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AVIATION SECURITY

TSA Has Policies that Prohibit Unlawful Profiling But Should Improve Its Oversight of Behavior Detection Activities

GAO Highlights

Highlights of [GAO-19-268](#), a report to congressional requesters

Why GAO Did This Study

In 2016, TSA began using behavior detection in a more limited way to identify potentially high-risk passengers who exhibit certain behaviors it asserts are indicative of stress, fear, or deception, and refer them for additional screening or, when warranted, to law enforcement. TSA's policies and procedures prohibit unlawful profiling, i.e., screeners are prohibited from selecting passengers for additional screening based on race, ethnicity, or other factors. Allegations of racial profiling have raised questions about TSA's use of behavior detection.

GAO was asked to review TSA's measures to prevent behavior detection activities from resulting in unlawful profiling. This report examines, among other things, (1) TSA's oversight of behavior detection activities and (2) the number of complaints alleging violations of civil rights and civil liberties related to passenger screening and actions taken by TSA to address them.

GAO reviewed TSA policies and procedures; analyzed passenger complaint data received by TSA from October 2015 through February 2018 and actions taken to address them; and interviewed TSA officials. Complaint data we analyzed alleged conduct that occurred at the screening checkpoint and was not specific to behavior detection activities.

What GAO Recommends

TSA should develop a specific oversight mechanism to monitor behavior detection activities for compliance with policies that prohibit unlawful profiling. DHS concurred with GAO's recommendation.

View [GAO-19-268](#). For more information, contact William Russell at (202) 512-8777 or RussellW@gao.gov

April 2019

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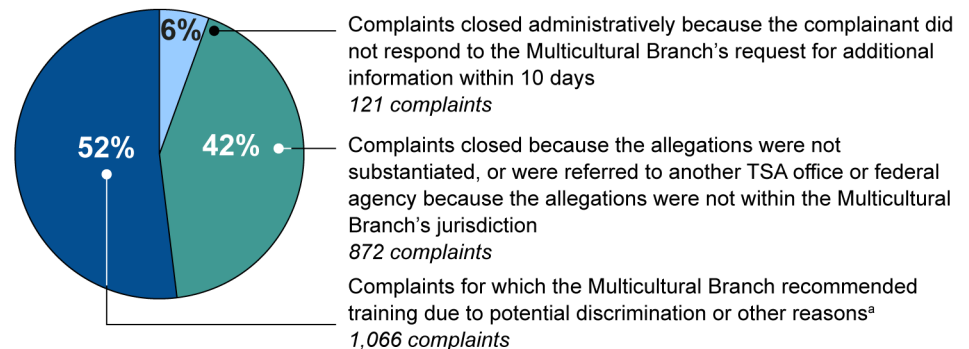
TSA Has Policies that Prohibit Unlawful Profiling But Should Improve Its Oversight of Behavior Detection Activities

What GAO Found

Transportation Security Administration (TSA) policy requires managers to ensure behavior detection is conducted without regard to race or ethnicity, among other factors. TSA uses seven oversight checklists to assess whether behavior detection activities are conducted in accordance with TSA policy, such as monitoring whether screeners trained in behavior detection observe and engage passengers correctly. However, these checklists do not instruct supervisors to monitor for indications of profiling. TSA officials stated that the training screeners receive, adherence to operating procedures, and general supervisory oversight are sufficient to alert supervisors to situations when unlawful profiling may occur. However, developing a specific mechanism to monitor behavior detection activities for compliance with policies prohibiting unlawful profiling would provide TSA with greater assurance that screeners are adhering to such policies.

From October 2015 through February 2018, TSA received about 3,700 complaints alleging civil rights and civil liberties violations related to passenger screening. These complaints are not specific to behavior detection activities. The TSA Contact Center (TCC), the office that initially receives these complaints, reported that about half of the complaints did not have complete information from passengers necessary for further review, such as the airport and date of the incident. According to TCC officials, they attempt to obtain the additional information from passengers, but often the complaint does not include the correct contact information or the passenger does not respond to the TCC's request for additional information. The TCC complaint data show that the remaining 51 percent (about 1,900) of complaints were referred to the TSA Multicultural Branch, the office responsible for reviewing complaints alleging civil rights and civil liberties violations. The Multicultural Branch reported reviewing 2,059 complaints, including approximately 1,900 complaints from TCC, as well as complaints referred from other TSA offices. For about half of the complaints (1,066) the Multicultural Branch reviewed, it found indications of potential discrimination and unprofessional conduct that involved race or other factors and recommended a range of refresher training across airports or for screeners at individual airports identified in the complaints.

TSA's Multicultural Branch Reviewed 2,059 Complaints Alleging Violations of Civil Rights and Civil Liberties from October 2015 through February 2018



Source: GAO analysis of Transportation Security Administration information. | GAO-19-268

^a Training is recommended when screening procedures are not followed or as a proactive measure.

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Abbreviations

ADDIE	Analysis, Design, Development, Implementation, and Evaluation
AIM	Airport Information Management System
DHS	Department of Homeland Security
DOJ	Department of Justice
FSD	Federal Security Director
TSA	Transportation Security Administration
TCC	TSA Contact Center

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April 23, 2019

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
House of Representatives

The Honorable Bonnie Watson Coleman
Member
House of Representatives

In 2006, the Transportation Security Administration (TSA) began using behavior detection to identify potentially high-risk passengers who exhibit certain behaviors it asserts are indicative of stress, fear, or deception, and refer them for additional screening or, when warranted, to law enforcement. TSA's policies and procedures require screeners to apply behavior detection without regard to race, ethnicity, nationality, and religion, among other factors. Over the years, allegations of racial profiling have raised questions about whether behavior detection officers inappropriately consider these factors when referring passengers for additional screening or to law enforcement. As we previously reported, TSA and the Department of Homeland Security's (DHS) Office of Inspector General investigated allegations of behavior detection officers unlawfully profiling passengers because of their race, ethnicity, or nationality at Newark Liberty International Airport in 2010, at Honolulu International Airport in 2011, and at Boston Logan International Airport in 2012.¹

In 2013, we found that TSA was unable to demonstrate that the agency's behavior detection activities could reliably and effectively identify high-risk passengers who may pose a threat to the U.S. aviation system. We recommended that TSA limit future funding support for the agency's behavior detection activities until TSA could provide scientifically validated evidence that demonstrates that behavioral indicators can be used to identify passengers who may pose a threat to aviation security.² In 2016, TSA began using behavior detection in a more limited way and in

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

²[GAO-14-159](#).

2017, we reported that TSA had reduced funding for behavior detection and revised its behavioral indicators. We stated that TSA should continue to limit funding for such activities until it can provide valid evidence demonstrating that behavioral indicators can be used to identify passengers who may pose a threat to aviation security.³ In early fiscal year 2018, TSA ended the stand-alone behavior detection program and eliminated the behavior detection officer position. TSA also began integrating the former behavior detection officers into the screener workforce to support increased passenger volume at TSA's checkpoints, according to TSA officials. Screeners trained in behavior detection continue to use it, largely in support of canine units.

In light of these efforts, you asked us to review the mechanisms TSA uses to prevent unlawful profiling while screening passengers using behavior detection. This report (1) describes how TSA trains screeners who engage in behavior detection on policies and procedures that prohibit unlawful profiling and evaluates the training; (2) examines TSA's oversight of behavior detection activities including monitoring compliance with policies that prohibit unlawful profiling; (3) examines the number of complaints related to passenger screening TSA received from October 2015 through February 2018 alleging violations of civil rights and civil liberties, and actions TSA took to address them; and (4) describes how TSA used these complaint data to inform screener training.

To address all four objectives, we reviewed relevant statutes, regulations, and strategic documents, such as TSA's Behavior Detection Strategic Plan and Standard Operating Procedures. Additionally, we conducted interviews with TSA headquarters officials from Security Operations, Training and Development, the TSA Contact Center, and the Multicultural Branch. In addition, we selected a nongeneralizable sample of three airports out of 15 that offered behavior detection training classes at the time of our review and attended the training classes: Hartsfield-Jackson Atlanta International Airport, Dallas-Fort Worth International Airport, and Dulles International Airport. We also interviewed TSA screeners, managers, and the TSA designated point of contact at these airports. We selected the airports based on their size and the number of participants signed up to take the Optimized Behavior Detection Basic Training course.

³GAO, *Aviation Security: TSA Does Not Have Valid Evidence Supporting Most of the Revised Behavioral Indicators Used in Its Behavior Detection Activities*, [GAO-17-608R](#) (Washington, D.C.: July 20, 2017).

To determine how TSA trains screeners on policies that prohibit unlawful profiling and evaluates the training, we reviewed TSA's training directives, course materials, and policies and procedures related to prohibiting profiling during the operation of behavior detection activities from fiscal year 2016 through November 2018. We selected this time frame because TSA's most current behavior detection procedures—Optimized Behavior Detection—were approved as the new standard for behavior detection training and operations starting in fiscal year 2017. To determine TSA's policies for prohibiting unlawful profiling, we reviewed various documents pertaining to behavior detection including standard operating procedures, the behavior detection handbook, and the behavior detection strategic plan for fiscal years 2016 through 2018. To determine what training screeners using behavior detection receive on the policies and procedures that prohibit profiling in carrying out behavior detection activities, we reviewed TSA's 2018 National Training Plan, which lays out annual training requirements for screeners, and TSA's management directive on training standards to determine how TSA developed and selected training requirements.⁴ We also reviewed behavior detection–related National Shift Briefings, a presentation on racial profiling developed by the Multicultural Branch in collaboration with a member of TSA's Multicultural Coalition, handouts, and other relevant materials provided to screeners. Lastly, to determine how TSA evaluates training related to behavior detection, we reviewed relevant TSA documentation on behavior detection training, including training evaluation documents, and we compared the documentation to the Kirkpatrick Evaluation Model for training evaluation.

