

**FEDERAL DEFENDANTS' MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS**

EXHIBIT A



To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.

REVISION: This revised directive supersedes TSA MD 100.4, *Transportation Security Searches*, dated September 24, 2007.

SUMMARY OF CHANGES: Section 4, Definitions, clarifies and adds terms; and Section 6, Policy, addresses discovery of currency and illegal items, explains authority to verify identity, and discusses layered security.

1. **PURPOSE:** This directive establishes certain TSA policies to prevent, protect against, or respond to acts of terrorism and to protect persons, facilities, and critical infrastructure as part of a layered security system in all modes of transportation. Among other situations, it applies to checkpoint screening to find explosives, incendiaries, weapons or other items and to screening to ensure that an individual's identity is appropriately verified and checked against government watch lists.
2. **SCOPE:** This directive applies to TSA operational components.
3. **AUTHORITIES:**
 - A. 6 U.S.C. § 1112
 - B. 49 U.S.C. § 114
 - C. 49 U.S.C. § 44901
 - D. 49 U.S.C. § 44903
 - E. 49 U.S.C. § 44917
 - F. 49 CFR Chapter XII, Parts 1500-1699
 - G. Prohibited Items Interpretive Rule, 70 FR 72930 (Dec. 8, 2005)
4. **DEFINITIONS:** For purposes of this directive, the following definitions apply:
 - A. Additional Screening: Secondary screening conducted to detect potential threats or risks or any particular substance, attribute, person, or undesirable material.
 - B. Administrative Search: A search conducted as part of a regulatory plan in furtherance of a specified non-law enforcement government purpose, such as to determine compliance with TSA regulations or to prevent the carriage of threat items or entry of an unauthorized person into the sterile area or on board an aircraft.
 - C. Accessible Property: Property that is intended to be accessible to the individual in the secured area, sterile area, or Air Operations Area of an airport or in the cabin of an aircraft.

- D. Aviation Direct Access Screening Program (ADASP)/Playbook Screening: TSA screening of persons, their accessible property, and vehicles as they enter or are present within a secured area, sterile area, or Air Operations Area of an airport.
- E. Behavior Detection Officers (BDOs): Specially-trained TSA personnel who execute TSA's Screening of Passengers by Observation Technique (SPOT) Program.
- F. Checkpoint Screening: A screening of individuals and property for threats at the screening checkpoint.
- G. Consent Search: A search of a person, property, location, or vehicle based on permission.
- H. Detection Technology: Electronic and/or mechanical means used to assist in the discovery and identification of property or persons that may pose a threat.
- I. Federal Air Marshal (FAM): A TSA law enforcement officer who derives his or her authority from 49 U.S.C. § 114(p), 49 U.S.C. § 44903(d), 49 U.S.C. § 44917, and the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53, 121 Stat. 266).
- J. Gate Screening: The screening of passengers and their accessible property at the boarding gate of an aircraft.
- K. Identification Media: Documents that establish identity for the purposes of accessing the screening checkpoint. Identification media includes, but is not limited to, Government-issued photo identification such as passports and driver's licenses as listed at www.tsa.gov. In accordance with TSA standard operating procedures, other documents, such as a school identification or library card may serve as identification media where the individual presents two such documents, which both bear the individual's name, and one of which also includes the individual's photo, address, phone number, date of birth or gender.
- L. Law Enforcement Officer: A sworn employee of a Federal, state, tribal, territorial or local government entity with power of arrest, who is trained and commissioned to enforce the criminal laws of the jurisdiction(s) in which he or she is commissioned.
- M. Office of Inspection Criminal Investigator: A TSA law enforcement officer that derives his or her authority from 49 U.S.C. § 114(p), 49 U.S.C. § 44903, and the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53, 121 Stat. 266).
- N. Prohibited items: Items that are not permitted to be carried by passengers and non-traveling individuals through the screening checkpoint, in the sterile area, in the cabin of an aircraft, or in checked baggage, as described in the prohibited items interpretive rule (70 FR 72930 (Dec. 8, 2005), or other TSA regulations, orders, and policies.
- O. Random Selection Protocol: A protocol that uses a random number generator or other neutral system to select which persons, property, or vehicles will be screened during an administrative or special needs search. Use of a random selection protocol helps to ensure that selection authority is not arbitrarily exercised.

