



AFGE

Congressional Testimony

STATEMENT BY

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BEFORE

**SUBCOMMITTEE ON TRANSPORTATION SECURITY
HOUSE HOMELAND SECURITY COMMITTEE**

ON

**LESSONS FROM THE LAX SHOOTING: PREPARING FOR AND
RESPONDING TO EMERGENCIES AT AIRPORTS**

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Chairman McCaul, Chairman Hudson, Ranking Member Thompson, and Representatives Waters and Brownley: My name is J. David Cox, Sr., and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 670,000 federal employees represented by AFGE, including approximately 45,000 Transportation Security Officers (TSOs) at our nation's airports, I thank you for the opportunity to testify today.

Summary

On behalf of AFGE, I first want to extend our deepest condolences to the family of our late bargaining unit member, Officer Gerardo Hernandez. His loss is felt profoundly by his union brothers and sisters at LAX and throughout the entire TSO workforce. Indeed, the federal civil servants AFGE represents are fully aware that Officer Hernandez and his family have made the greatest of all sacrifices. Likewise, AFGE reiterates our best wishes for a full recovery to Behavioral Detection Officer (BDO) Tony Grigsby, Officer James Speer, and passenger Brian Ludmer.

TSOs are tasked with keeping America's airline passengers safe, but the officers are often powerless in the face of danger. All too often, TSOs are verbally and physically assaulted while performing their duties, but prior to 2013 a TSA officer had never been killed in the line of duty. In the wake of the LAX shooting, the risk of assaults and mass casualty attacks resulting in the death or injury of our officers is now known all too well. The Internet and traditional media sources are replete with commentary from people who express hatred and vilification aimed at TSA and our officers every day, sometimes in the most horrific terms. TSA also has records of employees being physically and verbally assaulted while on duty at checkpoints and elsewhere. The Agency must act; this known workplace hazard must be addressed.

Since the attack on the TSA checkpoint at Terminal 3 of LAX, AFGE has sought to understand how this tragedy happened and how it can be prevented in the future. Sadly, the circumstances on November 1st left Officer Hernandez with little chance for his life. TSOs working at the checkpoint had but a moment to literally run for their lives while warning others. The TSO workforce has expressed to our union their continued anxiety about their safety, and who could blame them? Although these concerns heavily weigh on their minds, TSOs across the country continue to report for work every day and carry out their duties of protecting the flying public to the very best of their abilities.

But unarmed, unprotected and exposed, TSA officers at the Terminal 3 checkpoint were easy targets for a man with an irrational hatred of TSA and specifically TSA officers. There was no law enforcement presence at the checkpoint to defend our officers from the gunman, in part because local law enforcement had recently decided to no longer station their officers at that location, opting for them to patrol the terminal and related facilities instead.

AFGE applauds recent statements by TSA Administrator John Pistole that TSA seeks to ensure "the best possible security for TSA employees" and others in the airport. In light of this terrible tragedy, AFGE strongly believes the best response to enhance security for Agency employees

and the traveling public is to create an armed Transportation Security Law Enforcement Officer (TSLEO) position assigned to protect TSOs and passengers at airport checkpoints and other key locations. Deployment of TSLEOs would address problems made clear by the LAX shooting and establish a consistent standard of protection for vulnerable TSOs and passengers across the country. Establishment of a TSLEO position is a priority recommendation for AFGE, and we will discuss others in this testimony.

Background

Paul Anthony Ciancia has been charged on 11 federal counts stemming from the November 1st shooting rampage at LAX including murder, attempted murder, and charges related to committing violence and using a firearm in an international airport. As a result of Ciancia's attack at the TSA checkpoint, multiple LAX terminals were evacuated, and LAX was closed for a period of time, disrupting air travel around the world.

It is deeply troubling that we later learned that Ciancia carried with him a letter stating he had "made the conscious decision to try to kill" as many TSA employees as possible because in his words, he wanted to "instill fear in your traitorous minds." Sadly, TSOs are not unfamiliar with these misguided, unwarranted expressions of suspicion and hatred aimed towards the workforce. The events of November 1st have deeply saddened and affected the morale of TSOs across the country. During our recent conference in Washington, DC, AFGE's TSO members expressed the anxiety they experience on the job along with frustration that some of their fellow Americans despise them solely because they carry out their duties as trained.