To examine TSA's oversight of behavior detection activities including monitoring compliance with policies prohibiting unlawful profiling, we analyzed the Optimized Behavior Detection Standard Operating Procedures and oversight guidance from Security Operations, which is the office responsible for managing and overseeing the use of behavior detection. We also reviewed the Department of Justice's (DOJ) oversight guidance on the use of race and other factors—guidance that DHS has adopted. We interviewed Security Operations officials who oversee the use of behavior detection to discuss the oversight process for monitoring compliance with standard operating procedures. To learn about how

⁴For purposes of this report, and unless otherwise noted, references to screeners include both TSA-employed screening personnel and screening personnel employed by private sector companies contracted with TSA to perform screening services at airports participating in TSA's Screening Partnership Program. See 49 U.S.C. §§ 44901, 44920.

these practices are implemented at airports, we met with TSA officials at each of the three airports we visited and observed how screeners trained in behavior detection use behavioral indicators while conducting canine and airport and airline employee screening operations. Additionally, we reviewed TSA's efforts in response to the Secretary of Homeland Security's 2012 directive to enhance data collection systems to facilitate appropriate supervision and monitor the use of behavior detection in response to allegations of profiling by behavior detection officers.⁵ Further, we compared TSA's efforts to relevant federal internal control standards related to monitoring internal control systems.⁶

To examine the number of complaints related to passenger screening that TSA has received alleging violations of civil rights and civil liberties, and steps taken by TSA to address them, we analyzed complaint data for October 2015 through February 2018 from the TSA Contact Center (TCC) and reviewed actions taken to address the complaints.⁷ The complaints we reviewed were not specific to behavior detection and generally reflected alleged conduct occurring at the screening checkpoint through the application of screening measures. Further, complaints we reviewed alleged discrimination or profiling based on personal attributes and characteristics related to, among other things, an individual's race, ethnicity, national origin, language, gender, age, and hair. The TCC uses the Airport Information Management (AIM) system to record complaints and actions taken to resolve them, including referrals to the TSA Multicultural Branch—the office responsible for reviewing complaints alleging civil rights and civil liberties violations. We selected this time frame because it covered the period during which TSA began transitioning to Optimized Behavior Detection through the most recent date for which TSA had received complaints at the time we began reviewing the complaint data.

⁵Department of Homeland Security, *Memorandum for the Administrator of the Transportation Security Administration from Secretary Napolitano: TSA Behavioral Detection Officers* (Aug. 14, 2012).

⁶GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

⁷We use the term "passengers" to refer to individuals—including ticketed passengers, individuals accompanying ticketed passengers, and any other individuals not considered an employee for purposes of this report—who submitted complaints alleging civil rights and civil liberties violations related to TSA screening procedures to the TSA Contact Center.

On the basis of documentation from and discussions with TSA officials responsible for maintaining the data, we determined that data from AIM were sufficiently reliable for the purpose of describing information on the content and number of the complaints the TCC received. We also found that the data from AIM was sufficiently reliable for reporting the status of TCC's review and referral of complaints related to allegations of civil rights and civil liberties violations to the Multicultural Branch from October 2015 through February 2018.

We conducted a content analysis of the TCC complaints alleging civil rights and civil liberties violations. In the first step, three analysts independently coded a sample of complaints and then worked together to resolve any discrepancies. The analysts reviewed and discussed the complaints until they reached an agreement on the coding. During this first step, we reviewed TSA's codebook to understand the TCC's process for categorizing complaints. Based on our initial review of a subset of complaints we developed a list of codes to categorize the complaints. The codes we developed include certain protected classes and other personal attributes and characteristics, as well as the alleged adverse actions identified in the complaints.

We interviewed TSA officials from the Multicultural Branch and the designated point of contact at the three airports we visited to obtain their perspectives on using complaint data to monitor or enhance screening operations. Additionally, we reviewed relevant TSA policies and procedures related to the complaint process for complaints alleging civil rights and civil liberties violations, such as management directives, standard operating procedures that guide the TCC's review and referral of these complaints to the Multicultural Branch, and the Multicultural Branch's checklist for determining whether to conduct an inquiry (e.g., complaint was reported within a specified time, incident occurred at a federalized airport).⁸ We analyzed data on the resolutions of the complaints reviewed by the Multicultural Branch, which uses the Entellitrak database to document complaint resolutions. On the basis of information from and discussions with TSA officials related to the controls in place to maintain the integrity of TSA's complaint data, we determined that data from Entellitrak were sufficiently reliable for the purpose of describing the Multicultural Branch's reported resolution of the complaints it reviewed.

⁸ The term "federalized airport" refers to a TSA-regulated airport. See 49 C.F.R. § 1542.

In addition, we analyzed a nongeneralizable sample of six complaint files selected by the Multicultural Branch to gather more information about the documentation, resolution, and subsequent actions for passenger complaints.

To describe how TSA used the passenger complaint data to inform screener training, we reviewed TSA documentation related to trainings and briefings that were developed in response to passenger complaints alleging violations of civil rights and civil liberties. We also interviewed TSA officials to discuss actions taken to analyze the complaint data for trends and to use the results of the complaint reviews to identify training for screeners. We also reviewed how TSA shares this information with TSA executive leadership, TSA airport customer service managers, and screeners in the field, among others.

We conducted this performance audit from August 2017 through April 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

DHS's 2012 Memorandum on Addressing Allegations of Unlawful Profiling

In 2012, the Secretary of Homeland Security issued a memorandum directing TSA to take a number of actions in response to allegations of profiling by behavior detection officers. These actions included, among others, working with the DHS Office of Civil Rights and Civil Liberties to (1) review, and revise as necessary, behavior detection officer training policies, training curriculum, and supervisory guidance to ensure they adequately address and train against profiling; (2) enhance data collection to facilitate appropriate supervision and monitoring of behavior detection activities; and (3) ensure passengers are aware of complaint mechanisms and ensure complaints are appropriately handled.

TSA has taken some actions to address these directives. For example, TSA has

- revised its standard operating procedures and training materials to more clearly instruct personnel trained in behavior detection and other TSA personnel on how to avoid unlawful profiling;
- initiated a study to collect data on the race and national origin of passengers referred for behavior detection screening and examine whether disparities exist in the referral trends, and if so, whether these differences suggest discrimination or bias in the referral process;⁹ and
- issued a Management Directive establishing TSA policy and procedures for receiving, documenting, and referring passenger screening complaints resulting from the application of TSA security screening policies and procedures, including processes for all involved offices in headquarters and the field that handle passenger complaints.¹⁰

TSA's Use of Behavior Detection

The Aviation and Transportation Security Act established TSA as the federal agency with primary responsibility for securing the nation's civil aviation system, which includes the screening of all passengers and property transported by commercial passenger aircraft.¹¹ At the approximately 440 TSA-regulated airports in the United States, all passengers, their accessible property, and their checked baggage are screened prior to boarding an aircraft or entering the sterile area of an airport pursuant to statutory and regulatory requirements and TSA-

⁹TSA collected demographic data on approximately 1,200 behavior detection passenger referrals across 11 airports for fiscal years 2014 through 2017 to determine how referral data could be used to monitor and determine if unlawful profiling occurs during the screening process. TSA officials told us that they discontinued collecting data as of October 2017 due to the stand-alone behavior detection program ending in November 2017. This report does not include TSA's efforts to use these data to monitor behavior detection activities for unlawful profiling because TSA did not complete the study or analyze the results.

¹⁰Transportation Security Administration, Office of Civil Rights and Civil Liberties, Ombudsman and Traveler Engagement, TSA Management Directive No. 900.1, *Passenger Screening Complaints* (Nov. 2013).

¹¹See Pub. L. No. 107-71, § 101(a), 115 Stat. 597 (2001); 49 U.S.C. § 114. For purposes of this report, "commercial passenger aircraft" generally encompasses the scheduled passenger operations of U.S.-flagged air carriers operating in accordance with their TSA-approved security programs and foreign-flagged air carriers operating in accordance with security programs deemed acceptable by TSA. See 49 C.F.R. § 1544 (governing U.S.-flagged air carriers) and 1546 (governing foreign-flagged air carriers).

established standard operating procedures.¹² TSA began using behavior detection in 2006 as an added layer of security to identify potentially high-risk passengers.

Through the end of fiscal year 2016, TSA's behavior detection screening process was a stand-alone program that used specially trained behavior detection officers to observe passengers at the screening checkpoint and engage them in brief verbal exchanges. During this period, behavior detection officers had brief interactions with passengers in the queue leading up to the screening checkpoint. If the behavior detection officers determined during this interaction that a passenger exhibited a certain number of behavioral indicators, the behavior detection officer was to refer the passenger for additional screening or, if circumstances warranted, contact a law enforcement officer.¹³ According to TSA procedures, if a passenger was referred for additional screening, one behavior detection officer conducted a pat-down of the passenger and search of his or her personal property while another checked documents and conversed with the passenger, attempting to understand why the behavioral indicators were being displayed and continuing to look for additional behavioral indicators. If a passenger did not exhibit a certain number of additional indicators, he or she was allowed to proceed to the boarding gate. If the passenger did exhibit a certain number of additional indicators, or other events occurred, such as the discovery of a fraudulent document, the behavior detection officer was to call a law enforcement officer. The law enforcement officer then would determine next steps, which could include questioning the passenger or conducting a criminal background check. The law enforcement officer then determined whether to release the passenger, refer the passenger to another law enforcement agency, or arrest him or her.

