

**SCREENING PARTNERSHIP PROGRAM: WHY IS
A JOB-CREATING, PUBLIC-PRIVATE PARTNER-
SHIP MEETING RESISTANCE AT TSA?**

HEARING
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION
SECURITY
OF THE
COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
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SCREENING PARTNERSHIP PROGRAM: WHY IS A JOB-CREATING, PUBLIC-PRIVATE PART- NERSHIP MEETING RESISTANCE AT TSA?

Tuesday, February 7, 2012

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION SECURITY,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC.

The subcommittee met, pursuant to call, at 3:01 p.m., in Room 311, Cannon House Office Building, Hon. Mike Rogers [Chairman of the subcommittee] presiding.

Present: Representatives Rogers, Lungren, Walberg, Cravaack, Turner, Jackson Lee, and Thompson.

Also present: Representative Mica.

Mr. ROGERS. The Committee on Homeland Security Subcommittee on Transportation Security will come to order.

This subcommittee is meeting today to examine the Transportation Security Administration's Screening Partnership Program. I apologize for the delay, but they don't let me have any say-so over when votes are called on the floor. But I do appreciate your patience and your participation.

I will start by recognizing myself for an opening statement. I want to thank Administrator Pistole for being here and the time it takes to prepare for this.

Today the subcommittee will examine the Screening Partnership Program and TSA's willingness to work with the private sector to improve transportation security.

Let me state first and foremost that I am a strong supporter of the Screening Partnership Program, or SPP, and was disappointed with the TSA's decision last January not to expand the program beyond the existing 16 airports utilizing private screening services.

I am aware that last week the TSA approved one airport but denied two others from participating in the SPP. Limiting SPP's growth is the wrong approach, in my opinion, especially since both TSA and GAO have determined that the performance of Federal screeners and private screeners are roughly the same and that the security standards set for the SPP and non-SPP airports are completely identical.

Rather than trying to insulate a giant Federal workforce, TSA should be working to strengthen and improve the private screening program and make it more cost-efficient so that U.S. businesses can take on a more meaningful role. Then TSA could concentrate

on implementing the management, oversight, contracting, procurement, and training reforms it desperately needs.

Last April, the full committee Chairman and I introduced H.R. 1586, the Security Enhancement and Jobs Act of 2011. The bill requires TSA to approve any SPP application that would not compromise security and provide a written explanation to Congress and the airport concerned if an SPP application is denied. I am pleased that language similar to our bill was included in the FAA reauthorization conference report, which recently passed the House.

In addition, the huge number of TSA personnel working in airports that do have private screeners troubles me. Recent data provided to the committee reveals that at certain airports where contractors do screening and TSA is just there to oversee the screening process, there are upwards of 50 TSA employees on the payroll.

While we can agree that strong oversight in this area is critically important, having 50-plus TSA officials in a single airport where they are not responsible for conducting screening is just plain overkill, and it is costing taxpayers huge amounts of money. We will look at this issue and other contracting and management issues throughout the hearing.

I look forward to all the witnesses and now recognize the Ranking Member of the subcommittee, my friend, the gentlelady from Texas, for any opening statement she may have.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. We are friends. We have worked on this committee because we both have an abiding commitment to the security of this Nation.

I am delighted to see Administrator Pistole and thank him before he even starts for his leadership. This is a time for tough choices, tough decisions, and strong commitments to secure this Nation.

I would offer to say that, because of this committee and the leadership of Ranking Member and Chairman, that in actuality the United States has through some very, very difficult times managed to secure itself since 9/11, a horrific act that no one will ever forget throughout history and the annals of history of this Nation. It was on that day that the security of this Nation through airports was privatized. It was on that day that private security entities allowed individuals who ultimately sent planes into the towers in New York to kill thousands of persons.

So I have a vigorous disagreement, and I am hoping that the administration will courageously hold the line. This is not a time for politicizing and making people happy, and it is not a time for humoring small businesses. I am, in my mind, in the work that I have done, considered an avid supporter of small businesses, medium-size businesses, large businesses, and the work that is done in procurement to ensure that the American business has an opportunity to serve its Nation.

But on this one, I believe in one point of the Chairman; he is right that we need to be fiscally responsible. We need to assess our needs. We need to ensure that individuals are placed and utilized in the TSA structure and the transportation security officer structure in the most efficient, appropriate, and secure manner that we possibly can have.

Mr. Chairman, you were right about that question. But I cannot adhere to a massive reform that would provide for an expansion of the Screening Partnership Program without the appropriate limitations that are presently in place today.

So I would like to thank the witness and witnesses for joining us today to discuss TSA's Screening Partnership Program, commonly referred to SPP. Under this program, airports may apply to opt out of using the Federal screening workforce.

In January 2011, based on their review, Administrator Pistole decided not to expand the SPP beyond the 16 currently participating airports unless there was a clear and substantial benefit to doing so. I might add, there should be a security analysis in this, as well. I hope my words, "substantial benefit," in his testimony or questioning, we will discern that "substantial benefit" or "clear and substantial benefit" does not ignore the security ramifications.

According to TSA, operating the SPP costs taxpayers more than using the Federal screener workforce. In light of that fact, in these tight budgetary times, that would be reason enough to support the administrator's decision not to expand the program, but the list goes on.

Further expansion of privatized screening hampers TSA's ability to push out intelligence information to front-line workers. It adds to inconsistency. It makes changing procedures based on threat more complex. That means you not only have to vet the front-line officers, you have to vet the company, vet the executives of the company, vet the ownership, vet the financial structure of this, vet the banks that the private company goes to, who is paying whom to turn their head and to overlook some dastardly act that is prepared to attack American citizens as they travel the skies of America.

There has been much discussion of whether privatized screeners perform better than their Federal counterparts. I am always supportive of making sure that our Federal employees across the board are respected but also do their job. There is no conflict with insisting on excellence in performance to the idea that I have that privatized screeners are not adequate. Make the Federal employees excellent. That has been done in many, many places.

We certainly don't criticize our first responders in terms of their service, and we have no criticism of the young men and women who have come into our military service, non-privatized, who have offered themselves to serve. We would expect no less from transportation security officers. They are on the front line.

TSA informs us that the performance of privatized screeners is comparable to that of the Federalized workforce. I want our TSO to be better than privatized workers, and I believe our focus should be on how we achieve that. We don't need equals in this business; the Federal Government is always expected to be better than. We have the responsibility of millions of Americans all across this Nation. They look to us, this great Nation who uses the terminology "great," to be great and to be excellent.

The reality is that security incidents have occurred at both airports with privatized and Federalized screeners. Under the watch of privatized screeners at San Francisco International Airport, a

woman pushed through a closed checkpoint lane, boarded a plane, and flew to Baltimore without ever being screened.

The statute establishing the SPP did not endeavor to micro-manage TSA's decision to include or exclude an airport from participation. It was to show a sense of openness. Sixteen is enough. Rather, it gave proper deference to the administrator's judgment by stating that he may approve an application.

Now, I know from this very hearing we will see the potential amendments coming in, Mr. Administrator, trying to demand and say that you shall, just as we have seen in the language of the FAA bill. That is unfortunate. I am sorry that we are having this hearing after the fact. But I will live to rise again, and I will find a way, just like others did, to undo that, because I think it is wrong.

Unfortunately, despite having never been debated by this committee, the committee of jurisdiction, and no Members being appointed as conferees on behalf of the committee, the controlling statute was amended in the FAA Reauthorization Act, which will soon become law. That is called midnight legislating—in the dark, no transparency, and adhering to the voices of one tune.

The new standard limits TSA's flexibility to approve or deny an application from an airport to opt out, places a time limitation of 120 days on TSA to determine whether to approve an application, and provides a waiver for the requirement that a private contracted screening company be owned and controlled by a United States citizen.

Now, just a few years ago, everyone was up in arms about the potential of ports being owned by foreign entities. We have resolved and/or studied that issue, and I assume that it is still being studied. But there is no doubt that aviation still remains one of the most attractive entities for individual franchise terrorists. Now we suggest waivers, even if the company is owned by a foreign entity or the airport is owned by a foreign entity? How outrageous.

I look forward to hearing from the administrator on his views of the changes to the SPP statute and how he intends to continue to develop TSA into the Federal counterterrorism network he envisioned. He comes with years of experience with the FBI, who I understand and he knows full well are meticulous in their responsibilities, ensuring the security domestically. We can do no less when it comes to this Nation's skies and as well for those who travel internationally on our soil, into our area.

As we look forward to what I hope will be a productive year, Mr. Chairman, let us not forget the lessons of the past, one of which is that the system of privatized screeners failed us on 9/11. There is no further sentence that I need to make. The 9/11 day of horror was partly on the watch of privatized screeners.

The wisdom of the United States Congress in the immediacy of those tragic days was to come together and find a way to ensure that TSO was a Federal system over which we had the opportunity to provide intelligence, training, oversight, and, yes, security for the American people. I see nothing has changed today, and I would hope we change nothing in spite of the FAA legislation. I ask the administration to reject the premise of that legislation, even as it has been signed.

I yield back.

Mr. ROGERS. I thank the gentlelady.

We have been advised we are going to be called for votes between 3:45 and 4:00, so we will try to move.

But now I recognize the gentleman from Mississippi, the Ranking Member of the full committee, Mr. Thompson, for any statement he may have.

Mr. THOMPSON. Thank you very much, Mr. Chairman.

I am pleased that Administrator Pistole could join us today to discuss TSA's Screening Partnership Program. I would like to also extend a welcome to our second panel of witnesses.

It is my hope that some of the myths and rhetoric surrounding this program can be put to bed today.

By this hearing title, my colleagues on the other side of the aisle have implied that the current use of Federal screeners impedes job growth. There is no proof in law or fact for that assertion. The number of screeners at an airport is determined by an analysis of the risk threat and volume at that airport. These factors will not change based on whether the screeners are private contractors or Federal employees, so the number of jobs will not change based on whether the screeners are public- or private-sector employees.

Under the Republican suggestion, the only thing that will change is whether the jobs will be public or private. We know that both types of screeners are effective and face challenges, follow the same rules, and receive the same training. We also know that private screeners cost up to 9 percent more than Federal screeners. We know that public and private screeners can join unions. So the only real difference is cost. What we want to know is why the Republicans seem to be willing to pay more for the same service and how doing so will create jobs.

If the added cost to taxpayers fails to convince you that this program should not be expanded, consider that it takes us back to a model similar to the one in place during 9/11. Administrator Pistole performed a full review of TSA's policies and practices and determined that the SPP should not be expanded unless there was a clear and substantial advantage to doing so.

Contrary to claims made at the time, the administrator did not shut down the program. Rather, he set a reasonable standard for expansion. That standard was met last week by a low-risk seasonal airport in Montana, and TSA approved their application. TSA did so because the net impact was advantageous to Government.

On the same day, TSA denied the applications of two airports because they failed to demonstrate an operational, security, or cost advantage over Federalized screening applications. Both of these directions are perfectly logical.

Regrettably, this hearing comes a day late and a dollar short for the committee. Last week, the FAA Reauthorization Act was passed by the House and soon will be signed into law. As described by subcommittee Ranking Member Jackson Lee, that aviation safety bill contained a security provision within this committee's sole jurisdiction altering the law controlling the SPP. In summarizing this provision, it amounts to a Congressional attempt to micro-manage the SPP by stripping the administrator of his discretion.

Without this committee having held one hearing, markup, or debate on the changes proposed, Homeland Security Members were

denied a seat at the table by the Speaker when the provisions went to Congress. Chairman King and I sent a letter to the Speaker just 2 weeks ago requesting that jurisdiction over DHS be consolidated. Apparently, under this leadership, even when you have jurisdiction you get left out.

With that, Mr. Chairman, I yield back.

Mr. ROGERS. I thank my colleague from Mississippi.

Other Members of the committee are reminded that the opening statements may be submitted for the record.

We are pleased to have two distinguished panels of witnesses with us today.

The first panel, we would like to welcome the Honorable John Pistole. He has been the administrator of the TSA at the Department of Homeland Security since 2010. As the administrator, he oversees the management of approximately 60,000 employees, the security operations of more than 450 Federalized airports throughout the United States, the Federal Air Marshal Service, and the security of our highways, railroads, ports, mass transit systems, and pipelines.

Welcome, Mr. Pistole. The floor is yours.

**STATEMENT OF HON. JOHN S. PISTOLE, ADMINISTRATOR,
TRANSPORTATION SECURITY ADMINISTRATION**

Mr. PISTOLE. Well, thank you, Mr. Chairman, Chairman Rogers, and Ranking Members Jackson Lee and Thompson, Members of the committee. It is good to see you.

I appreciate the opportunity to appear before you today to discuss the Transportation Security Administration's mission to protect the freedom of movement for people and commerce. I also appreciate the opportunity to update the committee on the progress we continue to make in our efforts to develop and deploy a range of risk-based intelligence-driven initiatives to prevent terrorist attacks while facilitating the movement of people and goods across the United States and internationally.

Our goal and No. 1 priority is to provide the most effective security in the most efficient way. TSA accomplishes this vital National security mission through a series of public-private partnerships. For example, last year alone, TSA invested nearly \$2.5 billion in the private sector in critical services, technology, and equipment across all transportation modes. Since 2002, our experienced workforce has safely screened more than 5 billion passengers through a multi-layered security system.

Throughout 2011, we began evaluating the benefits of several risk-based security screening concepts, including TSA PreCheck, an initiative which, as many of you know and some have experienced, began last fall and is currently operating in seven of our country's busiest airports. Participation in TSA PreCheck is currently open to U.S. citizens who are members of existing Customs and Border Protection trusted traveller programs as well as certain airline frequent fliers.

In the few months since we began this initiative, over 310,000 passengers have gone through TSA PreCheck, and the feedback we have been receiving from participants has been consistently posi-

tive. As a result, we have plans to expand this initiative to other airports and other U.S. airlines throughout 2012.

There is much more to risk-based security than just TSA PreCheck. Other efforts recently developed and deployed include S-90 screening of over 300,000 airline pilots in 10 airports, changes in screening procedures for the 60,000 or so children 12 and under traveling by air every day, and the expanded use of behavior detection techniques in 2 airports. Additionally, we are taking steps to further develop our layered approach to security through state-of-the-art technologies, additional canine teams, better passenger identification techniques, and other actions which strengthen our capability to keep terrorists off aircraft.

By continuing our efforts to move away from a one-size-fits-all approach, risk-based security is helping to move TSA toward becoming a high-performing organization with a counterterrorism focus. The goal behind all of this is to look for ways to conduct the most effective security in the most efficient way. Doing so allows us to focus our resources on those travelers we know the least about or those on the terrorist watchlist, thereby reducing the size of the haystack in which a terrorist may hide. Combine that focus with a more comprehensive use of classified and other intelligence and we are in a better position to inform the security screening process.

As has been mentioned, through ATSA, Congress also created a means to assess the effectiveness of privatized screening through the SPP program beginning in 2002 with five airports. Currently, among the more than 450 airports with security overseen by TSA, there are, as has been mentioned, the 16 airports in the SPP. As you may know and as was noted, I recently approved one more application, West Yellowstone, and if a contract for private screening is awarded, the number will be 17. I have also recently denied two applications that did not provide a clear and substantial advantage to the taxpayers and our ability to achieve our mission.

Given Senate passage of the FAA bill last night and assuming the President's signature, we will assess the implications of the new law, and I will direct appropriate resources and engagement to carry out its intent, all in coordination with this and other oversight committees.

Thank you again for the opportunity to appear before you today.
[The statement of Mr. Pistole follows:]

PREPARED STATEMENT OF JOHN S. PISTOLE

FEBRUARY 7, 2012

Chairman Rogers, Ranking Member Jackson Lee, Members of the subcommittee, I am pleased to appear before you today to discuss the Transportation Security Administration (TSA) Screening Partnership Program (SPP). TSA employs risk-based, intelligence-driven operations to prevent terrorist attacks and to reduce the vulnerability of the Nation's transportation system to terrorism. Our goal at all times is to maximize transportation security to stay ahead of evolving terrorist threats while protecting passengers' privacy and facilitating the secure and efficient flow of legitimate commerce. TSA's current security measures create a multi-layered system of transportation security that identifies, manages, and mitigates risk. No layer on its own solves all our challenges, but, in combination, they create a strong and formidable system.

TSA has an experienced Federal workforce that has safely screened more than 5 billion passengers since TSA was created and has established a multi-layered avia-

tion security system reaching from the time a ticket is purchased, throughout a passenger's flight, to the time the passenger exits the secure area of their destination airport. Every day we see the effectiveness of these security measures with TSA Officers (TSOs) detecting hundreds of prohibited items. In fact, over the past decade TSOs have confiscated approximately 50 million prohibited items, and last year alone TSOs prevented more than 1,200 guns from being brought onto passenger aircraft.

As our risk-based approach evolves, we must ensure that each new step we take strengthens security. In addition to exploring new ways of focusing our attention where it is most needed, we are continually reevaluating existing programs to ensure that our resources are directed in a manner that yields the greatest level of security overall. This continued reevaluation includes the SPP.

Along with the creation of TSA itself, Congress determined that aviation security would be most effectively served by having passenger screening as a predominantly Federal responsibility. The Aviation and Transportation Security Act (ATSA) (Pub. L. 107-71) nevertheless established a privatized security screening pilot program (see 49 U.S.C. 44919). Under the pilot program, TSA was required to select five airports from five airport security risk categories, as defined by the administrator, to participate. Screening companies that met statutory qualifications were selected to provide comparable screening services through contract with the Federal Government, using employees who met the same qualifications and were compensated at the same level as Federal Transportation Security Officers (TSOs), and who met the same rigorous security standards as those in effect at airports with Federal security staffs. In addition, ATSA established a program through which the administrator could contract with additional qualified private screening companies for screening at other U.S. airports after completion of the pilot program (see 49 U.S.C. 44920). Under the SPP, airports may apply to TSA to have screening carried out by a qualified private screening company. As with the pilot program, private screeners must meet the same qualifications as TSOs and must be provided compensation and benefits at a level equal to or greater than the compensation and benefits provided to TSOs. Still, regardless of whether an airport has private or Federal screeners, TSA remains ultimately responsible for security, with Federal Security Directors overseeing the contracted operations as well as the other airport security operations, such as air cargo and facility security compliance inspections that continue to be conducted only by Federal employees.