The Path to Improved Checkpoint Security

AFGE applauds Administrator Pistole for TSA's quick response following the tragic event in Los Angeles, and for opening up a process in which all stakeholders, including AFGE, can receive information and provide recommendations. AFGE's concerns should be understood as an effort to address issues leading to what the Administrator has described as: "the best possible security for TSA employees." AFGE shares a strong commitment to that goal. AFGE's recommendations follow:

1. TSA Must Fulfill Its Duty to Assure Safe and Healthful Working Conditions for the TSO Workforce as Federal Employees.

In addition to its duty to protect the flying public, TSA also has the important obligation of protecting its workforce on the job. The Occupational Safety and Health Act contains provisions to assure safe and healthful working conditions for federal employees. TSA adopted Occupational Safety and Health Administration (OSHA) Standards as minimum acceptable safety criteria for its workplaces. OSHA developed an enforcement policy with regard to workplace violence as early as 1992 in a letter of interpretation that stated:

In a workplace where the risk of violence and serious personal injury are significant enough to be recognized hazards, the general duty clause [specified by Section 5(a)(1) of the Occupational Safety and Health Act (OSH Act)] would require the employer to take feasible steps to minimize those risks. Failure of an employer to implement feasible means of abatement of these hazards could result in the finding of an OSH Act violation. (OSHA Std. Interp. 1900 (D.O.L) 2006.)

Further, TSA policy tasks the Agency with “providing and maintaining safe and healthful working conditions for all TSA employees” (TSA Management Directive No. 2400.2(6)(A)) and requires the Agency to furnish “a workplace that is free from recognized hazards that cause or are likely to cause death or serious physical harm.” (TSA Management Directive No. 2400.1(6)(A)(2).)

It has been largely overlooked that despite the imminent threat to their lives, many TSOs in Terminal 3 showed remarkable courage. Although unarmed, it was reported that TSOs ran through the terminal alerting passengers and airport staff of a live shooter and to take cover. BDO Grigsby told the press he was shot twice during the attack while helping an elderly passenger to safety. The actions of BDO Grigsby and numerous other unnamed TSOs reflects the patriotism and commitment to public service evident in the TSO workforce.

The evident danger posed to the public during the LAX shooting and the heroic actions of TSOs clearly demonstrate that these officers meet the definition of “public safety officer” in every way. AFGE applauds Representative Julia Brownley (D-CA) for introducing H.R. 4026, the *Honoring Our Fallen TSA Officers Act* that would grant TSOs public safety officer status for duties that protect our nation’s transportation systems. The legislation recognizes that TSOs are the first line of defense against transportation terrorism and perform a very important public safety role for the country. On a personal note, when the *Honoring Our Fallen TSA Officers Act* becomes law, the family of fallen TSA Officer Hernandez will be eligible for the death benefits retroactively. Honoring those public servants who are killed in the line of duty recognizes that a very small portion of the population volunteers to be put in harm’s way to protect their country. There is no reason H.R. 4026 should not have enthusiastic bipartisan support.

The TSO workforce should not feel they are on their own when it comes to protecting themselves against violence from any member of the public. Our proposals reflect real-world solutions to address the potential for violence faced by our TSO members on a daily basis.

2. TSA Should Establish a Transportation Security Officer Law Enforcement Position.

The TSA Administrator currently has broad authority to implement changes that will better protect the TSO workforce and passengers at checkpoint. When the Aviation and Transportation Security Act of 2001 (ATSA) transferred the security functions at United States airports to a Federal government responsibility, the statute also imbued the TSA Administrator with broad authority to assess and manage threats against air travel. For example, the Administrator holds certain law enforcement powers, including the power to designate officers

to carry firearms and make arrests, with or without warrants. The TSA Administrator must use this authority to its greatest potential to enhance security and support its workforce.

The U.S. military employs a strategy known as “overwatch” that was widely used during the recent conflicts in Iraq and Afghanistan that should be applied to TSA checkpoint security. Overwatch consists of armed officers deployed to a position overlooking an area where a unit of soldiers (often unarmed) are vulnerable to attack as they perform duties such as loading and unloading vehicles. The strategy provided great protection to the brave men and women defending our country and it will provide the same protection to TSOs and passengers.

