

DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General

~~SENSITIVE SECURITY INFORMATION~~

Review of Department's Handling of Suspicious Passengers Aboard Northwest Flight 327



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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*), by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared as part of our DHS oversight responsibilities to promote economy, effectiveness and efficiency within the Department.

This report addresses the specific circumstances relating to Flight 327, including the Department's handling of the suspicious passengers and activities, and identified lessons learned from the suspicious incident. It is based on interviews with employees and officials of DHS, and other relevant Federal agencies and non-governmental institutions, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

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Inspector General

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Abbreviations

Abbreviations

ACS	FBI's Automated Case Support System
APIS	Advance Passenger Information System
ATSA	Aviation Transportation Security Act
CBP	Customs and Border Protection
CCD	Consolidated Consular Database
CLASS	Consular Lookout and Support System
DHS/Department	U.S. Department of Homeland Security
DOT	U.S. Department of Transportation
DTW	Detroit International Airport
EDT	Eastern Daylight Time
FAA	Federal Aviation Administration
FAMS	Federal Air Marshal Service
FBI	Federal Bureau of Investigation
Flight 327	Northwest Airlines Flight 327 on June 29, 2004
HSA	The 2002 Homeland Security Act
HSOC	Homeland Security Operations Center
IAIP	Information Analysis and Infrastructure Protection Directorate
IBIS	Interagency Border Inspection System
ICE	Immigration and Customs Enforcement
ICE / OI	ICE / Office of Investigations
IDENT	Automated Biometric Identification System
JTTF	FBI's Joint Terrorism Task Force
LAX	Los Angeles International Airport
LEO	Law Enforcement Officer
MOC	FAMS Mission Operations Center
MOU	Memorandum of Understanding

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Abbreviations

NASA	National Aeronautical and Space Administration
NAIS	National Automated Immigration Lookout System
NCIC	National Crime Information Center
NCTC	National Counterterrorism Center
NSEERS	National Security Entry-Exit Registration System
NTC	National Targeting Center
NTIDB	National Threat Incident Data Base
OIG	Office of Inspector General
PARIS	Performance and Result Information Systems
PDA	Personal Digital Assistant
PST	Pacific Standard Time
Promoter	Suspicious Passengers' Group Leader / Musical Promoter
SDR	FAMS' Surveillance Detection Report
9/11	September 11, 2001
SIR	TSA's Suspicious Incident Reports
TECS II	Treasury Enforcement Communication System
TSA	Transportation Security Administration
TSC	Terrorist Screening Center
TSIS	Transportation Security Intelligence Service
TSOC	Transportation Security Operations Center
USCIS	United States Citizenship and Immigration Services
U.S.	United States of America

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Executive Summary

This report presents the results of the Department of Homeland Security (Department) Office of Inspector General's (OIG) review of the Department's handling of suspicious passengers and activities aboard Northwest Airlines Flight 327 (Flight 327) from Detroit to Los Angeles on June 29, 2004. On this flight, 13 Middle Eastern men behaved in a suspicious manner that aroused the attention and concern of the flight attendants, passengers, air marshals, and pilots.

The objectives of our review were to (1) determine the specific circumstances relating to Flight 327, including the Department's handling of the suspicious passengers before boarding, during flight, and after the plane landed; and (2) identify any lessons learned as a result of the suspicious incident. We reviewed policies, procedures, documents, and investigative case files. Furthermore, we interviewed officials of various Federal agencies, four major airlines, ten airline industry associations, and six Flight 327 passengers who were not part of the group of 13 suspicious passengers. Appendix A provides additional details concerning our purpose, scope, and methodology.

Briefly, the following events occurred. Thirteen Middle Eastern men, traveling together as a musical group, 12 carrying Syrian passports and one, a lawful permanent resident of the U.S., of Lebanese descent, purchased one-way tickets from Detroit to Los Angeles. Six of the men arrived at the gate together after boarding began, then split up and acted as if they were not acquainted. According to air marshals, the men also appeared sweaty and nervous. An air marshal assigned to Flight 327 observed their behavior and characterized it as "unusual," but made no further reports at the time.

During the flight, the men again acted suspiciously. Several of the men changed seats, congregated in the aisles, and arose when the fasten seat belt sign was turned on; one passenger moved quickly up the aisle toward the cockpit and, at the last moment, entered the first class lavatory. The passenger remained in the lavatory for about 20 minutes. Several of the men spent excessive time in the

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lavatories. Another man carried a large McDonald's restaurant bag into a lavatory and made a thumbs-up signal to another man upon returning to his seat. Flight attendants notified the air marshals on board of the suspicious activities. In response, an air marshal directed a flight attendant to instruct the cockpit to radio ahead for law enforcement officials to meet the flight upon arrival.

After arriving, Flight 327 was met by Federal and local law enforcement officials, who gathered all 13 suspicious passengers, interviewing two of them. An air marshal photocopied the passengers' passports and visas. The names of the suspicious passengers were run through Federal Bureau of Investigation (FBI) databases, indicating the musical group's promoter (promoter) had been involved in a similar incident in January 2004. No other derogatory information was received, and all 13 of the men were released. Weeks after the flight landed in Los Angeles, following press reports of the suspicious incident, both the FBI and Federal Air Marshal Service (FAMS) independently opened investigations into the activities that occurred on Flight 327.

The Department's internal system for communicating and coordinating information on suspicious passengers, activities, and incidents in the gate area and aboard aircraft needs improvement. Presently, air marshals generally lack an effective means to communicate with the flight crew and (b)(2)High, (b)(3)----- (b)(2)High, (b)(3)----- According to the FAMS, (b)(3) (b)(2)High, (b)(3)----- However, FAMS established a cooperative interagency process with several Federal agencies, and has entered into a contract with a managed network provider to develop a wireless data and voice communications system.

Further, key Departmental components were either not notified or not notified timely of the suspicious activities that occurred before and during the flight. In addition, both the FAMS and the FBI have statutory authority to investigate in-flight incidents, thereby causing possible confusion, duplication, and the potential for compromising investigative cases.

In our draft report we recommended that TSA (1) develop or acquire technology to permit effective and timely in-flight communication (b)(2)High, (b)(3)----- (b)(2)High, (b)(3)----- (2) establish Departmental guidance to clarify each Departmental agency's roles and responsibilities, as well as requiring coordination and information sharing within the Department when handling suspicious passengers and activities aboard commercial aircraft; and (3) execute a Memorandum of Understanding with the FBI concerning post-flight investigations.

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TSA, responding for the Department, noted that the Department generally concurs with the report and recommendation 1. TSA's proposed action for recommendation 1 is adequate and the recommendation is considered resolved. However, further departmental actions are needed to correct the deficiencies addressed in recommendations 2 and 3. These recommendations will remain open until the Department provides additional information on how it plans to address recommendations 2 and 3.

Background

Following the September 11, 2001, (9/11) terrorist attacks, Congress enacted the Aviation and Transportation Security Act (ATSA),¹ which created the Transportation Security Administration (TSA) within the Department of Transportation (DOT); defined TSA's primary responsibility as ensuring transportation security, including aviation security; and required TSA to oversee screening of all passengers and property loaded onto commercial aircraft. Additionally, ATSA empowered TSA to deploy air marshals on passenger airline flights, required TSA to deploy air marshals on all high-risk flights, and gave priority for deployment to long-distance non-stop flights, such as Flight 327, when determining risk. Originally established within the U.S. Customs Service as the Sky Marshals Program in the 1970s to counter hijackings to Cuba, the FAMS was expanded in response to 9/11. ATSA also required TSA to develop MOUs with other federal agencies to share and crosscheck data on individuals identified on federal databases who may pose risks to transportation or national security.

Passage of ATSA initiated rapid and significant growth in the FAMS, which is currently the largest force of its type in the world. The growth was launched by the Federal Aviation Administration (FAA) in October 2001. Subsequently FAMS was transferred to TSA in February 2002. With the November 25, 2002, passage of the Homeland Security Act of 2002 (HSA), Public Law 107-296, TSA was transferred to the Department of Homeland Security in March 2003. The FAMS remained in TSA until November 2003, when it was transferred to Immigration and Customs Enforcement (ICE). On October 15, 2005, the FAMS was transferred back into TSA.

FAMS assigns plain-clothes armed air marshal(s) to ride as passengers aboard U.S. commercial aircraft flights. The FAMS and air marshals' mission is to "... promote confidence in our Nation's aviation system through the effective

¹ Public Law 107-71, enacted November 19, 2001.

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deployment of Federal Air Marshals, to detect, deter, and defeat hostile acts targeting U.S. air carriers, airports, passengers, and crews.” Air marshals are integral to assuring the safety of the flying public by protecting passengers and flight crews in the event of a hijacking or terrorist incident. Air marshals blend in with ordinary passengers to cover high-risk domestic and international flights on U.S. carriers.

The HSA also established the Information Analysis and Infrastructure Protection Directorate (IAIP) within the Department. Within IAIP was the Homeland Security Operations Center (HSOC). Although the HSOC was an element of IAIP at the time of Flight 327, it is currently part of the DHS Operations Directorate. HSOC is the Department’s national hub for domestic situational awareness, information sharing, communications, and coordination pertaining to the prevention of terrorist attacks and domestic incident management. The HSOC however, was not informed by any Departmental agency of the Flight 327 suspicious activity. The suspicious activity, which occurred on June 29, 2004, was not entered into HSOC’s logs until July 26, 2004, almost a month later, and only then logged as a result of a July 22, 2004, *Washington Times* article, and an inquiry from the White House Homeland Security Council.

Within DHS are multiple enforcement elements including the FAMS, ICE, Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). The FAMS, formerly a sub-element within ICE, is responsible for handling suspicious passengers and activities aboard in-flight commercial aircraft.

