, and Members of the Committee, this concludes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contacts and Staff Acknowledgments

For questions about this statement, please contact William Russell at (202) 512-8777 or RussellW@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. In addition to the contact named above, Ellen Wolfe (Assistant Director), Natalie Maddox (Analyst-in-Charge), Susan Hsu, Andrew Lobel, Tom Lombardi, Amanda Miller, Rachel Stoiko, and Herbert Tinsley made key contributions to the testimony. Key contributors to the report cited in the testimony are listed in the product.

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