In fiscal year 2017, consistent with the Aviation Security Act of 2016, TSA eliminated the stand-alone behavior detection officer position.¹⁴ TSA

¹²See 49 C.F.R. § 1540.5 (defining the sterile area of the airport as, in general, an area of an airport that provides passengers access to boarding aircraft and to which access is controlled through the screening of persons and property).

¹³TSA has determined the specific behavioral indicators and related information to be sensitive security information.

¹⁴See Pub. L. No. 114-190, § 3304(a)(1), 130 Stat. 615, 655 (2016) (requiring that TSA, not later than 30 days after enactment (enacted July 15, 2016), utilize behavior detection officers for passenger and baggage security screening, including the verification of traveler documents, particularly at designated TSA Pre✓® lanes to ensure that such lanes are operational for use and maximum efficiency).

transferred the former behavior detection officers to serve as part of the screener workforce and began assigning them to the checkpoint to screen passengers. According to TSA officials, when screeners trained in behavior detection are assigned to a position, TSA policies and procedures permit them to use behavior detection when applicable. Furthermore, TSA's checkpoint standard operating procedures do not currently include the use of behavior detection, as behavior detection's use continues to be guided by its own policies established in 2016.

However, some screeners trained in behavior detection continue to use behavior detection to support passenger screening canine teams as part of expedited screening.¹⁵ As part of this process, screeners trained in behavior detection work in conjunction with canine teams to observe passenger behavior and identify passenger behaviors that may indicate that a passenger poses a higher risk to the aviation system.¹⁶

Overview of Optimized Behavior Detection Training

The Training and Development Division (Training Division), within TSA headquarters, oversees the development, delivery, and evaluation of training programs for TSA employees. The National Training Plan, developed annually by the Training Division and Security Operations, contains the core curriculum for screeners to meet their yearly training requirements. In addition, Security Operations works with the Traveler Engagement Division to develop and deliver specific training on topics such as disability profiling, racial profiling, and screening transgender persons.

In August 2017, TSA began training screeners on its new behavioral indicators. TSA revised the behavioral indicators by eliminating and combining some of the indicators used to observe passenger behavior, which TSA refers to as Optimized Behavior Detection. According to TSA officials, Optimized Behavior Detection includes 36 revised behavioral

¹⁵Expedited screening is a process that TSA uses to assess a passenger's risk to aviation security prior to the passenger arriving at an airport checkpoint. TSA also deploys passenger screening canine teams that are trained to detect explosives being carried by or worn on a person. TSA uses combinations of behavior detection and passenger screening canine teams to help ensure that individuals selected for expedited screening do not exhibit high-risk behaviors or otherwise present a risk to the traveling public.

¹⁶GAO, *Aviation Security: TSA's Managed Inclusion Process Expands Passenger Expedited Screening, but TSA Has Not Tested Its Security Effectiveness*, [GAO-15-465T](#) (Washington, D.C.: March 25, 2015).

indicators—which TSA pared down from a list of 96 indicators. As of January 2019, TSA officials told us out of the approximately 43,000 screeners nationwide, a total of 2,541 screeners had been trained at 117 airports in Optimized Behavior Detection.

Screeners must be trained in passenger and accessible property screening before they are eligible to attend Optimized Behavior Detection training. Upon successful completion of Optimized Behavior Detection training, screeners are permitted to utilize behavior detection in accordance with the standard operating procedures, such as when operating in conjunction with canine teams or screening airport and airline workers.¹⁷ In addition, screeners must complete all requirements in the National Training Plan which includes elements of training on TSA's mechanisms for preventing unlawful profiling.

TSA's Oversight of Behavior Detection

TSA's Security Operations is responsible for overseeing the use of behavior detection. TSA's behavior detection policies and procedures prohibit screeners from selecting passengers for additional screening based on race, ethnicity, religion, and other factors, whether through behavior detection or other security measures. This responsibility includes overseeing officers trained in behavior detection to ensure they conduct behavior detection without regard to race/ethnicity, color, gender/sex, gender identity, religion, national origin, sexual orientation, or disability, in accordance with constitutional, statutory, regulatory, and other legal and DHS policy requirements to protect the civil rights and civil liberties of individuals. Although the stand-alone behavior detection officer position was eliminated and the program ended in 2017, the requirement to conduct oversight and verify compliance with TSA policies still applies when behavior detection is used, such as when behavior detection is used in conjunction with passenger screening canine teams. According to TSA's policies and procedures, supervisors must conduct oversight observations of behavior detection activities a minimum of 8 hours every 14 days to verify and document compliance with behavior detection policies, standard operating procedures, the handbook, and training, among other things, and submit a compliance checklist documenting the review to TSA Security Operations.

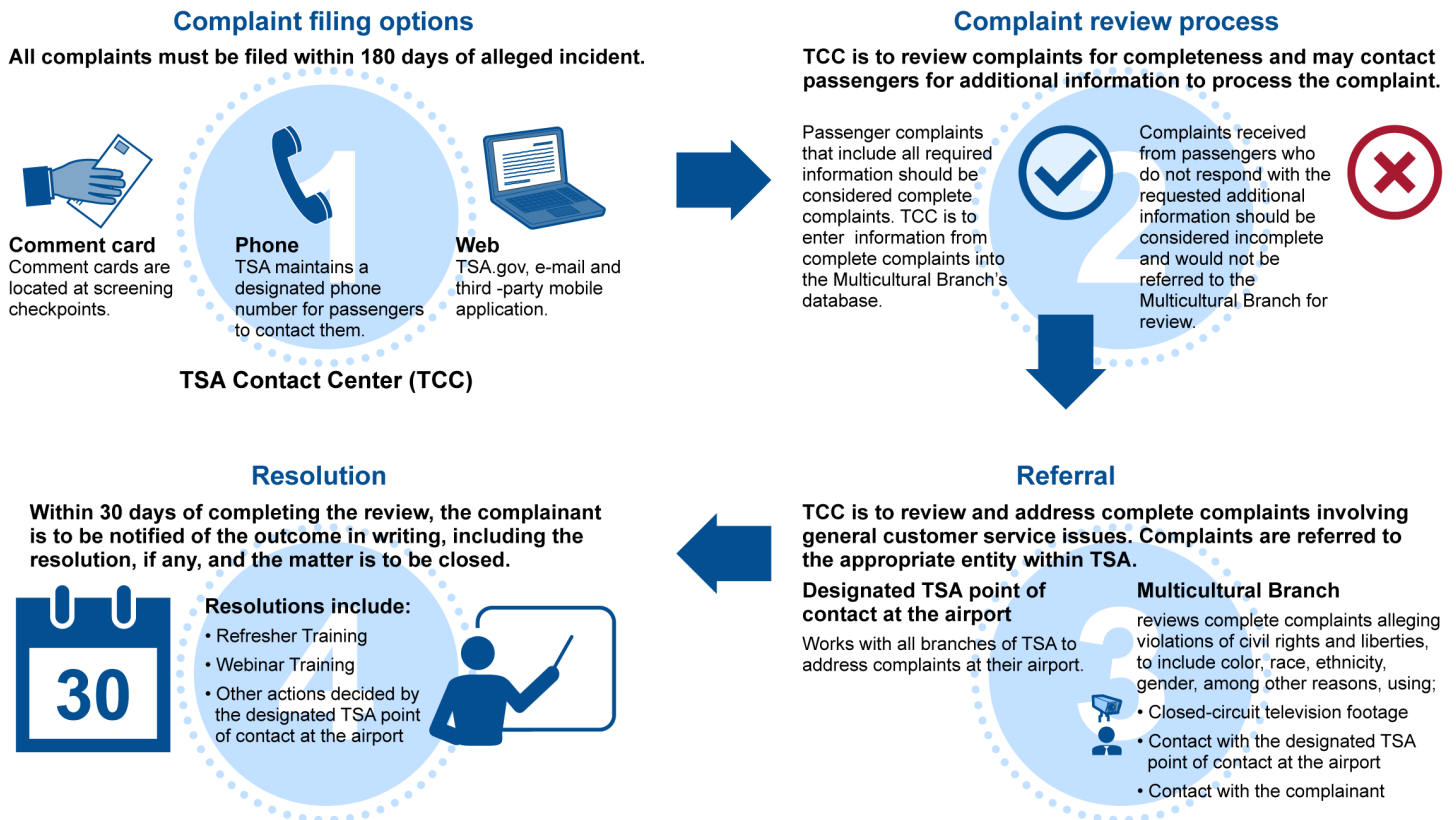
¹⁷According to TSA officials, the Federal Security Director (FSD), who is the ranking TSA authority responsible for leading and coordinating TSA security activities at a TSA-regulated airport, can direct the use of behavior detection at the airport, including the use of stand-alone behavior detection. See 49 U.S.C. § 44933.

Passenger Complaint Review and Referral Process

The TSA Contact Center (TCC) is the primary point of contact for collecting, documenting, and responding to public questions, concerns, or complaints regarding passengers' screening experience; reports and claims of lost, stolen, or damaged items; and complaints submitted by TSA employees.¹⁸ The TCC may refer screening complaints for resolution to other TSA headquarters offices, depending on the specific allegation. For example, complete complaints alleging violations of civil rights and civil liberties, which include allegations implicating color, race, ethnicity, gender, genetic information, national origin, religion, sexual orientation, and parental status, must be referred to the Multicultural Branch. Figure 1 describes the TCC's complaint review process.

