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Department of Homeland Security

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**FOR IMMEDIATE RELEASE**  
August 2, 2019

**For Information Contact:**  
Public Affairs (202) 981-6000

**DHS OIG Completes Review of Allegations of Discrimination at Orlando Airport**

A review by the Office of Inspector General (OIG) did not identify evidence to corroborate allegations that a Transportation Security Administration (TSA) supervisor at the Orlando airport directed TSA air marshals or other TSA personnel to use behavior detection techniques to racially discriminate against travelers between 2005-2010. This review was requested by members of Congress based on allegations made in the news media by former members of TSA's Federal Air Marshal Service (FAMS).

In the attached letter to Rep. Bennie G. Thompson, Chairman of the House Committee on Homeland Security, Rep. Val Butler Demings, Rep. Bonnie Watson Coleman and Rep. Darren Soto, the OIG reported that apart from the testimony of the three complainants, it did not identify any additional evidence that substantiated the allegations. During the course of the review, OIG found no previous record of similar complaints against the TSA supervisor. Although some witnesses relayed other prior instances of alleged racial profiling in the behavior detection program, none of the approximately 30 current and former personnel OIG interviewed confirmed the complainants' specific allegations. TSA has since eliminated the behavior detection officer position, and has largely stopped referring travelers for additional screening using behavior detection techniques.

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Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

August 2, 2019

The Honorable Bennie G. Thompson, Chairman  
The Honorable Val Butler Demings  
The Honorable Bonnie Watson Coleman  
Committee on Homeland Security  
U.S. House of Representatives  
H2-176 Ford House Office Building  
Washington, DC 20515

The Honorable Darren Soto  
U.S. House of Representatives  
1429 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Thompson and Representatives Demings, Watson Coleman, and Soto:

Pursuant to your August 2018 requests, we reviewed an allegation, originally raised in a news story,<sup>1</sup> that a Transportation Security Administration (TSA) supervisor at the Orlando airport instructed TSA air marshals to racially discriminate against travelers between 2005-2010. Per your requests, we also reviewed whether similar discrimination might still be happening.<sup>2</sup>

Apart from the testimony of the three complainants, we did not identify any additional evidence to substantiate that the subject of the allegation

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<sup>1</sup> *Former air marshals say they were told to target "the black people,"* FOX 46 WJZY, August 14, 2018, <http://www.fox46charlotte.com/news/local-news/former-air-marshals-say-they-were-told-to-target-the-black-people->. Two weeks later, the same reporter wrote a follow-up article. *Air marshals who say they were told to racially profile send written complaint to TSA supervisor,* FOX 46 WJZY, August 27, 2018, <http://www.fox46charlotte.com/news/local-news/air-marshals-who-say-they-were-told-to-rationally-profile-send-written-complaint-to-tsa-boss>.

<sup>2</sup> Correspondence from Bennie G. Thompson, Chairman, Val Butler Demings, Member, Bonnie Watson Coleman, Member, U.S. House of Representatives Committee on Homeland Security to Acting Inspector General, John V. Kelly, August 17, 2018. Correspondence from Darren Soto, Member of Congress, U.S. House of Representatives to John V. Kelly, August 22, 2018.



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directed air marshals, or any other TSA personnel, to discriminate against travelers based upon race. We did not identify any relevant formal or informal complaints against the subject of the allegation. We interviewed 16 other air marshals who were assigned to the Federal Air Marshals Service (FAMS) Orlando Field Office at the same time as the complainants, and none corroborated the allegation. Further, because the subject of the allegation managed TSA's behavior detection program at the Orlando airport when he allegedly gave the instruction, we also interviewed 11 former Behavior Detection Officers (BDO) who worked under the subject (BDO Manager) during the relevant time, and none recalled him ever providing instructions to racially profile.<sup>3</sup> While some former BDOs raised other allegations of potential profiling based upon race and/or appearance, we were unable to corroborate those allegations with reliable data. Moreover, TSA has largely discontinued the behavior detection program in recent years, and TSA employees now rarely refer travelers for additional screening based on behavior detection.<sup>4</sup>

#### **A. Background on the Allegation**

The three complainants said that in 2007 and 2008, they and other air marshals occasionally participated in behavior detection training and exercises at the Orlando airport on their non-flight days. The air marshals were not part of the behavior detection program, which was staffed by full-time BDOs, but they did coordinate with the BDO Manager, who was a former air marshal who had recently left FAMS to manage TSA's behavior detection program at the Orlando airport. During these exercises, the air marshals would monitor and interact with travelers throughout the airport. According to the complainants, if they identified suspicious behavior or activity, they were instructed to submit reports called Surveillance Detection Reports (SDR) and/or ask the BDO Manager to run names of these individuals through the National Crime Information Center (NCIC) database to check for outstanding warrants.

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<sup>3</sup> TSA's behavior detection program was initially called the Screening of Passengers by Observation Techniques (SPOT) program and was later renamed the Behavioral Detection and Analysis Program in January 2013. For ease, we refer to the program as the behavior detection program.

