



Amend Standard Operating Procedures for Screening Transgender Travelers

Issue

Transportation Security Administration's ("TSA") Standard Operating Procedures for screening commercial airline passengers invade the personal and medical privacy of transgender travelers.

Short Answer

TSA should issue a comprehensive policy amending its Standard Operating Procedures ("SOP") for screening by prohibiting discrimination against transgender individuals, providing transgender individuals a choice as to gender of the screener, and incorporating transgender-specific concerns into TSA employees' training.

Background

Current SOPs used by TSA to ensure that passengers do not bring any contraband materials onto airplanes require that some passengers sacrifice a certain level of privacy in order to ensure the public safety. TSA employees thoroughly screen selected passengers of the same sex for enhanced screening through use of hand-held metal detectors and pat-downs.¹ TSA has attempted to deal with complaints over time-consuming and privacy-invasive security measures through the adoption of new technologies. Today, TSA also uses next generation x-ray machines, such as the Rapiscan Secure 1000, to perform security on passengers that require enhanced screening because of a perceived "anomaly."

Despite these efforts, the current SOPs do not adequately address the privacy concerns of the transgender community. As TSA employees only screen passengers of the same sex, a transgender individual whose identity documents do not match his or her current gender presentation might encounter uncomfortable and embarrassing situations when he or she is searched by a screener who TSA believes to be of the "same sex," regardless of the transgender passenger's preference.² Furthermore, x-ray machines such as the Rapiscan Secure 1000, as well as other advanced imaging technologies used by the TSA, could expose transgender individuals to greater invasions of privacy to a screener of the "same sex" because the machine may expose a transgender individual's bindings, prostheses, or other devices used as part of his or her gender presentation. Although TSA's current SOPs permit individuals with "medical conditions" to take "equipment, aids, and devices...through security checkpoints once cleared through screening," a complete screening may require a transgender individual to remove some or all of these devices in front of the TSA screener in order to clear security.³ Given such an embarrassing situation, presenting the transgender individual with a choice as to the gender of the screener would alleviate some of the anxiety of travel.

¹ TRANSP. SEC. ADMIN., *TSA: Passenger Security Checkpoints*, http://www.tsa.dhs.gov/travelers/airtravel/assistant/editorial_1049.shtm.

² *See id.* TSA states that enhanced screening must be performed by a member of the same sex except in "extraordinary circumstances" but does not define what types of extraordinary circumstances qualify.

³ TRANSP. SEC. ADMIN., *TSA: Travelers with Disabilities and Medical Conditions*, <http://www.tsa.gov/travelers/airtravel/specialneeds/index.shtm>. TSA states that all "[i]tems used to augment the body for medical and cosmetic reasons such as mastectomy products, prosthetic breasts, bras or shells containing gels, saline solution, or other liquids" are permitted through the security checkpoint. *Id.*



TSA employees are not trained to understand the unique travel concerns of transgender passengers. For example, TSA employees should be explicitly informed that devices used to augment a transgender individual's physical appearance must be permitted through the security checkpoint. Employees that are not adequately trained to respond to these needs may cause emotional trauma and embarrassment to a transgender traveler, especially in situations where a transgender individual must expose their bindings and prostheses to the TSA screener. TSA screeners should be trained to handle these situations appropriately.

Recommendation

The Under Secretary for Border and Transportation Security of the Department of Homeland Security should issue a policy that would prohibit discrimination against transgender travelers solely based on gender identity or expression. In addition, the Under Secretary should issue explicit guidance to its employees on the proper SOPs for transgender passengers and require all TSA security personnel to undergo training with respect to the needs of transgender travelers.

Authority

TSA is charged with performing passenger and baggage screening at commercial airports.⁴ Under TSA's reorganization under the Homeland Security Act of 2002,⁵ the Under Secretary for Border and Transportation Security assumed the duties previously assigned to the Under Secretary of Transportation for Security in the Aviation and Transportation Security Act.⁶ Pursuant to the Aviation and Transportation Security Act and as transferred by the Homeland Security Act, the Under Secretary for Border and Transportation Security is now responsible for "day-to-day Federal security screening operations for passenger air transportation and interstate air transportation," including the screening of "all passengers and property" carried by a domestic or foreign passenger aircraft operator and "hiring and training personnel to provide security screening."⁷ Congress also provided for a general grant in power by permitting the Under Secretary to "carry out such other duties, and exercise such other powers, relating to transportation security as the Under Secretary [for Border and Transportation Security] considers appropriate, to the extent authorized by law."⁸

⁴ Aviation and Transportation Security Act (ATSA), Pub. L. 107-71 (2001).

⁵ Pub. L. 107-296 (2002).

⁶ See 6 U.S.C. §§ 201-203 (2002).

⁷ 49 U.S.C. §§ 114(e)(1), 114(e)(4), 44901(a) (2006).

⁸ 49 U.S.C. § 114(f)(15).