¹⁸In this report, we use "employees" to refer to current and former TSA employees who submitted complaints alleging civil rights and civil liberties violations related to TSA employment to the TCC. The TCC is responsible for receiving these employee complaints and referring them to TSA's Equal Employment Opportunity office for review.

Figure 1: The Transportation Security Administration (TSA) Contact Center Complaint Process



Source: GAO analysis of TSA Information. | GAO-19-268

TSA’s Multicultural Branch is responsible for collecting, monitoring, and adjudicating passenger complaints alleging civil rights and civil liberties violations at the passenger screening checkpoint, including complaints alleging unlawful profiling and discrimination, among other things. The Multicultural Branch receives complaints alleging civil rights and civil liberties violations from several sources within TSA including the TCC. When TCC officials determine a complete complaint involves a potential civil rights or civil liberties violation, they are to forward the complaint to the Multicultural Branch where staff are to input the complaint into a database and track the resolution of each complaint they receive.¹⁹ The Multicultural Branch, in consultation with Security Operations, determines whether a screener followed standard operating procedures while

¹⁹Entellitrak is the data system the Multicultural Branch uses to log records of complaints.

screening the complainant by reviewing available video of an incident or interviewing witnesses who saw the incident.

Depending on the nature and severity of the allegation, TSA airport staff may also elevate the complaint and evidence to the airport's Assistant Federal Security Director (FSD) for Screening. If the investigation finds fault with the screener, the screener's supervisor or manager is to determine the corrective action to be taken. Corrective actions specified in TSA's guidelines for disciplinary actions to address misconduct range from mandating that the screener take additional training to correct the behavior to terminating the screener's employment for multiple repeat offenses or a single egregious action.²⁰ Following the outcome of the complaint review and any resulting corrective actions, the TSA headquarters unit or the TSA customer support manager at the airport is to communicate the status of the resolution, if any, to the complainant—such as by using a template letter that explains TSA's policies and procedures or issuing an apology. According to Multicultural Branch protocols for reviewing passenger complaints, complaints may be resolved in three ways:

- **Closed-Administratively:** If the complainant does not respond within 10 days to the Multicultural Branch's first contact for additional information, such as a request for additional information on the alleged civil rights and civil liberties violation, the complaint is to be closed.
- **Closed-No Jurisdiction:** Complaints that are not within the Multicultural Branch's jurisdiction, such as complaints involving rude and unprofessional conduct that are not related to allegations of civil rights and civil liberties violations, are to be closed and referred to other TSA offices or the TSA designated point of contact at the airport for further handling.
- **Closed-Resolved:** Following the outcome of the investigation, the Multicultural Branch is to send a letter to the complainant summarizing the allegations reviewed, explaining whether TSA procedures were followed, and in some cases, issuing an apology or informing the complainant of the type of training offered to the screener(s). The Multicultural Branch may recommend training and provide refresher training materials for distribution at the airport to the screener(s)

²⁰Transportation Security Administration, *Guidelines on Using the Offenses and Penalties for Appropriate Discipline for Common Offenses*, October 11, 2018.

involved, if identified, or for all screeners at the airport's checkpoint at which the complaint originated. According to TSA officials, the Multicultural Branch recommends training when standard operating procedures for screening were not followed or when it determines that the proactive measure of refresher training would be useful. According to TSA, the designated TSA point of contact at the airport is required to verify when the training is completed.

Screeners Using Behavior Detection Receive Basic and Recurrent Training Related to Profiling, and TSA Evaluates Training Effectiveness Using the Kirkpatrick Model

Screeners Conducting Behavior Detection Receive Training on TSA's Policies and Procedures That Prohibit Unlawful Profiling

Before screeners are eligible to conduct any behavior detection activities, they must first complete a 5-day Optimized Behavior Detection Basic Training course, and undergo on-the-job training at their local airport. This course includes an overview of DHS and TSA policies that prohibit unlawful profiling, and trains screeners to apply behavioral indicators to passengers without regard to race/ethnicity, color, gender/sex, gender identity, religion, national origin, sexual orientation, or disability.²¹ Participants must complete the Optimized Behavior Detection Basic Training course and pass a 40 question job knowledge test at the end of the class, in addition to completing 32 hours of on-the-job training under the supervision of an officer already trained in behavior detection.²² If a participant fails the job knowledge test, he or she is to receive 1 hour of

²¹According to TSA policy, discernible traits may only be used to screen passengers when three conditions are met: (1) they are directed to do so by their FSD; (2) the directive is based on specific intelligence information; and (3) the directive is time-limited.

²²The job knowledge test includes multiple-choice questions, true/false questions, and scenario-based questions.

remedial training before retaking the test. Screeners must pass the test in two attempts to be eligible to conduct behavior detection activities.

In the four Optimized Behavior Detection Basic Training courses we attended, the training instructors covered TSA's policies on prohibiting unlawful profiling on day one of the course, and explained that profiling passengers based on discernible traits was not only illegal, but that such practices are ineffective at identifying potentially high-risk passengers. In addition, the course manual included a copy of DHS's 2013 memorandum defining racial profiling, which all participants were required to review.²³ To test their understanding of TSA policy and the Optimized Behavior Detection Standard Operating Procedures, the instructors presented various scenarios to engage participants in practicing how they would apply behavior detection at the checkpoint.

The 2018 National Training Plan required behavior detection-trained screeners to complete four recurrent technical training courses related to behavior detection, including two that contain material reinforcing DHS's and TSA's policies prohibiting unlawful profiling.²⁴ Screeners participate in each of the four interactive training courses using a computer and the courses contain knowledge checks that the participant must answer correctly before completing the training. Table 1 describes the training courses screeners trained in behavior detection are required to complete and appendix I includes a list of additional training related to unlawful profiling.

²³Department of Homeland Security, *Memorandum for Component Heads from Secretary Napolitano: The Department of Homeland Security's Commitment to Nondiscriminatory Law Enforcement and Screening Activities* (Apr. 26, 2013).

²⁴The National Training Plan guides the training requirements for all screeners for a given year.

Table 1: Transportation Security Administration (TSA) Courses Required For Behavior Detection–Trained Screeners for Fiscal Year 2018

Training course	Description
Behavior Detection Resolution Conversation	This course covers how behavior detection–trained screeners should interact with a passenger who has been selected for additional screening because the passenger met the threshold for behavior indicators.
Behavior Detection Preventing Profiling Pledge	This course covers TSA policies prohibiting the use of unlawful profiling and explains that such profiling negatively impacts TSA’s mission to protect transportation security. The course reinforces that unlawful profiling is illegal, inefficient, and diverts resources from proven, effective techniques.
Behavior Detection Active Engagement	This training covers how behavior detection–trained screeners should interact with passengers in the queue at the screening checkpoint as part of performing behavior detection.
Behavior Detection Plainclothes Operations	This course includes a section explaining TSA’s policy prohibiting unlawful profiling and covers how screeners using behavior detection in plain clothes should dress, operate, and report on their activities.

Source: GAO analysis of TSA information. | GAO-19-268

TSA Evaluates Training Courses Using the Kirkpatrick Evaluation Model

TSA determines the effectiveness of particular training programs using the Kirkpatrick Evaluation Model, a commonly accepted training evaluation model endorsed by the Office of Personnel Management and used throughout the federal government. In May 2018, TSA updated its training standards based on the ADDIE model, a methodology comprising five phases: Analysis, Design, Development, Implementation, and Evaluation (ADDIE).²⁵ TSA uses the Kirkpatrick model as part of the evaluation stage of ADDIE. The Kirkpatrick model consists of a four-level approach for soliciting feedback from training course participants and evaluating the impact the training had on individual development, among other things.

TSA conducts Levels 1 and 2 evaluations on selected training courses. Table 2 provides an overview of the Kirkpatrick model and the evaluation levels for courses related to behavior detection and unlawful profiling.

²⁵Transportation Security Administration, TSA MD 1900.14, Handbook, *Training Standards*.

Table 2: Transportation Security Administration (TSA) Implementation of Kirkpatrick Evaluation Model for Training Courses Related to Behavior Detection

Kirkpatrick evaluation level description	TSA’s current practices
Level 1	TSA implements Level 1 course evaluations for four of the five behavior detection courses, Optimized Behavior Detection Basic Training, Behavior Detection Resolution Conversation, Plainclothes Operations, and Behavior Detection Active Engagement. According to TSA Handbook 1900.14, <i>Training Standards</i> , Level 1 evaluations capture student reaction to course content and instructor performance, among other things. ^a
Level 2	TSA implements Level 2 course evaluations for three of the five behavior detection courses, Optimized Behavior Detection Basic Training, Behavior Detection Resolution Conversation, and Behavior Detection Active Engagement. According to TSA’s <i>Training Standards</i> , Level 2 evaluations include written and practical exams to identify gaps in instruction and student materials, and these evaluations are analyzed to ensure the evaluations accurately measure what the training participants learned in the course.
Level 3	TSA does not conduct Level 3 evaluations for behavior detection–related courses at this time.
Level 4	TSA does not conduct Level 4 evaluations for behavior detection–related courses at this time.

Source: GAO analysis of TSA information. | GAO-19-268

^aAccording to TSA officials, the Level 1 course evaluation is not applicable to the content of the Behavior Detection Preventing Profiling Pledge course.