In December 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108-458. The Act prescribes the roles and responsibilities of the newly created National Counterterrorism Center (NCTC) and its leadership.²

Results of Audit

Circumstances Related to Flight 327

Flight 327 was a weekday, non-stop flight from Detroit International Airport (DTW) to Los Angeles International Airport (LAX) operated by Northwest

² The NCTC was created outside the Department on August 27, 2004, by Executive Order 13354.

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Airlines. On Tuesday, June 29, 2004, Flight 327 departed DTW at 12:33 Eastern Daylight Time (E.D.T.), and arrived at LAX at 17:21 E.D.T. [14:21 Pacific Standard Time (P.S.T.)].³ The flight time totaled 4 hours and 48 minutes. The aircraft was fully loaded with 190 people, including air marshals, 2 pilots, and 4 flight attendants. No other federal, state, or local law enforcement officers were passengers on the flight.

Pre-Flight

On May 5, 2004, 12 Syrians were issued “entertainment” visas to enter the U.S. from Syria. The Syrians were part of a musical group scheduled to play in California on July 1, 2004. The visas covered the period from May 5, 2004, through June 10, 2004.⁴ The twelve men arrived in the U.S. at Dulles International Airport on May 30, 2004. The 13th suspicious passenger on Flight 327 was the musical group’s promoter who was a lawful permanent U.S. resident born in Lebanon. (b)(2)High, (b)(3) -----

(b)(2)High, (b)(3) -----
----- The Detroit metropolitan area has a large Middle Eastern population. Thus, numerous Middle Eastern passengers on an individual flight, originating or landing at DTW, would not be out of the ordinary.

At the Gate

Prior to boarding, one of the air marshals noticed what he later characterized as “unusual behavior” by about six Middle Eastern males, who arrived at the gate together, then separated, and acted as if they did not know each other. According to the air marshals, these men were sweaty, appeared nervous, and arrived after the boarding announcement. The air marshals made eye contact with one another to ensure they were aware of this behavior. The six men were part of the 13 member musical group. One of the six passengers who we interviewed said that while waiting at the gate he also noted several Middle Eastern-appearing men talking in small groups.

³ All times are shown as Eastern Daylight Time for activity that occurred prior to plane landing in Los Angeles, and Pacific Standard Time for activity that occurred in Los Angeles near landing and after plane landed. In addition, all times are approximate based on information and records reviewed during our audit.

⁴ Visa extensions were submitted to CIS in a petition signed June 10, 2004. According to CIS, although the visas expired on June 10, 2004, the petition was filed prior to its expiration date, and received by CIS on June 14, 2004. CIS’ Adjudicating Officer approved the visa extensions on July 6, 2004, allowing an extension until July 15, 2004.

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In-Flight

During the flight, about eight of the 13 Middle Eastern males behaved in a manner that aroused the attention and concern of flight attendants and passengers, and later of the air marshals and pilots. Suspicious activities noted by flight attendants and other passengers included:⁵

- One man, with a limp, sitting in the emergency row area, repeatedly refused to exchange seats, pretending not to understand English, even though he spoke English to the gate agent. The promoter eventually helped convince him to change seats.
- One or two men walked the aisle, appearing to count passengers.
- One man rushed to the front of the plane appearing to head for the cockpit. At the last moment he veered into the first class lavatory, remaining in it for about 20 minutes.
- One man carried a large McDonald's restaurant bag into a lavatory.
- Several men spent excessive time in the lavatories.
- Another man, upon returning from the lavatory, reeked strongly of what smelled like toilet bowl chemicals.
- Some men hand signaled each other. The passenger who entered the lavatory with the McDonald's bag made a thumbs-up signal to another man upon returning from the lavatory. Another man made a slashing motion across his throat, appearing to say "No."
- Several men congregated in the aisles, changed seats, and arose when the seat belt sign was turned on in preparation for landing.

The flight attendants first notified the air marshals of suspicious actions at 12:53 PM, 20 minutes after the flight departed DTW. (b)(2)High, (b)(3)-----
(b)(2)High, (b)(3)----- eight Middle Eastern males were changing seats. About 14:00 (1 ½ hours into the flight), a flight attendant notified another air marshal regarding the suspicious behavior. (b)(2)High, (b)(3)-----
(b)(2)High, (b)(3)----- and directed them to inform the captain. About 14:30, (b)(2)High, (b)(3)-----
(b)(2)High, (b)(3)----- that one of the suspicious individuals had taken a large McDonald's bag into the lavatory. The air marshal checked the lavatory, but found nothing suspicious. The air marshal directed the flight attendant to obtain the seat numbers and physical descriptions of the

⁵ The suspicious activity noted by the six non-suspicious passengers who we interviewed varied based on their seat assignment and activity level during the flight. (b)(2)High, (b)(3)-----
(b)(2)High, (b)(3)-----

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suspicious passengers. An air marshal then directed the flight attendant to notify the captain of the suspicious behavior.

At 16:11 (70 minutes before landing), due to the nature of the suspicious activity, an air marshal [REDACTED]

[REDACTED]

[REDACTED] At about 16:31 (50 minutes before landing), [REDACTED]

[REDACTED]

The captain was notified twice by the flight attendants regarding the suspicious passengers. The first time was about one hour into the flight (13:30), when a flight attendant entered the cockpit to talk with them. [REDACTED]

[REDACTED]

[REDACTED]

Post Flight

At about 17:06 (14:06 P.S.T.) the Los Angeles FAMS supervisor received a call from the MOC indicating that incoming Flight 327, with air marshals onboard, was landing at LAX in 15 minutes. The air marshals onboard the flight had requested the supervisor's assistance upon landing based upon reported suspicious activity of Middle Eastern males. The FAMS supervisor notified the FBI agent on duty at LAX about the situation and proceeded to the gate, where he met with another Los Angeles-based air marshal. There is no documentation showing that the MOC made further notifications at the time.

[REDACTED]

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Flight 327 landed at LAX at about 17:21 E.D.T. (14:21 P.S.T.). A FAMS supervisor and an air marshal, two TSA inspectors, one FBI agent, the Los Angeles Police, and LAX Police met the plane. The captain and co-pilot introduced themselves to the FAMS supervisor and FBI agent, offering a statement. They were informed that a statement was not needed.

Once the plane landed, an air marshal on the flight transmitted the SDR, and used his cellular phone to call his Los Angeles supervisor. The SDR mentioned that prior to boarding, the air marshals noted that five or six Middle Eastern males approached the gate together, but separated after checking-in. The air marshal met the FAMS supervisor and an FBI special agent at the gate and identified the two primary suspicious passengers: the individual with the McDonald's bag and the promoter. The FAMS supervisor informed the two suspicious passengers of the alleged suspicious activity and asked them for interviews. The men agreed. Another air marshal, along with the LAX police and a Los Angeles police officer, photocopied the men's Syrian passports and U.S. visas.

The promoter did not have his resident alien identification card, but instead produced a Connecticut driver's license. The promoter explained they were a musical group, performing July 1, 2004, at the Sycuan Casino and Resort in El Cajon, near San Diego.

Upon arrival at the gate, two TSA inspectors met with the Los Angeles FAMS supervisor. They had overheard a police radio call asking FBI to respond to Gate 24. The inspectors offered their assistance to the air marshals, allowed the FAMS and FBI to use an area in Terminal 2 for interviews, and provided a camera to photograph the suspicious passengers. TSA personnel were not present during the interviews of the suspicious passengers.

The air marshals from Flight 327, and another air marshal from Los Angeles, gathered the remaining suspicious passengers. The FAMS supervisor and the FBI agent escorted the promoter away from the gate for an interview in a quieter area. They later interviewed one other suspicious passenger. The promoter was present to translate during the second interview because the other suspicious passenger said he did not speak English. According to the FAMS, one of the onboard air marshals interviewed two flight attendants. The Los Angeles air marshal and an LAX police officer searched the plane, finding nothing suspicious. Afterwards, the same air marshal interviewed two passengers, not from the group of 13 Middle Eastern men, who insisted on giving statements.

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The FAMS supervisor examined the visas, but did not notice the visas had expired on June 10, 2004. One of the air marshals aboard Flight 327 did notice the June 10, 2004, expiration while photocopying the visas. However, he said his primary concern, at that time, was not whether the visas expired, but to copy the visa pages so that CBP could later run a database check on these individuals. This air marshal said he could have asked CBP to run a database check on the visas for him that day, but he did not do so. FAMS headquarters officials said that the air marshal erroneously believed he was not legally entitled to the database information and CBP might have declined assistance.

According to the FAMS supervisor, the FBI ran a check of the 13 suspicious passengers on the FBI's Automated Case Support System (ACS)⁷ and learned the promoter was involved in similar suspicious behavior on a January 28, 2004, Frontier Airlines flight.

At 19:36 E.D.T., more than 2 hours after the flight landed, the TSA inspector who met the flight notified TSA's Transportation Security Operations Center (TSOC). She also prepared and submitted a Suspicious Incident Report (SIR)⁸ to TSOC on June 30, 2004. This report was submitted through TSA's Performance and Result Information Systems (PARIS).⁹ Also, one of the air marshals onboard Flight 327 filed a "Mission Report," a two-page summary of observations and events surrounding Flight 327, on June 29, 2004. According to TSA's SIR, upon arrival at LAX, the FAMS supervisor, law enforcement officers, and the FBI met the aircraft, questioned two suspicious passengers, and queried the FBI's National Crime Information Center (NCIC),¹⁰ which came back clear. No other derogatory information was found. All 13 suspicious passengers were then released.

At 19:50, TSOC briefed the MOC, the Transportation Security Intelligence Service (TSIS), and other entities. No supplemental information regarding Flight 327 was provided to TSOC from the MOC. At 19:52, the TSOC briefed ICE and CBP.

⁷ Resides on the FBI's investigative mainframe and contains information related to all FBI investigations and cases. See Appendix D.

