

Congress of the United States

Washington, DC 20515

April 10, 2014

The Honorable John S. Pistole
Administrator
Transportation Security Administration
601 S. 12th Street
Arlington, VA 20528

Dear Administrator Pistole:

Since 2007, the Transportation Security Administration (TSA) has spent over \$1 billion on its Screening of Passengers by Observation Techniques (SPOT) program. Despite known or suspected terrorists having passed through screening on 23 different occasions in airports where Behavior Detection Officers (BDOs) were deployed; zero terrorists have been identified, apprehended, referred to law enforcement or prevented from boarding an aircraft as a result of the program.¹

On November 13, 2013, the Government Accountability Office (GAO) released a report recommending Congress consider the absence of scientifically validated evidence for using behavioral indicators to identify aviation security threats when making future funding decisions to ensure security-related funding is directed to programs, unlike SPOT, that have demonstrated their effectiveness.² GAO made this recommendation to Congress because the Department of Homeland Security did not concur with the Comptroller General's recommendation that TSA limit future funding for SPOT until it provided scientifically validated evidence that behavioral indicators can be used to identify threats to aviation security.

Since this GAO report was released, TSA has not only refused to limit funding for behavior detection activities, but also has expanded the use and scope of these activities. This expansion has occurred via TSA's BDO Targeted Conversation Proof of Concept (PoC) and the use of BDOs in TSA's Managed Inclusion program.

According to documents obtained from TSA, the agency commenced the BDO Targeted Conversation PoC on March 5, 2014, at Baltimore Washington International Thurgood Marshall Airport (BWI). During this PoC, passengers traveling through BWI are required to respond to questions from BDOs regarding their "trip story." Despite the fact that BDOs ask these questions in a public setting, TSA has designated the list of questions that will be asked as Sensitive Security Information. Should a passenger refuse to answer questions posed by the BDO, they will be subjected to a form of secondary screening. This PoC represents an intrusion into the privacy of the flying public through a process TSA has not scientifically validated.

¹ GAO-10-763: Aviation Security: Efforts to Validate TSA's Passenger Screening Behavior Detection Program Underway, but Opportunities Exist to Strengthen Validation and Address Operational Challenges.

² GAO-14-159: Aviation Security: TSA Should Limit Future Funding for Behavior Detection Activities.

During your appearance before the Committee on Appropriations Subcommittee on Homeland Security on March 25, 2014, you were asked about the expanded scope of work of BDOs via Managed Inclusion. You responded to a question regarding the effectiveness and cost efficiency of TSA's SPOT program by stating:

“[TSA] is using BDOs effectively through the Managed Inclusion program to identify low-risk passengers. So, if you want to say we are getting double bang for the buck, there are a number of people who are going through expedited screening today because they have been observed by BDOs as being lower-risk.”

Though providing expedited screening to passengers while maintaining security is a laudable goal, your statement before the Committee on Appropriations directly contradicts the assertion you made in correspondence to the Committee on Homeland Security where you stated that BDOs are used in the Managed Inclusion program only for exclusion purposes.³ Given the lack of scientific validation that BDOs are capable of detecting the presence of an individual who poses a threat to aviation security, it is unlikely that scientific validation exists to show that the use of the same methodology would enable BDOs to identify an individual who is low risk and only requires minimal and expedited checkpoint screening.

The expanded use of BDOs subsequent to GAO's recommendation that TSA limit funding for SPOT until it can provide scientifically validated evidence that behavioral indicators can be used to identify threats to aviation security raises serious concerns. In an effort to gain a clearer understanding of TSA's use of behavior detection techniques please provide the following information by April 24, 2014:

1. A comprehensive list of peer reviewed studies that have found that an individual's response to questions regarding travel can be used to determine whether an individual poses a threat to aviation security.
2. A comprehensive list of peer reviewed studies that have found that behavioral observation techniques can be used to identify low risk passengers.
3. Any and all documentation related to the privacy and civil liberties implications of the ongoing BDO Targeted Conversation Proof of Concept.
4. A comprehensive list of terrorists prevented from boarding domestic commercial flights as a result of SPOT.
5. The total annual cost to date of TSA's behavioral observation programs.

Thank you for your attention to this matter. If you have any questions about this request, please contact Hope Goins, Chief Counsel for Oversight at 202-226-2616.

³ See Letter from Administrator Pistole to Ranking Member Thompson dated February 11, 2013.

Sincerely,

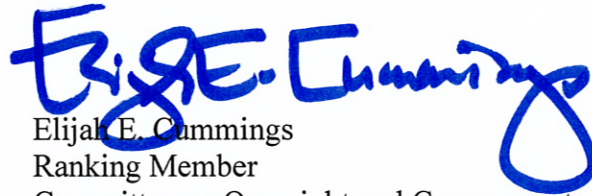


Bennie G. Thompson
Ranking Member
Committee on Homeland Security

Cedric L. Richmond
Ranking Member
Subcommittee on Transportation Security
Committee on Homeland Security



John Conyers, Jr.
Ranking Member
Committee on the Judiciary



Elijah E. Cummings
Ranking Member
Committee on Oversight and Government
Reform

cc: The Honorable Michael T. McCaul, Chairman, Committee on Homeland Security
The Honorable Richard Hudson, Chairman, Subcommittee on Transportation Security,
Committee on Homeland Security
The Honorable Bob Goodlatte, Chairman, Committee on the Judiciary
The Honorable Darrell E. Issa, Chairman, Committee on Oversight and Government
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