



**Transportation
Security
Administration**

DEC - 5 2011

3600.1

FOIA Case Number: TSA09-0800

Mr. Arjun Sethi
Covington & Burling, LLP
1201 Pennsylvania Ave., NW
Washington, D.C. 20004-2401

Dear Mr. Sethi:

This is in response to your Freedom of Information Act (FOIA) request dated August 24, 2009, in which you requested "a copy of the memorandum written by Mark Lendvay assessing the need for the TSA to implement an auditing mechanism to monitor racial profiling. This memorandum would include, among other things, assessments of various audit proposals, including those presented by Professors Jack Glaser and Steven Raphael from the University of California, Berkeley and by researchers at the Vera Institute".

Your request was processed pursuant to the FOIA, 5 U.S.C. § 552.

A search was conducted within the Transportation Security Administration (TSA) and responsive documents (43 pages) were located. Seventeen pages are being released to you in their entirety. Nine-teen pages in their entirety and portions of 7 pages are being withheld pursuant to Exemptions (b)(3), (b)(4), (b)(5) and (b)(6) of the FOIA. A more detailed explanation of these exemptions is outlined below.

Exemption (b)(3)

This information reveals Sensitive Security Information (SSI) and is exempt from disclosure under Exemption (b)(3), which permits the withholding of records specifically exempted from disclosure by another Federal statute. Title 49 U.S.C. Section 114(r) exempts from disclosure SSI that "would be detrimental to the security of transportation" if disclosed. The TSA regulations implementing Section 114(r) are found in 49 CFR Part 1520.

Exemption (b)(4)

We have determined that portions of the responsive documents are exempt from disclosure under Exemption (b)(4) and must be withheld in order to protect the submitter's proprietary interests. Exemption (b)(4) protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. The courts have held that this subsection protects (a) confidential commercial information, the disclosure of which is likely to cause substantial harm to the competitive position of the person who submitted the information and (b) information that was voluntarily submitted to the government if it is the kind of information that the provider would not customarily make available to the public. Based on our review of documents deemed responsive to your request, and in consultation with the submitters of research proposals, we have determined the information to have been voluntarily submitted. Accordingly some information has been withheld from release on the basis that it is the type of information the submitters would not customarily release to the public.

Exemption (b)(5)

Exemption (b)(5) protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. Of those, we have determined that some of the information in the documents you have requested is appropriately withheld under the deliberative process privilege, the general purpose of which is to "prevent injury to the quality of agency decisions." Specifically, three policy purposes consistently have been held to constitute the basis for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are actually adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's actions.

Exemption (b)(6)

Exemption (b)(6) of the FOIA permits the government to withhold all identifying information that applies to a particular individual when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." This requires a balancing of the public's right to disclosure against the individual's right to privacy. After performing this analysis, we have determined that the privacy interest in the identities of individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into the aforementioned balancing test.

Fees

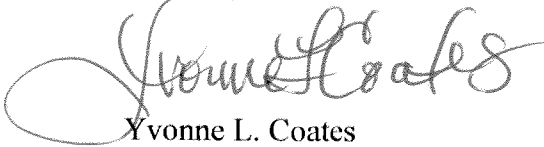
The fees incurred to process your request do not exceed the minimum threshold necessary for charge and, therefore, there is no fee associated with the processing of this request.

Administrative Appeal

In the event that you may wish to appeal this determination, an administrative appeal may be made in writing to Kimberly Walton, Special Counselor, Office of the Special Counselor, Transportation Security Administration, 601 South 12th Street, East Building, E7-121S, Arlington, VA 20598-6033. Your appeal **must be submitted within 60 days** from the date of this determination. It should contain your FOIA request number and state, to the extent possible, the reasons why you believe the initial determination should be reversed. In addition, the envelope in which the appeal is mailed in should be prominently marked "FOIA Appeal." Please note the Special Counselor's decision on your FOIA appeal will be administratively final.

If you have any questions pertaining to your request, please feel free to contact the FOIA Office at 1-866-364-2872 or locally at 571-227-2300.

Sincerely,



Yvonne L. Coates
Director, Freedom of Information Act Office
Office of the Special Counselor
Transportation Security Administration

Enclosure



Transportation
Security
Administration

Date: June 16, 2009

To: Kimberly Walton
Special Counselor

From:

(b) (6)

Subject: Final Report on Strategic Options to Consider on Racial Profiling and Slide Presentation

In accordance with my Development Assignment Profile that required me to: 1) reach out to external stakeholders and identify issues and concerns about secondary screening and allegations of racial profiling; 2) researching what measures other organizational entities have taken in response to such allegations; and 3) developing a formal recommendation as to the measures TSA should implement to address this matter, please find attached my formal recommendations based on meetings with our stakeholders and in-depth research performed on this issue.

The attached document contains eight (8) Strategic Options in which the TSA Senior Leadership Team could deploy, to include three formal proposals on data collection Efforts. These proposals were provided by University of California, Berkeley, VERA Institute of Justice and RAND Corporation.

Included with this report is a slide presentation that provides leadership with a Summary of the report.