⁸ TSA's Transportation Security Intelligence Service compiles an executive summary weekly of recent suspicious incident reports. The data is obtained from TSA, law enforcement and intelligence community sources.

⁹ A system that stores incident reports from TSA. All intelligence indicating a threat is supposed to be reported in PARIS. PARIS produces the weekly suspicious incident reports.

¹⁰ A computerized index of criminal record history information such as theft reports, warrants, fugitives, and other criminal justice information submitted by U.S. law enforcement agencies. See Appendix D.

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According to an FBI headquarters official, the FBI initiated its investigation on July 19, 2004, after viewing one of the passengers aboard Flight 327 on the July 19, 2004, MSNBC Scarborough Country television show. On July 22, 2004, ICE headquarters directed the ICE member assigned to the FBI's Joint Terrorism Task Force (JTTF) in Los Angeles to investigate the alleged suspicious activity. Between July 22, 2004, and August 4, 2004, an ICE / OI special agent in Los Angeles interviewed each of the four Flight 327 flight attendants. The Los Angeles FAMS supervisor accompanied the ICE agent during the interviews, signing the documents witnessing the interviews.

The HSOC logs show no entries regarding Flight 327 on the day of the flight. Flight 327 was logged into HSOC's data base on July 26, 2004, four days after the flight was discussed in a *Washington Times* newspaper article, and the suspicious incident was brought to HSOC's attention by an inquiry from the White House Homeland Security Council.

The group of Middle Eastern men flew from Long Beach, CA to New York City on July 3, 2004. The 12 Syrians left the U.S. via Newark International Airport: four on July 8, 2004; seven on July 10, 2004; and one on July 14, 2004. For a complete chronological description and handling of the events, see Appendix C.

Communication and Coordination

The Department's internal system for communicating and coordinating information on suspicious passengers, activities, and incidents relating to commercial air travel needs improvement. Specifically, while in-flight, air marshals do not have an adequate and timely method of communicating (b)(2)High, (b)(3) and the (b)(2)High, (b)(3) and the Department does not have adequate policies and procedures clarifying each agency's roles and responsibilities, as well as requiring coordination and information sharing on suspicious passengers and activities.

Air Marshals Do Not Have Effective In-Flight Communication Capability

Currently, while in flight, air marshals do not have the technology to communicate (b)(2)High, (b)(3) and the (b)(2)High, (b)(3) and the

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Policies and Procedures

The Department’s agencies did not adequately communicate and coordinate their handling of suspicious passengers and activities on Flight 327, as follows:

- Although the HSOC was an element of IAIP at the time of Flight 327, it is currently part of the DHS Operations Directorate. HSOC is the Department’s national hub for domestic situational awareness, information sharing, communications, and coordination pertaining to the prevention of terrorist attacks and domestic incident management. The HSOC, however, was not informed by any Departmental agency of the Flight 327 suspicious activity.
- The suspicious activity which occurred on June 29, 2004, was not entered into HSOC’s logs until July 26, 2004, almost a month later, and only then logged as a result of a July 22, 2004, *Washington Times* article, and an inquiry from the White House Homeland Security Council. Furthermore, it was never entered into IAIP’s National Threat and Incident Database (NTIDB), which records reported threats and incidents. Although it was transmitted to the IAIP, an IAIP analyst likely subjectively elected not to enter it into the

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database. A former HSOC official said that the HSOC was not notified initially because of a communications break down. Appendix H of this report illustrates the typical Departmental communication flow of a commercial aircraft incident with air marshals on board at the time of Flight 327.

- The roles and authorities of the FAMS and FBI officials in segregating and interviewing the 13 men are not clear. The FAMS and FBI found no reason to hold the men longer at the time, even though the promoter had been involved in a similar incident on a previous flight.
- The air marshal who photocopied the visas of the suspicious passengers at CBP's airport office noticed they expired June 10, 2004. He could have asked CBP to check whether visa extensions had been approved, but chose not to. Further, neither FAMS nor TSA contacted the ICE Operations Center, on June 29, 2004, to notify them about the suspicious activity aboard Flight 327. They also could have checked with CIS, the Departmental agency in charge of granting or denying requests for visa extensions, to look into the visa status. There is no evidence that CIS was informed about the Flight 327 suspicious incident prior to approving the visa extensions for the 12 suspicious passengers.

The FAMS investigation report of Flight 327 includes a list of databases queried regarding the suspicious passengers. The report does not indicate the date or time of the queries. A FAMS headquarters official said the database queries were conducted from July 16 to 23, 2004, subsequent to the appearance of a *Womens Wall Street* article written by a Flight 327 passenger. For a list of these databases, see Appendix D of this report.

DHS and FBI Authorities for Investigating In-Flight Incidents

Both the FAMS and the FBI have statutory authority for investigating in-flight incidents based on various statutes, but a clear policy or MOU defining each agency's authority and role under varying situations has not been executed. For example, both the FAMS and FBI conducted separate, and at times uncoordinated post-flight investigations of the Flight 327 suspicious incident. The lack of adequate coordination between these agencies could result in duplication and compromise investigative cases.

According to FAMS officials, its authority to conduct post flight investigations is

Handling of Suspicious Passengers Aboard Northwest Flight 327

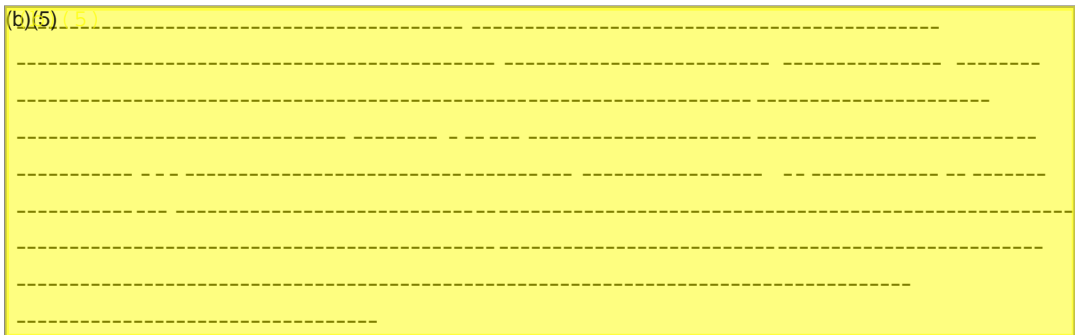
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derived from ATSA and 49 U.S.C. §§ 114 (q); 44903 (d) (e) as follows:

- Section 44903 (d) – “. . . the Secretary of Transportation may authorize an individual who carries out air transportation security duties—(1) to carry firearms; and (2) to make arrests without a warrant . . .”, and to seek and execute search and arrest warrants. FAMS position is that inherent in this authority is the ability to conduct investigations.
- Section 44903 (e) – “The (DOT) Under Secretary has the exclusive responsibility to direct law enforcement activity related to the safety of passengers on an aircraft involved in an offense under section 46502 of this title . . . from the moment all external doors of the aircraft are closed following boarding, until those doors are opened to allow passengers to leave the aircraft.”
- Section 114(q)- “Law enforcement powers . . . The (DOT) Under Secretary may designate an employee of the Transportation Security Administration or other Federal agency to serve as a law enforcement officer.”
- Additionally ATSA authorized TSA to exercise broad powers relating to its authority to ensure the safety of the aviation system. This included, but was not limited to, the power to investigate crimes against aviation.

When the FAMS was previously under TSA, TSA designated the FAMS as their law enforcement officers, and inherent in these powers was the authority to conduct investigations.



- Title 28, U.S.C., Part II, Chapter 33, Section 538 – Investigation of Aircraft Piracy and Related Violations. This statute provides that the FBI shall investigate any violation of section 46314 or chapter 465 of title 49.¹¹

¹¹ Title 49 – Transportation, Chapter 465 *Special Aircraft Jurisdiction of the United States*.

Handling of Suspicious Passengers Aboard Northwest Flight 327

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- (b)(5) (S)
-
-

(b)(5) (S)

(b)(5) (S), FAMS, TSA, and FBI have operated and cooperated under the May 6, 2003, FBI “electronic communication” guidance. According to Departmental Office of Policy officials, the Department is responsible for MOUs with outside agencies.

An FBI official said that once a commercial passenger aircraft lands, if there are any suspicions of terrorist activity or presence, FBI has lead federal responsibility, regardless of whether air marshals are aboard, pursuant to previously mentioned Title 28, Section 538. (b)(5) (S)

(b)(5) (S)

After the suspicious incident aboard Flight 327, the FBI started its own post-flight

Handling of Suspicious Passengers Aboard Northwest Flight 327

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investigation. In addition, the FAMS conducted their own post-flight investigation, even though air marshals' mission is to:

Promote confidence in our Nation's civil aviation system through the effective deployment of Federal Air Marshals to detect, deter, and defeat hostile acts targeting U.S. air carriers, airports, passengers, and crews.

Recommendations

We recommend that the Assistant Secretary, Transportation Security Administration, take steps to:

Recommendation 1: Develop or acquire technology to permit effective and timely in-flight communication (b)(2)High, (b)(3)-----

(b)(2)High, (b)(3)-----

Recommendation 2: Establish Departmental guidance to clarify each Departmental agency's roles and responsibilities, as well as requiring coordination and information sharing within the Department when handling suspicious passengers and activities aboard commercial aircraft.

Recommendation 3: Execute an MOU with the FBI concerning post-flight investigations.

Management Comments and OIG Analysis

We received written comments from TSA that were supported by DHS. In its comments, TSA noted that DHS generally concurs with the report. We have incorporated comments in the report where appropriate and included a copy of the comments in their entirety as Appendix B. The actions proposed by TSA for recommendation 1 are adequate; however, further departmental actions are needed to correct the deficiencies addressed in recommendations 2 and 3. Below is a summary of TSA's response to each recommendation and our assessment of the response.

