

TRANSPORTATION SECURITY ADMINISTRATION



ACI-NA Spring Webinar TSA COVID-19 Update

TSA's Office of Chief Counsel



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Chief Counsel Presenters

Francine J. Kerner

Chief Counsel

Michael D. Isacco

Assistant Chief Counsel, International Law

Bryan A. Bonner

Deputy Chief Counsel, Field Operations

Susan M. Prosnitz

Deputy Chief Counsel, Regulations and Security Standards



COVID-19 Transportation Security Update – Agenda

- **COVID-19 Impact on Air Travel**
- **Containing the International Spread**
- **Activating the Critical Incident Management Group (CIMG)**
- **Supporting the Workforce**
- **Employing Domestic Mitigation Measures**
- **Adapting Security Requirements**
- **Planning to Resume Business Operations**



COVID-19 Impact on Air Travel

Decrease in Travel

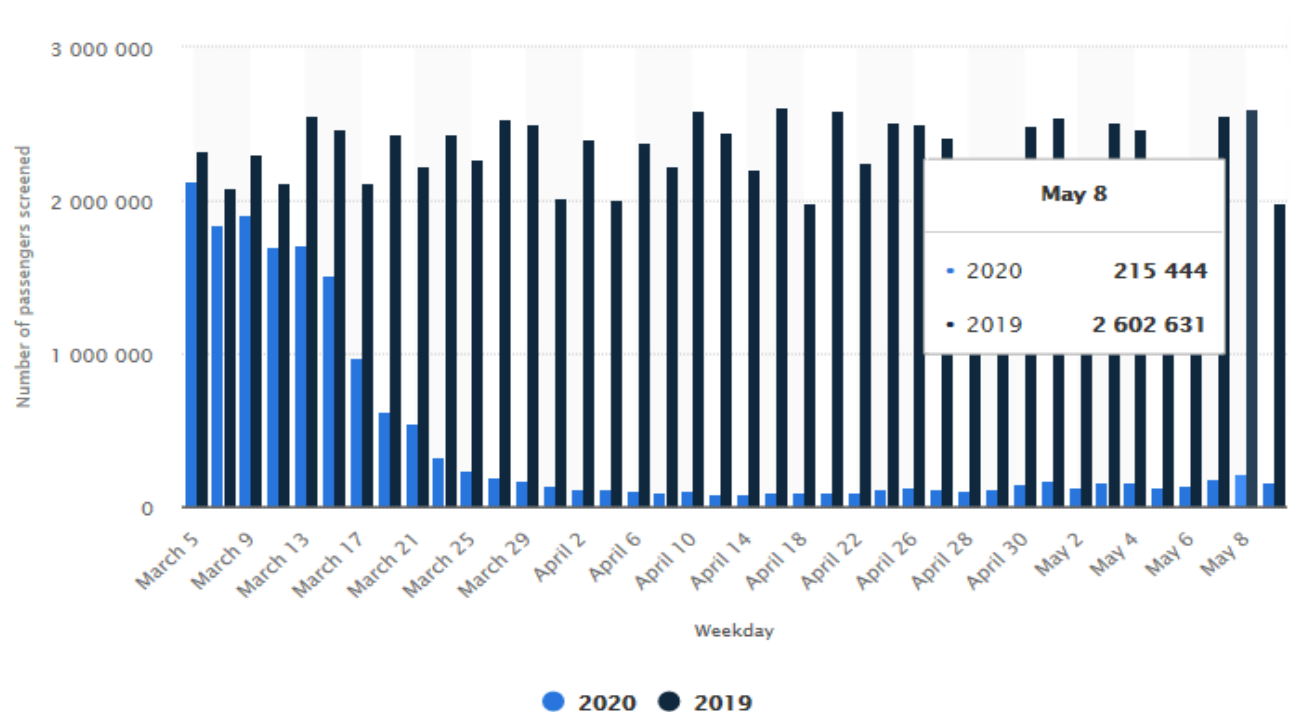
- Despite recent slight uptick in travel, domestic aviation travel is down 90% - 95%
- International travel also down 90% - 95%
- May 8 was the highest passenger throughput in over 30 days (>215,000 travelers in the U.S.)