<sup>4</sup> As you may be aware, the Government Accountability Office (GAO) recently assessed TSA's current policies to prohibit unlawful profiling while using behavior detection. *TSA Has Policies that Prohibit Unlawful Profiling But Should Improve Its Oversight of Behavior Detection Activities*, GAO-19-268, April 2019. GAO acknowledged that TSA's use of behavior detection is now more limited than before, and found that while TSA had policies in place, it should do more to enhance its monitoring of behavior detection activities for indications of profiling.



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The complainants alleged that, during one of these exercises, the BDO Manager instructed them to target African Americans because “they’re the ones who have warrants,”<sup>5</sup> and that he used a racial slur when giving this instruction. According to the complainants, the BDO Manager instructed them to target African Americans so that they could submit more SDRs and run more NCIC checks, which would demonstrate the behavior detection program’s value.

#### **B. No Records of Previous Complaints**

We conducted a search for any complaints filed with the TSA Office of Investigations or the DHS OIG Hotline going back to the time of the alleged instruction and found no records of previous complaints about this specific allegation, or records of any other complaints against the BDO Manager related to racial discrimination. Further, we found no evidence to corroborate the complainants’ claim that they reported the BDO Manager on two prior instances. First, the complainants said they told OIG inspectors about this allegation during a 2010 review of another matter. However, an OIG inspector who interviewed all three complainants did not recall hearing this allegation, and OIG work papers from that time confirm that the OIG spoke with all three complainants, but do not reflect any such allegations. Second, two complainants said that they raised these concerns to a TSA investigator who was investigating misconduct in the FAMS Orlando Field Office in 2009-2010. That investigative file contains sworn statements from the two complainants, but these statements do not mention anything resembling the current allegation.<sup>6</sup>

Thus, we found no record of the complainants raising this concern until a news reporter contacted them about an unrelated story in 2018. At the time they spoke with the reporter, one of the complainants had recently had a falling out with the BDO Manager, with whom he had maintained a personal association in the intervening years.<sup>7</sup>

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<sup>5</sup> One of the complainants alleges he heard these instructions on two or three occasions.

<sup>6</sup> The same two complainants told us that the TSA investigator covered up their allegations. One said he prepared an additional statement that the investigator left out of the case file, and the other said the investigator prevented him from mentioning this allegation in his statement. Because the TSA investigator had retired prior to our review, we did not question him about the complainants’ assertions.

<sup>7</sup> Two and a half months before the news stories were published, this complainant submitted a separate, unrelated complaint about the BDO Manager to DHS OIG, which referred the complaint to the TSA Office of Investigations. After the news stories were



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#### **C. No Other Air Marshals Confirmed the Allegation**

Aside from each other, the three complainants could not definitively identify anyone else who may have observed the alleged incident. One complainant named an air marshal who may have witnessed the remarks, but that air marshal told us he never heard the BDO Manager make the alleged remarks or any other racist comments, and that he did not recall participating in exercises at the Orlando airport with the three complainants. Moreover, he was familiar with the news articles and he disputed some of the other details they contained. For example, he said that air marshals were not supervised by the BDO Manager, nor would they ask the BDO Manager to conduct NCIC warrant checks for them.<sup>8</sup>

We also interviewed 15 other air marshals who worked in the Orlando Field Office between 2007 and 2008 and conducted exercises at the airport. None of the air marshals said they heard the BDO Manager provide instructions to racially profile, make racist comments, or file more SDRs or request more NCIC checks than they otherwise would have. To the contrary, the air marshals' recollections of their exercises at the Orlando airport suggested that their SDRs had little or no bearing on the performance of the BDO Manager or the behavior detection program.

First, though some air marshals remembered coordinating with the BDO Manager and other members of the behavior detection program while working in the airport, the air marshals were not under the BDO Manager's chain of command during the exercises. Second, while air marshals recalled being pressured to submit SDRs, they said this pressure came from FAMS leadership, not the BDO Manager, and did not relate to travelers' race. Furthermore, they felt pressure to submit reports throughout all of their work, such as during flights, and not only while conducting behavior detection at the airport. Trainings and exercises at the Orlando airport were only a small part of air marshals' jobs and there was no special or additional pressure to submit reports during these assignments. Finally, the air marshals documented suspicious behavior in SDRs, which were FAMS reports that were entered into a FAMS

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published, the BDO Manager sued the complainants for defamation, based on the unrelated complaint and the racial profiling allegations.

<sup>8</sup> The complainant speculated that this other individual might not corroborate the allegation because he is a current air marshal, and might fear retaliation. Like other witnesses, we informed this air marshal of the OIG's confidentiality protections. It is also worth noting that he does not currently work in the same state or program as the BDO Manager.



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computer system. As described below, the BDOs that worked in the behavior detection program mostly submitted a different kind of report into a different computer system. Thus, it is unclear how air marshals' SDRs would have contributed to the behavior detection program's reporting totals.