Recommendation 1: Develop or acquire technology to permit effective and timely in-flight communication (b)(2)High, (b)(3)-----

(b)(2)High, (b)(3)-----

Handling of Suspicious Passengers Aboard Northwest Flight 327

Management Comments: TSA concurred with the recommendation. FAMS noted that it has been working towards more effective communications, and agrees on its necessity, but acknowledges technological challenges. Furthermore, FAMS established a cooperative interagency process with several Federal agencies, and has entered into a contract with a managed network provider to develop a wireless data and voice communications system.

OIG Comments: We consider the recommendation resolved and will close the recommendation when TSA provides a comprehensive plan of implementation, including timetables.

Recommendation 2: Establish Departmental guidance to clarify each Departmental agency's roles and responsibilities, as well as requiring coordination and information sharing within the Department when handling suspicious passengers and activities aboard commercial aircraft.

Management Comments: TSA, responding for DHS, noted the Department has strategic plans in place which define the roles and responsibilities within the Department, as well as the components. The Department considers its strategic plan to be a "living document" which offers the flexibility to be reviewed and revised based upon changing and pertinent operational intelligence which effect all relevant programs and policies, including coordination and information sharing within the Department when handling suspicious passengers and activities aboard commercial aircraft.

OIG Comments: TSA's action is inadequate. The intent of Recommendation 2 was to provide Departmental enforcement officers with guidance that details the roles and responsibilities of each component's personnel when responding to a suspicious incident aboard an aircraft, and requirements for improved coordination and information sharing. Our audit found instances where officials were not clear on their roles and responsibilities and did not adequately coordinate and share information within the Department. A strategic plan would normally not contain the level of detail to meet the intent of the recommendation. The recommendation will remain unresolved and open until the Department or TSA provides, and our analysis determines that, adequate procedures or guidance have been developed and implemented to handle incidents such as those that occurred on Flight 327.

Handling of Suspicious Passengers Aboard Northwest Flight 327

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Recommendation 3: Execute an MOU with the FBI concerning post-flight investigations.

Management Comments: TSA's comments noted that the Department is reviewing a number of issues including an MOU with the FBI concerning post-flight investigations

OIG Comments: We consider this recommendation unresolved until the Department agrees to execute an MOU or another device that meets the intent of this recommendation.

Other Comments

TSA noted in its comments that it disagreed with our report language that there was a lack of coordinated action between the FAMS and FBI. Our audit identified examples where the Department's investigators were interviewing individuals and taking other investigative actions without the direction or knowledge of the FBI. Because we also found activities where the FBI and the Department were clearly coordinated, we revised the report language to say the investigations were "sometimes" uncoordinated.

TSA also commented that it believed a referral of the suspicious activity that occurred on Flight 327 did not merit referral to the HSOC. TSA's comments note, "The decision not to contact the HSOC was decided only after the FAMS and FBI leadership jointly determined that the subjects could be cleared. The reported suspicious activity was determined to be unfounded, and not a terrorist threat and therefore did not merit an HSOC referral." We believe the HSOC clearly signaled a referral was merited by logging the Flight 327 matter into its database on July 26, 2004, following a July 22, 2004, *Washington Times* article, and an inquiry from the White House Homeland Security Council.

Management Action

We are requesting TSA to respond within 90 days of the issuance of this report on the further actions it plans to take to address recommendations 2 and 3.

Handling of Suspicious Passengers Aboard Northwest Flight 327

Purpose, Scope, and Methodology

We initiated the audit because of media reports concerning actions taken by Departmental personnel in response to events on Flight 327. To assess the Departmental policies and procedures for handling suspicious passengers and activities aboard in-flight commercial aircraft, we interviewed officials within the department, and reviewed documents at the Department headquarters, FAMS, CIS, and CBP. Within the Federal Government, but outside the Department, we interviewed officials and reviewed documents from National Aeronautical and Space Administration (NASA) and the FBI. Outside the Federal Government, we interviewed officials from the (b)(2)High four air carriers including Northwest Airlines, and held discussions with officials from ten industry trade associations.

To determine the specific circumstances relating to Flight 327, including the Department's handling of the suspicious passengers after the plane landed, we interviewed: (i) Northwest Airlines officials, Flight 327 flight crew including four flight attendants and two pilots; (ii) the air marshals aboard Flight 327 and the FAMS supervisor who met Flight 327 in Los Angeles; (iii) TSA personnel in Los Angeles who met the flight; and (iv) six Flight 327 non-suspicious passengers. Our sample of non-suspicious passengers consisted of a free-lance writer, her husband, and 4 other concerned passengers who contacted her.

To determine the various systems for recording and reporting suspicious passengers and activities, we reviewed: (i) TSA's SIR and PARIS; (ii) the FAMS investigative case file for Flight 327; and (iii) policies and procedures pertaining to suspicious passengers and activities, including laws, regulations, directives, and internal correspondence.

We conducted our fieldwork from August 2004 through May 2005. Our review covered the period from March 1, 2003, through May 31, 2005. We conducted our audit pursuant to the Inspector General Act of 1978, as amended, and according to generally accepted government auditing standards.

The following table lists the different offices and entities we met with and obtained data from during the course of our audit:

Handling of Suspicious Passengers Aboard Northwest Flight 327

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Appendix A Purpose, Scope and Methodology

Organizations	Locations
1. Within the Department:	
a. Border and Transportation Security	Washington, DC
b. Information Analysis and Infrastructure Protection Directorate	Washington, DC
c. Federal Air Marshal Service	Headquarters in Herndon, VA
• Mission Operations Center	Herndon, VA
• Air Marshals aboard Flight 327 and those who met the flight upon landing at LAX	Los Angeles International Airport
• FAM assigned to the National Joint Terrorism Task Force	Herndon, VA
• FAM assigned to local JTTF	Detroit and Los Angeles
d. Immigration and Customs Enforcement	Headquarters in Washington, DC
• Office of Investigations	Washington, DC and Los Angeles
e. Customs and Border Protection	Headquarters in Washington, DC
f. Transportation Security Administration	Headquarters in Arlington, VA
• Officials that met Flight 327	Los Angeles International Airport
• TSA officials at local offices	Detroit Metro Airport, Minneapolis-St. Paul International Airport, and Chicago O'Hare Airport
• Transportation Security Operations Center	Herndon, VA
g. USCIS	Headquarters in Washington, DC
2. Within the Federal Government, but outside the Department:	
• FBI's JTTF	Detroit, MI
• NASA	Mountain View, CA
• FBI Office of Civil Aviation Security Program	Washington, DC
• Government Accountability Office	Washington, DC
• National Security Agency	Fort Meade, MD
3. Outside the Federal Government:	
• (b)(2)High	New York, NY
• Chicago Police Department	Chicago O'Hare International Airport
• Air Carriers	
Northwest Airlines	Headquarters – Minneapolis - St. Paul International Airport and Detroit International Airport
--Flight 327 pilots	Detroit Metro Airport
--Flight 327 attendants	Los Angeles International Airport
--Flight 327 (non-suspicious) passengers	Chicago, IL and Los Angeles, CA

Handling of Suspicious Passengers Aboard Northwest Flight 327

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Appendix A Purpose, Scope and Methodology

Organizations	Locations
American Airlines	Chicago O'Hare International Airport
(b)(2)High	Chicago O'Hare International Airport
United Airlines	Washington, DC - Reagan National Airport
• Industry associations, unions, and trade groups	
--Professional Flight Attendants Association	Bloomington, MN
--Association of Flight Attendants	Washington, DC
--Association of Professional Flight Attendants	Eules, TX
--Airline Pilots Association	Herndon, VA
--Allied Pilots Association	Ft. Worth, TX
--Air Transport Association	Washington, DC
--Airports Council International – North America	Washington, DC
--American Association of Airport Executives	Alexandria, VA
--Regional Airline Association	Washington, DC
--Airport Law Enforcement Agency	Nashville, TN

Handling of Suspicious Passengers Aboard Northwest Flight 327

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Appendix B
Management Response to Draft Report

U.S. Department of Homeland
Security
Washington, DC 20528



**Homeland
Security**

February 7, 2006

MEMORANDUM FOR: Richard L. Skinner
Inspector General
Department of Homeland Security

FROM: Steven J. Pecinovsky *Steven J Pecinovsky*
Director
Department GAO/OIG Liaison Office

SUBJECT: OIG Report titled "Review of Department's Handling of Suspicious
Passengers Aboard Northwest Flight 327"

Thank you for the opportunity to comment on and respond to the recommendations made in your draft report entitled "Review of Department's Handling of Suspicious Passengers Aboard Northwest Flight 327". The Department supports the attached comments as provided by the Deputy Administrator for the Transportation Security Administration.

Handling of Suspicious Passengers Aboard Northwest Flight 327

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~~SENSITIVE SECURITY INFORMATION~~ Office of the Assistant Secretary

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 22202-4220

FEB 02 2006



Transportation
Security
Administration

INFORMATION

MEMORANDUM FOR: Steve Pecinovsky
DHS Audit Liaison
Department of Homeland Security

FROM: Robert Jamison *Robert Jamison*
Deputy Administrator
Transportation Security Administration

SUBJECT: The Transportation Security Administration's (TSA)
response to the Department of Homeland Security (DHS)
Office of Inspector General (OIG) draft report titled
*"Review of Department's Handling of Suspicious
Passengers Aboard Northwest Flight 327"*.

Purpose

This memorandum constitutes TSA's response to the findings and recommendations made in the DHS OIG draft report, *"Review of Department's Handling of Suspicious Passengers Aboard Northwest Flight 327"* (November 2005).

Background

The DHS OIG draft addresses the specific circumstances relating to Northwest Flight 327 from Detroit to Los Angeles on June 29, 2004, including the Department's handling of the suspicious passengers and activities, and identified lessons learned from the suspicious incident. The Inspector General initiated this review on August 16, 2004.