In closing, the way ahead for the TSA is to determine what strategic option(s) to implement during the interim period of time it takes to deploy advance passenger screening technologies. It's my opinion that advance screening technologies, beyond those deployed today, will reduce or possibly eliminate perceptive profiling associated with our passenger screening process and policies.

Attachments (2)



TSA Passenger Screening Program
Strategic Options to Consider
Racial Profiling Concerns

Submitted By:

(b) (6)

Senior Leadership Development Program – 3

June 16, 2009

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TSA Passenger Screening Program Strategic Options to Consider Racial Profiling Concerns

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Introduction:

Since federalization the Transportation Security Administration (TSA) has implemented a number of passenger screening procedures that continue to evolve. These procedures change as the threat to aviation continues, along with the Agency balancing race neutral screening policies with national security. An example of this is in August of 2007, whereby the TSA commenced screening of bulky clothing and passenger headwear. Prior to this date the TSA permitted passage through the screening process without either additional screening or removal of headwear. This change in security posture resulted in some religious (Sikhs in particular) groups experiencing increased secondary screening. Some believe that the increased secondary screening resulted in "perceptible racial profiling" and in particular, individuals who wear turbans such as the Sikh religious faith.

In response to the concerns expressed by various coalition groups the TSA adjusted their screening procedures in October of 2007. This adjustment permitted individuals wearing religious headwear to carry out one of three screening options that includes passing through either a Trace Portal (Puffer) or Whole Body Imaging (WBI). However, even with adjustments to the Passenger Screening Checkpoint Standard Operating Procedures (SOP), the issue of "perceptible racial profiling" continues to exist today. The attached TSA Report Card prepared by the Sikh Coalition illustrates this ongoing concern among the Sikh community (**Attachment 1**).

The purpose of this document is to present the TSA Senior Leadership Team (SLT) with possible strategic options that could be implemented to: (1) address racial profiling concerns whether perceptive or actual; and, (2) Improve internal business controls as they relate to secondary screening procedures. Each option is presented below in granularity and offers the reader background information associated with the option. Although ultimately a highbred approach is suggested, a single course of action to address this sensitive and important area specifically pertains to screening technologies and the accelerated deployment of said equipment by the Agency.

Advancements in screening technologies would permit members of the traveling public to pass through the screening process without necessarily experiencing secondary screening. However, with advance technology, privacy becomes a consideration, not to mention how the TSA can adequately balance national security with public policy as exhibited in H.R. 2027 (Aircraft Passenger Whole-Body Imaging Limitations Act of 2009). The current challenge faced by the TSA is how to function during this interim period of time until the perfect screening technology is deployed for public use.



TSA Passenger Screening Programs

Strategic Options to Consider

Racial Profiling Concerns

Office of Special Inspection

(b) (5)

Attachments 2, 2A and 2B contain three proposed Research Prospectuses on data collection efforts. The first prospectus was submitted by the Goldman School of Public Policy, University of California - Berkeley who suggests reviewing checkpoint video as a methodology. The second prospectus was offered by the VERA Institute of Justice whose research methodology is to perform direct observational audits of the screening checkpoints, followed by reviewing video where available. (b) (4)

(b) (4)

Although all

research methodologies offer their own unique and independent benefits, it would appear that the VERA and RAND approaches are better aligned with TSA's expected outcomes.

(b) (5)

WIF (b)(3), (b)(5)



TSA Passenger Screening Pilot Program Strategic Options to Consider Racial Profiling Concerns

Office of Special Counsel

performed in accordance with Section 222 of the Homeland Security Act in order to alleviate the concerns associated with this screening technology. Although privacy concerns surrounding the WBI continue to remain today, the Agency is on official record of proactively performing the PIA.

Unlike the above programs, the Passenger Screening Checkpoint SOP has not undergone a CLIA. It would appear that based on a review of H.R. 1 (Implementing Recommendations of the 9/11 Commission Act of 2007), Title VIII, Section 1062, the TSA could provide (optional Agency action) the SOP to the DHS for review since these security procedures pertain to national security. Performing a CLIA on the SOP would, in the opinion of the author, reduce some of the debate associated with secondary screening and ensure that the Agency is meeting the intent of the statute; albeit, optional. Although the debate about discriminatory practices and racial profiling would continue, a CLIA endorsement would further demonstrate an open and transparent government, something that the current Administration requires.

Strategic Option Recommendation #2 to SLT:

Perform a CLIA on the Passenger Screening Checkpoint SOP then publically announce the effort and results.

(b)(3) 49 USC 114(r)

During the May 8th meeting with the Sikh Organizations, Acting TSA Administrator Gale Rossides, was specifically asked whether or not a turban had ever been utilized to conceal an item (b)(3) 49 USC 114(r)

(b)(3) 49 USC 114(r)

(b)(3) 49 USC 114(r) Such data could be delivered to Congress during



TSA Passenger Screening Program

Strategic Options to Consider

Racial Profiling Concerns

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classified briefings and support the "political debate" on national security versus public policy as they relate to privacy considerations.

