



U.S. House of Representatives
Committee on Transportation and Infrastructure

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Washington, DC 20515

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March 22, 2012

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MEMORANDUM

TO: Members of the Committee on Transportation and Infrastructure and the Committee on Oversight and Government Reform

FROM: Majority Staff, Committee on Transportation and Infrastructure and Committee on Oversight and Government Reform

SUBJECT: Committee on Oversight and Government Reform and Committee on Transportation and Infrastructure joint hearing: "TSA Oversight Part III: Effective Security or Security Theater?"

On **Monday, March 26, 2012, at 1:30 p.m. in room 2154 Rayburn House Office Building**, the Committee on Oversight and Government Reform and the Committee on Transportation and Infrastructure will conduct a joint hearing entitled "TSA Oversight Part III: Effective Security or Security Theater?" The Committees will examine the successes and challenges associated with Advanced Imaging Technology (AIT), the Screening of Passengers by Observation Techniques (SPOT) program, the Transportation Worker Identification Credential (TWIC), and other security initiatives administered by the Transportation Security Administration (TSA). Members will hear testimony from senior Transportation Security Administration officials, Coast Guard, the Government Accountability Office, as well as a private sector security expert.

This hearing is designed to revisit the airport security issues raised over the past three years by press accounts, constituent concerns, and briefings with TSA officials.¹ It will also provide Members with an opportunity to have an open dialogue with TSA officials about potential solutions to gaps in airport security.

Background

In the wake of the attacks of September 11, 2001, Members of the House Committee on Transportation and Infrastructure drafted the Aviation and Transportation Security Act ("ATSA"; P.L. 107-71), which created the Transportation Security Administration, and it was signed into law by

¹ See, Letters from Darrell Issa, Ranking Member, U.S. House Committee on Oversight and Government Reform to Edolphus Towns, Chairman, U.S. House Committee on Oversight and Government Reform, (January 5, 2010; January 26, 2010; March 9, 2010; and June 1, 2010); See also, Letters from Darrell Issa, Chairman, U.S. Committee on House Oversight and Government Reform, Jason Chaffetz, Chairman, Subcommittee on National Security, Homeland Defense, and Foreign Operations, and John Mica, Chairman, U.S. House Committee on Transportation and Infrastructure to Janet Napolitano, Secretary, U.S. Department of Homeland Security, and John S. Pistole, Administrator, Transportation Security Administration (February 14, 2011; March 8, 2011; April 13, 2011; April 29, 2011; May 5, 2011; July 12, 2011; July 25, 2011; August 10, 2011; September 7, 2011; November 18, 2011; February 1, 2012; March 6, 2012; and March 13, 2012).

President George W. Bush on November 19, 2001.² A year later, on November 25, 2002, President Bush signed into law the Homeland Security Act of 2002 (“Act”) which created the U.S. Department of Homeland Security (“Department”) and incorporated TSA into the Department.³ In keeping with the House Oversight and Government Reform Committee’s pivotal role in shaping the Department’s mission and goals, the Act delegated it responsibility for conducting broad oversight of the Department and its agencies.⁴ Since then, the Committee on Oversight and Government Reform has held at least 78 hearings⁵ examining topics ranging from the Federal Government’s efforts in responding to Hurricane Katrina⁶ to the oversight of Department contracts, including SBInet.⁷

The Committee on Oversight and Government Reform and the Committee on Transportation and Infrastructure have both conducted oversight of TSA policies and programs.⁸ To that end, they have examined aviation security matters including, but not limited to, information sharing, federal workforce issues in managing airport security, perimeter security, the relationship between TSA and local airport operators, the Screening Partnership Program, and the training and supervision of airport screeners.⁹

On March 16, 2011, the House Oversight and Government Reform Subcommittee on National Security, Homeland Defense, and Foreign Operations conducted a hearing entitled, “TSA Oversight Part I: Whole Body Imaging,” at which it examined privacy and safety concerns associated with screening technology and pat-downs. On July 13, 2011, the Subcommittee conducted a hearing entitled, “TSA: Oversight Part II: Perimeter Security,” at which it examined the security approach and policies adopted by TSA to ensure that airports are secure from the front door to the fence line.

This series of hearings continues by examining the effectiveness and reported shortcomings of TSA’s security initiatives. These matters are of paramount importance to our national security, homeland defense, and the safety of the traveling public.

Discussion

A. *Advanced Imaging Technology*

The Aviation and Transportation Security Act of 2001¹⁰ requires TSA to provide for the screening of individuals boarding commercial aircraft.¹¹ To comply with this requirement, TSA has primarily relied upon technology to screen passengers at airport checkpoints. For years, TSA most commonly used metal detectors. However, the attack by the Christmas Day Bomber revealed vulnerabilities in the utilization of metal detectors. Thus, the need arose for new screening technology or,

² The Aviation and Transportation Security Act of 2001, P.L. 107-71.

³ The Homeland Security Act of 2002, P.L. 107-296.

