

**TSA'S SPOT PROGRAM AND INITIAL LESSONS
FROM THE LAX SHOOTING**

HEARING
BEFORE THE
**SUBCOMMITTEE ON
TRANSPORTATION SECURITY**
OF THE
COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

NOVEMBER 14, 2013

Serial No. 113-43

Printed for the use of the Committee on Homeland Security



Available via the World Wide Web: <http://www.gpo.gov/fdsys/>

U.S. GOVERNMENT PRINTING OFFICE

87-373 PDF

WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON HOMELAND SECURITY

MICHAEL T. MCCAUL, Texas, *Chairman*

LAMAR SMITH, Texas	BENNIE G. THOMPSON, Mississippi
PETER T. KING, New York	LORETTA SANCHEZ, California
MIKE ROGERS, Alabama	SHEILA JACKSON LEE, Texas
PAUL C. BROUN, Georgia	YVETTE D. CLARKE, New York
CANDICE S. MILLER, Michigan, <i>Vice Chair</i>	BRIAN HIGGINS, New York
PATRICK MEEHAN, Pennsylvania	CEDRIC L. RICHMOND, Louisiana
JEFF DUNCAN, South Carolina	WILLIAM R. KEATING, Massachusetts
TOM MARINO, Pennsylvania	RON BARBER, Arizona
JASON CHAFFETZ, Utah	DONALD M. PAYNE, JR., New Jersey
STEVEN M. PALAZZO, Mississippi	BETO O'ROURKE, Texas
LOU BARLETTA, Pennsylvania	TULSI GABBARD, Hawaii
CHRIS STEWART, Utah	FILEMON VELA, Texas
RICHARD HUDSON, North Carolina	STEVEN A. HORSFORD, Nevada
STEVE DAINES, Montana	ERIC SWALWELL, California
SUSAN W. BROOKS, Indiana	
SCOTT PERRY, Pennsylvania	
MARK SANFORD, South Carolina	

GREG HILL, *Chief of Staff*

MICHAEL GEFFROY, *Deputy Chief of Staff/Chief Counsel*

MICHAEL S. TWINCHEK, *Chief Clerk*

I. LANIER AVANT, *Minority Staff Director*

SUBCOMMITTEE ON TRANSPORTATION SECURITY

RICHARD HUDSON, North Carolina, *Chairman*

MIKE ROGERS, Alabama, <i>Vice Chair</i>	CEDRIC L. RICHMOND, Louisiana
CANDICE S. MILLER, Michigan	SHEILA JACKSON LEE, Texas
SUSAN W. BROOKS, Indiana	ERIC SWALWELL, California
MARK SANFORD, South Carolina	BENNIE G. THOMPSON, Mississippi (<i>ex officio</i>)
MICHAEL T. MCCAUL, Texas (<i>ex officio</i>)	

AMANDA PARIKH, *Subcommittee Staff Director*

DENNIS TERRY, *Subcommittee Clerk*

BRIAN TURBYFILL, *Minority Subcommittee Staff Director*

CONTENTS

	Page
STATEMENTS	
The Honorable Richard Hudson, a Representative in Congress From the State of North Carolina, and Chairman, Subcommittee on Transportation Security:	
Oral Statement	1
Prepared Statement	3
The Honorable Cedric L. Richmond, a Representative in Congress From the State of Louisiana, and Ranking Member, Subcommittee on Transportation Security:	
Oral Statement	4
Prepared Statement	11
The Honorable Michael T. McCaul, a Representative in Congress From the State of Texas, and Chairman, Committee on Homeland Security:	
Oral Statement	12
Prepared Statement	14
The Honorable Bennie G. Thompson, a Representative in Congress From the State of Mississippi, and Ranking Member, Committee on Homeland Security:	
Oral Statement	15
Prepared Statement	17
The Honorable Jeff Duncan, a Representative in Congress From the State of South Carolina:	
Prepared Statement	18
The Honorable Maxine Waters, a Representative in Congress From the State of California:	
Oral Statement	4
WITNESSES	
Mr. John S. Pistole, Administrator, Transportation Security Administration, U.S. Department of Homeland Security:	
Oral Statement	19
Prepared Statement	21
Mr. Daniel M. Gerstein, Deputy Under Secretary, Science and Technology Directorate, U.S. Department of Homeland Security:	
Oral Statement	25
Prepared Statement	27
Mr. Stephen M. Lord, Managing Director, Forensic Audits and Investigative Service, Government Accountability Office:	
Oral Statement	29
Prepared Statement	30
Mr. Charles K. Edwards, Deputy Inspector General, Office of Inspector General, U.S. Department of Homeland Security:	
Oral Statement	36
Prepared Statement	37
FOR THE RECORD	
The Honorable Maxine Waters, a Representative in Congress From the State of California:	
Letter From the American Alliance of Airport Police Officers	5

IV

	Page
Letter From the Transportation Security Administration, U.S. Department of Homeland Security	7

TSA'S SPOT PROGRAM AND INITIAL LESSONS FROM THE LAX SHOOTING

Thursday, November 14, 2013

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

The subcommittee met, pursuant to call, at 9:39 a.m., in Room 311, Cannon House Office Building, Hon. Richard Hudson [Chairman of the subcommittee] presiding.

Present: Representatives Hudson, McCaul, Brooks, Sanford, Richmond, Thompson, Jackson Lee, and Swalwell.

Also present: Representatives Horsford, Payne, and Waters.

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

The subcommittee is meeting today to hear testimony on TSA's behavior detection activities and initial lessons learned from the tragic shooting that occurred at Los Angeles International Airport on Friday, November 1.

I will now recognize myself for an opening statement.

I would like to welcome everyone to this hearing and thank our witnesses for taking the time out of their schedules to be with us here today.

Two weeks ago, a lone gunman opened fire at Los Angeles International Airport, tragically killing one transportation security officer, Gerardo Hernandez, and wounding two other TSOs, along with a high school teacher. On behalf of the committee, our sincerest condolences go out to the victims and their families.

Transportation security officers take great personal risk every day in order to secure our Nation's aviation system and protect us against terrorism, and we thank them for their service.

Before I continue with my opening remarks, I would like to ask everyone to join me in a moment of silence to honor the life of Officer Gerardo Hernandez.

[Moment of silence.]

Mr. HUDSON. Thank you.

In light of the recent tragedy that occurred at LAX, it is critical, now more than ever, for TSA to work with stakeholders to conduct a comprehensive review of security programs to ensure that resources are being used in the most effective and efficient manner and that coordination and communication with local law enforcement is seamless.

The area prior to screening at an airport is a "soft target" where masses of people gather, much like a shopping mall or train sta-

tion. This leaves airports open to virtually anyone who wants to enter, including someone who may have malicious intent. While it is the airport's responsibility to provide security and law enforcement, we all know that there are unavoidable risks of being in public spaces and incidents like this one.

What is important now is to identify whether there were unnecessary vulnerabilities that we can learn from. Did TSA and airport police have seamless communication? Are there resources that could be shifted around to create a more robust, layered security posture?

I don't expect our witnesses to have all the answers here today, but I do believe this hearing is a timely opportunity to examine one program that has been heavily criticized by both the Government Accounting Office and the DHS Office of Inspector General.

TSA's Screening of Passengers by Observation Techniques program, also known as SPOT, deploys over 3,000 behavioral detection officers in an effort to identify passengers that may pose a risk to aviation security. These TSA employees are not trained law enforcement officers. As such, they rely on State and local law enforcement to handle any situations that may arise beyond the screening of passengers and their baggage or if they think someone is acting suspiciously. The way to determine if someone is acting suspiciously, according to the Government Accountability Office, is not based on proven science.

We know the threats to aviation are real. Our enemies continue to plot against us. I think my colleagues would agree that we need layers of security; but those layers have to make sense; they can't be based on a hunch; they have to be proven.

I want to commend Administrator Pistole for his tremendous effort to transform TSA into a risk-based agency. Programs such as PreCheck are a huge step in the right direction.

But my concern with SPOT is that it doesn't necessarily address threats emanating from overseas. It may not provide the deterrence we are looking for, and I am not fully convinced it increases safety in its current form. Calling it risk-based and actually proving it being risk-based are two entirely different things.

To my knowledge, there has not been a single instance where behavioral detection officers referred someone to law enforcement officers that has been deemed a terrorist. So that is important that we measure the effectiveness of the program and find a way to do that.

The latest study conducted by the Government Accountability Office found that, first, human ability to accurately identify deceptive behavior based on behavioral indicators is the same or slightly better than chance; No. 2, that TSA has limited information to evaluate SPOT's effectiveness; and, finally, that it will be at least 3 years before TSA can report on the effectiveness of its behavior detection activities.

GAO recommends that TSA limit further future funding for behavioral detection activities until it can provide scientifically validated evidence demonstrating that behavioral indicators can be used to identify passengers who pose a threat to aviation security. I look forward to hearing Administrator Pistole's intentions to address this recommendation.

With that being said, I do see the value of using behavioral analysis to bolster aviation security, but only when we can prove that taxpayer dollars are being spent in the most effective manner possible. Perhaps reinforcing local law enforcement officers at airports who are well-equipped to detect suspicious behavior would make more sense than having 3,000 employees directly employed by the TSA. But these are questions that we should examine.

According to the Congressional Research Service, TSA's SPOT program is the only stand-alone behavior detection program within either DHS or DOJ. If this type of program worked, I suspect we might see other agencies with similar missions deploying stand-alone programs to detect suspicious behaviors, but so far we haven't.

I look forward to hearing from TSA on how it plans to address the GAO and IG recommendations, including how it plans to assess SPOT's effectiveness.

[The statement of Mr. Hudson follows:]

STATEMENT OF CHAIRMAN RICHARD HUDSON

NOVEMBER 14, 2013

Two weeks ago, a lone gunman opened fire at Los Angeles International Airport, tragically killing one Transportation Security Officer, Gerardo Hernandez, and wounding two other TSOs along with a high school teacher.

On behalf of the committee, our sincerest condolences go out to the victims and their families. Transportation Security Officers take great personal risk every day in order to secure our Nation's aviation system and protect against terrorism. We thank them for their service.

In light of the recent tragedy that occurred at LAX, it is critical, now more than ever, for TSA to work with stakeholders to conduct a comprehensive review of security programs, to ensure that resources are being used in the most effective and efficient manner, and that coordination and communication with local law enforcement is seamless.

The area prior to screening at an airport is a "soft target" where masses of people gather, much like a shopping mall or a train station. This leaves airports open to virtually anyone who wants to enter, including someone with malicious intent.

While it is the airport's responsibility to provide security and law enforcement, we all know that there are unavoidable risks of being in public spaces, and incidents like this one, albeit tragic, are not always preventable.

What is important now is to identify whether there were any unnecessary vulnerabilities that we can learn from. Did TSA and airport police have seamless communication? Are there resources that could be shifted around to create a more robust, layered security posture?

I don't expect our witnesses to have all the answers yet. But I do believe this hearing is a timely opportunity to examine one program that has been heavily criticized by both GAO and the DHS Office of Inspector General.

TSA's Screening of Passengers by Observation Techniques program, also known as SPOT, deploys over 3,000 behavior detection officers in an effort to identify passengers that may pose a risk to aviation security.

These TSA employees are not trained law enforcement officers. As such, they rely on State and local law enforcement to handle any situations that may arise beyond the screening of passengers and baggage or if they think someone is acting suspicious. And the way they determine if someone is acting suspicious, according to GAO, is not based on proven science.

We know the threats to aviation are real. Our enemies continue to plot against us. I think my colleagues would agree that we need layers of security; but those layers have to make sense; they can't be based on a hunch; they must be proven.

I want to commend Administrator Pistole for his tremendous efforts to transform TSA into a risk-based agency. Programs such as Pre-Check are a huge step in the right direction. But my concern with SPOT is that it doesn't address the threats emanating from overseas; it doesn't provide deterrence, and I'm not convinced it really makes us safer in its current form.

Calling it risk-based, and actually proving it's risk-based, are two entirely different things.

To my knowledge, there has not been a single instance where a behavior detection officer has referred someone to a law enforcement officer and that individual turned out to be a terrorist.

The latest study conducted by GAO found that:

- The human ability to accurately identify deceptive behavior based on behavioral indicators is the same or only slightly better than chance;
- TSA has limited information to evaluate SPOT's effectiveness; and
- It will be at least 3 years before TSA can report on the effectiveness of its behavior detection activities.

GAO recommends that TSA limit future funding for behavior detection activities until it can provide scientifically validated evidence demonstrating that behavioral indicators can be used to identify passengers who pose a threat to aviation security. I look forward to hearing Administrator Pistole's intentions to address this recommendation.

With that being said, I do see value in using behavior analysis to bolster aviation security, but only when we can prove that taxpayer dollars are being spent in the most effective manner possible.

Perhaps reinforcing local law enforcement officers at airports, who are well-equipped to detect suspicious behavior, makes more sense than having 3,000 employees doing behavior detection at TSA.

According to the Congressional Research Service, TSA's SPOT program is the only stand-alone behavior detection program within either DHS or DOJ. If this type of program worked, I suspect we would see agencies with similar missions developing stand-alone programs to detect suspicious behaviors. But we don't.

I look forward to hearing from TSA on how it plans to address the GAO and IG recommendations, including how it plans to assess SPOT's effectiveness.

Mr. HUDSON. With that, I now recognize the Ranking Member of the subcommittee, the gentleman from Louisiana, Mr. Richmond, for 5 minutes for his opening statement.

Mr. RICHMOND. Thank you, Mr. Chairman. Thank you for calling this meeting and the bipartisan manner in which you work.

I will yield a few minutes of my opening to the gentlelady from California, Ms. Maxine Waters, so that she can make an opening statement.

Madam Ranking Member, before you start, I need to ask unanimous consent for Maxine Waters, Loretta Sanchez, Donald Payne, and Steven Horsford of Nevada to participate in today's meeting.

Mr. HUDSON. Without objection, so ordered.

Ms. WATERS. Thank you very much.

I am very appreciative of Mr. Richmond for your allowing me to take this time to give an opening statement. I would also like to thank Chairman Michael McCaul and Ranking Member Bennie Thompson for allowing me to participate in this hearing, which will consider the initial lessons learned from the tragic LAX shooting incident, which occurred November 1 at Los Angeles International Airport in my Congressional district.

I want to begin by joining with my colleagues to honor the life and service of Gerardo Hernandez, the Transportation Security Administration officer who was killed in the line of duty during this tragic incident. I offer my deepest condolences to his family and friends.

I also honor all of the TSA officers, LAX police officers, and other first responders who risked their lives to stabilize the situation and protect the public.

LAX is the sixth-busiest airport in the world and third in the United States. LAX offers 680 daily flights to 96 American cities and additional flights to 30 foreign countries. In 2012, LAX served

more than 63 million passengers, processed more than 1.9 million tons of air cargo, and handled more than 600,000 landings and takeoffs.

The safety and security of all of the people who work in and pass LAX is of paramount importance. The LAX shooting incident raises two specific security concerns that I will highlight today. The first is the need for law enforcement officers to be stationed at passenger screening checkpoints. The second is the need for airport police to have access to airport security cameras.

Both of these issues were raised in a letter from the American Alliance of Airport Police Officers to TSA Administrator John Pistole on September 28, 2012, more than 13 months before this tragic incident occurred. The letter was signed jointly by Marshall McClain, the president of the Los Angeles Airport Peace Officers Association, and Paul Nunziato, the president of the Port Authority Police Benevolent Association. In a response dated October 12, 2012, Administrator Pistole agreed that both of these issues merited further discussion.

I hereby request that the committee include both the airport police officers' letter and Administrator Pistole's response in the record for today's hearing.

[The information follows:]

LETTER FROM THE AMERICAN ALLIANCE OF AIRPORT POLICE OFFICERS

SEPTEMBER 28, 2012.

The Honorable JOHN PISTOLE,
Administrator, Transportation Security Administration, TSA-1 Administrator, 601
South 12th Street, Arlington, VA 20598.

DEAR ADMINISTRATOR PISTOLE: Thank you again for taking time this week to visit with our group to discuss our mutual goals of airport safety and security.

As a follow-up to our discussion, please find below the five major issue areas we discussed with specific examples and proposed solutions:

TSA AND AIRPORT POLICE SCREENING POINT BREACH/INCIDENT PROTOCOL—IMMEDIATE NOTIFICATION

Issue: When security breaches and/or incidents occur in TSA screening areas, TSA agents are attempting to investigate and/or self-correct breaches, exposing the travelling public to risk, delaying investigatory actions and causing unnecessary travel disruptions.

Example: In January 2012, two pipes which resembled pipe bombs were removed from a traveler's bag at LaGuardia Airport and set aside in a common area, prompting a security scare that was not reported to airport police until 6 hours later. See http://www.nypost.com/p/news/local/queens/bomb_botch_at_lag_cNNAisT-reOrBixGKlehn1.

Proposed Solution: TSA must be required to immediately notify airport police of security breaches and/or incidents at passenger checkpoints. Standard operating procedures must be prescribed between TSA and airport police when dealing with security breaches and/or incidents at passenger and baggage checkpoints.

REAL-TIME AIRPORT POLICE ACCESS TO CLOSED CIRCUIT SECURITY CAMERAS

Issue: Most airports do not have a coordinated airport-wide closed circuit security camera system. Instead, TSA, airport management, tenants, vendors, and others own and operate camera systems without a common repository. Most importantly, there is no requirement that stakeholders provide airport police with a camera feed should a crime or incident occur. In all breaches, real-time access to video is essential to airport police containing and assessing situations. The absence of a standardization that requires that airport police must be provided real-time access to any camera system on airport property has led to unnecessary disruptions and numerous incidents when perpetrators have eluded detainment.

Example: At Newark Airport in August 2012, traces of explosives were identified on the hands of a woman at the TSA screening point. TSA did not follow protocol

and detain her for secondary screening nor did they immediately contact airport police when they realized their serious error. A half-hour after the incident when airport police were notified, TSA could not even identify which of the three screening areas within the terminal was the breach area. As a result, the terminal was shut down for approximately 3 hours, delaying travel and inconveniencing thousands of passengers. See <http://www.myfoxny.com/story/19199785/security-breach-at-new-ark-airport#ixzz22mr44BK7>.

Proposed Solution: Any entity with security cameras at Category X airports must provide a real-time feed to the airport police's primary video surveillance system. Each entity is responsible for the cost of providing the feed.

LEO PODIUM POSITIONS/SCREENING RULE—300 FEET OF SCREENING AREA

Issue: Current statute requires that a law enforcement officer (LEO) “be able to provide prompt responsiveness to problems occurring at the screening points.” The definition of “prompt” has been interpreted broadly.

Example: At large New York City area airports, an officer must respond to “problems” at screening checkpoints within 5 minutes; a feat virtually impossible if an officer is charged with patrolling the entire terminal area and is performing other police functions. We share the concern you expressed about officer responses to TSA. The implementation of a 300-foot rule would address this matter and ensure a LEO is immediately prepared to answer TSA calls.

Proposed Solution: A uniform standard should be applied to all Category X airports which would require a LEO within 300 feet of the passenger screening area.

MANDATORY SCREENING FOR ALL AIRPORT EMPLOYEES AND ARMED TSA

Issue: At various airports, prior to DHS permitting TSA to wear metal badges, all TSA employees were screened with other airport employees and passengers who enter the airport. TSA asserts that since they now wear metal badges that will set off screening alarms, they should be exempt from screening procedures. As a result, all TSA employees at LAX and any item they carry or have on their body (i.e. backpacks, purses, etc.) bypass the screening checkpoint.

Example: At LAX, all airport employees must go through the TSA screening checkpoint except TSA, armed on-duty law enforcement officers, and Federal Flight Deck Officers (who also carry weapons). This issue is of great concern considering TSA agents have the potential of bringing prohibited, dangerous, and/or illegal items with them to work. Similarly, at JFK, airport employees are permitted to enter the airport via a rudimentary metal turnstile that is located immediately off the tarmac without passing through TSA screening. Again, these airports are among the most vulnerable to terrorist attacks in this country. In addition, two TSA agents are armed at LAX. They are: Don McMullen, Assistant Federal Security Director for TSA/Law Enforcement Division at LAX and a Task Force Officer on the FBI's Joint Terrorism Task Force, and John Lingram, TSA Assistant Special Agent in Charge at LAX and a former Federal air marshal.

Proposed Solution: Policy should revert to pre-badge protocol which required TSA employees go through the TSA screening checkpoint before entering secure areas of the airport.

TSA MISSION CREEP/DEFINITIVE LEO AND TSA ROLES

Issue: TSA agents are charged with screening every passenger and bag boarding commercial aircrafts. TSA agents are not law enforcement officers and are not trained nor equipped to perform police work. Airport police officers are vetted, attend an academy, and continually receive criminal policing, hijacking, and terrorist training. They are not screeners and do not seek to perform TSA-specific duties. TSA has expanded the scope of their authority beyond screening areas to more traditional “police” work without clear lines of delineation with airport police, jeopardizing public safety, contributing to a break in chain-of-command, and delaying timely law enforcement responses. This “mission creep” threatens the security of the airport.

Example: TSA's Behavior Detection Officer (BDO) program, which is designed to detect threat behavior patterns, has received almost universal criticism for its cost, lack of effectiveness, and racial profiling claims. Our officers have become frustrated with the program as BDO's have not produced a viable terrorist threat at any of our airports, yet many police hours have been expended in dealing with BDO claims to no avail. See <http://www.nytimes.com/2012/08/12/us/racial-profiling-at-boston-airport-officials-say.html?pagewanted=all> and <http://www.gao.gov/assets/310/304510.pdf>.

Proposed Solution: TSA employees who are not trained as Federal law enforcement officers should be restricted to conducting passenger and bag screening and agents should have no jurisdiction beyond passenger and baggage screening checkpoints. A pilot program should be conducted at two or three Category X airports to test the feasibility of only airport police, who have the foundational LEO training, knowledge of the specific airport environment, and ability to make arrests, to perform behavior detection activities in order to determine the efficiency, effectiveness, and cost comparisons between airport police BDO and TSA BDO programs.

The members of the American Alliance of Airport Police Officers have a long and productive history and respected relationships with numerous Federal partners including the FBI, Customs, and airplane-based Federal Air Marshals. The key to the success of our mutual efforts is that each participant has clear definitions of responsibilities. The only Federal entity with which our officers experience constant tension is with TSA non-law enforcement operations. It is important that we address the underlying issues and adjust our interactions to serve our mutual mission of keeping airports safe.