Strategic Option Recommendation #3 to SLT:

(b)(3) 49 USC 114(r)

Strategic Option 4 – Operational Screening Audits:

A number of the organizations (stakeholders) commented that many airports do not apply the Passenger Screening Checkpoint SOP in a consistent manner. Rather, screening measures appear to be inconsistent when comparing airports. In fact, as illustrated in **Attachment 1**, some airports may not require secondary screening for an individual wearing a bulky item, whereas other airports reportedly perform 100% secondary screening of the same item. Discretionary application of the SOP on bulky clothing is difficult to measure, but not necessarily impossible for the TSA to consider. Another factor to consider here when reviewing network consistency is whether or not an airport has advanced screening technologies (i.e. Trace Portal or WBI) deployed, as is the case with SFO.

Since federalization of the screening process the TSA has performed a number of operational tests, some of which consist of: IED Checkpoint Drills, ADASP and Red Team testing. But, the Agency does not conduct performance audits in order to gage the performance aptitude of the screening process, or how our TSOs are directly carrying out the SOP. In particular, the TSA is not reviewing bulky clothing screening procedures and the execution of independent discretion by the Officer ranks. This is further illustrated by the recently developed and released Training Job Aid that focuses on bulky clothing.

Although the PASS Program has some operational criteria contained, it's noted that this primarily focuses on screening with a Hand Held Metal Detector (HHMD), Full Body Pat Down (FBPD), attendance, Online Learning Center (OLC) and collateral duties. Performance audits of the bulky clothing requirements could be performed at each airport by Expert Screening Training Instructors (ESTI) or Screening Training Instructors (STI), then recorded in a centralized database such as PMIS or PARIS. These ESTIs or STIs could be deployed to other airports in order to provide an objective review of the screening process. This approach is similar to how the Agency is currently managing the Passenger Screening Evaluations (PSEs) this fiscal year.



WIF (b)(3), (b)(5)

U.S.A. Passenger Screening Program

Strategic Options to Consider

Racial Profiling Concerns

Office of Special Counsel

developed by the San Francisco Bay Area Airports (**Attachment 3**) in response to concerns of inconsistencies among SFO, OAK, SJC and SMF. Although not implemented at said airports as of yet, the observations items on the checklist are intended to be completed by a Transportation Security Manager (TSM), Supervisor Transportation Security Officer (STSO), ESTI or STI.

This option is similar to the previous option above in that an operational assessment of the screening process is performed. However, there is a specific focus on non-form fitting headwear, and not just religious headwear. Again, this information could be nationally entered into a centralized data system that would enable the Agency to review this screening procedure across the network.

Strategic Option Recommendation #5 to SLT:

Implement a Practical Skills Observation/Demonstration Checklist for Non-Form Fitting Headwear Screening and report findings throughout the network.

Strategic Option 6 – Expansion of Close Circuit Television at Passenger Screening Checkpoints:

A review of the (b)(3) 49 USC 114(r) reveals that CCTV technology is lacking. Conversely, airports such as (b)(3) 49 USC 114(r) have elaborate camera systems. The former airports have minimal camera coverage that results in challenges to local FSD staffs and the Agency as a whole as it relates to allegations of racial profiling.

Allegations of racial profiling and discriminatory screening practices, whether actual or perceptive, are not being recorded at airports lacking camera coverage. This results in the Agency having a difficult time of sorting out whether an allegation actual occurred or not. An ancillary consideration here also pertains to allegations of theft, damage, on-the-job injuries and security breaches. Thus, a robust camera system would assist the Agency in investigating such allegations, mitigating security breaches and possibly reducing the number of passenger claims paid out on.

Therefore, it's suggested that the Agency expand its' efforts in this area and consider funding instruments such as Other Transaction Agreements (OTAs) and/or Memorandum of Agreements (MOA).

Strategic Option Recommendation #6 to SLT:

Accelerate and improve CCTV systems at airports that lack such technology today.

