A Decade Later: A Call for TSA Reform

JOINT MAJORITY STAFF REPORT

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Table of Contents

Executive Summary

In the wake of September 11, 2001, President George W. Bush signed into law the Aviation and Transportation Security Act (ATSA; P.L. 107-71). Most notably, ATSA created the Transportation Security Administration (TSA). TSA has a vital and important mission and is critical to the security of the traveling public. To fulfill its mission, TSA employs many hard-working, dedicated personnel. It is the government's responsibility, however, to direct the agency's mission and prevent a cumbersome bureaucracy from inhibiting TSA's ability to address and adapt to changing security needs. Almost all western countries have evolved their airport screening systems to meet current aviation threats through federal oversight of private contract screeners. The U.S. must also evolve to provide the most effective transportation security system at the most reasonable cost to the taxpayer.

This report is an examination and critical analysis of the development, evolution, and current status and performance of TSA ten years after its creation. Since its inception, TSA has lost its focus on transportation security. Instead, it has grown into an enormous, inflexible and distracted bureaucracy, more concerned with human resource management and consolidating power, and acting reactively instead of proactively. As discussed more fully in the *Recommendations* section on page 18, TSA must realign its responsibilities as a federal regulator and focus on analyzing intelligence, setting screening and security standards based on risk, auditing passenger and baggage screening operations, and ensuring compliance with national screening standards.

The purpose of this report is to offer constructive recommendations for the improvement of airport screening operations and transportation security. This review of TSA's performance and current mission has been conducted by Majority investigative staff of the House Committees on Transportation and Infrastructure and Oversight and Government Reform. Members of the Committee on Transportation and Infrastructure were responsible for authoring the organic legislation that created TSA, and Members are currently preparing new legislation to reform TSA in accordance with the findings in this report.

Key Findings

I.   TSA Lacks Administrative Competency and is Made Inefficient by its Massive Bureaucracy

➢ With 21 other agencies housed within the Department of Homeland Security (DHS), the status and mission of TSA have gradually eroded to make the agency a tangential and inert unit within DHS's massive structure.

➢ The turnover of five Administrators in less than a decade, with periods of long vacancy between appointments, has obstructed TSA's ability to carry out its mission.

➤ With more than 65,000 employees, TSA is larger than the Departments of Labor, Energy, Education, Housing and Urban Development, and State, combined. TSA is a top-heavy bureaucracy with 3,986 headquarters personnel and 9,656 administrative staff in the field.

➤ Since 2001, TSA staff has grown from 16,500 to over 65,000, a near-400% increase. In the same amount of time, total passenger enplanements in the U.S. have increased less than 12%.

➤ Since 2002, TSA procured six contracts to hire and train more than 137,000 staff, for a total of more than $2.4 billion, at a rate of more than $17,500 per hire. More employees have left TSA than are currently employed at the agency.

➤ Over the past ten years, TSA has spent nearly $57 billion to secure the U.S. transportation network, and TSA's classified performance results do not reflect a good return on this taxpayer investment.

➤ On average, there are 30 TSA administrative personnel—21 administrative field staff and nine headquarters staff—for each of the 457 airports where TSA operates.

➤ TSA's primary mission, transportation security, has been neglected due to the agency's constant focus on managing its enormous and unwieldy bureaucracy.

II.   TSA is Failing to Effectively Carry out Agency Operations

➤ TSA has failed to develop an effective, comprehensive plan to evolve from a one-size-fits-all operation—treating all passengers as if they pose the same risk—into a highly intelligent, risk-based operation that has the capacity to determine a traveler's level of risk and adjust the level of screening in response.

➤ TSA's operations are outdated—the primary threat is no longer hijacking, but explosives designed to take down an aircraft. Today, aircraft have hardened cockpit doors, armed Federal Air Marshalls and armed pilots. Additionally, passengers and crew offer our first and most effective line of defense. These factors have drastically lowered the risk of a terrorist hijacking using a gun or knife. Consequently, TSA should prioritize its security measures to address the current threat of explosives.

➤ TSA's passenger and checked baggage screening programs have been tested over the years, and while the test results are classified, their performance outcomes have changed very little since the creation of TSA.

➤ As recently reported, more than 25,000 security breaches have occurred at U.S. airports in the last decade, despite a massive TSA presence.

➤ Even though most of the serious terrorist attempts against the U.S. in the last decade have originated overseas, the number of TSA personnel that oversee key international departure points with direct flights into the United States is limited.

➢ TSA's behavior detection program, Screening of Passengers by Observation Techniques (SPOT), costs a quarter of a billion dollars to operate annually, employing almost 3,000 behavior detection officer full-time equivalents (FTEs). TSA has invested more than $800 million in this program since 2007, and it will require more than $1.2 billion more over the next five years. In spite of this costly program, the Government Accountability Office (GAO) found that 17 known terrorists traveled on 24 different occasions through security at eight airports where TSA operated this program. In fact, GAO found that not one terrorist had been caught by the SPOT program, and the program has not been scientifically validated.

➢ TSA has tested numerous pilot programs for trusted travelers, including its current PreCheck program, but has failed to develop an expedited screening program that utilizes biometrics to positively identify participants.

➢ TSA has failed to follow congressional directives to establish biometric credentialing standards and biometric card reader standards. These standards are necessary for the Federal Aviation Administration (FAA) to implement a congressionally-directed requirement for biometric pilot licenses.

➢ GAO found that TSA's implementation of the Transportation Worker Identification Credential (TWIC), which has cost over half-a-billion dollars, has been crippled by latent programmatic weaknesses. TSA still has not deployed TWIC card-readers to many of the Nation's ports.

➢ On January 28, 2011, TSA Administrator Pistole halted the expansion of the Screening Partnership Program (SPP), despite the following evidence:

  o An independent consultant found that "private screeners performed at a level that was equal to or greater than that of federal TSOs [Transportation Security Officers]."

  o GAO found that TSA analytics ignored critical data relating to costs.

  o USA Today uncovered covert TSA test results in 2007 that showed significantly higher screener detection capabilities at an SPP airport than at an airport where screening was provided by TSA.