Economic Effect

- Over \$138 billion in losses for U.S. travel economy since early March
- In the week ending May 2, the travel economy witnessed its first expansion in nine weeks but still registered 88% below last year's levels (\$19.4 billion loss)

COVID-19 Impact on Air Travel

Comparing 2020 to 2019: Daily number of passengers screened at TSA checkpoints, March to May



May 8, 2020: highest passenger throughput in over 30 days

Still, approximately 92% drop in passenger throughput compared to May 8, 2019

Data visualization source: <https://www.statista.com/statistics/1107016/coronavirus-tsa-checkpoint-travel-numbers-us-airports/>

Data source: <https://www.tsa.gov/coronavirus/passenger-throughput>



COVID-19 Impact on Air Travel

Daily number of arriving and departing flights significantly reduced at major airports

	Sat, April 18, 2019	Sat, April 20, 2020	
LAX (Los Angeles, CA)	1,498 flights (avg. per day)	312 flights (avg. per day)	Approx. 79% drop in total flights
	April 18-22, 2019	April 18-22, 2020	
JFK (New York, NY)	1,200 flights (avg. per day) ➤ 15-20% of total flights are cargo	170 flights (avg. per day) ➤ 70% of total flights are cargo	Approx. 86% drop in total flights ➤ 50-55% rise in cargo flights



COVID-19 Impact on Air Travel

TSA Screening Checkpoint

- TSA has consolidated operations to single checkpoints at many airports
- Transportation Security Officer (TSO) schedules adjusted to adapt to significant decrease in domestic and international travel
- Passenger wait times generally less than nine minutes in standard screening, under three minutes in TSA Pre✓®

Federal Air Marshals (FAMS)

- Canceled flights have impacted mission coverage
- Mandatory stand down for 14 days following travel to identified countries



Containing the International Spread

- **Addressing the Virus – Interagency Coordination**
- **Presidential Proclamations Restricting Alien Entry**
- **Arrival at Designated Airports – Entry Screening**
- **Mandatory Foreign Airport Exit Screening**
- **Further United States Government Mitigation Actions**
- **Reparation Flights**



Addressing the Virus – Interagency Coordination

White House Task Force

- President established Coronavirus Task Force to coordinate interagency response, includes international travel sub working group (Jan. 29)

Immigration Authority

- Customs and Border Protection (CBP): 19 C.F.R. 122.32, authority to limit landing locations for aircraft coming to the U.S. from foreign lands

Quarantine and Communicable Disease Authority

- White House: Executive Order 13295, list of quarantinable diseases
- HHS/CDC: 42 U.S.C. § 264, authority to quarantine; authority to declare a communicable disease of public health significance

Transportation Regulatory Authority

- TSA: 49 U.S.C. § 114, authority to ensure adequacy of airport security measures



Restricting Alien Entry to U.S. – China

Presidential Proclamation

- President issued Proclamation 9984 (Jan. 31)
“Restrict and suspend entry into the United States, as immigrants or non-immigrants, of all aliens who were physically present within the People’s Republic of China ... during the 14-day period preceding their entry or attempted entry into the United States.”
- Effective Feb. 2
- Includes a number of exemptions, including Lawful Permanent Residents (LPRs), various persons related to LPRs, air and maritime crew



Restricting Alien Entry to U.S. – China

TSA Security Directive/Emergency Amendment

- TSA issued directives requiring that any air carrier with a flight originating in, transferring from, or transiting through China after Feb. 2, to:
 - **Not board passengers** who had been in China within the **preceding 14 days** unless the individual met one of the exemptions in the Proclamation
 - **Funnel flights** to a designated airport

TSA and CBP Federal Register Notice

- The notice identified 7 funneling airports (JFK, ORD, SFO, LAX, HNL, SEA, ATL; later expanded) (Feb. 7)



Arrival at Designated Airports – Entry Screening

CDC Traveler Health Declaration Form

- Travelers arriving from designated countries required to complete CDC Traveler Health Form Declaration
- Form seeks name, biographical information, countries visited, and health information

Screening Process

- CBP reviews CDC declaration form
- High risk or symptomatic person sent to temperature screening
- If temperature over 100.4°F, traveler sent to secondary CDC screening
- CDC conducts further screening and has authority to issue a quarantine order as well as alert state and local health officials
- DHS's Countering Weapons of Mass Destruction Office (CWMD) supports enhanced health screening through contracts with local Emergency Medical Services (EMS), public health, and first responders



CDC Traveler Health Declaration Form

UNITED STATES
TRAVELER HEALTH DECLARATION

Form Approved
OMB Control No. 0920-1287
Exp 09/30/2020

Providing the following information to the Centers for Disease Control and Prevention is required under Title 42 Code of Federal Regulations Section 71.20, and is being collected as part of the public health response to a new coronavirus first identified in China. The information will be used by U.S. public health authorities and other international, federal, state, or local agencies for public health purposes.

