

**Transportation Security Administration (TSA):
Issues, Successes, and Solutions**

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Transportation Security Administration (TSA) is the government security force under the United States Department of Homeland Security (DHS) that is entrusted with securing the airlines of America. TSA was formed following the terrorist attack of 9/11 when two hijacked airplanes crashed into the World Trade Center, one into the Pentagon in the capital of Washington D.C., and the final plane into a field in Pennsylvania. Because of these attacks, in November of 2001, the Aviation and Transportation Security Act was created to enhance the means of security measures in the airports by installing federal employees known as TSA Officers (TSO) to screen people and baggage (U.S. Department of Homeland Security). Since this installment, the reliability, trust, and privacy of TSA in need of reevaluation and discern.

CBP vs. TSA

An important distinction to make, for the purpose of this writing, is that TSA is not U.S. Customs and Border Protection (CBP). TSA is used to screen passengers departing the airlines for illicit materials carried on someone's body or in someone's baggage and identity checks for domestic and international travel. CBP screens passengers upon arrival to the United States and they are looking more for international security threats, things like illegal immigration, illegal merchandising, agricultural violations, and many other illicit behaviors or objects that go against the U.S. and/or international law (Zemler, 2020). However, there is a clear overlap with this.

TSA obtains assistance from CBP, like many government organizations. The DHS uses information-sharing protocols to ensure border security (Ellice, Eide, Smith, Brooks, Crowell, 2012). It is vital that these two sectors of security used at port of entries at the airlines across America work harmonically. According to a report done by the DHS Office of Inspector General, there are several ways in which TSA and CBP coordinate. One, TSA synchronizes transportation security technology for CBP to use with international passengers. Two, TSA receives status checks for workers coming from seaports from CBP and other organizations. Another means of the two organizations utilizing one another is through TSA Coordination Centers, which gather data inside and outside airports for potential threats. This response is a useful tool for CBP and other entities to track their own discovered threats and retrieve data (Ellice, Eide, Smith, Brooks, Crowell, 2012). These are a few of several keyways in which the two organizations are in constant collaboration.

Another similarity of TSA and CBP methods is the use of TSA Pre-Check and Global Entry. These are programs for the preapproval to get through Customs checks and TSA security quicker. Global Entry preapproves (through application) individuals of low risk for approval through automatic kiosks (Zemler, 2020). Global Entry membership also comes with a TSA Pre-Check

membership. Similarly, TSA Pre-Check members receive an expedited service of going through security lines at the airlines. Individuals receive membership through the application process by determining the person to be innocuous (Zemler, 2020).

Screening Methods

TSA uses various forms to screen passengers. From state-of-the-art technology, to forms of face-to-face questioning, and many other methods in an attempt to secure U.S. airports, TSA uses what is deemed by the DHS as the best methods to ensure aviation security and prevent attacks like the ones seen on 9/11. Yet, controversies about these methods are at stake.

Identification Check

The typical first method of security someone sees when they enter the security lines at the U.S. airports, is the identity check. Unlike many European airports who use the Kaba Argus HSB M03 - Self Boarding Gates for access control of individuals entering security, TSA checks individuals boarding passes and identification by a staff member. Therefore, U.S. airports have two parts of security – the line for an ID check and the line beyond that for security checks. Upon getting through the first line and up to the podiums where TSO's are, they will scan the boarding pass, then the ID, and then do their own facial check of the ID to ensure it is the person on the ID. After being cleared for that, one would proceed to further security. This method is quite longer than the use of self-boarding gates but far more secure. Self-boarding gates allow for people to get into the airport without an identity check. Rather, their ID is checked at the airline. Hence, TSA methods have downsides in efficiency but promote security before threats make it into airports, both protect airplanes before they depart.

Advanced Imaging Technology

The most prominent and different method used by TSA that is not seen in as much abundance as it is in the U.S. over the European Union and other countries is the use of advanced imaging technology (AIT). These are full-body imaging devices that scan passengers for non-metallic and metallic threats such as explosives or weapons which could be hidden under clothing (U.S. Department of Homeland Security). This technology screens individuals with target-orientated software by producing an image of the individual on a screen that is monitored by TSA personnel. If there is a suspected item found on the individual, it would appear on the screen (U.S. Department of Homeland Security).

Millimeter AIT is the only type of AIT still used in the U.S. today. Previously, TSA used a backscatter AIT that was proven to pose significant health risks due to ionizing radiation, with links to cancer (Kuruville, 2013). Moreover, the backscatters showed graphic images of the person who was being screened inside the machine, posing serious privacy concerns for the American people. Backscatter AIT was used for nearly 3 years before it was eliminated in May of 2013 (Kuruville, 2013).

