

OCT 26 2012



Homeland
Security

INFORMATION

MEMORANDUM FOR THE SECRETARY

FROM:

John Pistole 
Administrator
Transportation Security Administration

Margo Schlanger
Counsel to the Secretary

Tamara Kessler
Acting Officer for Civil Rights and Civil Liberties

SUBJECT:

TSA Behavioral Detection Officers

Purpose:

To inform you of actions being taken in response to the allegations of racial profiling by Behavioral Detection Officers (BDOs).

Background:

On August 11, 2012, the *New York Times* published an article that contained allegations of racial profiling by BDOs at Boston's Logan International Airport. On August 14, you issued a memorandum directing the Transportation Security Administration (TSA) to take a number of actions in response to these allegations.

Discussion:

Since receiving your memorandum, and as a result of our collaborative efforts, the following has been accomplished:

- In September 2012, a memorandum was issued to all TSA Office of Security Operations employees reminding them of TSA's Anti-Harassment and Retaliation Policy.
- All BDOs performing assessor and traditional BDO duties at both Boston and Detroit have already received this training. Remaining BDOs across the entire system will be receiving refresher training and reinforced anti-discrimination requirements.

- The TSA website was revamped to provide a complaints section to make it easier for travelers to locate the form for filing civil rights and civil liberties complaints through the web; the TSA mobile phone app also now provides access to this same complaint form and enables users to submit complaints via the app.
- All TSA Contact Center personnel have been retrained to ensure that each civil rights complaint is referred to TSA's Office of Civil Rights & Liberties, Ombudsman and Traveler Engagement (CRL/OTE).
- TSA's Office of Internal Investigations will notify CRL/OTE of referrals of racial profiling allegations to the DHS Office of the Inspector General (OIG) and of any decision by the OIG to pursue an investigation.

As provided in the attachment, we have also agreed upon a number of actions going forward, noting that the OIG investigation will help inform future actions. These actions cover anti-discrimination policy and training, emphasize the BDO focus on aviation security and not unrelated law enforcement, and will further improve coordination on internal and external civil rights complaints. The final item in the attached document is a data collection pilot; we are still working on how this pilot will be conducted. We will update you within 30 days with our plans on this item.

Please be assured that we have taken these profiling allegations very seriously and will continue working very aggressively to address them.

Attachment

AGREED UPON ACTIONS

1. SPOT/BDO Policy/Training is being amended in these respects:
 - a. The SOP provides that “SPOT must be conducted without regard to race, color, religion, national origin, ethnicity, sexual orientation, or disability except as directed by the FSD and provided such direction is based on specific intelligence threat information.” This SOP will be amended to state that such direction must, in terms of timing and reach, constitute an appropriately tailored response to specific threat information.
 - b. Policy and training will clarify that not only is profiling unlawful and out-of-policy, but so is retaliation against those who complain about profiling, whether they are complaining on their own or someone else’s behalf, and whether they are members of the public or TSA personnel.
 - c. Training materials already appropriately stress that there is no stereotypical “face of terrorism” and will be reviewed to ensure sufficiently diverse examples in all future training developments.
 - d. Training materials will ensure that constitutionally protected-activities are not considered as suspicious (e.g., religious conversion or non-criminal ideological associations).
 - e. Training materials will not use terminology that takes a position on religious or ideological debates.
2. TSA will provide routine annual anti-discrimination refresher training to BDOs relating to behavior detection and analysis practices. This training will be coordinated with both DHS CRCL and TSA’s Office of Civil Rights & Liberties, Ombudsman and Traveler Engagement (CRL/OTE).
3. The Assessor training will stress the importance of racial, ethnic, and religious neutrality. Training documents will state the anti-discrimination point clearly wherever relevant, and also will demonstrate its importance by avoiding the current exclusive focus on examples on Arab/Muslim terrorists. Training materials will emphasize that lack of English proficiency, in and of itself, is not a suspicious indicator.
4. The policy and the training will emphasize that unwilling or uncomfortable passengers should not be pressured to answer questions, (b)(3):49 U.S.C. § 114(r)
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5. Similarly, TSA questioning will be limited in duration to a period necessary for TSA personnel to engage and observe the passenger and to allow resolution of suspicious indicators, if any exist. Likewise, questions regarding travel (b)(3):49 U.S.C. § 114(r) will be for the purposes of identifying and resolving suspicious indicators and will not be overly intrusive or personal. The Assessor program will not be focusing on investigation: any (b)(3):49 U.S.C. § 114(r)
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(b)(3):49 U.S.C. § 114(r)

