



One Hundred Eleventh Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

June 21, 2011

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

Dear Administrator Pistole:

I continue to have serious concerns about the Transportation Security Administration's (TSA's) Screening of Passengers by Observation Technique (SPOT) program, a behavior-based profiling program in use at several U.S. airports. As you know, during the 111th Congress, I wrote to you requesting that SPOT be discontinued until the Department of Homeland Security (DHS) conducts an independent peer review assessment of the utility and efficacy of behavior detection as a passenger screening technology.¹ In addition to determining whether the SPOT program is useful as a tool to detect individuals intending to commit a terrorist act against the aviation system, I am also concerned about the possibility of passengers being disproportionately selected for SPOT screening because of their ethnic or racial profile. In fact, recent media accounts about minorities being targeted by Behavior Detection Officers (BDOs) at Newark Liberty International Airport have verified this concern.²

In your response to my letter last year, you stated that "Race and ethnicity are not factors taken into consideration in the SPOT program. Additionally, TSA has taken numerous steps to ensure that the behavioral and other factors used in the SPOT program do not result in unlawful racial profiling."³ Unfortunately, events described at Newark illustrate problems with SPOT that apparently were not anticipated by TSA but were possibly foreshadowed by data from the Government Accountability Office (GAO) which found that over a four year period of review, nearly 40% of individuals arrested based on a SPOT referral were arrested for immigration status issues, not for terrorist activity.⁴ I feel this statistic implies that there could be racial or ethnic biases influencing SPOT referrals.

¹ Letter from the Honorable Bennie G. Thompson to TSA Administrator John S. Pistole, August 17, 2010.

² *Report: Newark airport screeners targeted Mexicans and Dominicans*, <http://www.cnn.com>, June 15, 2011.

³ Letter from TSA Administrator John S. Pistole to the Honorable Bennie G. Thompson, October 6, 2010.

⁴ U.S. Government Accountability Office, *Efforts to Validate TSA's Passenger Screening Behavior Detection Program Underway, but Opportunities Exist to Strengthen Validation and Address Operational Challenges* (GAO-10-763), p.44, Washington, D.C., May 2010.

Further, I continue to question the scientific validation for SPOT. The GAO also found that TSA deployed SPOT nationwide before first determining whether there was a scientifically valid basis or practical application for using behavior and appearance indicators as a counterterrorism measure for the airport environment.⁵ I understand that the DHS Science and Technology Directorate has completed a validation study on SPOT, however, I find that the study was not designed to fully validate whether behavior detection can be used to reliably identify individuals who pose a security risk to aviation. The study concludes that further research to explore other elements of reliability and validity is still needed.⁶

Therefore, to address these concerns, pursuant to Rule X (3) (g) and Rule XI of the Rules of the House of Representatives, I respectfully request that you provide the following information no later than July 1, 2011:

1. TSA's internal report on the Newark SPOT program and any other reports TSA has conducted to investigate inappropriate activity by Behavior Detection Officers at airports.
2. Specific steps taken by TSA to address the racial profiling allegations at Newark Liberty International Airport and to alert Federal Security Directors at airports with Behavior Detection Officers of best practices to avoid racial and ethnic profiling in behavior detection activities.
3. Timeline for developing a comprehensive, independent, peer reviewed study to validate whether behavior detection can be used to reliably identify individuals in an airport environment who pose a security risk to aviation.
4. Timeline for the completion of a comprehensive risk assessment, to include threat, vulnerability and consequence at airports nationwide, to determine the effective deployment of SPOT.
5. Timeline for the completion of a cost-benefit analysis of the SPOT program including a comparison of SPOT to other security screening programs and existing security measures at airports.
6. Timeline for the implementation of a strategic plan for SPOT implementation that incorporates risk assessment information, costs and resources, and how SPOT will be integrated with other aviation security protocols at airports.
7. Timeline for TSA to develop a record keeping process to track SPOT referrals to law enforcement officers and the nature of subsequent legal action brought against referred individuals.
8. Training guidelines for Behavior Detection Officers that specifically address how BDOs can avoid racial and ethnic profiling in behavior detection activities.

⁵ See *id.* at p.15.

⁶ U.S. Department of Homeland Security Science and Technology Directorate, *SPOT Referral Report Validation Study*, Washington, D.C., April 2011.

Further, I request that you cease implementation of SPOT until TSA has completed a SPOT-specific risk assessment, cost-benefit analysis and a comprehensive validation study that encompasses all significant elements of validity examination. If you have any questions or concerns regarding the information requested above, please contact Cherri Branson, Chief Counsel for Oversight, at 202-226-2616.

Sincerely,

A handwritten signature in blue ink that reads "Bennie G. Thompson". The signature is written in a cursive, flowing style.

Bennie G. Thompson
Ranking Member