Each traveler coming from a country for which the United States has applied entry restrictions due to the 2019 Novel Coronavirus (COVID-19) needs to fill out a form¹.

Arrival airport (name or airport code):

IN THE PAST 14 DAYS HAVE YOU BEEN TO HUBEI PROVINCE, CHINA? YES ☐ NO ☐

IN THE PAST 14 DAYS HAVE YOU BEEN TO ANY OF THE OTHER COUNTRIES OR GEOGRAPHIC REGIONS LISTED ON THE BOTTOM OF THIS FORM? YES ☐ NO ☐

Family name: First (given) names:

Birth date: ____/____/____ (Day/Month/Year) Sex: Male ☐ Female ☐

Date of US arrival: ____/____/____ (Day/Month/Year) Airline: Flight number: Seat number(s):

U.S. destination: Address or hotel name: City: State:

E-mail address: Telephone number in US: Mobile? Yes ☐ No ☐

TODAY OR IN THE PAST 24 HOURS, HAVE YOU HAD ANY OF THE FOLLOWING SYMPTOMS?

	YES	NO
Fever (100.4° F / 38° C or higher), felt feverish, or had chills?		
New or worsening persistent (frequent or continuing) cough?		
New or worsening difficulty breathing?		

QUESTIONS FOR SCREENER

Measured Temperature

Does traveler have visible signs of cough or shortness of breath or being obviously unwell? Yes ☐ No ☐

Released ☐ Referred for public health risk assessment ☐

Completed by: _____

¹ People's Republic of China (mainland), Schengen Area (Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Monaco, San Marino, and Vatican City), Iran, Ireland, United Kingdom

This data collection is mandatory. Public reporting burden of this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to CDC/ATSDR Reports Clearance Officer, 1600 Clifton Road NE, MS D-74, Atlanta, Georgia 30333; ATTN: PRA 0920-1287.



Travel Advisories – Iran, Italy and South Korea

CDC Travel Advisories

- CDC issued Level 3 travel advisories for Islamic Republic of Iran, Italy, and Republic of Korea (South Korea) (late Feb.)

Alien Restrictions Expanded

- President issued Proclamation 9992 extending travel restrictions to Islamic Republic of Iran effective March 2 (Feb. 29)
- TSA revised SD/EA to include Iran (March 1)

Funneling Airports Update

- TSA and CPB updated funneling notice in *Federal Register* (expanded to include Iran, total of 11 airports) (March 4)



Mandatory Foreign Airport Exit Screening

TSA SD/EA

- Following CDC travel advisories, TSA issued SD/EA to aircraft operators and air carriers to implement mandatory exit health screening in South Korea and Italy (March 4, removed Italy March 14)

Screening Requirements

- Ensures airline personnel or host country government officials (or authorized representatives) **conduct health screening before boarding** using CDC medical standards:
 - Temperature checks (100.4°F)
 - Visual observation
 - Symptoms and exposure questionnaire
- Passengers who fail not allowed to board aircraft; referred to clinical and public health authorities
- South Korean government voluntarily adopted three-stage screening at terminal entrance, security checkpoints, and boarding gates



Restricting Alien Entry to the U.S. – Schengen Area

Continued Pandemic Escalation

- WHO declared COVID-19 to be a global pandemic (March 11)
- CDC issued a Level 3 travel advisory for Europe (March 11)
- President issued Proclamation 9993 extending travel restrictions to the Schengen Area of Europe (March 11)
- President declared a National Emergency (March 13)