Actions 6-8 emphasize TSA's focus on aviation security, not law enforcement.

6. Within 30 days, TSA will finish amending the relevant policy documents (in coordination with DHS CRCL) to ensure that each relevant document emphasizes that BDOs must stay focused on behaviors and aviation security, and that any non-security law enforcement results are a side benefit, not a goal.
7. Within 30 days, TSA will communicate to BDO Managers that they need to simultaneously do two things:
 - a) Reinforce the August 16th message to Federal Security Directors and the workforce that racial profiling will not be tolerated and is inconsistent with the TSA security mission, and directly address that performance appraisals (including rescinding any contradictory local communications) will not depend on achieving either a high number of referrals, or on the arrest rate coming from those referrals, but rather on demonstrated vigilance and skill in applying the SPOT (and where applicable, Assessor) protocols.
 - b) Systematically augment review of SPOT reports and SPOT implementation, in coordination with TSA CRL/OTE, to increase their ability to assess performance issues and look for non compliance with program protocols. Begin to assess whether regular review of Closed Circuit Television (CCTV) video can be used to note whether behaviors actually were observable and can be a part of such review given operational limitations, coverage, picture quality, and the like.
8. Periodic refresher training for BDOs will emphasize not only the non-discrimination requirements, but the importance of staying focused on behavior and on the aviation security (not law-enforcement) goals of the program. This training will supplement in briefs provided to BDOs in accordance with the SPOT SOP, which reiterate the emphasis on aviation security as the mission. Other job aids—posters, palm cards, etc.— will also be utilized for this purpose.
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10. We will continue to work on the issue of data collection and will report back within 30 days our plan for moving forward.

FOR FRONT OFFICE USE ONLY - DO NOT DUPLICATE

TSA CONTROL NUMBER	TSA-120814-011	ORIGINATING OFFICE: OCRL
 Transportation Security Administration	<input type="checkbox"/> Action Memo	<input type="checkbox"/> DHS SOL
	<input type="checkbox"/> Information Memo	<input type="checkbox"/> DHS Congressional
	<input type="checkbox"/> QFR	<input type="checkbox"/> TSA Congressional
	<input type="checkbox"/> Report to Congress	<input checked="" type="checkbox"/> Other: DHS TK
		WRITER: Chris Mondok
		PHONE: 7-
		DUE DATE:

TSA Executive Level Clearance Sheet

AA Approvals/Coordination:	Date:	SUBJECT:
1. Kimberly Walton, <i>CRLOTE</i>	10/18/12	DHS TASKER: TSA Behavioral Detection Officers. OCRL to coordinate with OSO and draft information memo for Administrator's signature, due to Exec Sec COB 8/15. Explanation, Special Instructions, Comments: <i>CRLOTE has coordinated with DHS CRCL + w/ Schneider Schlanger's office</i>
2. <i>R. Allison, OOZ</i>	<i>10/18/12</i>	
3. <i>B. Genter, OTWE</i>	<i>10/23/12</i>	
4. <i>S. Tawken, OSC</i>	<i>10/25/12</i>	
5. <i>S. Prosnitz, OCC</i>	<i>10/25/12</i>	
6.		

