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Hearing Statement of Chairman Bennie G. Thompson (D-MS)

Perspectives on TSA's Processes to Prevent Unlawful Profiling

June 4, 2019

We are meeting to examine whether TSA's policies and screening processes allow for unlawful profiling and discrimination. TSA has a difficult security mission. Terrorists continue to target the transportation sector and would like nothing better than to take a plane out of the sky. Every Member on this Committee appreciates the need to protect against that threat. This Committee is focused on ensuring that TSA continues to mature into an effective, professionalized agency that fulfills its security mission in a manner that does not allow unlawful profiling or discrimination.

The report GAO is releasing today shows that TSA's current operations do not meet the mark. GAO found that TSA has anti-profiling policies in place for its behavioral detection program, yet lacks an oversight mechanism to ensure anti-profiling policies are actually followed. Given the concerns this Committee and others have voiced for more than a decade regarding TSA's behavior detection program and the door it opens to unlawful profiling, it is unconscionable that TSA has not developed better oversight procedures. GAO's new report follows a 2013 report that recommended that Congress limit future funding for TSA's behavior detection activities. It also follows GAO's 2017 finding that TSA lacks valid scientific evidence to support nearly 80 percent of the behaviors it relies upon to identify suspicious travelers for additional screening.

Meanwhile, TSA has not provided sufficient evidence of the security benefits of behavior detection. TSA has scaled back the scope of its behavior detection program, but the logical conclusion from years of evidence is clear: it is time to end the program entirely. For today's report, GAO also looked at 3,700 complaints related to civil rights and civil liberties filed against the agency over two-and-half years and found over 1,000 complaints with potential indicators of discrimination. These complaints allege a variety of discriminatory incidents and practices encompassing all of TSA's screening operations.

DHS's response to GAO's findings shows that the Department does not understand the gravity of the allegations it faces. DHS stated it was "pleased to note" that GAO identified "only 3,700 complaints related to passenger screening alleging civil rights and civil liberties violations" during the relevant time period. DHS has missed the point entirely. First, 3,700 is not an insignificant number. A single incident where a traveler feels traumatized as a result of allegedly discriminatory treatment is certainly not insignificant to that person, and should not be considered insignificant to anyone. Under my leadership, this Committee will not ignore or downplay the significance of any American making a credible allegation of discrimination by their government. As TSA says: "Not On Our Watch."

Moreover, incidents are likely underreported, as people who are discriminated against in various ways throughout society may not have the time or resources to lodge formal complaints in every instance. It is clear from the complaints GAO has documented and recent media reports that TSA's screening processes disproportionately impact minority populations. In particular, Advanced Imaging Technology or "AIT" machines regularly alarm on certain populations—such as Sikh passengers, African American women, and transgender people—leading to increased delays and pat downs. AIT machines rely on algorithms that define what TSA considers "normal"—and religious headwear, hairstyles, or bodies that fall outside that definition are flagged for further inspection. TSA must improve its technology to address this issue, while considering the diversity of the public when it solicits and tests new technologies.

Finally, I want to make clear that my concerns are not with the TSA workforce. TSA's frontline officers have proven their commitment to TSA's mission, despite insufficient pay and, during the government shutdown, missed paychecks. Over and over again, TSA has made the news due to a poor passenger screening experience, and after an investigation, TSA's statement has almost always noted that officers followed security procedures appropriately. By and large, TSA's problems lie with its procedures—not its officers. As for the agency, I commend TSA for the work it has done to engage advocacy groups and improve cultural awareness training for officers. The next step is for TSA to ensure it fully considers concerns voiced by multicultural groups when developing technologies and screening procedures.

TSA must provide effective security without disproportionately impacting certain groups of Americans. This is not an "either/or" proposition. TSA interacts more intimately with the public on a regular basis than any other government agency, screening over two million passengers every day and physically touching many of them. For many, TSA is not just the "public face" of government—but its "hands" too. Its success as a security agency depends upon the trust and compliance of a diverse public. I hope to have a productive dialogue today about how we can continue move TSA toward that important goal.

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