TSA SD/EAs

- TSA issued revised SDs/EAs requiring that any air carrier with a flight originating in, transferring from, or transiting through China, Iran, or the Schengen Area (March 12):
 - **Not board passengers** who have been in China, Iran, or the Schengen Area within the preceding 14 days unless the individual meets one of the exemptions in the Proclamation
 - **Funnel flights** to one of **13 airports** (JFK, ORD, SFO, LAX, HNL, SEA, ATL, IAD, EWR, DFW, DTW, BOS, MIA)

Restricting Alien Entry to the U.S. – United Kingdom and Ireland



Travel Restrictions

- President issued Proclamation 9996 extending travel restrictions to the United Kingdom and Ireland (March 14)

Updated SD/EA

- TSA issued revised SD/EA requiring any air carriers with a flight originating in, transferring from, or transiting through China, Iran, the Schengen Area, the United Kingdom, or Ireland must:
 - **Not board** passengers who have been in China, Iran, or the Schengen Area within the preceding 14 days unless the individual meets one of the exemptions in the Proclamation
 - **Funnel flights** to one of **13 airports**
 - Provide **CDC's Travel Health Declaration** before landing



Further USG Mitigation Actions

Contact Tracing Interim Final Rule (IFR)

- Requires airlines to collect and provide to CDC, within 24 hours of request, names and contact information of passengers and crew arriving from foreign countries (Feb. 7)
- Data informs health education, treatment, and travel restrictions
- Airlines were required to provide this information under previous regulation if data was already available

No Sail Orders (Commercial Air Prohibition)

- Suspended cruise ship operations in waters subject to U.S. jurisdiction (March 14, April 15)
- Prohibited disembarking cruise passengers or crew arriving in U.S. from boarding commercial flights; only foreign government or industry-chartered flights permitted
- TSA may leverage Do Not Board authority as appropriate



Reparation Flights

Government Charters v. Non-government Charters

- Part 1544 security exception for government charters using a domestic carrier
- Part 1546 has no security exception for private or government charters for international carriers
- Part 1550 screening requirements imposed for carriers without a security plan

TSA Security Requirements

- Part 375 licenses issued by DOT to international carriers without a Part 129 license – still requires a TSA security plan

Adapting to COVID-19 circumstances

- Closed airports requiring alternate screening paradigms
- Private charters using contract screening



- **Role in Agency Response**
- **Information Sharing and COVID-19 Issues**



Activating the CIMG

Overview of the CIMG

- TSA's emergency operation management group
- Stood up during times of crisis or during exercise (e.g. Hurricane Harvey; Yemen 2010 transatlantic aircraft bomb plot; 2009 Christmas Day "Underwear Bomber")
- Remains operational for entire duration of incident
- Provides situational updates to TSA leadership on key areas
 - *e.g.* throughput and staffing, infection trend, employee impact, suspended air services, emerging hotspots, supplies

Information Sharing

- Distributes and disseminates key policy information to the field, such as security notices regarding checkpoint operations



Activating the CIMG (cont'd)

Participants and Chief Counsel's Role

- Staffed by cross-functional team of agency professionals across TSA (e.g. Security Operations, Operations Support, Federal Air Marshal Service, Procurement, Chief Counsel)
- In-person legal consultation and policy support services provided 24/7 during activation

COVID-19 Issue Examples

- What information can be shared with local Public Health Department when employee is suspected or confirmed positive for COVID-19?
- What documentation, if any, is required for an employee to return to the workplace?
- What ethics requirements apply to food pantries in airports?
- What Personal Protective Equipment (PPE) are employees required to wear, and when?



Supporting the Workforce

- **Contact Tracing and Employee Leave**
- **Health and Safety**
- **Personal Protective Equipment (PPE)**



Contact Tracing and Employee Leave

Contact Tracing

- Identifying exposed coworkers in close contact with employee with lab-confirmed COVID-19 or suspected symptoms and 48 hours before symptom onset
- Close contact defined as 6 feet for 10 cumulative minutes or direct cough in face

Employee Leave

- Permitting Weather & Safety leave for employees who:
 - Self-identified as higher-risk;
 - Are directed to self-isolate by physician or health department
 - Are asked to stay home because of reduced volume at checkpoints/airports or because they were identified in contract tracing; and
 - Have COVID-related personal affairs (up to 24 hours)



Health and Safety

Checkpoint Health and Safety

- Occupational Safety, Health, and Environment (OSHE) works in close coordination with the Chief Medical Officer to prioritize the safety and health of TSA employees during this national emergency
- OSHE provides significant input regarding personal protective equipment, cleaning and sanitization practices, and additional operational health and safety measures