In this vein, we hope you will thoroughly review and advance our recommendations. As we discussed, all airports are not created equally. Our airports are among the most trafficked and terrorist-targeted in the country and world. The rank-and-file officers we represent are fully committed to our mission and we seek to have a productive and more defined relationship with TSA to accomplish this goal. The implementation of these five initiatives would promote these efforts.

We look forward to your responses and to working with you, House Homeland Security Chairman Peter King, and others to address these important concerns.

Sincerely,

MR. MARSHALL MCCLAIN,
President, Los Angeles Airport Peace Officers Association.

MR. PAUL NUNZIATO,
President, Port Authority Police Benevolent Assoc. Inc.

LETTER FROM THE TRANSPORTATION SECURITY ADMINISTRATION, U.S. DEPARTMENT
OF HOMELAND SECURITY

OCTOBER 12, 2012.

MR. MARSHALL MCCLAIN,
President, Los Angeles Airport, Peace Officers Association.

DEAR MR. MCCLAIN: Thank you for your letter of September 28, 2012, co-signed by Mr. Paul Nunziato, president, Port Authority Police Benevolent Association, Inc. I appreciate that you took the time to bring to my attention concerns held by some local airport law enforcement officers regarding Transportation Security Administration (TSA) operations.

As I mentioned during our in-person meeting on September 24, 2012, I place a great deal of value on cooperation and collaboration between TSA and our law enforcement partners at all levels. One of the many lessons I learned during my 27 years in law enforcement with the Federal Bureau of Investigation (FBI) is the importance of communication between different organizations that have a shared responsibility for the safety and security of the American public. That lesson has been reinforced during my tenure as the TSA Administrator, and it is from that perspective that I am responding to your concerns and recommendations.

When Congress enacted the Aviation and Transportation Security Act (ATSA) in the aftermath of the 9/11 attacks, they assigned overall responsibility for security of the Nation's transportation systems to the newly created TSA. In addition to requiring that security screening operations for passengers be conducted directly by Federal employees of the TSA or under direct TSA oversight, ATSA also conveyed to the TSA Administrator broad responsibility and authority for security in all modes of transportation. While most TSA personnel are assigned to traditional passenger and checked baggage screening operations at commercial airports, TSA responsibilities and operations are neither limited nor restricted to these areas. Despite having overall responsibility for transportation security, the authority of the TSA Administrator to execute that responsibility is not unlimited, and in reality is shared with other Government and private-sector entities.

Within the commercial airport context, TSA shares security responsibility with airport operators, air carriers, airport assigned law enforcement personnel, U.S. Customs and Border Protection, and the FBI. Each of these entities operates under different authorities and constraints. However, despite frequently divergent interests and motivations, all these organizations share a common underlying interest

in protecting commercial aviation from acts of terrorism. I also believe that each of these organizations strongly support TSA's effort to fully implement risk-based principles in our approach to security with the goal to provide the most effective security in the most efficient way.

After reflecting on your concerns and considering the proposed solutions proffered in your letter, I believe there is sufficient common interest and agreement for us to engage in further discussions that will improve our collective ability to protect commercial aviation from acts of terrorism. The following provides my reply to your five specific proposals:

REQUIRE IMMEDIATE NOTIFICATION TO AIRPORT POLICE BY LOCAL TSA OF ALL SECURITY BREACHES AND/OR INCIDENTS AT PASSENGER CHECKPOINTS

TSA standard operating procedures require immediate notification to local law enforcement upon discovery of a deadly or dangerous item during security operations. Additionally, law enforcement notification is required whenever potential evidence of criminality is identified during TSA conducted searches of passenger and property. There are several other situations that require immediate notification to law enforcement, and I am happy to have my staff provide a more detailed explanation of current TSA criteria for immediate notification. Regarding the specific LaGuardia Airport example contained in your letter, shortly after discovery, the item in question was determined to be a non-hazardous homeopathic device by our Transportation Security Specialist Explosives (TSS-E) assigned to the airport. As occurs hundreds of times a day at airports around the Nation, TSS-E assist with quickly resolving explosives alarms and potential suspect devices identified during screening operations. This capability allows for quick resolution of nearly all alarms without the need for bomb squad response or shutting down and evacuating screening areas and directly supports the concept of providing the most effective and efficient security. At a higher level, the concern you raise really gets to the larger question of unified command during a security incident where incident response and management decisions are made based on the best information available from all entities involved in the situation. Rather than focusing narrowly on notification requirements, I would prefer discussions that get to a better understanding of how TSA and local law enforcement can operationalize a unified command approach that is more effective in responding to and mitigating the impact of security incidents.

REQUIRE REAL-TIME CCTV SYSTEMS ACCESS BE PROVIDED TO AIRPORT POLICE

In most instances, TSA does not own or operate airport CCTV systems except for those associated with access points into TSA direct leased spaces. Although local TSA officials have direct access to CCTV systems that were purchased and installed with funding provided to the airport authority by TSA, we do not have direct access to every CCTV camera installed at every airport. Even within the counter-terrorism context, questions exist about whether TSA has the authority to compel real-time CCTV access. If local law enforcement agencies lack the authority to compel private companies to provide them with real-time CCTV access, it is doubtful that the Federal Government has this authority—especially when the intended use of CCTV footage broadens into criminal investigation and away from strict counterterrorism. That being said, I do believe that this issue warrants additional discussion and that we can reach an agreement on an approach to gain cooperation from all of the operators of the various CCTV systems at an airport to grant access to local law enforcement personnel. However, lack of direct CCTV access during the Newark Liberty International Airport (EWR) incident referenced in your letter was not the reason why the terminal was shut down and evacuated for over 3 hours. In fact, the Federal Security Director (FSD) determined within 35 minutes that there was no reason to evacuate the terminal and directed that passenger screening operations continue. This determination, made by the senior TSA official with overall responsibility for aviation security at EWR, was communicated to the senior local law enforcement official on scene, airport authority, and air carriers. Despite this risk-based determination, law enforcement decided unilaterally to order the terminal evacuation and barred passengers from entering the security checkpoint. This incident again points to the need for more effective unified command and progress is being made at Newark towards that end.

IMPLEMENT A FIXED 300-FOOT PATROL PERIMETER FOR CHECKPOINT SUPPORT LAW ENFORCEMENT PERSONNEL

When TSA decided to allow local FSDs the discretion to work with local law enforcement to adopt a flexible response protocol for checkpoint security incidents, the intent was to allow local officials to determine how to structure the best approach

based on local conditions. Allowing law enforcement officers assigned to checkpoint support operations to roam beyond the checkpoint increases the visibility of these officers, security posture in other areas of the airport, and staffing flexibility. As budgets for all Federal, State, and local agencies become tighter, adopting a standard that removes flexibility may prove counter-productive to the overall security posture at large airports. However, I am willing to have my staff engage in a broader discussion on the topic of law enforcement support for checkpoint security operations to determine if a change in approach would better support unified incident command.

IMPLEMENT MANDATORY SCREENING FOR ALL AIRPORT EMPLOYEES AND ARMED TSA PERSONNEL

I do not support your suggestion, and do not feel it makes sense for several different reasons. First, the two armed TSA personnel at LAX: Assistant Federal Security Director for TSA/Law Enforcement Division (AFSD-LE) Don McMullen and TSA/AFSD-LE John Lindgren, formerly Assistant Federal Air Marshal in Charge (ASAC) of the FAMS Los Angeles field office, identified in your letter, are sworn Federal law enforcement officers with full authority to carry a firearm, which allows them to make an arrest without a warrant for any offense against the United States committed in their presence or for any felony under the laws of the United States. They are also authorized to seek and execute warrants of arrest or perform seizure of evidence. It makes little sense to adopt a policy that would treat TSA law enforcement personnel differently than other armed Federal, State, or local law enforcement officers engaged in official duties at an airport. Second, your suggestion with respect to the uniformed Transportation Security Officer (TSO) workforce is counter to implementing a risk-based approach to aviation security. These individuals are trusted to operate on the front lines executing the TSA mission at our airports and requiring them to be subject to physical screening diverts resources with little if any counterterrorism impact. Finally, as I mentioned during our meeting, TSA is not resourced to conduct 100 percent airport employee screening. Based on the experience gained through several pilot efforts mandated by Congress, TSA would require a significant increase in the number of TSOs to fully implement your proposal, which are not currently available.

CONDUCT A PILOT PROGRAM WHERE LOCAL LAW ENFORCEMENT PERSONNEL ARE TRAINED AND EXCLUSIVELY PERFORM BEHAVIOR DETECTION SCREENING

Your comment that airport police officers “have become frustrated with the program as BDOs have not produced a viable terrorist threat” indicates the need for a better understanding of the BDO program. TSA’s Behavior Detection Program currently provides a behavior awareness briefing to law enforcement entities who have regular interactions with BDOs, upon request from the law enforcement department. I am willing to explore a pilot program to assess the overall security benefits of providing law enforcement officers further training in behavior detection screening to augment TSA behavior screening operations, but I do not concur with the rest of your proposed solution or its underlying premise. As I noted above, TSA authority and jurisdiction is not limited to passenger and baggage screening locations and I have no intention to impose any such limitations. With respect to the BDO program, the vast majority of anomalous behaviors indicative of a potential elevated threat to aviation are quickly resolved by our BDO cadre through casual conversation. Across all TSA screening operations, a very small percentage of passengers are identified for more thorough screening as a result of observed behaviors, and an even smaller amount of those BDO interactions result in a request to local law enforcement for assistance. As example, of the nearly 24 million passengers screened at John F. Kennedy International Airport (JFK) over the past 12 months, only a few thousand were identified for additional screening by our BDO teams, and a marginal amount resulted in a request for law enforcement assistance. Clearly these statistics do not support the contention that many police hours are being expended in support of our BDO program. Of more important concern to me is the fact that despite averaging a low number of requests for law enforcement assistance per month resulting from the BDO program at JFK, law enforcement officers failed to respond to those requests too frequently.

I am confident that through improved communication we can reach a better understanding and clarity with respect to roles and responsibilities, and that this achievement will diminish the potential for unhealthy tension between TSA and our security partners at commercial airports. These communications are needed at both the National level as well as within each individual airport community where the shared responsibility for aviation security plays out each and every day. Because of

the multiple interests at play, these discussions need to include broader participation beyond the American Alliance of Airport Police Officers (AAAPO).

As you allude to in your letter, improved understanding and communication are important drivers towards a highly effective aviation security system. To that end, I have directed the TSA Assistant Administrators for the Law Enforcement/Federal Air Marshal Service and Security Operations to further discuss with AAAPPO and the Airport Law Enforcement Association Network (ALEAN) how to improve the level of cooperation and communication between TSA and local airport law enforcement. Based on your specific suggestions, these discussions will include improving unified command structures during incident response; improved access to CCTV systems at airports where access by law enforcement is problematic; review of policies for deployment of law enforcement resources in support of checkpoint screening operations; and, expanding current LEO behavior briefing to the appropriate additional law enforcement personnel. However, I am mindful that any proposed solution must involve other entities such as the leadership of Port Authority of New York and New Jersey Police, Los Angeles World Airways Police, American Association of Airport Executives, the Alliance for Airlines, and the individual airport operators potentially impacted by any proposed changes.

I appreciate that you took the time to share your concerns with us and hope this information is helpful. An identical letter is being sent to Mr. Paul Nunziato.

Sincerely yours,

JOHN S. PISTOLE,
Administrator.

Ms. WATERS. There are two methods by which police may provide law enforcement support for TSA's passenger screening checkpoints. The fixed-post method requires a police officer to be stationed at the passenger screening checkpoint. The flexible response method allows the police to roam the surrounding area but requires that they be able to respond to a problem at the checkpoint within a specified time period.

The airport police officers' letter explained that it is virtually impossible for an individual police officer to respond quickly to a problem at a screening checkpoint if the officer is responsible for patrolling an entire terminal area and performing other police functions. The letter recommends a uniform standard for all major airports which would require a law enforcement officer within 300 feet of the passenger screening area.

It is my understanding that LAX police officers did indeed provide both fixed-post and roaming police officers at LAX at the time this letter was written. Then last April, 6 months after Administrator Pistole agreed to discuss the issue, a decision was made to waive the requirement for fixed-post officers at LAX. In any event, there was apparently no fixed-post officer stationed at the affected LAX checkpoint when the shooting began.

The LAX's police officers' letter also raised the issue of real-time airport police access to airport security cameras. As the letter explained, most airports do not have a coordinated airport-wide security camera system. Instead, TSA airport management, airlines, and vendors own and operate their own security camera systems. There is no requirement that they provide airport police with a camera feed should an incident occur. This is certainly the case at LAX. It is my understanding—

Mr. HUDSON. The gentlelady's time has expired.

Ms. WATERS. Thank you very much.

I know that this was about the TSA SPOT program. I did not refer to it specifically because I just don't think it is viable or doable and I do believe that it is profiling. So I wanted to talk about some of the real issues that I think you could entertain.

Thank you very much, and I yield my time.
 Mr. HUDSON. I thank the gentlelady.
 The Ranking Member's time has expired.
 [The statement of Mr. Richmond follows:]

STATEMENT OF RANKING MEMBER CEDRIC L. RICHMOND

NOVEMBER 14, 2013

I want to give a special thanks to Administrator Pistole for your service and leadership in the wake of the tragic shooting at LAX on November 1.

Yet again, a committee is meeting on Capitol Hill to discuss a shooting by a lone wolf. Another in a seemingly endless series of tragic shootings that have separated husbands from wives, parents from children, and friends from colleagues. From Aurora to Newtown to the Navy Yard, it seems that every week we are back in the Capitol, a committee is holding a hearing to explore how and why a senseless act of gun violence occurred, garnering National headlines.

Rarely are there simple answers and rarely do we address the core issues that allow these events to occur time and time again. Nor do we examine all, or even more than a small sample, of the total number of incidents of gun violence that occur each day, week, and month in our Nation.

This time, we are meeting to explore the circumstances surrounding the targeted killing of a Transportation Security Officer. Gerardo Hernandez, the first TSA employee to be killed in the line of duty. But Officer Hernandez was more than that. He was, by all known accounts, a loving husband and father, loyal friend, and dedicated Federal employee. A man who, like so many other Transportation Security Officers, took pride in his job, defending our Nation from those who seek to do us harm.

Despite a constant barrage of criticism from Members of Congress, the media, and a litany of bloggers who fancy themselves security experts from behind their computer screens, Officer Hernandez and his fellow TSOs continued to do their part to secure our Nation, even during the shutdown, when political grandstanding put their paychecks in jeopardy. It is unclear whether there are any policies or procedures that can be put into place or dollars that can be spent to prevent what happened at LAX from happening again.

But in Washington, proposals for new policies will come fast and furiously. I would caution that we should guard against taking any steps prior to having a full understanding of the events that occurred at LAX and the impact policy changes would have on the Nation. Maybe there are common-sense steps that could be taken to improve coordination between local law enforcement agencies and TSA, such as ensuring they can communicate via radios during emergencies—this wasn't the case at LAX on the day of the shooting.

But even common-sense fixes have potentially unintended consequences and costs associated with them. Regarding cost, the Government Accountability Office has pointed Congress to a TSA program without scientific merit that the agency funds at over \$200 million per year. I am, of course, speaking of TSA's SPOT program and GAO's report released yesterday.

I, for one, needed no further convincing the SPOT program represents an inefficient use of taxpayer dollars. Indeed, I have proposed legislation to use the funds allocated to this program as an offset for student loans.

Hopefully, GAO's report, along with the previous work of the Department of Homeland Security Inspector General, will help other Members come to the conclusion that TSA's SPOT program is a failed experiment that no longer merits hundreds of millions of dollars in funds per year. Frankly, with resources scarce and Members looking for offsets anywhere they can find them, I cannot imagine how this program continues to garner Congressional support in the wake of GAO's report.

To that end, I would encourage Administrator Pistole to include within his review of security procedures at checkpoints an assessment of how SPOT funds could be allocated to enhance and expand the use of security technologies and procedures that have been proven effective.

Mr. HUDSON. The Chairman will now recognize the Chairman of the full committee, the gentleman from Texas, Mr. McCaul, for any statement he may have.

Mr. MCCAUL. Thank you, Chairman Hudson, for holding this important hearing.

Thank you to our witnesses for being here.

At the outset, I would like to first commend Administrator Pistole for his leadership, particularly with the positive development of the PreCheck system that you and I have talked extensively about, in terms of rolling out across the Nation. You have done an outstanding job.

In fact, finally, I think we got Southwest Airlines now to sign up, and that is going to be a huge sea change, if you will, at the airports in terms of the traveling public and being passenger-friendly while targeting the threats. I want to thank you for that.

From your time at the FBI to your years at TSA, you have been a true public servant. This committee certainly appreciates your dedication to homeland security and, importantly, aviation security, which many people forget is still very much an unfortunately viable threat to the traveling public.

Two weeks ago, a lone gunman carried out a senseless and shocking act of violence at Los Angeles International Airport, targeting transportation security officers. The individual who carried out this vicious assault took one life of our officers and wounded three others. Our thoughts and prayers are with the victims and their families during this difficult time.

What this incident demonstrates, once again, is just how vulnerable public spaces can be to those who wish to carry out such attacks. The swift response by local law enforcement is laudable. However, there are still some unanswered questions about the shooting itself.

A week after the incident took place, I was surprised to learn that the police officer assigned to patrol around the security checkpoint at LAX may not have been in the correct vicinity of the checkpoint to immediately respond when the shots were fired. To me, this is very significant. While we have since been told the officer may have, in fact, been within the required 3-minute radius of the checkpoint, this issue does raise new questions about the response protocols currently in place and how they work.

More importantly, in the chaos of evacuating the checkpoint, which no doubt saved many lives, according to the airport operator, no one at the screening checkpoint pushed the panic button that is supposed to be used in these situations to alert local authorities. A landline at the checkpoint was almost used by a TSO to communicate with police, but the phone was understandably abandoned during the evacuation because it wasn't mobile. Police responded based upon a phone call from an airline contractor rather than the TSA.

The response to the LAX shooting, by all accounts, was swift and successful. Local police, TSA personnel, and the medical personnel who responded deserve tremendous praise. Having said that, terrorists are constantly looking for vulnerabilities in our system. We must do everything we can to secure the perimeters of airports, ensure robust coordination and communication systems are in place between local law enforcement and TSA, and use the limited resources effectively at airports across the United States.

While the response from local authorities undoubtedly saved lives, the gunman had 4 unobstructed minutes—4 minutes. Four minutes in a time like this is a long time; with 150 rounds, is a very long time. It is extraordinary that more lives were not taken. It is a miracle that that didn't happen, and we thank God that didn't happen that day. But 4 unobstructed minutes to wreak havoc in one of the largest, busiest airports in the country. If his goal was to produce mass casualties rather than target TSA personnel, the outcome would have been more severe.

Several questions come to mind in light of this incident. Are emergency response times at airports adequate? Does TSA have appropriate plans and means to communicate with law enforcement in the event a checkpoint is evacuated? Fortunately, LAX had recently exercised—and I commend the administrator, John Pistole. They actually did an exercise for this type of situation just weeks before this event.

I am pleased that TSA will be undertaking a review to see what lessons can be learned from LAX, and I look forward to discussing those results. I encourage TSA to fully engage stakeholders as part of its review. Private industry obviously has a significant role to play when it comes to securing airports and airplanes from bad actors.

In addition, today's hearing is an opportunity to also examine some of the findings in GAO's most recent report on TSA's Screening Passengers by Observation Techniques program, commonly referred to as SPOT.

I had the opportunity to observe this program first-hand a few years ago, during a visit to Boston Logan Airport on the anniversary of 9/11. I am a fan of this program; don't get me wrong. I have seen it work first-hand. I have been a strong advocate for this program. However, we have had results of the GAO study that are less than favorable.

GAO recommends that TSA limit future funding for the program until an accurate study is completed that supports using behavioral indicators to identify threats to aviation. Based on TSA's own plans, it will be at least 3 years before we can begin measuring the effectiveness of SPOT.

I know TSA disagrees with GAO's findings, and I look forward to hearing that, and also argues that SPOT is risk-based, which I think is a good premise. I would like to hear TSA's explanation and information used to support this.

Frankly, I am disappointed with the findings of the report because I believe, as I said, there is value in assessing behavior in the aviation environment. There are century-old techniques and tools of law enforcement and other security organizations, including Israel—many people point to Israel as a model—that allow individuals to assess behavior, but if this program isn't working, we need to find something that will more effectively.

I am concerned that TSA will continue to so-called spin its wheels with this program instead of developing a more effective and efficient approach. I hope I am wrong on that point, but I look forward to not only discussing GAO and DHS IG's recommendations for this program but also whether there are better ways of

integrating behavior analysis into aviation security, perhaps by reinforcing local law enforcement and other alternative approaches.

I look forward to discussing the elements of TSA's review of the LAX shooting. The bottom line is we need to do all we can to protect our aviation system and to evolve our security measures, just as the threats against us are evolving.

Let me just to close by, again, to John Pistole, I admire what you are doing. It is not easy representing an agency that comes under so much scrutiny. It is sometimes the face of Homeland Security, and I think you are doing a good job making that face a better face across the country and making it more passenger-friendly and more targeted toward the terrorist.

I do believe this program—I don't believe, as some would say—I got asked on the nightly news last night, do you favor scrapping this program? I said, no, I don't. I believe detecting behavior can be so important, in terms of stopping the threat. But I do believe that it could be more effective and efficient for the American taxpayer, and I think that is what we are all here to do.

So, with that, Mr. Chairman, thank you for indulging me. I know my remarks went a little bit over. I appreciate you holding this hearing.

[The statement of Mr. McCaul follows:]

STATEMENT OF CHAIRMAN MICHAEL T. MCCAUL

NOVEMBER 14, 2013

Two weeks ago, a lone gunman carried out a senseless and shocking act of violence at Los Angeles International Airport, targeting Transportation Security Officers. The individual who carried out this vicious assault took one life and wounded three others. Our thoughts and prayers are with the victims and their families during this difficult time.

What this incident demonstrates, once again, is just how vulnerable public spaces can be to those who wish to carry out attacks.

The swift response by local law enforcement is laudable. However, there are still some unanswered questions about the shooting itself. A week after the incident took place, I was surprised to learn that the police officer assigned to patrol around this security checkpoint at LAX may not have been in the correct vicinity of the checkpoint to immediately respond when shots were fired. To me this is very significant.

While we have since been told the officer may have, in fact, been within the required 3-minute radius of the checkpoint, this issue does raise new questions about the response protocols currently in place and how they work.