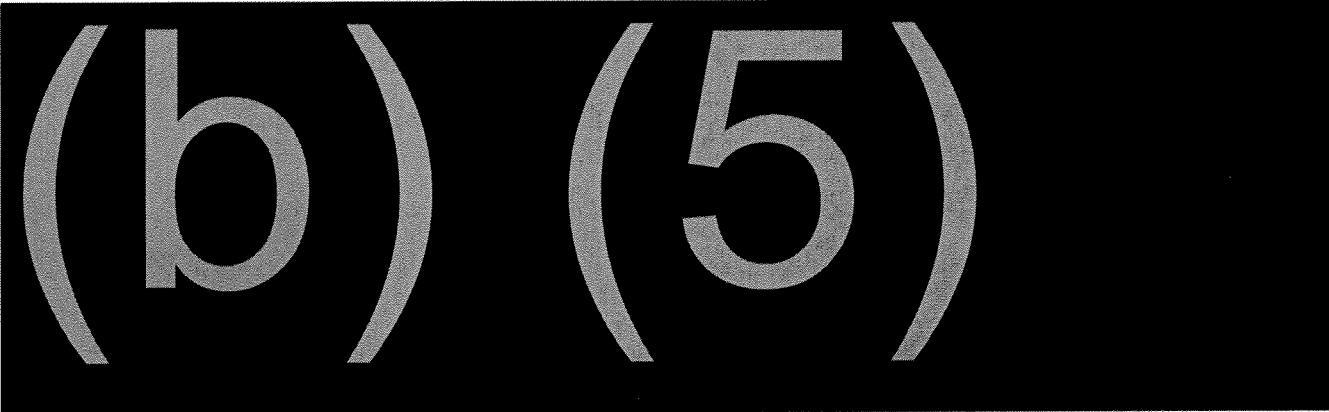


TSA Passenger Screening Program

Strategic Options to Consider

Racial Profiling Concerns

Office of the Chief Information Officer



Conclusion:

The Officer ranks of the TSA are all hardworking men and woman who carryout their official duties and responsibilities both proudly and professionally. Said workforce is administered continued training that not only pertains to screening procedures, but also cultural awareness. This workforce is resilient and adoptable to the dynamics associated with aviation security and the continued threat we collectively face.

Historical information indicates that the issue presented here is not one of profiling or discriminatory practices by the TSA workforce. Rather, the issue directly correlates to our current screening policies as a result of a lack of advance screening technologies, combined with ongoing threat streams. These policies are required to overcome the security vulnerabilities in order to ensure a safe and secure air transportation system.

The challenge ahead for the TSA is what strategic option or options to implement during the interim period of time it takes to deploy advance passenger screening technologies.

Attachment 1



The TSA Report Card

A Quarterly Review of Security Screenings of Sikh Travelers in U.S. Airports

Q1 2009

RoundUp: Oakland Airport Problems Persist

As we begin 2009, 100% secondary screening rates of Sikh travelers continue to be an issue at California's airports.

Of all the reports we have received, no Sikh turbaned traveler reported being spared a secondary screening at Oakland Airport. This is a continuation of the same problem we identified in our last quarterly report card.

We first brought this issue to the TSA's

attention in October 2008. In response, a few of California's TSA administrators met with Sikh groups in early February 2009. Though TSA officials from Washington D.C. at that meeting reiterated that the policy is not intended to mandate turban screenings, no action has yet been taken to remedy the screening problem at Oakland. A follow up meeting to discuss the policy has been planned for the first week of May in Washington D.C.

In addition to Oakland Airport, frequent flyers through Sacramento Airport also noted 100% screening rates at that location. Both airports are among the top screening airports according to the Sikh Coalition's data.

Similar reports have also been received from Seattle, while officials in Dallas and Chicago airports told Sikhs that turban searches are mandatory.

Screening Sikhs by the Numbers:

	Q1 2009	Q1 2008
Sikhs sent for additional screening who reported feeling singled out	90%	64%
Sikhs who were not informed of their option to conduct a self-pat-down	23%	23%
Sikhs who were told that turban screening is a mandatory security measure	13%	23%
Screening complaints stemming from California airports	48%	49%
Sikhs who reported being subject to additional screenings at U.S. airports*	84%	71%

*Note that this number is based on self-reporting by Sikh travelers. As a result, since more people are likely to complain about unpleasant experiences at security, this percentage is likely weighted towards bad experiences.

Specific Incidents

1. A traveler leaving from **Oakland Airport** was subjected to a full body pat down after clearing the metal detector. The TSO then mentioned that the passenger "would be a good one" for another TSA officer to get trained on.
2. A Sikh passenger traveling through **Buffalo Airport** was screened by four separate TSA officers before being allowed to proceed. Although one had only wanted to check his loose sweatshirt, another instructed the first officer to screen the full body. Then, a third and fourth screener asked the passenger numerous questions about his trip, where he lived and his destination.
3. A passenger at **Phoenix Airport** was instructed to go through a full body scan machine in lieu of a TSO pat down.
4. A passenger traveling through **Dallas Airport** had cleared security but was called back by a separate TSO whose supervisor claimed that all turbans must be screened. "I can even pull you out of the boarding area, if I want to," the supervisor said.

Recommendations

1. Audit TSA screeners in the exercise of their discretion, to ensure that individual TSA employees are not engaging in racial profiling at U.S. airports.
2. Promptly address claims of mandatory or 100% secondary screenings for Sikh passengers at the airports where they arise.
3. Guide TSA screeners to inform Sikh passengers of all three of their options as soon as a passenger is identified for additional screening of their turban.
4. Involve Sikh civil rights groups in the development of cultural sensitivity training materials for TSA screeners.
5. Post information about the screening procedures in Punjabi.

Attachments 2, 2A and 2B

**Research Prospectus:
Racial and Ethnic Profiling in Airport Security Screening
with a Focus on Clothing and Headdress Searches**

Associate Professor Jack Glaser and Professor Steven Raphael
*Goldman School of Public Policy
University of California, Berkeley*

At the request of
The Sikh Coalition

Draft: December 15, 2008

This investigation seeks to employ rigorous scientific and policy-analytic methods to investigate whether (and to what extent) or not racial and ethnic profiling has occurred in Transportation Security Administration screenings at American airports, resulting in unfair treatment of certain racial, ethnic, and religious groups.¹

The question:

Are Turbanned Sikhs and others targeted by Transportation Security Officers (TSO's) for extra scrutiny and secondary searches at airport security screening checkpoints at a rate that is disproportionate to that justified by their behavior?