TSA officials told us they will continue to evaluate the Optimized Behavior Detection Basic Training course and Level 3 evaluations are under development, as they roll out their training evaluation process. According to TSA’s *Training Standards*, a review team determines the frequency of curriculum review, which should occur at least once every 5 years. As part of this review, TSA plans to leverage data reported in evaluations at Kirkpatrick Levels 1 through 3.

TSA Has Oversight Policies for Behavior Detection and Prohibits Unlawful Profiling but Does Not Specifically Assess Whether Profiling Occurs

TSA's 2016 Optimized Behavior Detection Program Handbook and Operational Oversight Compliance Guidance require supervisors to conduct routine checks of behavior detection operations to monitor compliance with standard operating procedures. TSA's behavior detection Operational Oversight Compliance Guidance outlines seven specific assessments of behavior detection operations and includes a checklist for each assessment for managers to document completion of these routine oversight tasks. According to TSA officials, these assessments should occur when screeners use behavior detection in conjunction with canine operations and while screening airline and airport workers, among other activities.²⁶ When conducting these assessments, supervisors are to conduct 1-hour observations and use detailed checklists to document how screeners trained in behavior detection perform the behavior detection in practice. For example, one checklist requires supervisors to observe how screeners trained in behavior detection monitor passenger flow and communicate with passengers while observing for behavioral indicators, such as ensuring screeners using behavior detection do not ask passengers intrusive or offensive questions, among other activities related to the use of behavior detection.²⁷

However, our review of the oversight checklists found that they do not specifically instruct supervisors to monitor for compliance with procedures intended to prohibit unlawful profiling. According to TSA officials, TSA's guidance and checklists do not include this type of monitoring for unlawful profiling because officials believe that the training screeners receive, adherence to the standard operating procedures, and the general supervisory oversight in place are sufficient to prevent unlawful profiling and could alert supervisors to situations where unlawful profiling happens. However, the 2013 DHS memorandum on DHS's policy on unlawful profiling states that each component, including TSA, should both implement specific policy and procedures on racial profiling, and ensure all personnel are trained and held accountable for meeting the standards

²⁶According to TSA officials, the FSD has the discretion to assign the number of resources and coverage to get those assessments done.

²⁷The seven checklists and descriptions of the behavior detection observations required for each 1-hour assessment is considered sensitive security information. Therefore, in this report we only include selected examples that have been approved by TSA for public release.

set forth in DHS policy.²⁸ In addition, *Standards for Internal Control in the Federal Government* states that management should establish and implement activities to monitor the internal control system and evaluate the results, as well as remediate identified internal control deficiencies.²⁹ Such a mechanism could be an item added to a checklist for supervisors to document, based on their observations, whether screeners selected individuals for additional scrutiny in a manner consistent with policies and procedures.

Another oversight mechanism, as noted in DOJ's guidance on the use of race and other factors, could be studying the implementation of policies and procedures that prohibit unlawful profiling through targeted, data-driven research projects.³⁰ As previously discussed, in 2013, TSA initiated a study and collected data through October 2017 on passengers referred for secondary screening to monitor compliance with policies that prohibit unlawful profiling. TSA discontinued the study and did not analyze the data collected because the stand-alone behavior detection program ended in November 2017. As a result of not conducting the analysis, TSA does not know what the data would have shown regarding compliance with policies that prohibit unlawful profiling.

²⁸The DHS memorandum further states that DHS "has explicitly adopted" DOJ's "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," issued in June 2003. According to the DHS memorandum, "[i]t is the policy of DHS to prohibit the consideration of race or ethnicity in [its] daily law enforcement and screening activities in all but the most exceptional instances," as defined in Department of Justice guidance. See United States Department of Justice, Civil Rights Division, *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* (Washington, D.C.: June 2003).

²⁹[GAO-14-704G](#).

³⁰DOJ issued "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity" in December 2014, which supersedes and builds upon and expands the framework of its 2003 guidance. The 2014 DOJ guidance prescribes steps that, to ensure its implementation, federal law enforcement agencies must take related to training (to ensure, for example, that consistent practices are applied across the agency), data collection (to help managers assess the relative success or failure of policies and practices, if analyzed effectively and conclusions can be drawn with confidence), and accountability (by, for example, requiring that all violations be brought to the attention of the head of the department of which the agency is a component). Unlike the 2003 guidance, which included airport security screening within its scope, the 2014 guidance expressly states that it does not apply to such screening activities. DHS and TSA plan to review activities not directly covered by the new guidance to ensure they are including every appropriate safeguard and civil rights protection in the execution of security activities, and to enhance their policies where necessary.

TSA officials said they plan to update the behavior detection and checkpoint screening policies, procedures, and guidance during fiscal year 2019. As a part of this update, TSA officials told us they plan to include language in the standard operating procedures reinforcing the use of behavior detection simultaneously with other checkpoint duties, such as the document checker position. However, TSA officials told us they are not planning to add an oversight mechanism specific to profiling as part of the updates because, as previously noted, they believe screener training, adherence to the standard operating procedures, and general supervisory oversight are sufficient.³¹ Developing a specific oversight mechanism, such as a checklist or a data-driven study, to monitor screeners' compliance with policies that prohibit unlawful profiling would provide TSA with greater assurance that its personnel are adhering to these policies when using behavior detection, and better position TSA to identify potential incidents of unlawful profiling.

³¹In October 2018, TSA updated its guidelines for disciplinary actions for common offenses to provide supervisors with guidance for determining corrective actions for screeners who violate agency policies and procedures, which includes recommended disciplinary actions for screeners who make inappropriate comments or take actions based on a person's race, color, religion, or national origin, among other characteristics.

TSA Received About 3,700 Complaints Alleging Violations of Civil Rights and Civil Liberties from October 2015 to February 2018 and Recommended Screener Training to Address Complaints

The TCC Received 3,663 Complaints Related to Passenger Screening and a Majority of the Complaints Alleged Discrimination or Profiling Based on Personal Attributes and Characteristics

The TCC received 3,663 complaints related to passenger screening alleging violations of civil rights and civil liberties from October 2015 through February 2018. These complaints are not specific to behavior detection activities and generally reflect alleged conduct occurring at the screening checkpoint through the application of screening measures. We analyzed the 3,663 complaints and found that the majority (2,251 of 3,663) of the complaints alleged discrimination or profiling based on personal attributes and characteristics.³² For example, the TCC received complaints alleging discrimination that involved assertions by passengers that they had been selected for pat-downs based on race and ethnicity, among other reasons, when the passengers believed they did not trigger an alarm prompting the pat-downs.³³ The TCC also received complaints related to passengers' transgender identity alleging selection for additional screening because of their transgender status. Additionally, the

³²These complaints alleged discrimination or profiling based on personal attributes and characteristics related to, among other things, an individual's race, ethnicity, national origin, language, gender, age, and hair.

³³Standard screening typically includes passing through a walk-through metal detector or advanced imaging technology (AIT) machine, which identifies objects or anomalies on the outside of the body. Passengers may be subject to a pat-down if they are screened by the AIT or walk-through metal detector and the equipment alarms. Pursuant to TSA standard operating procedures for screening at the checkpoint, triggering an alarm is not the only reason why a passenger may be selected for a pat-down or additional screening measures.

TCC received passenger complaints alleging that screening procedures were aggressive or inappropriate for senior citizens. Table 3 provides a list of complaint types based on our analysis. In addition, appendix II provides additional detail about our content analysis of complaints alleging civil rights and civil liberties violations, and appendix III provides a list of 10 airports most often identified in the complaints.

Table 3: Complaints Received by the Transportation Security Administration (TSA) Contact Center (TCC) Alleging Civil Rights and Civil Liberties Violations Related to Passenger Screening and Categorized by Personal Attributes and Characteristics or by Alleged Adverse Actions, October 2015 through February 2018

Category	Frequency	Percentage	General description
Discrimination/profiling—national origin, language, race/ethnicity	1,532	42	Questions, concerns, or allegations about profiling or discrimination based on the individual's national origin, language, race, or ethnicity, or discrimination/profiling in general (no reason specified).
Pat-down	493	13	Questions, concerns, or allegations about a pat-down that was possibly invasive or overly aggressive, including pat-downs that the passenger alleges occurred due to their race/ethnicity.
Hair	279	8	Questions, concerns, or allegations about receiving a hair pat-down.
Sex/gender/gender identity, excluding transgender	271	7	Questions, concerns, or allegations of discrimination based on gender, including gender identity concerns: e.g., the passenger asserts that a screener of the wrong gender started to conduct the pat-down. Also includes allegations of differential treatment based on their sex/gender. No mention of race/ethnicity.
Religion	200	5	Questions, concerns, or allegations of discrimination based on perceived religion, e.g., a passenger alleges being subjected to additional screening because he or she appears to be part of a religious group or has a name that may make him or her appear to be part of a religious group.
Transgender	169	5	Questions, concerns, or allegations about transgender screening, e.g., a transgender passenger alleges that she always has to undergo a pat-down because TSA's technology is based on a binary male/female system.

Category	Frequency	Percentage	General description
Other—civil rights and civil liberties related	316	9	Combination of categories such as age, sexual orientation, and constitutional rights, among others. ^a
Other—not related to passenger screening	403	11	Combination of categories such as employee complaints, or those not related to passenger screening. ^b
Total	3,663	100	

Source: GAO analysis of TSA complaint data. | GAO-19-268

Note: We use the term “passengers” to refer to individuals—including ticketed passengers, individuals accompanying ticketed passengers, and any other individuals not considered an employee for purposes of this report—who submitted complaints alleging civil rights and civil liberties violations related to TSA screening procedures to the TSA Contact Center.