OFFICE OF THE EXECUTIVE SECRETARIAT PREPARATION

Title	ES Editor	Date	Approve	Approve w/ edits	Reject	Comments
IMS	Quovia Peyton	10/18/2012	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Folder to C. Mullen for FO delivery
W/E			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sr. W/E			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

OFFICE OF THE EXECUTIVE SECRETARIAT APPROVAL

To: OLA		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
To: FO	<i>J. Thiene</i>	<i>10/23/12</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>to R. Dine</i>

CLEARANCE

Check all Needed	Review Requested?				Action Taken				Comments
	Reviewer	Office	Initials	Date	Approve	Approve w/ edits	Reject	Use Autopen	
<input type="checkbox"/>	Sarah Dietch	OLA			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A	
<input type="checkbox"/>	Francine Kerner	OCC			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A	
<input checked="" type="checkbox"/>	Howard Goldman	Front Office	(b)(6)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A	
<input checked="" type="checkbox"/>	David Nicholson	Chief of Staff		<i>10.24</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A	
<input checked="" type="checkbox"/>	Ken Fletcher	Senior Advisor		<i>10/26</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A	

APPROVAL

<input checked="" type="checkbox"/>	J.W. Halinski	Deputy Administrator		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	John S. Pistole	Administrator		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

OTWE

 Transportation Security Administration	TSA CLEARANCE SHEET		ORIGINATOR		
			TSA ExecSec		
	DOCUMENT FOR ACTION		OFFICE	PHONE	DATE
<input type="checkbox"/> Action Memo <input type="checkbox"/> Letter <input checked="" type="checkbox"/> Info. <input type="checkbox"/> Other		OTWE- Michele Iuli	7-(b)(6)	10/22/12	

SUBJECT: TSA BDO Information Memo TSA-120814-011 (From Administrator Pistole to Secretary)

TSA CONTROL NUMBER		ACTION REQUIRED				
REVIEWERS		Office	Direct Phone No.	Initial	Date	Correction Required
1.	Fran Lozito	SOTD	7-1167	(b)(6)	10/23/12	<i>included</i>
2.	Stephanie Castor	BMO	7-5263		11/23/12	
3.	Brett Gunter	DAA	7-4257		11/23/12	
4.	Mike Novak	AA	7-5043		10/23/12	
5.						
6.						
7.						

EXECUTIVE SECRETARIAT	INITIAL	DATE	CORRECTION REQUESTED
1.			
2.			

OFFICE OF THE ADMINISTRATOR	INITIAL	DATE	CORRECTION REQUESTED
1.			
2.			
3.			

Explanation, Special Instructions, Comments:

Per ExecSec - Need clearance from OTWE and OOI

Peyton, Quovia

OOI Clearance

From: Hamilton, Leslie <TSA-13>
Sent: Thursday, October 18, 2012 3:29 PM
To: Peyton, Quovia
Subject: RE: TSA-120814-011 Information Memo- TSA Behavioral Detection Officers

Good Afternoon Quovia:

Mr. Rod Allison, Assistant Administrator for the Office of Inspection has read the documents and he concurs.

Leslie R. Hamilton
Executive Assistant
TSA, Office of Inspection
571-227-(b)(6)

(b)(6)

From: Peyton, Quovia
Sent: Thursday, October 18, 2012 3:19 PM
To: Iuli, Michele; Mursch, Alexis; Hamilton, Leslie <TSA-13>; Kinard, Clavon <TSA-13>; Busch, John <TSA-13> <OOI>; Kimble, Deena <TSA-13>
Cc: Moore, Gale; Mullen, Corie; StPierre, Tracey
Subject: TSA-120814-011 Information Memo- TSA Behavioral Detection Officers

All

Exec Sec is requesting that the attached memo be reviewed and cleared by TWE and OOI. Please provide all clearances electronically, as soon as possible.

Thanks and have a great day!