Erroll Southers, a former FBI agent who was chief of homeland security and intelligence at LAX from 2007 to 2010, said that if officers had still been stationed at the screening area on November 1st, “that arguably would have put them in a position to know about the incident and respond to it in a much more reduced time span.” AFGE shares that view and proposes that the TSA Administrator exercise his statutory authority to establish a unit of Transportation Security Law Enforcement Officers (TSLEOs) within the agency. This force would ensure that the Agency would have one or more armed, federal law enforcement officers – duly trained and certified – at every airport checkpoint, and at other key locations.

I want to clarify that our proposal does not call for, and has never called for the arming of all TSA officers or even a portion of that workforce. Rather, our proposal contemplates a new law enforcement unit within TSA. Some qualified TSOs would likely bid for positions in this new unit. This law enforcement unit would ensure a consistent and uniform level of security across the nation’s airports. As we have learned in the months since the attack at LAX, current law enforcement operations leave our officers vulnerable to attack. This is not to fault any law enforcement agency, but rather to highlight the gaps and inconsistencies in law enforcement coverage from the point of view of our TSA officers who work in the airports.

Airports currently are permitted to make their own security plans for armed officers, as long as they follow basic guidelines and get their plans approved by the TSA. The current system leaves the security of our TSOs, the traveling public, and the airport checkpoints to a patchwork of hundreds of local police jurisdictions across the country. Hundreds of airports have no armed law enforcement officers stationed at or in the airport. Even where law enforcement is present inside the airport, different decisions about police tactics, staffing, and deployment have left many checkpoints, like LAX, without an armed law enforcement officer permanently stationed there to provide security for our unarmed TSOs.

By contrast to the lack of consistent law enforcement support within TSA, the Social Security Administration (SSA), to take just one example, provides its employees with law enforcement support across its large network of offices. AFGE represents tens of thousands of employees at SSA, where an armed officer provides security at each of the over 1400 Social Security Offices around the country. This law enforcement support was put in place based on the recommendation of labor-management partnership meetings between AFGE and the SSA executives in the wake of the bombing of the Alfred P. Murrah Federal Building in Oklahoma

City in 1995. In that attack, 15 SSA employees were killed. Those officers remain in place, providing security for SSA employees and the Social Security recipients and beneficiaries who visit those offices.

As recently as early 2013, Los Angeles Airport Police Department (LAXPD) officers were assigned to and stationed at each checkpoint at LAX. This changed in April 2013, however, when LAXPD made what has been described by the LAXPD Chief as a tactical decision in which their officers were no longer required to remain at a podium by the screening area. In an effort to make security plans less predictable, they are assigned to roam the terminal provided they can respond to an emergency at the screening station within three minutes. Some law enforcement experts dispute the effectiveness of that change in tactics. From AFGE's point of view, the harsh reality of the events on November 1st make clear that the change failed to protect TSOs and the public at LAX.

3. TSA Should Create Law Enforcement Positions to Protect TSA's Mission.

AFGE respectfully submits that the presence of armed TSLEOs would be the most effective way to deter and repel potential future attacks. Having one or more armed federal law enforcement officers at every checkpoint, and at other key locations, will provide several improvements over the current system:

- Nationwide consistency in the protection of TSA checkpoints, TSOs, and the millions of passengers, airline and airport personnel who pass through those areas every year
- A law enforcement force that is integrated into TSA operations, controlled and directed by TSA officials, but which coordinates closely with local law enforcement to provide for seamless operations across the country
- A visible and effective deterrent to people intent on mass casualty attacks like the one in LAX, and to those passengers who subject TSOs to daily verbal assaults and all-too-frequent physical assaults
- The quickest possible response when an attack, large or small, occurs in the checkpoint or in other key TSA work locations

AFGE represents tens of thousands of federal law enforcement officers at the Department of Homeland Security and the Department of Defense, and our union is well acquainted with the qualifications to become a LEO and their certifications and duties. The facts of the November 1st incident at LAX require immediate steps to establish these positions under the TSA Administrator's existing authority. The addition of a TSA law enforcement unit will add a necessary layer of security in the airport that is, in most locations, not present today.