More importantly, in the chaos of evacuating the checkpoint, which no doubt saved many lives, according to the airport operator, no one at the screening checkpoint pushed the panic button that is supposed to be used in these situations to alert local authorities. A landline at the checkpoint was almost used by a TSO to communicate with police, but the phone was understandably abandoned during the evacuation because it wasn't mobile. Police responded based on a phone call from an airline contractor rather than TSA.

The response to the LAX shooting, by all accounts, was swift and successful. Local police, TSA personnel, and the medical personnel who responded deserve tremendous praise.

Having said that, terrorists are constantly looking for vulnerabilities in our system. We must do everything we can to secure the perimeter of airports, ensure robust coordination and communication systems are in place between local law enforcement and TSA, and use limited resources effectively, at airports across the United States.

While the response from local authorities undoubtedly saved lives, the gunman had 4 unobstructed minutes—4 minutes in a time like this is a long time and with 150 rounds it's extraordinary more lives were not taken. He had 4 unobstructed minutes to wreak havoc in one of the largest, busiest airports in the country. If his goal was to produce mass casualties, rather than target TSA personnel, the outcome

would have been more severe. Several questions come to mind in light of this incident:

- Are emergency response times at airports adequate?
- Does TSA have appropriate plans and means to communicate with law enforcement in the event a checkpoint is evacuated?
- Fortunately, LAX had recently exercised for this type of situation just weeks before this event.

I am pleased that TSA will be undertaking a review to see what lessons can be learned from LAX, and I look forward to discussing the results of that review.

I also encourage TSA to fully engage stakeholders as part of its review. Private industry obviously has a significant role to play when it comes to securing airports and airplanes from bad actors.

In addition, today's hearing is an opportunity to examine some of the findings in GAO's most recent report on TSA's Screening Passengers by Observation Techniques Program, commonly referred to as SPOT. I had the opportunity to observe this program first-hand a few years ago, during a visit to Boston Logan Airport on the anniversary of 9/11.

However, the results of GAO's study are less-than-favorable. GAO recommends that TSA limit future funding for the program until an accurate study is completed that supports using behavioral indicators to identify threats to aviation. Based on TSA's own plans, it will be at least 3 years before we can begin measuring the effectiveness of SPOT.

I know TSA disagrees with GAO's findings, and argues that SPOT is risk-based, which I think is a good premise. I would like to hear TSA's explanation and the information used to support it.

Frankly, I am disappointed with the findings of the report because I believe there is value in assessing behavior in the aviation environment. There are centuries-old techniques and tools of law enforcement and other security organizations, including Israel, that allow individuals to assess behavior; but if this program isn't working, we need to find something that will work more effectively.

I am concerned that TSA will continue to spin its wheels with this program instead of developing a more effective and efficient approach. I hope I am wrong on that point.

I look forward to not only discussing GAO and DHS IG recommendations for this program, but also whether there are better ways of integrating behavior analysis into aviation security, perhaps by reinforcing local law enforcement, or other alternative approaches.

I also look forward to discussing the elements of TSA's review of the LAX shooting. The bottom line is we need to do all that we can to protect our aviation system, and to evolve our security measures just as the threats against us are evolving.

Mr. HUDSON. I thank the Chairman.

The Chairman now recognizes the Ranking Minority Member of the full committee, the gentleman from Mississippi, Mr. Thompson, for any statement he may have.

Mr. THOMPSON. Thank you, Mr. Chairman. Thank you for holding this hearing today.

At the outset, I would like to join my colleagues in expressing condolences to Officer Hernandez's wife, children, friends, and family, and all of the employees of the Transportation Security Administration.

Today, I will be joining Chairman McCaul, Chairman Hudson, Ranking Member Richmond, and Congresswoman Waters in introducing a resolution condemning the shooting at LAX and expressing condolences to Officer Hernandez's family. Unfortunately, it appears that the Majority leader's protocol will not afford for the resolution to be considered on the House floor.

To Administrator Pistole, please know and take back to the workforce that this committee stands with the agency in this trying time.

The shooting that took place at LAX was a tragic and senseless act of violence. All evidence points to a shooter with extreme anti-Government views who intentionally and exclusively targeted TSA

employees. These are some of the Federal officers responsible for protecting our Nation against terrorist attack. I hope this incident will result in less rhetoric about, and demonizing of, transportation security officers.

It is also my hope that TSA takes a comprehensive look at how such an incident can be prevented or further mitigated in the future. I applaud Administrator Pistole for taking the initial step of announcing that he will conduct a review of security procedures at checkpoints. I also applaud the administrator for conducting outreach to a wide variety of stakeholders and Federal partners before defining the scope of his review. This review should serve as an opportunity to examine not only TSA's partnerships and coordination with local law enforcement but also of TSA's policies, programs, and partnerships affecting checkpoint operations.

Today, in addition to discussing the initial lessons from the shootings at LAX, we will examine reports issued by the Government Accountability Office and the Department of Homeland Security's Office of Inspector General regarding TSA's Screening of Passengers by Observation Techniques program, commonly referred to as SPOT.

GAO's report pulls no punches when it comes to this behavior detection program that costs taxpayers more than \$220 million per year, recommending that Congress consider the lack of scientific evidence to support the program when making funding decisions. The Inspector General's report, released in May, concluded that TSA could not provide evidence of the cost-effectiveness of the SPOT program.

Given the limited post-sequester dollars available for transportation security activities, we do not have the luxury of spending hundreds of millions of dollars per year on programs for which TSA cannot prove the effectiveness of or scientifically validate.

Since 2007, TSA has spent nearly \$1 billion on this misguided program. Even TSA admits that it will be years before the agency may be able to display the effectiveness of the SPOT program. That means hundreds of millions more in taxpayer dollars will need to be spent just to find out whether the program is effective.

It is no secret that I have been a critic of the SPOT program since its inception and expansion prior to being validated. In June of this year, I offered an amendment on the House floor to prohibit TSA from using funds for the SPOT program. Even if I were the program's most vocal proponent, I would not be able to justify continuing to fund it following a review of the GAO and DHS IG report that will be examined today.

To be clear, I have no doubt that the men and women working on the front lines of this program, the behavior detection officers, are performing as instructed and believe in their service. But we cannot continue to fund programs with the hope that they will work. We must prioritize limited funds for programs that have been proven effective.

The SPOT program does not fit that description. You can't have a program validated without science. I have requested that validation on a number of occasions, and all reports say there is no science in it.

So I have real concerns about it. There are people who talk about other models, but you talk about countries where civil rights and civil liberties are not a part of the protocol. So you can do behavior detection in countries where civil rights and civil liberties are not part of the protocol, but in America you can't profile people without protecting their civil rights and civil liberties. So I am concerned about that.

I also just want to thank each of the witnesses for appearing before the subcommittee today. I look forward to your testimony and the responses to Members' questions.

I would also like to thank all my colleagues on the Minority side for attending this hearing. Obviously, it is of importance to a lot of us, as well as Majority Members. I look forward to the testimony.

I yield back.

[The statement of Mr. Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

NOVEMBER 14, 2013

At the outset, I would like to join my colleagues in expressing condolences to Officer Hernandez's wife, children, friends, and family and to all of the employees of the Transportation Security Administration. Today, I will be joining Chairman McCaul, Chairman Hudson, Ranking Member Richmond, and Congresswoman Waters in introducing a resolution condemning the shooting at LAX and expressing condolences to Officer Hernandez's family. Unfortunately, it appears that the Majority Leader's protocols will not afford for the resolution to be considered on the House floor.

To Administrator Pistole, please know, and take back to the workforce, that this committee stands with the agency in this trying time. The shooting that took place at LAX was a tragic and senseless act of violence. All evidence points to a shooter with extreme anti-Government views who intentionally and exclusively targeted TSA employees.

These are some of the very Federal officers responsible for protecting our Nation against a terrorist attack. I hope this incident will result in less rhetoric about, and demonizing of, Transportation Security Officers.

It is also my hope that TSA takes a comprehensive look at how such an incident can be prevented or further mitigated in the future. I applaud Administrator Pistole for taking the initial step of announcing that he will conduct a review of security procedures at checkpoints. I also applaud the administrator for conducting outreach to a wide variety of stakeholders and Federal partners before defining the scope of his review.

This review should serve as an opportunity to examine not only TSA's partnerships and coordination with local law enforcement, but also all of TSA's policies, programs, and partnerships affecting checkpoint operations.

Today, in addition to discussing the initial lessons from the shooting at LAX, we will examine reports issued by the Government Accountability Office and the Department of Homeland Security's Office of Inspector General regarding TSA's Screening of Passengers by Observation Techniques program—commonly referred to as SPOT.

GAO's report pulls no punches when it comes to this behavior detection program that costs taxpayers more than \$220 million per year, recommending that Congress consider the lack of scientific evidence to support the program when making funding decisions. The Inspector General's report, released in May, concluded that TSA could not provide evidence of the cost-effectiveness of the SPOT program.

Given the limited post-sequester dollars available for transportation security activities, we do not have the luxury of spending hundreds of millions of dollars per year on programs for which TSA cannot prove the effectiveness of, or scientifically validate.

Since 2007, TSA has spent nearly \$1 billion on this misguided program. Even TSA admits that it will be years before the agency may be able to display the effectiveness of the SPOT program.

That means hundreds of millions more in taxpayer dollars will need to be spent just to find out whether the program is effective. It is no secret that I have been a critic of the SPOT program since its inception and expansion prior to being validated.

In June of this year, I offered an amendment on the House floor to prohibit TSA from using funds for the SPOT program. Even if I were the program's most vocal proponent, I would not be able to justify continuing to fund it following a review of the GAO and DHS IG reports that will be examined today.

To be clear, I have no doubt that the men and women working on the front lines of this program, the Behavior Detection Officers, are performing as instructed and believe in their service.

But we cannot continue to fund programs with the hope that they will work. We must prioritize limited funds for programs that have been proven effective. The SPOT program does not fit that description.

Mr. HUDSON. I thank the gentleman, Mr. Thompson.

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

Before we continue, I would like to ask unanimous consent to insert a statement into the record for the gentleman from South Carolina, Mr. Duncan.

Without objection, so ordered.

[The statement of Mr. Duncan of South Carolina follows:]

STATEMENT OF HONORABLE JEFF DUNCAN

NOVEMBER 14, 2013

The senseless act of violence that occurred at Los Angeles International Airport (LAX), which resulted in the death of a TSA officer and injuries of many, is a harsh reminder of the daily threat our airports and traveling public face. The Transportation Security Administration (TSA) was created following the September 11 attacks to strengthen the security of our Nation's transportation systems.

In an effort to further enhance passenger screening, in 2007, TSA deployed the Screening of Passengers by Observation Techniques (SPOT) program. This program employs Behavior Detection Officers (BDOs) to observe, visually assess, and identify potentially high-risk passengers by analyzing their behaviors that may indicate stress, fear, or deception.

Unfortunately, while TSA insists they have added an additional layer of security at our Nation's airports, according to the Government Accountability Office (GAO) this is not the case. In their November 2013 report, which I requested, GAO states that with an absence of scientific evidence for using behavioral indicators to identify aviation security threats, the SPOT program is not completely valid. After analyzing over 400 studies, GAO found that "the human ability to accurately identify deceptive behavior based on behavioral indicators is the same as or slightly better than chance."

The GAO had also previously issued a report on TSA's SPOT program in 2010. This report found that TSA deployed the program without first validating the scientific basis behind SPOT. GAO recommended that TSA conduct a validation study to prove the program's effectiveness. While TSA did conduct a study in 2011, GAO reported that with several design limitations, methodological issues, and faulty data collection, the results of the study were hindered. To date, TSA has been unable to show whether the program has helped in catching a single terrorist.

This program costs the American taxpayer over \$200 million per year and has already spent almost \$900 million since its implementation. That's \$900 million gambled away for a program that may or may not work. While I do believe that transportation security is of the utmost importance, I think it's time that we re-evaluate this costly program to be better stewards of taxpayer dollars. This is one of the reasons I voted in favor of Ranking Member Thompson's amendment to the Department of Homeland Security Appropriations Act for 2014 to prohibit the use of funds for the program. While this amendment ultimately failed, its intent was reaffirmed when GAO's recommendation called for the Secretary of Homeland Security to direct TSA to limit future funding for this program until TSA can provide scientifically validated evidence to support the effectiveness of SPOT.

Additionally, not only has GAO examined the validity of this program, the Office of the Inspector General (OIG) of the Department of Homeland Security (DHS) issued a report in May of this year which also questioned the capabilities of SPOT.

Based on the findings of their audit, the OIG determined that "TSA cannot ensure that passengers at United States airports are screened objectively, show that the program is cost-effective, or reasonably justify the program's expansion." From this report and the GAO reports, it is obvious to me that there has an abundance of poor decision making that has cost millions of taxpayer dollars, and that is absolutely unacceptable.

Deploying this program before knowing its effectiveness and then continuing to fund a faulty program on a yearly basis is illogical and irresponsible considering our Nation is buried in \$17 trillion in debt. I hope this hearing today will bring answers as to what course of action TSA will take next and how taxpayer dollars will not be needlessly wasted.

Finally, although I believe it is important to have a witness from the OIG's office to discuss their audit's findings, I find it questionable that the Office of the Inspector General provided Mr. Edwards to testify. While we have yet to see the results of the Senate Subcommittee's investigation or the on-going review being conducted by CIGIE, the nature of the allegations against Mr. Edwards are extremely serious. Mr. Edwards should have taken unpaid administrative leave until the findings of the investigations were completed. Instead, he has become a distraction to the important work of the Inspector General's office. The role of an IG in rooting out waste, fraud, and abuse demands a permanent leader with an untarnished reputation.

Mr. HUDSON. We are pleased to have a distinguished panel of witnesses before us today on this important topic. The witnesses' full written statements will appear in the hearing record.

Our first witness, the Honorable John Pistole, has been the administrator of the Transportation Security Administration at the Department of Homeland Security since 2010. As TSA 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 for highways, railroads, ports, mass transit systems, and pipelines.

You have a big job, sir, and I commend you for the job you are doing and appreciate your being here today.

The Chairman now recognizes Mr. Pistole to testify.

STATEMENT OF JOHN S. PISTOLE, ADMINISTRATOR, TRANSPORTATION SECURITY ADMINISTRATION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. PISTOLE. Well, thank you, Chairman Hudson, Ranking Member Richmond, Ranking Member Thompson, and other distinguished Members of the committee. I appreciate the opportunity to be here today.

Let me start off by expressing my deep appreciation to you, Chairman, and other Members of the committee who have expressed condolences on behalf of Transportation Security Officer Gerardo Hernandez and his family and the two other officers who were shot and wounded on November 1 there.

There was a great outpouring on Tuesday at the memorial service that was held in Los Angeles by the city of Los Angeles, by the police, the law enforcement community pulling together and demonstrating support for Officer Hernandez's family and the two other officers and their families. So thank you for that, the expressions and condolences.

But the bottom line is there are challenging times right now for members of TSA, TSA employees, especially those at LAX and Terminal 3, who have been directly affected by this, who have lost a

well-liked and well-respected colleague, and so there is a lot of grieving going on.

But I do want to commend the actions of the officers, the TSOs, and others at the checkpoint that day for their actions in helping move passengers away from the point of danger. In fact, the two officers who were injured, the air protection officer, Tony Grigsby, and then a screening training instructor, James Speer, were actually wounded because they probably stayed too long in the checkpoint helping an elderly gentleman away from the checkpoint, and they were shot as they were leaving the checkpoint as the shooter came up onto that upper level there.

So we have had this tragic incident, and the question is, what is our response? Let me just outline, briefly, five things that we have done since November 1.

Obviously, during the shooting, I convened a crisis action team meeting by senior leadership, among senior leadership at TSA, to assess what was going on even during the lockdown after the shooting and challenged the senior leadership team to come up with recommendations, both short-term and long-term, on what can be best done to protect transportation security officers at checkpoints around the country.

We coordinated closely with airport law enforcement organizations around the country to deploy uniformed officers in and around checkpoints in a much more visible way in the hours and days following that. That is continuing.

Third, we have redeployed a number of our VIPR teams, the Visible Intermodal Protection Response teams, to airports, again, for that response to and just the notion of having additional security officers protected with this additional show of force.

Fourth, we have communicated frequently with the workforce regarding the events, because the absence of information is a concern. We have listened to their concerns, particularly at LAX, where I have visited twice now in the last 10 days, to hear their concerns and provide grief counselors, who—hundreds of TSOs have availed themselves of those services.

Then, fifth, as was mentioned last Thursday, we convened a meeting at TSA headquarters of stakeholders both from the aviation sector writ large, law enforcement agencies, representatives from 30 different agencies, including the Aviation Security Advisory Council, the ASAC, basically to listen, to hear their views on what may happen or what may be some of the solutions as we look forward. So that review is on-going, and I look forward to updating the committee and, obviously, getting input from all of the committee on possible steps that we can take.

Second, the other issue that we are here for today is on the behavior detection officer program, SPOT, as it is referred to. The context has been referred to, but let me just emphasize that.

So, over the last several years, both from this subcommittee, the full committee, and from the American people, there have been calls for TSA to use more common sense in how we go about doing things, to be less invasive—fewer pat-downs, fewer of the imaging machines that provide the graphic images. We have done those things. So that is what risk-based security is all about.

We have taken 15 steps, including TSA PreCheck, which you mentioned, Mr. Chairman; Known Crewmember for pilots and flight attendants; the announcement we made yesterday expanding the partnership with DOD to allow DOD members to go through expedited screening around the country now; 75 and older, 12 and under—all these initiatives to try to bring more common sense and less invasiveness into the process.

One of those things we also do is what we call managed inclusion. As part of that, our behavior detection officers serve a key function. Just for example, on Monday this week, we had over 80,000 passengers around the country go through expedited physical screening because of behavior detection officers observing no suspicious behaviors, so 80,000 passengers in 1 day.

The other part of this is, under RBS, risk-based security, for the last 10 days we have actually met or exceeded the goal of 25 percent of the traveling public going through expedited physical screening on any given day. So the last 10 days we have met or exceeded that goal, which we had set for the end of the year.

In closing, the GAO has done several studies recently on the BDO program. The 2010 review was very helpful to us in terms of recommending 11 different steps that we could take to strengthen and improve the program. We have implemented 10 of those. We are still working with GAO on the eleventh, but we recognize the significant work they have done. This most recent study, we do disagree with the conclusions but recognize some of the valid points.

So we can and will strengthen the program. I commit to doing that. This initiative, though, is one that looks at intent and motivation rather than a prohibited item. So that's important. This looks at that.

So defunding the program is not the answer. I would just say, if we did that, if Congress did that, what I can envision is there would be fewer passengers going through expedited screening, there would be increased pat-downs, there would be longer lines, and there would be more frustration by the traveling public.

So I would like to work with the subcommittee and the full committee to strengthen this valuable program.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Pistole follows:]

PREPARED STATEMENT OF JOHN S. PISTOLE

NOVEMBER 14, 2013

Good morning Chairman Hudson, Ranking Member Richmond, and other Members of the committee. I appreciate the opportunity to appear before you today to discuss the Transportation Security Administration's (TSA) Behavior Detection and Analysis (BDA) Program.

TSA is a high-performing counterterrorism agency with a dedicated workforce executing our mission around the clock and across the globe. To fulfill this vital mission, TSA employs a layered approach to security through state-of-the-art technologies, intelligence analysis and information sharing, behavior detection techniques, explosives detection canine teams, Federal Air Marshals, and a well-trained front-line workforce, among other assets. All of these layers are essential to securing the Nation's transportation systems and improving the experience of the nearly 1.8 million air passengers who fly each day.

While the technological equipment TSA deploys at the checkpoint is designed to detect prohibited items, the BDA program is broader in scope and is designed to detect unknown threats. Terrorists have used a variety of items to attempt to inflict harm to aircraft, including underwear and shoe bombs, liquid explosives, and toner-

cartridge bombs. Consistent across all methods of attack, however, is the malicious intent of the actor. BDOs focus on behavioral indicators, rather than items. Since we cannot always predict the form evolving threats will take, BDOs provide a crucial layer of security. Over the last several years, BDOs have demonstrated that these techniques are an effective means of identifying people engaged in deceptive and/or illegal activity, and those who harbor a fear of discovery, all consistent with behaviors that might appear in individuals planning to do harm on board an aircraft. In 2012 there were 2,116 BDO screening referrals to law enforcement, which resulted in 30 boarding denials, 79 investigations by law enforcement entities, and 183 arrests.

BEHAVIOR DETECTION AND ANALYSIS (BDA) PROGRAM

The BDA program utilizes non-invasive behavior detection techniques based on scientifically-validated behaviors to identify individuals who potentially pose a threat to the Nation's transportation network. These individuals are deemed potentially higher-risk and subjected to additional scrutiny by TSA. The program was formally established in 2006 after 3 years of operational pilot testing. Today, TSA deploys more than 3,000 full-time Behavior Detection Officers (BDOs) in the aviation and surface transportation sectors, the latter through participation in Visible Intermodal Prevention and Response (VIPR) teams in surface modes of transportation.

The BDA program identifies potentially high-risk individuals exhibiting behavior indicative of excessive fear or stress and re-routes them for additional screening by looking for a combination of individual indicators that warrant follow-up. BDO observations and referrals are not dispositive of high-risk activity, but result in additional screening, similar to an Advanced Imaging Technology (AIT) alarm needing to be resolved. BDOs are trained to identify behavior cues that have been shown through research, science, and decades of domestic and international law enforcement experience to be reliable indicators and predictors of anomalous or suspicious behavior. BDOs engage in conversation with individuals displaying anomalous behaviors, looking at possible verbal cues indicative of a high-risk passenger and refer those individuals exhibiting such behavior for additional physical screening and/or to law enforcement.

SCIENTIFIC VALIDATION

Behavior detection techniques have been an accepted practice for many years within the law enforcement, customs and border enforcement, defense, and security communities both in the United States and internationally. As a law enforcement professional with 30 years of experience, I can personally attest to the effectiveness of behavior detection principles. TSA has completed extensive studies in partnership with the Department of Homeland Security (DHS) Science and Technology Directorate (S&T) and the academic community to examine the validity of the BDA program. An S&T validation study in partnership with the American Institutes for Research (AIR) completed in 2011 represents the most thorough and rigorous analysis of a behavioral screening program completed to date. The study included over 70,000 random samples at 41 airports. Notably, the validation study found that TSA's behavior detection identifies high-risk travelers at a significantly higher rate than random screening. The study concludes that a high-risk traveler is 9 times more likely to be identified using behavioral detection versus random screening. The 2011 independent Screening of Passengers by Observation Techniques (SPOT) Validation Study Technical Advisory Committee composed of respected subject-matter experts from academia, law enforcement, and the intelligence community concurred with the study's main conclusion.¹ Without behavior detection, TSA would have had to randomly subject over 50,000 more travelers to additional invasive screening to achieve the same results as did the BDOs during the time frame of the 2-year study.