III. TSA is Failing to Develop and Deploy Effective Technology

➢ The Nation's 35 largest airports account for nearly 75% of passenger traffic. TSA has failed to prioritize the deployment of in-line explosive detection systems (EDS) at these locations which would ensure the best baggage screening operations for a large portion of air travelers. Less than half of these 35 airports have complete in-line EDS, with some systems only configured to detect at TSA's 1998 explosive detection standards. Additionally, TSA has failed to reimburse airports for design costs incurred in the installation of in-line EDS.

➢ TSA wasted $39 million to procure 207 Explosive Trace Detection Portals, but deployed only 101 because the machines could not consistently detect explosives in an operational

environment. After lengthy and costly storage, TSA recently paid the Department of Defense $600 per unit to dispose of the useless machines.

➢ TSA deployed 500 Advanced Imaging Technology (AIT) devices in a haphazard and easily-thwarted manner at a total cost of more than $122 million. By 2013, TSA estimates that the total cost to taxpayers for AIT deployment will reach almost half-a-billion dollars. In 2010, GAO examined the AIT devices and found that "it remains unclear whether the AIT would have detected the weapon used in the December 2009 [Underwear Bomber] incident." While TSA continues to use AIT machines, the effectiveness of these devices in detecting explosives is still under review and remains questionable.

➢ TSA warehouses are nearly at capacity, containing almost 2,800 pieces of screening equipment, including 650 state-of-the-art AT-2 carry-on baggage screening machines costing approximately $97 million. TSA's failure to deploy this cutting-edge technology in a timely manner is yet another example of the agency's flawed procurement and deployment program.

TSA's Diverted Mission

Enacted on November 19, 2001, the Aviation and Transportation Security Act created the Transportation Security Administration and charged it with the responsibility of securing civil aviation.[1] The purpose of TSA, as originally intended by Congress, was to provide a coordinated security organization with the primary responsibility of analyzing and disseminating intelligence information and developing a structure to secure the critical interests of U.S. transportation.[2] This structure would provide the agency with the capacity to connect the dots between intelligence analysis and security performance.

> **The original purpose of TSA was to provide a coordinated security organization to analyze and disseminate intelligence information and develop a structure to secure the critical interests of U.S. transportation.**

With regard to aviation security, TSA was directed to "*provide for* the screening of all passengers and property…that will be carried aboard a passenger aircraft"[3] (as opposed to "providing the screening"). For the first two years after enactment, screening at airports was to be carried out by federal employees. Congress, however, also directed TSA to establish two federal screening public-private partnership programs, the security screening pilot program (PP5) and the security screening opt-out program (Screening Partnership Program or SPP).[4] Both of these federal screening programs allow qualified private screening companies, under contract with TSA and with strong federal oversight, to carry out security screening

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[1] Aviation and Transportation Security Act, Pub. L. No. 107-71 (2001).
[2] Aviation and Transportation Security Act Conference Report, H.R. REP. NO. 107-296, at 2 (2001).
[3] 49 U.S.C. §44901(a) (emphasis added).
[4] 49 U.S.C. §44901(a); see also §§44919 and 44920.

functions at airports that choose to participate in the programs. As stated in the Conference Report:

> Two years after certification, airports can opt out of the federalization of the screener level of the federal workforce if the Secretary determines that these facilities would continue to provide an equal or higher level of security. Companies will be barred from providing screening if they violate federal standards, are found to allow repeated failures of the system, or prove to be a security risk.[5]

ATSA also required TSA to develop standards by which all travelers and their baggage would be screened.[6]

TSA's mission is to establish screening security standards for all modes of transportation. When originally established in the Department of Transportation, TSA was given the broad leeway to complete that mission. In March of 2003, TSA was integrated, along with 21 other federal agencies, into the new Department of Homeland Security (DHS).[7]

With multiple agencies under DHS's administration, TSA's status and mission have gradually eroded as TSA became a tangential and inert unit within DHS's massive structure. Furthermore, TSA has lost focus on its security mission, instead of concentrating on setting and enforcing security standards and protocols. Consequently, TSA is overwhelmed by the operation of its massive personnel bureaucracy.

TSA's Leadership Structure is Flawed

TSA has struggled to maintain continuity of operations due to the turnover of five Administrators in less than a decade. This lack of steady leadership, combined with long periods of time between Administrator appointments, has often left the agency rudderless and floundering. Despite TSA's absence of leadership, the current Administration failed to nominate a viable candidate for TSA Administrator until eight months into its first term. This ultimately led to a period of more than one year without a permanent TSA Administrator. This ever changing leadership negatively impacts the perception of the TSA Administrator within the agency and at DHS. Both the status of TSA and the position of TSA Administrator need to be significantly reformed and elevated.

TSA's Bloated Administration and Bureaucracy

Ten years after its creation, TSA's security mission has evolved from coordinating and disseminating intelligence information and establishing sound security standards and protocols to the full-time occupation of operating a massive bureaucracy. At more than 65,000 employees,

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[5] Aviation and Transportation Security Act Conference Report, H.R. REP. NO. 107-296, at 64 (2001).
[6] *Id.*, at 19.
[7] Homeland Security Act of 2002, P.L. 107-296.

TSA would rank as the 12th largest cabinet agency and is larger than the Departments of Labor, Energy, Education, Housing and Urban Development, and State, combined.[8]

Since 2001, TSA has spent nearly $57 billion to secure the U.S. transportation network,[9] and TSA staff has grown from approximately 16,500 in 2001, to over 65,000 today, a near-400% increase.[10] In the same amount of time, total passenger enplanements in the U.S. have increased less than 12%.[11] TSA's massive Washington headquarters supports 3,986 administrative personnel earning on average $103,852 per year.[12] In addition, the agency continues to support an army of 9,656 administrative field staff, on top of the security officers who actually conduct the physical screening.[13] TSA must get out of the human resources business and direct its energy and resources towards securing the American public.

> Since its inception, TSA has spent nearly $57 billion, and TSA staff has grown from 16,500 to over 65,000, a near-400% increase. During this time, passenger enplanements in the U.S. have increased less than 12%.