^aConstitutional rights may include questions, concerns, or allegations raising freedom of speech or unreasonable search and seizure issues.

^bMatters not related to passenger screening may include information received by the TCC that TSA characterizes as conspiracy theories or other information unrelated to TSA screening processes. We use “employees” to refer to current and former employees who submitted complaints alleging civil rights and civil liberties violation related to TSA employment to the TCC. The TCC is responsible for receiving these employee complaints and referring them to TSA’s Equal Employment Opportunity office for review.

As TSA’s primary point of contact for passenger complaints, the TCC is responsible for the initial review and referral of all complaints that involve allegations of civil rights and civil liberties violations to the Multicultural Branch. According to the TCC standard operating procedures, TCC analysts review the complaints to ensure that they contain the necessary information to be considered complete, including the airport, passenger’s name, date of the incident, and description of the alleged civil rights and civil liberties violation. In addition, complaints reported over the phone or made on behalf of another person without the person’s consent are initially considered incomplete.³⁴ For complaints that are not complete, the TCC sends the passenger a document request for information when

³⁴The TCC standard operating procedures explain that federal regulations require that complaints be put in writing unless a disability prevents the person from doing so. If a passenger needs to file a complaint verbally due to a disability, the TCC call operators attempt to collect the necessary complaint information from the passenger over the phone and summarize the complaint in the database.

the passenger has provided correct contact information.³⁵ According to TCC officials, passengers often do not provide the correct contact information or do not respond with the necessary information to complete the complaint. TCC officials said that incomplete complaints are typically sent to the Multicultural Branch for informational purposes.³⁶ Multicultural Branch officials told us that they consider information from incomplete complaints to inform its policy and training initiatives, and to improve how TSA engages with the public.

From October 2015 through February 2018, the TCC referred 51 percent (1,865) of the 3,663 complaints it received to the Multicultural Branch for review. The TCC reported that 48 percent (1,764) of the 3,663 complaints did not have complete information necessary for further review, such as the airport and date of the incident. According to TSA officials, these complaints were sent to the Multicultural Branch for informational purposes.³⁷ TCC's passenger complaint data show that the remaining 1 percent (34) of the complaints were from TSA employees and were referred to other TSA offices for review.

³⁵The request for information template outlines the requirements for filing a complete complaint and requests the passenger to provide a written response with the missing information, consent for a complaint made on behalf of someone else, or further detail the alleged discrimination. TCC standard operating procedures state that the TCC attempts to follow up with the passenger by email or telephone, if the passenger provided correct contact information. TSA officials reported that the requests for missing information are sent within 48 hours of receiving the complaint. For complaints submitted by phone on behalf of someone else, the individual making the complaint is asked to state that he or she is authorized to file the complaint. All necessary complaint information must be received within 180 days of the alleged incident.

³⁶Multicultural Branch officials told us that they consider information from all complaints (complete and incomplete) along with its ongoing engagements with TSA's Multicultural Coalition, which is comprised of more than 50 community-based organizations and advocacy groups, to inform its policy and training initiatives and to improve how TSA engages with the public.

³⁷According to TSA officials, incomplete complaints were typically sent to the Multicultural Branch through October 2017 for informational purposes.

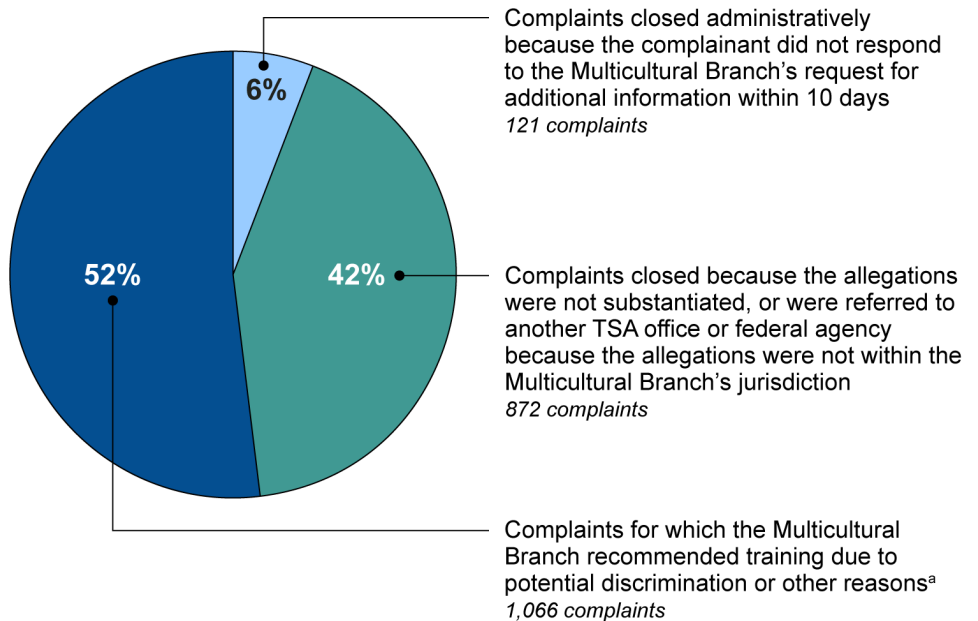
TSA's Multicultural Branch Reviewed More Than 2,000 Complaints and Recommended a Range of Screener Training

TSA's Multicultural Branch receives and reviews complete complaints related to allegations of violations of civil rights and civil liberties that are referred to it from the TCC, DHS's Office of Civil Rights and Civil Liberties, TSA's Disability Branch, and TSA personnel at airports.³⁸ From October 2015 through February 2018, the Multicultural Branch received 2,059 complaints alleging violations of civil rights and civil liberties, as shown in figure 2. Multicultural Branch officials stated that the majority of these complaints were referred from the TCC.

³⁸The Multicultural Branch receives complaint referrals from multiple sources and considers certain referrals, such as general inquiries from TSA officials, as intakes, not complaints, but reviews and addresses them in the same manner as complaints. For the purposes of our analysis, we treated these intakes as complaints.

Figure 2: Complaints Reviewed by the Transportation Security Administration (TSA) Multicultural Branch from October 2015 through February 2018

Complaints reviewed by the Multicultural Branch 2,059 complaints



Source: GAO analysis of TSA's Multicultural Branch passenger complaint data received from October 2015 through February 2018. | GAO-19-268

Note: TSA's Multicultural Branch is responsible for collecting, monitoring, and adjudicating passenger complaints alleging civil rights and civil liberties violations at the passenger screening checkpoint, including complaints alleging unlawful profiling and discrimination, among other things.

^aAccording to TSA officials, the Multicultural Branch recommends training when standard operating procedures for screening were not followed, or when it determines that the proactive measure of refresher training would be useful.

As shown in figure 2, for 1,066 (52 percent) of the complaints, Multicultural Branch staff found indications of potential discrimination, such as instances of rude or unprofessional conduct that included the use of race or other protected characteristics.³⁹ According to Multicultural Branch staff, to resolve the 1,066 complaints, they recommended a range of refresher training. Multicultural Branch staff explained that when issues are identified, their policy is to address the issues through screener

³⁹For example, Multicultural Branch officials reported that complaints alleging rude or unprofessional conduct were those in which a complainant alleged the screener asked inappropriate questions or made inappropriate comments based on his or her physical characteristics and attributes.

training. Multicultural Branch officials reported that these trainings were provided through National Shift Briefings, which were circulated across TSA, or through training provided at a particular airport.⁴⁰ For example:

- In one of the complaint cases we reviewed, a passenger alleged profiling based on headwear. Multicultural Branch officials used camera recordings and statements from officers involved in the encounter to substantiate that screening procedure violations had occurred. As a result, Multicultural Branch officials recommended refresher training to the airport on headwear screening protocols for all screeners at the airport to review.
- In another complaint case we reviewed, a passenger alleged profiling based on the use of a tribal-issued photo identification card. In response, Multicultural Branch officials sent refresher training on verifying tribal identification and the screening of Native American passengers to the TSA designated point of contact at the airport involved for distribution to TSA personnel identified in the complaint.
- In a third complaint reviewed, a passenger alleged being profiled at the screening checkpoint, without including any additional details. According to TSA officials, based on the particular allegations of the complaint and the lack of details, TSA was unable to substantiate the allegations made in the complaint. As a result, Multicultural Branch sent National Shift Briefings on TSA's policies and procedures that prohibit unlawful profiling and inappropriate comments to the TSA designated point of contact at the airport involved for distribution to TSA personnel identified in the complaint.