Discussion

DHS appreciates the DHS OIG's efforts to account the FAMS activities related to this report, and we look forward to an ongoing relationship with the IG as we work towards identifying and correcting vulnerabilities in our transportation security infrastructure.

Attachment

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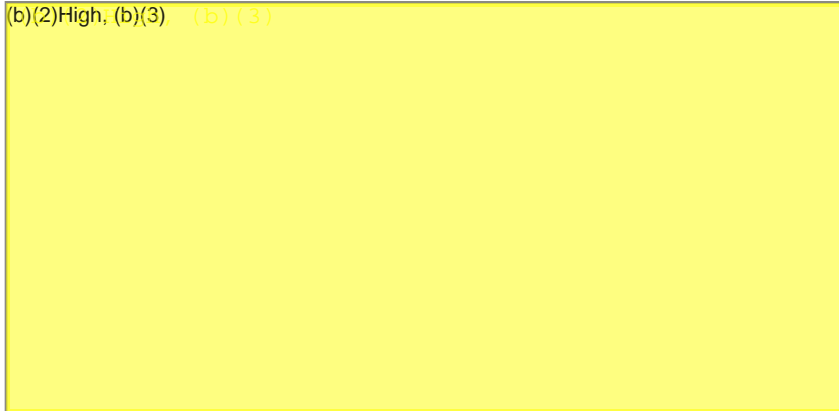
The Department of Homeland Security (DHS) Formal Response to the Department of Homeland Security (DHS) Office of Inspector General (OIG) Draft Report and Recommendations, "Review of Department's Handling of Suspicious Passengers Aboard Northwest Flight 327" (November 2005)."

DHS has reviewed the draft report, "Review of Department's Handling of Suspicious Passengers Aboard Northwest Flight 327." We appreciate the opportunity to comment and provide our input. DHS generally concurs with the report; however, there are several areas within the report that we offer further discussion and clarification:

- 1) Regarding FAMS in-flight communication capability;
- 2) DHS OIG's assertion that the FAMS and FBI conducted separate and uncoordinated post-flight investigations concerning Northwest Flight 327.
- 3) DHS and the Federal Bureau of Investigation's (FBI) authority to investigate in-flight incidents

FAMS In-Flight Communications Capability

DHS and the FAMS are committed to championing the development of a technologically viable air to ground communications initiative and have continuously placed a priority on its development. DHS, the Department of Justice, the Federal Communication Commission, the aviation and communications industries, and the Federal Law Enforcement community have committed to taking a leadership role to achieve this mandate.



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Handling of Suspicious Passengers Aboard Northwest Flight 327

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(b)(2)High, (b)(3) (b) (3)

Prior to and since this incident in 2004, the FAMS has set and achieved a number of measurable goals. The FAMS established a cooperative interagency process with DHS (Transportation Security Administration, Science and Technology, Border and Transportation Security, Information Analysis/Infrastructure Protection), the Department of Transportation (Federal Aviation Administration, National Aeronautics and Space Administration), Department of Defense, the Federal Communications Commission and other federal government agencies. This interagency cooperative was developed to collectively investigate complimentary avenues to develop new state-of-the art technology on a federal level. The FAMS has also entered into a contract with a managed network services provider to develop a wireless data and voice-capable broadband communications and tactical information sharing system. This contract includes provisions for the acquisition of the necessary hardware, software and managed services support for an Air to Ground Communication System (AGCS). The envisioned system will entail a wireless network (hardware, software, and applications) that interfaces with a combination of public and private satellite-based and/or terrestrial communication links providing global airborne communications coverage. DHS agrees on the necessity for the development of a wireless airborne communication system (air-to-ground, ground-to-air, air-to-air, and intra-cabin) in order to enhance aviation security and ensure the accomplishment of the FAMS' mission. DHS and the FAMS' objective are to complete our Congressional mandate and equip its workforce with access to voice and data communications onboard U.S. carrier aircraft worldwide.¹ It is important to emphasize, however, that the development and implementation of an AGCS was ongoing for two years before the incident which occurred on Northwest Flight 327.

¹ Specific legislative action includes: the House Conference Committee 107-593 (July 19, 2002) which authorized the Federal Air Marshal Service (FAMS) \$15 Million to initiate procurement of an AGCS program; *House Report 108-169 (June 23, 2003, accompanying H.R. 2555)*, which instructed the FAMS to establish and chair a public-private, interagency working group in order to develop, deploy and enhance aviation communications as it relates to security and law enforcement; Senate Report 108-86 (July 10, 2003), which provided \$10 million in funding for the FAMS to continue development of an AGCS; and House Report 109-241 (September 29, 2005) which provided \$2 million in funding for the FAMS to implement an AGCS and established a quarterly reporting requirement, in conjunction with DHS S&T, to the Appropriations Committees.

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Investigation of Flight 327

One of the report's central assertions is that the FAMS and the FBI conducted separate investigations of the Flight 327 incident weeks after the actual event.² The DHS OIG report states the following conclusion: "The lack of adequate coordination between these agencies could result in duplication and compromise investigative cases." DHS would assert to the contrary. From the onset of this incident the FAMS and FBI conducted a joint investigation. This is exhibited by the law enforcement response where both FBI and FAMS representatives jointly responded to meet Flight 327 as it landed and the passengers deplaned. Separate interviews may have been conducted, but all were jointly coordinated between both the FBI and FAMS during all stages of the investigation. Such investigative law enforcement conduct is reasonable and an accepted practice where there is a multi-agency response to any potential national or terrorist incident. Rather than conducting separate disconnected investigations, the capabilities of each organization were appropriately leveraged and jointly coordinated.

As documented within the report there were numerous instances where the FAMS and FBI's cooperative investigative efforts were apparent. For instance, the report establishes that fifteen minutes before Flight 327 landed at LAX, the FAMS supervisor on the scene notified the FBI duty agent at LAX and both proceeded to the gate to await the arrival of Flight 327³. Upon landing, the flight was met by local law enforcement, TSA inspectors, a FAMS supervisor, and another FAMS, and the FBI duty agent.⁴ The report also cites instances of the FAMS and FBI working in concert, including the FBI utilizing its ACS and NCIC systems to determine whether there was any reason to detain the suspicious individuals.⁵ Given the cooperative response, use of law enforcement assets and resources it would appear reasonable to assert that a joint investigation of this incident commenced on June 29, 2004, as evidenced by the cooperative response of the FAMS and FBI at LAX.

The DHS OIG cites an unnamed FBI official mentioned to support the assertion that the FBI did not investigate the incident until weeks later. "According to an FBI headquarters official, the FBI initiated its investigation on July 19, 2004, after viewing one of the

² *Review of Departments' Handling of Suspicious Passengers Aboard Northwest Flight 327 (Draft Report)*, p. 2 ("Weeks after the flight landed in Los Angeles, following press reports of the suspicious incident, both the FBI and Federal Air Marshal Service (FAMS) independently opened investigations into the activities that occurred on Flight 327."); p. 13 ("For example, both the FAMS and FBI conducted separate, but uncoordinated post-flight investigations of the Flight 327 suspicious incident.")

³ *Draft Report*, p. 7.

⁴ *Draft Report*, p. 8. It is important to also note that the captain and co-pilot were informed that a statement from them was not needed because neither individual were in a position to witness the events aboard Flight 327.

⁵ *Report*, pp. 2, 9-10, 12.

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passengers aboard Flight 327 on the July 19, 2004, MSNBC Scarborough Country television show.⁶ However, based on the aforementioned facts, it seems clear that an active and on-going investigation was commenced by the FAMS and FBI regarding the Flight 327 incident on the date the incident occurred, June 29, 2004.

The report is also unclear regarding precisely what the “new” FBI and FAMS investigations were. DHS OIG maintains that the FAMS conducted database queries on July 16-23, 2004, but it is uncertain whether or not these were the same databases searched at LAX on June 29, 2004. The report does state that the Los Angeles FAMS supervisor accompanied an Immigration and Customs Enforcement (ICE) Office of Investigations (OI) agent to interview the Flight 327 flight attendants. It is apparent from the report that the ICE agent was conducting these interviews in his capacity as a detailee to the FBI’s Joint Terrorism Task Force (JTTF). JTTF detailees report to the FBI, are directed by the FBI, and cooperatively investigate FBI terrorism cases. It is unclear how these interviews, conducted under the purview of the FBI’s JTTF, could have constituted a separate and uncoordinated investigation. Indeed, any follow up inquiry the FAMS conducted was coordinated with the FBI.

Overall a key element when considering the response to this incident should be noted, which is that the 13 Syrian musicians were not terrorists and that the law enforcement assessments made by the FAMS and FBI on June 29, 2004 were appropriate. This is of particular importance when considering the involvement of the HSOC.

The decision not to contact the HSOC was decided only after the FAMS and FBI leadership jointly determined that the subjects could be cleared. The reported suspicious activity was determined to be unfounded, and not a terrorist threat and therefore did not merit an HSOC referral.

FAMS Authority for Investigating In-Flight Incidents

FAMS legal authority to conduct post-flight investigations is derived from the Aviation and Transportation Security Act (ATSA), and 49 U.S.C. sections 114(q), 44903(d) and (e). This legal authority gives concurrent jurisdiction to the FAMS along with the FBI to investigate in-flight incidents; (b)(5) (5)

(b)(5) (5)

(b)(5) (5)

(b)(5) (5) Although the FAMS and FBI have concurrent jurisdiction, the FAMS agrees with the FBI and DHS OIG that a Memorandum of Understanding (MOU), formalizing this relationship would assist all responding agencies by setting forth a definitive understanding of each agency’s roles and responsibilities during such an

⁶ Report, p. 10.

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incident. While an MOU does not currently exist, the FAMS would assert that they have steadfastly maintained the necessary cooperation to achieve their agency mission.

