



## Testimony of Charles Leocha, Director, Consumer Travel Alliance

### Before the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Aviation

Washington, DC, November 29, 2012

Thank you, Chairman Petri, for giving passengers a seat at this hearing and an opportunity to testify about the effects of the Transportation Security Administration (TSA) on airline travel and suggest improvements to current airport security systems.

My testimony today will focus on the consumers' perception of TSA as a force designed to protect the American public from terrorist actions against our aviation transportation network. These recommended changes will also save hundreds of millions of dollars or allow the funds to be reallocated to counter other real or growing threats.

I will present a workable series of recommendations that takes into account the significant changes in the security landscape since 9/11. For my organization, and other consumer organizations, my testimony is not simply a chance to complain about TSA but an opportunity to offer constructive criticism and thoughtful solutions to today's security realities.

My name is Charles Leocha. I am the director of the Consumer Travel Alliance, a non-profit group created to educate legislators, regulators and their staff about the needs of travel consumers. Earlier this year, I was appointed by Secretary LaHood to the Advisory Committee on Aviation Consumer Protections, created as part of the most recent FAA Reauthorization bill. TSA Administrator Pistole also appointed me to the Consumer Advocacy Subcommittee of the Transportation Security Advisory Board where I have had an opportunity to meet with many members of TSA and hear about their consumer-facing operations such as their ombudsman, programs for the disabled and the TSA Contact Center.

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The Consumer Travel Alliance was closely involved with the last FAA Reauthorization bill. We continue to work toward complete disclosure of airline fees so that consumers can compare the full cost of travel across airlines and the free market can work efficiently for the aviation industry. Our organization has also been active in the debate over the European Emission Trading Scheme and new taxation of airline travel, which we oppose; and the implementation of NextGen to modernize our air traffic control system, which we strongly support. We believe that freedom of movement is a basic right.

### **Transportation Security Administration consumer overview**

The events of 9/11 and subsequent unsuccessful terrorist attacks against the world's aviation system have taught us that aviation security stakes are high. The Department of Homeland Security (DHS) and TSA deserve part of the credit and thanks for keeping us safe. However, the creeping increase in invasiveness of TSA airport search, questions about the effectiveness of degrading searches and of whole-body scanners have unsettled many American citizens.

The positioning of TSA as a law enforcement organization (though it is not), rather than a helpful organization developed to assist passengers fly safely, has generated fear instead of reassurance. Whole-body scanners, hailed by TSA as a necessity for security, have not captured one would-be terrorist, while subjecting masses of our population to a virtual strip search.

Screaming, scared children have been forcibly separated from their parents. Feeble, barely-able-to-stand elders quiver and shake beside their wheelchairs as they are screened while family members are forbidden to assist them. Women are subjected to treatment that would result in the arrest of anyone performing such a search outside of the parallel TSA airport-check-point universe. We all hear the stories.

Worse, TSA has become a subject of derision. Even President Obama noted to laughter during a State of the Union address, that Americans should support high-speed trains as an alternative to flying because, "for some trips, it will be faster than flying — without the pat-down." Only last Friday, I heard the Capitol Steps, a popular comedy group in Washington, D.C., perform a skit and sing a parody about how good the "government is about anticipating terrorist events after they occur." The skit went on about the excesses of TSA "random searches" and "pat-downs."

The litany of negative stories about TSA is constant. Newspaper editors with whom I have discussed TSA actions, all report a vitriolic reaction to stories about TSA. Comments on blogs and letters to the editors go off the charts. The level of citizen frustration is palpable. When security checks are so inconsistent, TSA appears to be a sinister version of Keystone Cops.

### **The Maginot Line didn't work in WWII; it won't work now**

Any security system that is designed to stand on its own is doomed to fail. During WWII the vaunted Maginot Line, built at the cost of hundreds of millions of French Francs, was considered impregnable and extolled as a work of genius. The Germans overran it.

The parallels may even be more prescient — the Maginot Line became a symbol of generals fighting the last war and it consumed such a large budget that other facets of the defensive forces were underfunded.

Today, TSA also finds itself fighting the last war and defending against old threats, in some cases defending against threats that no longer exist. Plus, the focus on passenger screening at airports has reduced the availability of funds to secure the vulnerable back ends of U.S. airports. There has been little discussion about the TSA's role in ensuring that airport employees — overwhelmingly outsourced as baggage loaders, caterers, cleaners, and fuelers — who have access to commercial aircraft are properly screened. Who is minding the airplanes?

### **Prisons vs. airports**

The futility of searches at the airport is best demonstrated by the problems of trying to use a single line of defense against drugs and weapons in prison. Last July, New Mexico had to shut down their prisons to search for weapons and drugs. Even our best efforts at maximum-security prisons don't work. The Bureau of Prisons admits that drugs and weapons smuggling into prisons is almost impossible to stop, even with the most invasive searching techniques, a prisoner-to-guard ratio of 20-40 to 1 and full control over prisoner movements. TSA agents are screening thousands of passengers every day and have no control of the public outside of their security stations.

Our real aviation security comes from constant intelligence, not from last-minute checks of passengers. The elaborate and expensive TSA barricades, snaking lines, whole-body scanners and x-ray machines have been proven to be more for show than they are for actually apprehending a terrorist. Plus, TSA rules are created without comments or the normal rulemaking process. The unintended consequences of our current enforcement procedures are not healthy for our country, its principles or our Constitution.

CTA was one of many groups that protested TSA's lawless actions and joined in a formal petition for rulemaking. Eventually some of the petitioners, led by the Electronic Privacy Information Center (EPIC), sued, and the court upheld their complaint. It ruled that the TSA was required to conduct a public rulemaking and ordered the TSA to do so. To date, TSA has failed to begin the rulemaking process.