Currently, among our 450 airports with Federal screening, there are 16 airports participating in the SPP. These include the original five pilot airports—San Francisco International; Kansas City International; Greater Rochester International; Jackson Hole; and Tupelo Regional—and 11 others—Sioux Falls Regional; Key West International; Charles M. Schultz-Sonoma County; Roswell Industrial Air Center; and seven small Montana airports: Frank Wiley Field; Sidney Richland Regional; Dawson Community; L.M. Clayton; Wokal Field; Havre City County; and Lewiston Municipal. In the most recent study conducted by TSA and examined by the Government Accountability Office (GAO) comparing the cost of screening at SPP airports and airports with a Federal screener workforce, we estimated that the cost to TSA of contracted screening is generally between 3 and 9 percent more than the cost of Federal screening. While GAO identified limitations in our initial cost estimates, their updated review in March 2011 noted that they believed “TSA has made progress in addressing three of seven limitations related to cost we identified in our January 2009 report and now has a more reasonable basis for comparing the cost of SPP and non-SPP airports.”

Shortly after I was confirmed as TSA Administrator, I directed a full review of TSA policies and programs with an eye toward helping the agency evolve into a more agile, high-performing organization that can detect and respond to evolving security threats. The SPP is just one program that I reviewed. At the time, I did not see any clear and substantial advantage to expanding the program, though I remained committed to maintaining contractor screening where it then existed. Now, as then, I am open to approving new applications where a clear and substantial benefit could be realized.

That being said, TSA remains a U.S. Government counterterrorism agency. To fulfill our responsibility in this mission, it is important to maintain our flexibility—as new and emerging threats are identified, we must be able to adapt and modify our procedures quickly to protect the traveling public and promote the flow of legitimate commerce. As such, contracts with private service providers must include the flexibility to deliver screening comparable to that provided by Federal screening. Additionally, with a Federal workforce we have greater flexibility to more easily augment staff in the event of exigent circumstances such as natural disasters, or for surge capabilities, with National Deployment Office (NDO) screeners or screeners

from nearby TSA-operated airports. Nevertheless, as noted above, I remain committed to maintaining a contractor workforce where such existed as of January of 2011, as appropriate.

As noted at the outset, we strive to maximize security not only by keeping ahead of current threats identified by intelligence, but by maintaining security systems that focus our resources on areas where they will yield the optimal benefit. This is consistent with our risk-based approach to security and critical in times of budget austerity. The SPP, no less than any other security program, must be implemented in a manner determined by cost as well as demonstrable benefits.

Thank you for the opportunity to appear here today. I will be happy to answer any questions that you may have.

Mr. ROGERS. I thank the gentleman.

I now recognize myself first for questions, and then we will alternate from side to side in the order Members arrived.

Mr. Pistole, about 4 months ago, I sent a letter to you.

By the way, I would like to ask unanimous consent to offer that for the record.

Without objection, so ordered.

[The information follows:]

LETTER FROM CHAIRMAN ROGERS TO ADMINISTRATOR PISTOLE

OCTOBER 14, 2011, Washington, DC.

The Honorable JOHN S. PISTOLE,
Administrator, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598.

DEAR ADMINISTRATOR PISTOLE: I am writing to express my strong concerns regarding the September 27, 2011 ruling of the United States Court of Federal Claims in the case of *FirstLine Transportation Security, Inc. (FirstLine) vs. The United States and Akal Security, Inc.*

According to the ruling, the Court found that TSA's acquisitions process in this case was fundamentally flawed and must be set aside. The Court specifically found that TSA awarded a Screening Partnership Program (SPP) contract to Akal Security to provide screening services at Kansas City International Airport in Kansas City, Missouri (MCI) despite the fact that its proposal was found to be significantly weaker overall than the proposal submitted by FirstLine, the contractor currently providing screening services at MCI. The Court specifically cited, among other criticisms, that:

- The best-value analysis performed by TSA's Source Selection Evaluation Board was both irrational and inconsistent with the evaluation criteria set forth in the Request for Proposal (RFP), and that the award to Akal Security was fundamentally unfair; and
- TSA not only ignored the dramatic difference in the number of strengths assigned to each of the proposals, but that it also irrationally minimized the significant differences between the proposals.

These findings call into question TSA's ability to make responsible contracting decisions, and whether taxpayer dollars were unnecessarily wasted in this process. Moreover, I am deeply concerned that a contractor was selected to screen passengers and help secure our aviation system despite TSA's own admission, according to the Court's ruling, that it would pose more operational risk and require Governmental intervention. This type of poor judgment is unacceptable in my view, considering the continued threats to aviation security. I hope you will agree that TSA runs the unnecessary risk of endangering travelers and causing serious economic damage by narrowly focusing on the cost advantages of one SPP proposal over another, rather than a true comparison in the ability to carry out security screening services.

SPP was authorized by Congress in 2001 and it has been a successful program over the last 10 years. TSA has repeatedly certified that all private screeners perform at or above the level of Transportation Security Officers. Kansas City International Airport is one of the largest U.S. airports participating in SPP, first entering the program in 2002. I am concerned that, particularly in light of your decision in January to limit expansion of this program, TSA's improper contracting decision involving one of the programs largest airports and one of its highest-performing private screening companies seems to indicate that TSA is not serious about the program and would rather see it fail than succeed. I continue to feel strongly that the

private sector has an important role to play in security and must be properly leveraged, not forced out of the process in favor of a larger Federal workforce.

While it is my sincere hope that the poor handling of this RFP resulted from human error and was not intentionally flawed, I am requesting your full cooperation and assistance to bring greater transparency to the rationale behind this decision and ensure that any deficiencies are addressed quickly. I request that you provide by no later than October 24, 2011, copies of all documents and communications created by or in the possession of TSA that pertain to the RFP issued by TSA on April 2, 2010, and the subsequent related contract award decision made on March 17, 2011, to perform SPP contract screening services at the Kansas City International Airport. The terms “documents” and “communications” are intended to mean all records including, but not limited to, files, reports, analysis, assessments, memoranda, notes, and presentations, in all forms of media, including emails or other electronic communications, and including any archived materials.

Additionally, as Chairman of the Subcommittee on Transportation Security, I intend to hold a hearing on SPP and the handling of the MCI contract in the coming weeks, and I respectfully request that you provide testimony at this hearing. I understand that TSA has already made a decision to issue a new RFP for the MCI contract following the Court’s ruling. I urge you to postpone any action on this RFP until the subcommittee can complete a review of the documents requested and conduct necessary oversight of TSA’s acquisitions process in support of a robust SPP and proper use of taxpayer dollars.

Thank you for your prompt and personal attention to this matter. I appreciate your continuing efforts to secure the Nation’s transportation systems and look forward to working with you to improve TSA’s performance in carrying out its critical mission.

Sincerely,

MIKE ROGERS,

Chairman, Subcommittee on Transportation Security.

Mr. ROGERS. I sent a letter to you expressing my concern over the ruling of the U.S. Court of Federal Claims in the case of *FirstLine v. U.S. and Akal Security, Inc.* I have just submitted that for the record.

The curious thing about the SPP contracting problem at Kansas City is the timing of it. Specifically, it came on the heels of your public statement that SPP doesn’t fit into your vision for a Federal workforce. My concern is whether the decision made in the Kansas City case could have been affected in some way by the fact that TSA does not want SPP to be successful and an integral part of its operations.

We have the director of the Kansas City aviation here today, who will offer his perspective on the second panel, but before we hear him, I would like for you to address this concern. Why did the Kansas City contract go so wrong?

Mr. PISTOLE. Well, thank you, Mr. Chairman.

There were several issues that we found in the Court of Federal Claim’s decision where we could have done a better job. Part of that was in our assessment of not only the best value but the cost and the security aspects that were inherent. Of course, this was an SPP airport that was continuing as an SPP airport; it was just a question of which private screener was the best value to the taxpayers and could provide the best security.

The other finding that the court made was that we did not do as good a job as we could have—and I agree with this—in documenting our findings, both between the board that reviewed this and then the source selection authority.

I do note that the court ruled in our favor on six of eight issues, but the key takeaways were we could have done a better job on

both our analysis and our documentation. Then the question became, how should we move forward?

So, clearly, we and I am supportive of Kansas City. They have had a good provider there, in terms of their private screening. The whole intent, as evidenced by this, was to continue that. It was a question of which private company was best suited to provide those services.

Mr. ROGERS. Okay.

The former Federal security director of Kansas City Airport, Mr. Richard Curasi, was working as an advisor for Akal Security at the time the company submitted its proposal and won the bid to take the screening services at the Kansas City Airport. Were you aware of that?

Mr. PISTOLE. I was not.

Mr. ROGERS. Now, did anyone at TSA who was involved in making the award have direct contact with Mr. Curasi starting from the time the RFP was issued until the contract was awarded?

Mr. PISTOLE. Not to my knowledge.

Mr. ROGERS. Are you concerned at all about the influence a former senior TSA employee could have had on the contracting process given his connections inside your agency?

Mr. PISTOLE. Well, given that I was not aware of that—obviously, there is always the appearance that we need to be mindful of. But I was assured, in terms of review of this and looking at the court decision, that there was no improper influence, that everything was done according to the procurement, the acquisition process.

But with the court's findings, in terms of both our assessment and our documentation of our findings, we could have and should have done a better job. So, as a result of that court decision, I have changed the procedures to ensure that that does happen and that we don't repeat the mistakes that we did in that instance.

Mr. ROGERS. Great.

In the same letter I referenced earlier, I also urged you to postpone any action on the new RFP for Kansas City until the subcommittee could conduct necessary oversight. Despite my request, I understand that TSA intends to issue a full recompetes of the Kansas City SPP contract.

Why did you decide to go back to square one on that contract?

Mr. PISTOLE. I looked at the court opinion, Mr. Chairman, and, in that, they noted that the permanent injunction was in the public interest because, and I quote, "It will promote full and open competition in the procurement process." That is from page 73 of the decision.

So, given that and the belief that by opening it up again we would have the opportunity to look at perhaps another contractor that could come in and do at least as good, if not a better, job than the two who had competed, that, coupled with several changes in the statement of work from 2010, added to my belief that we should simply open it back up.

As I would also note from the court decision, they concluded, the judge concluded, "What course of action TSA chooses to pursue after the contract is cancelled in order to maintain security screening services at MCI"—Kansas City—"is not for this court to decide." So I took that discretionary function and exercised it.

Mr. ROGERS. Do you know how much it has cost so far for this recompetite and how much it will cost?

Mr. PISTOLE. I don't know the details. I would be glad to get that and get back with you on that.

Mr. ROGERS. I would appreciate that.

I see my time has expired. The Chair now recognizes the Ranking Member of the subcommittee, Ms. Jackson Lee, for any questions she may have.

Ms. JACKSON LEE. Mr. Chairman, thank you so very much, and thank you to all the Members.

Mr. Pistole, I am going to be speaking quite quickly so I can get some quick answers from you. Thank you, first of all, for your testimony and your service.

Administrator Pistole, you state in your prepared testimony that TSA is a U.S. counterterrorism agency. What other domestic counterterrorism agency has outsourced the work of their front-line employees at an extra expense to taxpayers? Do you know of any?

Mr. PISTOLE. None that I am aware of, ma'am.

Ms. JACKSON LEE. Thank you very much.

As I addressed in my opening statement, a provision fundamentally altering your discretion to approve or deny an application to participate in the SPP will soon become law via the FAA Reauthorization Act. Since this committee never debated these changes and was shut out of the conference by the Republican leadership, I would like to take the time to review some of the key changes made and to get your response.

I also want to join my colleague, Mr. Thompson, and indicate that I am aghast at the emphasis of lack of employment, when obviously people who work in the Federal Government—you might just answer this, Mr. Pistole—are they people who are not unemployed? If they are working for you, they are not unemployed. Is that my understanding? If someone is working for the Federal Government, they are not in the unemployment line.

Mr. PISTOLE. Yes, ma'am.

Ms. JACKSON LEE. So, in essence, we are creating necessary jobs. Is that—

Mr. PISTOLE. Yes, ma'am.

Ms. JACKSON LEE. All right.

The language of this specific legislation requires you to approve an airport's application to the SPP if the approval would not compromise security or detrimentally affect the cost-efficiency or the effectiveness of the screening of passengers or property at the airport.

What impact will this language have on your decision not to expand the SPP unless there is a clear and substantial benefit to do so?

Mr. PISTOLE. Well, let me first say, ma'am, that obviously we are just assessing this at this point. So this is just an initial response.

But, obviously, it is changing the burden, if you will, on—and the discretion that I have in terms of making that decision, which is to be in the taxpayers' best interest in terms of cost, but also, obviously, the bottom line is who is providing best security. So if I am required to accept something unless I can prove affirmatively that it does not meet that criteria, it obviously changes the standard.

Ms. JACKSON LEE. That burden, I think, makes everyone—well, makes your job more difficult, not that you are opposed to difficulty, but more difficult in securing this country.

Mr. PISTOLE. Well, obviously, Congress has passed this law and the President is intending to sign it, I believe. So I look forward to working with the committee to figure out the best way forward on this.

Ms. JACKSON LEE. Well, I would argue to say that a non-security committee passed the bill. So I would make that point.

Does this language have the potential to increase the cost to taxpayers for administering the SPP due to the need for increased oversight and management?

Mr. PISTOLE. Well, clearly, if there is a flood of applications that come in, we will have to increase our headquarters staffing to handle those, as we have a small staff now to handle the 16 and now 17, potentially 17, SPP airports. But, yes, hypothetically, if every airport, all 450, or the remaining came in, then, yes, we would have to increase our staffing substantially.

Ms. JACKSON LEE. So now this process opens it up to all 450 airports in the United States; is that correct?

Mr. PISTOLE. That is my understanding, yes.

Ms. JACKSON LEE. So, then, my comment, we are looking forward to returning to 9/11.

The language requires you to approve or deny an airport's application within 120 days. Does that pose a stressful time frame? Is that adequate for you to conduct full review of the security implications?

Mr. PISTOLE. Well, there are a lot of aspects to that, but, yes, that is a compressed time schedule. For example, if there is one application, it is much easier to comply with that than if there are 10 or if there are 100.

Ms. JACKSON LEE. I want to go back to the thought that I raised in my opening statement. The language contains a provision waiving the requirement that any company contracted with for screening services be owned and controlled by a United States citizen. Thankfully, that language contains a clause that affords you complete discretion to reject any application that requires this waiver.

As you well know, Administrator Pistole, we live in a complex world with shifts in allegiances and a dynamic threat environment. One need look no further than to some of the activities that are going on with our neighbors in the Mideast, the pending complexity of Iran and its nuclear weaponization; some of the individual franchise terrorist acts that have occurred over the last decade, even after 9/11, though this Nation has been very fortunate; and, of course, the concern about, as you mentioned, the idea of sharing intelligence.

My question to you: Will you commit to us today that during your tenure as administrator you will not approve any application that requires a waiver of the citizenship requirement on the basis of the need for the securing of intelligence and the securing of this Nation?

Mr. PISTOLE. Well, clearly, madam, I would need to review any application. The fact that it would be a foreign-owned company, I

would need to look at the intent of Congress, but that does give me concern about the—potential concern about the issues that might be inherent in that business.

But, again, I am just seeing this language for the first time, so I need some more time to assess that.

Ms. JACKSON LEE. Mr. Chairman, I just have—let me just follow up with him—

Mr. LUNGREN. Mr. Chairman, we have—

Ms. JACKSON LEE [continuing]. For a moment.

Mr. Lungren [continuing]. Fifteen minutes until we are supposed to have a vote. There are four Members who would like to ask questions. Could we proceed in regular order, please?

Ms. JACKSON LEE. Well, let me do this, Mr. Lungren. Mr. Chairman, I will defer to you, but let me just put this question on the record.

Mr. Lungren, you are not the Chairman at this time.

Mr. ROGERS. The time has expired.

Ms. JACKSON LEE. Excuse me.

Mr. LUNGREN. We have four other Members—

Mr. ROGERS. Regular order.

Mr. LUNGREN [continuing]. Who would like to ask questions.

Ms. JACKSON LEE. Excuse me, Mr. Lungren—

Mr. LUNGREN. Out of respect to other Members—

Ms. JACKSON LEE [continuing]. You are not the Chairman.

I am asking to put this question on the record. I will not ask for an answer, Mr. Chairman. Mr. Lungren is not the Chairman.

Mr. ROGERS. I would just ask you to submit it for the record.

Let's go to Mr. Thompson for any questions he may have.

Mr. THOMPSON. Thank you very much, Mr. Chairman.

Mr. Pistole, I am concerned that comments by some lobbying for the expansion of privatized screening has resulted in a misunderstanding of what this would mean for the flying public.

We created this entity, TSA, after 9/11. If a similar incident occurred today, would you have the authority to direct private screeners to other locations?

Mr. PISTOLE. Under the existing contracts, no. They would be limited to the airport to which they are assigned.

Mr. THOMPSON. So, basically, the ability to respond based on an incident is hampered by your inability to move private screeners where that situation could potentially be.

Mr. PISTOLE. Yes, that is one of the limitations that is part of the contract process which we could address in future contracts. But under existing contracts, that would be a voluntary aspect of that, so I cannot direct them.

Mr. THOMPSON. Thank you.

In your experience in negotiating public and private contracts, has it been your experience that private contracts for screeners cost more than Federal contracted screeners?

Mr. PISTOLE. Under the existing SPP contracts, they have all, I believe, except for one, cost more than it would have cost for the Federal Government to have the TSOs there.

The incidence last week where I approved the application from West Yellowstone is another exception because they—I believe they will be able to come in with a bid that will be less than what we

would be able to do because we are sending people in on temporary duty assignment for the 4 months that West Yellowstone is open. So that would be another exception.

Mr. THOMPSON. Can you clarify for us what screening protocols must be followed by privatized screeners?

Mr. PISTOLE. The same as for all other Federalized airports.

Mr. THOMPSON. Do privatized screeners, in your experience, perform better than their Federal counterparts?

Mr. PISTOLE. I believe that they—every assessment is that they perform comparably to the Federalized workforce, both in terms of security and in terms of customer engagement.

Mr. THOMPSON. So, again, all things being equal, at this point your experience is, other than the cost associated with private screeners versus Federal contracted screeners, we are pretty much on par.

Mr. PISTOLE. Yes.

Mr. THOMPSON. Thank you.

Now, one other issue. Does maintaining a mixed-use, public-private model of screening cost taxpayers more or less if the entire system is Federalized?

Mr. PISTOLE. So, it costs us slightly more to have both the Federal and the SPP airports. Is that what—

Mr. THOMPSON. Yes.

Mr. PISTOLE. Yes, it does.

Mr. THOMPSON. What your testimony basically is, is that one system would allow the taxpayers a greater savings than managing a two-part system?