Notwithstanding the fact that an MOU would be preferable, a procedural matrix has been effectively developed and acted as a de facto MOU for the FAMS and FBI for more than two years. This was fully briefed to the DHS OIG and a copy of the electronic communications has been provided. The process can be outlined as follows: upon a FAM making an arrest aboard an aircraft, the FAMS will facilitate the arrest through the initial appearance stage of the criminal prosecutive process. Immediate notification will be made with the FBI, and the FBI will be provided with the ability to interview the subject, witnesses, review evidence, and receive copies of all arrest documentation, not later than the subject's initial appearance. In all other matters, the historic jurisdiction and responsibilities of the FBI are unaffected. This agreement is in writing, and has been communicated to all relevant FBI and FAMS personnel and to date has functioned well. However, this document does memorialize the fact that concurrent jurisdiction does exist between the FAMS and FBI, and details the working processes for addressing in-flight investigations and establishes that the FAMS and FBI do have a relationship built on communication, coordination, and cooperation.

TSA Response to DHS OIG Recommendations:

DHS OIG RECOMMENDATION 1: Develop or acquire technology to permit effective and timely in-flight communication (b)(2)High, (b)(3) (b)(7)(F) (b)(2)High, (b)(3) (b)(7)(F)

DHS concurs with the recommendation and has been working towards this aim since shortly after September 11, 2001. Both DHS and the FAMS are committed to championing the development of a (b)(2)High, (b)(3) (b)(7)(F) communications initiative and have continuously placed a priority on its development. DHS, the Department of Justice, the Federal Communication Commission, the aviation and communications industries, and the Federal Law Enforcement community have committed to taking a leadership role to achieve this mandate.

DHS agrees on the necessity for the development of a wireless airborne communication system (b)(2)High, (b)(3) (b)(7)(F) in order to enhance aviation security and ensure the accomplishment of the FAMS' mission. DHS and the FAMS' objective are to complete our Congressional mandate and equip its workforce with access to voice and data communications onboard U.S. carrier aircraft worldwide. ⁷

⁷ Specific legislative action includes: the House Conference Committee 107-593 (July 19, 2002) which authorized the Federal Air Marshal Service (FAMS) \$15 Million to initiate procurement of an AGCS program; *House Report 108-169 (June 23, 2003, accompanying H.R. 2555)*, which instructed the FAMS to establish and chair a public-private, interagency working group in order to develop, deploy and enhance aviation communications as it relates to security
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Handling of Suspicious Passengers Aboard Northwest Flight 327

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DHS OIG RECOMMENDATION 2: Establish departmental guidance to clarify each departmental agency's roles and responsibilities, as well as requiring coordination and information sharing within the department when handling suspicious passengers and activities aboard commercial aircraft.

The Department currently has strategic plans in place which define the roles and responsibilities within the Department, as well as the components. The Department considers its strategic plan to be a "living document" which offers the flexibility to be reviewed and revised based upon changing and pertinent operational intelligence which effect all relevant programs and policies, including coordination and information sharing within the Department when handling suspicious passengers and activities aboard commercial aircraft. Additionally, TSA and the FAMS have directives in place that require Federal Air Marshals, Federal Security Directors, and air carriers and other regulated parties, to report suspicious incidents and security incidents to TSA and FAMS headquarters.

DHS OIG RECOMMENDATION 3: Execute an MOU with the FBI concerning post-flight investigations.

The Department is reviewing a number of issues including an MOU with the FBI concerning post-flight investigations.

Conclusion

Thank you again for the opportunity to comment. If we can provide any further clarification or supporting materials it would be appreciated.

and law enforcement; Senate Report 108-86 (July 10, 2003), which provided \$10 million in funding for the FAMS to continue development of an AGCS; and House Report 109-241 (September 29, 2005) which provided \$2 million in funding for the FAMS to implement an AGCS and established a quarterly reporting requirement, in conjunction with DHS S&T, to the Appropriations Committees.

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Appendix C

Timeline of Suspicious Events and Departmental Response Prior To, On, and After June 29, 2004

DATE & TIME ¹²	LOCATION / AGENCY	ACTIVITY
PRIOR TO JUNE 29, 2004		
08/20/03	USCIS	USCIS advised that the musical group’s promoter (one of the 13 suspicious passengers on Flight 327) was approved as a lawful permanent resident in the U.S.
01/28/04	TSA	Per TSA’s Suspicious Incident Report, the promoter was one of eight passengers acting suspiciously aboard Frontier Airlines Flight 577 from Houston, through Denver, to San Francisco. Flight attendants reported all eight passengers kept trying to switch seats while boarding and during the flight, made repeated service requests in what the attendants described as an effort to keep the flight crew occupied. One took a cell phone into the “front lavatory,” remained in the lavatory for over 15 minutes, but did not appear to have the phone when leaving the lavatory.
05/05/04	CIS	Entertainment (P3) visas were issued to 12 of the 13 suspicious passengers to come to the U. S from Syria.
05/30/04	CIS	Twelve of the 13 suspicious passengers arrived in the U.S. at Dulles International Airport. The 12 men are from Syria. The remaining passenger, a lawful permanent U.S. resident, was born in Lebanon. Their ages range from 23 to 52.
06/10/04	CIS	The expiration date of the visas issued to the 12 suspicious passengers and the date visa extension applications were signed by their petitioner.
06/14/04	CIS	Per CIS, this is the date when the visa extension requests were received by CIS. (Four days after visas expired.)
06/18/04	CIS	Per CIS, Interagency Border Inspection System (IBIS) checks were done on 12 of the 13 suspicious passengers in order to approve their visa extensions to remain in the U.S. Eight names returned back as IBIS positive hits. CIS officers ultimately resolved the hits since no other derogatory information was found.
ON JUNE 29, 2004 - PRIOR TO BOARDING		
	Detroit Airport (DTW)	The air marshals scheduled for Flight 327 observed six Middle Eastern appearing men, sweating and nervous, who arrived at the gate together after the announcement for boarding, then separated.
	DTW	Flight 327 was delayed five minutes because one of the 13 suspicious passengers, who appeared not to understand English and walked with a limp, was seated in the emergency exit row. The flight attendants determined he was unable to operate the emergency procedures, and delayed the flight while having him exchange seats.
12:33 p.m.	DTW	Flight 327 takes off from DTW.
IN-FLIGHT		
12:53 p.m. (20 min. after departure)		(b)(2)High, (b)(3) ----- regarding suspicious activity of eight Middle Eastern appearing men changing seats.

¹² All times are shown as Eastern Daylight Time for activity that occurred prior to plane landing in Los Angeles, and Pacific Standard Time for activity that occurred in Los Angeles near landing and after plane landed. In addition, all times are approximate based on information and records reviewed during our audit.

Handling of Suspicious Passengers Aboard Northwest Flight 327

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DATE & TIME ¹²	LOCATION / AGENCY	ACTIVITY
13:30 (1 hour into flight)		The captain was notified twice by the flight attendants regarding suspicious passengers aboard the flight. (b)(2)High, (b)(3)----- (b)(2)High, (b)(3)-----
14:00 (1 ½ hours into flight)		Another flight attendant (b)(2)High, (b)(3)----- indicating a couple of passengers were acting suspiciously. The air marshal talked to the flight attendant.
14:00 to 14:30 (90 to 120 minutes into flight)		<ul style="list-style-type: none"> • ----- A flight attendant (b)(2)High, (b)(3)----- an oversized McDonald's bag into the lavatory and returned to his seat carrying the same bag. A search of the lavatory did not turn up anything. • An air marshal asked a flight attendant to obtain the seat numbers and descriptions of the suspicious passengers. (b)(2)High, (b)(3)----- (b)(2)High, (b)(3)----- • The air marshal asked the flight attendant to notify the Captain of the suspicious behavior.
16:11 (70 min. before landing)		(b)(2)High, (b)(3)-----
16:31 (50 min. before landing)		(b)(2)High, (b)(3)----- (b)(2)High, (b)(3)----- Upon receiving the air marshal's note, the Captain sent a message to Northwest Airlines Dispatch to contact the air marshal supervisor at LAX to meet the plane.
17:00 20-30 minutes before landing)		(b)(2)High, (b)(3)-----
From this point forward time is shown as Pacific Standard Time		
14:00 to 14:06	FAMS - LAX	The FAM supervisor in Los Angeles received a call from the MOC indicating an incoming Flight 327, with air marshals onboard, was about to land at LAX within 15 minutes. The air marshals onboard the flight had requested the supervisor's assistance upon landing based upon reported suspicious activity of Middle Eastern males. The FAM supervisor notified the FBI agent about the situation and proceeded to the gate, where he met with another air marshal.