The background:

The Transportation Security Administration is tasked with, among other things, preventing terrorists from carrying out attacks involving airliners. To that end, their TSO's screen every passenger. Some passengers are given secondary screening that extends beyond passing through a metal detector and having items x-rayed. The secondary screening can involve additional electronic "wanding," physical pat-downs, screening by an electronic trace portal machine (puffer), clothing removal, additional questioning, and even strip searching.

The problem:

Based on numerous firsthand accounts and complaints, The Sikh Coalition believes that Sikhs who wear turbans in accordance with their religious mandate, are subjected to secondary screening at a dramatically disproportionate rate. At one point, it was explicit TSA policy to subject any passenger wearing a turban to secondary screening. This had a disparate effect on Sikhs. The TSA has reversed that policy. Nevertheless, reports to the Sikh Coalition indicate that Sikhs are still asked to have their turbans inspected more often than others wearing clothing

¹ We will use the term "racial and ethnic profiling" in this document to capture profiling based on religious group membership as well, particularly because it is likely that screeners and other observers often do not accurately recognize the actual religion of targeted minorities. The term "ethnic" will be used broadly to capture some non-racial physical, cultural, and religious categorizations.

that could just as easily conceal a weapon (e.g., Hasidic Jews, people wearing cowboy hats, people wearing baggy clothes).

If Sikhs are being targeted disproportionately, it implicates a civil rights violation. Furthermore, excessive targeting of Sikhs may even be at odds with security objectives because Sikhs would be singled out based solely on their appearance – a tactic that the TSA has agreed is a distraction in terms of promoting security. Targeting Sikhs based on misconceptions about religion and ethnicity may undermine security by drawing TSOs' attention and resources away from more likely threats and more direct and credible indicators of threat.

The research:

The study would involve objective reviews of TSO screening videos from a diverse sample of airports. Multiple, carefully trained raters would use standardized criteria to record security screenings, including traveler gender, ostensible race/ethnicity/religion, approximate age, size, dress, and manner. Screening procedures employed for each traveler would also be recorded. Raters would be blind to the purpose of the study, and two raters would be used, working independently of each other, according to identical rating criteria and standard social scientific procedures. Airport and personnel information would be kept strictly confidential. This sort of data coding method is the most appropriate approach for codifying and analyzing large samples of naturalistic human behavior (as opposed to structured, questionnaire measures or experiments).

The purpose of the study would be to identify if, where, when, and under what circumstances disparate screening treatments have been imposed on different groups. The study does not aim to make value judgments or second-guess screening procedures. It will simply quantify the screening behaviors, and their varying rates, with regard to identifiable physical attributes of travelers. In this manner, we can identify if there is empirical support for the complaints of the Sikh community, specifically, and other groups as well.

The participants:

Jack Glaser is an Associate Professor at the Goldman School of Public Policy at the University of California, Berkeley. Professor Glaser has a PhD in Psychology from Yale University. He teaches graduate level courses on statistical analysis, policy analysis, and the social psychology of prejudice and discrimination. His research focuses primarily on the application of social psychological approaches to criminal justice, including work on racial profiling, hate crime, capital punishment, and unintended forms of racial bias in policing. He is preparing a book on racial profiling for Oxford University Press.

Steven Raphael is a Professor at the Goldman School of Public Policy at the University of California, Berkeley. Professor Raphael received his Ph.D. in economics from UC Berkeley in 1996. His primary fields of concentration are labor and urban economics. He has authored several research projects investigating the relationship between racial segregation in housing markets and the relative employment prospects of African-Americans. Raphael has also written theoretical and empirical papers on the economics of discrimination, the role of access to transportation in determining employment outcomes, the relationship between unemployment

¹ Bakeman, R. (2000). Behavioral observation and coding. In H.T. Reis & C.M. Judd (Eds.), *Handbook of Research Methods in Social and Personality Psychology* (pp. 138-159). New York: Cambridge University Press.

and crime, the role of peer influences on youth behavior, the effect of trade unions on wage structures, and homelessness.

The Sikh Coalition is a national, community based civil rights organization that actively promotes civil and human rights for all people. The Sikh Coalition was formed in the aftermath of the terrorist attacks of September 11, 2001, to help address bias and discrimination against the Sikh American community. Neha Singh, the Western Region Director of the Sikh Coalition, is serving as liaison to the research project.