Personal Protective Equipment (PPE)

Masks

- TSA employees required to wear surgical face masks when performing screening operations
 - Facial protection optional in public areas, so long as social distancing (6 feet) can be maintained
- Passengers encouraged to wear facial protection; however, individuals may be asked to lower their mask for identity verification purposes

Gloves

- Employees must wear TSA-issued gloves at all times while performing screening functions
- TSOs increasing changing of gloves (e.g., if passenger asks for officer to change gloves)



Personal Protective Equipment (PPE) (cont'd)

Supply to Workforce

- Agency continues to ensure sufficient supply of PPE for frontline workforce
- Includes surgical and N-95 masks, hand sanitizer, alcohol and protective eyewear

State/Local Requirements

- Some state and local jurisdictions mandate certain protective gear and temperature-taking
- TSA employees following state/local requirements as a matter of policy, where possible



Employing Domestic Mitigation Measures

- **Checkpoint Cleaning and Sanitization**
- **Changes to the Screening Checkpoint**
- **Accepting Additional Expired IDs**



Checkpoint Cleaning and Sanitization

Reimbursement Available to Airports

- TSA received \$100 million in appropriations from the Coronavirus Aid, Relief, and Economic Security (CARES) Act to prevent, prepare for, and respond to COVID-19 (March 27)
- \$54 million available to reimburse airports for cleaning and sanitization of TSA checkpoints and leased spaces
- Available for cleaning and sanitization required by the local/state health department and CDC COVID-19 guidelines

Requirements

- To receive reimbursement, airports must:
 - Document the cleaning/sanitizing work and cost,
 - Coordinate with their Federal Security Directors (FSDs), and
 - Execute a reimbursement agreement



Changes to the Screening Checkpoint

Hand Sanitizer and Commercial Disinfectants

- Hand sanitizer determined as medically necessary and passengers can bring up to 12 oz
- Commercial disinfectants of any size or quantity allowed through security checkpoint for uniformed or non-uniformed crewmembers (crewmember must still comply with applicable DOT/FAA hazardous materials restrictions)
- Both products must undergo required screening

Contactless Boarding Pass Scanning

- TDCs ask passenger to place boarding pass (paper and mobile) over Boarding Pass Scanner
- After boarding pass scanned, TDC asks individual to show boarding pass to TDC for visual inspection and directs individual to appropriate lane after identity verification



Changes to the Screening Checkpoint (cont'd)

Passenger-Facing CAT Pilot

- TSA will pilot reverse Credential Authentication Technology (CAT) machine at DTW
- Passengers will place identification card in CAT machine, eliminating need to hand ID over to TSO
- TDC will include Plexiglas shield as physical barrier between TSO and passenger
- To begin this week

Social Distancing

- Officers must attempt to stay at least 6 feet from other people, including passengers and other TSOs, to extent possible based on operational needs



Changes to the Screening Checkpoint (cont'd)

Disposable Equipment

- Gloves and Explosive Trace Detection (ETD) swabs must be disposed of after each use, whether for on-person, accessible property, or baggage screening

Passenger Divestiture

- Agency supporting contactless screening procedures where possible, such as not assisting passenger with divestiture
- TSOs focus on providing detailed verbal divestiture requirements (e.g., telling passenger with a big belt buckle to remove it so it does not alarm)



Accepting Additional Expired IDs

Acceptable Identification

- Agency generally does not accept, or allow regulated entities to accept, expired identification to verify identity
- TSA did accept expired driver's licenses (<1 year) at the TDC

TDC Updates

- TSA continuing to accept expired driver's licenses (<1 year)
- Also now accepting expired airport-issued ID Media, such as Security Identification Display Area (SIDA) badges

Security Program Updates

- TSA permitting regulated entities to accept expired IDs for certain purposes (*e.g.*, can accept expired driver's licenses at check-in counter or bag check)