- P. Regulatory Inspection: Inspection or test to determine compliance with TSA regulations, security programs, orders, policies, and applicable laws.
- Q. Reverse Screening: Post-flight screening of passengers, accessible property, and luggage conducted after the aircraft has reached its destination and before passengers or baggage are permitted to re-enter the sterile area of an airport.
- R. Searches: Examinations consistent with the Fourth Amendment that include administrative and special needs searches, consent searches, and law enforcement searches.
- S. Screening: A physical or visible inspection or appraisal of a person, place, document or thing, with or without assisting technologies, to determine compliance with TSA standards, regulations and applicable laws and to detect a threat.
- T. Screening Checkpoint: A screening location at the entry to a sterile area or other transportation area defined by TSA regulations, polices and procedures.
- U. Screening of Passengers by Observation Technique (SPOT): A program that identifies potentially high-risk individuals based on behavioral cues.
- V. Special Needs Search: A search conducted without a warrant and in furtherance of a special governmental need, beyond the ordinary needs of law enforcement. In the context of transportation security, special needs searches are designed to mitigate the risk to the public posed by the introduction of threat items or entrance of an unauthorized person into the transportation system.
- W. Threat: A natural or man-made situation, individual, entity, or action that has or indicates the potential to harm life, information, operations, the environment and/or property.
- X. Threat Items: Includes, but are not limited to, prohibited items such as explosives, incendiaries and weapons. Threat items may include items that are themselves benign, but that can be rapidly transformed into a security risk, such as parts of weapons or explosives, and certain liquids and gels. Threat items may also be benign items that cannot be effectively and rapidly distinguished from dangerous items (e.g., water from certain liquid explosive; or an ordinary laptop from an electronic triggering device) or items that on their face appear to be threat items, such as imitation firearms or grenades. In addition, threat items may also include items that can be used or altered to conceal other threats or prohibited items, such as thermos bottles and certain electronics.
- Y. Transportation Security Inspector (TSI): Specially-trained TSA employee who conducts security assessments of transportation systems, works with transit officials to enhance the security of their systems, provides technical assistance for security, and conducts regulatory inspections.
- Z. Transportation Security Officer (TSO): An individual who is trained, certified, and authorized in accordance with applicable TSA standards and directives to inspect individuals, accessible property, identification documents and/or checked baggage for threats.
- AA. Transportation Venue: A building, structure, or location that facilitates the movement of passengers or goods in the transportation system.

- BB. Travel Document Checker: A specially-trained TSA employee who conducts checks of travel documents and verification of identification for individuals desiring access to the screening checkpoint.
- CC. TSA Law Enforcement Officer: A law enforcement officer who derives his or her authority from 49 U.S.C. § 114(p), and whose authority includes, but is not limited to, carrying a firearm; making arrests without a warrant for any offense against the United States committed in the officer's presence, or for any felony cognizable under the laws of the United States if there is probable cause to believe that the person to be arrested has committed or is committing the felony; and seeking and executing warrants for arrest or seizure of evidence issued under the authority of the United States upon probable cause that a violation has been committed.
- DD. Visible Intermodal Prevention and Response (VIPR) Program: TSA's deployment of specialized teams to augment the security of any mode of transportation. VIPR teams may comprise any asset of DHS, including, FAMs, TSIs, canine detection teams, and detection technology.

5. RESPONSIBILITIES: All offices and individuals responsible for establishing and implementing programs and procedures involving searches should ensure that searches are conducted in accordance with this directive and other applicable law and policy.

- A. Office of Security Operations (OSO) is responsible for:
 - (1) General oversight and training of Federal Security Directors (FSDs), BDOs, Bomb Appraisal Officers, Explosives Security Specialists, TSIs and TSOs.
 - (2) Drafting procedures for operations that are consistent with this directive.
 - (3) Ensuring that OSO personnel receive appropriate training to carry out this directive.
 - (4) Coordinating with the Joint Coordination Center.
- B. Office of Law Enforcement/Federal Air Marshal Service (OLE/FAMS) is responsible for:
 - (1) General oversight and training of FAMs, National Explosives Detection Canine Teams, and Assistant FSDs for Law Enforcement.
 - (2) Drafting procedures for OLE/FAMS operations that are consistent with this directive.
 - (3) Ensuring that OLE/FAMS personnel receive appropriate training to carry out this directive.
 - (4) Planning, coordinating and deploying VIPR assets as designated TSA facilitator of the Joint Coordination Center.
- C. FSDs are responsible for:
 - (1) Ensuring that all searches conducted by OSO personnel under his or her leadership are in accordance with this directive.