INTERNATIONAL BEHAVIOR DETECTION PARTNERSHIPS

TSA has long partnered with international counterparts to develop and strengthen behavior detection practices. In December 2011, TSA partnered with Canada, the European Civil Aviation Conference (ECAC), France, Switzerland, and the United Kingdom to create the Behavior Detection in Aviation Security Study Group (BDIAS-SG) to exchange operational and programmatic information and best practices between/among BDIAS-SG Members in order to refine domestic programs. This framework facilitates the sharing and alignment of on-going research and

¹ SPOT Validation Study Final Results: 2011 Technical Advisory Committee (TAC) Review Report, HumRRO, June 2011.

science in the field of behavior detection, with a focus on validating the effectiveness and efficiency of behavior detection across cultures and identifying an optimal approach to behavior detection in the future. It also creates international awareness concerning the use of behavior detection as an aviation security measure through the production of non-sensitive outreach materials that clearly define behavior detection. The BDIAS-SG is also creating common tools for use by members and, in the future, regional governmental organizations or possibly industry to support countries/actors with robust security structures to build anomalous behavior detection capability tailored to the relevant domestic environment. This international exchange has been instrumental to the growth and validation of TSA's BDA program and has produced a framework and materials that will assist additional interested countries to establish their own behavior detection programs.

RISK-BASED SECURITY

The BDA program is a critical part of TSA's Risk-Based Security (RBS) efforts, which moves TSA's checkpoint screening away from a "one size fits all" approach to more effective security measures that use the best available intelligence to differentiate levels of screening based on risk. As concluded in a recent RAND National Defense Research Institute report, "[T]here is current value and unrealized potential for using behavioral indicators as part of a system to detect attacks."² TSA behavior detection procedures, including observational assessments and the equally important verbal interaction with passengers, are an essential element in a dynamic, risk-based layered security system.

One key element in expanding RBS is the Managed Inclusion concept, which routes passengers into expedited screening lanes using passenger screening canine teams or sampling with explosives detection technologies to screen passengers and their belongings for explosives while BDOs assess passengers for suspicious behaviors. If the explosives detection teams do not alert on an individual and a BDO does not observe suspicious behavioral indicators, the individual may be eligible for expedited screening through a TSA PreCheck™ lane.

ZERO TOLERANCE FOR UNLAWFUL PROFILING

Racial profiling is not part of the TSA's BDA program and is not tolerated by TSA. Not only is racial profiling generally prohibited by Federal law and under Department and agency policy, but it is also an ineffective security tactic. TSA has zero tolerance for this kind of behavior and has taken several steps to reinforce the agency's nondiscrimination and anti-profiling policies with our workforce.

The Standard Operating Procedures (SOPs) and training for TSA's BDA program, in coordination with the DHS Office of Civil Rights and Liberties (CRCL), provide clear instructions to ensure that referrals for additional screening are made based on specific observed behavioral criteria without regard to nationality, race, color, ethnicity, or religious affiliation. BDOs are required to complete a report documenting specific behaviors observed for each passenger identified for additional action. BDA program analysts audit these reports regularly to ensure that BDOs are employing techniques properly, including protecting any privacy information that results from a law enforcement referral.

Additionally, BDOs are trained specifically in preventing race, ethnicity, or religious profiling, and in 2012, TSA reviewed and revised all training documents to underscore that unlawful profiling violates agency policy and anti-discrimination laws. BDOs are instructed to immediately notify management if they believe profiling has occurred. That instruction is reinforced during recurring training, shift briefs, employee counseling sessions, and other avenues. All BDOs and BDO training managers are required to take a pledge against unlawful profiling, and all TSA employees are required to take biannual DHS Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act) training that provides information to employees regarding rights and protections available under Federal antidiscrimination, whistleblower protection, and retaliation laws.

TSA expects every member of the workforce, including BDOs, to report allegations of profiling to local management or directly to the TSA Office of Civil Rights and Liberties, Ombudsman and Traveler Engagement (CRL/OTE) or Office of Inspection (OOI) without fear of retaliation. TSA also modified its complaint reporting procedures to make it easier for travelers to report allegations of racial profiling through

²Davis, P.K., Perry, W.L., Brown, R.A., Yeung, D., Roshan, P., and Voorhies, P. (2013). "Using Behavioral Indicators to Help Detect Potential Violent Acts: A Review of the Science Base". RAND Corporation, National Defense Research Institute.

TSA's website or mobile phone app. If allegations do arise, TSA takes immediate steps to investigate the issue.

In 2013, the DHS Office of Inspector General (OIG) conducted an investigation at the request of TSA into allegations that BDOs at Logan International Airport (BOS) in Boston, MA, racially profiled passengers in order to meet secondary inspection referral production quotas. In a Report of Investigation provided to TSA on August 22, 2013, DHS OIG stated there was no indication the BDOs at BOS racially profiled passengers.

GOVERNMENT ACCOUNTABILITY OFFICE (GAO) RECOMMENDATIONS

TSA appreciates input and recommendations to enhance its programs including the GAO's feedback on the BDA Program. Its recommendations have led to significant improvements in program management and deployment, including the risk-based allocation mentioned above. In addition, GAO's comments on the behavior indicator set have helped shape TSA's efforts to strengthen detection and evaluation methodologies, including the following actions:

- Condense and strengthen the behavior indicator list and optimize the weights and protocols used, which will likely result in significant changes to behavior detection procedures and include a simplified scoring and referral process.
- Explore additional performance metrics that could be used to examine overall program effectiveness, individual and combinations of indicator effectiveness, and reliability across individuals and locations.
- Incorporate more robust data collection and authentication protocols similar to those used in TSA operational tests of screening technologies in any future studies.

While TSA appreciates GAO's partnership in improving the BDA program, we are concerned that its most recent report relies heavily on academic literature regarding the detection of individuals who are lying. The report, however, fails to recognize all of the available research or that S&T, which conducted a validation study with an independent review process, relied in part upon unpublished studies not included in literature reviews. It is important to note that TSA's behavior detection approach does not attempt to specifically identify persons engaging in lying; rather, it is designed to identify individuals who may be deemed high-risk based on objective behavioral indicators. The National Research Council's (NRC) 2008 report³ cites scientific evidence that supports this method.

Based on TSA's objective to identify individuals who may be deemed high-risk based on objective behavioral indicators, TSA believes the program should continue to be funded at current levels while the improvements outlined below are implemented.

FUTURE OF THE PROGRAM

Strong program management is critical to any program and this includes performance metrics, strategic planning, and quality assurance measures. The BDA program is currently undergoing rigorous review to further improve TSA's vital behavior detection capability, which is consistent with many of the OIG recommendations made in their May 2013 report. Within 90 days of the report issuance, TSA closed half of the recommendations and is working on closing the remainder. Specifically, TSA has taken the following actions:

- *Strategic Planning and Performance Measurement.*—Finalized a strategic plan and performance measurement plan and began implementing many of the objectives in these framework documents.
- *Data Accuracy.*—Implemented controls to ensure completeness, accuracy, authorization, and validity of referral data entered into the Performance Management Information System.
- *Training.*—Implemented a plan to provide mandatory recurrent/refresher training to all BDOs and BDO instructors. In September 2013, The National Training Team Academy, which trains BDO instructors, graduated a class of 25 trainers on September 26. TSA also finalized a plan to assess BDO instructor performance in required core competencies on a regular basis.
- *Monitor and Evaluate BDO Activity.*—Developed and implemented an automated tool to help evaluate airports' use of BDO resources.
- *Employee Engagement.*—Implemented processes, including focus groups, for identifying and addressing issues raised by the workforce that may directly affect the success of the BDA program.

³National Research Council (2008). Protecting individual privacy in the struggle against terrorists: A framework for assessment. National Academies Press, Washington, DC.

TSA anticipates optimized behavior detection procedures to begin testing by the third quarter of fiscal year 2014 using robust methods similar to the operational testing conducted in support of technology acquisitions. TSA should have sufficient information on the performance of the new processes to update the National behavior detection deployment strategy within 6 months of the commencement of the tests. Additionally, TSA has established an Optimization effort in partnership with S&T and academia, industry, and other Government and community stakeholders to enhance behavior detection principles and provide the tools to quantify its effective contribution to transportation security.

CONCLUSION

The Nation continues to face evolving threats to our transportation system, and TSA's BDA Program provides a critical security capability to defend against our adversaries. TSA appreciates the work of the GAO, DHS OIG, and this committee to identify opportunities to strengthen the program as we move forward. Our on-going progress demonstrates our continuing commitment to TSA's mission of securing our Nation's transportation systems in the most effective way. Thank you for the opportunity to appear before you today. I look forward to answering your questions.

Mr. HUDSON. Thank you, Administrator Pistole.

Dr. Daniel Gerstein is the acting under secretary for science and technology at the Department of Homeland Security. Dr. Gerstein gained extensive experience in the security and defense sectors while serving in various positions in civilian government, uniform, and private industry. Before joining DHS, he served in the Office of the Secretary of Defense.

Dr. Gerstein, I have to say, I am disappointed that you failed to comply with the committee rules for not submitting a written testimony, a written statement for the record. I believe this is your first appearance as acting under secretary for S&T. I am willing to waive this requirement, in consultation with the Ranking Member, rather than barring you from giving an oral presentation here today. But, again, please know that we are making a generous exception for you, and failure to submit a written statement impedes the oversight role of this committee because it prevents our ability to prepare and plan ahead. So I just ask for your cooperation in the future with getting those written statements in, in a timely manner.

But, at this point, the Chairman does now recognize you to testify, sir. Thank you.

STATEMENT OF DANIEL M. GERSTEIN, DEPUTY UNDER SECRETARY, SCIENCE AND TECHNOLOGY DIRECTORATE, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. GERSTEIN. Well, thank you, Mr. Chairman. Sorry for that indiscretion.

Good morning, Chairman Hudson, Ranking Member Richmond, and other Members of the committee. I appreciate the opportunity to appear before you today with Administrator Pistole to discuss the collaboration between TSA and the Science and Technology Directorate. This collaboration occurs across a broad range of projects, including TSA's behavior detection and analysis capabilities.

Let me emphasize from the outset that all of our efforts are ultimately designed to support TSA in their efforts to improve security effectiveness and passenger experience with transportation screening.

During my opening remarks, I will develop three overarching themes.

First, the SPOT program is part of a layered security system and must be considered within that context. It does not exist in isolation and, therefore, must be considered in terms of its incremental contribution to improving the overall probability of detection of persons that knowingly and intentionally attempt to defeat the security process.

Relying on any single process, technology, or capability is not an acceptable strategy. This layered security system consists of several opportunities to screen passengers and verify travel documentation. Checks are done when a passenger purchases a ticket and obtains a boarding pass. Behavior detection officers and canine units check for hostile intent or threatening materials, respectively. Carry-on items and checked bags are also screened before they are allowed in the terminal area.

Past this stage, TSA has unpredictable protocols on planes, Federal air marshals, and trained flight crews to identify and mitigate any incidents or threats. The focus of all this activity is to increase the probability of detection of a person trying to defeat the security process.

Second, the underlying concepts employed in the SPOT program are based on scientific research and represent the best practices from defense, intelligence, and law enforcement organizations. These practices have become accepted based on years of experience in these fields in attempting to identify persons that should receive additional scrutiny in the screening process.

What the SPOT process does that has not been done previously is to methodically identify and assess a broad range of behavioral characteristics and provide a scoring system that adds a structure to the intuitive and highly subjective processes that many have relied on in the past.

As part of the SPOT effort in 2009, S&T, at the request of TSA, initiated a research program to assess the validity of existing screening protocols and indicators. S&T contracted with American Institutes for Research, or AIR, one of the Nation's largest non-profit behavioral research organizations, to design and execute an independent assessment. The primary finding was that the SPOT identified high-risk travelers at a significantly higher rate—on average, nine times more often—than random screening.

In considering the use of behavioral indicators, it is worth noting that a number of other governments—Australia, Canada, France, Israel, Switzerland, United Kingdom, to name a few—have developed and deployed behavior detection screening protocols. I have personally toured the facilities and received briefings on the use of behavior detection in Australia and Israel.

We do recognize that the results of the study must be considered in the context of the limitations that are described in detail in the SPOT validation report. We identified many of these limitations. Nonetheless, we believe that the sampling and measurement errors that are cited are due to limitations, and they are relatively minimal, given the study's design features that included a large sample, multiple outcomes around important population parameter estimates. S&T does agree with the primary context of the study's design limitations and recommendations for additional research.

Furthermore, additional research efforts, both laboratory and field studies, that could be conducted would include a more extensive examination of the underlying behavioral construct, an indicator optimization study, a comprehensible reliability study, and an empirical comparison of SPOT with other screening programs. Some of these efforts are on-going at TSA today, although S&T is not involved in those study efforts.

My third and final point concerns current collaboration between TSA and S&T. In this regard, our relationship has never been stronger. This can be seen through objective measures as well as anecdotal information.

In fiscal year 2013, S&T conducted R&D supporting TSA requirements on 19 projects, for a total of \$108 million. Additionally, we continue to work with TSA on examining checkpoint operations in order to determine how combinations of technological developments, use of knowledge products, business process reform, and other capabilities can holistically be employed in a synergistic manner to enhance checkpoints two to three times their capability over the next 3- to 5-year period. This could significantly enhance security operations, boost effectiveness, efficiency, and substantially improve customer experience at checkpoints.

Finally, S&T appreciates the opportunity to work with TSA, the GAO, and this committee on questions surrounding the behavioral detection program and, more broadly, improving performance of existing and emerging operational screening programs.

I thank you again for this opportunity before you today and for allowing me to present oral remarks.

[The prepared statement of Mr. Gerstein follows:]

PREPARED STATEMENT OF DANIEL M. GERSTEIN

NOVEMBER 14, 2013

Good morning Chairman Hudson, Ranking Member Richmond, and other Members of the committee. I appreciate the opportunity to appear before you today with TSA administrator John Pistole to discuss the collaboration between TSA and the Science and Technology (S&T) Directorate. This collaboration occurs across a broad range of projects including the TSA's behavior detection and analysis capabilities. Let me emphasize from the outset that all of our efforts are ultimately designed to support TSA in their efforts to improve in both security effectiveness and passenger experience with transportation screening.

During my opening remarks, I will develop three overarching themes. First, the SPOT program is part of a layered security system and must be considered in that context. It does not exist in isolation and therefore must be considered in terms of its incremental contribution to improving the overall probability of detection of persons that knowingly and intentionally attempt to defeat the security process. Relying on any single process, technology, or capability is not an acceptable strategy. This layered security system consists of several opportunities to screen passengers and verify travel documentation. Checks are done when a passenger purchases a ticket and obtains a boarding pass. Behavior Detection Officers (BDOs) and canine units check for hostile intent or threatening materials, respectively. Carry-on items and checked bags are also screened for threats before being allowed in the terminal area. Past this stage, TSA still has unpredictable protocols and on the plane, Federal Air Marshalls and trained Flight Crews to identify and mitigate any incidents or threats. The focus of all this activity is to increase the probability of detection of a person trying to defeat the security process.

Second, the underlying concepts employed within the SPOT program are based on scientific research and represent the best practices from defense, intelligence, and law enforcement organizations. These practices have become accepted based on years of experience in these fields in attempting to identify persons that should receive additional scrutiny in a screening process. What the SPOT process does—that

has not been previously done—is to methodically identify and assess a broad range of behavioral characteristics and provide a scoring system that adds a structure to the intuitive and highly subjective processes that many have relied on in the past. As part of the SPOT effort in 2007, S&T—at the request of TSA—initiated a research program to assess the validity of the existing screening protocol and indicators. S&T contracted with the American Institutes for Research or AIR, one of the Nation’s largest non-profit behavioral research organizations, to design and execute an independent assessment of the extent to which using SPOT led to correct screening decisions at security checkpoints. The resulting field study compared over 71,000 (71,589) random referrals with over 23,000 (23,265) Operational SPOT referrals collected over 9 months from December 2009 through October 2010 across 43 airports. The primary finding was that Operational SPOT identified high-risk travelers at a significantly higher rate—on average, 9 times more often—than random screening.

In considering the use of behavioral indicators, it is worth noting that a number of foreign Governments—Australia, Canada, France, Israel, Switzerland, and United Kingdom to name a few—have developed and deployed behavior-based screening protocols supporting aviation and mass transit environments. I have personally toured the facilities and received briefings on the use of behavior detection operations in Australia and Israel.

We do recognize that the results of this field study must be considered in the context of its limitations that are described in detail in the SPOT Validation Final Report. Many of these limitations are inherent in operational field research in general and in the examination of security programs in particular. These limitations potentially introduced some degree of uncontrolled error in the validation analysis; thus, results should be considered in this context and additional research should be conducted. Nonetheless, sampling and measurement error due to these limitations are believed to be relatively minimal, given the study’s design features that included a large sample, multiple outcome measures, and sensitivity analyses around important population parameter estimates. S&T agrees with the primary finding within the context of the study’s design limitations and recommendations that additional research would be required to more fully validate the SPOT Referral Report.

Furthermore, additional research efforts, both laboratory and field studies, could be conducted that would include a more extensive examination of the underlying behavioral construct, an indicator-level optimization study, a comprehensive reliability study, and an empirical comparison of SPOT with other screening programs. Findings suggest that there may be potentially other indicators not presently included in SPOT that may assist in identifying high-risk passengers. As a result, S&T believes that research could be conducted to broaden the range of potential indicators beyond those contained in the existing SPOT Referral Report would be very useful. S&T had also recommended conducting analyses to empirically compare TSA’s SPOT protocol with other operational screening and suspicious behavior detection protocols.

My third point concerns current collaboration between TSA and S&T. In this regard our relationship has never been stronger. This can be seen through objective measures as well as anecdotal information. In fiscal year 2013, S&T conducted research and development supporting TSA requirements on 19 projects for a total of \$108 million. Additionally, we continue to work with TSA on examining checkpoint operations in order to determine how the combinations of technological developments, use of knowledge products, business process reforms and other security capabilities can be holistically employed in a synergistic manner to enhance throughput at checkpoints 2 to 3 times over the next 3–5-year period. This could significantly enhance security operations, boosting effectiveness, efficiency, and substantially improving passenger experience at checkpoints.

S&T appreciates the opportunity to work with TSA, GAO, and this committee on questions surrounding the behavioral detection program and more broadly to assist with establishing performance baselines and conducting research and development to improve the performance of existing and emerging operational programs.

Thank you for the opportunity to appear before you today. I look forward to answering your questions.

Mr. HUDSON. Thank you.

Mr. Stephen Lord is the managing director of the Forensic Audits and Investigative Service team at the Government Accountability Office. In this capacity, Mr. Lord oversees high-quality forensic audits and investigations of fraud, waste, and abuse.

We are pleased to have you before the subcommittee again, Mr. Lord. The Chairman now recognizes you to testify.

STATEMENT OF STEPHEN M. LORD, MANAGING DIRECTOR, FORENSIC AUDITS AND INVESTIGATIVE SERVICE, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. LORD. Thank you, Chairman Hudson, Ranking Member Richmond, as well as Ranking Member Thompson. I am really happy to be here today to discuss the findings of our new report, just released yesterday, on TSA's behavior detection program.

The recent events at LAX provide an unfortunate reminder of the important role that TSA plays in providing security at airports. I would first like to preface my comments by noting that I do agree with Mr. Pistole in two important areas: That it is important that TSA adopt a risk-based approach to ensure resources are focused in the areas of the highest need and potential; and also focusing on screening for potential bad actors and moving away from screening for prohibited items and objects, or ensuring sufficient resources are devoted to that.

The question I am hoping today's hearing can answer: What is the best way to do that?

This is an important issue, as TSA has spent \$900 million on the so-called SPOT program since 2007. Today I would like to highlight two important issues from a recent report: First, research supporting the use of behavior indicators to identify threats; and, second, whether TSA has the data necessary to really assess the effectiveness of its program.

A first key point is the research completed to date, both public and non-public, does not clearly show whether behavior indicators can be used to reliably identify threats to aviation security—that is, to identify deception or mal-intent. Hundreds of studies we reviewed completed over the last 60 years showed that the ability of humans to accurately identify deception based on behaviors is the same or roughly—essentially the same as chance, slightly greater than chance, 54 percent.

Moreover, DHS's 2011 validation study of the program, while we view it as a very important initial step, had several design limitations. Therefore, you have to be very cautious about using any of the findings. In fact, the study itself made 13 additional recommendations to ensure reliability and validity moving forward.

Also, the study relied on a database that we found in our prior work was unreliable for conducting the statistical analysis of associations between behaviors and desired outcomes. One key weakness was the database only allowed BDOs to enter a certain number of behaviors, even though, as you probably know, the behavior detection officers are trained to identify 94 separate indicators.

In addition, when we visited airports, we interviewed the behavior detection officers, and they wholeheartedly agree some of these indicators are subjective and difficult to interpret. This is clearly evident in the data we reviewed. For example, we found that passenger referral rates—that is the rate passengers are pulled out of line for subsequent screening—ranged from 0 to 26 passenger referrals per month for the average behavior detection officer. The average rate on an overall basis was 1.6 referrals a month. So, anyway, when we saw this variation, it really raised questions in our mind about the usefulness of these indicators and whether the officers can consistently interpret them.

We also found that TSA has limited information to evaluate the effectiveness of the program. Well, the good news is they are taking major steps as we speak to help them craft better performance measures. The good news is they plan to develop 40 metrics, 40 performance metrics, within 3 broad categories. I think this is really going to help them gain valuable insights into the program, especially on the performance of individual BDOs, and also ensure they are more consistently applying these techniques across passengers. The bad news is, of course, they are going to need 3 more years to do this. This is something we discuss in more detail in our report.

In closing, it does not appear that behavioral indicators can be reliably used to identify individuals who might pose a threat to aviation, and that continues to concern us. Although TSA is still in the process of evaluating the effectiveness of the program, I think it is important to note that they first started deploying this in 2007. Typically you validate a concept first, then deploy. TSA chose, which, you know, they are free to choose, a strategy which I deem higher risk: They deployed at the same time they were validating.

This is one of the reasons we are recommending that TSA limit future funding to the program until they can develop additional empirical evidence that these indicators can be used in a reliable manner.