Inquiries about the project should be addressed to:

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To: (b) (6) Transportation Security Administration
From: (b) (6) The Vera Institute of Justice
Date: June 3, 2009
Re: Preliminary TSA Research Proposal

The Vera Institute of Justice is pleased to outline a preliminary research proposal to examine the application of secondary screening policies at Transportation Security Administration (TSA) airport checkpoints. We understand that TSA has been working internally – as well as externally with concerned citizens and organizations – to ensure that secondary screening policies do not result in discrimination. Based on our conversations, it is our understanding that the TSA has been tasked with making a recommendation on how to determine (1) if screeners in the field uniformly adhere to TSA’s national secondary screening policies and practices, and (2) if the application of those policies has a disparate impact on who is selected for secondary screening, particularly with regard to census characteristics such as perceived race, ethnicity, national origin, and religion. This memo outlines Vera’s proposed research methodology to examine the issues you have identified. We view this proposal as a work in progress. The methodology description is preliminary and is intended to offer a sample of what is possible. Details of this methodology would be developed and adapted based on a more in-depth understanding of TSA procedures, restrictions, and the outcomes that TSA wants to realize from the research. The memo also offers examples of relevant work from Vera’s nearly fifty-year history delivering robust research and program development and services as a trusted partner to leaders in government and civil society.

Research Methodology

Investigating whether disparate impact exists in the screening of several million passengers per day across widely diverse settings is a very complex and multi-dimensional task. It is not simply a question of ‘who’ is selected for secondary screening but rather, ‘who is selected among those eligible to be screened secondarily’ and ‘whether policies, procedures, or practices are affecting the likelihood of secondary screening in any particular subset of those eligible to be screened.’ Vera first must conduct a number of preliminary assessments before determining optimal sampling strategies, measurements, and analytic strategies. During the initial stage of the project, Vera staff will work with expert TSA staff to gather information critical to the development of an appropriate and effective research design – including problem definition, sampling strategy, site selection, data collection procedures, and measurement.

Problem Definition and Overall Approach.

Vera's primary research goals for this project are to examine: (1) whether TSA officers are adhering to Agency secondary screening policies; (2) whether disparities exist within TSA's secondary screening process; and (3) if disparities exist, potential underlying causes and subsets of travelers -- if any -- most affected by these disparities. These goals will be refined and adjusted based on further discussion of TSA's concerns and needs.

Vera staff also will team with TSA to determine what degree and level of detail is of interest. Discussions will include whether TSA is interested in answers to the above questions on a national, regional, or local level (or by size of airport), if there are particular regions or arrays of primary concern due to the number of complaints received, and if specific populations are of concern. Vera then will work with TSA to customize the research plan and incorporate these issues. Once the extent of TSA's needs and interests has been identified, Vera will develop an appropriate sampling strategy and method of data collection and analysis.

Sampling Strategy and Site Selection.

Vera researchers will work with TSA staff to develop a categorized list of potential sites, based on criteria determined during problem definition (e.g., numbers of TSA checkpoints & personnel, volume of passengers, geographic region, types of outgoing flights served (commuter, domestic, international), composition of general population, etc.). Parallel to this procedure, Vera staff, in consultation with a survey sampling statistician, will determine the appropriate sample size needed to answer the research questions at the desired level of confidence.

Measurement and Data Collection.

To assess whether there is disparate impact, Vera will collect data on those eligible for secondary screening as well as those selected for screening. To accomplish this, Vera must answer the questions "What categories of persons qualify for secondary screening?" and "Under what conditions are people pulled for a secondary screen?" As a first step in this process, Vera staff will conduct interviews and focus groups with staff members as well as review relevant documents to develop a comprehensive understanding of TSA's policies and procedures for secondary screening, including gathering information about whether discretion is permitted, under what circumstances, and what review procedures or other internal controls are currently in place. (At the option of TSA, Vera might also develop a separate, internal project to assess how closely TSA officers are adhering to TSA's national policies; this option will be discussed with TSA at a later date.)

Once the overall information is collected, Vera can proceed to ascertain what decisions are made; whether disparate impact occurs, to whom, and under what conditions; and the degree to which discretion versus policy accounts for that disparity. To assess this, Vera researchers will first measure secondary screening outcomes based on strict adherence to policy in the aggregate to determine if disparate outcomes result. This measure will provide our baseline, which may or may not uncover disparate outcomes. If applicable under TSA procedures, we could then measure what happens if discretion is permitted, specifically seeking to answer the question: "Does discretion result in disparate outcomes, and if so, are they greater in magnitude than the baselines?"

Vera anticipates using a combination of quantitative and qualitative methods to measure whether groups are being affected disparately. For example, one possible method of assessment would be to use independent raters – either trained researchers with necessary security clearances and/or TSA personnel – to identify who is eligible for secondary screening during a particular time period via onsite observations – our preferred methodology, or through recorded footage from the checkpoint, combined with any other information available to the TSA screener prior to the secondary screening. The “eligible” group may then be compared to the actual group selected for screening to assess whether there is a higher risk of screening for any subgroup. Another potential method for examining disparities is to engage confederates (*e.g.*, “confederate” or “tester” passengers hired by Vera with particular characteristics of interest) to subject themselves to screening and track who is selected for a secondary screen and for what reason. Specific characteristics of these confederates or testers can be deliberately manipulated to see whether, individually or in combination, they are related to screener decisions and to decisions resulting in disparate impacts.