⁴ Hearings Conducted by the U.S. House Committee on Oversight and Government Reform: Homeland Security. *See*, <http://www.access.gpo.gov/congress/house/house07ch107.html> (last visited March 14, 2012).

⁵ Hearings Conducted by the U.S. House Committee on Oversight and Government Reform: Homeland Security. *See*, <http://www.gpoaccess.gov/congress/house/govreform/index.html> (last visited March 14, 2012).

⁶ U.S. House Committee on Oversight and Government Reform, Minority Report, “Waste, Fraud, and Abuse in Hurricane Katrina Contracts,” August 24, 2005.

⁷ Hearing, U.S. House Committee on Oversight and Government Reform, “Management of Massive Homeland Security Contracts: Deepwater and SBInet,” February 8, 2007.

⁸ On November 16, 2011, the Committee on Oversight and Government Reform and the Committee on Transportation and Infrastructure issued a joint staff report, entitled, “*A Decade Later: A Call for TSA Reform*,” as “an examination and critical analysis of the development, evolution, and current status and performance of TSA ten years after its creation.”

⁹ *Supra*, note 1; *See also*, Hearing, U.S. House Committee on Oversight and Government Reform, “Coordinated Information Sharing and Homeland Security Technology,” June 7, 2002; Hearing, U.S. House Committee on Oversight and Government Reform, “Travel vs. Terrorism: Federal Workforce Issues in Managing Airports,” April 4, 2006; Hearing, U.S. House Committee on Oversight and Government Reform, “Knives, Box Cutters, and Bleach: A Review of Passenger Screener Training Testing and Supervision,” November 20, 2003.

¹⁰ The Transportation Security Administration was originally placed within the U.S. Department of Transportation.

¹¹ The Aviation and Transportation Security Act of 2001, P.L. 107-71.

at a minimum, exploring additional solutions that could prevent dangerous non-metallic objects from bypassing airport checkpoints.

In response to the Christmas Day Bomber, TSA procured and deployed Advanced Imaging Technology (also known as “Whole Body Imaging”) machines that use backscatter and millimeter wave technology.¹² Currently, there are more than 257 backscatter and 238 millimeter wave units in use at 78 U.S. airports.¹³ The backscatter imaging devices, manufactured by Rapiscan Systems, emit electromagnetic radiation (X-ray beams) in order to produce a “reflection of the body.”¹⁴ Millimeter wave imaging technology, manufactured by L3 Communications, utilizes electromagnetic waves on the body to “create a black and white three-dimensional image.”¹⁵

Despite the hundreds of millions of taxpayer dollars already spent on AIT, recent reports suggest that whole body imaging technology may not be as effective as the Department envisioned. TSA originally procured and deployed AIT machines specifically to screen for non-metallic items. However, the Government Accountability Office issued an unclassified report in March 2010, stating that “**it remains unclear whether the AIT would have detected the weapon used in the December 2009 incident.**”¹⁶ [Emphasis Added]. Additional information relating to the effectiveness can be found within classified reports and tests conducted by GAO.¹⁷ It has also been reported that a TSA agent performed a covert test of AIT machines at Dallas/Ft. Worth International Airport and the technology failed to detect a concealed firearm.¹⁸

B. The Screening of Passengers by Observation Techniques Program

TSA designed the SPOT program to provide Behavior Detection Officers (“BDOs”) with an understanding of how to identify individuals who pose a risk at U.S. airports.¹⁹ BDOs are supposed to focus on behaviors and appearances that deviate from normal behaviors that indicate stress, fear, or an attempt to deceive.²⁰ For Fiscal Year 2011, the Administration had requested \$232 million.²¹ Since 2007, “TSA [has] invested over \$800 million in the program.”²² [Emphasis Added].

Despite spending almost \$1 billion on the initiative, reports indicate that SPOT is not being implemented in an effective manner. On April 6, 2011, GAO testified that the program faces many “operational challenges.”²³ [Emphasis Added]. Also of great concern is that TSA “deployed SPOT nationwide before first determining there was a scientifically valid basis for using behavior and appearance as indicators as a means for reliably identifying passengers who may pose a risk to the U.S. aviation system.”²⁴ Yet, a 2008 report issued by the National Research Council of the National Academy

¹² TSA: Advanced Imaging Technology: Imaging and Technology. See <http://www.tsa.gov/approach/tech/ait/index.shtml> (last visited March 8, 2012).

¹³ E-mail from TSA Legislative Affairs to Mitchell Kominsky, Counsel, House Oversight and Government Reform Committee (May 3, 2011, 2:00 p.m. EST).

¹⁴ TSA: Advanced Imaging Technology: How it Works, http://www.tsa.gov/approach/tech/ait/how_it_works.shtml (last visited March 10, 2012).

¹⁵ See *Id.*

¹⁶ See, “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,” GAO-10-484T, U.S. Government Accountability Office, Mar. 2010.

¹⁷ See *Id.* (Classified Version of GAO Aviation Security Report).