Mr. PISTOLE. Well, yeah, I mean, the taxpayers are paying either way, whether it is to the Federal employees, the TSOs, or to the privatized screeners, who also have overhead for a private company.

Mr. THOMPSON. But they are paying more.

Mr. PISTOLE. Right. So, in the past—and now we have driven that down, but, in the past, it has been anywhere from 3 to 9 percent more than the Federal approach.

Mr. THOMPSON. Thank you.

Ms. JACKSON LEE. Does the gentleman yield?

Mr. THOMPSON. I yield back.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. THOMPSON. We need to go on with some of the—

Mr. ROGERS. The gentleman yields back.

The gentleman from Minnesota is now recognized for 5 minutes.

Mr. CRAVAACK. Mr. Chairman, if I could, I would like to yield—I will not yield at this time.

Mr. Pistole, thank you very much for coming. I appreciate it.

Just in the spirit of what I believe this committee should be all about, which is finding solutions to the problems, I would like to yield 30 seconds of my time to answer Ms. Jackson Lee's question. Would that be all right?

Mr. PISTOLE. That is fine with me.

Mr. ROGERS. Ms. Jackson Lee, you are recognized.

Ms. JACKSON LEE. Thank you very much.

Thank you very much. I appreciate it.

Mr. Pistole, TSA has a veterans preference. In privatizing, would you be able to ensure that there would be a veterans preference for private companies?

Mr. PISTOLE. We would be able to negotiate that as part of the contract. As I think you are aware, approximately 24 percent of the overall TSA workforce are veterans.

Ms. JACKSON LEE. Would it be an extra cost, sir, for privatized?

Mr. PISTOLE. I don't know that. I would have to look into that.

Ms. JACKSON LEE. All right. We appreciate the yielding of the gentleman, and I will pursue that further with the administrator. I thank the Chairman for his kindness.

Mr. CRAVAACK. I will reclaim my time.

First off, thank you very much, sir. I appreciate everything you have done. I have gone through that PreCheck. It is slick. What it does—it is fantastic—it concentrates our limited resources on known and unknown threats, and it is just absolutely awesome. I commend you on that.

Mr. PISTOLE. Thank you.

Mr. CRAVAACK. One of the things I want to bring up, too, is there is a big difference between pre-9/11 and post-9/11 security, whether you are privatized or you are a Federal employee. As an airline pilot that went pre-9/11, I can dramatically see the difference.

Mr. PISTOLE. Right.

Mr. CRAVAACK. So it is a completely different ball game—much more professional group, much more adherence and concentrating on security. As an airline pilot for 17 years, I can see the big difference.

One of the questions that I want to just really bring out relatively quickly is, a while back, SPP applications for six airports in February 2011, TSA denied the applications for the six, indicated that they did not allow the expansion for the program. Later in 2011, we walked it back a little bit and we said there had to be a clear and substantial advantage to the TSA airport, like you had said.

How did the TSA determine the threshold for the airport participating in the SPP, in that the airport must demonstrate that there is a clear and substantial advantage in order to create that determination?

Mr. PISTOLE. Thank you, Congressman. Thank you for your comments about PreCheck. The men and women of TSA are excited by that because of the service they are able to provide, which, frankly, they had been hampered on previously. So thank you for that.

So, obviously, the process is an airport applies. Thus far, you know, in the 10-plus years that TSA has been in existence, we have only had 30 or so airports actually apply for the SPP status. Now, some of those, a couple times because they were denied. So only 30 out of the 450-plus airports.

So when they apply, then we evaluate that. Under this new criteria, it would be: Is there a clear and substantial advantage to the taxpayer, for the one? So is there a cost benefit that is improved in some way that we can show that there is a savings to the taxpayer? Then obviously they have to comply with all the security protocols and regimens.

So it really comes down to, unless there is a clear and substantial advantage, then what benefit is there in changing if it would cost more and simply provide the same level of security?

Mr. CRAVAACK. The metrics that you were applying, do you have a copy? Can you forward those metrics to us?

Mr. PISTOLE. I basically outlined what they are. In terms of the cost, and so what do we assess the cost as being? Then the security protocols should be absolutely the same, if not better than the current standard operating procedures for TSA. So that is really what it comes down to.

Mr. CRAVAACK. Okay. For the private organizations that did apply for the SPP program, did you get back to them on telling how their applications could be improved, why they were deficient?

Mr. PISTOLE. What we asked them to do is come in and provide what they believed would be the clear, substantial indicia or information that would indicate why they would be a better proposition than the Federal—so we didn't go back and say, "A, B, C, D, E, address these issues," if that is what you are asking.

Mr. CRAVAACK. Okay, you did not do that.

Mr. PISTOLE. Did not do that.

Mr. CRAVAACK. Okay.

I am running quickly out of time, but I guess the big thing for us is we want to make—everybody here on this panel wants to make sure that we have an effective and efficient TSA.

Mr. PISTOLE. I appreciate that.

Mr. CRAVAACK. You know—

Mr. PISTOLE. That is my goal also.

Mr. CRAVAACK. Yeah, I know it. It is a bipartisan issue. We have worked on a lot of different issues regarding transportation as well.

The big thing I think we want to make sure that we have public is that there is a beneficial cost associated with the privatized, if there is one; and, No. 2, that we have an effective system that you are able to manage.

So, with that, I am out of time and I will yield back.

Mr. PISTOLE. Thank you, Congressman.

Mr. ROGERS. I thank the gentleman.

We are supposed to be called for votes soon, but I understand that Mr. Mica has joined us, the Chairman of the Committee on Transportation and Infrastructure, and would like to sit at the dais. So I would ask unanimous consent that he be permitted to do so.

Without objection.

Welcome, Mr. Mica.

The gentleman from California, Mr. Lungren, is recognized.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

First of all, Mr, Pistole, thank you for the PreCheck program. I think that is a move in the right direction.

Mr. PISTOLE. Thank you, Congressman.

Mr. LUNGREN. Having said that, though, you know my consternation with respect to this program. Let me ask you, is there any statutory language that reads that you must find clear and substantial advantage before you can approve a private contractor?

Mr. PISTOLE. None that I am aware of, no.

Mr. LUNGREN. So it is not part of the statute; it is something—

Mr. PISTOLE. No.

Mr. LUNGREN [continuing.] That you have put as your additional requirement.

Mr. PISTOLE. Yes. Trying to understand what I believed the Congressional intent was in terms of creating TSA, you know, after 9/11 as a Federalized workforce, with the exception of the SPP, you know, the initial five and that assessment of whether privatized airports could add value.

Mr. LUNGREN. Right. So it is not part of the statute.

Mr. PISTOLE. Not my knowledge, no.

Mr. LUNGREN. Would you think it unreasonable for an airport such as the one in my district to not have applied for this yet because they believe this is disfavored by you and by TSA?

Mr. PISTOLE. Well, I would hope that each airport would make a business decision to assess what would be best for their passengers, for their—

Mr. LUNGREN. I understand that. But let me ask you, if you were told that they have to prove a clear and substantial advantage, even though everything else must be equal—

Mr. PISTOLE. Uh-huh.

Mr. LUNGREN [continuing]. If you observe that the TSA, in trying to make a comparison of the costs, initially said they were double-digit, but Government Accounting Office when they looked at it said, you know, “TSA, you have forgotten about the cost of Federal retirement,” and then you brought that in and you brought, I think, the difference down to about 3 percent; and if you saw what happened in Kansas City where the court—frankly, I would be embarrassed if a court said this about me or my client, that—it was an 81-page decision which reversed, in the court’s words, “a fundamentally flawed source selection by the TSA.”

They said, the TSA did not conduct a proper best-value analysis. The court found, TSA arbitrarily deviated from their own procedures that they had put in place. It said that TSA did not document its evaluation and decision. It said that TSA’s price evaluation scheme was irrational. The only way you could overturn something like this is if you find it arbitrary and capricious. They found, frankly, TSA to be arbitrary and capricious.

Then it is extended out over time, and if I am an operator of an airport, that doesn’t suggest to me that TSA is going to be objective in this; it sounds to me like TSA is going to make it extremely difficult for me.

So, I mean, I have an airport in my district that would want to do it. They have not applied to you, at this point in time. But I just want to set for the record that that is not because they do not wish to.

So you keep quoting this number that, out of 400-and-some-odd airports, only so many have applied. Then you have told me you don’t want to approve very many—you just approved West Yellowstone?

Mr. PISTOLE. Yes.

Mr. LUNGREN. How many flights do they have a day?

Mr. PISTOLE. I don’t know.

Mr. LUNGREN. Have you ever been to West Yellowstone?

Mr. PISTOLE. Never been there.

Mr. LUNGREN. I have been to West Yellowstone. It is not one of the large metropolises of America. Although I did get good ice shaving there one time. If you ever want to find some good ice shaving and you are coming out of Yellowstone, you will find that that works very, very well.

There have been things that have been said on this dais today that don't insult the Federal employee, and I do not wish to insult the Federal employee, but to insult the private employee I think is irresponsible, to suggest that the private employee cannot do a good job.

Are you suggesting to us that the security at San Francisco International Airport, the largest airport that has a private contractor, is less than what it is at any other airport?

Mr. PISTOLE. Absolutely not.

Mr. LUNGREN. Would you allow that to be the case?

Mr. PISTOLE. Absolutely not. If they didn't do the job, then we would seek another company or whatever other options.

Mr. LUNGREN. I mean, I do not understand why we have to sit here and suggest that if you have a private employee, that private employee is less than a public employee. Frankly, we ought to Federalize the entire American workforce and have 138 million people all working for the Federal Government if that happens to be the case.

I know that you oppose the proposition that was in the law, but you have said that you will work to enforce that.

Mr. PISTOLE. Absolutely.

Mr. LUNGREN. I know, from your record, that you will do that.

Mr. PISTOLE. Absolutely.

Mr. LUNGREN. I just hope you will not add any additional things, such as "clear and substantial advantage" or whatever else you would come up with, to undo the intent of Congress, as you suggest that we are trying to follow the intent of Congress.

With that, I see my time is over, and I thank the Chairman.

Mr. ROGERS. I thank the gentleman.

We have been called for votes, but I want to recognize Mr. Mica for his set of questions.

You are recognized for 5 minutes. Thanks for joining us.

Mr. MICA. Thank you so much, Mr. Chairman, Mr. Thompson, Members of the committee, for affording me a few minutes. Hopefully—well, I will definitely finish within my 5.

I am pleased to have Administrator Pistole. He has probably one of the toughest jobs in Washington. It is very difficult.

Of course, you know my history, having been involved—I was chairman of the Aviation Subcommittee. The good Lord gave me that task in 2001, and the President wanted a bill on his desk by Thanksgiving after the attacks in September. Of course, we don't have jurisdiction. I try to conduct oversight. I am also on Government Reform and try to do our, you know, good job in protecting the taxpayer and the flying public. It is an important mission.

But that being said, we are here now, and there is great frustration, as you know. You have probably heard some of it today. We have talked, and I think that we need to get to a risk-based system. I was pleased also—I wasn't here but I heard of your willingness to work with the committee to implement the new language,

and that is important. I will work with you. We want this to be successful. We want to work with you, tried to work with Members of the Homeland Security Committee in that regard.

But, you know, I have the most recent meltdowns—Honolulu, you know, was a meltdown; Charlotte Douglas; most recently, Liberty International. It is not just a couple, it is quite a few of the TSA employees you had problems with. Every time you pick up the paper—here is just last week’s headlines: “TSA Workers: The Theft Cops” and then “TSA Agent Arrested for Stealing iPads.” Those are a couple from last week.

Then the recruitment and training, we spent \$2.4 billion on recruitment and training. We trained 137,000 people. Actually, more people have left. I think we need to find a more efficient way. If we can incorporate that into the SPP model, I think we can have great savings there. That is something that I don’t think was in the GAO report.

Then, you know, you have resorted—I know the difficulty in hiring people. You have advertised on the top of pizza boxes. This is pizza boxes. This was on the top of—I saw this on a National—well, I buy cheap gas. I went to a discount gas station and actually took that picture. I was stunned to find that Washington Reagan National, one of our most-targeted probably, and need-to-be-secure airports, is now hiring transportation security officers—it tells all the benefits—above the “cheapest gas in town” pump ad.

You have gone to a huge number of screeners, 51,000; pretty substantial administrative staff, somewhere between 12,000 and 14,000 out there. But right now, folks, for everyone in the administrative realm, we are looking at about 30 people—well, I will say 25 people, just a little lower, in administrative—because have you marshals and others, we don’t want to count them in—overseeing this.

We have looked at all the models. I looked at them before; I have looked at them around the country. The United States is now one of only a few Western countries—Poland, Romania, Bulgaria, and the United States. Libya did have an all-Federal screening force. But you went and saw the models in Israel. I went before, I went back after you went there, and Napolitano. The United Kingdom, which had huge incidents of terrorists, probably faced terrorism far worse than we did, they all retain private screenings.

No one is saying, do away with the Federal Government. No one is saying Federal employees do a bad job. But I want to get you out of the personnel business and into the security business—and I think that is so important, because we do have a threat—so you can focus.

So, again—and the union issue. You know, the SPPs they joined unions before the Federal employees. Those in San Francisco and other places we looked at, sometimes the private screeners pay more money to retain people. The turnover is great. Maybe we could submit this comparison if it has it between San Francisco and Los Angeles. There is room for that.

My only question, sir, is—you had stated to the committee that you would work with us, and I hope you will work with me, to try to improve this and implement the law that the President, we expect, will sign in a few days.

Mr. PISTOLE. Yeah. Absolutely.

Mr. ROGERS. I thank the gentleman.

I would like to ask you open-endedly before we go to vote, where do you see this going? Do you envision a time horizon in which you see an expansion of SPPs? Or is that something you really don't want to see?

Mr. PISTOLE. I think it is hard to forecast, Mr. Chairman. It is a good question because we, frankly, don't know.

You know, before my decision last year not to expand beyond the 16 unless there is some clear and substantial benefit, as I mentioned, there had only been the handful, less than three dozen, that had applied. So even before that decision, it wasn't like they were knocking down our doors. Now, to Congressman Lungren's point, maybe there was a belief that we wouldn't accept them.

So I, frankly, don't know what it will look like, but obviously we have to be prepared for any substantial number.

If I could comment—

Mr. ROGERS. Certainly.

Mr. PISTOLE [continuing]. On Congressman Mica's points, you raised a number of good points and, obviously, some philosophical differences. I don't know, I don't have visibility into the private workforces, but just as there are some outstanding security officers within the Federal Government and not so, I assume that is the same in the private sector.

What we don't hear about, for example, are some of the great stories. For example, the security officer at Newark who found \$5,000 and turned it in. Another officer saw a second officer taking the \$5,000 and reported that. So, you know, good with the bad there. Then just last week in Harrisburg, Pennsylvania, a security officer whose apartment that he lived in caught on fire, the apartment building. He went back in and helped saved the lives of 10 people.

So those things aren't out there, but it just demonstrates that we have great people within the Federal Government. There are great people in the private sector. But, yeah, so, to answer your question, it is—

Mr. ROGERS. Yeah, I don't argue that. I mean, I think we all admire the great employees that we have in the Federal system. But we do have some good examples, like in San Francisco, where the private contractors are working wonderfully.

So I am anxious to see, as the next few months unfold, if more people do pursue it, and if so, you know, how you view it. Because I just don't want to close the door. I think there are some great opportunities out there for us to transition, as long as we can maintain comfort—

Mr. PISTOLE. Sure.

Mr. ROGERS [continuing]. That it is being done well.

There is a real concern on my part, though, that we have seen the ratio of supervisors at the airports where we have SPP programs be pretty high—40 or 50 folks supervising at one airport. Can you speak to that?

Mr. PISTOLE. Yeah—

Mr. ROGERS. Do you know what the ratio is?

Mr. PISTOLE. Well, for example, at SFO, with over 1,000 security officers, TSOs, I don't know the exact figure, but I think that 40

to 50 is probably right. Because the private company is simply doing the front-line workers and what we call the leads and I believe the supervisors. But all the managers and all the, as Congressman Mica refers to, the administrative staff, those things still have to be done. The private companies aren't paying for that; we are paying for that. So—

Mr. ROGERS. Is that because you have contracted that you want to keep those responsibilities? So the private company could do it but you chose to maintain that authority?

Mr. PISTOLE. I don't know the specific contract provision on that, Chairman, so I will have to take that back and look at that. But that is the model. Whether that is by design or simply—and, obviously, the Federal security directors and the deputies in all the airports are still TSA employees.

But there is a certain efficiency of doing that. So, for example, whether it is one of the small, Montana 7 or something, yeah, there has to be some TSA presence in order for us to oversee and make sure the protocols are being followed accordingly.

So I will look into that.

Mr. ROGERS. Well, and I will probably need to get back with you in a classified setting, because I have some pretty glaring examples that—they may be legitimate, they may be wrong, but also they may have some security reasons why. But I would like to know more about this ratio of TSA personnel to contract personnel in airports, as well as some TSA folks that are in other roles at airports. But I don't want to bring that up in a public setting and—

Mr. PISTOLE. I appreciate that.

Mr. ROGERS [continuing]. Compromise anything that might be inappropriate from your perspective.

I hate that votes have been called. I have a whole lot of things I want to talk to you about, and these other guys and gals did too. But we don't have control, and I don't want to inconvenience you any further.

I hate to delay the second panel, but I have to go vote. As soon as we get back, we will have our second panel.

So, with that, Mr. Pistole, thank you for being here.

Mr. PISTOLE. Thank you very much.

Mr. ROGERS. We are in recess.

[Whereupon, at 4:01 p.m., the subcommittee was recessed, subject to the call of the Chair.]

**SCREENING PARTNERSHIP PROGRAM: WHY IS
A JOB-CREATING, PUBLIC-PRIVATE RELATIONSHIP MEETING RESISTANCE AT TSA?
DAY II**

Thursday, February 16, 2012

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON TRANSPORTATION SECURITY,
Washington, DC.

The subcommittee met, pursuant to call, at 1:07 p.m., in Room 311, Cannon House Office Building, Hon. Mike Rogers [Chairman of the subcommittee] presiding.

Present: Representatives Rogers, Cravaack, Turner, Jackson Lee, and Richmond.

Mr. ROGERS. The subcommittee will come to order. I would like to welcome everybody back to this important hearing, and thank our witnesses for not only being here, but being so patient and accommodating to our schedule. Today the subcommittee will continue to examine the Screening Partnership Program and TSA's willingness to work with the private sector to improve transportation security. Last week we had a very productive dialogue with Administrator Pistole on the role of private screeners under the SPP program. I appreciated Administrator Pistole's testimony and candid responses to my questions and other Members' questions.

