

Transportation Security Administration

Freedom of Information Act (FOIA) Records Request

TSA FOIA Case Number	2013-TSPA-00339	Records Request Date	06/26/14	Due Date	07/03/14
----------------------	-----------------	----------------------	----------	----------	----------

Tasked Office	FSD SFO TSA-1/TCC	Tasked Office Point of Contact	Kavita Gutkovsky, Michelle Cartagena
---------------	----------------------	--------------------------------	--------------------------------------

FOIA BRANCH CONTACT INFORMATION		Main Number: 571-227-2300	
FOIA Tasking POC	Matthew Johnsen	Phone Number	571-227-2989
FOIA Specialist		Phone Number	

REQUESTED RECORDS

(4) any and all history of complaints against the TSA/Covenant agents:

- Deputy Federal Security Director (DFSD) James Adams
- Transportation Security Manager (TSM) David Smith (badge #174312)
- Assistant Manager (ATM) Ellison Champagne (#186390, Covenant)
- Supervisory Transportation Security Officer (STSO) Michael Snead (#1260, Covenant)
- STSO John Orille (#1430, Covenant)
- TSO Kristy Akens (#2038, Covenant)

(5) any and all history of similar complaints against any TSA, Covenant, or San Francisco Airport agent. (For SFO)

INSTRUCTIONS FROM FOIA BRANCH

- Search your records for responsive documents, and if located, you **MUST** provide one clean copy (without redactions) regardless of classification, physically to the FOIA Branch or electronically to: TSA.FOIAPOCResponses@tsa.dhs.gov.
- Record the total number of hours spent searching for records responsive to this request.
- If documents contain SSI or Personally Identifiable Information, ensure you password-protect when sending electronically. You **MUST** provide the actual password in a subsequent email for our records and use.

OTHER NOTES OR INSTRUCTIONS FROM FOIA BRANCH

This is being re-tasked as per TSA-2/OCC.

RESPONSE/COMMENTS FROM TASKED OFFICE (Check all that apply) Recommend total release Recommend withholding information (SSI, PII, etc.) No Records – Our search failed to locate any responsive documents Other TSA office(s) or another agency should search for responsive records. Please contact the following office(s):

- Click here to enter text.

Zach Bromer TSA Disability Branch

Documentation for Conducting a Search for Records Requested under the FOIA

In responding to this request for information made pursuant to the FOIA, 5 U.S.C. 552, you must undertake a search that is *reasonably calculated to uncover all relevant documents* described in the request. You must search in all places where responsive records may be found.

Please conduct a thorough search of your records for documents pertaining to this FOIA request. You must search in every area within your components where you believe responsive records are located.

“Records” include: paper records, electronic records, e-mail correspondence, pictures, DVDs, video tapes, audio tapes, microfiche, or any other material recorded in any manner unless otherwise stated in the request.

SEARCH PARAMETERS

Searcher Name:	Romila Deo	Position/Title:	Customer Support Manager
----------------	------------	-----------------	--------------------------

Search Start Date:	6/26/2014	Search End Date:	7/2/2014	Total Search Time:	30 minutes
--------------------	-----------	------------------	----------	--------------------	------------

Databases

List the systems of records searched:	
List the search terms used:	

Computer Searches	
Did you search employees' computers? Y or <input checked="" type="radio"/> N (circle one)	
How did you search these computers (i.e., manual review of each folder individually, use search engine in Start menu, or some other electronic search command)?	
List the position titles and names of employees whose computers were searched:	
List the search terms used:	

Paper Files		
Did you search any paper files?	<input checked="" type="radio"/> Y or N	Describe below how the files are organized and maintained (i.e., file cabinet, bookshelf, order, name of holder, etc.):
Were the paper files contained in personal files?	Y or <input checked="" type="radio"/> N	Office Central Filing System under complaints. One file located. Copies attached.
Were the paper files in your office's central file system?	<input checked="" type="radio"/> Y or N	