TSA has struggled to manage its massive field staff in an effective and efficient manner. TSA has repeatedly relied on its National Deployment Force (NDF) to fill in the gaps and provide screening services where it cannot keep a sufficient number of staff on board. The NDF was originally created to "support airport screening operations during emergencies, seasonal demands, or other circumstances requiring more staffing resources than are regularly available."[14] In April of 2008, the Department of Homeland Security Office of the Inspector General (OIG) found that TSA is "overly reliant on the deployment force to fill chronic staffing shortages at specific airports in lieu of more cost effective strategies and solutions to handle screening demands."[15] When factoring in the government's obligation to pay salary and benefits, travel, lodging, per diem, and overtime, NDF managers say this program is nearly two-and-a-half times more expensive then locally-hired staff.[16] TSA has ignored the OIG's recommendations, which were designed to protect the taxpayer investment and to help the agency become a more effective regulator of transportation security.

TSA's Personnel Failures

TSA's personnel operations provide another example of the waste and mismanagement that is rife within the agency.

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[8] Data from U.S. Office of Personnel Management, June, 2011, available at http://www.fedscope.opm.gov/.
[9] Fox News, *7 Ways Air Travel Changed After 9/11*, available at http://www.foxnews.com/slideshow/travel/2011/09/05/7-ways-air-travel-changed-after-11.
[10] Email from TSA Legislative Affairs to Simone Perez, Committee on Transportation and Infrastructure (July 13, 2011).
[11] Enplanement data provided by the Department of Transportation Bureau of Transportation Statistics.
[12] Email from TSA Legislative Affairs to Simone Perez, Committee on Transportation and Infrastructure (July 13, 2011).
[13] *Id.*
[14] DHS Office of Inspector General, *The Transportation Security Administration's National Deployment Force* (April 2008) (OIG-08-49), at 1.
[15] *Id.*
[16] *Id.*

- **Training**—Since 2002, TSA procured six contracts to hire and train its staff, for a total of more than $2.4 billion.[17] This massive expense to the taxpayer was incurred to employ and train slightly more than 137,000 staff at a rate of more than $17,500 per hire.[18]

- **Attrition**—A 2008 investigation by the DHS OIG found that TSA suffers from low employee morale, resulting in a 17% voluntary attrition rate.[19] TSA's inability to retain its workforce compounds its already astronomical training costs. Private screening contractors conduct security screening more efficiently and train their screeners to TSA standards at a lower cost.[20] At San Francisco International Airport (SFO), the cost to train a private screener to TSA standards is $6,222, more than $11,000 less, per screener, than their federal counterparts.[21]

- **Recruiting and Hiring**—Despite TSA's claims that it operates as an intelligent risk-based organization, TSA advertised for employment at the Washington Reagan National Airport on pizza boxes and on advertisements above pumps at discount gas stations in the D.C. area.[22] It has also been reported to the Committee on Transportation and Infrastructure on multiple occasions that TSA does not consistently conduct criminal and credit background checks on new and existing employees. The failure to implement an intelligent hiring strategy, combined with the lack of background investigations, has resulted in high termination rates and employee turnover.

TSA is Failing to Achieve Operational Success

"The ability of TSA screeners to stop prohibited items from being carried through the sterile areas of the airports fared no better than the performance of screeners prior to September 11, 2001."
Richard Skinner, Former DHS Inspector General, January 26, 2005

TSA Aviation Security Failures

Earlier this year, a TSA investigation into improper screening practices at Honolulu International Airport resulted in the firing of 28 personnel and the suspension of 15 others.[23] At the request of

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[17] House Committee on Transportation and Infrastructure, *TSA Ignores More Cost-Effective Screening Model*, Appendix 3, June 3, 2011, available at http://republicans.transportation.house.gov/Media/file/112th/Aviation/2011-06-03-TSA_SPP_Report.pdf [hereinafter T&I SPP Report].
[18] Email from TSA Legislative Affairs to Rachel Weaver, Committee on Transportation and Infrastructure (May 23, 2011).
[19] DHS Office of Inspector General, *Transportation Security Administration's Efforts to Proactively Address Employee Concerns* (May 2008) (OIG-08-62).
[20] T&I SPP Report, Appendix 2.
[21] *Id.*
[22] Ed O'Keefe, *TSA Using Pizza Boxes to Recruit New Workers*, Washington Post, July 14, 2010, available at http://voices.washingtonpost.com/federal-eye/2010/07/tsa_using_pizza_boxes_to_recru.html.
[23] Shane Nelson, *TSA fires 28, suspends 15 following Honolulu Airport Investigation*, Sept. 26, 2011, available at

Congressional leaders,[24] the DHS OIG has agreed to investigate why such a significant number of the federal screener workforce at Honolulu International Airport failed in its performance of critical transportation security responsibilities.[25]

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The House Committee on Oversight and Government Reform reported that despite massive TSA presence, more than 25,000 security breaches have occurred at U.S. airports since November, 2001.
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TSA's operations are out-moded—the primary threat is no longer hijacking, but explosives designed to take down an aircraft. The U.S. has avoided another successful terrorist attack primarily through the actions of passengers and crew, foreign intelligence agencies, and Customs and Border Protection, along with good luck. Today, aircraft have hardened cockpit doors, on many flights there are armed Federal Air Marshalls and armed pilots, and most importantly, it is ingrained in the minds of passengers and crew that potential hijackers must be resisted. These factors have combined to drastically lower the risk of hijacking from a terrorist with a gun or knife. TSA should focus its resources on preventing terrorists from smuggling explosives onto an aircraft. Today, TSA's screening policies are based in theatrics. They are typical, bureaucratic responses to failed security policies meant to assuage the concerns of the traveling public.