I now look forward to hearing from individuals who are directly impacted by the decisions TSA makes with regard to this important program. I hope that we can identify ways to improve this program and TSA's relationship with the private sector. I now would like to recognize our panelists.

We have Mr. Mark VanLoh is the director of aviation for the city of Kansas City. Mr. VanLoh oversees all aspects of the management, development, operation and maintenance of Kansas City International Airport and Charles B. Wheeler Downtown Airport. Prior to his tenure in Kansas City, Mr. VanLoh served with Chattanooga Metropolitan Airport Authority, where he was president and CEO since 2001. From 1998 to 2001, Mr. VanLoh was commissioner of airports for Cleveland Hopkins International Airport and Burke Lakefront Airport in Cleveland, Ohio. Previously, he served as director of airports for the Toledo-Lucas County Port Authority in Toledo, Ohio, and director of aviation for the Greater Rockford Airport Authority in Rockford, Illinois. Mr. VanLoh is an accredited member of the American Association of Airport Executives, and serves on the board of directors for Airports Council International.

Mr. Steven Amitay is the Federal legislative counsel for the National Association of Security Companies, NASCO, the Nation's largest contract security association. For the past 12 years, Mr. Amitay has represented ASIS International, the world's largest association of security professionals, and was involved in the Congressional passage of the Private Security Officers Employment Authorization Act. Mr. Amitay previously served as a professional staff member of the then-Senate Governmental Affairs Committee Subcommittee on Government Efficiency, Federalism, and the District of Columbia.

Also Mr. John Gage is with us. He is the national president of the American Federation of Government Employees, the largest Federal employee union, representing 600,000 Federal and D.C. government workers Nation-wide and overseas. He has held this position since 2003. Mr. Gage has been involved in the American Federation of Government Employees and the labor movement for more than 25 years. Welcome all of you.

Again, thank you for being here and devoting your time and attention to this effort. The Chairman now recognizes Mr. VanLoh for his summarization of your testimony for 5 minutes. Your full statement will be put in the record.

STATEMENT OF MARK VANLOH, A.A.E., DIRECTOR, AVIATION DEPARTMENT, KANSAS CITY INTERNATIONAL AIRPORT

Mr. VANLOH. Good afternoon, Mr. Chairman. I am Mark VanLoh, as you said, director of aviation for the city of Kansas City. Thank you for inviting me to appear before the committee today to discuss the airport Screener Partnership Program. First I want to describe Kansas City International Airport. It is one of the country's major medium hubs. We are served by 23 passenger and cargo airlines, with approximately 200 daily flights, and generate over 10 million passengers a year. Kansas City International Airport is particularly conducive to Screening Partnership Program because of its unique configuration. Designed in the late 1960s, we have three separate semicircular passenger terminals that are not connected. It was designed so that the distance between the curb and the jet bridge is 75 feet.

The lack of a central concourse also creates the need for multiple security screening locations, and does not allow for a central screening checkpoint that most modern airports have. My testimony today addresses the airport Screener Partnership Program based upon Kansas City's nearly 10 years of experience under this program since it began shortly after 9/11. In the aftermath of 9/11, Congress made fundamental changes to the way airport passengers and property are screened. It took screening out of the hands of the airlines and Federalized it under TSA.

However, Congress wisely decided to allow private screening in two ways: First, it established a pilot program covering five airports. Second, it established an opt-out program. Once the pilot program expired, airports had the ability to opt out.

Kansas City was selected by TSA in 2002 under the pilot program, along with four other airports, San Francisco, Rochester, Tupelo, and Jackson Hole. It has been a partnership that has worked extremely well at Kansas City. I have been an airport oper-

ator for 28 years. In my view, the Screening Partnership Program has provided a level of screening services and security protection at least as good as, indeed we think better than, levels that TSA would have provided using Federal personnel. It has done so with operational efficiency and high levels of customer satisfaction. By "customer," I mean the traveling public, the airport, and TSA. Because of the success of the pilot program, we enthusiastically elected to continue the Screening Partnership Program under the opt-out program. In fact, all the original five airports selected have also elected to continue to participate in this program. The advantage of the Screening Partnership Program can be summarized as follows: Enhanced flexibility and efficiencies in personnel use and deployment; greater flexibility to respond to increased or decreased service requirements; greater flexibility to cross-train and cross-utilize personnel. We are not subject to the Federal employee hiring freezes or employment caps that we have all come to know. More effective in dealing with nonperformers. That is key.

The private screening company has greater flexibility than the Federal Government to redeploy screeners on short notice, to reschedule screeners' shifts to and from off-hours, to add or delete checkpoints on short notice. In fact, several airport directors have recently complained about a decrease in staffing and an increase in wait times at their Federalized airports. I have the luxury in Kansas City of making one local phone call to resolve any issue at my airport, and make immediate changes without having to wait on a response from Washington.

Based on our nearly 10 years of experience under the private program, I can report that the Screening Partnership Program has been very effective in providing high-quality service to our passengers at a security level equal to, if not better than, that level using Federal Government employees. It is a cost-effective program that can be used to increase private sector opportunities and reduce costs to the Federal Government. Using private contractors to perform critical safety and security missions is quite common. There are many safety and security functions carried out by private entities with strong Federal oversight, as my written testimony points out. One comes to mind is there are 200 private air traffic control towers in the United States run by private operators under the supervision of the air traffic control system.

While I firmly believe the program has worked well for Kansas City, there are a number of areas I think it can be improved. First, TSA needs to be more flexible in its supervision of private screening companies as to better foster improvements and innovation. TSA should set minimum levels of security standards and operational procedures, but give the private screeners the flexibility to provide security in a new and innovative and creative way. However, as we understand it, TSA requires all Federal and private screeners to operate under the same procedures, including centralized procedures for screener hiring and assessments, and coordinating all of it through TSA headquarters.

I do not believe that the law requires a one-size-fits-all approach. Second, TSA should develop staffing resources based on the operational requirements of each airport, not on some arbitrarily wide system capping based on salary caps and staffing caps that it uses

for the Federal workforce. Such an approach would more effectively account for the unique requirements of each airport, including the need for part-time screeners. Once again, one size doesn't fit all. For example, staffing requirements in Kansas City, which does not have a single checkpoint, as I mentioned, would be markedly different than the requirements for airports that have these facilities. Third, private screening companies should have the flexibility to vary compensation and benefits to enhance screener performance. The law requires only that the private screeners receive compensation and benefits not less than the Federal screeners. But private screening companies should have the flexibility to develop their own compensation plans, especially when we compare the costs of living for Kansas City as compared to Washington, DC, or the New York areas.

Fourth, there needs to be greater coordination with the airport operator. Of course, TSA has the ultimate legal and operational responsibility for screening. But more can be done to get the airport operator's input on rational procedures, staffing, and other critical activities. For example, TSA recently chose to replace Kansas City's long-time private screening company, yet they never asked us for our input on the incumbent's prior performance, even though Kansas City International received first place in the J.D. Power awards for passenger satisfaction in 2010. We were not unhappy when the TSA's decision to switch providers was challenged and overturned in the United States Court of Federal Claims.

Fifth, the choice of screening companies should be based largely on technical capabilities and performance, not on cost. Basing selection primarily on cost considerations, we will return to the poor performing system we had prior to 9/11, where contracts were generally awarded to the lowest bidder, manned by screeners who lacked experience, critical skills, and performance incentives.

In conclusion, the Screening Partnership Program has worked very well at Kansas City International Airport. It has shown that private screeners under the direct control and supervision of the TSA will perform excellent security and customer service at a reasonable cost.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to address any questions you or Members of the subcommittee may have. Thank you.

[The prepared statement of Mr. VanLoh follows:]

PREPARED STATEMENT OF MARK VANLOH

FEBRUARY 7, 2012

Chairman Rogers, Ranking Member Jackson Lee, and Members of the Transportation Security Subcommittee, I am Mark VanLoh and I am the Director of Aviation for the City of Kansas City, Missouri. Thank you for inviting me to participate in today's hearing on the airport screener partnership program.

My testimony today addresses the airport screener partnership program based upon Kansas City's nearly 10 years of experience under the program since it began in June 2002. Kansas City International Airport is one of the country's major medium-hub airports. We are served by 23 passenger and cargo airlines with approximately 200 daily flights and generate over 10 million annual passengers.

Based on our experience, the screening partnership program has worked extremely well at Kansas City. It has provided a level of screening services and security protection at least as good as, indeed, we think better than, the levels that TSA would have provided using Federal personnel. It has done so with operational effi-

ciency and high levels of customer satisfaction. As I will discuss later on, there are a number of areas of improvement that TSA should implement to make the program even more effective and efficient.

Prescreening of airline passengers and baggage had been a component of the commercial aviation landscape for almost 40 years. The FAA implemented universal prescreening on January 5, 1973, placing prescreening responsibility on the airlines. Since this became a component of airline costs, this approach resulted in a security screening workforce based generally on the lowest-cost bidder, with employees paid at minimum wage, lacking experience, skills, and performance incentives, and with relatively poor training. In addition to the United States, only two other countries in the world—Canada and Bermuda—relied on air carriers to foot the responsibility for aviation security screening.

In the aftermath of the terrorist attacks on September 11, 2001, Congress promptly began to address enhancements to aviation security and made fundamental changes in the way airport passengers and property are screened. On September 21, 2001, a bill was introduced in the Senate that would place security screening responsibility in the hands of the Federal Government, manned by a Federal security workforce. A competing House bill proposed to utilize private screening companies under the direct supervision and control of the Federal Government. The Aviation and Transportation Security Act (ATSA) was passed by Congress on November 16, 2001 and signed by the President on November 19, 2001.

ATSA created a new Federal agency, the Transportation Security Administration within the Department of Transportation (subsequently transferred to the Department of Homeland Security), with responsibility for security of all transportation modes. ATSA Federalized security screening at more than 440 commercial airports in the United States.

As a compromise between the Senate and the House approaches to private versus Federal security screeners the ATSA provided for two private screening options:

First, under 49 U.S.C. § 44919, Congress created a mandatory 2-year “pilot program” directing the TSA to establish a “pilot program” for private screening involving not more than five airports (one from each of the five security risk categories defined by TSA). Under that program, TSA, not the airport or the airlines, is required to contract with a private screening company at the selected airports.

Second, under 49 U.S.C. § 44920, Congress authorized a “security screening opt-out program” beginning November 19, 2004, under which airports can “opt out” of the Federal screening program and have security screening performed by qualified private screening company under a contract with the TSA rather than Federal screeners.

Kansas City applied for participation in the pilot program in May 2002 and was selected on June 10, 2002, as one of the five airports to participate in the pilot program, also known as PP5, along with San Francisco, Rochester, Tupalo, and Jackson Hole. These airports represented a balanced cross-section of the different airport security risk categories.

At the end of the pilot program, Kansas City had the automatic right to “elect to continue to have screening carried out by screening personnel of a qualified private screening company”, and Kansas City enthusiastically chose to continue with private screening through the “opt-out” program. Actually, all of the original five airports in the program have elected to continue this partnership.

It is vitally important for Congress and TSA to recognize that a “one-size-fits-all” approach to airport security would not work. There are vast differences in the physical layouts among the Nation’s airports. One of the reasons we believe Kansas City International Airport was a perfect candidate for the pilot program was because of the airport’s unique physical layout and the unique requirements for security facilities and personnel.

Kansas City International Airport has three separate semi-circular passenger terminals. The airport was designed in the 1960’s with the passenger convenience objective of shortening the distance between the terminal entrance and the points at which passengers board aircraft. Consequently, Kansas City International Airport is unique among major airports as it is configured so that the distance between curbside and boarding bridge is only 75 feet. This unique design minimizes the distance between curbside and gate, shortens the time between arrival and boarding, and maximizes customer convenience. The lack of a central concourse also creates the need for multiple security screening locations and does not allow for central security screening that is common with more modern airport designs.

Although the airlines and our passengers are well-served by the current configuration, we are in the initial design-stage of a program to modernize Kansas City International Airport which, when completed, will have one large terminal, rather than three separate terminals. However, that project is many year away.

Based on our nearly 10 years of experience under the private screening program, we think that the public-private screening program is very effective in providing high-quality service to our passengers at a level of security equal to, if not better than, the level that would be provided at the airport using Federal Government employees. It is a cost-effective program that can be used to increase private-sector job opportunities and reduce costs to the Federal Government. The private screening program at Kansas City has been a success and is a model for expansion of the public-private screening program for other airports throughout the country.

Relying on private entities to perform critical safety and security missions is common. There are many safety and security functions carried out by private entities with strong Federal oversight. These include consumer products and medical products manufacturing, travel through the National airspace, physical security at Federal facilities (like the U.S. DOT and FAA, for example) are activities that are conducted by private companies. These products and services are important to the safety and security of U.S. citizens but are conducted by private entities under the appropriate supervision of Federal regulation, certification, inspection, and enforcement. There is no sound reason why screening services at U.S. airports cannot be delegated to private entities. We think that the public-private program has proved that it can be done so successfully, safely, and with the highest level of security.

The ATSA statute ensures that the level of security provided under the private screening program remains high. This is because the law mandates that the level of screening provided at the airport under the contract program “will be equal to or greater than the level that would be provided at the airport by Federal Government personnel.” 49 U.S.C. 44920(d)(1).

The advantages of public-private screening can be summarized as follows:

- enhanced flexibility and efficiencies in personnel use and deployment.
- greater flexibility to respond to increased or decreased service requirements.
- greater flexibility to cross-train and cross-utilize personnel.
- not subject to Federal employee “hiring freezes” and employment caps.
- more effective in dealing with non-performers.
- less expensive to the Federal Government.

Kansas City has been quite satisfied with the level of performance of the private screener at Kansas City International Airport—Firstline Transportation Security, Inc., a company with long-standing experience in providing security. The quality of screener performance is high and they have demonstrated a commitment to providing a high level of customer service while not sacrificing their over-arching security responsibilities.

At the outset of the pilot program, we provided input to the TSA Federal Security Director on the critical goals and objectives for the private screening program, focusing on the external customer service issues, short lines, courteous behavior and professionalism, efficiency coupled with thorough and quality screening of our customers. Based upon the experience to date, the quality of performance of the private screeners has been very good. Kansas City is particularly conducive to a private screening workforce because of the need for flexibility to re-deploy screeners on short notice, to reschedule screener shifts to and from off-hours, and to add or delete screening checkpoints on short notice as airline services increase or decrease. In fact, several fellow airport directors have recently complained about a decrease in staffing and an increase in passenger wait times at their airports. I have the luxury in Kansas City of making one local phone call to resolve any issues and make immediate changes without the need to wait for a response from Washington.

While we believe the program has worked well for Kansas City, there are a number of areas in the way TSA oversees the private security program that should be improved.

First, TSA needs to be more flexible in its supervision of private screening companies so as to better foster improvements and innovation. The law provides for TSA oversight and requires that TSA ensures that the level of screening services and the protection afforded “will be equal to or greater than the level that would be provided at the airport by Federal Government personnel.” To fulfill that responsibility, TSA should set minimum levels of security standards and operational procedures, but give the private screeners the flexibility to provide the security in new, different, innovative, and creative ways. However, as we understand it, TSA requires Federal and private screeners to operate under the same procedures, including centralized procedures and facilities for screener hiring and assessments, and coordination or hiring through TSA headquarters. The law doesn’t mandate a one-size-fits-all approach.

Second, with respect to screener staffing, instead of establishing arbitrary staffing caps based on a system-wide staffing model, TSA should conduct staffing analysis and operational requirements for each specific airport. We believe that this ap-

proach does not effectively account for the unique requirements of each airport, including the need for part-time screeners. Again, one size doesn't fit all. For example, staffing requirements for Kansas City International Airport's, which does not have a single central security location but are spread throughout several terminals, will be markedly different than the requirements for airports that have centralized security screening facilities.

Third, private screening companies should have the flexibility to vary compensation/benefits to enhance screener performance. The law requires only that the private screeners receive compensation and benefits "not less than" Federal screeners, but private screening companies should have flexibility to develop their own compensation plans—especially when comparing the cost of living in areas such as New York with the Midwest.

Fourth, there needs to be greater coordination with the airport operator. While TSA has the ultimate legal and operational responsibility for screening, more can be done to get the airport operator's input in the operational procedures, staffing, and other critical activities.

Fifth, screening companies must be selected on the basis of technical capabilities, performance and not just on cost. When our long-term private screening company's contract expired, TSA selected another company in large part based on price. That company TSA selected did not match the incumbent's experience and technical capabilities. These decisions simply should not be based primarily on cost otherwise we will return to the system that existed pre-9/11 where contracts were generally awarded to the lowest-cost bidder, with employees paid at minimum wage, lacking experience, critical skills, and performance incentives. The low-cost bidder would be hard-pressed to retain experienced workers because of the need to reduce salaries/staff. And, TSA never asked Kansas City for our input on the incumbent's prior performance. The TSA's decision was challenged and eventually overturned by the United States Court of Federal Claims. *Firstline Transportation Security, Inc. v. United States*, No. 11-375C, issues September 27, 2011.

In conclusion, the public-private airport screening program has worked well and has demonstrated that under appropriate circumstances private screeners under the direct control and supervision of the TSA will provide high levels of security, on an efficient and cost-effective basis, with enhanced customer service.

Mr. Chairman, this concludes my prepared remarks and I would be pleased to address any questions you and the Members of the subcommittee may have. Thank you for this opportunity to present Kansas City's views on this important topic.

Mr. ROGERS. Thank you, sir. I appreciate that.

The Chairman now recognizes Mr. Amitay for his opening statement.

STATEMENT OF STEPHEN D. AMITAY, ESQ., FEDERAL LEGISLATIVE COUNSEL, NATIONAL ASSOCIATION OF SECURITY COMPANIES

Mr. AMITAY. Chairman Rogers, distinguished Members of the subcommittee. As the Chairman said, my name is Stephen Amitay, and I am Federal legislative counsel to NASCO, the National Association of Security Companies. Founded in 1972, NASCO is the Nation's largest contract security trade association, and NASCO works with legislators and officials at every level of government on issues that affect the use of private security. NASCO strives to increase awareness and understanding of the important role of private security in safeguarding persons and property, and supporting law enforcement and government entities. At the same time, NASCO has been the leading advocate for raising standards for the licensing of private security officers and for firms. Across the Nation, almost 2 million armed and unarmed security officers are employed by private companies. Private security is providing protection and screening of employees and visitors at thousands of Federal facilities, including DSA and TSA headquarters, CIA and FBI offices, NASA launch sites, Federal courthouses, National labs, and National heritage sites.