Since then, TSA has implemented Millimeter AIT across America to replace the issues found with the Backscatter AIT. Millimeter AIT works similarly to the Backscatter AIT, but they use radio waves, rather than x-rays, and produce non-ionizing radiation. Millimeter AIT also no longer produces graphic imagery of the subject and the screen is now monitored in a separate room. Although, millimeter AIT still poses some risks. The radiation caused by Millimeter AIT is as low of levels as things like a microwave or cell phone would produce. The long-term effect of these small exposures from the millimeter AIT is still unknown. Radiation physicist Ivan Brezovich explains that these trace amounts of non-ionizing radiation could have a biological effect on people.

Therefore, with the increase of new technology emitting these trace amounts of non-ionizing radiation all around us, it is difficult to say how it will affect the human body in the future.

Millimeter AIT being one of these radiation-emitting technologies puts U.S. citizens in a controversy of the unwanted technology. One must determine the essentialness of millimeter AIT to ease the publics of concern with radiation. TSA helps to curb these concerns with the use of TSA Pre-Check. As stated earlier, TSA Pre-Check members get an expedited service through security lines. Meaning, they need not go through the AIT.

Pat-Down Searches

Another method used by TSA in which receives the highest amounts of controversy is the pat-down search. Upon an AIT showing a foreign object on the person stepping through, TSA will pull the individual aside and perform a pat-down in order to safely locate the object. TSOs may also be urged to perform a pat-down if people violate other security protocols, intentionally or unintentionally. This sometimes includes violations of the separation of liquids, not removing a jacket, thickness of hair, heavy jewelry, random selection and so on. Realistically, a TSO may perform pat-down on any traveler for any reason they deem as probable cause. Since the new implication of pat-down procedure in 2017, a pat-down inspection takes place with an officer using latex gloves to put sufficient pressure on any area of one's body (U.S. Department of Homeland Security). Officers may ask individuals to adjust clothing to ensure accuracy. Officers are instructed to use the back of their hands in private areas of the traveler, but they may switch to the front if an accurate reading is not possible given the specific circumstance (U.S. Department of Homeland Security).

The issues of the pat-down searches are privacy concerns of the American people. TSA switched their methods in 2017, despite constant outbursts of the American people concerned

about the invasiveness of their already existing pat-down searches (U.S. Department of Homeland Security). It is unknown what standardization of protocol in pat-down searches exactly changed, but TSA claims that the searches will start to be more “thorough.” With the policy for using the back of their hands for pat-downs on private areas, some of the concern has been curbed. However, it is the decision of each TSO whether is unnecessary to use the front of their hand in each specific search. Leaving the issue of invasiveness still at large when officers must emit enough pressure for accuracy on these private areas (U.S. Department of Homeland Security). The American Civil Liberties Union speaks to this issue and states that they have received over a thousand complaints about the intrusiveness of the pat-down searches done by TSOs (The Audacity of Grope: TSA's New Pat-Down, 2010). Individuals facing backlash effects from sexual violence, psychological disorders and diseases, and other circumstances where they may be more subject to facing the utmost trauma from the intrusiveness of the pat-down search are most at risk. In my own research done on this topic in the spring of 2019, I created a small survey on how the public feels about TSA's methods. Of the sample set of 76 participants, with varying demographics, 63.2% of the responses did not believe that TSA was too invasive with their security methods. The remaining 36.8% responded with yes or sometimes when asked if TSA's methods invaded their privacy. Representative Rush Holt of TSA has even attested to these concerns (The Audacity of Grope: TSA's New Pat-Down, 2010). Hence, it has been an ongoing trend to the American people of the intrusiveness of TSA methods.

In an attempt to subdue these concerns, TSA does have ways to counter the issues of their pat-down searches. For one, they offer pat-down searches by the same gender (U.S. Department of Homeland Security). They also allow for people to request to have a pat-down search in another room with a companion or police officer present. They also state that children are not to receive

pat downs without “consulting” their guardian. Furthermore, people have the right to deny the removal of any clothing they have been requested to be take off. Individuals also have the right to deny the pat-down search altogether. However, this means they would not be able to continue through security and to the terminal (U.S. Department of Homeland Security).

Although these measures put in place by TSA help quell some of the concerns, they still open up more issues and have unresolved others. Transgender individuals in particular face another problem. Since TSOs use the same gender to give pat-down searches, how does it accompany the transgender population? TSA selects the same gender to pat someone down based off appearance. They click a button for a male or female before receiving pat-down (U.S. Department of Homeland Security). Therefore, non-conforming gender individuals are likely to be displaced for this measure. In addition, parents are consulted before their child is given a pat-down, yet if they deny the pat-down the travelers are given the same answer as to leave the airport and are not allowed through to their flights. These measures to help with the concerns of the American people are in the right direction to help ease privacy concerns, yet not foolproof.