Email (Outlook)	
Did you search Outlook?	Y or <input checked="" type="radio"/> N
How did you search Outlook? (i.e., manual review of every email in sent, deleted, incoming, outgoing, and archived folders, "Find" function in the Tools pull-down menu)	
List the employee Outlook boxes searched	

and search terms used:	
------------------------	--

Other Records	
Did you search any other records not listed above?	Y or <input checked="" type="radio"/> N
If so, where did you search?	
How did you search?	
List the search terms used:	

Sensitivity	
Are any of the responsive records classified? If yes, contact FOIA Tasking POC to coordinate review.	Y or <input checked="" type="radio"/> N
Describe which records are classified:	

I certify that I searched all locations reasonably believed to contain records that are responsive to this request.

I certify that I will properly transport any sensitive and/or classified records to the TSA FOIA Branch in accordance with federal regulations. In the case of records containing National Security Information, this includes the arrangement of a point-to-point delivery to an individual within the TSA FOIA Branch that has an appropriate security clearance.

Signed: *Romula Deo*

Date: 7/2/2014

Sworn Affidavit of Events

To whom it may concern —

On Friday, 1 March 2013, I was heading for Delta flight 1510 (boarding time 11:55 pm) from San Francisco (where I live) to Raleigh, NC via Atlanta. I passed through the Transportation Security Agency ("TSA") checkpoint guarding Terminal 1, boarding area C, gates 40-48 beginning at approximately 9:40 pm.

During my screening at that checkpoint, the TSA, including multiple supervisors, refused to permit me to travel with or have access to my medical liquids, directly disobeying both clearly established law and TSA policy, and in the process illegally detaining me for 50 minutes.

SFO TSA can be reached at 650 266-1900, % Stephanie Jackson, 700 Airport Blvd., Suite 200, Burlingame, CA 94010. Covenant Aviation Security, TSA's contractor, can be reached at 800 764-8050, 1350 Old Bayshore Highway, Suite 540, Burlingame, CA 94010.

The specific agents involved were:

- Deputy Federal Security Director (DFSD) James Adams (by phone)
- Transportation Security Manager (TSM) David Smith (badge #174312)
- Assistant Manager (ATM) Ellison Champagne (#186390, Covenant)
- Supervisory Transportation Security Officer (STSO) Michael Snead (#1260, Covenant)
- STSO John Orille (#1430, Covenant)
- Two unidentified STSOs
- TSO Kristy (#2038, Covenant)

This complaint is written informally and without the assistance of counsel. My recollection of events listed below may not be perfect; I may later recall substantive details or mistakes, and reserve the right to improve it later.

Chronological record of events

The following is, to the best of my current recollection (with the supplement of notes that I took during the encounter as well as openly recorded audio/video), a clear and accurate recounting of the events that transpired. The raw video is available in full at <http://goo.gl/ofHxw>.

The times listed are as indexed into the first iPhone recording I made, which begins at approximately 9:46 pm.

Beginning of screening

3m04s: document check

4m18s: bags put on x-ray belt

5m08s: I declare that I have medical liquids (two 50.7 ounce bottles of aloe juice) and that I am opting out of electronic strip search. TSO acknowledges this.

6m47s: bags done with x-ray, placed on top of x-ray machine

Beginning of secondary screening

10m16s: TSO Kristy says that two items (a block of cheese and a burrito) looked like liquids on x-ray; removes

them from my backpack for secondary screening

12m: STSOs acknowledge that I have declared medical liquids, and claim that there is a maximum volume for medical liquids.

12m40s: STSO demands to know my destination; I refuse to answer due to privacy concerns. STSO claims I am required to do so.

13m28s: I request that TSO Kristy re-scan my items to speed the process. She refuses to do so.

15m18s: ATM Champagne arrives. She acknowledges that I have declared my aloe juice as a medical liquid. She claims that its container is "too large". When directly asked whether she is an employee of the TSA or of Covenant, she refuses to give a direct answer, saying instead "I am a *representative* of TSA.", "I am the assistant manager for this terminal.", and "Covenant is the company that we work with."

