

SEP 21 2011

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 20598

The Honorable Bennie G. Thompson
Ranking Member
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515



Transportation
Security
Administration

Dear Congressman Thompson:

Thank you for your June 21, 2011, letter expressing your concerns with the Transportation Security Administration's (TSA) Screening of Passengers by Observation Techniques (SPOT) Program. Specifically, your letter cites allegations of profiling at Newark Liberty International Airport (EWR) that occurred nearly 2 years ago. Since that time, I have installed new leadership at EWR, including a new Federal Security Director (FSD). Your letter also requests information related to the May 20, 2010, Government Accountability Office (GAO) report of the SPOT program. Please accept my apologies for the delayed response. TSA conducted a thorough review of this matter to be as responsive as possible to your requests.

TSA does not tolerate the unlawful profiling of any race, ethnicity, or nationality. The SPOT program includes safeguards to protect the privacy, civil rights, and civil liberties of individuals who are screened across the transportation system.

Regarding your specific requests for information, I am pleased to provide you with the following responses.

1.) TSA's internal report on the Newark SPOT program and any other reports TSA has conducted to investigate inappropriate activity by BDOs at airports.

Attached are copies of three reports related to the investigation of the SPOT Program at EWR and an Initial Decision of the Merit Systems Protection Board (MSPB), which upheld TSA's disciplinary action against the EWR SPOT manager. The manager has appealed the initial decision to the full MSPB. The Agency has responded to the appeal which, as of the date of this letter, is pending. Some of these documents contain Sensitive Security Information (SSI) and are appropriately marked. Additionally, Personal Identifiable Information (PII) has been redacted consistent with Privacy Act requirements. If, for any reason, you intend to release any of these materials, we ask that you consult with us beforehand so that SSI can be redacted and withheld from public release.

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.

In the case involving the EWR SPOT Program, TSA conducted a thorough investigation upon receiving reports that EWR employees were engaged in prohibited activities. When it became clear that some EWR management officials may have engaged in misconduct, TSA conducted

appropriate follow-on investigations. Ultimately, TSA took disciplinary action against one EWR SPOT manager. As a result of the investigation's findings, TSA has retrained the entire EWR Behavior Detection Officer (BDO) staff and appointed new management officials at EWR. The TSA FSD at EWR continues to closely monitor the performance of the BDO workforce to ensure that appropriate techniques and procedures are utilized at all times.

Several procedures outlined in the SPOT standard operating procedures (SOP) and the SPOT training curriculum provide best practices to avoid racial and ethnic profiling in behavior detection activities. The SPOT SOP references 7 times that behavior detection activities be done without racial and ethnic profiling. The SOP includes the requirement that BDOs work in pairs to validate and confirm each other's observations. The SOP also requires managers who oversee the SPOT program to spend time on the floor observing his/her BDOs to ensure SPOT is being performed correctly. The SPOT Program has been reviewed by the U.S. Department of Homeland Security's (DHS) Office of Privacy and Civil Rights and Civil Liberties to ensure compliance.

Additionally, as part of their basic training, BDOs who perform SPOT receive cultural awareness training and specific instruction with emphasis on the DHS policy against racial or ethnic profiling. BDO core training references 11 times that racial or ethnic profiling is not tolerated and that it detracts from the real threat as high risk passengers do not fit any specific profile. If allegations of profiling arise, TSA immediately conducts an investigation and takes corrective action as warranted.

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.

The DHS Science and Technology (S&T) Directorate completed the SPOT Validation Study and issued the final report in April 2011. DHS S&T also sponsored an independent peer review of the Validation Study's methodology. The peer review concluded that the methodology for conducting the validation study was sufficient.

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.

TSA is conducting a comprehensive SPOT-specific risk assessment. The assessment demonstrates risk reduction and consequence avoidance values across a spectrum of BDO effectiveness values and adversary indicator display values. TSA expects to finalize the report by the end of calendar year 2011.

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.

TSA is conducting a cost-benefit analysis of the SPOT program as a component of the SPOT specific risk assessment. The preliminary cost-benefit analysis is based on vulnerability, threats, and consequences utilizing a parametric table of BDO effectiveness and adversary indicator

display values. TSA expects to finalize the cost-benefit analysis by the end of calendar year 2011.

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.

TSA is finalizing the SPOT strategic plan, which includes strategic goals for fiscal years 2011 and 2012, detailed action plans, and resource requirements to achieve each strategic goal. TSA expects to complete the SPOT strategic plan by the end of calendar year 2011.

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.

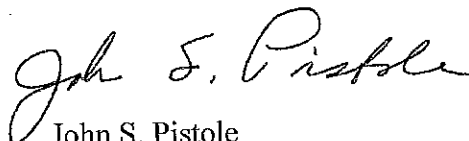
SPOT referrals to law enforcement are currently tracked in TSA's SPOT database. TSA also traces arrests from SPOT referral screening. However, law enforcement frequently conducts further investigation of referred individuals, and TSA is not made aware of the reason for or the outcome of this additional investigation.

8.) Training guidelines for BDOs that specifically address how BDOs can avoid racial and ethnic profiling in behavior detection activities.

The training curriculum does not contain any racial or ethnic considerations for performing SPOT. BDOs are instructed to refer individuals for additional screening based solely on their behavioral observations. As stated above, several procedures outlined in the SPOT training curriculum provide best practices to avoid racial and ethnic profiling in behavior detection activities. These include the requirement that BDOs work in pairs to validate and confirm each other's observations, and for managers who oversee the SPOT program to spend time on the floor observing his/her BDOs.

I look forward to working with you on this and other homeland security issues in the future. Should you need additional information, please do not hesitate to contact me personally or the Office of Legislative Affairs at (571) 227-2717.

Sincerely yours,



John S. Pistole
Administrator

Attachments

1. *SPOT Standardization Team Report* dated November 20, 2009
2. *Administrative Inquiry* dated January 25, 2010
3. *Administrative Inquiry regarding BDO Manager* dated February 17, 2010
4. *Merit Systems Protection Board Initial Decision* dated June 24, 2011