I know TSA believes very strongly in the program. We interviewed people at all levels of the agency. They are working hard to make it work. They have faith it works. They have hope it works. But, again, from a GAO standpoint, the program should be based on sound, empirical evidence and not hope and faith alone.

Mr. Chairman, this concludes my remarks. I look forward to any questions you have. Thank you.

[The prepared statement of Mr. Lord follows:]

PREPARED STATEMENT OF STEPHEN M. LORD

NOVEMBER 14, 2013

AVIATION SECURITY.—TSA SHOULD LIMIT FUTURE FUNDING FOR BEHAVIOR DETECTION ACTIVITIES

GAO-14-158T

CHAIRMAN HUDSON, RANKING MEMBER RICHMOND, AND MEMBERS OF THE SUBCOMMITTEE: I am pleased to be here to discuss the findings of our November 2013 report assessing the Department of Homeland Security (DHS) Transportation Security Administration's (TSA) behavior detection activities, specifically the Screening of Passengers by Observation Technique (SPOT) program.¹ The recent events at Los Angeles International Airport provide an unfortunate reminder of TSA's continued importance in providing security for the traveling public. TSA's behavior detection activities, in particular the SPOT program, are intended to identify high-risk passengers based on behavioral indicators that indicate mal-intent. In October 2003, TSA began testing the SPOT program, and by fiscal year 2012, about 3,000 behavior detection officers (BDO) had been deployed to 176 of the more than 450 TSA-regulated airports in the United States. TSA has expended a total of approximately \$900 million on the program since it was fully deployed in 2007.

Through the SPOT program, TSA's BDOs are to identify passenger behaviors indicative of stress, fear, or deception and refer passengers meeting certain criteria

¹ GAO, *Aviation Security: TSA Should Limit Future Funding for Behavior Detection Activities*, GAO-14-159 (Washington, DC: Nov. 8, 2013).

for additional screening of their persons and carry-on baggage. During SPOT referral screening, if passengers exhibit additional behaviors, or if other events occur, such as the discovery of a suspected fraudulent document, BDOs are to refer these passengers to a law enforcement officer (LEO) for further investigation—known as a LEO referral—which could result in an arrest, among other outcomes. In May 2010, we reported, among other things, that TSA deployed the SPOT program without validating the scientific basis for identifying passengers who may pose a threat, TSA was experiencing implementation challenges at airports, and the SPOT program lacked performance measures.² We recommended in our 2010 report that DHS take several actions to address these findings, with which DHS generally concurred and implemented. Specifically, TSA has taken action on all of the 11 recommendations we made, and as of October 2013, has fully implemented 10 of them.

My testimony today highlights the key findings of our November 8, 2013, report on TSA’s behavior detection activities. Specifically, like the report, my statement will address: (1) The extent to which available evidence supports the use of behavioral indicators to identify aviation security threats, and (2) whether TSA has data necessary to assess the effectiveness of the SPOT program in identifying threats to aviation security.

For the report, we reviewed academic and Government research on behavior-based deception detection. We also reviewed documentation related to DHS’s April 2011 SPOT validation study, including study protocols and the final reports, and assessed the study against established practices for evaluation design and generally accepted statistical principles.³ In addition, we interviewed program managers at TSA headquarters, and a nongeneralizable sample of 25 randomly-selected BDOs at four airports where SPOT was implemented in fiscal years 2011 and 2012. We analyzed fiscal years 2011 and 2012 data from the SPOT program, TSA, and the National Finance Center to determine the extent to which SPOT referrals varied across airports and across BDOs with different characteristics. We also reviewed documentation associated with program oversight, including a November 2012 performance metrics plan. Our November 2013 report provides further details on our scope and methodology.⁴ We conducted this work in accordance with generally accepted Government auditing standards.

AVAILABLE EVIDENCE DOES NOT SUPPORT WHETHER BEHAVIORAL INDICATORS CAN BE
USED TO IDENTIFY AVIATION SECURITY THREATS

In November 2013, we reported that: (1) Peer-reviewed, published research we reviewed did not support whether nonverbal behavioral indicators can be used to reliably identify deception, (2) methodological issues limited the usefulness of DHS’s April 2011 SPOT validation study, and (3) variation in referral rates raised questions about the use of indicators.

Published Research on Behavioral Indicators

In November 2013, we reported that our review of meta-analyses (studies that analyze other studies and synthesize their findings) that included findings from over 400 studies related to detecting deception conducted over the past 60 years, other academic and Government studies, and interviews with experts in the field, called into question the use of behavior observation techniques, that is, human observation unaided by technology, as a means for reliably detecting deception. The meta-analyses we reviewed collectively found that the ability of human observers to accurately identify deceptive behavior based on behavioral cues or indicators is the same as or slightly better than chance (54 percent).⁵ We also reported on other studies that

²GAO, *Aviation Security: Efforts to Validate TSA’s Passenger Screening Behavior Detection Program Underway, but Opportunities Exist to Strengthen Validation and Address Operational Challenges*, GAO-10-763 (Washington, DC: May 20, 2010).

³GAO, *Designing Evaluations: 2012 Revision*, GAO-12-208G (Washington, DC: Jan. 31, 2012). This publication supersedes *Government Operations: Designing Evaluations*, GAO/PEMD-10.1.4 (Washington, DC: May 1, 1991).

⁴GAO-14-159.

⁵M. Hartwig and C.F. Bond, Jr., “Why Do Lie-Catchers Fail? A Lens Model Meta-Analysis of Human Lie Judgments,” *Psychological Bulletin*, vol. 137, no. 4 (2011); C.F. Bond, Jr., and B.M. DePaulo, “Accuracy of Deception Judgments,” *Personality and Social Psychology Review*, vol. 10, no. 3 (2006); M.A. Aamodt and H. Custer, “Who Can Best Catch a Liar? A Meta-Analysis of Individual Differences in Detecting Deception,” *The Forensic Examiner*, 15(1) (Spring 2006); and, B.M. DePaulo, J.J. Lindsay, B.E. Malone, L. Mehlbruck, K. Charlton, and H. Cooper, “Cues to Deception,” *Psychological Bulletin*, vol. 129, no. 1 (2003). The first three meta-analyses found, among other things, that the accuracy rate for detecting deception was an average of 54

Continued

do not support the use of behavioral indicators to identify mal-intent or threats to aviation.⁶ In commenting on a draft of our November 2013 report, DHS stated that one of these studies, a 2013 RAND report, provides evidence that supports the SPOT program.⁷ However, the RAND report, which concludes that there is current value and unrealized potential for using behavioral indicators as part of a system to detect attacks, refers to behavioral indicators that are defined and used significantly more broadly than those in the SPOT program.⁸ The indicators reviewed in the RAND report are not used in the SPOT program, and, according to the RAND report's findings, could not be used in real time in an airport environment.⁹

DHS's Validation Study

Further, in November 2013, we found that DHS's April 2011 validation study does not demonstrate effectiveness of the SPOT behavioral indicators because of methodological weaknesses. The validation study found, among other things, that some SPOT indicators were predictive of outcomes that represent high-risk passengers, and that SPOT procedures, which rely on the SPOT behavioral indicators, were more effective than a random selection protocol implemented by BDOs in identifying outcomes that represent high-risk passengers. While the April 2011 SPOT validation study is a useful initial step and, in part, addressed issues raised in our May 2010 report, methodological weaknesses limit its usefulness. Specifically, as we reported in November 2013, these weaknesses include, among other things, the use of potentially unreliable data and issues related to one of the study's outcome measures.

First, the data the study used to determine the extent to which the SPOT behavioral indicators led to correct screening decisions at checkpoints were from the SPOT database that we had previously found in May 2010 to be potentially unreliable.¹⁰ In 2010, we found, among other things, that BDOs could not record all behaviors observed in the SPOT database because the database limited entry to 8 behaviors, 6 signs of deception, and 4 types of serious prohibited items per passenger referred for additional screening, though BDOs are trained to identify 94 total indicators.¹¹ Although TSA made changes to the database subsequent to our May 2010 report, the validation study used data that were collected from 2006 through 2010, prior to TSA's improvements to the SPOT database. Consequently, the data were not sufficiently reliable for use in conducting a statistical analysis of the association between the indicators and high-risk passenger outcomes.

Second, our analysis of the validation study data regarding one of the primary high-risk outcome measures—LEO arrests—suggests that the screening process was different for passengers depending on whether they were selected using SPOT procedures or the random selection protocol. Specifically, different levels of criteria were used to determine whether passengers in each group were referred to a LEO, which is a necessary precondition for an arrest. Because of this discrepancy between the study groups, the results related to the LEO arrest metric are questionable and cannot be relied upon to demonstrate the effectiveness of the SPOT program's be-

percent. The fourth meta-analysis found that there were no effect sizes that differed significantly from chance.

⁶These studies included P.K. Davis, W.L. Perry, R.A. Brown, D. Yeung, P. Roshan, and P. Voorhies, *Using Behavioral Indicators to Help Detect Potential Violent Acts: A Review of the Science Base*. (Santa Monica, California: RAND Corporation, 2013); National Research Council, *Protecting Individual Privacy in the Struggle Against Terrorists: A Framework for Assessment* (Washington, DC: National Academies Press, 2008); JASON, The MITRE Corporation, S. Keller-McNulty, study leader, *The Quest for Truth: Deception and Intent Detection*, a special report prepared for the U.S. Department of Defense, October 2008. For a complete list, see GAO-14-159.

⁷Davis and others, *Using Behavioral Indicators to Help Detect Potential Violent Acts: A Review of the Science Base*.

⁸Davis and others, *Using Behavioral Indicators to Help Detect Potential Violent Acts: A Review of the Science Base*. In its discussion of behavioral indicators, the RAND report includes indicators from "pattern-of-life data"—such as mobile device tracking and monitoring on-line activity—that can indicate changes in lifestyle patterns, as well as communication patterns and physiological indicators.

⁹For example, the RAND report states that coding emotional expressions for use in scientific studies currently involves a painstaking process of a frame-by-frame analysis in which hours of labor are required to analyze seconds of data, and accordingly, the RAND report found that the process would be too burdensome to use in real time at checkpoints or other screening areas. The RAND report also states that technologies to recognize and analyze such emotional expressions are in their infancy.

¹⁰GAO-10-763. The validation study analyzed data collected from 2006 through 2010 to determine the extent to which the indicators could identify high-risk passengers.

¹¹The 2011 SPOT standard operating procedures lists 94 signs of stress, fear, and deception, or other related indicators that BDOs are to look for, each of which is assigned a certain number of points.

havioral indicators. In November 2013, we also reported on other methodological weaknesses, including design limitations and monitoring weaknesses, that could have affected the usefulness of the validation study's results in determining the effectiveness of the SPOT program's behavioral indicators.

Variation in Referral Rates and TSA Efforts to Study Indicators

In November 2013, we reported that variation in referral rates and subjective interpretation of the behavioral indicators raise questions about the use of indicators, but TSA has efforts under way to study the indicators. Specifically, we found that SPOT referral data from fiscal years 2011 and 2012 indicate that SPOT and LEO referral rates vary significantly across BDOs at some airports, which raises questions about the use of SPOT behavioral indicators by BDOs.¹² The rate at which BDOs referred passengers for SPOT referral screening ranged from 0 to 26 referrals per 160 hours worked during the 2-year period we reviewed.¹³ Similarly, the rate at which BDOs referred passengers to LEOs ranged from 0 to 8 per 160 hours worked.¹⁴ In November 2013, we also reported that BDOs and TSA officials we interviewed said that some of the behavioral indicators are subjective and TSA has not demonstrated that BDOs can consistently interpret the behavioral indicators. We found that there is a statistically significant relationship between the length of time an individual has been a BDO and the number of SPOT referrals the individual makes. This suggests that different levels of experience may be one reason why BDOs apply the behavioral indicators differently. TSA has efforts underway to better define the behavioral indicators currently used by BDOs, and to complete an inter-rater reliability study. The inter-rater reliability study could help TSA determine whether BDOs can consistently and reliably interpret the behavioral indicators, which is a critical component of validating the SPOT program's results and ensuring that the program is implemented consistently. According to TSA, the current contract to study the indicators and the inter-rater reliability study will be completed in 2014.

TSA HAS LIMITED INFORMATION TO EVALUATE SPOT PROGRAM EFFECTIVENESS, BUT PLANS TO COLLECT ADDITIONAL PERFORMANCE DATA

In November 2013, we reported that TSA plans to collect and analyze additional performance data needed to assess the effectiveness of its behavior detection activities. In response to a recommendation in our May 2010 report to develop a plan for outcome-based performance measures, TSA completed a performance metrics plan in November 2012.¹⁵ The plan defined an ideal set of 40 metrics within three major categories that TSA needs to collect to measure the performance of its behavior detection activities. As of June 2013, TSA had collected some information for 18 of 40 metrics the plan identified, but the agency was collecting little to none of the data required to assess the performance and security effectiveness of its behavior detection activities or the SPOT program specifically. For example, TSA did not and does not currently collect the data required to determine the number of passengers meaningfully assessed by BDOs, BDOs' level of fatigue, or the impact that fatigue has on their performance.

¹²Up to three BDOs may be associated with a referral in the SPOT referral database. According to TSA officials, the BDO in the "team member 1" field is generally the primary BDO responsible for observing the behaviors required for a referral. To avoid double-counting referrals, the referral rate is based on the number of referrals for which a BDO was identified as team member 1. For additional information see GAO-14-159.

¹³Specifically, we reported that variation exists in the SPOT referral rates among 2,199 non-manager BDOs and across the 49 airports in our November 2013 review, after standardizing the referral data to take account of the differences in the amount of time each BDO spent observing passengers. We standardized the SPOT referral and arrest data across the 49 airports to ensure an accurate comparison of referral rates, based on the number of hours each BDO spent performing operational SPOT activities. For a complete description of our methodology, see GAO-14-159.

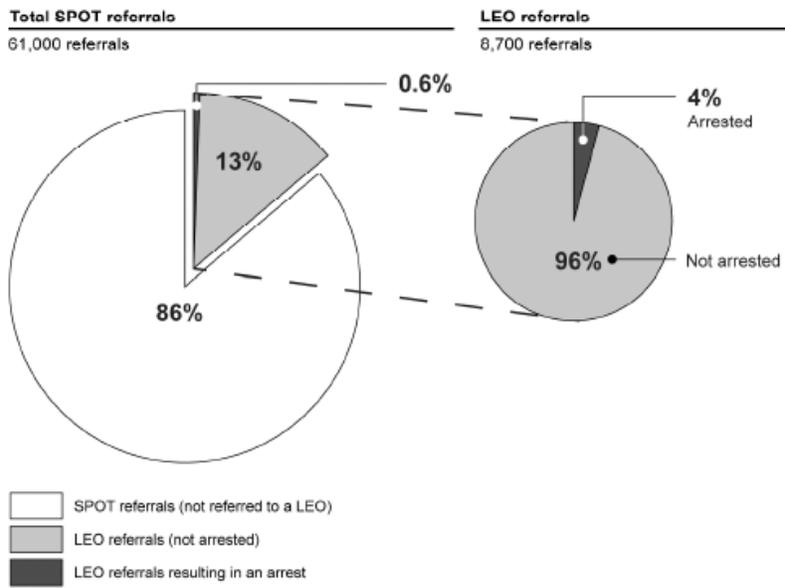
¹⁴The average SPOT referral rate across the 2,199 BDOs who conducted SPOT at the airports in our November 2013 review was 1.6 referrals per 160 hours worked. Thus, on average, 0.2 percent of a BDO's time, or roughly the equivalent of 1 work day over a 2-year period, was spent engaging passengers during SPOT referral screening. This calculation is based on TSA's estimate that a BDO requires an average of 13 minutes to complete a SPOT referral. The average LEO referral rate for BDOs who conducted SPOT at these airports was 0.2 per 160 hours worked, or 1 LEO referral every 800 hours (or approximately 20 weeks).

¹⁵GAO-10-763. Specifically, we recommended that TSA "establish a plan that includes objectives, milestones, and time frames to develop outcome-oriented performance measures to help refine the current methods used by BDOs for identifying individuals who may pose a risk to the aviation system."

To address these and other deficiencies, the performance metrics plan identifies 22 initiatives that are under way or planned as of November 2012. For example, in May 2013, TSA began to implement a new data collection system, BDO Efficiency and Accountability Metrics, designed to track and analyze BDO daily operational data, including BDO locations and time spent performing different activities. According to TSA officials, these data will allow the agency to gain insight on how BDOs are utilized, and improve analysis of the SPOT program. However, according to the performance metrics plan, TSA will require at least an additional 3 years and additional resources before it can begin to report on the performance and security effectiveness of its behavior detection activities or the SPOT program.

Without the data needed to assess the effectiveness of behavior detection activities or the SPOT program, we reported in November 2013 that TSA uses SPOT referral, LEO referral, and arrest statistics to help track the program's activities. As shown in figure 1, of the approximately 61,000 SPOT referrals made during fiscal years 2011 and 2012 at the 49 airports we analyzed, approximately 8,700 (13.6 percent) resulted in a referral to a LEO. Of the SPOT referrals that resulted in a LEO referral, 365 (4 percent) resulted in an arrest.¹⁶

Figure 1: Percentage of Screening of Passengers by Observation Techniques (SPOT) Referrals Resulting in Law Enforcement Officer (LEO) Referrals and Arrests at 49 Airports, Fiscal Years 2011 and 2012



Source: GAO analysis of TSA data.
 Note: Totals do not add up to 100 percent because of rounding.

TSA has taken a positive step toward determining the effectiveness of its behavior detection activities by developing the performance metrics plan, as we recommended in May 2010. However, as we reported in November 2013, TSA cannot demonstrate

¹⁶The SPOT database identifies six reasons for arrest, including: (1) Fraudulent documents, (2) illegal alien, (3) other, (4) outstanding warrants, (5) suspected drugs, and (6) undeclared currency. The proportion of LEO referrals that resulted in an arrest (arrest ratio) could be an indicator of the potential relationship between the SPOT behavioral indicators and the arrest outcome measure because an individual must display multiple SPOT behavioral indicators, or have other events occur, such as the discovery of a fraudulent document, for a LEO referral to occur. If the behavioral indicators were indicative of a threat to aviation security, a larger proportion of the individuals referred to a LEO may ultimately be arrested. However, the arrest ratios per airport ranged from 0 to 17 percent.

the effectiveness of its behavior detection activities, and available evidence does not support whether behavioral indicators can be used to identify threats to aviation security. According to Office of Management and Budget (OMB) guidance accompanying the fiscal year 2014 budget, it is incumbent upon agencies to use resources on programs that have been rigorously evaluated and determined to be effective, and to fix or eliminate those programs that have not demonstrated results.¹⁷ As we concluded in our November 2013 report, until TSA can provide scientifically validated evidence demonstrating that behavioral indicators can be used to identify passengers who may pose a threat to aviation security, the agency risks funding activities that have not been determined to be effective. Therefore, in our November 2013 report, we recommended that TSA limit future funding for its behavior detection activities. DHS did not concur with our recommendation.

In commenting on a draft of our November 2013 report, DHS identified two main areas where it disagreed with information presented in the report: (1) The findings related to the SPOT validation study, and (2) the findings related to the research literature. With regard to the findings related to the SPOT validation study, DHS stated that, among other issues, our methodology for replicating the study's indicator analysis introduced error and resulted in "misleading" conclusions. We disagree with this statement. Our analysis was consistent in finding that some indicators were positively and significantly related to the validation study outcome measures; however, we also found that a roughly equal number of indicators were negatively and significantly related to the outcome measures—a finding that the validation study did not report.¹⁸ Further, as discussed in the November 2013 report, the validation study's analysis used unreliable data, which limits the usefulness of the study's findings. With regard to our findings related to the research literature, DHS stated that, among other things, we did not consider all the research that was available. However, as described in the report, in addition to the meta-analyses of over 400 studies related to detecting deception conducted over the past 60 years that we reviewed, we also reviewed several documents on behavior detection research that DHS officials provided to us, including documents from an unclassified and a classified literature review that DHS had commissioned.

Finally, in stating its nonconcurrence with the recommendation to limit future funding in support of its behavior detection activities, DHS stated that TSA's overall security program is composed of interrelated parts, and to disrupt one piece of the multi-layered approach may have an adverse impact on other pieces. As we reported in November 2013, TSA has not developed the performance measures that would allow it to assess the effectiveness of its behavior detection activities compared with other screening methods, such as physical screening. As a result, the impact of behavior detection activities on TSA's overall security program is unknown. Further, not all screening methods are present at every airport, and TSA has modified the screening procedures and equipment used at airports over time. These modifications have included the discontinuance of screening equipment that was determined to be unneeded or ineffective. Therefore, we concluded that providing scientifically validated evidence that demonstrates that behavioral indicators can be used to identify passengers who may pose a threat to aviation security is critical to the implementation of TSA's behavior detection activities. Consequently, we added a matter for Congressional consideration to the November 2013 report. Specifically, we suggested that Congress consider the findings in the report regarding the absence of scientifically validated evidence for using behavioral indicators to identify aviation security threats when assessing the potential benefits of behavior detection activities relative to their cost when making future funding decisions related to aviation security. Such action should help ensure that security-related funding is directed to programs that have demonstrated their effectiveness.

Chairman Hudson, Ranking Member Richmond, and Members of the subcommittee, this concludes my prepared testimony. I look forward to answering any questions that you may have.

Mr. HUDSON. Thank you, Mr. Lord.

Finally, Mr. Charles Edwards is the deputy inspector general of the Department of Homeland Security. Mr. Edwards has over 20

¹⁷ OMB, *Analytical Perspectives—Budget of the U.S. Government, Fiscal Year 2014*. ISBN 978-0-16-1749-3 (Washington, DC: 2013).

¹⁸ The negatively and significantly related indicators were more commonly associated with passengers who were not identified as high-risk, than with passengers who were identified as high-risk.

years of experience in the Federal Government and has held leadership positions at several Federal agencies.

The Chairman recognizes Mr. Edwards now to testify.

STATEMENT OF CHARLES K. EDWARDS, DEPUTY INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. EDWARDS. Good morning, Chairman Hudson, Ranking Member Richmond, Ranking Member Thompson, and distinguished Members of the subcommittee. Thank you for inviting me to testify today.

I would like to take a moment to express my condolences on the tragic shooting incident at Los Angeles International Airport, that TSA Officer Gerardo Ismael Hernandez was killed and other TSA officials were wounded, one of whom is a behavior detection officer.