Private security officers are also on duty at numerous U.S. military installations. Private security protects the vast majority of critical infrastructure facilities in the United States. Today's hearing addresses the use of private companies to provide passenger and baggage screening at U.S. airports under the Screening Partnership Program, SPP. More specifically, the subcommittee is examining why, after 9 years of a successful partnership with private screening companies, TSA now believes the expansion of the SPP program will essentially inhibit TSA's ability to provide effective aviation security.

First off, the stated justifications for this new non-expansion policy relating to potentially lessened ability to modify procedures, re-deploy screeners, and distribute intelligence are alternatively unsubstantiated, or as Mr. Pistole stated last week, can be addressed through contract modifications. Furthermore, while anyone can come up with fanciful what-if scenarios, there is absolutely no tangible evidence in the almost 10-year history of the SPP that an SPP contractor has not effectively served the needs of the TSA.

For instance, when TSA virtually overnight implemented the 3-1-1 liquid and gel screening procedures at all airports, the SPP contractors were right on top of it. There is no indication that the TSA's needs cannot be similarly met in the future by private companies if the SPP expands. As to the more general issue of whether private screeners should be used at all at U.S. airports, which was a major focus of last week's hearing, putting aside that using private screeners allows TSA to focus more on aviation security and less on personnel management, putting aside that private companies are more adept at screener management and motivation, hiring, and retaining employees, and are much more customer-service focused, which also has a security benefit, putting aside that all cargo screening in the United States is done by private companies under TSA oversight, putting aside that virtually all other Western countries have determined that private screening under Federal oversight is the most effective screening model, and putting aside that if TSA was ever able to account for all its costs and conduct a true cost comparison, it would find SPP airports to be less costly to operate than non-SPP airports, but for opponents of the SPP to claim that using private screeners is not as secure or effective as using Federal screeners is completely unfounded and contradicted by independent evaluations, covert testing, and TSA performance metrics.

It came as no surprise then when credit for the TSA's decision to halt the expansion of the SPP was not claimed by aviation security experts, but by the union now representing Federal screeners. At a minimum, and I repeat a minimum, under the SPP, private screeners must meet the same employment screening, proficiency, and training requirements of Federal screeners. They must be provided compensation and benefits at a level no less than Federal screeners.

Finally, the level of screening services and protection provided by the private screening company must be equal to or greater than the level that would be provided at an airport by Federal screeners. In fact, as is often the case, private screeners undergo more employment screening and training, their pay and benefits equal or exceed

those of Federal screeners, and most significantly, as mentioned, covert testing, independent evaluations, and the awarding of contract performance bonuses provide clear evidence that the level of screening provided by private screeners is superior to that of Federal screeners. Therefore, for anyone to characterize the possible expansion of the SPP as a “return to the pre-9/11 screening workforce,” such a statement not only defies credulity and shows a complete lack of understanding of how the SPP operates and is governed, but is also an insult to the highly-trained, hard-working men and women working as screeners at SPP companies.

Passenger and baggage screening is not an inherently Governmental function. Like with many other complex services, qualified private screening companies possess the real-world experience, management, and cost accounting tools, flexibility, and motivation that allows them to provide equal or better service more efficiently than the Federal Government.

From the experiences and lessons learned in the SPP, it is clear that the use of private screening companies has proven to be a viable and effective option for airports. Private screening can effectively be overseen by TSA. It is therefore unfortunate, and indeed ironic, that at a time with unprecedented interest and emphasis on Government efficiency and sustained and meaningful job growth that TSA is trying to limit and marginalize a successful public-private partnership that is exceedingly efficient, effective, and customer-focused.

Far from ignoring the SPP and its mission to provide the best possible aviation security, the TSA should be embracing the SPP. Private security companies stand ready to work with TSA to improve passenger and baggage screening at U.S. airports. Thank you.

[The prepared statement of Mr. Amitay follows:]

PREPARED STATEMENT OF STEPHEN D. AMITAY

FEBRUARY 7, 2012

NASCO AND PRIVATE SECURITY

NASCO is the Nation’s largest contract security trade association, whose member companies employ more than 300,000 security officers. Across the Nation almost 2 million private security officers, both contract and proprietary are at work protecting (and often screening persons and bags) at Federal buildings, courthouses, military installations, critical infrastructure facilities, businesses, schools, and public areas. In addition, as the Screening Partnership Program (SPP) has demonstrated, private companies are also effectively providing passenger and baggage screening services to U.S. airports. Formed in 1972, NASCO strives to increase awareness and understanding among policy-makers, consumers, the media and the general public of the important role of private security in safeguarding persons and property. At the same time, NASCO has been the leading advocate for raising standards for the licensing of private security firms and the registration, screening and training of security officers. At every level of government, NASCO has worked with legislators and officials to put in place higher standards for companies and officers. As the recognized source of information and views for the contract security industry, NASCO regularly holds seminars and other events for industry which provide a forum for information and interaction with Members of Congress, Congressional staff, Federal officials, legal and policy experts on issues and activities affecting the private security industry. NASCO recently formed a “Government Security Contractor Caucus” to widen and strengthen its efforts to improve the working relationship between Federal agencies and private security companies and since the inception of the SPP, NASCO has worked with companies and policy-makers involved and interested in the program. Most significantly, over the past several years

NASCO has been very active in working with Congress and the Federal Protective Service (FPS) to strengthen the “public-private partnership” that is the FPS Contract Guard Program.

BACKGROUND ON THE SPP

After 9/11 Congress passed the Aviation and Transportation Security Act (ATSA), which stood up TSA and authorized it to assume responsibility for security in all modes of transportation, including the creation of a Federal workforce to conduct passenger and baggage screening at U.S. airports. However, Congress did not make a blanket judgment that in going forward with more stringent airport screening only a Federal workforce could provide effective screening. As such, the ATSA also required TSA to set up a parallel screening program (the SPP) that would allow airport operators to “opt out” of using Federal screeners. Instead, these airports could have their screening conducted by personnel from a qualified private screening company chosen by TSA operating under strict Federal standards, supervision, and oversight. The SPP was made available to all U.S. airports in November 2004, after a required 2-year SPP pilot program involving five airports, one from each of the five “airport security risk categories.”

Currently, sixteen airports, including all five of the airports in the original pilot program, have opted out of the use of Federal screeners with the largest being San Francisco International Airport (SFO) in California and Kansas City International Airport (KCI) in Missouri.

For a company to be “qualified to provide screening services” under the SPP, the company must only employ individuals “who meet all the requirements applicable to Federal Government personnel who perform screening services at airports.” The company must “provide compensation and other benefits to such individuals that are not less than the level of compensation and other benefits provided to such Federal Government personnel.” Finally, a private company can only provide screening at an airport if TSA determines and certifies to Congress that “the level of screening services and protection provided at the airport under the contract will be equal to or greater than the level that would be provided at the airport by Federal Government personnel.”¹

To reiterate, at airports where private screening companies are used: (1) The screeners at a minimum have met the same employment screening, proficiency, and training requirements of Federal screeners, (2) the screeners are provided compensation and benefits at a level no less than Federal screeners (in fact on its website TSA states that it has “conducted an extensive review of the private contractors and found overall the private screening companies are providing pay and benefits that equal or exceed the pay and benefits provided by the Federal Government”),² and (3) the level of screening services and protection provided by the company must be equal to or greater than the level that would be provided at the airport by Federal screeners. Therefore, when John Gage, the head of the AFGC which represents “competing” Federal screeners, characterizes the SPP as “a return to the pre-9/11 screening workforce of low paid and poorly trained non-Federal employees” such criticism defies credulity and shows a complete lack of understanding of how the SPP operates and is governed.³

Furthermore, the inference that the use of private screeners at airports allowed for the tragedy of 9/11 to take place is plain wrong. FAA regulations in place on 9/11 permitted the weapons the terrorists used to take over the planes to be brought on board, and the 9/11 Commission Report found that each security layer relevant to hijackings—intelligence, passenger prescreening, checkpoint screening, and on-board security—was seriously flawed prior to 9/11.

In fact, over the past 9 years since airports have been using private screeners under the SPP there is considerable evidence from covert testing results, GAO reports, independent evaluations, reports from airport operators, anecdotal information, and other sources that the public-private partnership of utilizing private screeners under Federal regulation and oversight is a superior and more cost-effective security option for airports than using Federal screeners.⁴

¹Aviation Transportation and Security Act, Section 108, 49 USC 44920.

²TSA website, “Screening Partnership Program” FAQs. http://www.tsa.gov/what_we_do/optout/spp_faqs.shtm.

³The TSO Voice; January 20, 2010.

⁴See House Committee on Transportation and Infrastructure Oversight and Investigations, *Staff Report: TSA Ignores More Cost Effective Screening Model*, June 3, 2011, [hereinafter T&I SPP Report].

TSA RESISTANCE TO THE SPP

TSA has described the SPP as a way “to benefit from private expertise and know how.”⁵ Accordingly, during the pilot and the first several years of the program the screening companies involved truly felt the SPP was being used by TSA as a “laboratory” to see how the private sector could help improve and innovate airport screening and the management of screeners. TSA would both bring SPP company officials to Washington and send TSA “tiger teams” to SPP airports to observe and learn about the screening methods and operations of the companies. In 2007, TSA even encouraged some smaller airports in Montana to apply to join the SPP, as the rigid TSA staffing model was inefficient to staff those airports. Even as recently as 2009, in awarding an SPP contract to continue private screening for Roswell Air Center in New Mexico, the TSA Federal Security Director overseeing the airport called it an “excellent example of an effective public-private partnership” and he “looked forward to working” with the private screening company.⁶ However, while TSA has never fully embraced the SPP, as the title of today’s hearing notes, this public-private partnership is now (and has been for the last couple years) encountering serious resistance at TSA.

TSA resistance related to the SPP and SPP companies has taken many forms. There are no more “lessons learned” meetings with SPP companies. The process for SPP companies to submit innovations to TSA, a component of SPP contracts, is now ignored or ideas are summarily dismissed as unworkable. While the level of communication between SPP companies and local TSA officials, program managers, and contracting officials remains high, the flow of information from TSA headquarters to screening companies, and airports, has diminished. The ability for the screening companies, airports, and TSA to work together has been limited by a lack of TSA sharing of important performance and service data and the agency often taking a “my way or the highway approach” to doing things. In addition, as TSA gets more secretive and guarded with its information, TSA is now seeking to limit the ability of SPP companies to share information. In a recent SPP contract, TSA, without any notice or explanation, inserted a provision that prohibits the SPP from publicly disseminating “any information, oral or written, concerning the results or conclusions made pursuant to the performance” of the contract “without prior written consent of the Contracting Officer.” This includes seminars, professional society meeting/conferences, and even requests for information from Congress. Before this “gag order” was put in place, SPP companies were already prohibited from releasing protected Government information under both previous contract language and various Federal laws. Given the broadness of this clause, SPP companies are now reticent to discuss almost any aspect of their performance with anyone without first receiving TSA’s written permission. This could severely restrict the amount of information available to airports, Congress, and the public about the SPP.

TSA’s mishandling last year of the SPP contract award for the Kansas City airport could also be seen as resistance to the SPP or perhaps just incompetence. Either way it showed an irrational lack of consideration for quality service. TSA was required to make the award based on a “best-value analysis tradeoff” using price and six non-price factors. However, the U.S. Court of Federal Claims determined that the TSA award was “essentially made on a lowest-cost technically acceptable basis not pursuant to the best-value determination required by the RFP.”⁷

In ordering the award to be stopped, the Court concluded that it was “clear that the Source Selection Evaluation Board failed to account for the significant differences between the competing proposals with respect to technical quality including the four most important technical evaluation factors in the tradeoff analysis (Management Approach, Screening Services, Security Training, and Pre-Transition/Transition).” In addition, the losing proposal was assigned 33 strengths and not a single weakness, while winning proposal received only one strength and one weakness. It goes without saying that it is in the public’s best interest for TSA to properly award airport screening contracts using a “best value” analysis, which places a premium on performance capabilities as opposed to a “low price technically acceptable” basis.

The greatest TSA “resistance” though related to the SPP though is the now year-old TSA policy that it will not approve new airports for the SPP unless there can be demonstrated a “clear and substantial advantage” to do so. This new policy was announced in the wake of the denial of 5 SPP airport applications for which TSA

⁵ http://www.tsa.gov/what_we_do/optout/what_is_spp.shtm.

⁶ TSA Press Release; “Private Screening Contract Awarded for Roswell International Air Center” July 16, 2009.

⁷ *FirstLine Transportation Security Inc. v. United States*, 2011 U.S. Claims LEXIS 1945 (September 27, 2011).

provided no details. It was also preceded by attempts of TSA officials, from the administrator on down, to discourage airports from joining the SPP.⁸

While a plain reading of ATSA language governing the SPP gives TSA complete discretion in approving application (“The Under Secretary may approve any application submitted . . .”); nonetheless, the intent of Congress seemed clear that if a screening company could provide a level of services and protection equal to or greater than that of Federal screeners, and the airport making an application had a good safety and security record, then that airport would be accepted into the program. While TSA never embraced the SPP, this interpretation of the SPP statutory language was followed by TSA—until last January. Essentially now, airports are cut off from the SPP.

The vague justifications provided for the new policy relating to agility, cohesive and intelligence sharing, as will be discussed later, are alternatively unsubstantiated or can be addressed through TSA working with SPP companies and modifying SPP contracts. And to no surprise, credit for this new dubious policy was not claimed by aviation security experts but by the union now representing Federal screeners.

Fortunately though, help is on the way for new airports wishing to join the SPP and benefit from more effective, efficient, and customer service-oriented private screening companies. Under the FAA Reauthorization bill about to be enacted, Congress has amended the ATSA to add criteria and time lines under which the administrator must act in considering SPP applications. Specifically, TSA:

“Shall approve an application submitted by an airport operator under subsection (a) if the Under Secretary determines that the approval would not compromise security or detrimentally affect the cost-efficiency or the effectiveness of the screening of passengers or property at the airport.

“Shall provide to the airport operator, not later than 60 days following the date of the denial, a written report that sets forth the findings that served as the basis for the denial; the results of any cost or security analysis conducted in considering the application; and recommendations on how the airport operator can address the reasons for the denial.”⁹

The Act also give airports a voice as to which qualified screening company would best meet its screening needs and the Act gives the administrator the discretion to waive the SPP requirement that a screening company be “owned and controlled by a citizen of the U.S.” in the case of U.S. subsidiaries “with a parent company that has implemented a foreign ownership, control, or influence mitigation plan that has been approved by the Defense Security Service of the Department of Defense.”

The expected results of these changes to the SPP seem clear. More applying airports will be accepted into the SPP in a timely fashion with more qualified screening companies available to them. As described below, it seems virtually impossible based on the past and current performance of screening companies in the SPP that the administrator will reasonably determine that using a private screening company will “compromise security or detrimentally affect the cost-efficiency or the effectiveness of the screening” at an airport. We will soon find out though as FAA bill also requires the TSA to reconsider those applications that were pending before it limited the program and denied five applications last January.

MERITS OF THE SCREENING PARTNERSHIP PROGRAM

The merits and effectiveness of the Screening Partnership Program and a public-private partnership for airport screening can be viewed on policy, operational, and other levels.

On a policy level, with private companies doing airport screening, TSA is not both the regulator and operator. The reasons supporting lessening TSA’s direct role and conflicting mission in screening are two-fold. First, the enormous task of managing the 50,000 or more TSA employees involved in airport screening diverts and denigrates TSA’s ability to focus on critical transportation security-related functions such as setting security standards, technology adoption, conducting risk management analyses, performing oversight, enforcing standards and regulations, analyzing intelligence, auditing screening operations, and doing more to stop aviation-related terror before the terrorists get to the airport. Second, as the entity both conducting

⁸Even though the current TSA administrator has not been known to have ever visited any SPP airport since assuming his position, as documented in the House T&I SPP Report, he did make a visit to the Sanford Orlando Airport to try to personally talk the airport director out of joining the SPP.

⁹H.R. 658, FAA Reauthorization and Reform Act of 2011, Section 830. APPROVAL OF APPLICATIONS FOR THE AIRPORT SECURITY SCREENING OPT-OUT PROGRAM.

the screening and overseeing the screening, there are inherently greater risks of poor screener performance going uncorrected or even worse being encouraged or covered up by management.

Last year an investigation at Hawaii's Honolulu International Airport uncovered a massive on-going security breach involving improper (lack of) screening of checked bags for explosives. Forty-five TSA workers at the airport were fired or suspended including screeners, their supervisors, and the Federal Security Director. The TSA screeners claimed they were forced to abandon required screening practices because of TSA management pressure. Could TSA managers at an SPP airport, operating at "arm's length", be able to pressure a private screening company to abandon required screening practices putting the company in clear default of its entire contract? Not likely. The potential loss of a contract and hundreds of jobs is a strong incentive for a company, and everyone in the company, to make sure that all employees are compliant with the requirements of the contract. At the Hawaii airport, the malfeasant Federal screeners, managers, and security director were simply replaced by other Federal employees.

On an operational level, the reasons why using private screeners is more effective and efficient are numerous and well-documented. While private and Federal screeners are required to meet the same minimum training/screening standards and are compensated comparably, there are many advantages in using private screeners and private screening companies. In providing many services, the private sector is much more innovative, efficient, and effective than the Federal sector and airport screening is no exception. The same can be said for the managing of such services.

Private screening companies at SPP airports have come up with numerous innovations, some which TSA adopted Nation-wide, and are doing things to improve screener quality and performance (and airport satisfaction) that TSA does not or cannot do. SPP companies came up with better configurations for processing passengers through screening. An SPP company came up with dual functioning screeners (certified for both checkpoint and baggage screening), which facilitated flexibility in scheduling. To address widespread baggage screener injuries and related costs, an SPP company created a non-certified position assigned only to lift bags for the certified baggage screeners (significantly reducing screener injuries and workers compensation costs). At a Federalized airport a new OPM job classification would first be required. SPP companies employ full-time health and safety professionals on-site to investigate and study injuries and devise ways to mitigate them. SPP companies competitively bid for materials and support services. Screeners that are better at image recognition are paired with new screeners in a "mentor" arrangement. SPP companies do their own covert testing of screeners in addition to TSA covert tests and provide remedial training on-site—something that TSA cannot provide.

