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The Special Counsel

July 22, 2022

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-18-4110

Dear Mr. President:

I am forwarding to you reports transmitted to the Office of Special Counsel (OSC) by the Department of Homeland Security (DHS) in response to the Special Counsel's referral of disclosures of wrongdoing at the Transportation Security Administration (TSA), Washington, D.C., [REDACTED], a Federal Security Director (FSD), who consented to the release of his name, alleged that agency officials engaged in conduct that constituted gross mismanagement and a substantial and specific danger to public safety. I have reviewed the agency reports and whistleblower comments¹ and, in accordance with 5 U.S.C. § 1213(e), determined that the reports' findings do not appear to be reasonable. The following is a summary of the reports, comments, and findings.²

The Allegations

Mr. [REDACTED] alleged that TSA officials approved airport security policies that endanger public safety. He disclosed that TSA officials lowered security guidelines for passengers with medical devices and for X-ray baggage screening in Pre-Check lanes. He also alleged that agency officials directed that [REDACTED]

[REDACTED] Mr. [REDACTED] alleged that these measures, purportedly intended to increase efficiency, created serious security gaps.³

¹ Unfortunately, Mr. [REDACTED] died during the pendency of this matter, prior to OSC's receipt of the agency's second supplemental report. His comments on the first two reports are referenced herein.

² The allegations were referred to former Secretary [REDACTED] for investigation pursuant to 5 U.S.C. § 1213(c) and (d). The Office of Inspector General (OIG) and TSA Investigations jointly conducted the investigation. Then Senior Officer Performing the Duties of Under Secretary for Management [REDACTED] reviewed and signed the OIG reports.

³ Mr. [REDACTED] also alleged that TSA failed to retest Transportation Security Officers (TSOs) who were hired based on an invalid color blindness test. TSA reviewed the allegations concerning the color blindness test and found that the agency implemented a new, more sensitive test for applicants in December 2017, and an

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The DHS OIG investigated and substantiated the facts of Mr. [REDACTED]'s security allegations. Nevertheless, Mr. [REDACTED], the Secretary of Homeland Security's designee to review the investigative findings, concluded that the OIG's findings did not substantiate gross mismanagement or a substantial and specific danger to public safety. For the reasons summarized below, I have determined that DHS's conclusions do not appear reasonable.

The OIG Findings

TSA's Updated Screening Policies Reduce Effectiveness of Security Measures

The OIG's investigation found that in 2018, TSA changed its Risk-Based Security (RBS) Standard Operating Procedures (SOPs) to omit additional screening for Pre-Check passengers with medical devices, [REDACTED]. Prior to implementing the changes, TSA's Systems and Risk Analysis Branch conducted a risk assessment that considered the increased opportunities for concealment presented by individuals with disabilities and medical conditions along with the assumption that Pre-Check passengers have been vetted and are considered lower—but not zero—risk.

The OIG also determined that in May 2018, TSA revised its RBS SOPs to permit TSOs in Pre-Check lanes to continuously run the X-ray conveyor belt for baggage screening unless the X-ray image [REDACTED]. TSA indicated that this change was consistent with the different security requirements placed on Pre-Check passengers, who are not required to divest toiletries or electronic devices from their baggage. TSOs may stop the belt if they have concerns about an item and OIG investigators observed TSOs doing so in Pre-Check lanes during visits to Dulles International Airport and Baltimore-Washington International Airport. DHS's cover letter transmitting the OIG report characterized this change as "modest revision."

The OIG emphasized that TSA's assertions regarding the effectiveness of these policy updates presuppose that Pre-Check passengers have been fully vetted and determined to be low risk. But the OIG stated that it previously issued several recommendations for TSA to address concerns with Pre-Check eligibility and screening. The OIG recommended that, to the extent TSA bases security decisions on the presumed lower risk posed by Pre-Check

improved version of its original test for incumbents in FY 2020. TSA estimated that between 4000 and 5000 employees with possible color vision deficiencies would be identified in this process, with most resolved by a TSA physician review and the remaining requiring additional testing. In his comments, Mr. [REDACTED] asserted that TSA had attempted to conceal its longstanding inaction on the issue of color-blindness testing.