16m39s: TSO Kristy asks STSO Orille whether she should re-run my items. ATM Champagne orders her not to do so. I object to the duration of my detention so far; ATM Champagne claims that it is "so that we can verify whether or not this is something that you can take with you".

17m30s: ATM Champagne acknowledges that she is an employee of Covenant, and refuses to directly answer whether she is a TSA officer, saying instead "I am an *agent* for the TSA. A TSA "agent" is anybody who represents them. I *represent* TSA. I am representative of the TSA."

19m: STSO is summoned to begin the "pat down".

20m20s: I reach for my juice, hand very visibly shaking from tremor, and say "As I said, this is a medical liquid, and I need constant access.". One of the STSOs physically prevents me from drinking, putting his hand on top of the bottle. I object, citing the Americans with Disabilities Act.

21m30s: STSO begins "pat down" process.

Detention and interrogation by TSM Smith

23m20s: TSM Smith arrives, asks ATM Champagne what size my bottles are. She responds that they are 58 ounces each. *[Note: the bottles are actually 50.7 ounces. ATM Champagne misread the label.]*

26m09s: TSO Kristy asks TSM Smith whether she should continue screening my items (i.e. to re-scan them by x-ray to determine whether the burrito & cheese were the items that showed up previously). He tells her to do so, and she does.

26m15s: TSM Smith skeptically acknowledges that I am claiming the juice as medical liquids. He accusingly asks if it's "really" medical. I object that he is not my doctor and has neither the authority nor ability to make such a determination, and insist that he obey TSA policy.

27m18s: TSM Smith: And you can buy a medical liquid for \$2.99?

Me: I don't think this line of conversation is relevant. You have no authority to interrogate me, nor to ask me about...

TSM: I'm not interrogating you, I'm just asking a simple question.

Me: I don't want to answer it.

TSM: OK, then if I can't get any information, then I have to deny the liquid coming in.

Me: Absolutely not. You have no authority to require me to give you any medical information, or to justify medical necessity, or to present a prescription, or any information whatsoever.

TSM: I didn't ask for a prescription. I just asked a simple question, OK? So...

Me: I buy it from the store.

TSM: A medical store?

Me: From the store.

TSM: Well that's that. That answers the question.

Me: No it doesn't. Walgreen's, is that a "medical store"?

TSM: I ask you [unintelligible] medical store, you said you [unintelligible].

Me: Look. You're launching an attempt to determine whether or not liquids are medically necessary. Like I said, you have no authority to do that. I *strongly* object to this line of questioning.

30m19s Me: [hands still visibly shaking from tremor] Again, I need access to my medical liquids on a constant basis, including right now.

ATM: Say that again?

Me: I need access to my medical liquids on a constant basis, including right now. I want to drink. Are you going to stop me from doing so?

ATM: OK, we're going to wait until he's finished [i.e., the TSM].

Me: So the answer is yes, you are stopping me from accessing my medical liquids.

ATM: I'm going to wait for him to finish, and he can address any concerns. We've turned it over to TSA. That's what you wanted. So we're going to do that.

Me: Indeed. But as it stands, you're detaining me and preventing me from accessing medical liquids.

ATM: [to TSO Kristy] Have you tested these? [with explosive trace detection]

TSO Kristy: Not yet.

Me: Why not?

TSO Kristy: We haven't gotten to that stage of the process. We have to wait.

Me: So, you *could* test them, but you're refusing to.

TSO Kristy: [unintelligible]

STSO Orille: Sir, I understand that you [unintelligible] liquid, do you want some water to drink, is that OK?

Me: That would help, but I would like my liquids.

STSO Orille: [goes to get some water]

32m00s STSO Orille: [offers me water in small paper cone]

Me: [tries to drink; severe muscle tremors in arm & hand cause about half the water to spill on clothes and floor]

34m05s I ask ATM Champagne whether I can touch my cleared items (i.e. everything other than the juice). She says yes. I begin re-packing my bags.

36m33s I take out clipboard & pen and begin taking down officers' names and badge numbers.