Quovia Peyton

Information Management Specialist
Transportation Security Administration
Office of Executive Secretariat
Desk: 571-227-(b)(6)
Fax: 571-227-1400

OCC + OSC Clearance

Mondok, Chris

From: Walton, Kimberly
Sent: Thursday, October 25, 2012 4:55 PM
To: StPierre, Tracey; Mondok, Chris; Prosnitz, Susan <TSA OSPIE>
Subject: FW: IMPORTANT: Memo to S1 on BDOs
Attachments: TSA-120814-011 AGREED UPON ACTION - (additional edits and comments OCC).docx; TSA-120814-011 BDO Information Memo - (OCC edits).docx
Importance: High

From: Prosnitz, Susan <TSA OSPIE>
Sent: Thursday, October 25, 2012 4:49 PM
To: Bester, Margot <TSA OCC>; Walton, Kimberly; Tauber, Sarah; King, Jennifer L; Sanders, John P.<TSA OSC>; Tashiro, Susan; McLaughlin, Chris; Goldman, Howard <TSA Exec Ofc>; Leaf, Stephanie; Dietch, Sarah
Subject: RE: IMPORTANT: Memo to S1 on BDOs
Importance: High

All,

Please see attached comments from OCC which build upon comments provided earlier today by OSC and OTWE. The comments generally highlight the need to clarify what policies we are referring to when we indicate they will be changed (anything in addition to the SOP?); make clear where we are reemphasizing aspects of training, rather than incorporating new ideas; and delete language which doesn't accurately depict the current agency practice.

Also, upon further review and discussion with OII, OCC recommends (b)(5) (b)(6) OII has indicated that under a Memorandum of Understanding in existence since 2003, allegations of racial profiling are automatically referred to the OIG with the OIG afforded the opportunity for first refusal of the investigation. The SLT is copied on these notifications to the OIG. However, CRL/OTE is not automatically notified of these referrals. OCC therefore recommends an alternative recommendation (b)(5) (b)(5) Suggested language is included in the memo (second attachment).

Susan

Susan M. Prosnitz, Esq.
Legal Counsel
Office of Security Policy and Industry Engagement
Transportation Security Administration
1215 L Street, N.W. (b)(6) (office)
Washington, DC 20547 (mobile)
(b)(6)

ATTORNEY-CLIENT PRIVILEGED/ATTORNEY WORK PRODUCT

THIS COMMUNICATION MIGHT CONTAIN COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT, COMMUNICATIONS THAT ARE PART OF THE AGENCY DELIBERATIVE PROCESS, OR ATTORNEY-WORK PRODUCT, ALL OF WHICH ARE PRIVILEGED AND NOT SUBJECT TO DISCLOSURE OUTSIDE THE AGENCY OR TO THE PUBLIC. PLEASE CONSULT WITH THE OFFICE OF CHIEF COUNSEL BEFORE DISCLOSING ANY INFORMATION CONTAINED IN THIS E-MAIL.

From: Bester, Margot <TSA OCC>
Sent: Thursday, October 25, 2012 3:06 PM
To: Walton, Kimberly; Tauber, Sarah; Prosnitz, Susan <TSA OSPIE>; King, Jennifer L; Sanders, John P.<TSA OSC>;

Tashiro, Susan; McLaughlin, Chris; Goldman, Howard <TSA Exec Ofc>; Leaf, Stephanie; Dietch, Sarah
Subject: Re: IMPORTANT: Memo to S1 on BDOs

Yes, but it was my impression from the meeting 3 weeks ago that (b)(5)

(b)(5)

I agree that #10 has to be changed as you have suggested.

(b)(5)

(b)(5)

Not clear as written. Still reviewing.

From: Walton, Kimberly

Sent: Thursday, October 25, 2012 02:57 PM

To: Bester, Margot <TSA OCC>; Tauber, Sarah; Prosnitz, Susan <TSA OSPIE>; King, Jennifer L; Sanders, John P.<TSA OSC>; Tashiro, Susan; McLaughlin, Chris; Goldman, Howard <TSA Exec Ofc>; Leaf, Stephanie; Dietch, Sarah

Subject: RE: IMPORTANT: Memo to S1 on BDOs

These are the same recommendations that were in the earlier memo. The have been extracted from the Margo Schlanger memo and placed in an attachment. The Administrator has already seen them.