There are almost daily reports of TSA failures, but even more alarming is TSA's inability to quickly analyze and take advantage of available intelligence, as well as TSA's poor use of the enormous resources provided to it since 9/11. Despite the fact that most of the terrorist attempts against the U.S. in the last 10 years have originated with foreign nationals or were developed by those located outside the United States, the number of TSA personnel that are working outside the U.S. with other governments and organizations is limited. The following are some of the high-profile attempted terrorist attacks since 9/11:

> **Shoe Bomber**—On December 22, 2001, on a flight from Paris to Miami, Richard Reid, a British citizen, attempted to blow up the aircraft by using an explosive concealed in his shoe. Passengers and flight attendants stopped Reid from carrying out his attack.[26]

> **Underwear Bomber**—On December 25, 2009, a Nigerian named Umar Farouk Abdulmutallab attempted to ignite plastic explosives in his underwear on board a Northwest Airlines flight from Amsterdam to Detroit.[27] Passengers and flight attendants took action to subdue Abdulmutallab before he could successfully detonate the bomb.[28]

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http://www.travelweekly.com/Hawaii-Travel/TSA-fires-28,-suspends-15-following-Honolulu-Airport-investigation.

[24] Letter from John L. Mica, Chairman, Committee on Transportation and Infrastructure, and Jason Chaffetz, Chairman, Subcommittee on National Security, Homeland Defense and Foreign Operations, Committee on Oversight and Government Reform, to Charles K. Edwards, Acting Inspector General, DHS (June 21, 2011).

[25] Shane Nelson, *TSA fires 28, suspends 15 following Honolulu Airport Investigation*, Sept. 26, 2011, available at http://www.travelweekly.com/Hawaii-Travel/TSA-fires-28,-suspends-15-following-Honolulu-Airport-investigation.

[26] *Timeline: The shoe bomber case*, CNN, Jan. 7, 2002, available at http://edition.cnn.com/2002/US/01/07/reid.timeline.

[27] Kevin Krolicki & Jeremy Pelofsky. *Nigerian charged for trying to blow up U.S. airliner*, Reuters, Dec. 26, 2009, available at http://af.reuters.com/article/worldNews/idAFLDE5BP03M20091226.

[28] *Id.*

- **Times Square Bomber**—On May 1, 2010, Pakistani-born Faisal Shahzad attempted to detonate a car bomb in Times Square. Officials placed Shahzad on the no-fly list on May 3; however, he was still able to board an aircraft, even after paying cash for the ticket, and it was not until a post-boarding check that airline officials discovered that Shahzad was on the no-fly list.[29]

- **Toner Cartridge Bomb Plot**—On October 29, 2010, foreign officials found bombs, originating in Yemen, hidden in printer cartridges on cargo planes bound for the United States.[30] Authorities were only able to locate the bombs because foreign intelligence provided tracking numbers for each package.[31]

TSA Security Program Failures

TSA's failure to develop a risk-based security plan has resulted in a one-size-fits-all method of screening. The implementation of a risk-based security plan will require fewer, better-trained, better-qualified personnel that are capable of differentiating between passengers based on risk.

TSA's Failed Screening Passengers by Observation Techniques (SPOT) Program
Staff of the Subcommittee on Investigations and Oversight of the Committee on Science, Space, and Technology assisted in the writing of this section.

The SPOT program trains TSA screeners known as Behavioral Detection Officers (BDOs) to identify persons who may pose a potential security risk in the air transportation system by using behavioral indicators such as stress, fear, or deception that travelers allegedly exhibit in response to the fear of being discovered.[32] However, GAO recently reported that "a scientific consensus does not exist on whether behavior detection principles can be reliably used for counterterrorism purposes, according to the National Research Council of the National Academy of Sciences."[33] While the SPOT program was initially established to detect terrorist threats to the aviation transportation system, TSA has broadened the program's mission to include the identification of behaviors indicative of criminal activity.[34] Critics of the program have argued that this

> GAO reported that since the SPOT program's inception, at least 17 known terrorists have flown on 24 different occasions, passing through security at eight SPOT airports.

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[29] Scott Shane, *Lapses Allowed Suspect to Board Plane*, New York Times, May 4, 2010, available at http://www.nytimes.com/2010/05/05/nyregion/05plane.html.

[30] Gordon Rayner & Duncan Gardham, *Parcel bomb plot 'aimed at passenger jets'*, Telegraph, Nov. 3, 2010, available at http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/8100602/Parcel-bomb-plot-aimed-at-passenger-jets.html.

[31] Frank Gardner, Dubai bomb was flown on passenger planes, BBC News, Oct. 31, 2010, available at http://www.bbc.co.uk/news/world-middle-east-11661496.

[32] Government Accountability Office, *Aviation Security: Efforts to Validate TSA's Passenger Screening Behavior Detection Program Underway, but Opportunities Exist to Strengthen Validation and Address Operational Challenges* (May 2010) (GAO-10-763).

[33] *Id.*

[34] Department of Homeland Security, *Congressional Budget Justification*, Fiscal Year 2012, available at http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf.

expansion reflects the failure of the program to identify any terrorists, and as a result, program success could only be quantified by broadening the goals to include criminal activity, which has a higher rate of occurrence.[35]

Since 2007, TSA has expended more than $800 million on the faulty program, and will require $1.2 billion more over the next five years.[36] However, out of two billion airline passengers who passed through SPOT airports between May 2004 and August 2008, only 1,100 were arrested, and none were arrested on terrorism charges.[37] Even more disconcerting is the fact that GAO reported that since the SPOT program's inception, at least 17 known terrorists have flown on 24 different occasions, passing through security at eight SPOT airports.[38] The Times Square Bomber, Faisal Shahzad, also passed undetected through a SPOT airport only days after his attempted bombing.[39]

Thus far, this program has been one of TSA's largest failures.[40] According to GAO, TSA never scientifically validated the list of behaviors underpinning the program, never determined whether the techniques could be applied in an airport environment, and never conducted a cost-benefit analysis of the program.[41] Instead, the review that DHS conducted was to "determine whether SPOT is more effective at identifying passengers who may be threats to the aviation system than random screening."[42]

The inadequacy of the DHS review was articulately summed up by Dr. Philip Rubin, Chair of the National Academies Board on Behavioral, Cognitive, and Sensory Sciences, who, in response to questions from an April 6, 2011 hearing conducted by the House Science, Space, and Technology Subcommittee on Investigations and Oversight, stated, "Politicians, policymakers and the lay public, will hear something like 'SPOT is significantly more effective than random screening' and may assume that this program is effective, useful, and has been adequately scientifically evaluated. To this point the effectiveness and usefulness have not been established. The scientific evaluation has been inadequate and has not been approached in a manner that would lead to greater knowledge regarding the program. Establishing scientific credibility has the potential to be helpful to programs of this sort, but that requires full, well thought out, independent, credible, and open scientific review."[43]

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[35] Sharon Weinberger, *Intent to Deceive? Can the Science of Deception Detection Help to Catch Terrorists?* Nature, Vol. 465127, May 26, 2010, available at http://www.nature.com/news/2010/100526/pdf/465412a.pdf.