- (2) Ensuring that all searches conducted by OSO personnel under his or her leadership are in accordance with this directive and all other applicable laws and policy including TSA Standard Operating Procedures and policies for regulatory inspections.
- D. OLE/FAMS Special Agents in Charge (SACs) are responsible for ensuring that all searches conducted by FAMS and Assistant FSDs for Law Enforcement under his or her leadership are in accordance with OLE/FAMS authorities, protocols and this directive.
- E. Joint Coordination Center (JCC) is responsible for:
 - (1) General oversight of the VIPR Program.
 - (2) Coordination and development of guidelines for VIPR operations with other TSA components.
 - (3) Monitoring active VIPR deployments.
 - (4) Ensuring that VIPR operations plans are distributed to all appropriate TSA components for review.
- F. Office of Intelligence is responsible for:
 - (1) Providing information and guidance to assist in the identification of current threats and vulnerabilities that may form a predicate for searches.
 - (2) Providing risk analysis to assist in making search determinations.
- G. Office of Chief Counsel (OCC) is responsible for:
 - (1) Reviewing Operations Plans, Standard Operating Procedures, Security Directives, TSA regulations, and other policies and plans to help ensure compliance with legal requirements.
 - (2) Providing legal advice and guidance on issues related to searches.
- H. VIPR Team Leaders are responsible for:
 - (1) On-site supervision of all VIPR operations.
 - (2) Ensuring that all searches conducted during VIPR operations are in accordance with this directive and approved operations plans, as applicable.
 - (3) Ensuring that all VIPR team members understand their responsibility and authority during the VIPR operation, and have appropriate guidance to carry out VIPR operations.
- 6. **POLICY:** TSA personnel must use this directive in carrying out their functions. Nothing in this directive is intended to create any substantive or procedural rights, privileges, or benefits enforceable in any administrative, civil, or criminal matter.
 - A. General: Intelligence reports indicate that Al-Qaeda and other terrorist groups continue to develop plans for multiple attacks against transportation systems. Successful, coordinated bombing attacks aimed at incurring mass casualties in various transportation systems have

occurred. Terrorist groups continue to pursue a range of targets, tactics, and capabilities to accomplish their objectives.

- (1) Screening and searches may be conducted by TSA personnel or at the direction of TSA, and may be initiated by TSA Headquarters or local TSA officials. TSA will consult and coordinate with Federal, state, and local law enforcement officials, as well as affected transportation entities, as appropriate, when conducting these operations. Risk analysis and operational and strategic intelligence may provide guidance in executing appropriate screening and security measures.
- (2) TSA's layered security strategy includes an overlapping system of screening and searches. No single security measure or method is sufficiently reliable to be depended upon in isolation. For this reason, screening and search techniques are not limited to circumstances where detection technology is unavailable or has indicated a potential threat.
- (3) Screening may include examination of individuals and all contents of accessible property, including, but not limited to, containers, compartments, and envelopes. Screening may be conducted for the purpose of finding threat items or identification media, as appropriate.
- (4) Screening may not be conducted to detect evidence of crimes unrelated to transportation security. However, if such evidence is discovered, TSA shall refer it to a supervisor or a law enforcement official for appropriate action. This report satisfies a TSA employee's obligation to report known or suspected violations of federal law. (*ref. TSA MD 1100.73-5, Employee Responsibilities and Conduct, Section 5A(9)*). Although an individual may be requested to wait until law enforcement arrives, he or she is free to leave the checkpoint once applicable screening requirements have been completed successfully. TSA officers should complete an Incident Report whenever law enforcement is notified. Examples of ordinary criminal wrongdoing include possession of illegal drugs and child pornography, and money laundering (i.e., transferring illegally gained money through legitimate channels so that its illegal source is untraceable).
- (5) Traveling with large amounts of currency is not illegal. Sometimes currency discovered at the checkpoint will need to be examined to clear it to enter the sterile areas (or other secured areas). As a general matter, there should be no reason to ask questions of the passenger about currency, although there may be times when questions are warranted by security needs. When currency appears to be indicative of criminal activity, TSA may report the matter to the appropriate authorities. For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment. For international flights, currency that exceeds \$10,000 may not be transported into or out of the United States unless it has been reported to Customs and Border Protection (CBP). TSA may notify CBP and/or law enforcement authorities pursuant to its standard operating procedures that the individual possesses a sum of currency. TSA may also note any factors related to criminal activity for purposes of notifying CBP and/or law enforcement, as well as request that the individual remain accessible pursuant to such notification.
- (6) Prior to entering the sterile area, individuals seeking access to the screening checkpoint must have their identity verified by the Travel Document Checker. Once screening at the checkpoint has begun, as a policy matter, TSA may screen an individual's accessible

property for identification media under two circumstances: according to the standard operating procedures for the SPOT program; and when TSA is already screening the accessible property to resolve an alarm or for another appropriate reason (e.g., as a result of a random selection protocol for screening accessible property). The purpose of screening for identification media is to re-verify that the individual's identity has been matched against government watch lists, thus adding an additional layer of security to the initial check performed by the Travel Document Checker. An individual in possession of multiple forms of identifications reflecting different names or dates of birth may have an identity that has not been checked against the watch lists. Whenever such items are discovered, the new identities should be checked against the No Fly and Selectee lists.