38m32s TSM Smith [on phone]: "... he got them at the store store, he said [unintelligible] medical liquids at the store, and he got them for \$2.99. [unintelligible] for medical purposes. Only reason why I picked it up..."

TSM Smith returns from speaking with AFSD Adams

40m39s TSM Smith: [returning] All right.

Me: Who did you call?

TSM: I was on the phone with my FSD.

Me: FSD?

TSM: Yeah. The FSD of the airport. He's saying for the type of drinks that you got right there, he's basically saying no, it's not going to go.

Me: On what grounds?

TSM: Because for the type of drink it is, it's a medical drink, and it's the *size* of it...

Me: As I said... Have you read the TSA Special Needs Memo? *[Note: SNM is attached as Exhibit B]*

TSM: [nodding] M-hm. Well, I haven't read it in a while, but yeah. Are you recording this?

Me: I am. Have you read the section where it says that for medical liquids, there is no restriction on volume? Period?

TSM: OK.

Me: Have you?

TSM: Yes, I've read... I've seen that in there.

TSO Kristy: Are you recording us, sir?

Me: Yes, I am.

TSM: Are you filming us, or are you *recording* us? There's two different choices.

Me: Both.

TSM: OK.

ATM Champagne: He's filming.

TSM: He's filming it?

Me: Yes.

41m34s Me: So, given that you know — not only do you have a duty to know, but you said you've actually read it —

TSM: I've seen it in there, yeah.

Me: You still bring it up as if it's a problem. Why?

TSM: Actually, I brought it up to my FSD, who says that because of the type of [unintelligible] drink...

Me: What's your FSD's name?

TSM: Mr. Adams.

Me: Adams?

TSM: M-hm.

Me: Continue.

TSM: He's the, he's the... basically, he's denying it. He said we will help you out, we could even, like they [motions to other agents] suggest, in there right now, to bring it down to 3.2 ounces, several 3.2 ounces...

Me: No.

TSM: ... we can do that.

Me: I'm not required to do so, and I don't want to.

42m14s TSM: OK. But at this point in time, this is what we... is our junction right now. The liquids can't go.

Me: On what br... on what grounds?

TSM: Because, uh... [reading container] "tropical energy drink", there was... [unintelligible]

Me: Did you read the part of the Special Needs Memo that specifically says that juice is a medical liquid?

TSM: [overlapping] I'm telling you right now, this is not going. We have...

Me: Please answer my question.

TSM: We can give you everything else. I'm just giving you your choices right now. This is not going.

Me: Did you read the part of the Special Needs Memo where it says that juice is a medical liquid?

TSM: Look, this is done, OK? OK? You have your choice, I got that from my boss, who said that it's got his choice.

Me: [looking at badge]

TSM: Oh, you want? Oh, ok [holds up badge]

Me: [filming closeup on badge] Thank you.

TSM: OK, so you have a choice, OK? We can help you out with all the paperwork, or [unintelligible] numbers you need, or something like that...

Me: What paperwork?

TSM: Whatever you require. You want websites, or anything like that, or the file [unintelligible]

Me: Oh, I've seen...

TSM: Well, you have that.

Me: Can I get a statement in writing?

TSM: I'm sorry?

Me: Can I get a statement in writing that you're denying me access to my liquids?

TSM: [shakes head] Nope. I'm giving you a choice right now, OK.

Me: Namely?

TSM: I'm sorry?

Me: What's... what choice are you giving me exactly?

TSM: The choice is, the liquids are not passing through. You can either go outside, bring it down to 3.2 ounces...

Me: I'm not gonna do that.

TSM: Then the liquids can't pass through at this point.

43m36s Me: You're also denying me access to *drink* the liquids, even though I have an immediate medical need...

TSM: You need a drink right now?

Me: Yes I do. As I've said repeatedly.

ATM: We've offered some water

Me: That's not adequate.

ATM: [unintelligible] if he wants to drink, he can take them outside the sterile area.

TSM: OK.

Me: I don't want to go through screening again, I'm not required to. It's a violation of the ADA, what you're doing right now.