In terms of better hiring and retention of screeners, SPP companies also do many things that TSA does not or cannot do. In hiring screeners, SPP companies do their own local recruiting and screen applicants before submitting them for the formal TSA screening process. Even after a prospective screener passes the TSA screening process, he or she can still go through a company interview with supervisors before being hired. At airports using Federal screeners, screeners can show up for work, sight-unseen, already hired. The additional screening that SPP companies apply to the recruitment process results in more successful new-hire completion rates and on-going on-the-job success. At Federal airports, TSA headquarters sets compensation for screeners and managers and screeners have no real financial incentives to perform beyond the minimum requirements and barring the commission of a crime or serious violation of standards, Federal screeners and managers—like all Federal workers—have great job security.¹⁰

At SPP airports, the screening operation is a business, and better performance is good for business both tangibly (award fees) and intangibly (reputation and future business). SPP company site managers are very vested in hiring the right people, monitoring performance, and striving for better-than-average performance. Bonuses are provided for perfect attendance and robust attendance policies are maintained (recognizing that just one late screener can prevent the "critical mass" needed to open a check point). Does TSA even have an attendance policy for its screeners? Pri-

¹⁰Dennis Cauchon "Some federal workers more likely to die than lose jobs" USA TODAY July 19, 2011. Recently, a TSA screener who was caught on tape stealing \$5,000 in cash from an air passenger's jacket at a TSA screening checkpoint and was arrested for grand larceny was "suspended pending investigation." At an SPP company, that screener would be "suspended pending termination" and likely be fired much sooner than at TSA. SPP companies, while in compliance with all DoL standards, have considerably more capability to discipline progressively and remove ineffective employees than TSA.

vate screeners can also be immediately counseled and can be provided with remedial training if needed. A culture of cohesion and teamwork within the workforce and peer expectations are encouraged.

SPP companies also use a pre-hire physical testing protocol coupled with other working initiatives that minimize on-the-job injuries, and allow for faster return to work and lower workers compensation rates. SPP companies will provide monetary and other incentives to retain screeners. SPP companies fully realize that a stable workforce is more efficient, effective, and motivated. The House T&I SPP Report calculated that the turnover rate at the non-SPP LAX airport was 13.8% compared to 8.7% at the SPP San Francisco (SFO) airport.¹¹ Supporting the notion that TSA is not as effective at managing/motivating/retaining its screener workforce is the recent ranking of TSA at 232 (out of 240) as the “Best Places to Work” in the Federal Government.¹²

A major advantage that SPP companies have over TSA is in scheduling and managing its screener force. At Federally screened airports, the number of full-time and part-time screeners (actually FTE's) is dictated to TSA airport directors by TSA headquarters. At SPP airports, the SPP company site manager can hire more screeners as needed in order to meet the contract requirement for total screener hours. They can more flexibly schedule screeners in ways to provide better service without increasing costs. For instance, at most larger airports, the terminals are open for 20 hours. Under TSA's staffing model, this would require two full-time screeners at 8 hours per shift and one part-time screener for 4 hours to staff the position, with all three screeners receiving fixed benefits. On the other hand, at one SPP airport with such terminal operating hours, the SPP company is able to schedule two screeners at two 10-hour shifts reducing personnel and costs. TSA does not utilize such an option.

For most airports, the No. 1 concern is wait time and SPP companies are much attuned to this concern. SPP companies use sophisticated airline industry-based scheduling tools, which efficiently schedule and manage staffing in real-time. They make the screening schedules and can make pinpoint adjustments using optimization software and airline data. They have decision support systems that allow managers to be proactive. Scheduling is also tied in directly with payroll, HR, and training systems, which ensure full visibility of manpower resources. For TSA, effective and efficient scheduling is a problem due to centralization of the scheduling system and institutional inflexibility. Airports are told when to open lanes and checkpoints with little local TSA (or airport) input. As evidence of the scheduling problems at TSA, in 2008 the DHS Inspector General found that TSA is “overly reliant on the (National mobile) deployment force to fill chronic staffing shortages at specific airports in lieu of more cost-effective strategies and solutions to handle screening demands.”¹³ In the House T&I SPP Report, it was estimated that SPP screeners (based on a comparison between two similarly-sized airports) are 65 percent more efficient than their TSA Federal counterparts.

While private screeners and private screening companies are more efficient, there is also a strong case to be made that they are more effective. While not much data is publicly made available, from what is available, screener performance is better at SPP airports than non-SPP airports. In 2007, *USA Today* uncovered covert TSA tests results that showed significantly higher screener detection capabilities at an SPP airport (SFO) than at a comparably-sized non-SPP airport (LAX). According to the test results, investigators successfully smuggled 75 percent of fake bombs through checkpoints at Los Angeles International Airport . . . and 20 percent at San Francisco International Airport.”¹⁴ As reported by the GAO in a 2009 report, in December of 2007, Catapult Consultants issued a report to TSA (which was never publically released) that found private screeners performed at a level that was “equal to or greater” than that of the average Federal screeners. TSA was also advised to “explore the use of the SPP model as a tool to improve performance at low-performing fully Federal airports.”¹⁵ In addition, in SPP contracts, TSA measures a company's performance against the average performance of airports in the same category through a quality assurance surveillance plan (QASP). In order for a company to get an award fee they must score higher than the Federal average. In other words, SPP companies simply cannot meet the goal, they must exceed the performance metric in order to earn their award fee. SPP companies consistently earn

¹¹ Id at Appendix I.

¹² <http://bestplacestowork.org/BPTW/rankings/detail/HS10>.

¹³ DHS OIG Report “The TSA National Deployment Force” April 2008. OIG-08-09.

¹⁴ Thomas Frank, “Most Fake Bombs Missed by Screeners”, *USA Today*, Oct. 22, 2007.

¹⁵ Government Accountability Office, *Aviation Security: TSA's Cost and Performance Study of Private-Sector Airport Screening* (Jan. 9, 2009) (GAO-09-27R).

award fees meaning they are consistently exceeding the average performance of similar non-SPP airports. This accords with the ATSA requirement that in order for an SPP company to maintain its contracts/certification it must be equal to or better in performance than similar Federal airports.

Private screening companies are also cost-efficient. A commonly-cited, yet thoroughly debunked, alleged disadvantage of the SPP is that it costs more to use screening companies at Federal airports than it does Federal screeners. The source of this allegation is a 2007 internal TSA estimate that SPP airports would cost about 17 percent more to operate than airports using Federal screeners. A GAO review of that estimate found its methodology to be severely flawed and TSA agreed to redo the estimate using better data and methods. In January 2011, TSA released a revised estimate that SPP airports would cost 3 percent more to operate SPP airports.¹⁶ Even then, the renewed estimate only partially addressed four of seven “cost analysis limitations” that the GAO had identified.¹⁷ In addition, adjustments TSA made to calculate workers compensation, liability insurance, retirement cost, and revenue generated from corporate income taxes were only “generally accepted” by GAO and never substantiated. Data on the costs of deploying TSA National Deployment Force was also lacking from the estimate. In fact, TSA has no idea of the exact costs of screener operations at Federally-screened airports while SPP companies know their costs to the penny.

TSA also has refused to address the wasteful issue of duplicative staff at SPP airports. In 2007, an independent evaluator hired by TSA recommended that TSA “(e)xplore reducing the redundant general and administrative and overhead costs at SPP airports.” However, a 2009 GAO study found that TSA has “not consider[ed] the impact of overlapping administrative personnel on the costs of SPP airports.”¹⁸ And while TSA has told Congress more recently that it has addressed the issue of duplicative staffing, Congressional investigators continue to find multiple instances of TSA employees holding similar or identical positions to those held by the private screening company at the airport.¹⁹

It is very likely that under a detailed analysis, TSA would find the cost of operating an SPP airport to be less expensive than a non-SPP airport, and in fact House T&I SPP Report found that taxpayers would save \$1 billion over 5 years if the Nation’s top 35 airports operated as efficiently as the San Francisco International airport under the SPP program.

Greater effectiveness and efficiency are not the only advantages in using private screeners, another demonstrable advantage—one that TSA does consider a performance metric—is customer service and accountability. At SPP airports, while TSA is the client, the airport is the customer as are the passengers. Better customer service also has a security benefit. Avoiding incidents and maintaining a calmer passenger base makes it easier for screeners and behavior detection officers to spot aberrant behavior. SPP companies realize the value of customer service and they teach and reinforce customer service constantly. Even with the difficult protocols, SPP screeners are taught to implement them with customer service empathy. It is no surprise that Kansas City International Airport, an SPP location has earned the J.D. Power and Associates award for highest customer satisfaction of all medium-sized North American airports twice in the last 4 years. Security checks provided by the SPP contractor were cited as a critical factor in making both awards. That airport’s screening services as well as other SPP companies have garnered much praise from their airport directors for customer service and other innovations that have improved screening operations.²⁰ For those airports wanting to join the SPP, greater customer service and greater accountability are major reasons. Said one airport official whose airport had applied to the SPP, “As we have documented, TSA employees frequently have no concern for customer service. We feel that participating in the SPP will increase screening efficiency and flexibility and improve the customer service experience.”²¹ Critics of the SPP also try to fall back on the dubious claim that airport screening is an inherently Governmental function “so intimately related to

¹⁶To no surprise, even after TSA revised its estimate to 3% the AFGE continued to use the discredited 17% figure. See AFGE press release “AFGE’s Efforts Put SPP on Ice TSA Ends Expansion of Airport Privatization Program” January 19, 2011.

¹⁷GAO Letter to Congress “Aviation Security: TSA’s Revised Cost Comparison Provides a More Reasonable Basis for Comparing the Costs of Private Sector and TSA Screeners” March 4, 2011.

¹⁸See footnote 9, GAO-09-27R).

¹⁹T&I SPP Report, page 25.

²⁰See T&I SPP Report. Appendix 12 SPP Testimonials.

²¹May 20, 2011 Letter to House T&I Committee from Springfield-Branson National Airport.

the public interest” that Federal personnel must provide it.²² Putting aside that allowing airports to use non-Federal screeners is required under the ATSA, and putting aside the evidence that private screeners are more effective than Federal screeners, there is virtually no legal, policy, or practical support for the argument that passenger and baggage screening is inherently Governmental.

First off, assertions that a private screening company’s desire to make a profit and reduce costs means its screeners will not perform as well as “non-profit” Federal screeners are not only outright false, but a specious accusation. While seeking to reduce costs and eliminate waste in operations is one way for a contractor to increase profits, what also increases a contractor’s profits is better performance. Better performance translates into award fees and more contracts. Also, in the private sector, constant competition from other contractors creates an incentive to perform well, employ best practices, reduce waste, and seek to constantly improve. These performance and cost-containment drivers (especially in the area of reducing overtime costs) are not present in the Federal sector and the Federal workplace is beset with its own host of employee performance and motivation issues.

Second, in the area of security services, OMB has specifically defined as “inherently Governmental” security operations in certain situations connected with combat or potential combat.²³ Accordingly, below this very high threshold, many types of security and screening services can and are being performed by contractors on behalf of the U.S. Government. Federal agencies have consistently and successfully utilized private security and screening services at Government facilities (including Level 4 and 5 secured facilities) and to protect Federally-regulated critical infrastructure sites. From DoD locations requiring Top Secret and above clearances to the Department of Homeland Security Headquarters, NASA launch sites, nuclear facilities, Federal Courts, military installations, and FBI offices around the country, the U.S. Government has relied upon contractors to provide security and screening across the spectrum of sites. Everyday, contracted officers protect, screen, and provide access control at sensitive sites to millions of visitors, U.S. Government employees and invited guests each day.²⁴

Also, as documented in the House T&I SPP Report, in other countries where the danger of aviation terrorism is equally of great National concern “Federal oversight of qualified private contract screeners has shown to be effective all over the world (and) almost all Western countries operate civil aviation security through the use of Federal oversight of private contract screeners. Other than Romania, Poland, and Bulgaria, the United States has the only government in the Western world that functions as the airport security operator, administrator, regulator, and auditor.”²⁵

And if the TSA and critics of the SPP do not feel that private companies are as effective as Federal screeners to prevent a terrorist act on an airplane, then why are they not similarly concerned about cargo screening? Currently, all cargo screening is conducted by private screeners in compliance with TSA procedures, processes, certifications, and standards—the same model of TSA oversight for passenger screening under the SPP. It would seem hypocritical for TSA to treat passenger and baggage screening as “inherently governmental” when the all of the cargo placed on commercial airlines is screened by private companies.

Finally, TSA can and does provide effective oversight of private screening services. Among the tools that TSA uses to track screener performance are daily TSA manager reports, monthly Performance Management Reviews calculated against challenging metrics, and twice-yearly award fee reviews also calculated against challenging performance metrics. TSA can be assured, and indeed constantly assures itself, that SPP companies perform at a very high level.

TSA CONCERNS WITH THE SPP

In the House T&I SPP Report, the operational justifications that Administrator Pistole and TSA used to limit the scope of the SPP program to the current airports

²² As defined in Section 5 of the Federal Activities Inventory Reform Act “inherently Governmental function” means a function that is so intimately related to the public interest as to require performance by Federal Government (Pub. L. 105-270).

²³ OMB Office of Federal Procurement Policy Publication of the Office of the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions.

²⁴ The United States has multiple sites around the country that are American Heritage sites and potential targets for terrorists interested in “making a statement.” One such site is the Statue of Liberty. This site is controlled by the U.S. Park Police in concert with a contract security firm who provides unarmed screeners to efficiently process up to 15,000 visitors per day. This requirement has multiple lanes of visitors flowing through magnetometers, hand wands, and X-ray machines, very similar to those processes used by TSA.

²⁵ House T&I SPP Report, page 15.

are reviewed. They included: Administrative burden—disproportionate amount of resources are spent on SPP airports; Intelligence—TSA can tailor and provide direct information to Federal employees; Direct control—another layer is involved when FSDs order direction action; Flexibility and use of resources—TSA can use its own resources for emergency events, but cannot utilize SPP; and Impact on workforce—TSOs at potential SPP airports face uncertainty about their job status, benefits, leave, and salary.

While the T&I Committee staff notes that SPP Program Office officials have informed them that TSA was amending SPP contracts to eliminate any existing challenges related to the operational concerns, some of these concerns are not even substantiated by the facts. For example, the “intelligence concern” is negated by the fact that the managers employed by the SPP companies undergo the same SECRET clearance process as TSA employees and are capable of receiving the same intelligence as their Federal counterparts. The question of the flexibility of resources for emergency events is negated by the fact that the SPP contracts currently include programs such as the TSA VIPR program that allows SPP contractors to provide additional security outside of the airports where they work and that TSA’s SPP contracts already include a “surge clause” that allows the TSA to direct SPP contractors to immediately support emergency situations.

As to the concern that allowing more SPP airports will hinder the “agility” of TSA, SPP companies vigorously disagree with this notion. While perhaps their screeners cannot, “on paper” be currently deployed directly by TSA, in many past instances SPP companies have demonstrated their agility and responsiveness to address staffing emergencies and a change in procedures due to a heightened security risk. In fact, neither the TSA nor SPP critics can point to a single actual situation where a SPP contractor has been less agile than the TSA. And although anyone can come up with fanciful “what-if” scenarios, there is absolutely no tangible evidence in the almost 10-year history of the SPP where an SPP contractor has not served the needs of the TSA and the flying public completely and absolutely. Finally, as with other Federal security service contracts, additional deployment of staff to meet emergency requirements can be built into those contracts to facilitate additional agility in meeting unforeseen needs.

CONCLUSION

Many airports are satisfied with their Federal screening force and the ATSA language establishing the SPP in no way pushes or even encourages airports to use private screening companies. However, it is clear that Congress wanted airports to at least have the opportunity to utilize private screening which by law has to be equal to or greater in the level of security provided. From the experiences and lessons learned in the SPP, it is clear that the use of private screening companies has proven to be a viable and effective option for airports, and private screening can be effectively overseen by TSA. It is therefore unfortunate and indeed ironic that at a time with unprecedented interest and emphasis on Government efficiency and sustained and meaningful job growth, the TSA continues its attempts to limit and marginalize a successful public-private partnership program that is exceedingly efficient, effective, and customer-focused. Far from ignoring the SPP, in its mission to provide the best possible aviation security, the TSA should be embracing it.

Mr. ROGERS. Thank you.

Mr. Gage is recognized for 5 minutes.

STATEMENT OF JOHN GAGE, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. GAGE. Thank you, Chairman Rogers, committee Members. Thanks for the opportunity to testify today. Also, Chairman Rogers, thank you, you have my thanks and Everett Kelley’s thanks for your questions yesterday at the Armed Services Committee on behalf of Federal civilian workforce at Anniston Army Depot. Sir, the vital mission of air travel security is an inherently Governmental function. It is an important piece of an integrated National security system. It is no different than local, State law enforcement, the Federal Government’s mission in securing our borders and ports of entry with Border Patrol agents and CBP officers, or even the mission of the U.S. Capitol Police to provide security for the U.S. Con-

gress. It is disturbing that the Congress is moving to give the mission of providing air travel security to private corporations. The mission of corporations is to make profits for their shareholders. That is in direct conflict with the single-focused mission of air travel security for Americans. Corporations belong in the private sector, where the focus on profits is appropriate. The real need to make profits inevitably leads to cutting corners on security. TSA will be significantly hampered by the fact that it would lose its fundamental security integration as one unit. Conceivably, privatization could mean hundreds of corporations at the airports, creating a nightmare for security coordination when speed and quick information sharing through the system is necessary. A hodgepodge of corporate entities will prevent TSA from acting quickly when it needs to do so.

TSA will lose flexibility. For instance, TSOs will no longer be able to be deployed from one airport to another as they can do now. We are also concerned that the FAA legislation sponsored by Congressman Mica will allow corporations to be owned by foreigners or perhaps foreign governments. Outsourcing to foreign entities will undermine our security even further. Americans were outraged by the Dubai ports scandal, and they will be outraged when they learn of this giveaway.

As Congresswoman Jackson Lee indicated, further privatization makes assuring internal security more complex and more costly. In addition to vetting of front-line officers, you have got to vet the company, vet the executives of the companies, vet the ownership, vet the financial structure of this, vetting their banks, if necessary. This becomes an intelligence and coordination nightmare, and would actually increase TSA's management cost. Then there is the cost of creating RFPs, reviewing contract proposals, and post-award litigation.

As more airports become open to privatization, TSA will have to spend more resources on the initial bid and review process. Indeed, TSA will need hundreds of contracting officers, attorneys, and auditors. Conceivably every contract could be litigated into the courts, costing tens of thousands to defend each decision. Since the Congress has moved to privatize TSA, the corporations also should not be shielded from liability. I feel it is wrong to extend resources to cover claims. In summary, privatization will be more costly, will undermine air traffic safety and security. Corporations do not bring any added value. Their mission of profit is in direct conflict with the mission of protecting the flying public, and Americans will be at risk to a much greater degree. Thank you, Mr. Chairman.