B. Special Needs and Administrative Searches:

- (1) The decision to conduct an administrative or special needs search at a specific transportation venue may be based on or pursuant to:
 - (a) Considerations such as threat level, intelligence, overlapping coverage provided by other layers of security, fluctuations in passenger volume, and available staff.
 - (b) TSA policies on conducting regulatory inspections.
- (2) All administrative or special needs searches are to be tailored to the transportation security purpose for which they are conducted. These searches should be designed to be minimally intrusive, in that they should be no more intensive or extensive than reasonably necessary to detect threat items, to prevent persons who may pose a threat to transportation security from entering the transportation system, or to determine compliance with TSA standards, regulations and applicable laws.
- (3) Examples of administrative or special needs searches include:
 - (a) ADASP/Playbook Screening;
 - (b) Gate screening;
 - (c) Checkpoint screening;
 - (d) Regulatory inspections;
 - (e) Reverse screening; and
 - (f) Vehicle screening.
- (4) All administrative or special needs searches should be conducted according to established procedures to ensure that the searches will be confined in good faith to their intended purpose. When designing or conducting an administrative or special needs search, the following objectives should be addressed, if applicable:
 - (a) How the search is intended to enhance the security of persons and critical infrastructure, to augment the security of any mode of transportation, or to ensure compliance with TSA regulations;


- (b) The threat item(s) that are the target of the search, or the regulation or order for regulatory inspection in the case of regulatory inspection;
 - (c) The manner in which persons are given notice of the search;
 - (d) The procedures used to detect or deter the introduction of the designated threat item(s), to conduct regulatory inspections, or to determine whether an individual is using multiple names or dates of birth which may need to be checked against government watch lists;
 - (e) How the search procedures are tailored to protect personal privacy; and
 - (f) The applicable random selection protocol, unless all persons and/or vehicles that pass through the location will be searched.
- (5) Before conducting an administrative or special needs search, standard operating procedures and deployment operations plans should be developed in consultation with OCC, if practical.
- (6) To incorporate unpredictability and enhance deterrence, search locations may be switched or the number, staffing, and scheduling of locations may vary so that deployment patterns are shifting and difficult to predict.
- (7) To the extent that it is possible, notice should be provided to persons who will be subject to search.
- (a) The notice should be provided in such a manner as to allow persons the opportunity to avoid the search by choosing not to enter the location.
 - (b) TSA may seek the cooperation of airport, aircraft, mass transit, or other transportation operators to place notice on websites in addition to notice provided prior to entry into the physical location of the search.
- (8) With appropriate training, any TSA personnel, including TSOs and TSIs, may conduct an administrative or special needs search.
- (9) An individual submits to screening to verify his or her identity when he or she produces identification media to TSA or an alternative verification process is requested. This normally occurs at the Travel Document Checker podium in front of the checkpoint. Once TSA has verified the individual's identity and has determined that the identification is not fraudulent, the individual is free to proceed to the checkpoint or to exit the queue. At the checkpoint, an individual submits to screening of his or her person when he or she enters the first walk-through screening technology or requests special screening. An individual submits to screening of his or her accessible property when he or she places it on the conveyor belt leading to the x-ray machine. Individuals who have completed the process of screening of their persons or accessible property are free to leave the checkpoint and the sterile area.

- C. Consent Searches: Unlike an administrative or special needs search, the scope of a consent search will depend on the scope of the permission given by the individual, and a person may not be denied access or boarding to the transportation venue based solely on a refusal or withdrawal of consent to a search.
- (1) A search of a person, property, vehicle, or location based on consent may be conducted in any transportation venue.
 - (2) Persons may decline to be searched or withdraw consent at any time.
 - (3) With appropriate training, any TSA personnel, including TSOs and TSIs, may conduct a consent search.
- D. Law Enforcement Searches:
- (1) TSA law enforcement officers may engage in law enforcement activities consistent with established authorities and protocols. This directive does not and is not intended to limit the authority of TSA law enforcement officers.
 - (2) Law enforcement activities may include investigations, detentions, and searches, as appropriate, and are not limited to administrative or special needs searches. This directive does not and is not intended to explain or define the variety of law enforcement searches that may be conducted.
 - (3) The only TSA personnel who should engage in law enforcement activities are TSA law enforcement officers (e.g., Office of Inspection Criminal Investigator or FAMS conducting investigations pursuant to their authority under 49 U.S.C. § 114(p)).

7. **PROCEDURES:** All screening, searches and regulatory inspection should be conducted in accordance this directive and other applicable laws and policy.

8. **EFFECTIVE DATE AND IMPLEMENTATION:** This policy is effective immediately upon signature.

APPROVAL



Gale Rossides
Acting Assistant Secretary

9-1-2009
Date

Distribution: Offices of Chief Counsel, Inspection, Intelligence, Law Enforcement/Federal Air Marshal Service, Security Operations, Federal Security Directors and Special Agents in Charge

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