Finally, TSA's penchant for hiding behind their claim of national security when asked for details of equipment testing, rationale of rules and screener customer service training is unacceptable. Congress and the American people are paying the bills and should be informed of issues that affect them such as radiation, privacy and customer service.

### **The terrorism world has changed. TSA hasn't.**

All of these recommendations are made based on three basic changes in the counter-terrorism landscape since 9/11. TSA is operating as though none of these significant changes has occurred.

- 1 Our terrorism watchlist capabilities have improved dramatically.
- 2 All airplane cockpits have been hardened, locked and fortified.
- 3 Passengers, now aware of the possibility of having their plane used as a missile, will not allow terrorists to take over an aircraft.

### **Recommendation #1 — Revise the forbidden items list and focus on explosives**

Times have changed. The threat has changed. Our defenses need to change.

Small knives, box cutters, tools, self-defense items, sporting goods, sharp items and other items were deemed dangerous as TSA was formed, post 9/11. Later, shoes were to be removed, then liquids were limited and segregated, and whole-body scanners came into play based on failed terrorist attacks.

Outside of the secured areas of the airport, these items are legal and of no more threat to passengers than if they were in the possession of citizens strolling in front of the New York City library, riding the Metro in Washington, DC, taking the Coast Starlight train along the Pacific or riding a bus in Fort Worth.

Worse, the forbidden list is so long and many of the items so difficult to spot, even with x-ray machines and security personnel pawing through luggage, the rules are not, and cannot be, consistently enforced. An article about TSA screening practices regarding favorite Thanksgiving dinner food items often carried by family members to share for dinner, are, according to TSA experts, "up to the officer."

### **Recommendation #2 — Dress security screeners in non-threatening uniforms. Retrain all screeners in basic customer service skills.**

TSA personnel at airport checkpoints should be positioned as security assistants. Their job is to make sure the traveling public is safe, not law enforcement. They are screeners. They should not be dressed to intimidate. They should be trained to smile at passengers and assist them in making sure they are safe, not to force citizens into submission.

### **Recommendation #3 — Immediately decommission all backscatter scanners**

All Backscatter whole-body scanners should be decommissioned — their radiation effects are not documented and their privacy protection software does not function. TSA has already removed many of these machines. They should not be repositioned. They should be considered a danger to the public.

TSA should release radiation testing and allow independent testing of their whole body scanners. Withholding these results from Congress and the American public as classified is

either foolish or dishonest. Even more important than catching terrorists is the health of our citizens. There is no reason for TSA reticence in this instance.

**Recommendation #4 — Only use millimeter-wave whole-body scanners as an optional secondary screening method and return to using the metal detectors for primary screening**

These scanners may have better privacy protections; but, even with pat-downs, they are no more effective than metal detectors at discovering anything that might disrupt a flight. Placing passengers in a “hands-up,” submissive position does nothing demonstrable for security.

**Recommendation #5 — Trusted traveler programs should eventually cover a great majority of the traveling public. Use the terrorist watchlist. Use probable cause.**

The intelligence system and our terrorist watchlist are far superior to what was in effect 11 years ago. We should use it. If a terrorist gets to the airport, unnoticed, it is a major intelligence failure by multiple intelligence agencies.

At least a dozen intelligence organizations work to ferret out terrorists. That information is funneled into a national terrorism center where it is analyzed and where every passenger flying in our country is matched against a rigorous, multi-level watchlist. Our intelligence systems and watchlist protocols already cover all traveling Americans. The number of citizens and travelers pulled over to be patted down should be minimal and based on some kind of probable cause.

**Recommendation #6 — Stop practice of rescreening international baggage**

Rescreening this already-screened baggage is an enormous waste of time and budget money. I believe this is a congressional mandate, not a TSA-generated rule.

**Recommendation #7 — Limit TSA responsibilities to aviation and airport security; we have law enforcement personnel that can secure other public venues**

There has been a creeping expansion of TSA’s field of operations. The organization was created to protect against aviation terrorism. Its mission statement should be limited strictly to aviation security. The DHS for all other venues such as trains, buses, ferries, sporting events, etc. has access to local, state and national law enforcement. The TSA has no business being involved in random traffic stops, screening people attending a political convention or checking Amtrak passengers after they've disembarked a train. It is time to end the VIPR squads that are being deployed, seemingly at random, around the country.

**Recommendation #8 — Pay attention to back-end operations of airports**

The focus of time, money, and energy on passenger screening has diverted resources from the vulnerable back ends of U.S. airports. As I mentioned earlier, there has been little discussion about the TSA’s role in ensuring that transient airport workers are properly screened. Airport employees — overwhelmingly outsourced as baggage loaders, caterers, cleaners, fuelers, etc. — that have access to commercial aircraft should be subject to the same terrorist watchlist rigors as passengers. It seems relevant to ask that the TSA report on the progress of who is minding the airplanes and the airports.

## **TSA of the future**

In preparation for this testimony, I tried to envision a TSA of 2015 or 2020. My vision is dramatically different from what we know today.

- The intimidating presence of TSA will not be evident
- The mass screening of passengers will be replaced for the great majority of passengers with a Trusted Traveler program that seamlessly checks passengers before they fly (while at the same time being respectful of their privacy) and continued maintenance of the terrorist watchlist and no-fly list.
- The terrorism watchlists will also be used for airline and airport employees.
- Metal detectors will be back in use as the primary screening method. All full-body scanners will be decommissioned.
- Additional searches will be conducted based on just probable cause.
- New explosive detection systems will screen passengers as they pass through check-in gates in a non-invasive manner that doesn't place their health at risk and thermal imaging may be employed.

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