Since 2007, TSA has spent an estimated \$878 million on its Screening of Passengers by Observation Techniques program, commonly called SPOT. As of fiscal year 2012, the program was operating in 176 airports and employed more than 2,800 behavior detection officers.

However, TSA has not implemented a strategic plan to assess or ensure the program's success. My testimony today will address the need for improvement in two areas: First, measurement of the effectiveness of the SPOT program; and, second, the training program for BDOs.

We reported in May of this year that TSA is unable to accurately assess or evaluate the progress of the SPOT program because it does not have a finalized strategic plan that identifies mission goals and objectives needed to develop a system of performance measures.

The program's standard operating procedures indicate that its purpose is to identify high-risk individuals who may pose a threat to transportation security, but TSA has not developed performance measures for the program. Instead, program staff collects activity output data, such as the number of passengers referred, but the data do not provide a measure of program effectiveness.

For example, TSA documents the identification of prohibited items, undeclared currency, and illegal aliens, but the SPOT program has not defined how these outputs support achieving the SPOT program goal to identify high-risk individuals who are engaged in some form of deception and fear of discovery.

Additionally, our testing showed that data collected was not always complete or accurate. TSA has not developed a training strategy that addresses the goals and objectives of the SPOT program. Formal BDO training and refresher training is not consistently provided, and there is no formalized process to evaluate BDO instructors.

Although acknowledging that observation skills are perishable, TSA did not start providing refresher training for currently certified BDOs until May 2011, 5 years after the start of the program. Of the 88 eligible BDOs we contacted during our audit, 65, or about 74 percent, had not yet received the refresher training. BDOs who have not received recent refresher training may be operating at varying levels of proficiency.

Furthermore, TSA does not have a program to provide recurrent training to BDO instructors to ensure these instructors continue to have the knowledge, skills, and abilities to instruct BDO classes.

In response to our report and recommendations, TSA officials have taken numerous steps toward addressing these issues. For example, TSA officials have provided verification that comprehensive measures have been implemented to ensure completeness, accuracy, authorization, and validity of referral data collected. They have also developed and implemented a plan to provide recurrent training for BDO instructors and refresher training for the BDO workforce. Lastly, TSA officials have completed the BDO communications plan, which contains a number of workforce engagement tools designed to help the program office gauge selection, allocation, and performance of BDOs.

In closing, without the implementation of the SPOT strategic plan that contains appropriate performance measures, TSA cannot evaluate the performance of the program to ensure that passengers at U.S. airports are screened in an objective manner or show that the program is cost-effective or reasonably justify the program's expansion.

Mr. Chairman, this concludes my prepared statements, and I welcome any questions that you or the Members may have. Thank you.

[The prepared statement of Mr. Edwards follows:]

PREPARED STATEMENT OF CHARLES K. EDWARDS

NOVEMBER 14, 2013

Good morning Chairman Hudson, Ranking Member Richmond, and Members of the subcommittee: I am Charles Edwards, Deputy Inspector General for the Department of Homeland Security (DHS). Thank you for inviting me to testify today about the Transportation Security Administration's Screening of Passengers by Observation Techniques program, commonly called SPOT. Our audit report, "Transportation Security Administration's Screening of Passengers by Observations Techniques" (OIG-13-91, May 2013) concluded that, under the SPOT program TSA cannot ensure that passengers at U.S. airports are screened objectively, show that the program is cost-effective, or reasonably justify the program's expansion.

My testimony today will discuss 4 issues in regard to the SPOT program, TSA's: (1) Performance management, (2) training strategy, (3) outreach efforts, and (4) financial plan.

In 2003, TSA developed the Screening of Passengers by Observation Techniques (SPOT) program with assistance from the Massachusetts State Police. TSA began operational testing at Logan Airport in Boston, MA, and later expanded its testing at two other New England airports. According to the U.S. Government Accountability Office (GAO), in fiscal year 2007, TSA implemented SPOT, and was authorized 644 Behavior Detection Officers (BDO) for deployment to 42 airports. According to TSA, as of fiscal year 2012, more than 3,000 BDOs were authorized for deployment to 176 U.S. airports. TSA's Behavior Detection and Analysis Division was responsible for developing strategic plans and program guidance for the SPOT program. The program emphasizes objective behavior observation and analysis techniques to identify potentially high-risk individuals who are engaged in some form of deception and fear discovery.

BDOs, working in pairs, primarily conduct SPOT at airport screening checkpoints by having brief verbal exchanges with passengers waiting in line, while observing passengers' behaviors. A BDO identifies passengers for additional screening based on an evaluation system of identified behaviors, which may require a referral to law enforcement. A law enforcement officer (LEO) may assess the situation by interacting or engaging the passenger to determine if law enforcement intervention is necessary. Passengers whose observed behaviors are not resolved during the referral process may not be permitted to board an aircraft.

TSA BDOs were required to document all relevant information regarding each passenger referral in a referral report and the Performance Management Information System (PMIS). However, the SPOT Standard Operating Procedure prohibited the collection of personally identifiable information in the referral report or PMIS. Reports on the results of SPOT operations, such as the *SPOT Situation Report Dashboard—All Airports*, were generated from the data entered into PMIS. According to TSA, SPOT referrals made from October 2011 through September 2012 resulted in 199 arrests, which included outstanding warrants, suspected drugs, and illegal aliens.

AUDIT RESULTS

Since the Screening of Passengers by Observation Techniques program began in fiscal year 2007, TSA data indicate that the program has expanded from \$20 million to \$205 million in expended costs and the number of airports with the program has grown from 42 to 176. However, TSA has not implemented a strategic plan to ensure the program's success. TSA did not: (1) Assess the effectiveness of the program, (2) have a comprehensive training program, (3) ensure outreach to its partners, or (4) have a financial plan. As a result, TSA could not ensure that passengers at United States airports were screened objectively, show that the program was cost-effective, or reasonably justify the program's expansion. In fiscal year 2012, TSA's Behavior Detection and Analysis Division developed a draft strategic plan that included a statement of mission, goals, and objectives. However, the plan had not been approved and implemented at the time of our audit.

PERFORMANCE MEASUREMENT

TSA could not accurately assess or evaluate the progress of the SPOT program because it did not have a finalized strategic plan that identified the mission, goals, and objectives needed to develop a system of performance measures. Furthermore, TSA did not collect accurate or complete information about the program's operations.

The SPOT program's Standard Operating Procedure indicates that its purpose was to identify high-risk individuals who may pose a threat to transportation security, but TSA has not developed performance measures for the program. As a result, the program collected data from referral reports that provided measurable outputs of specific activities; however, these outputs did not provide a measure of program effectiveness, because TSA has not established why these outputs support desired outcomes.

For instance, TSA documented the identification of prohibited items, undeclared currency, and illegal aliens, but the SPOT program has not defined how these outputs support achieving the SPOT program goals. As a result, TSA cannot assess the SPOT program's success without relative outcome-oriented performance measures. In August 2012, TSA provided its draft *Behavior Detection and Analysis Division Performance Metrics Plan*. This plan was intended to identify current gaps in performance metrics collection, proposed metrics solutions, and resource requirements for the next 3 years, but it had not been approved and implemented at the time of our audit.

Although program operations and outputs from referrals were recorded in the PMIS, the referral data captured was not always complete or accurate. BDO managers were required to review and approve all SPOT referral reports entered into PMIS, but the internal controls over data entry were ineffective. For example, PMIS was set up to automatically bypass manager review of a referral report after 72 hours, and the data entry quality assurance measures beyond a BDO manager review are insufficient. Of the 15 airports tested, 1,420 of the 18,152 (8 percent) referral reports recorded in fiscal year 2012 bypassed management review. Five of the airports had more than 15 percent of the referral reports bypass management review. Only 1 of the 15 airports tested had 100 percent management review of referral reports recorded in PMIS.

BDOs were required to document information regarding each referral, including the reason(s) for a referral, the BDOs involved, and the resolution. However, passenger-specific data were prohibited from being recorded.

We assessed more than 110,000 referral records in PMIS from April 1, 2009, through September 30, 2012. Of those records—

- 7,019 did not identify the primary or secondary BDO;
- 1,194 did not meet the criteria for a referral;

- 442 were referral records that were deleted; and
- 143 did not contain a code for the airport where the referral was made.

Additionally, we identified duplicate records and one record that contained personally identifiable information.

Incomplete and inaccurate PMIS SPOT referral data may have been used to present program results to TSA senior leadership and oversight officials to illustrate the results of the SPOT program. In fact, 4 months after providing our audit team with PMIS data, the SPOT program office identified and corrected errors in the database before providing similar data to our investigators, who were conducting a separate investigation. We were not informed that the original data we received had been changed. SPOT program officials said they corrected errors in the level of LEO involvement and deleted duplicate records.

TRAINING

TSA had not developed a training strategy that addresses the goals and objectives of the SPOT program. A well-designed training program should be linked to the agency's goals and to the organizational, occupational, and individual skills and competencies needed for the agency to effectively perform.¹ As a result, TSA cannot ensure that training contributes to the uniform screening of passengers.

FORMAL TRAINING

TSA did not consistently offer formal refresher training to BDOs. Beginning in May 2006, all BDOs were required to attend the SPOT Basic Training course for BDO certification. TSA's training task analysis emphasized the importance of recurring training when it reported:

“ . . . observation skills are among the perishable variety. They need to be constantly honed and refocused on some regular basis. Observation is the single most important task in the entire SPOT Program . . . but little training is provided to address its importance, and there is virtually no measurement of the skill in the current testing program.”²

TSA did not start providing refresher training for currently certified BDOs until May 2011. The 3-day refresher training consisted of a review of SPOT Standard Operating Procedure requirements and addressed deficiencies in prior basic training courses. TSA determined that BDOs were not receiving training on 37 of the 63 (approximately 59 percent) required job tasks in the original versions of the basic training course.

BDOs with a year or more of experience were eligible to complete TSA's refresher training. According to TSA, 713 of the approximately 2,200 eligible BDOs (approximately 32 percent) received refresher training in the past 2 years. Of the 101 BDOs we interviewed, 88 were eligible to receive the refresher training. Of the 88 eligible BDOs, 65 (approximately 74 percent) did not receive the training. The SPOT program office reported that because of training staffing constraints, they needed to prioritize the training of new BDOs before conducting refresher training. As a result, BDOs who have not received the refresher training may be operating at varying levels of proficiency.

Instructors

BDO instructors provided the only formal classroom training to BDOs. During July 2012, TSA provided training to BDO instructors and tested them on their teaching abilities. TSA identified six BDO instructors who did not have the instructor knowledge, skills, or abilities to instruct BDO classes. TSA provided remedial instruction to those instructors in order for them to become qualified to teach. However, TSA did not evaluate BDO instructors on their instructional abilities in their Performance Accountability and Standards System. Additionally, TSA did not have a program to provide recurrent training to BDO instructors. Therefore, the program office could not ensure that BDOs were effectively and consistently trained.

OUTREACH

The relationship between BDOs and local LEOs is critical to the program and needed to be improved. TSA incorporated law enforcement response as an integral part of the SPOT program. However, the SPOT program office has not ensured that

¹U.S. General Accounting Office, GAO-04-546G, *Human Capital: A Guide for Assessing Strategic Training and Development Efforts in the Federal Government*, March 2004.

²Transportation Security Administration, *Training Task Analysis for the Screening of Passengers by Observation Techniques Program*, December 16, 2011.

airports effectively engage local law enforcement. BDOs and local LEOs at the airports contacted said there was insufficient understanding of the roles and responsibilities that each had relative to the SPOT program. For example, LEOs at 7 airports contacted said they had not received clear information about BDO duties and why referrals from BDOs warranted law enforcement response. Conversely, BDOs expressed concerns about the consistency of LEOs' responses to referrals. BDOs said that local LEOs did not consistently respond to referrals or engage referred passengers. TSA data show that LEOs did not respond to 2 percent of the referrals between October 2011 and September 2012.³ Additionally, TSA data indicate that LEOs did not question 13 percent of referred passengers during that same period.

Of the 15 airports we contacted, 3 had locally-developed LEO outreach activities. At the airports using outreach activities, BDOs and LEOs reported more consistent and effective working relationships. The success of the program may be affected if BDOs and LEOs do not collaborate effectively.

FINANCIAL PLAN

The SPOT program's financial plan did not include priorities, goals, objectives, or financial performance measures. According to the SPOT program office, the program was allocated more than \$1 billion between fiscal years 2007 and 2012. TSA data indicated that the program expended an estimated \$878 million for the program office and SPOT personnel. OMB Circular A-11 describes budget formulation, development, and execution requirements that include needs analysis and budget development, budget execution, and expenditures tracking. Budget control is an integral part of an entity's planning, implementing, reviewing, and accountability for stewardship of Government resources and achieving effective results.⁴ Because the SPOT program did not have a financial plan that included priorities, goals, objectives, or measures, TSA could not: (1) Show that SPOT was cost-effective, (2) identify opportunities for improvement, or (3) justify the program's expansion.

Prior to fiscal year 2012, the SPOT program office did not fully determine priorities for future spending or develop an itemized forecast of future funding and expenditures. Performance information was not used to assess the effectiveness of program activities to develop budget priorities. According to program officials, the program's historical funding was the basis for spending estimates. Beginning in fiscal year 2012, the Behavior Detection and Analysis Division developed spend plans that identified project funding requirements. According to the fiscal year 2013 draft spend plan, the objective of the spend process was to collect, identify, and document funding requirements for the budget year with a 5-year forecast. However, the spend plans did not include a comprehensive accounting of SPOT funding requirements, such as BDO costs and training.

Although TSA had several areas that required improvement, SPOT officials have taken several steps toward meeting those objectives since our audit was issued.

For instance, TSA officials have provided verification that comprehensive measures have been implemented to ensure completeness, accuracy, authorization, and validity of referral data entered into PMIS. They have also developed and implemented a plan to provide recurrent training for Behavior Detection Officer instructors and refresher training for the BDO workforce. Lastly, TSA officials have completed the BDO Communications Plan, which contains a number of workforce engagement tools designed to help the program office gauge selection, allocation, and performance of BDOs.

In closing, strategic planning is the keystone to a successful program. Because OMB Circular A-11 guidance identifies requirements for agency strategic planning, it would be prudent for agency programs to follow these same principles to help ensure program success and contribute to the agency's mission. Without the implementation of a SPOT strategic plan that contains key elements, TSA cannot ensure that passengers at U.S. airports are screened in an objective manner, show that the program is cost-effective, or reasonably justify the program's expansion to ensure that threats to aviation security are effectively prevented.

I would also like to take this moment to express my condolences on the tragic shooting incident at Los Angeles International Airport where TSA Officer Gerardo Hernandez was killed and other TSA officials were wounded.

Mr. Chairman, this concludes my prepared remarks. I welcome any questions that you or the Members of the subcommittee may have.

³This information is based on PMIS data, which may be incomplete and inaccurate due to errors identified.

⁴U.S. General Accounting Office, GAO/AIMD-00-21.3.1, *Standards for Internal Control in the Federal Government*, November 1999.

Mr. HUDSON. Thank you, Mr. Edwards.

We appreciate you all being here.

I now recognize myself for 5 minutes to ask questions.

Administrator Pistole, when we spoke after the shooting, I was extremely pleased to learn that TSA personnel at LAX had recently trained for an active-shooter situation. I think we agree that that training certainly helped that response to the actual shooting situation. That probably led to saving lives. They knew exactly what to do and, certainly, as I say, saved lives as a result.

However, as Chairman McCaul indicated, we have also heard that the communication between police and TSA when shots were fired may have broken down, could have been conducted better. Would you agree that the communication issue is one of the areas you need to review?

Mr. PISTOLE. Yes.

Mr. HUDSON. Thank you.

During the time of the shooting at LAX, were there any BDOs deployed in Terminal 3 when the shooting took place? If so, do you know if they witnessed behavior of the shooter before the incident took place?

Mr. PISTOLE. There were BDOs deployed in Terminal 3. The area that the shooting took place was on a lower level before the actual checkpoint. So the initial officer, Officer Hernandez, that the shooter encountered, that was just seconds after the shooter entered the terminal after being dropped off at curbside there.

So there were no BDOs down at that level, but the BDOs were stationed—and, in fact, Tony Grigsby, who was injured, was one of those up there helping passengers after the shooting took place.

Mr. HUDSON. Could you explain for us the protocols that BDOs follow when they refer a person to local law enforcement, how that takes place?

Mr. PISTOLE. Sure. So, obviously, BDOs will compare, so it is not an isolated incident, and if one BDO makes an observation, they confer with their partner to see if that is accurate, if that is what they observed. Then, if they concur on that, then, dependent on what the suspicious behavior is, they may engage the passenger themselves, most likely would be the first response, and to get a sense of that person's—just who they are and everything.

If it warrants a law enforcement response because of something that goes beyond the norm, and particularly if they have referred that person for secondary screening and there is an issue there, which is sometimes the case, then that is when law enforcement officers are called in to help resolve that situation.

Mr. HUDSON. Are they able to contact the local law enforcement through radio communications? Or how does that communication take place?

Mr. PISTOLE. So it all depends—you know, from 450 airports, it depends on which airport and what the communication apparatus is there. They have radios. The people at—TSA employees at the checkpoints have radios that they can call in to a command post, which is staffed both—or coordination center, depending on where you are, that is staffed either by TSA employees in that coordination center and/or the airport police if they are on-site. So it depends on which airport.

So they can make that request. Now, a number of the airports do have airport police on-site at a podium at the checkpoint. So, again, it depends on which airport, what would be the normal response protocol.

Mr. HUDSON. Is the local law enforcement required to respond? If so, how quickly is local law enforcement required to be present to respond to that referral?

Mr. PISTOLE. Generally, law enforcement—there are about 330 of the airports that there is a law enforcement reimbursement agreement that TSA has, where we help pay for the cost of those police officers to be present. In those airports, under the aviation security program that TSA has with the airports, there is an agreed-upon response time, which is typically 5 minutes.

But now, for example, in some of the smaller airports in rural areas where there is no dedicated presence, it may be 15 or even 20 minutes because it is a sheriff's deputy, who is not actually stationed there. So, again, it varies by airport, but typically it is 5 minutes. That is done by agreement between the airport police or those first responders and TSA.

Mr. HUDSON. Well, in general, do you think this response time is sufficient?

Mr. PISTOLE. So, again, that was designed with the idea that you may find somebody not causing intent to do harm in the sense of somebody has a gun or something else, prohibited item. So, obviously, given the shooting, we are evaluating that.

Clearly, even though the Los Angeles Airport Police responded and neutralized the target within 4 minutes from the first call, obviously, if the shooter had the intent to cause much greater harm, there are dozens of passengers that he could have shot but he just walked right past. You watch the videotape of all this taking place, and, literally, there are people right at his feet. When he goes back to shoot Officer Hernandez the second time, there are literally passengers laid on the floor right by him he just avoids.

So, clearly, 5 minutes was too long in this case, so that is something we are looking at as part of our review.

Mr. HUDSON. Well, I appreciate that.

My time has expired. The Chairman now recognizes the Ranking Minority Member of the subcommittee, the gentleman from Louisiana, Mr. Richmond, for any questions he may have.

Mr. RICHMOND. Thank you, Mr. Chairman.

Let me just start with Mr. Lord and Mr. Edwards. In your report—and I don't remember the number so I hope can you give it to me—how many BDOs did you find had never made a referral to police?

Mr. LORD. I don't have the specific number at the tip of my fingers, but it was more than 20, as I recall. Perhaps 25.

Mr. RICHMOND. I think I am being told somewhere around the number of 70 to 76, somewhere around there. But how do you critique or judge someone objectively when all of the things you would judge them by are in their own head? I don't understand how we even monitor the program to judge its effectiveness.

Mr. LORD. Well, it is a difficult proposition, obviously. That is one of the reason they work in pairs. They like to confer and make sure they are both seeing the same thing. But some of the indicators

they are honing in on are, quite frankly, subjective, so it is difficult to measure whether they are consistently honing in on the same behavioral indicators. In fact, that is why you see the great variation across BDOs. We saw an average of zero to 26 referrals per month on average across different screeners.

Mr. RICHMOND. Mr. Pistole, first of all, thank you for your service. Let me ask you, did any of the referrals by our officers result in an arrest that indicated a terrorist plot or something of that nature?

Mr. PISTOLE. Not to my knowledge. They were for other criminal offenses, whether it is an outstanding warrant, drug trafficking, money trafficking, being in the country illegally, things like that. But to my knowledge, just for context, there has not been a single attempted terrorist to enter a U.S. airport, aircraft since 9/11.

Mr. RICHMOND. Any human trafficking?

Mr. PISTOLE. Yes. There was an instance, for example, last year in Miami where there were two men with a young woman, and a BDO observed this situation and interceded, which did result in the arrest of those two individuals and would have rescued that woman from human trafficking or at least for that immediate time.

Mr. RICHMOND. Let me ask you another question, but before I ask the question I want to say that—and thank you for your leadership. When I talk about leadership, it is sometimes the hard part of leadership when you go down a path and you realize it is not working, that it may not have been the best decision to reverse it. That is the hard part of leadership. So thank you for your decision with the knives and all of those things.

My question would be, can you find a place within your agency to better spend \$200-plus million a year than on this SPOT program?

Mr. PISTOLE. Thank you for that question. I have given that a lot of thought, given the concerns that have been raised, both by GAO and the IG. Look, under RBS we are achieving efficiency. So we are a smaller agency today than we were a year ago, and I believe that trend will continue, primarily through attrition. So it is not that we are laying people off.

But my concern with those efficiencies is that if we remove one whole layer of security, that being the BDOs, who, again, are the least invasive and looking for intent rather than items, then that gives us an exposure to potential terrorists that we don't currently have.

The risk-reward equation is difficult, as GAO and IG have pointed out. Given my experience in law enforcement and National security, I know behavioral protection works, and so I am a strong advocate, because I don't want to take away a layer of security that may identify the next putative terrorist who may decide they want to try to get into an airport here in the United States to do something bad.

Mr. RICHMOND. Well, I would love to have at least a statement or analysis on our return on investment on that \$200-plus million.

Let me just say this in my final few seconds, because I know that we have made a lot of statements about the incident at LAX, and you and I talked on the phone. When we talk about response time, and when we talk about what could have been done to do things

differently and prevent loss of life, I think the other side, my colleagues on the other side all the time remind us that we can't be everything to everybody because we don't have the money to pay for it.

