

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

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November 18, 2020

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Comptroller General Dodaro,

The Transportation Security Administration (TSA) and U.S. Customs and Border Protection (CBP) each have unique responsibilities for screening travelers entering or leaving the country or travelling within the United States. With nearly three million passengers flying in and out of U.S. airports every day in 2019, these critical security agencies help keep our country and travelers safe.¹ However, as screening programs adapt to new threats and new technologies, improvements must continue to be made to ensure that we are kept safe and each passenger's civil rights are protected. I write to request that GAO study the impacts that current traveler screening procedures have on communities of diverse background and make recommendations to ensure that all discrimination and disproportionate impact can be eliminated in the travel screening process.

Recent Government Accountability Office (GAO) reports have made a variety of recommendations to ensure that traveler screenings are conducted in an effective and accountable manner. For example, GAO recently reviewed the rules that TSA uses to identify who should receive enhanced screening, and reported that TSA must do more to clarify screening rule review procedures, document the rule review process, and explore additional data sources for measuring the effectiveness of rules.² GAO has also reviewed TSA's behavior detection activities and policies against unlawful profiling, and recommended that the agency implement "a specific oversight mechanism to monitor behavior detection activities for compliance with policies that prohibit unlawful profiling."³ Reviews of TSA's "Secure Flight" program, which assigns risk categories to passengers, produced recommendations for determining program effectiveness and adequately protecting passenger privacy.⁴ GAO has also reported on TSA's behavior detection activities and encouraged Congress to limit funding until scientifically-validated evidence of their effectiveness is produced.⁵

¹ Federal Aviation Administration, *Air Traffic By The Numbers* (https://www.faa.gov/air_traffic/by_the_numbers/) (accessed Oct. 26, 2020).

² Government Accountability Office, *Aviation Security: TSA Coordinates with Stakeholders on Changes to Screening Rules but Could Clarify Its Review Processes and Better Measure Effectiveness* (GAO-20-72) (Nov. 20, 2019).

³ Government Accountability Office, *Aviation Security: TSA Has Policies that Prohibit Unlawful Profiling But Should Improve Its Oversight of Behavior Detection Activities* (GAO-19-268) (Apr. 23, 2019).

⁴ Government Accountability Office, *Secure Flight: TSA Could Take Additional Steps to Strengthen Privacy Oversight Mechanisms* (GAO-14-647) (Sep. 9, 2014); Government Accountability Office, *Secure Flight: TSA Should Take Additional Steps to Determine Program Effectiveness* (GAO-14-531) (Sep. 9, 2014).

⁵ Government Accountability Office, *Aviation Security: TSA Should Limit Future Funding for Behavior Detection Activities* (GAO-14-159) (Nov. 8, 2013).

I request GAO continue and build on these prior efforts evaluating TSA and CBP's screening processes by conducting a study of potential discrimination and disproportionate impacts on communities of diverse backgrounds. Recent reports have indicated that many individuals still experience profiling based on characteristics including race and religion in traveler screening, and it is of vital importance that the federal government implement measures to prevent any discrimination based on these constitutionally-protected characteristics.⁶ Therefore, to ensure accurate understanding of any shortcomings and vulnerabilities in the traveler screening process, I request that GAO address the following questions:

1. Do current TSA and CBP traveler screening policies discriminate against or have disparate impacts on any particular communities on the basis of race, ethnicity, national origin, or religion?
2. Please analyze all potential redress mechanisms for individuals who believe they have been discriminated against on the basis of any such characteristic in traveler screenings and determine their adequacy. Where and how are these redress processes communicated to the public?
3. What data do TSA and CBP collect on the characteristics of individuals referred for enhanced screening, and what changes should be made to improve data collection practices?
4. Please describe what differences in protocol exist between minors and adults in travel screenings. What protections exist for minors in travel screening? What criteria are used to determine whether a minor needs enhanced screening?
5. Are current TSA and CBP enhanced traveler screening policies, such as rules-based screening and random screening, effective at detecting threats? What metrics do TSA and CBP use to determine the effectiveness of these programs?
6. What reforms can be implemented to eliminate potential discrimination in traveler screening processes at TSA and CBP?

Thank you for your attention to this request.

Sincerely,



Gary C. Peters
Ranking Member

⁶ See American Civil Liberties Union, *BAD TRIP: Debunking the TSA's 'Behavior Detection' Program*, (Feb. 2017) (<https://www.aclu.org/report/bad-trip-debunking-tsas-behavior-detection-program>); *TSA Agents Say They're Not Discriminating Against Black Women, But Their Body Scanners Might Be*, ProPublica (Apr. 17, 2019) (<https://www.propublica.org/article/tsa-not-discriminating-against-black-women-but-their-body-scanners-might-be>).