As shown in figure 2, there were 993 complaints that the Multicultural Branch reviewed but did not address through training. The Multicultural Branch closed 121 of these complaints because it determined that the complainant did not provide sufficient information about the alleged civil rights and civil liberties violation for Multicultural Branch review and the complainant did not respond with additional information requested by the Multicultural Branch within 10 days. The Multicultural Branch determined that the remaining 872 complaints were not substantiated based on its review of the camera recording of the alleged incident, or were not within its jurisdiction. For the complaints not within its jurisdiction, the Multicultural Branch referred them to other TSA offices, to TSA officials at

⁴⁰National Shift Briefings provide a reminder to all screening personnel of their role in ensuring that security measures are appropriately applied in accordance with TSA policies and procedures.

the airport or airports identified in the complaints for review, or to other federal agencies (e.g., U.S. Customs and Border Protection, Department of Transportation, or the Federal Aviation Administration) as appropriate. These complaints involved allegations of unprofessional conduct and other issues that did not involve allegations of civil rights and civil liberties violations.⁴¹

According to Multicultural Branch guidance, the designated TSA point of contact at the airport along with the Multicultural Branch analyst are to determine appropriate next steps for resolving complaints, such as preparing a briefing for screeners that is tailored to address the concerns raised by the complainant. TSA officials stated that resolutions to the complainant are tailored to reflect the allegation, type of inquiry conducted, and investigation of the facts and evidence underlying the complaint. TSA's responses to the complainant include, but are not limited to, apologizing for the screening experience or informing the complainant about the next steps such as the agency's plans to address the complaint or underlying conduct that gave rise to the complaint.⁴² For example, in a letter we reviewed, TSA apologized for the "unprofessional and inappropriate personal questions" the passenger experienced during screening, and stated that refresher training would be distributed to screeners at the airport involved. According to documentation we reviewed related to this complaint, the Multicultural Branch sent refresher training materials on avoiding inappropriate comments to the designated TSA point of contact at the airport involved. In addition, TSA's office of Human Capital Employee Relations reported that it took a range of disciplinary actions—from letters of reprimand to termination—for 100

⁴¹TSA's Multicultural Branch is responsible for conducting inquiries into any alleged discrimination or illegal profiling of passengers during checkpoint screening by TSA screeners. Complaints not under Multicultural Branch's jurisdiction include but are not limited to those that allege criminal misconduct, which are referred to TSA's Investigations office for formal inquiry, according to TSA officials.

⁴²As previously noted, regardless of the outcome, Multicultural Branch officials reported that its policy is to recommend refresher training as a proactive measure when, for example, they are unable to determine if the alleged civil rights and civil liberties violations occurred.

screeners from October 2015 through February 2018, in part in response to passenger complaints alleging civil rights and civil liberties violations.⁴³

TSA's Multicultural Branch Analyzes and Shares Passenger Complaint Data to Inform Screener Training

TSA's Multicultural Branch regularly collects and analyzes data on passenger civil rights and civil liberties and discrimination complaints and their resolution status, and shares this information with TSA executive leadership, TSA airport customer service managers, and screeners in the field, among others. Multicultural Branch officials told us their staff are assigned to specific airports based on geographic region, and they continually analyze passenger complaints referred to their office from the TCC to identify trends. Staff members meet weekly to discuss trends in complaints for their geographic regions, and they review weekly, quarterly, and annual reports on the number and category of complaints referred to their office by the TCC. In addition, Multicultural Branch officials track the resolution of the cases for which they have jurisdiction and submit this information to their senior leadership each week. Specifically, the Multicultural Branch uses a database to track complaints by type, airport, submission date, and resolution status, such as how many cases are open, closed, or whether they have been resolved.

Multicultural Branch officials share trends in complaints throughout TSA in several ways, including conference calls, monthly briefings, reporting metrics to TSA executive leadership, and on-site training events at airports each year. For example, Multicultural Branch officials hold monthly conference calls with customer service managers at airports to review complaint trends, upcoming on-site airport trainings, and job aids they have developed to help screeners understand issues, such as screening passengers wearing religious headwear. Multicultural Branch officials stated they also share information with screeners and supervisors through National Shift Briefings that are distributed at all airports, and focus on bringing awareness to screeners on events they need to be aware of when screening passengers, such as religious observances occurring that month.

⁴³TSA officials reported that none of the complaints that resulted in the disciplinary actions were specific to behavior detection. TSA's Human Capital Employee Relations officials determined that more than 60 percent of the 100 screeners used inappropriate comments or were engaged in misconduct, including offensive comments or actions based on another's race, national origin, and/or sex, among other factors.

According to TSA officials, the Multicultural Branch uses its analysis of passenger complaints and the results of complaint investigations to develop training aids and materials on areas where they determine screeners need more training, such as multicultural awareness or screening of transgender passengers. For example, the Multicultural Branch has developed briefings focusing on unlawful profiling and unconscious bias which reiterated that unlawful profiling is against TSA policy, defined unconscious bias, and provided scenario-based examples. Additionally, members from the Multicultural Branch hold on-site training for screeners at selected airports each year based on complaint data analysis and other factors. These training sessions last three days, include topics stemming from complaint data TSA has analyzed, and can include webinars, role-playing, and other forms of instruction.

Conclusions

DHS and TSA have policies prohibiting unlawful profiling—using race, ethnicity, gender, or other protected characteristics to identify passengers for additional screening—when using behavior detection, as well as other screening measures. While TSA has oversight guidance and checklists to monitor screeners' use of behavior detection, these policies and procedures do not include a specific mechanism to monitor whether screeners may be using behavior detection to unlawfully profile passengers. Although TSA officials report that they are working to update the standard operating procedures in 2019, they currently have no plan to add a specific mechanism to monitor compliance with policies that prohibit unlawful profiling. Developing a specific oversight mechanism would provide TSA with greater assurance that screeners are adhering to such policies and help TSA identify any potential incidents of unlawful profiling.

Recommendation for Executive Action

We are making the following recommendation to TSA.

The TSA Administrator should direct Security Operations to develop a specific oversight mechanism to monitor the use of behavior detection activities for compliance with DHS and TSA policies that prohibit unlawful profiling. (Recommendation 1)

Agency Comments and Our Evaluation

We provided a draft of this report to DHS for review and comment. DHS provided written comments which are reproduced in appendix IV. In its comments, DHS concurred with our recommendation and described actions planned to address it. Security Operations, TCC, and the

Multicultural Branch also provided technical comments, which we incorporated as appropriate.

DHS correctly noted in its letter that GAO's analysis of civil rights and civil liberties complaints related to every aspect of TSA's passenger and baggage screening and is not specific to behavior detection. We agree with DHS's observation, as this analysis provides information on what passengers alleged in their complaints and how TSA addressed them. It is important to note that the complaint data provided by TSA did not preclude behavior detection activities as a potential contributing factor to any number of the complaints submitted.

With regard to our recommendation, that the TSA Administrator should direct Security Operations to develop a specific oversight mechanism to monitor the use of behavior detection activities for compliance with DHS and TSA policies that prohibit unlawful profiling, DHS stated that TSA plans to take additional steps to continue to ensure behavior detection activities adhere to policies that prohibit unlawful profiling. In fiscal year 2019, TSA plans to modify existing oversight checklists used by managers and supervisors to include specific terminology for monitoring unlawful profiling. DHS estimated that this effort would be completed by September 30, 2019. This action, if fully implemented, should address the intent of the recommendation.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees and the Secretary of Homeland Security. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact William Russell at (202) 512-8777 or RussellW@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

A handwritten signature in black ink that reads "W. William Russell". The signature is written in a cursive style with a large, prominent "W" at the beginning.

W. William Russell
Acting Director, Homeland Security and Justice

Appendix I: Additional Training Related to Unlawful Profiling

The Transportation Security Administration (TSA) provided examples of refresher training materials that are provided to screeners on TSA’s prohibition on the use of unlawful profiling at the passenger screening checkpoint. Table 4 provides information on these materials, including the methods used to distribute the materials to screeners.

Table 4: Examples of Transportation Security Administration (TSA) Refresher Training Materials Related to Unlawful Profiling at the Passenger Screening Checkpoint, Fiscal Years 2016 through 2018

Training material	Date distributed	TSA office that developed the material	Method used to distribute to screeners
Racial Profiling At The Airport: TSA Cultural Awareness Webinar	April 2016	Multicultural Branch ^a	Webinar
Heads Up: Racial Profiling is Prohibited	April 2016	Multicultural Branch	Posted on TSA’s internal internet website, iShare
Heads Up: Screening of Transgender Passengers	June 2016	Multicultural Branch	Posted on TSA’s internal internet website, iShare
Heads Up: What is Unconscious Bias?	July 2016	Multicultural Branch	Posted on TSA’s internal internet website, iShare
The Female Suicide Bomber	November 2016	Security Operations	Monthly shift brief
Unlawful Profiling: What It Is and How To Avoid It	November 2017	Office of Civil Rights and Civil Liberties	TSA written guidance

Source: GAO analysis of TSA information. | GAO-19-268

Note: This is not an exhaustive list of TSA refresher training materials related to unlawful profiling at the screening checkpoint. The list provides examples of the types of training materials TSA has made available to screeners.

^aAccording to TSA officials, the Multicultural Branch developed the course presentation and materials in collaboration with a member of TSA’s Multicultural Coalition. TSA’s Multicultural Coalition, which is comprised of more than 50 community-based organizations and advocacy groups, to inform its policy and training initiatives, and to improve how TSA engages with the public.

Appendix II: GAO Analysis of Complaints Submitted to the Transportation Security Administration Contact Center

From October 2015 through February 2018, the Transportation Security Administration (TSA) Contact Center (TCC) received 3,663 complaints that it classified as alleging violations of civil rights and civil liberties. Of the 3,663 complaints, the TCC received 707 complaints, or about 19 percent, by phone.¹ Table 5 summarizes our analysis of the complaints the TCC received.