It is unfortunate that this happened at a checkpoint, it happened within the airport, but if we just take a moment to think, if it happened in a parking garage we wouldn't be there. If it happened curbside we may be there. So at some point we have to thank the people that put their lives on the line and do it knowing that they are putting their lives on the line, but also that we just don't have the capability and we don't have the resources to make sure that we are on every street corner, every parking garage, and everyplace else.

So with that in mind, thank you for being very thoughtful and methodical in where we place people. There are going to be lessons to be learned from this incident in communications and all of those things that we need to do better. But we have to look at other things besides what happens when somebody is holding a gun to prevent them from having it in the first place, or that rage to do things.

So thank you for what you do. That is not a shot for my colleagues on the other side, but we as a society have to work more on the underlying factors because we just can't be everywhere. Thank you.

Mr. HUDSON. Thank the gentleman.

The Chairman now recognizes the Ranking Minority Member of the full committee, the gentleman from Mississippi, Mr. Thompson, for any questions he may have.

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

Administrator Pistole, can TSOs at LAX communicate with the Los Angeles Police Department at the airport by radio?

Mr. PISTOLE. Yes.

Mr. THOMPSON. So there is communication?

Mr. PISTOLE. Yes.

Mr. THOMPSON. I want to at some point provide you information that says that that is not the case. I want to make sure that we are on the same wavelength with that. By communicate, I am talking about radio, not telephone, not panic button.

Mr. PISTOLE. Yes.

Mr. THOMPSON. But radio.

Mr. PISTOLE. Yes, and that may go through the coordination center for TSA with the LAWA Police, as opposed to if you are talking about is there an officer around the corner that they would have direct contact to. So maybe we can clarify that.

Mr. THOMPSON. Well, I think the question is, if an incident occurs, do our TSOs have radios at checkpoints?

Mr. PISTOLE. The supervisors, yes, or the manager there, yes.

Mr. THOMPSON. Was there a supervisor or manager on duty?

Mr. PISTOLE. Yes.

Mr. THOMPSON. Did that supervisor or manager call on the radio?

Mr. PISTOLE. No. The supervisor picked up a dedicated line, literally a red phone to call in, and as they were getting ready to speak, you can watch in the video, she drops the phone and runs

because the shooter is coming up the escalator, having just fired additional rounds, and so she did not stay to finish that call.

Mr. THOMPSON. So the radio was not communicating.

Dr. Gerstein, this validation report you reference, are you comfortable with the results of that contract for validation?

Mr. GERSTEIN. Yes, sir. We have looked at the validation study. We believe that the findings, the 9 times greater the detection over random is important. When I say 9 times, people forget, that means 900 percent better, and that is an important statistic.

Mr. THOMPSON. So you stand by the validation report?

Mr. GERSTEIN. The SPOT validation, indeed.

Mr. THOMPSON. Mr. Lord, what is your analysis?

Mr. LORD. Unfortunately, I will have to respectfully disagree with Mr. Gerstein, in fact. I think it is important to look at the report itself. It was couched as an initial first step and made several recommendations going forward to improve validity, reliability. The technical advisory committee report that was associated with it raised some similar concerns.

So again, it was useful, you know, it provided some insights on the program, but we don't think it should be used to establish the effectiveness of the program. If I could give you one little example. The indicators, even though we had concerns about the reliability of the data, we replicated the results and we did find some positive associations between behaviors and high-risk individuals, as DHS did. But we also found some negative associations. That means the BDOs are potentially honing in on some behaviors more commonly associated with low-risk passengers, in fact with 20 of the indicators. So we were concerned that that wasn't included in the report. So it appeared they perhaps were highlighting the positive and accentuating the negative.

Mr. THOMPSON. So in essence, as you said, you disagree with this report?

Mr. LORD. Yeah, I don't think it can be used to conclude it is 9 times more effective than random.

Mr. THOMPSON. Mr. Edwards, can you speak about how training and evaluation of BDOs is important? I have a concern that we have a number of people who are BDOs who have never made a single referral. I would assume they are considered successful employees. Can you explain people who don't do referrals or anything for the committee?

Mr. EDWARDS. Well, thank you, sir. TSA has to take a number of steps, including collecting reliable data, but regarding training and refresher training, you know, 5 years after the program came into existence, you know, they started the refresher training. Out of the folks that we had interviewed, you know, out of the 88 people that we interviewed, a number of them, 713 out of the 2,800 BDOs were ready for the refresher training in 2 years.

The other problem is this refresher training was held in a classroom and the BDOs are not able to practice that, what they learn in class, until they come back to their home airport. Not having this consistent refresher training across the board, not everybody is referring what they need to refer because the varying levels of training that one has gotten and not gotten.

Mr. THOMPSON. Thank you.

I yield back, Mr. Chairman.

Mr. HUDSON. Thank you, Mr. Thompson.

The Chairman will now recognize other Members of the committee for questions they may wish to ask the witnesses. In accordance with our committee rules and practices, I plan to recognize Members who were present at the start of the hearing by seniority on the subcommittee. Those coming in later will be recognized in the order of arrival.

At this time, the Chairman will recognize the gentlelady from Indiana, Ms. Brooks, for any questions she might have.

Mrs. BROOKS. Thank you, Mr. Chairman, and thank you for holding this hearing in such a timely way.

I want to just speak to Administrator Pistole and offer my condolences to your officer and to those who were injured and to the entire workforce. I applaud the fact that you reminded us that since 9/11 we have not had an incident, a terrorist incident at an airport or on any of our aircraft, in large part, not that there haven't been attempts occasionally on aircraft, but that TSA has been doing what it was founded to do.

I was U.S. attorney at the time TSA was started, and I want to talk with you and a couple of other panelists about, you know, behavior detection, which is the heart of law enforcement. Whether you are a local law enforcement officer or whether you are—which is what TSA is really all about, is it not, about behavior detection, whether they are coming through checkpoints, whether they are, you know, informing airport police officers.

With your FBI background prior to TSA, can you talk a bit more about behavior detection and its importance, not only for BDOs, but also what are the TSA officers and the supervisors, you know, if we were to—I believe it is hard to study, because I believe that it is something that—but it is the heart of what these officers are trained to do.

You know, I am interested in hearing more about the importance of behavior detection, how you were training on it, as has been discussed, but yet how officers learn over time, and based on the time that they are there. Can you just talk about behavior detection, specifically in law enforcement, but in the role of TSA, which are not, you know, specifically law enforcement?

Mr. PISTOLE. Thank you, Congresswoman Brooks, and thank you for your kind words.

Sure, some of this is, frankly, common sense that is just human nature, what people do every day in assessing others that they come in contact with. Is that other person demonstrating stress, fear, or deception in some way? So it is just human nature. Of course, with a law enforcement background, a lot of this discussion is difficult to quantify, to say, well, what does your gut tell you about that person you are talking to or that you are observing? I could give a number of anecdotes from my FBI days. I won't do that. But just that notion that it really becomes a survival skill, particularly for front-line police officers who are out on the street every day engaging people.

So what we in TSA have done is taken that basic training, looked at what the Israelis did, continue to do in terms of their assessment of people through behavior detection officers, and to say: How

can we apply that in the airport environment? Then trained, again within our budgets and everything, to say, here is what we will do to equip our officers on those front lines from making that non-invasive, non-intrusive assessment that can either help identify somebody who may be high-risk, such as these human traffickers, not that they are terrorists. But what we are doing now under risk-based security is also making the other side of the equation identifying low-risk individuals. So we, where I mentioned earlier, that 80,000 passengers on Monday alone went through expedited physical screening, that is because the behavior detection officers did not detect suspicious behavior.

So how do you quantify that? What is the return on investment? Well, if you asked those 80,000 people, they would probably say, hey, I appreciate those BDOs making a judgment about me that I got through expedited physical screening, basically TSA PreCheck. So GAO didn't have a chance to address that, because that is an evolution of RBS, just one of the different manifestations.

But it really is one of those key enablers for us as we transition from one-size-fits-all to risk-based, intelligence-driven, and how can we employ all of the tools that are available? So the concern is, if you think of a mesh or a web or something, why would we take one of those layers of security off to allow possible terrorists to try to get through if they have either an underwear bomb or, you know, there has been intelligence in the past about surgically implanted devices that technology probably won't pick up. So we rely on our BDOs to make assessments about people who may manifest some suspicious behavior. So that is all part of the background.

Mrs. BROOKS. Thank you very much.

Just very briefly, Dr. Gerstein, it is my understanding that Customs and Border and FLETC also utilize. Is S&T involved in assisting those agencies with developing their behavior detection tools and techniques?

Mr. GERSTEIN. We have a number of on-going initiatives with both FLETC and primarily Customs and Border, but none of them to my knowledge are directly related to the behavioral detection analysis or operations. We go where we are asked by our partners, and so if that is an area that they want to get into we certainly would assist with that.

Mrs. BROOKS. Thank you.

Mr. HUDSON. The gentlelady's time has expired.

At this time the Chairman will recognize the gentlelady from Texas, Ms. Jackson Lee, for any questions she may have.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Let me thank the Chairman and the Ranking Member for holding this hearing. As I indicated previously, publicly, again, my deepest sympathy to Mr. Hernandez's family and the entire community, and to thank the law enforcement community of that area for the most passionate and dignified tribute to him. It was enormously heartwarming to see the law enforcement community both at the airport and the surrounding area come together and acknowledge the service of Mr. Hernandez as a law enforcement officer. Which again, I join with my Ranking Member, Mr. Thompson to acknowledge that I hope that concludes forever any comment that TSOs are not first responders or dealing with the security of

this Nation, and put to rest any ideas of privatization as a substitute for a professional Federal workforce. So let me thank you again for that.

Let me also, Mr. Pistole, thank you for meeting with the aviation stakeholders. As you well know, that was an important issue led by our Ranking Member of the full committee, and hopefully that was a productive meeting, and that you will continue to do so vigorously.

I have toured the Bush Intercontinental Airport with the FSB and chief of police and other law enforcement walking through our airport after this tragic incident and looking at the TSA areas, the security areas in at least four of our terminals there, and will continue to dialogue with them.

I raise this question about how we can be effective with respect to the perimeter security, which I think has been put off on airports. I think it is a question of no one knowing who is responsible for it.

One of the issues I think is important to the Chairman is the idea or the concept of reimbursement for added security in the perimeter area. As a frequent traveller, I view the perimeter area, meaning the external and ticketing areas, as a concern leading up to the secured area, where our TSOs are.

My question to you is: What proposition could you put before with respect to funding on reimbursement to local law enforcement for enhanced security that many of the TSOs—all of them, I move, that you have had a chance to speak to—have suggested should occur?

Mr. PISTOLE. Well, thank you, first, Congresswoman, for your gestures of condolence and for your call, and appreciate that, and pass that on, obviously, to Officer Hernandez's wife.

So what you address is one of the things that the working group that we established internally, and then in discussing with the ASAC, the Aviation Screening Advisory Council, and the broader community, what would those costs look like? So I don't have that for you right now, but that is something we are looking at.

If we, for example, reduce the response time from 5 minutes to 3 minutes, how much additional would that cost, and how much of that should be borne by the Federal Government in terms of we call it the LEO reimbursement agreements, and then how much would be borne by the local airports? Of course, budgets are tight everywhere, so the question is: How do we best buy down risk? Part of that discussion that we had last week was how do we ramp up the unpredictable random patrols by armed officers at and through checkpoints that may now be doing other things? So there is a number of things that I have to get back with you on that.

Ms. JACKSON LEE. Let me make a formal request that that inquiry be made, but more importantly, that that reimbursement structure be put in place. It is no doubt that the presence and the quicker response of armed law enforcement is part of the solution. Certainly, the solution is not armed TSO officers in the very small areas that they have to deal with innocent traveling passengers.

Let me quickly ask GAO, did you detect any racial profiling in the work of the BDO, and are you not suggesting that the 12 points that they are finishing would improve it? Are you suggesting that

there should be other improvements? Are you also suggesting that the program should be slimmed down?

I think Mr. Pistole makes a point on layering, but I would be appalled and in great opposition if there was racial profiling. I think one of the issues of the BDO is that the overall impact is not immediately detectable because it is sort of a floating issue, if you will, of whether or not there is safety. So could you answer that? Then the enhanced training, would that have an improvement? I would be willing to look at enhanced training, slimming down the program to get where GAO thinks it needs to be, to be able to have it as a complementary layering of security at airports. Mr. Lord.

Mr. HUDSON. The Chairman is happy to let Mr. Lord answer that even though the gentlelady's time has expired. Please go ahead.

Ms. JACKSON LEE. I thank the Chairman for his generosity.

Mr. LORD. Okay, thank you for the question.

In terms of racial profiling, of course, you are aware that the IG did a separate study at the allegations involving Boston Logan, and found in their study there was no evidence of racial profiling. I believe they interviewed all of the behavior detection officers on site. Although they did note, which is one interesting thing, they did note in some cases there was what they termed appearance profiling. So I am not sure to what extent that overlaps with racial profiling, or how they define that, but that was one notable finding perhaps Mr. Edwards can respond to.

In terms of limiting funding in our recommendation, obviously, as I said in my opening remarks, I believe there is value in focusing resources on screening for potential bad actors at the airport through behavioral detection techniques. The question is: How do you go about it? I think as part of our review of SPOT, we believe it is a very complicated scoring process. We believe it could be streamlined, simplified, perhaps focus more on passengers deemed high-risk. I mean, some passengers come to the airport, they are already preselected for secondary screening, and TSA is developing on this new risk methodology to supplement that.

So perhaps that may be a way to do it rather than trying to do it on this mass stand-off surveillance basis, which is very difficult, because as the report notes, each passenger on average is screened for 30 seconds or less. So it is really difficult to do that to every single person coming in the airport without interacting with them. So we think there is a way to make them more interactive, more risk-based, more simplified, and that is essentially what we are referring to in our report. Thank you.

Mr. HUDSON. I thank the gentleman.

Thank the gentlelady for her questions.

Ms. JACKSON LEE. Thank you.

Mr. HUDSON. The Chairman will now recognize the gentleman from South Carolina, Mr. Sanford, for any questions he may have.

Mr. SANFORD. Yes, sir. I appreciate the testimony of each of you.

Gordon Sullivan, a retired general, wrote a book a long time ago entitled "Hope is Not a Method." It just seems to me when I look at the fundamentals of the SPOT program it seems that it is built on that foundation. It seems to be a cart out before the horse because, indeed, you do have deployment before you have validation

of effectiveness. So the whole idea of spending \$1 billion and having 3,000 folks employed in this endeavor while, you know, from a statistical standpoint the results are about 50/50, seems to be not a good use of taxpayer money.

But I want to zero in on what my associate Bennie Thompson was touching on just a moment ago. I think that there is a real civil liberty component to what is going on here that I think is a real challenge. I tell my boys all the time, guys, have the wisdom to know what you don't know. Mr. Richmond was touching on this notion of how do you get inside somebody's head just a moment ago. I think it is a very difficult place to be.

So you have a system set up wherein, as I read here the notes, you are going to look for behaviors that indicate stress, fear, or deception. But I would ask you, Mr. Pistole, you know, if you were a young kid that maybe got the off the track at an earlier age, you served some time but you paid your price to society, but you do have a criminal record, if a law enforcement fellow was standing before you asking you questions, do you believe that you would exhibit stress or fear?

Mr. PISTOLE. It all depends on the individual. Yeah, sure, potentially.

Mr. SANFORD. Okay. What if you were a staunch right-wing conspiracist with very strong anti-Government leanings, you had posted things that probably weren't the best to post on the internet, but you had the security of invisibility that goes with the internet, but now you have got law enforcement probing, asking you questions, would you exhibit stress or fear?

Mr. PISTOLE. Again, it depends on the individual, but potentially, sure.

Mr. SANFORD. If you were an immigrant whose dad and mom perhaps had come here illegally, would you exhibit stress or fear if somebody was asking you questions?

Mr. PISTOLE. All situational, again.

Mr. SANFORD. Let's say you were a, you know, a wife whose husband has been beating her and you are just trying to get on airplane to get the heck out of town, would you exhibit stress or fear if somebody was going into interrogation on some front?

Mr. PISTOLE. Again, situational.

Mr. SANFORD. Which I think raises the question that the GAO report has brought, and what Mr. Lord testified, which is, again, entirely situational. But the question is in this instance, you know, the difference with a front-line officer who is there on the street, you pull up to a car, you don't know what they got in the car. You don't know who they are. You have nothing that insulates you as an officer, and you better be, you know, cueing in on nonverbal cues.

But in this case you go through a screening system that essentially undresses somebody. You send their equipment, whatever they have, through radar detection and other device. It is a very different environment. The question is, I think, from a civil liberties standpoint, given those other tests that have been made with regard to, you know, who this person is, do you, in addition, have to go through a screening process based on somebody's interpretation of what they think might be inside your brain?

Mr. PISTOLE. I mean you raise good points, Congressman. Let me address a couple of things. I would have loved to have behavioral detection officers in Schiphol Airport in Amsterdam on Christmas day 2009 to see how Abdulmutallab, the 24-year-old with the underwear bomb, would have appeared. We don't have that on CCTV. Most notably—

Mr. SANFORD. But what if he had been a cool customer and you wouldn't know?

Mr. PISTOLE. But that gives us another opportunity. So there is no perfect science. There is no perfect art of this.

Mr. SANFORD. Well, to your point, how many underwear bombs have been detected with these 3,000 officers?

Mr. PISTOLE. Zero, because I believe they have served—what we have done in TSA in the United States has served as a deterrent. I know we have a Classified briefing next week where we can talk in a little more detail, but what we do in the United States—

Mr. SANFORD. But we have got to look at cost-effectiveness in the program.

Mr. PISTOLE. Okay.

Mr. SANFORD. I mean, how many surgically-implanted bombs have they found?

Mr. PISTOLE. Fortunately, there haven't been any deployed that we are aware of.

Mr. SANFORD. Zero and zero in terms of result, but \$1 billion of cost.

Mr. PISTOLE. So if we look at that in the context, this has been over 7 years, and we have screened by observation over 4 billion passengers. It actually comes out to less than 50 cents in some instances; 25 per passenger is the cost for BDOs to observe. So you are right—

Mr. SANFORD. Or you could say it in reverse, you could say \$1 billion with no results.

Mr. PISTOLE. Well, I would say there is a result from the standpoint of deterrence.

Mr. SANFORD. I see my time is coming to an end, and I think we could argue that point, but I think that there is a bigger civil liberty point, which is whether there has or hasn't been deterrence GAO raises questions on. They say it is flip of a coin.

But on the opposite side of the equation, in addition to possible redeployment of those 3,000 folks and the taxpayer cost associated with that, there is a big civil liberty question of, to get on an airplane, does it require more than in essence undressing and having all your equipment checked, but now a second level of screening based on somebody's interpretation of what they think is inside your head.

Mr. HUDSON. The gentleman's time has expired. If you want to briefly respond.

Mr. PISTOLE. Yeah, I would. Thank you, Chairman.

So there is only a very small percentage of people who are referred for additional screening by BDOs. That is one point. Another is that the whole impetus of the risk-based security initiative, RBS, with TSA PreCheck, DOD, 75 and over, 12 and under, all of those things are designed to address some of those concerns about the invasiveness and intrusiveness of the one-size-fits-all approach.

So I get your point on that. The idea is how can we work collaboratively to have multiple layers of security, that we can expedite those that we have greater confidence in without ever profiling. So the notion about profiling, I agree strongly with the Ranking Member that we will not tolerate in TSA. If we find any person, any employee who is profiling based on race, ethnicity, national origin, any of those things we will take appropriate action.

Mr. SANFORD. I think—I mean, I have run out of time—but I think Mr. Lord raised the question of the type of profiling that in fact does occur. The guy in the business suit generally isn't going to be the most suspicious-looking guy.

Mr. HUDSON. Unfortunately, I will need to cut this off. We will do a second round of questions, but I would like to move on to other Members.

At this point I will recognize the gentleman from Nevada, Mr. Horsford, for any questions he may have.

Mr. HORSFORD. Thank you very much, Chairman Hudson, and to the Ranking Member, Mr. Richmond, to the Ranking Member of the full committee, Mr. Thompson, for allowing me to participate in this hearing today. Thank you to our panelists.

I just want to associate myself with the comments of the Ranking Members and the other panelists who have talked about the need to both protect our National security while preserving Americans' right to privacy and our civil liberties, and to underscore the statements by the prior representative who asked, you know: What is the return on investment for \$1 billion? To somehow suggest from the GAO report that there is not profiling I think deserves some more analysis and review.

Administrator Pistole, I also wanted to extend my personal condolences to the TSA officer, Mr. Hernandez, and to his family, for giving his life in the protection of the American public. The TSA forms the front line of our Nation's aviation security and their work is not only critical, but also appreciated. I think in light of the recent tragic events at the Los Angeles airport, airport security is once again in the fore.

Based on the review that we have received that your agency conducted, it is my understanding that the shooter entered through the exit lane of that airport. So I am concerned that the actions and policies adopted by the TSA may have some unintended consequences, particularly because they are being made without the input of stakeholders who may have particular expertise on the topic.

I recently offered an amendment to Ranking Member Thompson's bill, the Aviation Security Stakeholder Participation Act, which will form the Aviation Security Advisory Committee, and my amendment added the issue of exit lane security to the scope of the advisory committee's responsibilities. This was done prior to the tragic events at the Los Angeles airport.

So, Administrator Pistole, isn't it true that your plan to transfer responsibility of exit lanes from the TSA to local airport authorities has been met with near universal resistance from local airports?

Mr. PISTOLE. First, Congressman, thank you for your kind words earlier.

So the context for the exit lanes are that airports currently in the United States provide exit lane staffing in two-thirds of all of the airports in the United States where TSA has a presence. So we are only talking about one-third of the airports. So there is 155, approximately, airports that TSA provides some type of staffing.

Now, we will still do the staffing as it relates to screening of law enforcement officers, known crew members, pilots, flight attendants, and things like that. We will still do that screening function. The issue with the exit lanes is on access control.

Mr. HORSFORD. Right.

Mr. PISTOLE. The exit lane is one of dozens of access control points around the airport that TSA does not provide any, that is an airport function. So in shifting this responsibility, I understand the concerns that airports have expressed because of the costs associated with this. The bottom line for us in a time of reduced budgets for TSA, we have to find cost savings to focus under a risk-based security approach on the security screening functions as opposed to access control.

Mr. HORSFORD. Yeah, and I respect that, however it can't be done in a vacuum.

Mr. PISTOLE. I agree.

Mr. HORSFORD. You have got to do it with the inputs of your stakeholders and with Congress, which signed legislation putting this responsibility under the TSA. We haven't changed that from a policy standpoint. So to have the TSA take this up without direction from Congress, I also think may be inappropriate from a regulatory standpoint.