[36] Government Accountability Office, *Aviation Security: Efforts to Validate TSA's Passenger Screening Behavior Detection Program Underway, but Opportunities Exist to Strengthen Validation and Address Operational Challenges* (May 2010) (GAO-10-763).

[37] *Id.*

[38] *Id.*

[39] Byron York, *Amid Airport Anger, GOP Takes Aim at Screening*, Washington Examiner, Nov. 15, 2010, available at http://washingtonexaminer.com/politics/2010/11/amid-airport-anger-gop-takes-aim-screening.

[40] Government Accountability Office, *Aviation Security: Efforts to Validate TSA's Passenger Screening Behavior Detection Program Underway, but Opportunities Exist to Strengthen Validation and Address Operational Challenges* (May 2010) (GAO-10-763).

[41] *Id.*

[42] *Id.*

[43] Behavioral Science and Security: Evaluating TSA's SPOT Program, hearing before the House Science, Space, and Technology Subcommittee on Investigations and Oversight, April 6, 2011.

Further, in GAO's written testimony submitted for the same April 6, 2011 hearing, the GAO witness stated, "Congress may wish to consider limiting program funding pending receipt of an independent assessment of TSA's SPOT program. We identified potential budget savings of about $20 million per year if funding were frozen at current levels until validation efforts are complete. Specifically, in the near term, we reported that Congress could consider freezing appropriation levels for the SPOT program at the 2010 level until the validation effort is completed."[44]

In August 2011, TSA began its interactive behavior detection pilot, known as the "Assessor" program. Unfortunately, rather than employing several highly-trained transportation security personnel to observe and question selected high-risk passengers, the demonstration project employed a large, bureaucratic ensemble of Transportation Security Officers (TSOs) who expended an unnecessarily lengthy time performing meaningless interviews with all passengers, regardless of risk level.

When questioned about the protocol for additional screening of individuals who may pose a risk, Committee investigators were informed that risk-identified travelers would be screened by a metal detector and baggage screener. However, TSA's most sophisticated screening equipment, an Advanced Imaging Technology detector, was not in operation because TSA lacked sufficient numbers of trained personnel on duty. While it is irresponsible that this demonstration is a costly and bureaucratic method of screening, it is unacceptable that an operational model cannot be deployed in a manner that utilizes existing advanced technology and resources. While some type of behavior detection is necessary to a risk-based security scheme, TSA's current implementation of SPOT is a failure by almost any standard and must change to incorporate an intelligent interactive component.

TSA is Ignoring Congressional Directives to Utilize Biometrics

Congress has repeatedly directed TSA and DHS to establish biometric standards for aviation security purposes. In 2001, Congress recognized the value of biometric credentials in ATSA, requiring TSA to work with airport operators to consider the deployment of biometric technology to positively identify individuals entering secure areas of airports.[45] ATSA also required TSA to issue guidance for the use of biometric or other technology that positively verifies the identity of each employee and law enforcement officer who enters a secure area of an airport.[46]

In 2004, Congress directed TSA to establish comprehensive technical and operational system requirements and performance standards for the use of biometric identifier technology in airport access control systems

> TSA has failed to comply with congressional requirements that the agency work with airport operators and issue guidance on the use of biometrics for aviation security.

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[44] Testimony of Stephen Lord, Director, Homeland Security and Justice Issues, Government Accountability Office, before the House Science, Space, and Technology Subcommittee on Investigations and Oversight, April 6, 2011, available at
http://science.house.gov/sites/republicans.science.house.gov/files/documents/hearings/2011%2004%2004%20Lord%20Testimony.pdf.
[45] Aviation and Transportation Security Act § 106, 49 U.S.C. §44903.
[46] *Id*.

and best practices for incorporating biometric identifier technology into airport access control systems.[47] Congress also required TSA, in consultation with the Attorney General, to establish a law enforcement travel credential that incorporates biometric identifier technology and is uniform across all federal and other government law enforcement agencies.[48]

In 2005, Congress directed DHS to utilize the Transportation Security Clearinghouse as the central identity management system for the deployment and operation of the registered traveler program and the Transportation Worker Identification Credential program for the purposes of collecting and aggregating biometric data necessary for background vetting.[49]

TSA will never be able to function as a truly risk-based organization until the agency can differentiate between passengers based on levels of risk. TSA must develop an expedited screening program using biometric credentials that would allow TSA to positively identify trusted passengers and crew members so that the agency can prioritize its screening resources on select individuals.

TSA's first use of biometrics was the Transportation Worker Identification Credential (TWIC), which was designed to protect access to U.S. ports. According to a recent GAO study, latent programmatic weaknesses cripple its effectiveness to secure U.S. critical infrastructure, and TSA has not deployed TWIC card-readers at many of the Nation's ports.[50] Furthermore, the TWIC program has cost nearly half-a-billion dollars and DHS estimated that the total cost would reach $3.2 billion over ten years.[51] In developing a biometric credential for the aviation sector, TSA must comply with international standards and work with stakeholders in the government and the private sector in order to avoid a repeat of the problems with TWIC implementation.

Undermining the Screening Partnership Program (SPP)

ATSA authorized the development of two models for screening air travelers and their baggage.   The first model provided all-federal screening operations at the Nation's airports. The second model, known as the Screening Partnership Program (SPP), was created to enable airport authorities to "opt-out" of all-federal screening and instead use qualified private screening contractors under federal standards, supervision, and oversight.[52] While one goal of the SPP is to reduce TSA screener workforce by utilizing the services of qualified private contractors, TSA administrative staff levels

> "I examined the contractor screening program and decided not to expand the program beyond the current 16 airports as I do not see any clear or substantial advantage to do so at this time."
>
> *TSA Administrator John Pistole, January 28, 2011*

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[47] Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458 (2004).