#### **D. Former BDOs Did Not Confirm the Specific Allegation, But Some Raised Other Concerns About Profiling**

Unlike the plainclothed air marshals who moved throughout the airport during their behavior detection exercises, the BDOs in the behavior detection program generally wore uniforms and observed travelers primarily at airport security checkpoints. If the BDOs identified a certain number of enumerated suspicious behaviors, they would refer a traveler for additional screening as he/she came through the checkpoint. After referring travelers for additional screening, BDOs submitted reports into a behavior detection program computer system. These reports contained information on the behavioral indicators observed, how the referral was resolved, and the flight number of the passenger, but did not contain the traveler's name or any other personal information. In rarer, more serious instances, BDOs referred travelers to law enforcement authorities, and completed a different type of report that did contain the traveler's personal information.<sup>9</sup>

We interviewed 11 former BDOs who worked at the Orlando airport at the same time as the BDO Manager, as well as the BDO Manager's long-time supervisor. None of these individuals heard the BDO Manager make racist comments or instruct BDOs to racially profile. One BDO did say that the BDO Manager would sometimes tell BDOs to watch certain travelers for possible referral, and she believed that those travelers tended to be minorities. However, she did not witness the BDO Manager explicitly mention race when flagging these individuals, and she never submitted a complaint to TSA or the OIG about her concern.

Although none confirmed the specific allegation about the BDO Manager, six of the eleven former BDOs we spoke with recalled concerns about

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<sup>9</sup> BDOs entered reports on law enforcement referrals into the Transportation Information Sharing System, which was the same system in which air marshals submitted SDRs. According to a 2008 Privacy Impact Assessment, the Transportation Information Sharing System receives information from a wide range of Federal, state, and local officials in order to "detect, deter, and defeat a criminal or terrorist act in the transportation domain before it occurs."



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other BDOs or BDO supervisors profiling travelers based on race and/or appearance rather than behavior. For example, two BDOs said that some BDO supervisors pointed out minorities, including African American or Hispanic travelers, based also on their appearance—such as having tattoos, or wearing “baggy clothes” or “gaudy jewelry”—and told BDOs to pay particularly close attention to them for potential additional screening. They said the BDO supervisors did not explicitly mention race or appearance when flagging these individuals, but the two BDOs noticed that most people who the supervisors flagged fit this description. These BDOs said that profiling occurred at a time when there was intense pressure within the program to refer more travelers for additional screening to demonstrate the behavior detection program’s performance.

Such claims are similar to allegations of profiling within the behavior detection program at Boston’s Logan Airport, which the OIG investigated in 2013.<sup>10</sup> However, the OIG found that they could not use TSA’s data to validate whether racial profiling was occurring because the BDOs’ reports for additional screening referrals did not contain race or any other personal information. Although the BDOs’ law enforcement referral reports usually included race information, those referrals represented only a small fraction of all referrals, and the OIG determined that it could not draw reliable conclusions about the overall racial composition of BDO referrals by analyzing the smaller subset of law enforcement referrals. As a result, even though appearance or race-based profiling is an inherent risk in behavior detection screening, TSA’s data is not conducive for analyzing allegations of such profiling.

#### **E. The BDO Position Has Been Eliminated**

TSA has since largely discontinued the behavior detection program and eliminated the BDO position. In 2013, DHS OIG and the GAO both issued reports that were critical of the behavior detection program—the OIG’s report questioned TSA’s ability to evaluate the program’s effectiveness and GAO’s report questioned the scientific basis of behavior detection.<sup>11</sup> Following these and other criticisms, TSA reassigned BDOs to other duties. TSA continues to train some employees in behavior detection, but no longer tasks employees solely with observing travelers

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<sup>10</sup> DHS OIG Report of Investigation: Behavior Detection Officers et al, Transportation Security Administration, Boston, Massachusetts, I12-TSA-PHL-00968.

<sup>11</sup> *Transportation Security Administration’s Screening of Passengers by Observation Techniques*, OIG-13-91, May 2013; *TSA Should Limit Future Funding for Behavior Detection Activities*, GAO-14-159, November 2013.



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to identify behavioral indicators. For example, Transportation Security Officers are primarily tasked with screening travelers, but some are certified to use behavior detection to refer travelers for additional screening during the normal course of their duties. As a result, TSA's nationwide behavioral detection referral numbers have plummeted from approximately 37,000 in FY 2012 to 1,000 in FY 2018.

**F. Conclusion**

In conclusion, we did not identify any evidence corroborating the complainants' allegation that the BDO Manager directed air marshals or BDOs to discriminate against travelers based upon race. While some former BDOs raised other allegations of possible profiling based upon race and appearance, we were unable to corroborate those allegations with data. Moreover, TSA has eliminated the BDO position, and now TSA employees rarely refer travelers for additional screening using behavior detection techniques.

Please call me with any questions, or your staff may contact Erica Paulson, Assistant Inspector General for External Affairs, at (202) 981-6000.

Sincerely,

A handwritten signature in black ink that reads "Jennifer J. Costello".

Jennifer Costello  
Deputy Inspector General

cc: David P. Pecoske, Administrator  
Transportation Security Administration

Patricia F.S. Cogswell, Acting Deputy Administrator  
Transportation Security Administration