The intrusiveness of the pat-down search is vouched against in many cases. The problem is, TSOs used to be protected if someone feels they have crossed a line and would feel the need to press charges (Kunkle, 2018). Allegations of abuse by a TSO previously were not likely to make it far in a court of law. Per the U.S. Court of Appeals for the Third Circuit, TSO’s would receive sovereign immunity from charges put against them (Pellegrino v. TSA, 2019). Because of the Federal Tort Claims Act (FTCA) TSOs were immune to civil lawsuits. The FTCA allows for a complex and narrow list of susceptible charges to federal employees. Thus, protecting TSOs. But, the U.S. Court of Appeals for the Third Circuit eventually reverted their decision to TSOs being among the small set of susceptible civil suits that would not receive immunity based on their titles

as “officers” which includes their power to search people and therefore should be able to be held accountable for potential charges that come from the use of their title (*Pellegrino v. TSA*, 2019). This change does help with privacy issues and abuse of power, but it only protects people within the jurisdiction.

This case also addresses issues derived from the Fourth Amendment of the U.S. Constitution that protects citizens from unreasonable searches and seizures. Thus, holding the balance for citizens’ rights to privacy with law enforcement. Citizens of the U.S. believe TSA violates the Fourth Amendment because the Fourth Amendment protects “invasions of privacy” with searches and seizures. Since the methods of pat-down searches give an appearance of intrusion based on the methods previously discussed, the pat-downs by TSA arguably fall within this violation. However, one must consider the exceptions to this rule; which are consent, stop and frisk, administrative search, and exigent circumstances (U.S. const. amend. IV). Consent is a relevant exception to TSA because technically consent is given by the choice of flying. Denial of the search is possible by denying flying. The stop and frisk exception is partially fulfilled because TSOs perform most pat downs after “reasonable suspicion” is present based on the certain triggers that were discussed (hair thickness, items detected through AIT, etc.). Yet, the random pat-down searches cannot fall within this requirement. TSA falls within the administrative search doctrine because of the government power held by TSA to conduct national security measures. Lastly, exigent circumstances are partially fulfilled by TSA searches because of the necessity to prevent immediate harm by discovery threats through a pat-down search. The Fourth Amendment requires only one of these exceptions to be fulfilled to be determined constitutional (U.S. const. amend. IV).

This all may be valid, however not infallible. Technically, consent is given. But with the ultimatum of not being able to fly, can one really consider this consent? The controversy on this is addressed by the U.S. Court of Appeals for the Third Circuit in the same case that addressed lawsuits against TSOs. *“The Government does not dispute that holding. Instead, it contends that consent by passengers cancels the Fourth Amendment’s effect. But the presence or absence of consent does not determine whether a search has occurred for purposes of the Fourth Amendment... In any event, TSO screenings are not consensual. As noted, per TSA regulations any individual who does not consent to a “search or inspection” may not board a flight (Pellegrino v. TSA, 2019).”* Overall, the case notes that the requirements put forth by the Fourth Amendment in exceptions and rules signify instances for law enforcement officers trained in such specifics of the Fourth Amendment and thus suggest *“instead of drawing the principled and constitutionally grounded line between investigatory and administrative searches, my colleagues today open the United States Treasury to liability for the intentional torts of every federal employee with the authority to conduct any Fourth Amendment search—regardless of the employee’s knowledge of, or training in, Fourth Amendment doctrine. In my view, Congress chose its words in the proviso carefully to avoid this very result (Pellegrino v. TSA, 2019).”*

Varying Screening Methods

Many of the other varying methods used by TSA are (but are not limited to) K-9 teams, swab tests, behavior detection, and Visible Intermodal Prevention and Response Teams (VIPR). Other programs that are used by TSA for added streamline prevention are the Secure Flight program, TSA PreCheck, the Surface Transportation Program, and the Transportation Worker Identification Credential Program. These measures are less used and known and show little

controversy among the American people, but they are important additives for successful security measures.

Worth it?

Now knowing the details and controversy with the methods of TSA, one must analyze the success of these measures in order to deem the sacrifices made by travelers to solidify the essentialness of the methods in question.

TSA publishes its records of findings each year. From the past two years (2018 & 2019), there has been a seven percent increase in firearm discoveries from 2017 to 2018 and a five percent increase from 2018 to 2019 (Wagner, 2020). Since 2008, the data shows that there has been a steady increase each year. Other severely prohibited items that are mentioned in the reports from these two most recent years include a few explosive types (grenades, C4, ect.) and a handful of concealed knives (Wagner, 2020).

On the other hand, A study done by the Department of Homeland Security discovered that TSA had a 95% failure rate when operatives were put under cover with concealed weapons (Blake, 2017). After this discovery, the Homeland Security Committee and members of Congress came up with eight recommendations to solve this. What exactly those recommendations are, is classified. This study was done by undercover DHS teams who smuggled critical prohibited items, such as firearms and explosives, through the security lines. They attempted to get 18 items through and only one was caught by TSOs. The testing was done at Minneapolis International Airport in Minnesota (Blake).