[48] *Id.*

[49] Department of Homeland Security Appropriations Act, 2006, Pub. L. No. 109-90 (2005).

[50] Government Accountability Office, *Transportation Worker Identification Credential: Internal Control Weaknesses Need to Be Corrected to Help Achieve Security Objectives* (May 2011) (GAO-11-657), at 39.

[51] *Id.*, at 46.

[52] Aviation and Transportation Security Act § 108, 49 U.S.C. §44920.

continue to increase despite the fact that 16 U.S. airports use private screening contractors.

TSA has continuously thwarted the adoption of the SPP and has a history of intimidating airport operators that express an interest in participating in the SPP. Throughout 2009 and 2010, TSA held hostage all SPP applications from the entire state of Montana, ultimately denying all four airports. Throughout this timeframe, multiple SPP applicant airports reported the use of scare tactics by uniformed federal TSOs directed towards airport passengers.[53] In one instance, TSOs repeatedly informed passengers that it would not be safe to fly under the SPP model, and lobbied the airport board, the press and local government officials to abolish the program.[54]

Then, in January 2011, TSA Administrator Pistole halted expansion of the SPP. This decision was made despite nine years of successful operations, clear direction from Congress in ATSA, and the following findings:

- ➤ In December of 2007, Catapult Consultants issued a report to TSA that found "private screeners performed at a level that was equal to or greater than that of federal TSOs."[55]

- ➤ Similarly, interviews with private sector screening companies and airport officials indicate that SPP airports have better screener detection capabilities and provide greater customer service, responsiveness, and flexibility at passenger checkpoints.[56]

- ➤ GAO found that TSA ignored critical data relating to costs.[57] After TSA took GAO's factors into consideration, the revised study found that the cost to operate the SPP and all-federal screening to be nearly identical.

- ➤ The USA Today uncovered covert TSA test results in 2007 that showed significantly-higher screener detection capabilities at San Francisco International, an SPP airport, than at Los Angeles International Airport, where screening is provided by TSA.[58]

In making this announcement, Administrator Pistole stated that he does not see "any clear or substantial advantage" to expand the SPP.[59] This "clear or substantial advantage" standard is not present in ATSA, and Administrator Pistole's adoption of this standard is arbitrary and capricious and in contravention of the law.

Additionally, unions representing TSOs placed significant pressure on TSA officials to consider abolishing the SPP and preserve federal jobs. Contrary to claims by Administrator Pistole that

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[53] T&I SPP Report, at 13-15.
[54] *Id*.
[55] Government Accountability Office, *Aviation Security: TSA's Cost and Performance Study of Private-Sector Airport Screening* (January 9, 2009) (GAO-09-27R), at 7.
[56] T&I SPP Report, at 12.
[57] Government Accountability Office, *Aviation Security: TSA's Cost and Performance Study of Private-Sector Airport Screening* (January 9, 2009) (GAO-09-27R).
[58] Thomas Frank, *Most Fake Bombs Missed by Screeners*, USA Today, Oct. 22, 2007, available at http://www.usatoday.com/news/nation/2007-10-17-airport-security_N.htm.
[59] E-mail from John S. Pistole, Administrator, TSA, to All TSA Employees, *100 – Screening Partnership Program* (Jan. 28, 2011).

there was no union involvement in his decision to stop the expansion of the SPP,[60] investigative staff of the Committee on Transportation and Infrastructure discovered that a public history exists of union meetings and communications with DHS and TSA officials regarding the SPP.

In a May 6, 2010, newsletter, the American Federation of Government Employees (AFGE) reported that "TSA has told AFGE that the agency will revisit the SPP and will place any contracting out plans on hold until a decision has been reached."[61] In the same newsletter, Eric Wood, a Lead TSO, applauded the union's efforts: "AFGE was able to get TSA management to stop moving forward on our airports application [sic] for SPP… now thanks to all the help from AFGE we were able to convince TSA that SPP was not a program that is good for the mission of TSA."[62]

> "I have some very good news. AFGE and TSA have agreed that the SPP program will be abolished. They just signed an agreement."
>
> *Cynthia Jenson, President of the AFGE Local 1120 in Montana*

On December 19, 2010, Cynthia Jenson, President of the AFGE Local 1120 in Montana, sent an e-mail stating, "I have some very good news. AFGE and TSA have agreed that the SPP program will be abolished. They just signed an agreement."[63] Jenson told Committee staff on May 19, 2011, that she "wholeheartedly believed" AFGE had a role in Administrator Pistole's January 28, 2011, decision not to expand the SPP.[64]

Federal oversight of qualified private contract screeners has shown to be effective all over the world. Almost all western countries operate civil aviation security through the use of federal oversight of private contract screeners. Other than Romania, Poland and Bulgaria, the United States has the only government in the western world that functions as the airport security operator, administrator, regulator, and auditor.[65]

Canadian airports utilize private contract screeners under federal oversight and demonstrate a highly successful private screener model, which contrasts TSA's bureaucratic operation of the SPP at airports in the United States. Just one example of Canada's highly efficient security model is at Quebec City Jean Lesage International Airport (YQB). In 2010, YQB handled approximately 1.2 million air travelers,[66] while its ratio of private contract screeners to federal administrative personnel was approximately 150-to-1.[67] By comparison, in the U.S. under the SPP, at Sioux Falls Regional Airport (FSD), which handled approximately 700,000 air travelers

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[60] Letter from John S. Pistole, Administrator, TSA, to John L. Mica, Chairman, Committee on Transportation and Infrastructure (Feb. 28, 2011).

[61] AFL-CIO, *What Happens in Montana May Not Stay in Montana*, The TSO Voice, May 6, 2010, available at http://www.afge.org/index.cfm/2010_05_11_TSOVoiceMay6.pdf?fuse=document&documentid=2424.