TSM: OK, so you were given all those options. What I can do for you right now, Mr. — John [referring to STSO Orille], if you want, he can give you a cup like for the water...

Me: I need *sugar*, which is in my medical liquids.

TSM: That's why I'm saying, he can give you the cup from over there, like he did with the water, he can *pour* it, and you can drink it.

Me: So you're saying you can pour it into a cup and let me drink that...

TSM: From the cup, yeah...

Me: ... but you can't let me...

TSM: That's what I'm willing... that's what I'm willing to do right now, because you say you need it. You don't want to go back outside so I'm trying to [unintelligible] medium right now.

Me: Let's do that, actually.

TSM: OK, I'm trying to [unintelligible] medium right now.

Me: Let's do that for the moment. Please.

TSM: OK, I'm trying to help you out for the medium right now.

Me: I appreciate that. However, I would point out the very fact that you think that it's safe to drink means that it could not possibly be a weapon or explosive.

TSM: [shakes head] OK.

Me: And the TSA's authority extends exclusively to weapons or explosives.

ATM: [unintelligible] there's um, this [unintelligible]

Me: Go ahead and ETD it.

TSM: This one I'm assuming...

Me: That one's open. Please don't open the other one.

TSM: [picks up phone] Hello, this is Dave. Hello? Yeah. OK. [walks away]

STSO (unidentified): Can I ask you to open the container?

Me: I don't want to open the closed one.

ATM: [unintelligible] the one that's open.

Me: [takes cap off bottle that was previously opened]

Unidentified STSO tests juice with ETD machine prior to letting me drink some juice indirectly

45m50s STSO (unidentified): Thank you. [holds ETD testing strip above bottle, douses with test liquid] You can close the container, sir.

Me: [right hand very visibly shaking in front of camera]

STSO: [pours aloe juice into small paper cone, hands cone to me]

Me: [drinks, hand shaking badly enough to spill juice all over]

TSM: [walking by, on phone] No it's, that's usually where [unintelligible]...

Me: [hand holding cup badly enough that it's audibly shaking]

Me: [to TSA7] More.

STSO Orille: You want some more?

TSM: What's that?

STSO Orille: He wants some more.

TSM: Do you require... would you like more?

Me: Yes.

TSM: OK.

TSO Kristy: [opens bottle]

Me: In fact, I'd rather just take a swig. Is there any reason I can't just grab it and drink?

note: second iPhone video cuts out here. following video starts shortly after, started on another device; the following times are indexed into that video

0m42s STSO unidentified: So sir, do you want to at least try to go back outside...

Me: No, I want you to follow TSA policy.

STSO unidentified: Well sir, I just [unintelligible] to him, so like I said, do you want...

Me: I want to drink from my bottle. How is it in any way a weapon or explosive to have me pick up my bottle and take a swig?

STSO unidentified: [unintelligible]

STSO unidentified: Hey, Dave?

TSM Smith refuses to let me travel with juice, despite it having been tested

1m16s TSM: [walks over]

Me: [holding up visibly shaking right hand] As you can see, I have muscle tremors.

TSM: OK.

Me: Drinking from that [the paper cone] is a lot more difficult than drinking from my bottle. It's [i.e. the bottle is] heavier.

TSM: OK.

Me: That's part of why I use it.

TSM: OK. But right now, your option is, you can take it out and check it in, but it's not going to go.

Me: [overlapping] So you're willing to let me drink from a cup that's worse for me medically, but not to drink from my bottle...

TSM: I don't know if that's worse for you medically, as you pointed out to me, I am not a doctor.

Me: Indeed, you're not. You're denying me the ability to drink from a bottle ... for what reason exactly?

TSM: [laughs, looks away] OK.

Me: You know that the TSA is limited to search no more intensive nor intrusive than necessary to detect the presence of weapons or explosives.

TSM: [overlapping] OK. All right. I'm giving you the choice again. You can take it outside, or take it out and check it in your bags. Or you can do whatever it is you want, but it's not going past this point, OK? Your choice.

Me: I see. Since you are essentially detaining me without cause...

TSM: I'm not detaining you.