From: Bester, Margot <TSA OCC>

Sent: Thursday, October 25, 2012 2:55 PM

To: Walton, Kimberly; Tauber, Sarah; Prosnitz, Susan <TSA OSPIE>; King, Jennifer L; Sanders, John P.<TSA OSC>; Tashiro, Susan; McLaughlin, Chris; Goldman, Howard <TSA Exec Ofc>; Leaf, Stephanie; Dietch, Sarah

Subject: Re: IMPORTANT: Memo to S1 on BDOs

kimberly,

With all due respect, we were just provided with these documents and not given sufficient time to review them.

From: Walton, Kimberly

Sent: Thursday, October 25, 2012 02:53 PM

To: Bester, Margot <TSA OCC>; Tauber, Sarah; Prosnitz, Susan <TSA OSPIE>; King, Jennifer L; Sanders, John P.<TSA OSC>; Tashiro, Susan; McLaughlin, Chris; Goldman, Howard <TSA Exec Ofc>; Leaf, Stephanie; Dietch, Sarah

Subject: RE: IMPORTANT: Memo to S1 on BDOs

Any additional comments, please provide asap. My understanding is this needs to be in S1 briefing book for Friday.
Thanks

From: Bester, Margot <TSA OCC>

Sent: Thursday, October 25, 2012 2:41 PM

To: Walton, Kimberly; Tauber, Sarah; Prosnitz, Susan <TSA OSPIE>; King, Jennifer L; Sanders, John P.<TSA OSC>; Tashiro, Susan; McLaughlin, Chris; Goldman, Howard <TSA Exec Ofc>; Leaf, Stephanie; Dietch, Sarah

Subject: Re: IMPORTANT: Memo to S1 on BDOs

I think there may be other issues as well. We just received this and are reviewing.

From: Walton, Kimberly

Sent: Thursday, October 25, 2012 02:37 PM

To: Tauber, Sarah; Bester, Margot <TSA OCC>; Prosnitz, Susan <TSA OSPIE>; King, Jennifer L; Sanders, John P.<TSA OSC>; Tashiro, Susan; McLaughlin, Chris; Goldman, Howard <TSA Exec Ofc>; Leaf, Stephanie; Dietch, Sarah

Subject: RE: IMPORTANT: Memo to S1 on BDOs

Currently, Item 10 of the attachment states:

10. (b)(5) [Redacted]

Can I move the memo forward if I change it to state:

10. (b)(5) [Redacted]

From: Tauber, Sarah
Sent: Thursday, October 25, 2012 1:34 PM
To: Waiton, Kimberly; Bester, Margot <TSA OCC>; Prosnitz, Susan <TSA OSPIE>; King, Jennifer L; Sanders, John P.<TSA OSC>; Tashiro, Susan; McLaughlin, Chris; Goldman, Howard <TSA Exec Ofc>; Leaf, Stephanie; Dietch, Sarah
Subject: FW: IMPORTANT: Memo to S1 on BDOs
Importance: High

All,

(b)(5) [Redacted]

From: OSC Communications
Sent: Thursday, October 25, 2012 1:18 PM
To: Tauber, Sarah
Cc: Tashiro, Susan; Harvey, Melanie; King, Jennifer L; Leaf, Stephanie; Morgan, Crystal A.; Bynum, Florita; OSC Communications
Subject: FW: IMPORTANT: Memo to S1 on BDOs
Importance: High

Sarah,

OSC has been asked to review and provide clearance on the attached memo regarding actions being taken in response to allegations of racial profiling by BDOs. Would you please review and let us know if you have any concerns? Our response has been requested by 2 p.m. today. I apologize for the short suspense.

Thank you,

Joel Thomas
OSC Communications Team
571-227-(b)(6)

From: Mondok, Chris
Sent: Thursday, October 25, 2012 1:10 PM
To: OSC Communications; Bynum, Florita; Hatcher, George <CTR>; Thomas, Joel <CTR>
Cc: Tashiro, Susan; Walton, Kimberly
Subject: IMPORTANT: Memo to S1 on BDOs
Importance: High

CRL/O TE has just been told that we need OSC clearance on the attached. This is a high priority matter to the Secretary and Ranking Members of Congress. We need a response by 2 PM today. Our apologies for the short turnaround.