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passengers, TSA must ensure that only passengers properly vetted by TSA or another federal entity are given access to Pre-Check lanes.

DHS explained in its cover letter to the OIG's December 2020 supplemental report that, pursuant to the TSA Modernization Act, TSA certified to Congress on April 3, 2020, that use of Pre-Check is limited to TSA program members, members of another Federal known traveler program, and certain low-risk passengers traveling with one of the above. But the OIG's report highlighted that TSA's certification memoranda to Congress do not identify how TSA intends to enforce the restrictions or hold FSDs accountable for noncompliance. TSA did not provide the OIG with evidence of oversight or quality assurance measures to ensure that only properly vetted passengers access Pre-Check lanes, and OIG noted that TSA does not conduct covert internal testing to ensure compliance. Notwithstanding the absence of this critical information, in its cover letter, DHS concluded the changes to TSA's security guidelines did not constitute gross mismanagement or a danger to public safety.

Whistleblower Comments

In his comments, Mr. [REDACTED] noted that prior to these policy changes, TSA failed [REDACTED] OIG testing [REDACTED]. Mr. [REDACTED] also referenced internal TSA communications indicating that terrorist groups were [REDACTED]

[REDACTED] Mr. [REDACTED] explained, for example, that airport wheelchair pushers often advise passengers to stay in their wheelchair when they arrive at security to avoid undergoing screening. Mr. [REDACTED] also questioned TSA's description of its conveyer belt policy as a "modest revision," characterizing it instead as "one of the most egregious vulnerabilities TSA has introduced." He explained further that [REDACTED] without stopping the belt. He also noted that, although OIG observed TSOs removing bags for additional inspection, they generally do so because [REDACTED]

Mr. [REDACTED] noted that this is common in Pre-Check lanes because Pre-Check passengers do not divest their baggage.

In his comments on the December 2020 report, Mr. [REDACTED] noted that, as of February 2021, TSA was still using canine-enhanced screening teams to fast-track unvetted passengers out of standard screening lanes into Pre-Check lanes. In a November 2021 supplemental report, OIG confirmed that it shared these concerns and had asked TSA for evidence that it had prohibited the use of canine teams to increase checkpoint efficiency. TSA provided the OIG with its canine screening SOPs and a directive to FSDs on proper use of canine teams at passenger screening checkpoints. However, the OIG noted that neither

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document specifically prohibited FSDs from using canines to increase efficiency by moving unvetted passengers into Pre-Check lanes. DHS, in its cover letter to the November 2021 report, countered OIG's assessment, finding it sufficient that the SOPs do not specifically direct the use of canine teams in this manner.

Second OIG Findings

TSA's Failure to Use Available Technology Compromises Safety

The initial OIG report found that TSA decided not to activate bounding box technology on X-ray baggage screening machines in Pre-Check Lanes when the technology was introduced in 2015.⁴ The decision was based on a TSA study that showed the use of bounding boxes reduced passenger throughput and significantly increased wait times in Pre-Check lanes. The OIG also highlighted its open recommendation from 2017 that if TSA [REDACTED] must demonstrate improved performance over OIG's covert testing results. The OIG stated that TSA has not presented the OIG with evidence to that effect.

The OIG also found that although WTMDs do not have manufacturer-recommended settings, they include a higher sensitivity setting intended for standard screening lanes and a lower sensitivity setting for Pre-Check lanes. In 2013, TSA [REDACTED] The OIG reported that this decision was made to permit the introduction of dual-use lanes. The OIG also noted that since 2008, WTMDs have been replaced by AIT machines as the primary means of screening passengers in standard, non-Pre-Check lanes.