Me: Yeah you are.

TSM: No, I'm not. You're free to go. You're detain... you're holding yourself up because of the liquids.

Me: OK, sorry. My apologies. You're stealing my liquids.

TSM: No, I'm not.

Me: Yes, you are.

TSM: No.

Me: And you're also violating clearly established law and clearly established TSA policy. As such, you have no qualified immunity. I will see you in court.

TSM: OK.

Conclusion

This whole ordeal took about 50 minutes. As a result of it, although I had budgeted a significant amount of extra time, I only barely made my flight.

Due to the TSA's actions, I was forced to take a long, cross-country flight without access to my medical liquids, posing a serious risk to my health and exacerbating my medical condition.

Furthermore, this is not an isolated event. In June 2012, Laguardia Airport Deputy Assistant Federal Security Director Paul Bostic (port ID #302113857) very similarly refused to obey the TSA's medical liquids policy, and seized a bottle of ginger beer that I had declared as a medical liquid. One another occasion, I was flatly told by a senior TSA agent that I would not be permitted to bring through a large bottle of Odwalla Superfood which I had declared as a medical liquid unless I showed them a doctor's note — which I did only under duress. On many occasions, I have been gotten TSA agents to comply with the medical liquids policy only after producing a highlighted copy of the Special Needs Memo and insisting that they obey it, and have been unlawfully detained and delayed in the process.

If anything, it is only in a minority of cases — e.g. during my return flight from RDU to SFO on this trip — that TSA agents have *voluntarily* complied with the TSA's medical liquids policy.

My disability

I have a rare form of non-Tourette's tic disorder; this is a neurological disorder affecting my motor system. The most common symptoms are spasmodic torticollis, arm jerking or spasticity, hand tremors, etc. (See Exhibit A.)

My symptoms are severely aggravated by stress as well as lack of immediate and constant access to medications, liquids, and food — all of which factors were present due to the TSA agents' actions.

The agents deliberately both prevented me from accessing medical liquids, and deliberately *confiscated* my liquids. This occurred despite my directly informing them of my needs, clearly visible symptoms, and their

explicit acknowledgment of the TSA policy mandating that such liquids be permitted¹.

I discuss my disability on a need-to-know basis, and I take especially serious offense at a demand by a government agent that I disclose the details of my medical issues to them in a totally unrelated context, such as during an administrative search that carries the real threat of a seizure of my property.

Privacy of SSN & former name

Please note that "Sai" is my full legal name, as listed on my current passport; I am mononymic².

I strongly request that my former name and any identification numbers (e.g. SSN, passport number, driver's license number, etc) not be listed or mentioned in any public documents or media, and be redacted from any proceedings in this matter (as I have done in the attached exhibits).

My reasons for changing my name are highly personal and not ones I wish to discuss in a public forum, and I have tried to keep my former name out of available public records to the extent possible. My former name is neither newsworthy nor relevant to any proceedings related to this matter, and I would be highly offended at its publication.

I will consider any violation of this request for privacy "public disclosure of private facts" and act accordingly.

Conclusion & contact information

I intend to work with any group that has allied cause in this matter, and to pursue both civil and criminal action against both the TSA as well as TSA agents Champagne, Smith, and Adams in their personal capacity, as well as to pursue all facets of this cause (in particular, the violations of both civil liberties and disability rights).

I will be filing this complaint with the SFO ADA Coordinator and the national TSA Office of Civil Rights and Liberties; the California Attorney General's Civil Rights Division³; the Department of Justice's Disability Rights office⁴, California Department of Fair Employment and Housing⁵, and the San Francisco Human Rights Commission⁶, as well as the offices of Senator Boxer and Congresswoman Pelosi. I am currently seeking private counsel to engage in civil litigation.

¹ TSA "Special Needs Memo", *Changes in Allowances for Persons with Disabilities at Airport Security Checkpoints*, September 25, 2006 (Exhibit B), second page: "We are continuing to permit ... other liquids needed by persons with disabilities and medical conditions. This includes ... liquids (to include water, juice, or liquid nutrition) or gels for passengers with a disability or medical condition. ... [I]f the liquid medications are in volumes larger than 3 ozs each, they may not be placed in the quart-size bag and must be declared to a Transportation Security Officer."