The research project would also provide TSA with an additional tool to use in quality control and management. Vera’s work would result in TSA staff being trained to do on-going assessments of TSA screenings and the knowledge of how to effectively use results of the screening assessments to improve the quality of services.

Vera’s Background

The Vera Institute of Justice is an independent nonprofit organization that combines expertise in research, evidence-informed programmatic design, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety. Vera has an extensive history of conducting research, including federally funded research projects. Vera’s research department conducts three types of research: exploratory research on issues of interest to Vera or to a government partner, evaluations of innovative programs including Vera’s own demonstration projects, and special projects providing research advice and assistance to other nonprofit organizations or government agencies. The driving force behind these research models is that the findings be of use to our government partners and that they be in a form that can be utilized to develop more effective services. Launched in 1961, Vera has developed substantial staff capital and infrastructural capability over its nearly fifty-year history to deliver robust research and programmatic services in a wide range of government and civic settings.

In addition to our established research capacity, Vera has built a solid reputation for providing technical assistance to a variety of governmental entities. Vera offers a range of services to help government partners improve their systems. We provide decision makers at the local, state, and national level with expertise and nonpartisan advice to help them craft practical solutions that are viable, effective, sustainable, and tailored to support their specific goals. In these efforts we combine subject matter expertise, research and analytical capacity, and knowledge of government systems with skilled facilitation and process consultation to help our partners achieve optimal outcomes tailored to meet their information and programmatic goals.

Highlights of Vera's work include:

- ***Appearance Assistance Program.*** In 1996, the Immigration and Naturalization Service asked Vera to establish a supervised release project for people in removal proceedings in New York City. The INS goal was to assess supervision and evaluate its effect on rates of appearance in court and compliance with court ruling compared to other alternatives to detention already in use by the agency, such as bond, parole, and release on recognizance. The Appearance Assistance Program (AAP) – a three-year test of community supervision for people in immigration removal proceedings – began operating in February 1997 and concluded in March 2000. All Vera employees working on AAP obtained the appropriate security clearances needed to perform the work. The AAP demonstrated that it is not necessary for the INS to detain all noncitizens in removal proceedings to ensure extremely high rates of appearance at immigration court hearings. Ninety-one percent of participants in the intensive program attended all required hearings, in comparison to 71% of noncitizens released on bond or parole. Among Vera's other findings: supervision is more cost effective than detention, and AAP supervision almost doubled the rate of compliance with final orders.
- ***Prosecution and Racial Justice.*** Since 2006, Vera's Prosecution and Racial Justice Program (PRJ) has partnered with district attorneys in Milwaukee County, Wisconsin; Mecklenburg County, North Carolina; and San Diego County, California, to pilot an internal assessment and management procedure that is helping supervisors to (a) identify evidence of possible racial or ethnic bias in their staff's aggregate decision-making and (b) respond appropriately when such biases are found. In the course of this work, PRJ has analyzed administrative data from district attorney's offices and conducted focus groups and surveys with prosecutors. Vera also worked effectively to design and help implement constructive solutions when problems were identified. For example, in 2006, Vera found that junior prosecutors in Milwaukee, WI, were filing drug paraphernalia charges against 59 percent of whites compared to 73 percent of non-whites. Vera facilitated discussions about this finding among the staff, which resulted in district attorney requiring prosecutors to consult their supervisor prior to issuing drug paraphernalia charges. Within a matter of months, the disparity disappeared. More recently, Vera developed a monitoring tool to provide district attorneys with an early warning system that flags potential areas of racial disparity in initial case screening. Vera continues to work closely with these district attorneys in identifying and eliminating racial bias, thereby enhancing the integrity of judicial outcomes and building public confidence in the criminal justice process.
- ***Law Enforcement & Arab American Community Relations after 9/11.*** After the bombings on September 11, 2001, Vera conducted a research study funded by the National Institute of Justice examining the effects nationally of the events of September 11th on law enforcement agencies and communities with high concentrations of Arab-American residents. To explore these issues, Vera researchers conducted telephone surveys with community leaders, local law enforcement

officials, and field office agents from the Federal Bureau of Investigation (FBI) in 16 representative sites around the country. Four sites were then selected for in-depth study involving additional interviews, facilitated focus groups, and researcher' observation of police-community relations. Vera produced a report from study findings that provided in-depth insight into relations between Arab Americans and local and federal law enforcement as well as challenges each of these stakeholders faces in responding to pressures that are increasingly global in nature. The Vera report also identified examples of best practice partnerships and innovations that have successfully bridged gaps identified in the study. Recommendations and opportunities for restoring trust and creating alliances to reduce crime and address terrorism and other public safety concerns also are included.