4. TSA Should Establish Protective Installations at Each Checkpoint.

In addition to the establishment of a new armed TSLEO position, AFGE advocates providing raised, protective installations at the checkpoints and other key locations. By installing raised

podiums with bulletproof glass and other protective reinforcement, TSA can improve the law enforcement presence and response time in the event of future attacks.

This type of installation, raised above floor level, will allow armed officers to better observe the area, detect a problem before it escalates into an attack and create a visible, armed deterrent for those who might be planning an attack. The installation would also serve as a base from which to launch an immediate law enforcement response to an attack.

The reinforcement of the installations would provide a measure of protection in the event of attack by serving as a barricade for the officers and providing cover from which they can return fire or await the arrival of additional officers. Also, the visible presence of armed TSLEOs in the immediate area of the checkpoint will provide a deterrent for those seeking to breach the checkpoint or assault TSA personnel or passengers.

5. TSA Should Continue to Deploy TSOs to Monitor Exit Lanes.

Published reports have indicated that after the LAX shooter attacked Officer Hernandez, the shooter proceeded to walk *through the exit lane* and enter Terminal 3 where he continued to shoot additional victims. Even prior to the LAX attack there was considerable documentation, and long experience, that the exit lanes are vulnerable points of entry for potential security breaches, particularly those that are co-located at the TSA screening checkpoint. Despite this history, just last year TSA decided, with no Congressional review or authorization, to transfer the responsibility for exit lane monitoring to the airports and their various law enforcement resources. Although Congress blocked TSA from handing off the exit lanes at any additional airports, at some airports exit lane staffing remains the responsibility of the local authorities, not TSA.

This transfer of exit lane duties has been strongly opposed by airports and AFGE for good reason. An exit lane breach can bring airport operations to a halt and strand tens of thousands of passengers across the country for hours. Such a breach can allow an active shooter or anyone seeking to create mass casualties access to what is often the part of the airport with the largest crowds: the air side of the terminal. Even before the attack at LAX, TSOs assigned to exit lane monitoring duties suffered assaults at the hands of passengers and others seeking to breach the exit lane.

Exit lane monitoring should remain primarily a TSA responsibility in all airports, and that responsibility should be returned to TSA at airports where it was previously delegated to local authorities. In addition to the TSOs who have normally staffed the exit lanes in the past, the new TSLEOs we have proposed should be assigned to the exit lanes. This change will ensure the same consistent national security standards as at the checkpoint.

6. TSA Should Implement Necessary Changes to Improve the BDO Program.

AFGE has for years strongly supported the layered approach to security, and the risk-based security principles implemented by TSA. AFGE agrees with TSA and with broader law enforcement community that behavior detection programs are an important element of the overall security system that will keep commercial aviation safe. Although speculative, AFGE believes that the behavior of the LAX shooter would have been noticed by well-trained BDOs on patrol near the checkpoint and afforded them an opportunity to help prevent the shooting.

AFGE recognizes the valid concerns stated in the November 2013 Government Accountability Office report on the Screening of Passengers by Observation Techniques program and strongly encourages TSA to implement the recommended scientific research and enhanced training to better identify threats to aviation security. This will in turn increase the likelihood that a BDO will be in the right place at the right time to detect and deter a potential attacker like the LAX shooter.

7. TSA Must Ensure Close Coordination Between Airport and Local First Responders.

While the Los Angeles World Airport's (LAWA) report on the November 1st active shooter incident represents a well-intentioned effort to identify and address security problems, AFGE found the report's conclusions and omissions disturbing. We cannot help but express our dismay at the lack of coordination across those agencies responsible for security at the airport. Officer Hernandez waited 33 minutes before he received medical attention. Over an hour passed before command posts were merged and a unified response coordinated. Emergency equipment such as the checkpoint "panic button" simply did not work. Even if the "panic button" had operated properly, TSOs did not have clear access to that device and checkpoint phones, and it is not clear those devices would have contacted directly local or airport law enforcement.

In addition, the LAWA report does not discuss the impact of the redeployment of and removal from TSA checkpoints of local law enforcement, nor why two assigned officers were out of position when the shooting began. The issues leading to the failure of security must be openly acknowledged and addressed to ensure lessons are learned from the November 1st tragedy and applied to airports around the U.S.