TSA website (<http://www.tsa.gov/traveler-information/medically-necessary-liquids>, Exhibit C), very first line: "Medically necessary liquids are allowed through a checkpoint in any amount once they have been screened."

² For the purposes of the TSA's "Secure Flight" program, I entered my name as "SIR SAI", since their system is not capable of processing mononyms. My passport lists my surname as "SAI" and my given name as blank.

³ <http://oag.ca.gov/>

⁴ <http://www.justice.gov/crt/complaint/#two>

⁵ http://dfeh.ca.gov/Complaints_ComplaintProcess.htm

⁶ <http://www.sf-hrc.org/index.aspx?page=85>

I have read the above complaint, and the allegations contained above are true to the best of my knowledge and belief.

Signed under penalty of perjury, sincerely,

Sai

14 March 2013

Phone: +1 510 394 4724

Email: tsa@saizai.com

Physical mail: Sai [REDACTED]

Exhibit A: Neurologist's letter confirming details of disability and need for constant access to medication, food/drink, and communication aids

Dr. Xie's contact information has been redacted; it is available if needed, under confidentiality.



To whom it may concern -

My name is Dr. Tao Xie. I am a clinical neurologist at the University of Chicago Medical Center, specializing in movement disorders.

My patient, Sai (formerly [REDACTED]), has chronic motor tics. This is a neurological disorder that causes symptoms such as frequent neck jerking movements and muscle spasms of his right arm. These symptoms can range from mild to quite severe. This disorder can be aggravated by all kinds of stress. He also has intermittent mutism of unclear etiology.

As a result of this medical disorder, Sai requires constant access to any medication he is carrying, and to other medical items which he finds help to control his tics, such as sugar pills, food, water, juice, etc. He also requires access to his notebook, pen, and laptop to mitigate communication difficulties when mute. Denying access to any of these, or causing unnecessary stress, could worsen his symptoms.

In case acute treatment is required for a particularly severe episode, with Sai's consent, 1-2 mg intramuscular Ativan (lorazepam) is effective treatment.

Should you have any questions, please feel free to contact me at [REDACTED] during regular office hours, or page the neurology resident on call by calling [REDACTED] after office hours or on weekends.

Sincerely,

A handwritten signature in black ink, appearing to be "Tao Xie", written in a cursive style.

Tao Xie, MD PhD

Exhibit B: TSA Special Needs Memo

Previously available at http://www.tsa.gov/assets/pdf/special_needs_memo.pdf, this memo has since been removed from the TSA's website, but is nevertheless still in force.

U.S. Department of
Homeland Security

Office of Screening of Persons
with Disabilities
601 South 12th Street
Arlington, VA 22202-4220



**Transportation
Security
Administration**

MEMORANDUM

Date: September 25, 2006

From: Sandra Cammaroto
Division Manager
Transportation Security Administration
Office of Screening of Persons with Disabilities

To: Passengers with Disabilities and Medical Conditions Using Air Transportation

Subj: Changes in Allowances for Persons with Disabilities at Airport Security
Checkpoints

One of the primary goals of the Transportation Security Administration (TSA) is to provide the highest level of security and customer service to all who pass through our screening checkpoints. Our current policies and procedures focus on ensuring that all passengers, regardless of their personal situations and needs, are treated equally and with the dignity, respect, and courtesy they deserve. Although every person and item must be screened before entering each sterile area, it is the manner in which the screening is conducted that is most important.

In order to achieve that goal, TSA has established a program for screening of persons with disabilities and their associated equipment, mobility aids, and devices. Our program covers all categories of disabilities (mobility, hearing, visual, and hidden). As part of that program, we established a coalition of over 60 disability-related groups and organizations to help us understand the concerns of persons with disabilities and medical conditions. These groups have assisted TSA with integrating the unique needs of persons with disabilities into our airport operations.