Adapting Security Requirements

- **Alternative Measures and Procedures**
- **Regulatory Flexibility**



Alternative Measures and Procedures

Airport-Issued ID Media Updates

- Received over 40 requests for various changes to airport security measures
- TSA issued National Alternative Measures providing relief by:
 - Modifying security measures for ID media renewals;
 - Eliminating tactile touch of ID-media;
 - Accepting expired state-issued identification for airport-issued ID-media, and
 - Extending amount of time applicant may pick-up airport-issued ID-media following successful completion of vetting process

Positive Control of Airport-Issued ID Media

- Airports must ensure positive control even when an employee has been furloughed or is on extended absence
- TSA policy letter clarifies different ways airports can demonstrate positive control of ID media without deactivating ID media for furloughed or extended-absence employees



Regulatory Flexibility

Cargo Vetting Application

- Air cargo workers required to undergo a TSA security threat assessment (STA); regulations require submission of application and fees to cover STA cost
- New exemption allows companies to provide biographic information of new employees to TSA via spreadsheet, rather than through standard application process
- Exemption offered to large air cargo entities during COVID crisis

TWIC and HME

- Extended expiration dates for Transportation Worker Identification Credentials (TWICs) and Hazardous Materials Endorsements (HMEs) expired after March 1, to additional 120 days
- Extensions ensure ongoing movement of critical cargo shipments, recognize that many enrollment centers are closed due to 'shelter-in-place' orders, and respect need for social distancing



Planning to Resume Business Operations

- **Innovating to Improve Safety and Security**
- **New International Requirements**
- **TSA Support for Business Reconstruction**



Innovating to Improve Safety and Security

Collaborating with DHS S&T

- Working with DHS Science and Technology to test Ultra Violet lighting, disinfectants, and other checkpoint sanitizing solutions
- Considering solutions that improve security effectiveness and reduce transmission risk

Future Capabilities

- Evaluating how current capabilities should change due to the virus
- Considering how to reduce checkpoint alarms, use more targeted pat-downs, and include alternative (non-pat down) methods of resolving alarms
- Evaluating how to reduce exposure risk at the TDC, for example, using Plexiglas at TDCs to create a physical barrier between passenger and TSO
- Exploring how to reduce touch during the identity verification process, to include touchless Credential Authentication Technology (CAT) variations



New International Requirements

Global Requirements

- Countries issuing new requirements to help prevent spread of virus at airports and in flight, including temperature checks, masks, and health screening

Temperature Checks

- Individual's temperature can be taken using a variety of technologies, such as hand held infrared scanners and thermal-imaging technology
- Temperature checks mandated by governments across the world, including China, Australia, India, and Italy; often conducted by airlines or airports



International Requirements – Canada

Transport Canada Orders

- New requirements for domestic and inbound international flights
- Civil penalties for passengers and aircraft operators for violations

Air Carrier Requirements – Health Screening

- Conduct verbal screening by asking questions related to symptoms and whether passenger was recently refused boarding or subject to mandatory quarantine
- Observe whether passengers exhibit symptoms
- Deny boarding to passengers based on positive answers to questions, refusal to answer questions, or observation of symptoms (fever + cough or fever + breathing difficulties)



International Requirements – Canada (cont'd)

Air Carrier Requirements – Masks

- Require confirmation that passengers have a mask before boarding; denying boarding if passenger refuses
- Deny boarding passengers without masks
- Require masks during flight when within 2 meters of another person on the flight unless both individuals live in the same house (allows exceptions for eating, drinking, taking medication and unforeseen circumstances)
- Keep a record of flight, passenger information, and circumstances related to passengers who refuse to wear a mask

Checkpoint Screening

- Passengers required to wear facemask at the screening checkpoint; must remove during screening if required by officer



TSA Support for Business Reconstruction

Thermal Imaging Technology

- Non-intrusive, fixed thermal imaging equipment that locates temperature anomaly amongst the public
- Identifies elevated body temperatures of 100.4°F/38°C or above

Potential Use at Airports

- Would prevent individual from possibly exposing TSA screening personnel, individuals in sterile area, or passengers and crew aboard aircraft
- Could be used as one layer of a multi-layered approach designed to address public health threat of COVID-19



TSA Support for Business Reconstruction

Resumption of Business Planning Committee Created

- TSA created committee dedicated to business reconstitution efforts as COVID-19 begins to decline
- Coordinating planning and messaging with airports, airlines, other aviation stakeholders and government
- Addressing ability to operate in “new normal” given challenges posed by COVID-19 and preparation for post-pandemic future
- Working group areas include: economic projections; workforce initiatives; screening modernization; public health standards; acquisition and procurement; resourcing and budgeting; strategic messaging; and stakeholder engagement