[62] *Id.*

[63] E-mail from Cynthia Jenson, President, American Federal Government Employees (AFGE) Local 1120, to AFGE Members (Dec. 19, 2010).

[64] Telephone conversation between Cynthia Jenson, President, AFGE Local 1120, and Rachel Weaver, Committee on Transportation and Infrastructure (May 19, 2010).

[65] T&I SPP Report, Appendix 2.

[66] Airports Council International—North America, *Airport Traffic Reports*, 2010, available at http://www.aci-na.org/sites/default/files/_rankings-2010nam_.xls.

[67] Information provided by Security Director, Quebec City Jean Lesage International Airport, to Congressional Delegation (Oct. 22, 2011).

in 2010,[68] the ratio of private contract screeners to federal administrative personnel was 3-to-1.[69] Private screening companies must maintain their own administrative and managerial staff at the SPP airports. Therefore, the extra layer of TSA bureaucracy at SPP airports is both unnecessary and costly. TSA must address its inefficiencies in operating the SPP by eliminating duplicative and unnecessary federal staff at SPP airports, thereby further improving the advantages to the taxpayer of the private contract screening model.

Despite substantial evidence supporting the success and viability of the SPP, TSA still refuses to allow new airports to participate in the program and continues to refuse to provide an explanation of the criteria used to judge the merits of program applications.

TSA Technology Failures

Since 2001, TSA has struggled to implement and deploy its technologies in a cost-effective manner. During that timeframe, TSA has obligated more than $8 billion for the enhancement of passenger and checked-baggage screening.[70]

In-Line Explosive Detection Systems (EDS)

TSA estimated that in-line explosive detection systems for checked baggage would reduce the number of required TSA baggage screeners by as much as 78 percent.[71] However, despite the security, efficiency, and economic benefits of in-line baggage screening, GAO found that TSA is struggling to upgrade its deployed fleet of baggage-screening machines and that some of TSA's deployed machines are detecting explosives at standards from 1998.[72]

TSA also failed to deploy in-line EDS based upon risk and economies of scale. Investigators on the Committee on Transportation and Infrastructure found that less than half of the Nation's 35 largest airports, which handle 75% of all commercial passengers,[73] screen all checked baggage through in-line systems. Of the remaining top-35 airports, six have zero

> Less than half of the Nation's 35 largest airports screen all baggage with in-line technology, and the Committee on Transportation and Infrastructure has received numerous reports that TSA has failed to reimburse airports for agreed-upon costs of installing these systems.

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[68] Airports Council International—North America, *Airport Traffic Reports*, 2010, available at http://www.aci-na.org/sites/default/files/_rankings-2010nam_.xls.

[69] Email from TSA Legislative Affairs to Rachel Weaver, Committee on Transportation and Infrastructure (May 23, 2011).

[70] Government Accountability Office, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue* (March 2011) (GAO-11-318SP).

[71] Government Accountability Office, *Aviation Security: Systematic Planning Needed to Optimize the Deployment of Checked Baggage Screening Systems* (March 2005) (GAO-05-365).

[72] Government Accountability Office, *Aviation Security: TSA Has Enhanced Its Explosives Detection Requirements for Checked Baggage, but Additional Screening Actions Are Needed* (July 2011) (GAO-11-740).

[73] Federal Aviation Administration, *Aerospace Forecast: Fiscal Years 2011-2031*, at 26, available at http://www.faa.gov/about/office_org/headquarters_offices/apl/aviation_forecasts/aerospace_forecasts/2011-2031/media/2011%20Forecast%20Doc.pdf.

utilization of in-line EDS for baggage screening. Additionally, investigative staff of the Committee on Transportation and Infrastructure have received numerous reports of TSA's failure to reimburse millions of dollars to airports for agreed-upon costs related to the implementation of in-line EDS systems.

Explosive Trace Detection Portals ("Puffers")

From 2004 to 2006, TSA ultimately spent more than $39 million to procure and deploy Explosive Trace Detection Portals, known as "puffers," as part of its passenger screening operations. While TSA procured 207 puffers, it only deployed 101 nationwide because TSA belatedly discovered that the puffers were unable to detect explosives in an operational environment. TSA rushed this untested product to deployment, ignoring internal procedures designed to prevent this type of waste.

GAO found that TSA's lack of a risk-based strategic development and deployment plan and inconsistent communication resulted in delayed and ineffective deployment of this checkpoint screening technology.

Advanced Imaging Technology Devices

Advanced Imaging Technology (AIT) devices allow screeners to see beneath a passenger's clothing to identify "abnormalities" requiring further screening.[74] In early 2011, to replace the puffers, TSA began installing 500 AIT devices, at a total cost of more than $122 million.[75] In September 2011, TSA purchased 300 additional AIT devices. In November 2011, TSA announced plans to complete deployment of 1,000 AITs by the end of 2011. By 2013, TSA estimates that the total cost to taxpayers for AIT deployment will reach approximately $500 million.[76] Despite TSA's great investment in AIT technology, GAO stated, "it remains unclear whether the AIT would have detected the weapon used in the December 2009 [Underwear Bomber] incident."[77] Additionally, Homeland Security Newswire reported in March 2011 that a TSA covert test of AIT machines at Dallas Ft. Worth International Airport resulted in the AIT machines' failure to detect a concealed firearm.[78]

Furthermore, TSA deployed the AIT devices in a haphazard and easily-thwarted manner. In many cases, TSA used AITs as a simple replacement for magnetometers as a means of primary screening. However, due to the limited number of AIT devices that TSA has deployed,

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[74] AITs include both millimeter-wave technology as well as backscatter x-ray technology.

[75] TSA Oversight Part II: Airport Perimeter Security, Hearing before the House Committee on Oversight and Government Reform, Subcommittee on National Security, Homeland Defense and Foreign Operations, July 13, 2011.

[76] *Id.*

[77] Government Accountability Office, *Aviation Security: TSA Is Increasing Procurement and Deployment of the Advanced Imaging Technology, but Challenges to This Effort and Other Areas of Aviation Security Remain* (March 2010) (GAO-10-484T).