To replace these features, TSA uses "layers of security" to identify prohibited or threatening items in baggage or on a person. In its supplemental reports, the OIG further described TSA's "three layers of security"—Enhanced Accessible Property Screening (EAPS)⁵, Pre-Check, and computed tomography (CT) technology. TSA explained that it had integrated EAPS requirements into its SOPs on what passengers must remove from baggage. The OIG noted that TSA's analysis concluded that the most effective security option would be increased use of EAPS in Pre-Check lanes along with Threat Image Projection (TIP), which displays a fictional threat image through the X-ray equipment on random baggage to

⁴ Bounding boxes are visual designations that X-ray machines place on items or bags that have characteristics of a possible explosive or opaque object.

⁵ EAPS protocol requires passengers to remove any electronics larger than a cell phone or items larger than a softball for screening.

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ensure that TSOs are paying attention. [REDACTED]

Mr. [REDACTED] noted in his comments, and the OIG confirmed, that EAPS is only employed in standard security lanes with Advanced Technology X-ray machines, not in standard lanes with CT machines or Pre-Check lanes. The OIG indicated that TSA has no assurance passengers will comply with baggage screening requirements and noted that TSA could not support its claims regarding improved performance results using alternative procedures, prove the procedures are in place at all checkpoints, or show analytical results corroborating its assertions of improved performance. Nevertheless, DHS determined that these security procedures do not constitute gross mismanagement or a substantial and specific danger to public safety.

The Agency's Supplemental Memorandum

In July 2022, the agency provided a supplemental memorandum regarding its determination that the findings in the OIG's reports did not constitute gross mismanagement or a substantial and specific danger to public safety. The memorandum reiterated the agency's position that its approach to limiting Pre-Check lanes access, as laid out in its certification memorandum to Congress, was sufficiently reliable. The agency also highlighted its deployment of technology to assist with identifying Pre-Check passengers and noted the 2020 closure of relevant OIG recommendations as support. However, it is notable that while the OIG's closure of these recommendations predated the OIG's second supplemental report in this matter, the second supplemental report did not reference the closed recommendations and the OIG did not alter its findings from earlier reports. The agency also discussed its use of alternative screening procedures in lieu of assistive technology, but did not directly address the shortcomings identified in the OIG's reports. Rather, the agency emphasized that these determinations, which it asserts are risk-based, were made in the interest of operational efficiency after studies showed that using assistive technology would increase passenger wait times. The OIG confirmed, however, that the points raised in the agency's memorandum do not alter the investigative findings described in the OIG's reports.

Special Counsel's Findings and Determinations

I have reviewed the original disclosure, agency reports, and Mr. [REDACTED]'s comments. Mr. [REDACTED] raised serious concerns regarding the effectiveness of TSA's passenger- and baggage-screening security policies. Mr. [REDACTED] highlighted his assertion that TSA's

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prioritization of efficiency comes at the expense of effective security. The majority of the OIG's findings appear to confirm Mr. [REDACTED]'s allegations. The OIG emphasized that TSA's reliance on Pre-Check status was misplaced when unvetted passengers are still receiving Pre-Check screening and that its continued use of a layered security approach in lieu of assistive technology required evidence of improved performance metrics. TSA could not produce data showing improved performance and OIG cast significant doubt on TSA's ability to truly limit Pre-Check access to vetted passengers. In its cover letters transmitting the OIG reports to OSC, DHS makes unsupported assertions that appear to run counter to the OIG's findings. Nevertheless, DHS determined that actions of TSA officials did not constitute gross mismanagement or a substantial and specific danger to public safety. The agency's supplemental memorandum does not effectively counter the OIG's findings. Given these discrepancies, an objective reading of the OIG's reports does not support DHS's conclusions in this matter. Thus, I have determined that the findings of the reports do not appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency reports, and the whistleblower comments to the Chairs and Ranking Members of the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Homeland Security. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,



Henry J. Kerner
Special Counsel

Enclosures