¹⁸ “TSA Source: Armed Agent Slips Past DFW Body Scanner, Lapses,” Grant Stinchfield, MSNBC, Feb. 18, 2011; See also, http://www.msnbc.msn.com/id/41671538/ns/local_news-dallas/fort_worth_tx/ (last visited March 10, 2012).

¹⁹ See, “Aviation Security: Efforts to Validate TSA’s passenger Screening Behavior Detection Program Underway, but Opportunities Exist to Strengthen Validation and Address Operational Challenges,” GAO-10-763, U.S. Government Accountability Office, May 2010.

²⁰ See, *Id.*

²¹ See, *Id.*

²² See, “Aviation Security: TSA is Taking Steps to Validate the Science Underlying Its Passenger Behavior Detection Program, but Efforts May not Be Effective,” GAO-11-461-T, U.S. Government Accountability Office, April 2011.

²³ *Id.*

²⁴ *Id.*

of Sciences found that the “scientific evidence for behavioral monitoring is preliminary in nature.”²⁵ In light of such findings, GAO recommended to Congress “**limiting program funding pending receipt of an independent assessment of TSA’s SPOT program.**”²⁶ [Emphasis Added].

C. *The Transportation Worker Identification Credential*

The Maritime Transportation Security Act of 2002 (“MTSA”) required TSA to create regulations “preventing individuals from having unescorted access to secure areas of MTSA-regulated facilities and vessels unless they possess a biometric transportation security card and are authorized to be in such an area.”²⁷ Accordingly, the Transportation Worker Identification Credential program was designed to employ these biometric requirements. In order to implement TWIC, DHS has previously estimated that the TWIC program “**could cost the federal government and the private sector a combined total of between \$694.3 million and \$3.2 billion over a 10-year period.**”²⁸ [Emphasis Added].

While DHS is currently on track to spend potentially billions of taxpayer dollars on TWIC, GAO found that “[i]nternal control weaknesses governing the enrollment, background checking, and use of TWIC potentially limit the program’s ability to provide reasonable assurance that access to secure areas . . . is restricted to qualified individuals.”²⁹ [Emphasis Added]. Likewise, “DHS has not demonstrated that TWIC . . . is more effective than prior approaches used to limit access to ports and facilities.”³⁰

D. *The Visible Intermodal Prevention and Response Program*

According to GAO, the TSA Visible Intermodal Prevention and Response (“VIPR”) staff work alongside local law enforcement “to augment the security of mass transit and passenger rail systems and promote the visibility of TSA.”³¹ These efforts may include “random high visibility patrols at mass transit and passenger rail stations and conducting passenger and baggage screening operations.”³² According to the FY2012 Department of Homeland Security Budget Justification, VIPR teams may include “TSIs, TSOs, Federal Air Marshals, Behavioral Detection Officers . . . Explosives Detection Canine teams, and Federal, State and local law enforcement officers.”³³ Furthermore, “[t]he total number of VIPR deployments has increased from four to five per week in 2007 to approximately 145 to 150 per week in 2010.”³⁴ TSA plans to conduct 7,360 separate VIPR operations throughout the United States in FY2012.³⁵

There have been ongoing concerns about the constitutionality of the VIPR program as well as its effectiveness. Specifically, GAO recently stated that “performance measures had not been fully established to assess the results of VIPR deployments” by TSA.³⁶ The DHS Office of the Inspector General is currently conducting an efficiency and effectiveness investigation of the VIPR program. This investigation is scheduled to be completed later this year.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See, “Transportation Work Identification Credential: Internal Control Weaknesses Need to Be Corrected to Help Achieve Security Objectives

²⁸ GAO-11-657, U.S. Government Accountability Office, May 2011

²⁹ See, *Id.*

³⁰ *Id.*

³¹ See, *Id.*

³² GAO-10-435R, p. 4.

³³ *Id.*

³⁴ DHS FY2012 Budget Justification, AS-47.

³⁵ *Id.*, at AS-47.

³⁶ *Id.*

³⁷ GAO-10-435R, p. 4.

Conclusion

This hearing will examine the aforementioned concerns and seek input from the witnesses on how best to resolve them. Ultimately, the federal government must strive to implement successful and cost-effective security measures. In achieving this, it must do so in a manner that avoids the waste, fraud, and abuse of taxpayer resources.

Witnesses

- Mr. Christopher L. McLaughlin
Assistant Administrator for Security Operations
Transportation Security Administration
- Mr. Stephen Sadler
Assistant Administrator for Intelligence and Analysis
Transportation Security Administration
- Rear Admiral Paul F. Zukunft
Assistant Commandant for Marine Safety, Security and Stewardship
United States Coast Guard
- Mr. Stephen M. Lord
Director
Homeland Security and Justice Issues
U.S. Government Accountability Office,
- Mr. Bruce Schneier
Chief Technology Officer
BT Global Services
(and Author, *Schneier on Security* (2008))

Staff Contacts

For questions related to the hearing, please contact Mitchell Kominsky or Tom Alexander of the Oversight and Government Reform Majority staff at (202) 225-5074; or Sean McMaster of the Transportation and Infrastructure Majority staff at (202) 225-9446.