One of the other issues that I have is with the TSA procurement procedures for both vendors and airports, because they assume tremendous risk when they begin the process of adopting new technologies. The airport closest to my district, McCarran International Airport, recently won approval for TSA for a technology solution to the problem of exit lane monitoring, for which I am, you know, very excited. But my question is: How does TSA expect airports to take the risk of designing, purchasing, and installing these technologies within the time frames presented and without TSA preapproval of that technology?

Mr. HUDSON. The gentleman's time has expired, but I will allow the administrator to respond if you would like.

Mr. PISTOLE. Yeah, thank you, Chairman. So we are not dictating to the airports how they do the exit lane security. If they want to staff somebody, put a person there as TSA has, that is fine. We just ask the airport authorities to work with the local Federal security director to have some acceptable solutions. So for the technology solution, that is great, we just ask that we be given insight into what that is, and then we will review and presumably approve if it meets standards, but we are not in the business of dictating, saying this is what you will do. We are just saying we are out of that business—

Mr. HORSFORD. Can I just clarify? Can you approve in a pre-approved qualified vendor list so that once they are selected, they know that the project can come to fruition?

Mr. PISTOLE. We have not taken that approach for various reasons which I can get into more detail later, but, no, we have not done that.

Mr. HUDSON. We will do a second round if the committee so chooses or so desires.

Now I recognize the gentleman from California, Mr. Swalwell, for any questions he may have.

Mr. SWALWELL. Thank you, Mr. Chairman, and welcome to our witnesses.

Administrator Pistole, I first want to thank you for engaging with me and Members on this committee during the knives on planes discussion. I really appreciate you working with the ASAC on that and continuing to engage with me. I appreciate the policy revisions that were made.

I also want to express to you, administrator, how sorry, deeply sorry I am about the shooting at LAX. I want to pass along my condolences to the family of Officer Hernandez. I am the son of a retired police officer and the brother of a police officer who serves today. I want to wish well the transportation security officers who were shot, James Speer and Tony Grigsby, as well as passenger, Brian Ludmer.

You know, as far as Federal workers go, TSOs in the Federal workforce, the transportation security officers, they are some of the newest employees we have in our Federal agencies. You know, they have been around now since right after September 11. But I think it is easy to forget that they are relatively new compared to how many Federal employees we have, and they are still learning their job and growing in their job, and we shouldn't take that for granted, and they are among the last lines of defense between a person who wishes to do harm and passengers and crew on an airplane.

In many ways, as Mr. Hernandez and the others who were shot, they are heroes, but too often unsung. Unfortunately, I think too many people, and I have seen this in this Congress, continually attack and denigrate the work at the TSA. Recently, in 2012, the Republican National Committee's platform called for de-Federalizing the TSA and privatizing the TSA.

I think we need to all just take a step back in our comments about the TSA and just attacks in general on the Federal workforce. I mean, these people are doing a public service. They are doing it oftentimes at much less money than they would receive in the private sector. Again, they are the last line of defense. I don't think our comments are well-served and I think they can create a culture of hate toward people who are working in very stressful environments dealing with the passengers, myself included, who are not always on our best behavior as we are rushed trying to make our plane. It is a very difficult job, and I hope we can all just be mindful of that job.

In light of that, administrator, I do want to talk about—Ranking Member Thompson had some concerns with his questioning about radio communication capability between TSOs and law enforcement personnel, particularly armed law enforcement who are at the airports. So my question to clarify: At LAX and most of the airports across the country, is there radio communication that can

take place between a TSO and law enforcement personnel, or is it only phone communication that can take place?

Mr. PISTOLE. Yes, and thank you for your kind comments, Congressman.

So it depends, airport-by-airport. So out of the 450 airports, I don't have the figures here in front of me, which I will get, most of the communication would be between the TSA employees and a coordination center, which may be jointly staffed, depending on which airport, between TSA and airport police, or just TSA, the coordination center. I am not aware of ones where it is a direct link into a radio contact into the police, but I am sure there are some. I am just not aware of those off-hand.

Mr. SWALWELL. Do you think that could have helped with what happened at LAX and for future scenarios that you could envision or training that you have gone through, would it be better if we had a radio system where police and TSOs were on the same channel?

Mr. PISTOLE. Well, I think that is clearly one of the things that we are looking at as part of our review, but just for awareness, for example, if you are at LAX and you call 9-1-1, that doesn't go to the Los Angeles Police.

Mr. SWALWELL. CHP, right?

Mr. PISTOLE. Yeah. So that goes elsewhere. You have to dial 7-9-1-1 to get into the airport police. So there are some quirks in there that go, you know, beyond TSA and just law enforcement, but it really does come down to airport-by-airport.

Mr. SWALWELL. Okay, thank you.

Also, as far as behavioral or behavior detection, what have you learned from what happened at LAX and, you know, the behavior detection officers? Is there anything that they could have detected? I know you are still investigating, but, you know, clearly, this was a situation that happened and unfolded rapidly and a behavior detection officer was one of the officers that was shot. Is this something that you believe under prime circumstances the behavior detection team could have detected this person earlier?

Mr. HUDSON. The gentleman's time has expired, but I will allow the witness to answer.

Mr. SWALWELL. Thank you.

Mr. PISTOLE. Thank you, Chairman.

Again, possibly, given the configuration of terminal 3 at LAX with the document checker on the lower level and then escalators up to where the checkpoint is, there were actually just two TSA employees there, and so there were no BDOs that would observe. But the shooter, again, for the time he was dropped off at the curb to the time he walked literally, I walked this on Tuesday, walked a few steps, and then took out his assault rifle and opened fire, I mean, it is just a matter of seconds. It is possible that a BDO, if the officer would have seen something, you can actually see on the video an airport employee pointing at the gunman. You don't see the gunman in the video, but you see this person pointing, and then the shots are fired. So somebody could have, and somebody did, but given that configuration there were no BDOs present at that actual point.

Mr. SWALWELL. Great, thank you. I yield back my time.

Thank you, Mr. Chairman, for the extra time.

Mr. HUDSON. Thank the gentleman.

At this point the Chairman will recognize the gentleman from New Jersey, Mr. Payne, for any questions he may have.

Mr. PAYNE. Thank you, Mr. Chairman.

I first would like to acknowledge our condolences to your organization for its loss.

Mr. PISTOLE. Thank you.

Mr. PAYNE. Just want to bring light to a few things. I am sure being last I am possibly going to ask something that has already been asked, but I feel it is important. You know, the GAO report released yesterday cites an incident where a BDO manager at Newark Liberty International Airport, which is my home airport, gave inappropriate direction to behavior detection officers regarding profiling of passengers and made racial comments. It is my understanding that that BDO has been fired.

It has also been brought to my attention that the BDOs have been promoted based on the number of referrals they have made, which have encouraged BDOs to racially profile to increase their referral rate.

So what degree of confidence do you have that other BDO managers aren't encouraging or directing racial profiling through the SPOT program?

Mr. PISTOLE. Well, thank you, Congressman Payne. So our clear instruction, and one of the lessons learned from these multiple reviews that have been done is we could have done a better job in terms of training and retraining and ensuring that there is no notion of profiling taking place. In fact, as part of our retraining that we have done since these reports have been done, is to require every BDO to take a pledge against profiling, which I have and can share with the subcommittee, and every BDO other than those who are out on extended leave or something have taken that pledge to ensure that they understand that profiling has absolutely no place in a BDO's work. It is not good law enforcement. It is not good security work from our perspective. It is unconstitutional. So anybody who is found to be profiling, will be investigated and dealt with appropriately.

So we have put that message out very clearly. I can talk about the Newark situation in detail if you would like. But that being said, any time there is an allegation, in fact, that is what happened in Boston last year, the allegations came into us. I saw them. I take them very seriously. So I asked the Inspector General to conduct the investigation rather than TSA because this was National news. It was in the *New York Times*.

So they conducted the review, and obviously you heard from Mr. Edwards in terms of their findings, there was not discrimination that was found or profiling. But we take it very seriously, and I know from my background that that is just unacceptable, and so any violation of somebody's civil rights or civil liberties is a significant, significant issue for us and just undermines the entire program. So that is why we don't tolerate it.

Mr. PAYNE. I hope it is not a culture that has been created. Because let me say, I don't know if it is the right word, but I am sensitive to this issue. Being from a State where my uncle is the au-

thor of the racial profiling bill in New Jersey, we have had many instances where this problem is just out of proportion. So to see this here, it harkens back to issues that we have been dealing with in New Jersey, and now this at Newark Airport is troubling.

You know, to Mr. Horsford's point, you know, that there needs to be maybe more analysis of whether or not this is going on, what steps has TSA taken to begin collecting racial information on passengers in order to be able to measure quantitatively whether racial profiling has occurred?

Mr. PISTOLE. Yeah, that has been a challenging issue for us because we in collecting the information, does it then promote either the actual or the appearance of profiling? So we have been doing a feasibility study to assess that. Of course, when an individual is referred to law enforcement, they collect that data, but then that is not necessarily passed back to us. So that is part of our challenge. Is it the appearance of somebody? Of course, that it is an imperfect art of defining somebody. So those are the challenges that we are working through, but I am sensitive to the point you are making.

Mr. PAYNE. Yeah. You know, the point of BDOs being promoted based on the number of referrals—

Mr. PISTOLE. Yes, that is not—

Mr. PAYNE. You know, growing up I went to school in a town where the population was changing and people were resistant to it. So they had someone that worked for the board of education that would go to homes to make sure people actually lived there. What subsequently I found out years later is that for every person he could prove didn't live there, he was paid. So, you know, these referrals kind of harken to that type of thing. So I am very concerned about that.

Mr. HUDSON. The gentleman's time has expired.

Mr. PISTOLE. Chairman, may I respond to that?

Mr. HUDSON. Sure.

Mr. PISTOLE. From the standpoint of, I think there was a perception among some BDOs, and I believe the inspector general found this in their review in Boston, that BDOs may be promoted more readily if they made a higher number of referrals. That is not the case, but there was a perception. So we have gone back to retrain and clarify that that is not the case. So we don't want people referring, we don't want BDOs referring because they think they will be more readily promoted.

Mr. HUDSON. Thank you for that answer.

At this point, we will start a second round. I have just got one question. I am not planning to take my entire 5 minutes, and maybe we can get through this round pretty quickly. But I appreciate the indulgence of the witnesses here.

My question is for both Mr. Gerstein and Mr. Lord. In your testimony you said that there were several foreign countries who have implemented this type of behavioral detection program. In fact, I visited Ben Gurion Airport myself and have seen first-hand how they implement that program. So my question to both of you, or anyone who wants to respond, is there a body of scientific studies that support the effectiveness of some of these foreign programs?

If so, how can this information be better leveraged and used as we examine what we do here?

Mr. LORD. I guess I can start. You typically hear the Israelis operate a similar system. I think it is really important to note that there are as many dissimilarities as similarities in their system. First, you are allowed to racially profile under their system. As Mr. Pistole explained that is prohibited under our system. They also, their system is much smaller in scale. You know, one major international hub, number of aircraft is less than 100 in their national fleet. They essentially will take the time and interview every single passenger getting on an aircraft. We can't do it under our system at 1.8 million passengers a day. The entire system would come screeching to a halt. So I think you have to be really careful about drawing parallel with the Israelis.

Also in our report, we did cite another country report. We are not allowed to disclose the name of the country, it is considered sensitive security information. But the phase one of the study found some merit in the use of behavior indicators, but they did another follow-up study, same country, same process, phase two found that there was no, you know, they changed the conclusion and concluded it was not a really effective use of their resources. So there are some other country studies out there, but I think you have to be really careful about citing them as evidence to support the use of behavior detection.

Mr. GERSTEIN. I would agree with Mr. Lord with respect to Israel. I think, you know, they rely on it heavily but it is a difference in scale. It is certainly not something that we would want to engage in here.

On the other hand, when I went to Australia, I thought that their program is very robust. We walked what I call the last 200 meters, if you will, from the time somebody goes through their passport, and then goes through and gets their luggage and is finally checked out. They have a very robust system.

The one thing that I did not see in comparing it to ours was the same sort of checklist scoring of the indicators. But, you know, they rely on this heavily, and they think it works.

I would also like to say that we have evidence that many of the indicators that we have within the TSA methodology on SPOT have been validated through Department of Defense work. For example, person-borne IEDs. So they have looked at it and they came up in one of the studies that 24 indicators that have been identified in TSA overlap with what was in this Department of Defense-sponsored study.

You know, likewise, there was a recent workshop—well, somewhat recent, 2011—with Federal, local law enforcement, DOD, private sector, in which they found 32 of the indicators were overlapping. So there is work on-going to try to better understand the questions that surround behavioral science and to try to get better at it.

You know, the one thing about this program I think is really interesting, though, is that, you know, most of what we do when we talk screening is based on capabilities. In other words, can I X-ray it and determine is there an explosive? Or do I put something through a magnetometer or one of the AIT machines?

SPOT is really the premier program for trying to get at this question of behavioral issues and can you identify people who are in stressful situations and, therefore, should be brought aside for secondary screening? I would add that that is a very low-risk outcome to be secondarily screened. Thank you.

Mr. HUDSON. I appreciate that.

At this point, I will recognize the gentleman from California, Mr. Swalwell for a second round.

Mr. SWALWELL. Thank you, Mr. Chairman.

Administrator Pistole, yesterday the committee received a letter from a behavior detection officer—actually officers—at Boston's Logan Airport expressing concerns about retaliation for exposing profiling, to follow up on the gentleman from New Jersey's question. Can you assure our committee that employees who come forward and report any wrongdoing or the suspicion of wrongdoing in the behavior detection program, whether it is profiling or otherwise, that they would be protected against retaliation?

Mr. PISTOLE. Absolutely.

Mr. SWALWELL. Great, thank you.

I yield back.

Mr. HORSFORD. Would the gentleman yield?

Mr. SWALWELL. I will yield, if it is okay, to the gentleman from Nevada.

Mr. HUDSON. Without objection.

Mr. HORSFORD. Thank you. I will defer to the gentlelady. I just had some additional questions, but—

Mr. HUDSON. Well, I am happy to get to the gentleman in order. If the gentlelady is next then I am happy to recognize you for 5 minutes—

Mr. HORSFORD. That is fine.

Mr. HUDSON [continuing]. If that is appropriate.

Okay. At this point then I will recognize the gentlelady from Texas, Ms. Jackson Lee, for a second round.

Ms. JACKSON LEE. Thank you. I thank the gentleman from Nevada for his courtesy.

I wanted to pursue the line of questioning that goes to whether we keep or whether we do not keep the SPOT program. So let me first go to this issue, Mr. Lord, that you indicated in your past report, though I will not hold that as the final answer, that you saw no racial profiling—but we have just heard of concerns from Boston—but you saw the idea of attire.

So I guess, Mr. Lord and Mr. Edwards, what do you mean by that, and how is that not effectively racial profiling if someone is wearing a head dress, someone is wearing braids, someone is wearing their hair natural, how does that not fall into the category of profiling?

Mr. EDWARDS. Thank you, ma'am. We looked at the Logan International Airport in our report investigation. Mr. Pistole had asked me to look into it. We interviewed the BDOs, we interviewed the BDO supervisors, we also interviewed some passengers, not to go on a fishing expedition, but we interviewed some passengers as well. What we found was there was not racial profiling, but in the interviews some of the BDOs alleged a practice of appearance profiling.

Ms. JACKSON LEE. Right. So my question is: You found that. What does that mean, and how do we fix that or how do we improve that? Because it is certainly, I think, very much connected.

Mr. EDWARDS. So in general terms, appearance profiling, you know, it is identifying individuals exhibiting certain types of characteristics that may be different from the general population. I can come in a non-public setting and explain to you my understanding of what this appearance profiling is. I am just uncomfortable elaborating that at this public setting.

Ms. JACKSON LEE. All right.

Mr. Lord, did you find any form of discriminatory assessments being made by BDOs?

Mr. LORD. Well, first of all, we started our review, we always coordinate with the IG. Since they were looking at these racial profiling allegations in Boston, we deferred to them on this issue. But as part of our work, since we had already started the work, we did interview 25 behavior detection officers across four airports; 20 of the 25 said they had not personally witnessed any racial profiling, but 5 of them indicated there was, in their view, based on a personal observation, some profiling. Again, that is a very small number over 3,000 behavior detection officers.

We tried to substantiate it looking at the data, since, you know, that is a hallmark of how we do our work, and at the time TSA didn't have the data systems that would allow us to substantiate that, but as Mr. Pistole just noted, they have a pilot, a feasibility study under way.

Ms. JACKSON LEE. Thank you.

Mr. LORD. They are going to think about better ways to do that.

Ms. JACKSON LEE. Thank you so very much.

Mr. Pistole, let me conclude with you, please. There have been several, I think, constructive points being made at this hearing. Would you go back and look at this program, this service as it may be better refined through streamlining, through looking at the at-risk concept that I think you adhere to, through the idea of—I even like the idea, because of the LAX tragedy, of expanding in the outer areas in an area surrounding the perimeters, so as passengers enter, it might be an appropriate executive fix. Are you willing to go back and look at this program constructively?

Mr. PISTOLE. Yes, Congresswoman. That is part of our review. Clearly we want to make sure we are deploying BDOs and the entirety of the workforce in the highest-risk, most return-on-investment places, times, and situations. So that is clearly what we are doing.

As part of the BDO program we are looking at refining the number of indicators. Is it too complicated, is it confusing, how can we streamline, to your point, how can we simplify the whole process to give the greatest return on investment?

Ms. JACKSON LEE. Mr. Chairman, if I may just put a question on the record and ask you, let me thank you and the Ranking Member for this hearing. I would offer a thought based upon Mr. Edwards' comment and some more pointed questions that I would like to ask that we have a Classified briefing on the BDO pursuant to or in light of LAX and a lot of our concerns about the exterior. Meaning, when I say the exterior, there are the perimeters, people

driving up, that is one issue, but I am talking about the lead-up to the TSA area, the ticketing area, people walking up, which is where this gentleman was. So he had to walk somewhere, and the question was: Was there some officer other than the law enforcement who deals with the actual activity of violence or activity, but someone watching that area?

So, again, no determinations here, no commitments here. Prefer not in open setting. But I would like to have the opportunity, if we could, to have that discussion.

Mr. HUDSON. I would be happy to work with you on that.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Thank you very much. Again, thank you for your service. Thank the gentleman from Nevada as well.

Mr. HUDSON. At this point, I will recognize the gentleman from Nevada, Mr. Horsford, for 5 minutes.

Mr. HORSFORD. Thank you, Mr. Chairman.

I would like to ask the administrator if he could go ahead and answer the question about the TSA not being able to have a preapproved vendor list, what the challenges are to implementing the process.

Mr. PISTOLE. We looked at doing a qualified products list to say we would recommend or we would accept if you bought these particular pieces of technology from these manufacturers. We are trying to be open to all vendors, all providers, so it is not like we are preselecting one and saying you must go with this one. So McCarran may have contact with a vendor that has one solution, LAX may have contacts with another vendor with a different solution. So we are tried not to be prescriptive in that regard; tried to be completely open to whatever vendors and solutions that airports would provide.

So what we have done is provide a template to say, here are some recommended solutions, and then if you work within those parameters just make sure you coordinate that with your local Federal security director, these more likely than not would be approved; as opposed to saying from a qualified product list, here is the exact product you have to use.

Mr. HORSFORD. So I would like to ask if I can follow up with you and someone from your office in that regard to make sure that that process is clear to the local airport—

Mr. PISTOLE. Sure.

Mr. HORSFORD [continuing]. Directors? Thank you.

Mr. PISTOLE. Yep.

Mr. HORSFORD. Also, administrator, in fiscal year 2014 TSA reduced the number of airports where the SPOT program operates from 176 airports down to 121, a reduction of 55 airports. So the agency did this despite your own analysis that said you actually needed to increase the number of behavior detection officers. So first my question: Are the airports where the SPOT program has been removed less secure today because they don't have the BDO? If not, why not?

Mr. PISTOLE. Yes. So this goes back to actually a GAO, the 2010 report, that recommended that we assess our deployment of BDOs across the risk landscape—my words. So under a risk-based security approach, what we have done is looked at those 175 and made

a judgment that our return on investment in terms of being able to see and observe the greatest number of passengers in the highest-risk airports would be better-suited by reducing the footprint from across the country, basically the peanut butter approach, just spreading resources equally around the country, to those higher-risk and higher-passenger airports.

So that is what we have done under this Risk-Based Security initiative to say we will be in generally the 121 busiest airports around the country, so we will be observing over 80, maybe as high as 90 percent of all passengers so we get a better return on investment.

In an ideal world, yes, I would have BDOs at virtually every airport. So there is some argument to be made that those airports have less security. But we are not in a time, as you know, of unlimited budget, so I have to make a risk-based decision based on our budget, and so that is why we have made that to coincide with the GAO recommendation.

Mr. HORSFORD. So on that exit lane issue which I raised earlier with you, and your point was you guys can't afford it so you are going to shift that burden to local airports, local airports have budget constraints, too. So, again, all I would ask is that you not make these decisions in a vacuum, that you involve the local stakeholders so that they can help you inform how to best maintain security. We can't make the Federal budget problems local and State problems. I was a former State senator before coming to Congress. So shifting the burden down isn't a solution either. So I would just ask that you continue to get their input.

Can I just ask one final question, maybe Mr. Edwards or Mr. Lord? Is there any data of those passengers who have been screened of their race, ethnicity, religion? Is any information like that captured?

Mr. LORD. Yeah, there is some, but it wasn't systemic or sufficient for us to do a good analysis. For example, when they make a referral that ultimately goes to a law enforcement officer, the law enforcement community does in some cases keep good demographic data, but it really varies by airport. So it is spotty, but there is some data out there.

Mr. HORSFORD. Okay. That is something we need to follow up on, because it is done more effectively in law enforcement outside of airport, and if we are going to continue to have these type of profiling strategies, we need to make sure that it is not disproportionately impacting, you know, based on race, ethnicity, and religion. You don't know that unless you collect the data.

Mr. LORD. Yeah. To TSA's credit, they are very sensitive to that, and they already have a project under way to gather better data to help answer that question.

Mr. HUDSON. I thank the gentleman. I thank the witnesses for their testimony to Members' questions today. Members of the subcommittee may have some additional questions that they want to submit in writing. We ask the witnesses that you do respond to these.

Without objection, the subcommittee stands adjourned.
[Whereupon, at 11:46 a.m., the subcommittee was adjourned.]