- **Translating Justice.** For the past six years, Vera also has partnered with the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS Office) to assist law enforcement agencies nationally in improving their relationships with immigrant communities through developing multi-jurisdictional recommendations and action plans. In 2005 with funding from the COPS Office, Vera partnered with the Anaheim Police Department, Clark County (OH) Sheriff's Office, and the Las Vegas Metropolitan Police Department to develop language access action plans and policies specifically tailored for each jurisdiction. Each language access action plan was based on in-depth findings from interviews, focus groups, and police-community strategic planning meetings. In addition, Vera created a document offering practical steps that law enforcement agencies nationwide can take to overcome language barriers for immigrants, including gathering data to identify immigrant community needs, developing a language access policy, and cultivating existing bilingual personnel. Currently, Vera and the COPS Office are concluding a project highlighting promising practices nationally for overcoming language barriers in policing; this project involved Vera collecting and analyzing assessments of nearly 200 agencies' practices. The COPS office has also partnered with Vera to assemble a group of police and community leaders for a focus group discussing how law enforcement and new immigrants can cultivate, maintain, and restore partnerships aimed at keeping communities safe.
- **Legal Orientation Program.** The Legal Orientation Program (LOP) was created to inform immigrant detainees about their rights, immigration court, and the detention process. The LOP is a partnership between Vera, the Annie E. Casey Foundation, the U.S. Department of Health and Human Services, the U.S. Department of Justice's Executive Office for Immigration Review (EOIR) and their Office of Community Oriented Policing Services (COPS). On behalf of the EOIR, program staff work with nonprofit legal service agencies to provide the program at 25 detention facilities across the country. Research indicates that program participants move through immigration court more quickly and are therefore likely spend less time in detention than people who do not have access to legal help.
- **Accessing Safety Initiative (ASI).** The Accessing Safety Initiative helps its partner jurisdictions – states and cities – enhance the capacity of their social services and criminal justice systems to assist women with disabilities and deaf women who have experienced domestic violence, sexual assault, and stalking. ASI partnered with the U.S. Department of Justice's Office on Violence

**VERA INSTITUTE OF JUSTICE
TSA preliminary proposal**

Against Women in 2006 to provide intensive consulting and training to federally funded initiatives that are working to improve services for these survivors. Its goal is to increase victim agencies' knowledge, skills, and resources for offering accessible and welcoming services to people with disabilities and, at the same time, help disability organizations offer safe and responsive services to survivors of domestic or sexual violence.

- ***Work with the National Prison Rape Elimination Commission.*** Vera's Washington DC Office worked over a three-year period with the congressionally mandated National Prison Rape Elimination Commission (NPREC) to develop standards to detect, prevent, and respond to sexual abuse and rape in jails, prisons, lock-ups, juvenile residential detention facilities, immigration detention facilities, and community-corrections settings and to produce a final report for the Commission. The standards, submitted for public comment in 2008, incorporate public as well as intensive key stakeholder feedback. They will be released June 24th 2009 along with the final report and recommendations and presented to the U.S. Attorney General, President, and Congress for further action

Attachment 3

Attachment 3



Transportation
Security
Administration

Practical Skills Observation/Demonstration Checklist
Non-Form Fitting Headwear Screening

Performance Accountability and Standards Audit for Check Point Screening

PRINCIPAL PURPOSE(S): This information will be used as part of the Contractors performance review

Non-Form Fitting Headwear		
Employee's Name	Last 4	Date/Time
Supervisor's Name	Auditor's Name	Location

(b)(3) 49 USC 114(r)

SENSITIVE SECURITY INFORMATION - WARNING: This record contains Sensitive Security Information that is controlled under 49 C.F.R. parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know," as defined in C.F.R. parts 15 and 1520, except with the written permission of the administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 C.F.R. parts 15 & 1520.

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**TSA Strategic Options to Consider
Secondary Screening – Bulky Clothing & Headwear
Community Perceptions of Racial or Religious Profiling**

June 11, 2009

(b) (6)

Senior Leadership Development Program - 3
Office of the Special Counselor (OSC)
Transportation Security Administration (TSA)



Transportation
Security
Administration

Project Overview

Since August 2007 the TSA has collaboratively worked with the Sikh organizations to ensure screening options appropriately balance security needs with the passenger's civil rights and civil liberties, including freedom of religion. This effort has resulted in screening alternatives for passengers who cannot remove their headwear for secular or religious reasons. 2 years later, concerns still remain among this group. These concerns pertain to:

- *Inconsistent screening procedures - verbal announcements of the screening options delivered by Transportation Security Officers*
- *Inconsistent screening advisements – inadequate or poor communication to the passenger about the screening alternatives*
- *Some airports perform 100% secondary screening of all religious headwear*
- *Decommissioning of Trace Portals (Puffers) and proposed Congressional limitations of Whole Body Imaging (WBI) technology – Primary Position*
- *Recent changes to the Primary Position WBI SOP (Not Shared Publicly)*
- *TSA's lack of data collection efforts as it relates to secondary screening and passenger demographics*
- *U.S. is the only country that requires additional headwear screening requirements*

Proposed Strategic Options for TSA

- Data collection efforts on secondary screening
- Civil Liberties Impact Assessment
- (b)(3) 49 USC 114(r)
- Operational Screening Audits
- Practical Skills Observations/Demonstration Checklist
- Expansion of CCTV coverage at passenger checkpoints
- Rapid deployment of “hush” radio equipment
- Hybrid option suggested as interim Agency response
- Advance screening technology is the ultimate solution