Handling of Suspicious Passengers Aboard Northwest Flight 327

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Timeline of Suspicious Events and Departmental Response Prior To, On, and After June 29, 2004

DATE & TIME ¹²	LOCATION / AGENCY	ACTIVITY
14:00 to 14:06	TSA - LAX	Two TSA regulatory inspectors at LAX monitored a call over the police radio asking FBI to respond to Gate 24. The two TSA LAX inspectors also responded to Gate 24. Upon arrival at the gate, the two inspectors met with the Los Angeles FAM and FBI agent. The inspectors offered their assistance to the air marshals, allowed the FAMS to use the area in Terminal 2, and provided a camera to the air marshals to photograph the suspicious passengers. TSA personnel were not present during the interviews with the two suspicious passengers conducted by the air marshal and the FBI.
14:21	LAX	Flight 327 landed at LAX.
POST LANDING ACTIVITY		
06/29/04	FAMS @ LAX	<ul style="list-style-type: none"> • Once the plane landed, one of the air marshals (b)(2)High, (b)(3) ----- used his cell phone to call his Los Angeles supervisor. He met the supervisor and an FBI agent at the gate. The air marshal identified the two “primary” suspicious passengers: the “McDonald’s individual” and the promoter. • The FAM supervisor informed the two suspicious passengers of the alleged suspicious activity and asked them for an interview. The men agreed to be interviewed. • Another air marshal, the LAX Police, and the LAPD photocopied the remaining passengers’ documents. The promoter did not have his resident alien identification card, instead producing a Connecticut driver’s license. The man explained the group was in Southern California for an engagement July 1, at the Sycuan Casino in El Cajon, near San Diego and the group was returning to New York City July 3, 2004. • The in-flight air marshals and an air marshal from Los Angeles gathered the remaining suspicious passengers by the ticket counter. The FAM supervisor and FBI agent escorted the promoter away from the gate for an interview in a quieter area. They later interviewed the other suspicious passenger employing the promoter as the translator. According to the air marshals, one of the air marshals interviewed two flight attendants. • The Los Angeles air marshal and an LAX police officer searched the plane. Afterwards, the same air marshal interviewed two passengers (not the suspicious passengers) who insisted on giving statements.
06/29/04	FAMS @ LAX	<ul style="list-style-type: none"> • One of the in-flight air marshals made copies of the Syrian passports carried by 12 of the 13 suspicious men and the Connecticut driver’s license for the promoter. The air marshal noticed the visas expired June 10, and that the men entered the country May 30, 2004. • The FAM supervisor and the FBI agent examined the visas, not noticing they had expired on June 10, 2004. • The MOC requested TSIS run database checks on 2 of the suspicious passengers’ history and did not report any problems regarding their history.
06/29/04	FAM / FBI LAX	Per the FAM supervisor, the FBI ran a check of the promoter on the FBI’s ACS System and learned that he had been involved in a similar suspicious incident on January 28. No other derogatory information was found. All 13 men were released.

Handling of Suspicious Passengers Aboard Northwest Flight 327

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Timeline of Suspicious Events and Departmental Response Prior To, On, and After June 29, 2004

DATE & TIME ¹²	LOCATION / AGENCY	ACTIVITY
06/29/04 @ 1636 hours	TSA – LAX	<ul style="list-style-type: none"> • Per TSA’s Suspicious Incident Report, the TSA inspector who met the flight notified the TSOC of the circumstances regarding Flight 327, and submitted a report. The passengers’ names were not provided. • The SIR prepared by the TSA inspector who met Flight 327 indicates that upon arrival at LAX, FAMS supervisor, law enforcement officers, and the FBI met the aircraft, questioned the suspicious passengers, contacted the FBI’s NCIC, which came back clear, and released the passengers. • The TSA inspector also submitted a report in TSA’s PARIS.
06/29/04 @ 1650 hours	TSA - LAX	According to TSA’s SIR, TSOC briefed FAMS Operations Center, the TSIS, and other entities.
06/29/04 @ 1650 hours	TSA – LAX; FAMS	<ul style="list-style-type: none"> • Per TSA’s Incident Report, TSOC conferred with the MOC. TSOC provided the information received from LAX TSA to the FAM representative assigned to TSOC, who then briefed the MOC. • A MOC representative said that the MOC received a call from Northwest Airlines dispatcher, on behalf of the air marshal, requesting that a FAM supervisor at LAX meet the plane. The MOC received a second phone call from Northwest’s dispatch saying that the air marshal had reported that Middle Eastern men were getting out of their seats. After the MOC received the call from Northwest, they notified their Los Angeles FAMS supervisor.
06/29/04 @ 1652 hours	TSA - LAX	TSOC briefed DHS, ICE, and CBP.
07/01/04		According to the band’s promoter, they were scheduled to perform at the Sycuan Resort & Casino, near San Diego.
07/03/04		The suspicious passengers returned to New York from Long Beach, CA on a Jet Blue flight.
07/06/04		Per USCIS, this is the date when the adjudication officer approved the visa extensions for the 12 suspicious passengers (a week after Flight 327).
07/08/04		Four of the 13 suspicious passengers leave the U.S.
07/10/04		Seven of the 13 suspicious passengers leave the U.S.
07/14/04		The remaining suspicious passenger and the band’s singer (not onboard Flight 327) leave the U.S.
07/15/04		Per USCIS, this is the date the visa extensions expired.

Handling of Suspicious Passengers Aboard Northwest Flight 327

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Timeline of Suspicious Events and Departmental Response Prior To, On, and After June 29, 2004

DATE & TIME¹²	LOCATION / AGENCY	ACTIVITY
{Exact Date & Time unknown}	FAM / FBI	<p>Documents provided by the FAMS include a list of databases queried with regards to the suspicious passengers. The databases mentioned are as follows:</p> <ol style="list-style-type: none">1. Treasury Enforcement Communications System II (TECS II) - Foreign travel records found; no derogatory information found.2. NCIC – Negative results found.3. CCDI – Visa and passport records found.4. National Automated Immigration Lookout System (NAILS) – showed the P3 visas expired (06/10/04)5. CBP’s Automated Targeting System – Passenger (ATS-P) – Foreign travel records found.6. TSA – No Fly List / Selectee List – No exact match found7. TIPOFF – no exact match records found8. CBP’s National Targeting Center (NTC) activity log – No record found; NTC was not contacted on 06/29/04. <p>Note: We asked the FAMS whether they could provide the exact time and date when those databases were queried. A FAMS official said the databases were queried July 16-23, 2004, subsequent to an article written by a Flight 327 passenger.</p>
07/18/04		LA FAM supervisor visited the Sycuan Resort & Casino where the men were supposed to have performed.
07/19/04	FBI	The FBI started its investigation into Flight 327 after a Flight 327 passenger wrote an article and appeared on the MSNBC Scarborough Country television show.
07/19/04	FAMS, FBI	FBI reported to the FAMS that ACS records checks on all individuals came back with no derogatory information found.
	FAMS	The MOC did not notify ICE Operations Center regarding the suspicious activity.
07/22/04		On this date a <i>Washington Times</i> article made reference to the article written by a Flight 327 passenger and freelance writer regarding the suspicious activity she observed during the flight.
07/22/04	ICE / OI	<ul style="list-style-type: none">• ICE headquarters directed the Los Angeles ICE /OI agent assigned to the JTTF to investigate the alleged suspicious activity onboard Flight 327, as well as the immigration status of the suspicious passengers.• A Los-Angeles based ICE/OI agent interviewed a Flight 327 flight attendant. The LA FAMS Supervisor attended the interview and signed the document as a witness.
07/26/04	HSOC	According to IAIP’s e-mail, a review of the HSOC logs indicates that no reports on the Flight 327 suspicious incident were received at the time the suspicious incident occurred. It was not logged until July 26, 2004 based on a July 22, 2004 <i>Washington Times</i> article.
	IAIP	<ul style="list-style-type: none">• According to IAIP, both DHS and FBI investigated the suspicious incident concluding that while there were visa issues involved, it was not terrorist related. There was no evidence that any of the individuals had terrorist group connections.

Handling of Suspicious Passengers Aboard Northwest Flight 327

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DATE & TIME ¹²	LOCATION / AGENCY	ACTIVITY
	IAIP	<ul style="list-style-type: none"> IAIP stated that the suspicious incident was received in the HSOC, which includes a co-located IA Intelligence Activity. The suspicious incident was not databased in the IA NTIDB because it was determined not to have a terrorism nexus or a nexus to a crime with national security implications. DHS and FBI investigations failed to determine any nexus to terrorism from the event. While the suspicious incident was not put into NTIDB, the information was retained in HSOC's database to which IAIP personnel, and HSOC have access. All DHS entities report unusual, non-standard, unexpected or suspicious incidents to IAIP. The incidents are then reported locally to the JTTF as they occur. In the June 29, 2004 suspicious incident, local reaction was to meet the aircraft with law enforcement and security authorities and interview the "band" and tour promoter.
07/27/04	ICE / OI	A Los-Angeles based ICE/OI agent interviewed a second Flight 327 flight attendant. LA FAM Supervisor attended the interview and signed the document 7/28/2004 as a witness.
07/30/04	ICE / OI	A Los-Angeles based ICE/OI agent interviewed a third flight attendant.
08/03/04		The FBI sent a memo to its field offices indicating that recent reports detailed a number of suspicious incidents at airports and aboard aircrafts involving foreign travelers, possessing fraudulent or expired visas or other documentation. The memo mentions that it is imperative that the FBI's airport response protocol incorporates the ICE confirmation of the immigration status of foreign travelers involved in suspicious incidents.
08/04/04	ICE / OI	A Los-Angeles based ICE/OI agent interviewed the fourth Flight 327 flight attendant.
08/26/04		(b)(2)High, (b)(3)-----
09/24/04		<p>The promoter arrived at John F Kennedy International Airport on Delta Airlines Flight 73 from Istanbul. (b)(2)High, (b)(3)-----</p> <p>(b)(2)High, (b)(3)-----</p> <p>-----</p> <p>-----</p> <p>-----</p>
09/24/04		(b)(2)High, (b)(3)-----
05/17/05	HSOC	We obtained printouts of the Daily Summaries Operational Reports for June 29 – July 5, 2004. The reports include incidents reported by ICE and the FAMS, but no mention of Flight 327.