Chris

From: StPierre, Tracey
Sent: Thursday, October 25, 2012 12:43 PM
To: Mondok, Chris
Subject: Latest Electrons

Chris: As discussed, Sophia Hardee asked that we ensure OSC clearance/coordination. Attached are the latest version electronically.

Thanks,
Tracey

Tracey St. Pierre
Director, Office of the Executive Secretariat
Transportation Security Administration
phone: 571-227-(b)(6)
e-mail: (b)(6)

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MEMORANDUM FOR THE SECRETARY

FROM:

John Pistole 
Administrator
Transportation Security Administration

Margo Schlanger 
Counsel to the Secretary

Tamara Kessler 
Acting Officer for Civil Rights and Civil Liberties

SUBJECT:

TSA Behavioral Detection Officers

Purpose:

To inform you of actions being taken in response to the allegations of racial profiling by Behavioral Detection Officers (BDOs).

Background:

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Administrator
Transportation Security Administration

Margo Schlanger
Counsel to the Secretary

Tamara Kessler
Acting Officer for Civil Rights and Civil Liberties

SUBJECT: TSA Behavioral Detection Officers

Purpose:

To inform you of the status of actions being taken in response to the allegations of racial profiling by Behavioral Detection Officers (BDOs).

Background:

On August 11, 2012, the *New York Times* published an article that contained allegations of racial profiling by BDOs at Boston's Logan International Airport. On August 14, you issued a memorandum directing the Transportation Security Administration (TSA) to take a number of actions in response to these allegations.

On October 26, 2012, we three provided you with a joint memorandum outlining agreed upon actions.

Discussion:

TSA completed a number of steps as outlined in the recommendations and are in the process of moving towards completion for others. The attached matrix outlines what has been done to date and the current status of each specific recommendation as provided in the joint memorandum.

All of this work is being done in close collaboration between TSA, the DHS Office for Civil Rights and Civil Liberties and Margo Schlanger, Counsel to the Secretary. We

continue to work diligently towards implementation of the remaining recommendations and ensuring that agency training documents, policies, and processes guard against unlawful profiling.

BDO Project Matrix – Anti-Discrimination Recommendations

Action	Recommendation	Status	Status
1a	The SOP provides that “SPOT must be conducted without regard to race, color, religion, national origin, ethnicity, sexual orientation, or disability except as directed by the FSD and provided such direction is based on specific intelligence threat information.” This will be amended to state that such direction must, in terms of timing and reach, constitute an appropriately tailored response to specific threat information.	Complete	The SPOT SOP has been revised and is currently in circulation for final signature; Assessor SOP will include the same language.
1b	Policy and training will clarify that not only is profiling based on race or any other protected status unlawful and out-of-policy, but so is retaliation against those who complain about such profiling, whether they are complaining on their own or someone else’s behalf, and whether they are members of the public or TSA personnel.	Complete	All BDOs must take required online training addressing the concerns raised by DHS CRCL by January 15, 2013. Effective January 1, 2013, SPOT Basic and Refresher training curriculum will include a module addressing the Agency’s policy against unlawful profiling and retaliation. This is a one-hour instructor-led lesson integrated into the class schedule. The SPOT SOP has been revised and is currently in circulation for final signature
1c	Training materials already appropriately stress that there is no stereotypical “face of terrorism,” and we will continue to include sufficiently diverse examples in all future training developments.	Complete	All current training materials will continue to include sufficiently diverse examples of the faces of terrorism, as well as all newly developed and/or updates to current SPOT curricula.
1d	Training materials will not discuss constitutionally protected activity as suspicious (e.g., religious conversion, or non-criminal ideological associations)	Underway	A review of all SPOT related training materials is underway with the intent of identifying any instances and/or examples that may unintentionally touch on constitutionally protected rights. The review will be completed by December 14, 2012, and any necessary updates/changes will be completed within 30 days of the agreed upon changes.
1e	Training materials will be adjusted so as to not use terminology that takes a position on religious or ideological debates.	Underway	A review of all SPOT related training materials is underway with the intent of identifying any instances and/or examples so as to not use terminology that takes a position on religious or ideological debates. The review will be completed by December 14, 2012, and any necessary updates/changes will be completed within 30 days of the agreed upon changes.
2	TSA will provide routine annual anti-discrimination refresher training to BDOs relating to both SPOT and Assessor. This training will be coordinated with both TSA’s Office of Civil Rights & Liberties, Ombudsman and Traveler Engagement (OCRL/OTE) and DHS CRCL.	Complete	All BDOs must take required online training focused on Preventing Profiling, addressing the concerns raised by DHS CRCL by January 15, 2013. Effective January 1, 2013, SPOT Basic and Refresher training curriculum will include a module addressing the Agency’s policy against unlawful profiling, and retaliation. This is a one-hour instructor-led lesson integrated into the class schedule. Additionally, current BDO learning plans include Introduction to civil rights, Arab & Muslim cultural awareness training, Sikh American cultural awareness training, DHS No Fear Training, guidance on the use of race for law enforcement, and TSA workplace diversity training.