Table 5: Complaints Received by the Transportation Security Administration (TSA) Contact Center (TCC) Alleging Civil Rights and Civil Liberties Violations Related to Passenger Screening and Categorized by Personal Attributes and Characteristics or by Alleged Adverse Actions, October 2015 through February 2018

Category	Frequency	Percentage	General description
Discrimination/profiling—national origin, language, race/ethnicity	1,532	41.82	Questions, concerns, or allegations of discrimination or profiling based on the individual's national origin, language, race, or ethnicity, or discrimination/profiling in general (no reason specified).
Hair	279	7.62	Questions, concerns, or allegations about receiving a hair pat-down.
Sex/gender/gender identity, excluding transgender	271	7.40	Questions, concerns, or allegations of discrimination based on gender, including gender identity concerns: e.g., the passenger asserts that a screener of the wrong gender started to conduct the pat-down. Also includes allegations of differential treatment based on sex/gender. No mention of race/ethnicity.
Pat-down race/ethnicity	243	6.63	Questions, concerns, or allegations about a pat-down due to his or her race or ethnicity.
Religion	200	5.46	Questions, concerns, or allegations of discrimination based on perceived religion, e.g., a passenger alleges being subjected to additional screening because he or she appeared to be part of a religious group or has a name that appeared to be part of a religious group.
Not at checkpoint	221	6.03	Questions, concerns, or allegations not related to passenger screening, but may include complaints about checked bag screening, occurrences at the gate or some other location at an airport, or complaints by TSA employees. ^a
Customer service issue	182	4.97	GAO did not categorize customer service issues that involved allegations of unprofessional or rude screeners as civil rights or civil liberties complaints.
Transgender	169	4.61	Questions, concerns, or allegations about transgender screening, e.g., a transgender passenger alleges that she always has to undergo a pat-down because TSA's technology is based on a binary male/female system.
Pat-down general	155	4.23	Questions, concerns, or allegations about a pat-down that was described as "invasive" or "overly aggressive."

¹All phone complaints are summarized and reported by TCC call operators.

**Appendix II: GAO Analysis of Complaints
Submitted to the Transportation Security
Administration Contact Center**

Category	Frequency	Percentage	General description
Pat-down gender	95	2.59	Questions, concerns, or allegations about a pat-down due to gender or because gender-specific areas or things were noticed and selected for additional screening (such as wearing a maxi pad, bra, or other gender-specific undergarments).
Sex/gender/gender identity and race/ethnicity	81	2.21	Questions, concerns, or allegations based on sex/gender and race/ethnicity.
Sexual orientation	57	1.56	Questions, concerns, or allegations based on being a member of the lesbian, gay, bisexual, transgender, or queer community.
Constitutional right	51	1.39	Questions, concerns, or allegations raising, for example, freedom of speech or unreasonable search and seizure issues.
Age	43	1.17	Questions, concerns, or allegations based on age.
Age and race/ethnicity	38	1.04	Questions, concerns, or allegations based on both age and race/ethnicity.
Multiple concerns	34	0.93	Category for complaints involving multiple concerns/complaints that cross various categories.
Headwear—general	7	0.19	Questions, concerns, or allegations about headwear screening at the checkpoint, not otherwise captured in another category.
Weight	5	0.14	Questions, concerns, or allegations due to a weight-related issue.
Total	3,663	100	

Source: GAO analysis of TSA data. | GAO-19-268

Note: We use the term “passengers” to refer to individuals—including ticketed passengers, individuals accompanying ticketed passengers, and any other individuals not considered an employee for purposes of this report—who submitted complaints alleging civil rights and civil liberties violations related to TSA screening procedures to the TCC.

^aWe use “employees” to refer to current and former TSA employees who submitted complaints alleging civil rights and civil liberties violations related to TSA employment to the TCC. The TCC is responsible for receiving these employee complaints and referring them to TSA’s Equal Employment Opportunity office for review.

Appendix III: GAO Analysis of Complaints Submitted to the Transportation Security Administration Contact Center by Airport

From October 2015 through February 2018, the Transportation Security Administration (TSA) Contact Center (TCC) received 3,663 complaints that it classified as alleging violations of civil rights and civil liberties. The TCC received 707 of these complaints, or about 19 percent, by phone.¹ Of the 3,663 complaints, Los Angeles International Airport was identified most often in the complaint data. Table 6 lists the 10 airports most often identified in these complaints.

Table 6: Ten Airports Most Often Identified in Complaints Submitted to the Transportation Security Administration (TSA) Contact Center (TCC) Alleging Civil Rights and Civil Liberties Violations, October 2015 through February 2018

Airport name	Number of complaints
Los Angeles International Airport	181
John F. Kennedy International Airport	157
Hartsfield-Jackson Atlanta International Airport	125
Chicago O'Hare International Airport	122
Newark Liberty International Airport	118
General Edward Lawrence Logan International Airport	109
McCarran International Airport	108
Dallas-Fort Worth International Airport	107
Denver International Airport	94
Orlando International Airport	94
Total	1,215

Source: GAO analysis of TSA data. | GAO-19-268

Note: We analyzed 3,663 complaints received by the TCC from October 2015 through February 2018 and identified the 10 airports most often identified in these complaints. In these complaints, 240 airports were identified and the 10 airports comprised one-third of the complaints.

¹All phone complaints are summarized and reported by TSA call center operators.

Appendix IV: Agency Comments



U.S. Department of Homeland Security
Washington, DC 20528

**Homeland
Security**

April 2, 2019

W. William Russell
Acting Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-19-268: "AVIATION SECURITY: TSA Has Policies to Prohibit Unlawful Profiling, But Should Improve its Oversight of Behavior Detection Activities"

Dear Mr. Russell:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's analysis of civil rights complaint data from October 2015 through February 2018 identified only 3,700 complaints related to passenger screening alleging civil rights and civil liberties violations. This represents just .0002% of the 1.8 billion passengers TSA screened during that time period. TSA continuously reinforces the agency's nondiscrimination and anti-profiling policy with its workforce to promote respect for every individual's constitutional rights, while providing world-class security. For example, as the draft report noted, Transportation Security Officers (TSOs) are trained that profiling of passengers, based on discernible traits, is illegal and not effective at identifying high-risk passengers.

To ensure TSA is responsive to passenger concerns, TSA's Multicultural Branch regularly collects and analyzes discrimination complaint data and shares this information across the TSA enterprise to inform policy and training. For example, as discussed in the report, the Multicultural Branch has developed briefings which reiterated that unlawful profiling is against TSA policy, defined unconscious bias, and provided scenario-based examples. Additionally, members from the Multicultural Branch hold on-site training for officers at selected airports each year based on complaint data analysis and other factors. These training sessions last three days, include topics stemming from complaint data TSA has analyzed, and can include webinars, role-playing, and other forms of instruction.

TSA, through its Civil Rights & Liberties, Ombudsman and Traveler Engagement office, is committed to continuing its robust analysis of traveler complaints to identify trends and develop training and educational materials to promote compliance with Federal civil rights and civil liberties laws in TSA's intelligence-driven, risk-based security screening activities. TSA will continue its outreach with the Multicultural Coalition, which is comprised of organizations and advocacy groups representing diverse communities, as a way to better inform the public and gather insights and recommendations to improve our checkpoint engagements.

TSA also uses seven oversight checklists to assess whether behavior detection activities are conducted in accordance with TSA policy, such as monitoring whether officers trained in behavior detection observe and engage passengers correctly. Consistent with GAO's recommendation, TSA believes that there are opportunities to enhance the use of the checklists, which will now incorporate language for supervisors and managers to directly observe for unlawful profiling. This measure complements the vast measures TSA has taken to protect the civil rights and civil liberties of the traveling public.

It is important, however, to view GAO's findings within the proper context. Specifically, GAO's analysis encompassed civil rights and civil liberties complaints related to every aspect of TSA's passenger and baggage screening, from checking boarding passes to performing bag searches, but none of the complaints referred to behavior detection. Consequently, it is possible some readers of the report could misinterpret GAO's findings to associate all or many of the complaints with behavior detection when the analyzed data did not include any complaints involving the use of behavior detection.

The draft report contained one recommendation with which the Department concurs. Attached find our detailed response to the recommendation. Technical comments were previously provided under separate cover.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



J.M.H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

**Attachment: Management Response to Recommendations
Contained in GAO-19-268**

GAO recommended that the TSA Administrator:

Recommendation 1: Direct Security Operations to develop a specific oversight mechanism to monitor the use of behavior detection activities for compliance with DHS and TSA policies that prohibit unlawful profiling.

Response: Concur. As directed by the Aviation Security Act of 2016, TSA integrated behavior detection into the standard duties of its TSO workforce and eliminated the standalone Behavior Detection Officer position. Integration reflects the intent expressed in the Federal Aviation Administration Extension, Safety, and Security Act of 2016, as well as GAO's recommendations to limit funding for the program. However, consistent with other professional security organizations throughout the world, it remains important that TSA maintains an array of capabilities for identifying adaptive adversaries looking to evade and defeat our security screening measures as part of an overall risk mitigation strategy.

As behavior detection remains one of those capabilities, TSA plans to take additional steps to continue to ensure behavior detection activities adhere to policies that prohibit unlawful profiling. In fiscal year 2019, TSA will modify existing checklists used by managers and supervisors to now include specific terminology for monitoring unlawful profiling. Estimated Completion Date: September 30, 2019.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

William Russell, (202) 512-8777 or RussellW@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Ellen Wolfe (Assistant Director), Natalie Maddox (Analyst in Charge), Saida Hussain, and Brendan Kretzschmar made key contributions to this report. Also contributing to the report were Alyssa Bertoni, David Dornisch, Ben Emmel, Eric Hauswirth, Susan Hsu, Tom Lombardi, Amanda Miller, Sam Portnow, Rachel Stoiko, and Adam Vogt.

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