With the increase in findings each year by TSA reports of firearms, one may assume that TSA is getting better and better. However, strictly measuring this with data is not possible due to interfering circumstances. It is not known what made it through security and it is not known what

the intention of the individuals concealing the prohibited items. This study in 2017 attests to that. If seventeen prohibited items made it through at one airport in one day, it is difficult to know what else has been missed across the entire country. Luckily, no attacks like 9/11 have occurred since on U.S. soil. Attempts that have been recorded by the DHS are the attempt of the underwear bomber in 2009 when an Al-Qaeda member tried to detonate a bomb concealed in his underwear, an IED planted on a cargo ship concealed in printer cartridges in 2010, another underwear bomb attempt in 2012, and reports of other “increased interest” by terrorist organizations in planting explosives in electronics (U.S. Department of Homeland Security). Beyond this, the entirety of attempts on U.S. airports and airlines is unknown to public knowledge. Therefore, one can consider that the measures implemented have at least caused deterrence.

Options for Privatization?

An option for consideration in aviation security in America is the use of private security companies. Presently, only 22 airports in the U.S. use private companies for aviation security. Contrasted to Europe, where over 173 airports use contracted security. With the issues presented by the use of federally run security, privatization may be a better option to ease the issues presented.

Performance

For one, privacy concerns could have more of an ability of being solved. This solution could ease federal court complications with pat-down searches. Since private agents wouldn't be held to the same restrictions as TSOs in a controversy manner as in the case of Pellegrino v. TSA means that citizens have more options and ability to vouch for violations of their rights and could lead to deterrence in officers violating pat-down search procedures.

Privatization could also increase performance due to competition. With the abundance of security contracting companies competing for roles, it is more likely to have better security. With

TSA being a sole option, it makes employees, as a whole, less expendable. If a contracted security company is not doing their job, they can easily be fired, and a better company could come on. Hence, increasing performance rates.

Performance could also be greater due to more employees showing up for work. Since TSOs are on the government payroll, when the government shuts down, so does their pay. Leaving many TSOs prompted to not show up for work. In the 2000's, the government has gone into a shut down three times – in 2013 for 16 days, in 2018 for two days, and again in late 2018 into 2019 for thirty-five days (History, Art & Archives, U.S. House of Representatives). Therefore, leaving unintended gaps in American security.

Money Savings

The privatization of U.S. airports could also save the country and therefore taxpayers a lot of money. TSA has the fourth largest budget in the DHS (Dewan, 2018). Privatization could put government spending elsewhere and save the citizen's money. Proof of this lies with how Canada tackled this option. Canada switched to the privatization of their airlines in 2002 with the implementation of Canadian Air Transport Security Company (CATSA). Since this implementation, Canada “spends 40 percent less per capita on aviation security (Dewan, 2018).”

TSA and COVID-19

To connect TSA to present developments, one can look at their response to the pandemic COVID-19. The U.S. is well over the most reported COVID-19 cases in the world and thus TSA has taken measures to protect passengers who must travel during the pandemic. For one, all TSOs are wearing facemasks and gloves (U.S. Department of Homeland Security). Next, they have been enforcing social distancing standards by having ground markers 6 feet apart in lines. They also claim that they have increased routine cleaning procedures of screening equipment and surfaces.

To help passengers, they changed the procedure for the liquid carry on allowance for hand sanitizer so travelers may keep sanitizer up to 12 ounces in their baggage. As for identification, they have allowed for expired U.S. ID's to proceed as well as adhering to the new deadline of October 2021 for U.S. citizens to obtain REAL ID-complaint IDs (U.S. Department of Homeland Security).

Similar strategies are being implemented in open European airports. However, the U.S. has not closed any federally run airports. In Europe, travel is far more restricted due to COVID-19. The U.S. is still allowing domestic flights in all parts of the country. While in Europe, many countries have shut down most airports. France among those. Paris is only allowing Paris-Charles de Gaulle to be open (Paris Airport, 2020). All in all, airports and countries are doing what they can and what is necessary to curb their specific outbreaks of COVID-19 while trying to mediate the rights of their citizens and requirements put forth by their governments.

TSA Reviewed ✓

Despite any of the concerns discussed, aviation security is a top priority and sacrificing issues developed that are concerns for the American people is something to be considered. Extreme measures are to be taken after an act of terror like the events that unfolded on September 11th, 2001. Revision and reevaluation of strategies are always a dire need for any country who must implement this type of security. But society must consider what greater risk is at stake when considering the issues that have unfolded due to the present measures, while governments must consider the rights they owe to their citizens with the responsibility of protection.

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