3.	<p>The Assessor training will stress the importance of racial, ethnic, and religious neutrality. Training documents will state the anti-discrimination point clearly wherever relevant, and also will demonstrate its importance by avoiding the current exclusive focus in examples on Arab/Muslim terrorists. (b)(3):49 U.S.C. § 114(r)</p> <p>(b)(3):49 U.S.C. § 114(r)</p>	Pending	<p>TSA is currently evaluating next steps for the Assessor concept of operations. If the concept of operations continues, training will be revised to include content addressing concerns raised by DHS CRCL.</p>
4.	<p>By policy and training, TSA will avoid heavy-handed questions in this setting. The policy and the training will be clear, so that unwilling or uncomfortable passengers should not be pressured to answer questions. (b)(3):49 U.S.C. § 114(r)</p> <p>(b)(3):49 U.S.C. § 114(r)</p>	Underway	<p>The SPOT SOP has been revised and is currently in circulation for final signature.</p> <p>A review of all SPOT related training materials is underway with the intent of identifying any instances where TSA will be able to expand upon our policy that passengers who are unwilling or uncomfortable with participating in an interactive discussion and responding to questions will not be pressured to do so. The review will be completed by December 14, 2012, and any necessary updates/changes will be completed within 30 days of the agreed upon changes.</p> <p>Language is already present in the Assessor SOP (b)(3):49 U.S.C. § 114(r)</p> <p>(b)(3):49 U.S.C. § 114(r) This language will also be incorporated into the SPOT SOP.</p>
5.	<p>Policy and training materials will be adjusted stressing questioning will be limited in duration to a period necessary for TSA personnel to engage and observe the passenger and to allow resolution of suspicious indicators, if any exist. Likewise, questions regarding travel and seeking identification will be for the purposes of identifying and resolving suspicious indicators and will not be overly intrusive or personal.</p>	Underway	<p>The SPOT SOP has been revised and is currently in circulation for final signature.</p> <p>A review of all SPOT related training materials is underway with the intent of identifying any instances where TSA may expand upon its policy that passengers who are unwilling or uncomfortable with participating in an interactive discussion and responding to questions will not be pressured to do so. The review will be completed by December 14, 2012, and any necessary updates/changes will be completed within 30 days of the agreed upon changes.</p>
5.	<p>The Assessor program will not be focusing on investigation: any (b)(3):49 U.S.C. § 114(r)</p> <p>TSA will adjust the policy and training to reflect that BDOs should (b)(3):49 U.S.C. § 114(r)</p>	Complete	<p>Per current training and policy, an Assessor would only ask for (b)(3):49 U.S.C. § 114(r)</p> <p>(b)(3):49 U.S.C. § 114(r)</p>
6.	<p>TSA will amend the relevant policy documents (in coordination with DHS CRCL) to ensure that each relevant document emphasizes that BDOs must stay focused on behaviors and aviation security, and that any non-security law enforcement results are a side benefit, not a goal.</p>	Complete	<p>The SPOT SOP has been revised and is currently in circulation for final signature; additionally mandatory online training reinforces point. Effective January 1, 2013, SPOT Basic and Refresher training will include a module addressing these concerns.</p>