[The statement of John Gage follows:]

PREPARED STATEMENT OF JOHN GAGE

FEBRUARY 7, 2012

Chairman Rogers, Ranking Member Jackson Lee, and Committee members: On behalf of the American Federation of Government Employees, AFL-CIO (AFGE), thank you for the opportunity to testify today regarding the Screening Partnership Program (SPP) of the Transportation Security Administration.

After the terrorist attacks on 9/11, America learned that the system of private screening companies and the private screeners in place on that fateful day were incompetent to perform the task of keeping terrorists off our passenger aircraft. As a result, Congress Federalized airport screening in recognition that the job of

screening airline passengers and maintaining the security of the commercial aviation system was fundamental to our security as a Nation. Since then, our skies have been kept safe, despite constant threats.

There isn't much that scares me. But the thought of returning to the days prior to 9/11, and to the expanded use of private contractors who are forced to cut corners to increase profits . . . that scares me.

Aviation security is too important to be left to the private sector. I know the free-market advocates will recoil when I say that, but as we have seen over and over since 9/11, the terrorists will never quit trying to attack us. Private contractors must by their very nature keep their eyes on the bottom line. That consideration cannot help but bleed over into decisions on staffing, training, recruitment, retention, and operations. As a frequent flyer myself—and I know the Members of this committee are as well—it seems beyond question to me that we should want the Federal Government to continue to provide the focus, the consistency, and the stability that this mission requires. If we learned nothing else from 9/11, I would hope we learned that.

SPP is not new, and the problems with SPP are not new. Airports have had the ability to “opt out” of the Federal screener system since TSA was created, but in those 10 years only a handful of 450 have chosen to do so. Opting out means opting in to the lowest bidder, which is not how homeland security should operate. It is too important to be left to companies that would not be accountable to the American people. There is no contracting out of the Secret Service, FBI, Border Patrol, Customs and Border Protection Officers, or the Capitol Police who protect Members of Congress and their staffs. Those agencies are all part of an integrated network designed to keep Americans safe. TSA should be no different. I think most Members of Congress would be reluctant to have the Capitol Police splintered into five or six private security companies, with each operating a different section of the Capitol complex.

SPP is not about creating jobs as the topic of this hearing implies. TSA has created almost 50,000 jobs. These are good jobs, although the pay is still too low and working conditions need to improve. Moving these jobs to the private sector is, at best, a zero sum game after the private contractors take their profit off the top.

The drumbeat to privatize security screening operations runs contrary to laws enacted by Congress in recent years requiring Government agencies to in-source functions that are inherently Governmental. Recent efforts to reform procurement practices at Government agencies and reduce their over-reliance on private contracting also argue against privatizing TSA's screening work.

The Federal Government is obligated to the American taxpayers to perform its functions efficiently and spend taxpayer money wisely. Generally, before privatizing Federal employee work, agencies are required to demonstrate that a contractor is more efficient. Under TSA's Screening Partnership Program, the agency keeps the transportation screening managers but hires a contractor to create an additional layer of management, and converts the front-line homeland security Federal employees to contract workers.

There is no doubt that TSA and its Federal screening workforce have protected our Nation from a repeat of the horror of 9/11. Rather than calling for the dismantling of an agency that is living up to its mission, despite constant challenges, proponents of private screeners should instead work to empower Federal screeners to do their jobs better. Only a well-trained, well-paid, fully empowered professional public workforce can provide the protection the American people need.

TSOs receive constant and on-going training, including changing protocols or using new technology at a moment's notice to address new terrorist threats. These protocols can change from day-to-day or even shift-to-shift. The training TSOs receive is conducted by Government employees and based on threat detection and risk assessment from the Federal Government's National security, homeland security, and intelligence agencies. TSA may be required to renegotiate contracts when deploying new technology, resulting in delays, increased costs, and holes in the aviation security net. It is not credible that screeners working for private contractors have the same capability to adjust procedures to address emergent threats as TSOs working for Administrator Pistole.

In conclusion, every single day America's patriotic TSOs are more than diligent at their duties because the last thing they want is for a terrorist to slip through on their watch. This is the same goal as TSA management. A TSO workforce with workplace rights and protections—including the ability to have AFGE speak on their behalf—is empowered to report problems with procedures or gaps in security. The goal of keeping air travel safe for the flying public is mutual between TSA and its employees.

Thank you again, Mr. Chairman, for this opportunity to address the issues surrounding SPP. I would be happy to answer any questions that you or the Members of the committee may have.

Mr. ROGERS. Thank you. You all did a great job. I recognize myself for the first questions. Mr. Amitay, Mr. Gage just made some pretty good observations that I would love to hear your thoughts on. For example, how do you make a profit when you have got to pay the exact same thing or more for your employees in an SPP program as the Government employees? Just address his comments. I am interested in your thoughts.

Mr. AMITAY. Chair, I think the primary cost saver for private companies doing screening as opposed to TSA is the ability of private companies to utilize cost accounting and management tools that either the Federal Government does not possess or does not even know how to utilize. It is in the oversight of its workforce and having to account to the last penny where private companies are much, much more efficient than TSA. For instance, take with the hiring and training process, the private companies are doing it more effectively so that, (A), it will be less expensive even though they are providing the same training if not more, and then (B), in their vetting process, they are selecting screeners who are more likely to stay, and therefore they are saving money on attrition costs.

Then finally, another major area is overtime and workers compensation costs. These are costs that for the Federal Government are virtually unaccountable for, and are claimed at a much, much higher rate than with private companies.

Mr. ROGERS. What about Mr. Gage's assertion that this is an inherently Governmental function?

Mr. AMITAY. I completely disagree with that.

Mr. ROGERS. Why?

Mr. AMITAY. Because private security officers are, as I mentioned in my oral and written testimony, they are stationed and doing screening at DHS and TSA headquarters. They are doing screening of visitors and employees at cleared facilities, at top secret facilities. They have top secret clearances. They are doing screening at military installations. That is not an inherently Governmental function. Also, the recent OMB guidance on what is considered inherently Governmental did not mention at all these types of security services.

Mr. ROGERS. Okay. Mr. Gage, why is he wrong?

Mr. GAGE. Well, first of all, I think the profit motive there, I didn't hear Mr. Amitay really say anything specifically on how the private sector makes money off these service contracts. But if—

Mr. ROGERS. No, he did. He went through a litany of things. I am interested in why this is inherently Governmental, though.

Mr. GAGE. Well, it is, because it is part of an integrated National security—and it is not just the screening and the baggage checks, the BDOs, for instance, the people who walk the—I mean, there is a lot more being done there that you just can't—how do you coordinate that in 400 airports, 450 airports if you have all these private companies? You can't do screening operations in one airport different than in another.

Mr. ROGERS. But my understanding, and I may be in error, my understanding is all these SPP participants are under the supervision of TSA.

Mr. GAGE. That is true. But when there is 16, that is one thing. When there is hundreds, I think that is why Pistole is saying can't do it.

Mr. ROGERS. Okay. Mr. VanLoh, one of the things that Mr. Pistole pushed back on me, because as you know, I am a proponent of more of this privatization, one of the things he pushed back with me was to say, listen, there is not that much of a demand. We only had three airports ask, and we gave one of them the green light.

So what do you say to that? Why are more airports not requesting to move in that direction?

Mr. VANLOH. More airports are, I get that every week from fellow airport directors all around the country. There are about 400 of us in the United States that run airports of any size. Early on in the program, there was word out that if you privatized your screening and something happened, and somebody maybe got a weapon through and an aircraft went down, your airport would be sued out of existence. That scared a lot of cities away from this program. Well, that was false. That is not the case. Lately, a lot of airports were concerned about TSA's oversight going forward if they wanted to elect out. So there are, in fact, many airports that want to do this today.

Mr. ROGERS. You mentioned in your opening statement the cumbersomeness of the oversight that exists. One of the things that you would like to see is some relief on that front. I have heard criticisms that at these airports where we have these SPP programs, there are too many TSA folks overseeing. What has been your experience? What is the ratio of TSA personnel to your private personnel per airport?

Mr. VANLOH. Mr. Chairman, that is information that I am not privy to, but I can guess that we have approximately 500 screeners in Kansas City, and we have 50 TSA employees.

Mr. ROGERS. For what?

Mr. VANLOH. I am not sure, I am not told.

Mr. ROGERS. My time has expired, but I thank the gentleman. Mr. Cravaack. Mr. Richmond has joined us, you are recognized for 5 minutes.

Mr. RICHMOND. I will start with Mr. Amitay. This is not directly an SPP, but I think it is analogous, and I would like to hear your thoughts on it. Last year, well, in 2010, GAO released a report pointing to significant challenges across DHS contracting practices with FPS contract guardsmen such as the lack of training and decentralized operations. In one case in Detroit, a private security guard brought in a backpack with an explosive in it and left in it in storage for 2 weeks. Will we face the same challenges with SPP as we do with FPS?

Mr. AMITAY. That was an individual incident. I would just comment that also last year, 45 TSA employees at Honolulu airport were either fired or suspended because of a massive security breach that went from the screener level all the way up to the airport's Federal security director level. They are all implicated, fired, or suspended. So pointing to examples of individual instances

where a security breach happened, I don't think that is inherently Governmental or inherently private.

Mr. RICHMOND. I think you bring up a good point that all of them were fired. Do you know the company that the employees worked for in Detroit, that company is still on the job because it is hard for us to terminate a company once they are working with us, no matter what we find?

Mr. AMITAY. Sure. As the GAO testified last year, FPS, I think they took action against six or seven employees of the company involved, they were fired, and FPS and GAO both thought that that was sufficient punishment.

Mr. RICHMOND. But we can't have zero tolerance with the company. See, part of what I am asking is, it is easy to dismiss and get rid of the employee, but if we find that it is a company that just lacks our confidence and through examples, we don't have much we can do about it.

Let me ask you another question because I hear it thrown out all the time that private-sector employees are much more customer-friendly. Who does that survey and who—how do we come up with that? Because I will tell you, as someone who flies through airports and travels through the Capitol and a bunch of other places, I don't necessarily find that to be the case. So I am just wondering what authority determined that?

Mr. AMITAY. As Mr. VanLoh mentioned, J.D. Powers, they do an annual survey of performance at airports, including customer satisfaction and the private screening company at the Kansas City Airport won the J.D. Powers' award, I think last 3 out of 4 years for medium-sized airports. I think also in the 2007 study commissioned by TSA with Catapult Consultants, they also determined that customer service was higher at SPP airports than at non-SPP airports.

Mr. RICHMOND. Well, I would just tell you as a person who frequents Federal buildings that have private security and airports that are TSA, being a young African-American male, I see no difference in either. You have your good actors and your bad actors, and I would hate for us to lump anybody in. I think it goes against the morale.

Mr. Gage, I will ask you a question about that. When we talk about our Federal employees and my colleagues on the other side of the aisle, some on my side of aisle, were pushing for consistent pay freezes for Federal employees, and at the same time, we consistently look to privatize and get rid of as many Federal workers as we can. How does that affect the morale in TSA?

Mr. GAGE. It is not good. I am really surprised that the morale in TSA is as high as it is. People like the job, they really have a dedication, and I think that comes from being a public employee. I think TSA really does a nice job of getting some allegiance of the employees of sticking together and realize the importance of their job. So this idea that it that the private sector always does it better, I don't think so. There are many functions in Government, Social Security, for instance, or the VA where I think the Government employees simply, we do it better. I think TSA is an example.

Again, I want to emphasize, running a system that big, 450 airports is tough enough with a single—with TSA as an agency, to

have hundreds of contractors out there. Mr. Pistole, I think, says it consistently every time, that is a management nightmare and it will lead to more and more risk in our flying security.

Mr. RICHMOND. Mr. Chairman, I see that my time has expired, I yield back.

Mr. ROGERS. I thank the gentleman. The Chairman recognizes the gentleman from Minnesota, Mr. Cravaack.

Mr. CRAVAACK. Thank you, Mr. Chairman, I appreciate that. Mr. Amitay, Mr. Gates brings up a point that I hadn't really considered before regarding outsourcing of companies that may have foreign entities that own them, background checks regarding that information that may increase the costs associated with a private entity versus a public entity. How would you respond to that?

Mr. AMITAY. Well, first of all, FOCI companies, foreign-owned controlled and influenced, are already doing a lot of work for the Federal Government. Their U.S. subsidiaries are doing a lot of work. What the waiver says is that for any company that is a United States subsidiary with a parent company that is implemented a foreign ownership control or influence mitigation plan that has been proved by the defense security service of the Department of Defense prior to submission of the application. So in other words, DSS is already vetting the U.S. subs of these foreign countries, and in fact, these U.S. subs of these foreign countries are already doing a lot of classified and very important stuff for the U.S. Government and the Department of Defense, Department of Homeland Security and elsewhere.

Mr. CRAVAACK. Okay, thank you for the clarification. Mr. Gage, along with—Administrator Pistole brought up another point that I wanted to verify with you, in saying that it is extremely important for the TSA to maintain, it is important to maintain flexibility, and that TSA must be able to respond and adopt to modify procedures quickly, as well as be able to augment staff in certain circumstances, natural disasters, certain of capabilities. Mr. Gage also brought up not able to transfer accordingly, could you comment on that as well?

Mr. AMITAY. In terms of the ability to surge and the ability to provide extra screeners, first of all, TSA already has a National deployment force of screeners that can be transferred to any location. Second of all, as Mr. Pistole mentioned last week, surge clauses and transfer clauses, these are all things that can be incorporated into contracts with private companies. Third, right now the private companies, they have never not responded to any TSA need. So again, engaging in these hypothetical situations, I think: (A), they are covered by the National deployment force, the ability to modify the contracts, and the fact that the screening companies are partners with TSA and they will get the job done.

Mr. CRAVAACK. I don't mean to be, like, picking on you I am trying to clarify and get more information from you. Opponents of the SPP contend that training of contractors at TSOs is less than received of Federal screeners. Can you comment on that or how do you respond to that?

Mr. AMITAY. I would think it is the opposite. Right now, the training of contract screeners is at a minimum, the same as the Federal screeners. In fact, the contract companies, maybe not in

the initial training, but once they are on the job, they have programs, training programs, remedial training programs that they utilize that the Federal screeners are not part of.

For instance, at some of the private screening companies they will match their top performers with some of their lower performers, and they will provide the remedial training and mentoring services.

Mr. CRAVAACK. Okay. Mr. Gage, you testified the SPP program will cost the Government 3 to 9 percent more than the Federal workers. What are you basing this—how do you base these numbers on?

Mr. GAGE. Profits.

Mr. CRAVAACK. Profits?

Mr. GAGE. Yep. I think, too, it will require a lot more oversight from TSA management. In other words, the overhead of TSA—if all the screeners are private, to make sure there is consistency across the airports, and when you say there is 50 TSA folks at the airport with 600 private screeners, I think that would be about right. I think you—it is not that you give, TSA gives an airports a minimum qualification standard for security and let them do whatever they want from that, that is not the way National security ought to go. This is not a minimum type of operation, it is constantly to get better and better, and to be able to keep a consistent—you can't have a good airport security and another airport that does bad security, they have to be consistent.

I think TSA really has made the mark on making our airport screeners and security very consistent from airport to airport.

Mr. CRAVAACK. Can you respond to that, Mr. Amitay?

Mr. AMITAY. I agree there needs to be consistency and, in fact, the way the SPP is set up, is that the private screening company can only be used at an airport if its performance will equal or exceed that of the average for the category class of airport. It has been proven through independent evaluations, covert testing, and then the awarding of contract performance bonuses based on performance metrics that the private screening companies are exceeding beyond the TSA standards. You are right, there are good airports and there are bad airports, but for the SPP airports, they are at the middle or above.

Mr. CRAVAACK. My time has expired. I ask unanimous consent to materials I brought in for the Chairman of the Transportation Committee be submitted for the record.

Mr. ROGERS. Without objection, so ordered.*

The Chairman now recognizes my friend and colleague from New York and somebody who knows something about running big organizations, Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman. I am still stuck on this 3 to 9 percent more efficient for the TSA. Who did this study and how is it done?

Mr. GAGE. It was TSA who did the study, sir.

Mr. TURNER. Oh.

Mr. AMITAY. I might just add that the 9 percent is not a valid figure. The GAO, in a letter to Congress in March 2011, they said

*The information has been retained in committee files.

that after TSA had taken in three out of seven GAO's recommendations, TSA produced a cost comparison in 2007, that said that the SPP airports are 17 percent more costly to operate. GAO severely criticized that. They asked TSA to relook at it and to consider, I think, 10 different factors.

In 2009 then, TSA came back having only then addressed, they said they only addressed three out of the seven recommendations. They said that TSA estimated that SPP airports would cost 3 percent more to operate in 2011 than airports using Federal screeners. However, GAO noted that TSA needs to take additional action or provide additional documentation to address the remaining four limitations related to cost, and the three limitations related to performance. In addition, that didn't even take into the issue that was raised by GAO of TSA addressing the additional costs of overlapping administrative personnel at SPP airports.

Mr. TURNER. Perhaps Mr. VanLoh can help us here. Kansas City, there is an Orlin number, the TSA sends you a check for security, is that fair?

Mr. VANLOH. I never see any of the deals to companies.

Mr. TURNER. It is somewhere, I am sure. What airport is comparable in size to Kansas City?

Mr. VANLOH. We are the—I believe, we are the 32nd-largest airport in the country so perhaps Cleveland, Ohio is similar. We are a little bigger now than Cincinnati; Nashville is a little smaller than us, so we are medium-size airport in the United States.

Mr. TURNER. Any of those configured pretty much the same way?

Mr. VANLOH. No one in the world is configured like Kansas City. As a matter of fact, Chairman Mica came to Kansas City a few years ago because he couldn't believe how the airport was set up, and after he left, he became a believer on how we operate with the private screening companies.

Mr. TURNER. All right. So an apples-to-apples comparison would be pretty difficult?

Mr. VANLOH. It is.

Mr. TURNER. Wildly difficult?

Mr. VANLOH. I would say so, I believe with our current configuration, we have more screeners than most major airports do.

Mr. TURNER. The other privatized airports, perhaps a little too small.

Mr. VANLOH. San Francisco is one of them, and is many times larger than we are.

Mr. TURNER. Oh, San Francisco.