Readjusting to Increased Throughput as Travelers Return

- Will continue to communicate regularly with stakeholders to prepare for short term and long term volume increases
- Posturing workforce to have ability to recall officers for next day requirements, while minimizing their exposure



Recent Litigation – Watchlist Challenges

- ***Latif v. Holder (Latif III)*** – Plaintiffs sued multiple federal agencies claiming they had received insufficient due process when denied flight boarding. After protracted litigation, the Executive Branch revised the redress process for passengers denied boarding. 28 F. Supp. 3d 1134 (D. Or. 2014).
- **Revised redress procedures now include:**
 - Information on whether individual is on the No Fly List
 - General criteria for placement on the No Fly List
 - Where feasible, unclassified summary of reasons for individual's placement on the No Fly list, considering national security and law enforcement interests
 - Opportunity for individual to respond to placement on the No Fly List
 - Final determination as to placement by the TSA Administrator
- ***Kashem v. Barr*** – Revised redress procedures are constitutionally adequate, and the No Fly List criteria are not unconstitutionally vague. 941 F.3d 358 (9th Cir. 2019), formerly *Latif*. Additionally, individuals' substantive challenges to No Fly List placement must be taken to a U.S. Court of Appeals. 49 U.S.C. § 46110.



Recent Litigation – Watchlist Challenges

Continuing due process challenges to additional screening for selected higher risk passengers

No protected constitutional interest harmed by the inconvenience of enhanced screening, which “can only be described as incidental or negligible” and amounts to no more than “delays many individuals are likely to experience at the airport.”

Beydoun, Bazzi v. Sessions, 871 F.3d 459 (6th Cir. 2017).

Routinely experiencing enhanced screening does not implicate a protected a liberty interest

Abdi v. Wray, 942 F.3d 1019 (10th Cir. 2019)

Nearly every court to have considered due process challenges to enhanced screening has found that no constitutionally protected liberty interests in freedom of movement or reputation are implicated

See, e.g., Proctor v. DHS, No. 180-70657 (9th Cir. 2019); *Kovac v. Wray*, 363 F. Supp. 3d 721 (N.D. Tex. 2019); *Kadura v. Lynch*, 2017 WL 914249 (E.D. Mich. 2017)

One district court held that those liberty interests are infringed upon by inclusion on the Terrorist Screening Database (TSDB), and that the current TSDB redress process is not constitutionally adequate. The decision has been appealed to the Fourth Circuit.

Elhady v. Kable, 391 F. Supp. 3d 562 (E.D. Va. 2019), appeal pending before the Fourth Circuit.



Recent litigation – Constitutional Torts

- **Personal Liability for Constitutional Torts** — Constitutional torts claims can be brought against federal employees in their personal capacity. Employee would pay the damages. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1972).
- **Should TSOs Be Subject to Suit?** — In *Vanderklok v. Kiser*, Plaintiff's bag contained a plastic pipe, capped at both ends, containing a watch, wires, and organic material (food bars). When challenged, Plaintiff, a marathon runner, angrily claimed he could get a bomb through security and was arrested. He subsequently sued the Supervisory TSO who had called the police, alleging that he had been retaliated against for exercising his First Amendment right to speech. 868 F.3d 189 (3d Cir. 2017).
- **The Third Circuit Denied the Claim** — The court said that airport screeners are a new category of defendant for *Bivens* claims, writing that the nature of airport screening is a “special factor counseling hesitation” in extending *Bivens* liability. Additionally, Plaintiff had “recklessly created an unjustifiable risk of public disturbance.” *Vanderklok*, (3d Cir. 2017).



Questions?

Francine.Kerner@tsa.dhs.gov

571-227-2693 (desk)

202- 997-3619 (mobile)

Susan.Prosnitz@tsa.dhs.gov

571-227-1335 (desk)

202-570-3047 (mobile)

Michael.Isacco@tsa.dhs.gov

571-227-3757 (desk)

202-834-2300 (mobile)

Bryan.Bonner@tsa.dhs.gov

571-227-2950 (desk)

202-365-0970 (mobile)