7a	Within 30 days, TSA will communicate to BDO supervisors that performance appraisal will NOT depend on achieving either a high number of referrals, or on the arrest rate coming from those referrals, but rather from demonstrated vigilance and skill in applying the SPOT (and, where applicable, Assessor) protocols.	Complete	Through biweekly manager calls and messages, the Behavior Detection and Analysis Program Office has reinforced to all BDO managers that high performing employees are those that demonstrate vigilance and skill in applying SPOT procedures. Further communication to the Federal Security Directors and the workforce is forthcoming.
7b	Systematically augment review of SPOT reports and SPOT implementation, in coordination with TSA CRL/OTE, to increase their ability to assess diligent and less-diligent performance. Within extant operational limitations, given coverage, picture quality, and the like, this will include regular review of Closed Circuit Television (CCTV) video related to some portion of referrals, to ensure that the noted behaviors actually were observable.	Complete	TSA has assessed using CCTV with the conclusion that it is not very viable on a large scale due to the limiting factors (e.g., quality, frame rates, availability, ownership). However, procedures may be piloted to assess the feasibility of using periodic and systematic random samples of referral videos where quality CCTV footage can be gathered to examine the referral details and to ensure that proper protocol was followed. The exact methodology or process for doing this across all SPOT airports is unknown at this time. Further testing is warranted to determine the appropriate reviewers and resources needed. Program Compliance Assessment visits are conducted to evaluate to what extent each airport is in compliance with SPOT SOPs, Training, and associated ODs and MDs.
8.	Periodic refresher training for BDOs will emphasize not only the non-discrimination requirements, but the importance of staying focused on behavior and on the aviation security (not law-enforcement) goals of the program.	Complete	All BDOs must take required online training focused on Preventing Profiling, addressing the concerns raised by OCRL by January 15, 2013. This training also reminds BDOs of the tenets of the SPOT security objectives in support of aviation security. It is TSA's intent to include an annual training module for all BDOs focused on these principles and policies. Additionally, effective January 1, 2013, SPOT Basic and Refresher training will include language an instructor led lesson addressing these points.
8.	In addition, for both SPOT and Assessor, in-briefs are conducted at the beginnings of shifts, and provide opportunities for less formal briefing/training. These too will be used periodically to ensure that BDOs stay focused on their actual mission: aviation security. Other job aids—posters, palm cards, etc.—will also be utilized for this purpose.	Complete	Daily in and/or out briefings are currently a requirement for all BDOs and STSMs, per the SPOT SOP. Effective January 1, 2013, scenario drills modeled from those used for sustainment of the Coach and Engage principles will be available to BDO managers as a means to routinely highlight SOP requirements and solicit interactive discussions, to supplement and enhance the current daily briefing practice.
9.	Action will be taken to ensure that the TSA Assistant Administrator for CRL/OTE will be notified promptly when discrimination allegations are reported by travelers or employees through any of these mechanisms. This includes allegations that might be thought to be too imprecise for investigation, or involving only "customer service." When a misconduct investigation relating to screening discrimination results in a finding of "unsubstantiated," as well as a substantiated finding, TSA will consider non-disciplinary responses, such as augmented supervision or training. CRCL and TSA will work together on civil rights oversight mechanisms to improve complaint response.	Underway	With respect to ensuring that the TSA Assistant Administrator is notified when discrimination allegations are reported by travelers, the Operations Directive on processing passenger inquiries has been revised to address this recommendation and it is in the clearance process.
10.	TSA should (with CRCL's coordination) conduct a data collection pilot at four or five airports, including both current Assessor airports, perhaps attempting several different approaches, to assess the best path forward.	Underway	TSA engaged an outside contractor and academic expert with extensive experience with racial profiling data collection. The Contractor has provided a concept paper (received on December 11, 2012) and is currently being reviewed for further consideration.