8. TSA Must Provide Immediate Active Shooter Training for the TSO Workforce.

Our members report that prior to the attack at LAX the only active shooter training available to them was a video providing instruction for an active duty situation at an office building. Clearly an office building situation cannot compare to an active shooter at a checkpoint as TSOs and passengers are trapped in a small, enclosed area. AFGE calls upon TSA to establish and implement airport active shooter training for all TSOs. As much as possible, TSA should coordinate with federal, state and local airport organizations to establish live shooter

interagency drills. The LAX shooter had an animus against and was targeting TSA employees in his attack. TSOs are the unique targets and should have priority for training designed specifically for their protection. In addition, TSA must allow all TSOs time to receive the training. Our members complain that due to management staffing concerns that recently hired TSOs are more likely to receive training than incumbent employees. This is unacceptable for certification and skills training and unthinkable for active shooting training. The TSOs on duty at LAX on November 1st did the best they could to save their lives and those of the public. No TSO should ever be placed in that situation again in the future.

Conclusion

AFGE believes that improved security for the more than 45,000 Transportation Security Officers represented by our union is essential for improved public safety. TSOs should receive recognition and respect for performing important job duties that are not always safe. We strongly urge that AFGE's recommendations be implemented. We look forward to participating in additional dialogue about implementation of the changes that we have recommended. This concludes my statement. I will be happy to respond to any questions.

STATUTORY AUTHORITIES

(p) Law enforcement powers.

(1) In general.--The Under Secretary may designate an employee of the Transportation Security Administration or other Federal agency to serve as a law enforcement officer.

(2) Powers.--While engaged in official duties of the Administration as required to fulfill the responsibilities under this section, a law enforcement officer designated under paragraph (1) may--

(A) carry a firearm;

(B) make an arrest without a warrant for any offense against the United States committed in the presence of the officer, or for any felony cognizable under the laws of the United States if the officer has probable cause to believe that the person to be arrested has committed or is committing the felony; and

(C) seek and execute warrants for arrest or seizure of evidence issued under the authority of the United States upon probable cause that a violation has been committed.

(3) Guidelines on exercise of authority.--The authority provided by this subsection shall be exercised in accordance with guidelines prescribed by the Under Secretary, in consultation with the Attorney General of the United States, and shall include adherence to the Attorney General's policy on use of deadly force.

(4) Revocation or suspension of authority.--The powers authorized by this subsection may be rescinded or suspended should the Attorney General determine that the Under Secretary has not complied with the guidelines prescribed in paragraph (3) and conveys the determination in writing to the Secretary of Transportation and the Under Secretary.

ATSA, 49 U.S.C.A. § 44901

(h) Deployment of armed personnel.

(1) In general.--The Under Secretary shall order the deployment of law enforcement personnel authorized to carry firearms at each airport security screening location to ensure passenger safety and national security.

(2) Minimum requirements.--Except at airports required to enter into agreements under subsection (c), the Under Secretary shall order the deployment of at least 1 law enforcement officer at each airport security screening location. At the 100 largest airports in the United States, in terms of annual passenger enplanements for the most recent calendar year for which

data are available, the Under Secretary shall order the deployment of additional law enforcement personnel at airport security screening locations if the Under Secretary determines that the additional deployment is necessary to ensure passenger safety and national security.

ATSA, 49 U.S.C.A. § 44901 NOTE

Deadline for Deployment of Federal Screeners

Pub.L. 107-71, Title I, § 110(c), Nov. 19, 2001, 115 Stat. 616, provided that:

“(1) In general.--Not later than 1 year after the date of enactment of this Act [Nov. 19, 2001], the Under Secretary of Transportation for Security shall deploy at all airports in the United States where screening is required under section 44901 of title 49, United States Code, a sufficient number of Federal screeners, Federal Security Managers, Federal security personnel, and Federal law enforcement officers to conduct the screening of all passengers and property under section 44901 of such title at such airports.

“(2) Certification to Congress.--Not later than 1 year after the date of enactment of this Act [Nov. 19, 2001], the Under Secretary shall transmit to Congress a certification that the requirement of paragraph (1) has been met.”