Mr. VANLOH. They were one of the original five, yes, sir.

Mr. TURNER. Perhaps San Francisco and Boston or Philadelphia, comparisons could be made?

Mr. AMITAY. The House Transportation and Infrastructure Committee did a cost comparison with LAX which is a similar-sized airport, and they found that it was 35 percent less expensive at SFO.

Mr. TURNER. That is about the number I would expect private to public. But thank you. I yield back.

Mr. ROGERS. I thank the gentlemen. I want to go back to the line of questioning I was pursuing a while ago, Mr. VanLoh. That is, the frequency, or the number of airports applying, am I interpreting your answer correctly in that you think more now are going

to apply, that some of the concerns that they had initially they discovered were unfounded?

Mr. VANLOH. Yes, Mr. Chairman, I believe that is true.

Mr. ROGERS. So give me an idea in the next year, do you think we will have five airports make application or 50?

Mr. VANLOH. I think those are both extremes. I would estimate you could have 20 airports that would be immediately come—to the process.

Mr. ROGERS. That is interesting. That does—Mr. Pistole has been making a good point that there is no big clamor to come.

One question I had a few minutes ago, in talking about the minimum standards that you have to meet as far as pay and training, does TSA at an SPP airport, does TSA tell you the minimum number of personnel you must have as well? That is for either one of you two gentleman.

Mr. AMITAY. No, TSA does not do that with the SPP reports. Essentially, there is, for lack of better terminology, an overall hour security requirement, and then the SPP company then staffs it sufficiently, being able to use part-time, full-time, whereas the TSA model is a specific amount of FTEs and part-time employees that are assigned to each airport under a screening allocation model.

Mr. ROGERS. I had asked Mr. VanLoh earlier about the number of personnel that are overseeing the SPP airports. Have you observed the same ratio that he has talked about, because I heard it from other people too that there are large numbers of TSA personnel overseeing these contractors. Have you seen that ratio as well that he described?

Mr. AMITAY. Well, that is something—I talked with some of the SPP companies, and they have raised that, they think it is an issue at the airport, but more importantly, the GAO has raised that as an issue.

Mr. ROGERS. What does the GAO say they are doing?

Mr. AMITAY. Well, the GAO says that TSA needs to include the impact of potential overlapping of administrative staff on the costs of SPP airports. So they identified this issue of overlapping staff, so did the TSA contractor who did a comparison. But as of yet, TSA really has not really addressed—and we are talking administrative staff, we are not talking security staff. We are talking administrative staff that is overlapping.

Mr. ROGERS. Mr. Gage, earlier you made the comment that you thought that 50 overseeing 600 was a sound number. Tell me why you think—is there a methodology to that?

Mr. GAGE. No, no, I think that it is very important that there be strong oversight over the contractors, and 50 in an airport of 600, or 600 screeners, doesn't, to me, sound outrageous, but I think the key thing here is not cost, it is consistency, and it is security, and that there has to be very strong oversight by TSA to make sure that procedures are followed, that the SOPs are rigorously enforced and that is just the nature of the business.

Mr. ROGERS. Is it your opinion, based on any objective evidence, that any of the SPP airports have provided a lower quality of screening?

Mr. GAGE. No.

Mr. ROGERS. Going back to this issue about the number of employees, what I—I hear a lot from folks that know that I am on this committee, whenever we are talking about over at TSA, they start complaining about the number of TSA agents standing around when they go through screenings. It just drives them nuts, that they are standing in line and they see all these people standing around apparently doing nothing.

I know some of those are BDOs, and they are actually paying attention to some things, but there are folks who stand around. That has been one of my concerns is we aren't doing more to make at least the appearance of efficiencies. Is it your experience that is one way you can make these ventures profitable is to right-size the staffing as opposed to having a bloated staffing. I ask Mr. Amitay.

Mr. AMITAY. Yeah, that is exactly right. One advantage of the private sector is that with their scheduling tools, they are able to anticipate when there will be high demand and when there will be low demand. They are able then to adeptly match the screening workforce needed to the needs of the airport at the time. That is why there are shorter wait lines at SPP airports, and there is greater customer satisfaction, but the flexibility that the private companies have in terms of scheduling, it is a huge cost-saver, yet the security is not diminished at all because, as you mentioned, you don't get these occasions where there might be a dozen screeners standing around when obviously the requirements at that time do not require a dozen screeners.

Mr. ROGERS. Mr. VanLoh, in your testimony, you stated TSA never asked Kansas City for its input on the contractor's prior performance during contract award decision-making process. If Kansas City had been given the opportunity to provide its input to TSA, what would it have been?

Mr. VANLOH. I would have explained much that I have explained to the committee today. We are winning passenger service awards, very few complaints, very low turnover. I think it is 2 percent, is our turnover rate right now. It is not broken, and let's keep going, it is working well.

Mr. ROGERS. Last, Mr. Gage, I wanted to raise an issue, you made the point that while TSA's morale has been questioned, that you are surprised it is as good as it is. Mr. Pistole had written to this committee saying data from employee surveys has repeatedly shown TSA ranking poorly in terms of employee morale and engagement. Employee engagement and security are interrelated and therefore, directly affect our capacity to carry out our mission. We must ensure TSOs are motivated and engaged as is their judgement, and discretionary efforts are critical to achieving a superior security. We must continue to do better, and by our employees, ensure we continue to accomplish this mission.

What would you recommend that we do to deal with this TSA morale problem?

Mr. GAGE. A lot of the morale problem is pay, they are under a pay system that nobody understands, nobody likes, they are not under the GS system which is fair and people do understand it. I think the pay issue, Congressman, is really a very large one with our members.

Mr. ROGERS. Thank you. But I would make the point, private screeners are paid the same thing as these folks and we don't have the same morale problems. I want to recognize my friend and colleague from Texas, the Ranking Member who has joined us.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I thank the witnesses for their patience. I was called to duty in my other committee, which I was introducing amendments and so I was delayed in coming here. This is an important hearing, and I truly wanted to have the opportunity to pose a number of questions. Let me quickly go to Mr. VanLoh. What size in the schedule of airports where they have top 10, what number are you in the Nation?

Mr. VANLOH. I believe we are thirty-third in the Nation, ma'am.

Ms. JACKSON LEE. Have you been privatized since 9/11?

Mr. VANLOH. That is correct.

Ms. JACKSON LEE. Were you privatized before 9/11?

Mr. VANLOH. Yes, all our airports were.

Ms. JACKSON LEE. So there has not been any great altering of your structure. So you have employees that have been there for 10 years?

Mr. VANLOH. We could have a few that are close to 10-year employees, yes.

Ms. JACKSON LEE. Anybody longer than that?

Mr. VANLOH. Not to my knowledge.

Ms. JACKSON LEE. Are you given oversight by the Transportation Security Administration?

Mr. VANLOH. I personally, my organization, the City of Kansas City has no oversight whatsoever.

Ms. JACKSON LEE. Are you in compliance with the Transportation Security Administration requirements?

Mr. VANLOH. Absolutely.

Ms. JACKSON LEE. So you are doing pat-downs and private screening?

Mr. VANLOH. Yes, ma'am.

Ms. JACKSON LEE. Do you handle individuals who are in a wheelchair or who may have an artificial limb in any way differently from the way the TSO officers do?

Mr. VANLOH. No.

Ms. JACKSON LEE. So at the time when it was required to pat down children, you were patting down children?

Mr. VANLOH. Yes, they were.

Ms. JACKSON LEE. As we look forward to some overview and rearrangement of some of these issues, you will then follow the TSO, TSA mandate?

Mr. VANLOH. Immediately, yes, ma'am.

Ms. JACKSON LEE. So the question of whether or not you have happier passengers, it may be that you live in a happy community, it may be that the sun shines on the day they come in, it may be a lot of variables; is that correct?

Mr. VANLOH. I am not the census taker, but it could be very well, yes, ma'am.

Ms. JACKSON LEE. Let me congratulate you for it. The fact you have it, I am glad that you do have it. I believe that those, even though I question the change in language that says you shall, I have no quarrel with the existing airport private screener struc-

ture. I have a quarrel with whether or not we privatize the entire Nation.

Let me go to Mr. Gage, and say to you, Mr. Gage, what can we do—have you had an opportunity, or do you have some of your leadership, have had the opportunity, you fly, of course, to view some of other front-line agents, TSO officers on the front lines? What is your general perception?

Mr. GAGE. I am very impressed with them. Many of them have law enforcement backgrounds, military backgrounds, they are career law enforcement people. I think they are paid less than the rest of the Federal Government, border patrol agents, for instance, ICE agents, other Federal law enforcement. I think that is a big problem. I have gotten to know a lot, hundreds and hundreds of them. We have almost 14,000 members, and they are extremely dedicated people, and the turnover—as the turnover rate slowed, and you have more and more experience, they are really top-notch employees who know their job and can react to virtually anything.

Ms. JACKSON LEE. Let me emphasize what you just said. In my visiting airports, as the Chairwoman and now Ranking Member for a number of years on this committee, I have seen an enormous amount of professionalism, but you are absolutely right, they are former police or law enforcement individuals, they are certainly former military with a great sense of pride and they are just Americans who desire to work hard. I want to join my Chairman and say that we should always be looking to improve the efficiency and effectiveness of those Federal employees paid by Federal dollars that serve the American public, but Mr. Gage, and then I will ask Mr. Amitay, would you want to have the TSO officers give out lollipops and paint a smile on their face, or would you rather ensure that we have the kind of security professional treating everybody with dignity that is necessary?

Mr. Gage, do you think that the work that we do, and I say “we” in dealing with Homeland Security sometimes is not a friendly word. Let me say personally, I have experienced sometimes the strictness of the security check, but is it not, from your perspective, extremely important to have that kind of oversight as we utilize the Nation’s transportation system?

Mr. GAGE. It is serious business, it has to be done professionally, it can’t be sloppy, the people have to pay attention every minute in their jobs. I think that we have come a long way in airport security since the days before 9/11. Really, when I look at this workforce, I am proud of it. I think the Nation should be proud of it and if it is not broke, don’t fix it.

Ms. JACKSON LEE. What I would say in being honest in my assessment in saying that I want to work with the Chairman, would you welcome increased professional training, increased or a review of the pay scale, and what I have been advocating for is professional development where the TSO officers would have the opportunity for promotion, promotion throughout the system. Would you welcome that?

Mr. GAGE. They really have to have the promotional potential into other Federal agencies too, even within the Department of Homeland Security. That is important when you are any worker that you are looking to better yourself and to do a good job so that

you could be picked up as an ICE agent or another law enforcement officer somewhere else in the Federal Government. Right now those connections don't exist, and I am very concerned about it and we are working with Homeland Security to provide more promotional opportunity for TSOs.

Ms. JACKSON LEE. Let me pointedly ask you, the TSO officers could stand the enhanced professional development in training. Do you see that as an opportunity?

Mr. GAGE. I do. It is a constant training situation, as techniques evolve, almost sometimes weekly, where it seems to be getting better and better, smoother and smoother, and more and more professional.

Ms. JACKSON LEE. As well, you would argue, I don't want to say that you would argue—but that we should look seriously at the pay structure?

Mr. GAGE. No question, they lag way behind in pay. Someone dreamed up the pay structure they are in. It hasn't worked, it doesn't work. They need a consistent pay scale such as the general schedule.

Ms. JACKSON LEE. If I could conclude, Mr. Chairman, with Mr. Amitay. Are you suggesting, Mr. Amitay, and I have no quarrel with small contractors and business empowerment, and small businesses, and large businesses, but are you suggesting that something as important and serious as the massive securing of our airports should go back to 9/11, which is when the airports, through the airlines, were, in essence, secured by private companies, which, if not contributed to, were there on the day that those individuals traveled on 9/11? Is that what you are here to encourage us to do?

Mr. AMITAY. I think to make any comparisons of the current level of screening and security at airports now, using private screeners, to compare that to pre-9/11 when private screening essentially was regulated by the FAA, who then delegated the airlines to take care of it. To say that that is the same, that that system then, which was only one part of the reason for 9/11, box cutters were allowed onto planes.

Ms. JACKSON LEE. You are correct that it was one part, you are correct. Go ahead.

Mr. AMITAY. So that part now has been radically changed and radically improved. To say that the private sector does not have the ability to provide enhanced screening under TSA, strict TSA standards and requirements. In fact, the level—in order for a private company even to be able to provide screening at an airport, the level of screening services and protection provided by the private screening company must be equal to or greater than the level that would be provided at the airports by Federal screeners. That is the law.

Ms. JACKSON LEE. You didn't answer my question. The question is are you calling for the complete privatization of all airports in the country?

Mr. AMITAY. What recently—right now, airports have the option, if they so desire, to opt out of using Federal screeners.

Ms. JACKSON LEE. Are you calling for the privatization of all airports, yes or no?

Mr. AMITAY. Am I personally calling for it? No.

Ms. JACKSON LEE. Is your organization calling for it?

Mr. AMITAY. No, we are calling for the law to be abided by.

Ms. JACKSON LEE. Thank you so very much. I agree with you, we should not. Thank you, Mr. Chairman.

Mr. ROGERS. The Chair now recognizes the gentleman from Minnesota, Mr. Cravaack.

Mr. CRAVAACK. Thank you, Mr. Chairman. Mr. VanLoh, it has been noted that a former Federal security director of Kansas City was involved in a proposal team for one of the contract contenders; is that correct?

Mr. VANLOH. Yes.

Mr. CRAVAACK. Further, the committee has learned that he may have contacted city officials as much as 4 months in advance regarding an award, would that be correct?

Mr. VANLOH. Yes, it is.

Mr. CRAVAACK. Now, Administrator Pistole in the last hearing said that he was apparently unaware of this FSD's actions, others in the TSA, however, did know about the employment of one of the contract contenders and his efforts to contact city officials. In your opinion, would such actions raise concern as a director of an airport or any other airport?

Mr. VANLOH. Well, they certainly did at the time, when he contacted my Mayor Pro Tem of Kansas City and told him his company was going to be taking over screening at Kansas City International 6 months before the award was made, I was very concerned.

Mr. CRAVAACK. Okay. That raises an eyebrow or two, doesn't it?

Mr. VANLOH. Yes, sir.

Mr. CRAVAACK. With regard to a selection process of an SPP provider for Kansas City, were you or any other Kansas City officials ever contacted for your opinions solicited prior to the—

Mr. VANLOH. Never.

Mr. CRAVAACK. That is another eyebrow. How would you view the selection of the security provider for Kansas City who had no prior SPP or airport screening experience? How would you view that selection?

Mr. VANLOH. I was very concerned.

Mr. CRAVAACK. Okay, that is something else I think we should investigate. If you don't mind, I just have a couple more. Opponents of SPP contend that the performance by contractors is, at best, the same as Federal screeners. How do you respond, Mr. Amitay?

Mr. AMITAY. As I have stated before, I would say in order for private screeners to be used, the level of screening services protection must be equal to or greater, in covert testing, independent evaluations, and the awarding of contract performance bonuses based on performance metrics have shown that it actually is equal to or greater.

Mr. CRAVAACK. Mr. Gage, do you believe that the private contractors are less qualified and less trained?

Mr. GAGE. I think they probably are, but I think that is really not the issue. It is hard to look at one airport and say private or public in that airport. The big argument and the logic for public is the whole-country system, that you have to be running this to-

gether in an integrated way and with private contractors, perhaps hundreds of them. That is impossible. I think Pistole and TSA have consistently said that.

Mr. CRAVAACK. Isn't it true the SPC TSOs must implement the protocols and meet the same stringent requirements for all TSA?

Mr. GAGE. I would hope so, yes. But—

Mr. CRAVAACK. All right. I thank you. In going back pre-, post-9/11, I was a pilot that flew pre- and post-9/11. There is a dramatic difference between the type of security because it did go out to the lowest bidder back then. Now it does not go out to the lowest bidder, but it goes out to—what is the word I am looking for, best value. So there is a huge difference between a lot of times you go through the security, and the person couldn't even speak English in a lot of cases.

So there is a huge difference, and who is in charge, being the TSA has made a huge, huge difference in regards to that. So opponents of Mr. Amitay and opponents of the SPP include some Members of the committee that have asserted that expansion of this program is unnecessary risk and tantamount to returning to 9/11. I just want to make sure that it is clear there is a huge difference because of who is in charge now in overseeing TSA agents. Mr. Gage, TSA agents, like in Minneapolis, I have got to give a shout out for those guys. They are great, they truly are, they a fantastic group, extremely professional. They try to get you through the line as quickly as possible.

So there is a fine balance that can be reached here and I hope we all can reach that balance and have the most efficient, effective, and most secure system in the world. With that, I yield back.

Mr. ROGERS. Thank the gentleman, thank our witnesses. Again, appreciate you being here. This has been a very interesting hearing for me. For a couple of main reasons. One is the information by Mr. VanLoh that more people will be making applications, I will be watching for that. But the other thing is this staffing level issue, that has been very interesting to me to hear about these numbers of people who are assigned by TSA to oversee the private contractors, and then the bloated numbers that are being used in the airports the TSA screens with as opposed to private.

So I am going to pursue a hearing or maybe two to maybe look at that. Now that we have got a model of some airports that have used private contractors to compare these staffing levels to see what is the right size, and also to try to figure out what in the world people are doing that are overseeing the contracts because I have yet to have anybody tell me what they are doing. It is my hope that maybe if we can right-size some of the staffing levels in the TSA airports, maybe we can pay a little better with the money we can save. But with this country in the financial straits it is in, it is pretty hard to see waste and not do something about it. You all have been very helpful.

Ms. JACKSON LEE. May I inquire of the Chair? Mr. Chairman, I would like for us to work together on it. Obviously I have a very strong position about privatization, but there is a provision in place that allows it. I raise the point and would like to join you on is the professional development, the question of structuring TSA for its most enhanced performance, and to also recognize that when you

do privatize, the airports pay nothing, we take taxpayer dollars to pay private security companies. That, in and of itself, may be an expense and become an expense when you expand the privatization.

So I think we can find some common ground on how we professionalize, train, look at the pay scale of the TSO officers and get them the way my good friend, Mr. Cravaack, has indicated in the airport Minnesota, I believe, that he commented. I will say that in the many airports that I traveled, Houston, Texas, many in Alabama, Boston, New York and other places have found, if not a group, individually competent persons that are serving our country.

So I would like to work with you on that and maybe we will find common ground. I yield back to the Chairman.

Mr. ROGERS. Thank the gentlelady. Thank the witnesses and this hearing is finally adjourned, 2 weeks later.

[Whereupon, at 2:14 p.m., the subcommittee was adjourned.]