[78] Grant Stinchfield, *TSA Source: Armed Agent Slips Past DFW Body Scanner, Lapses*, MSNBC, Feb. 18, 2011, available at http://www.nbcdfw.com/news/local/TSA-Agent-Slips-Through-DFW-Body-Scanner-With-a-Gun-116497568.html.

passengers are easily able to bypass this technology by choosing a screening lane without these AIT machines in use.

Advanced Technology–2

TSA's failure to properly procure and deploy its screening technologies has led to thousands of pieces of equipment stuck in TSA warehouses. A recent Committee on Transportation and Infrastructure investigation learned that TSA warehouses are nearly at capacity, storing almost 2,800 pieces of passenger and baggage screening equipment. This includes approximately 650 state-of-the-art Advanced Technology–2 (AT-2) carry-on baggage screening machines at a cost of nearly $97 million.[79] TSA's failure to deploy this cutting-edge technology in a timely manner is yet another example of the agency's flawed procurement and deployment program.

TSA has wasted hundreds of millions of dollars in taxpayer funds on failed solutions to securing commercial aviation, ignoring internal protocols to prevent such waste and adopting technologies that have repeatedly failed TSA's own covert tests.

Recommendations

Since its inception, TSA has hired over 137,000 employees, grown into a mammoth bureaucracy of 65,000 employees, spent almost $57 billion, yet has failed to detect any major terrorist threat since 9/11, including the Shoe Bomber, the Underwear Bomber, the Times Square Bomber, and the Toner Cartridge Bomb Plot. Congress created TSA to be a lean organization that would analyze intelligence and set risk-based security standards for the U.S. transportation system. Today, TSA suffers from bureaucratic morass and mismanagement. The agency needs to properly refocus its resources on assessing threats and intelligence, instituting appropriate regulations, and auditing and adjusting security performance. TSA cannot do this effectively as a massive human resources agency.

Accordingly, the Committees on Transportation and Infrastructure and Oversight and Government Reform of the House of Representatives make the following recommendations:

1. **TSA must act with greater independence from the DHS bureaucracy.** Terrorists constantly evolve their methods, and TSA must have similar flexibility to respond quickly and appropriately to any intelligence it receives. Without this ability, TSA will continue to be a solely reactive and ineffective agency that cannot ensure the security of U.S. travelers.

2. **The TSA Administrator's stature must be elevated.** The constant turnover and long vacancy of this vital position has caused great disruption at TSA. With each new Administrator, there have been repeated changes in vision and direction of the agency. In

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[79] TSA Reform: Exploring Innovations in Technology Procurement to Stimulate Job Growth, Part III, Hearing before the House Committee on Homeland Security, Subcommittee on Transportation Security, November 3, 2011.

order for TSA to be an effective and successful agency, it must have stable leadership that can make both short- and long-term plans for improving the agency and providing effective and cost efficient aviation and transportation security. The TSA Administrator must be a priority appointment for the President, along with other agency heads and Cabinet-level Secretaries, and the length of the term of the TSA Administrator's appointment and compensation should be reexamined.

3. **TSA must function as a federal regulator, analyzing intelligence, setting screening and security standards and protocols based on risk, auditing passenger and baggage screening operations, and enforcing national screening standards.** TSA needs to evolve out of the human resources business and focus on analyzing and disseminating intelligence information, developing a regulatory structure to secure the critical interests of the U.S. transportation sector, and enforcing these regulations to maintain a standardized set of practices throughout the country.

4. **TSA should expand and revise the Screening Partnership Program so that more airport authorities can transition airport screening operations to private contractors under federal supervision.** Instead of vesting all discretion with TSA to approve airport opt-out applications, the TSA Administrator should pre-qualify private screening companies that are capable of providing effective passenger and baggage screening services. Then, when an airport makes the decision to apply to the Screening Partnership Program, TSA can select from the pre-qualified contractors.

5. **The TSA Administrator must set performance standards for passenger and baggage screening operations based on risk analysis and common sense.** Detailed, specific, articulated metrics by which TSA will measure screening performance are critical to effective airport security operations. Without a clear list of standards, TSA will not be able to adequately measure and systematically improve screener performance.

6. **The number of TSA administrative personnel must be dramatically reduced.** TSA's massive bureaucracy must be streamlined so that TSA can focus on analyzing intelligence and setting risk-based security standards without being bogged down by managing its bloated administration.

7. **The number of TSA personnel stationed abroad and the number of TSA personnel that oversee key international departure points with direct flights into the United States and are engaged with other governments and organizations must be adjusted in order to effectively respond to the international threat to the U.S. transportation network.** Most of the terrorist attempts against the U.S. in the last 10 years have originated with foreign nationals or were developed by those in other countries, and TSA must adapt to this threat and deploy its resources accordingly.

8. **TSA should require that the screening of all passengers and baggage on in-bound flights is equivalent to U.S. domestic screening standards.** Rescreening passengers after an international flight lands in the U.S. does not avert the risk to U.S. citizens, while en route to the U.S.

9. **TSA must develop an expedited screening program using biometric credentials that would allow TSA to positively identify trusted passengers and crew members so that the agency can prioritize its screening resources based on risk.** TSA will never be able to function as a truly risk-based organization until the agency can differentiate between passengers based on levels of risk.

10. **TSA performance results should be made public after 24 months or when deemed appropriate for security purposes, so that passengers can know the level of security they receive.** Public reporting of performance evaluations provides transparency and will incentivize TSA to operate at the highest standards.

11. **A qualified outside organization must conduct a comprehensive, independent study of TSA's management, operations, and technical capabilities, and make recommendations to increase TSA's efficacy and its ability to better analyze intelligence and set risk-based, common sense security standards.** In conducting the study, the organization should consult with Congress, the TSA Administrator, TSA employees, aviation passengers, airport operators, and other representatives of the transportation industry. Finally, the TSA Administrator should review the organization's report and implement the recommended reforms.

"After countless expensive detours, it is time for TSA to refocus its mission based on risk and develop common sense security protocols."
John L. Mica, Chairman, Committee on Transportation and Infrastructure

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