Handling of Suspicious Passengers Aboard Northwest Flight 327

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Appendix D

List of (b)(2) Databases That Were Checked During the Visa Process or After Passengers Landed At LAX

No.	Databases Queried	During Visa Process	Prior to Boarding Flight 327	After Flight Landed at LAX	Database Description ¹³
(b)(2)	(b)(2)High (b)(2)	(b)(2)		(b)(2)	(b)(2)High (b)(2)
(b)(2)	(b)(2)High; (b)(3) (b)(3)	(b)(2)		(b)(2)	(b)(2)High (b)(2)
(b)(2)	(b)(2)High; (b)(3) (b)(3)	(b)(2)		(b)(2)	(b)(2)High (b)(2)
(b)(2)	(b)(2)High (b)(2)	(b)(2)		(b)(2)	(b)(2)High (b)(2)

¹³ Regarding Flight 327, officials definitely queried databases 1 thru (b)(2)

Handling of Suspicious Passengers Aboard Northwest Flight 327

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List of (b)(2) Databases That Were Checked During the Visa Process or After Passengers Landed At LAX

No.	Databases Queried	During Visa Process	Prior to Boarding Flight 327	After Flight Landed at LAX	Database Description ¹³
(b)(2) High, (b)(3) (B) (3)					

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Appendix E

Process for Obtaining and Extending “P3” Entertainment Visas

The process for obtaining a P3 visa is as follows:

- A sponsor has to file a petition with USCIS on behalf of the performer interested in entering the U.S.
- To issue the visa, the Department of State has to have evidence that USCIS approved the petition.
- CIS notifies the Department of State, which then interviews the applicant and decides whether to issue the visa. Petitions are approved or denied by CIS; visa applications are approved or denied by Department of State.

The process for extending a P-3 visa is as follows:

- Once aliens have entered the U.S., and want to extend their visa period, they have to apply directly with CIS. The decisions to grant or deny the requests for extension of stay are made solely by CIS.
- CIS must receive the extension application by the day the visa expires.
- All visa applicant names are run through the CLASS database, which contains data from the FBI’s NCIC.
- IBIS checks are conducted on all petitions before they are approved.
- CIS has evidence of IBIS check for all 12 suspicious passengers.

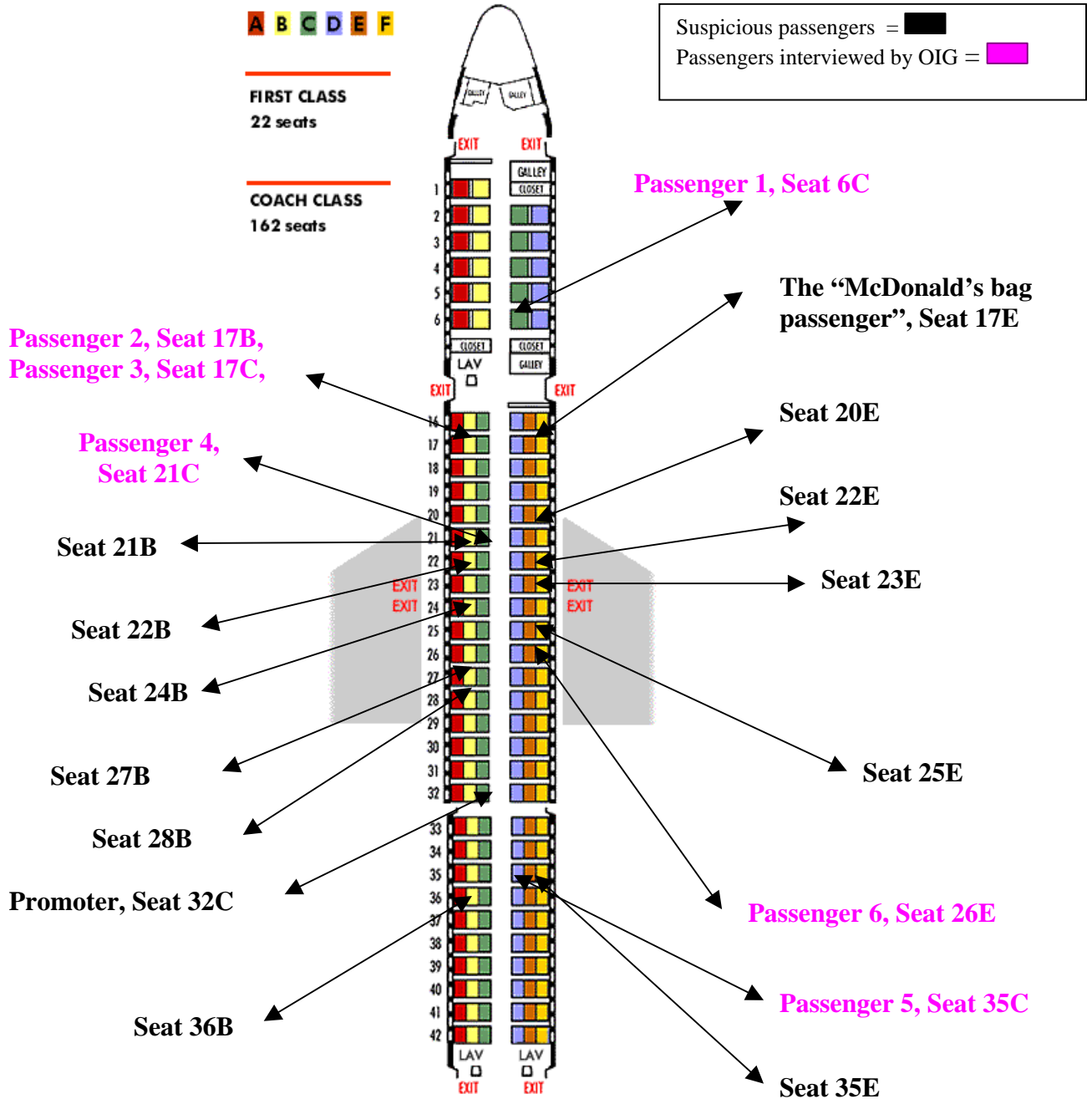
Handling of Suspicious Passengers Aboard Northwest Flight 327

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Appendix F

Flight 327 Seating Diagram – OIG Interviewed Passengers and Suspicious Passengers’ Seats

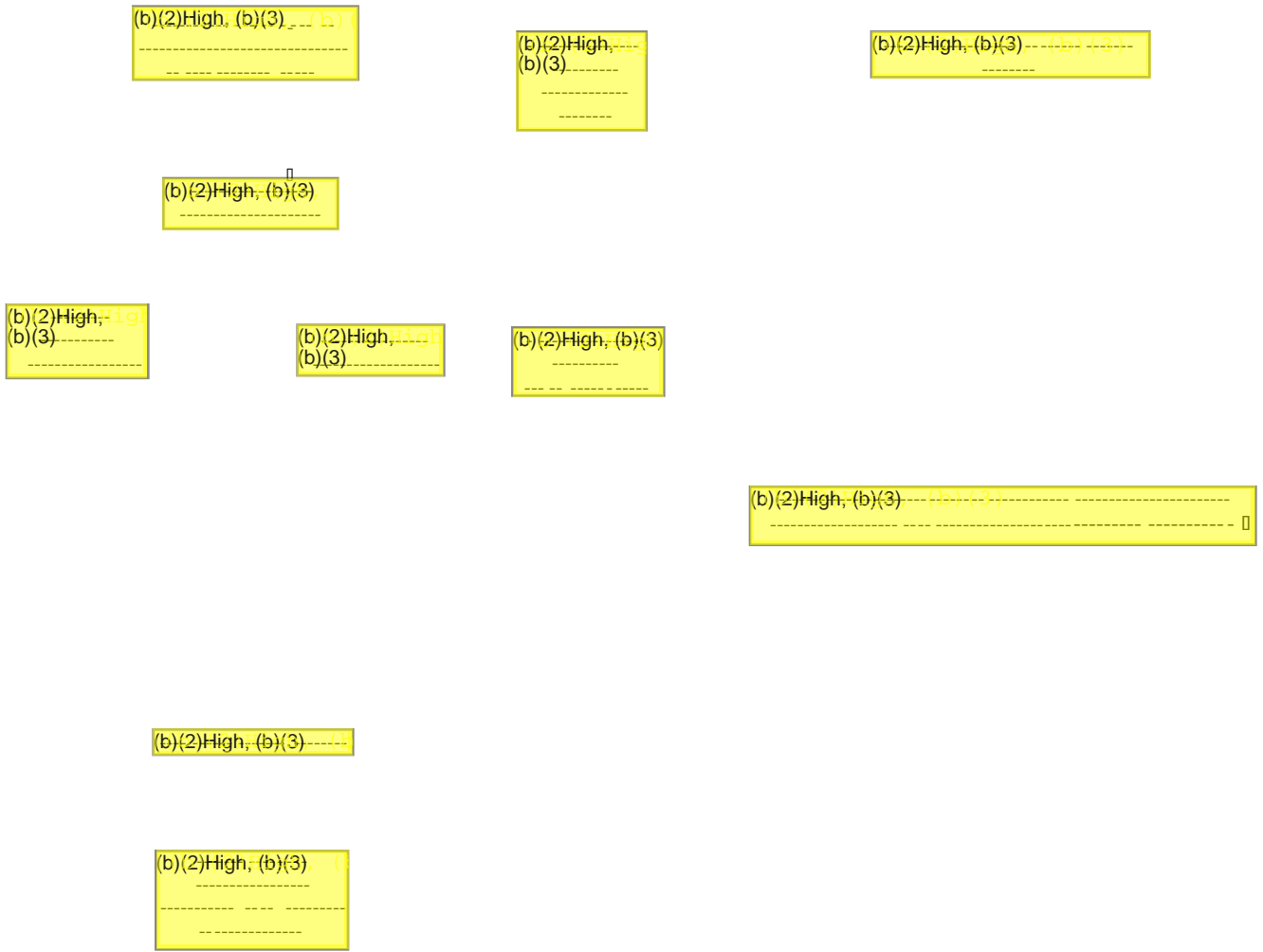


Handling of Suspicious Passengers Aboard Northwest Flight 327

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Appendix H
Flowchart Depicting How Departmental Communications Should Flow Concerning a Commercial Aircraft



Note: (b)(2)High, (b)(3) (b)(3)

Source: MOC, ICE Operations Center, ICE/OI, TSOC, TSA staff at LAX, e-mails from the Department level, and a former HSOC senior watch officer.

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Appendix I
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Handling of Suspicious Passengers Aboard Northwest Flight 327

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Appendix J
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