The purpose of this advisement is to provide those with disabilities and medical conditions with changes related to the ban on liquids, aerosols, and gels effective Tuesday, September 26.

Since the initial total ban on liquids, gels and aerosols took effect on August 10, we have learned enough from the UK investigation to say with confidence that small, travel size liquids are safe to bring through security checkpoints in limited numbers. We are confident in our increased security measures throughout the airport. Therefore,

passengers can purchase drinks in the secure boarding area and bring them aboard their flights.

The US and UK have continued to work closely together and have shared technical and threat information with partners in Canada and the European Union. These measures are being simultaneously adopted in partnership with the Canadian government, and the EU is also considering these measures.

The needs for the changes are to support the sustainability of the security system. We are working with the airlines and airports to make these changes. The aviation sector continues to operate at Homeland Security threat level Orange or high and will remain so for the foreseeable future. It is unlikely that further adjustments to the ban on liquids, gels and aerosols will be made in the near future.

There are two changes: we are adjusting the current ban on liquids, aerosols and gels to allow travelers to carry **travel-size toiletries (3 ounce or less) in ONE, QUART-SIZE, clear plastic, sealable bag** through security checkpoints. In addition, travelers can now bring beverages and other items purchased in the secure boarding area on-board the aircraft.

We are continuing to permit prescription liquid medications and other liquids needed by persons with disabilities and medical conditions. This includes:

- all prescription and over-the-counter medications (liquid, gel, and aerosol), including KY jelly, eye drops, and saline solution for medicinal purposes;
- liquids (to include water, juice, or liquid nutrition) or gels for passengers with a disability or medical condition;
- life support and life sustaining liquids (bone marrow, blood products, transplant organs);
- items used to augment the body for medical or cosmetic reasons (e.g. mastectomy products, prosthetic breasts, bras or shells) containing gels, saline solution, or other liquids; and
- gels or frozen liquids needed to cool disability or medically related items used by persons with disabilities or medical conditions.

Passengers with disabilities and medical conditions can choose to put their small bottles/items of liquid medication in the one quart sealable bag (mixed with toiletries) without the need to declare these items. However, if the liquid medications are in volumes larger than 3 ozs each, they may not be placed in the quart-size bag and must be declared to a Transportation Security Officer. A declaration can be made verbally, in writing, or by a person's companion, caregiver, interpreter, or family member. Declared liquid medications and other liquids for disabilities and medical conditions must be kept separate from all other property submitted for x-ray screening.

It is recommended (not required) that passengers bring along any supporting documentation (ID cards, letter from doctor, etc.) regarding their medication needs. It is recommended, not required, that the label on prescription medications match the passengers boarding pass. If the name on prescription medication label does not match

the name of the passenger, the passenger should expect to explain why to the security officers. To ensure a smooth screening process, passengers are encouraged to limit quantities to what is needed for the duration of the flight.

Passengers will still be required to remove their shoes as part of the screening process, however, persons with disabilities, medical conditions, and prosthetic devices **DO NOT** have to remove their shoes. Those who keep their shoes on will be subjected to additional screening that includes a visual/physical and explosive trace detection sampling of their footwear while the footwear remains on their feet.

Lastly, TSA's checkpoint security screening procedures for persons with disabilities and medical conditions have not changed as a result of the current threat situation. All disability-related equipment, aids, and devices continue to be allowed through security checkpoints once cleared through screening.

Disability and medically related items permitted beyond the checkpoint include: wheelchairs; scooters; crutches; canes; walkers; prosthetic devices; casts; support braces; support appliances; service animals; any and all diabetes related medication, equipment, and supplies; orthopedic shoes; exterior medical devices; assistive/adaptive equipment; augmentation devices; ostomy supplies; medications and associated supplies; hearing aids; cochlear implants; tools for wheelchair disassembly/reassembly; personal supplemental oxygen; CPAP machines; respirators; CO2 personal oxygen concentrators; baby apnea monitors; Braille note takers; slate and stylus; tools for prosthetic devices; and any other disability-related equipment and associated supplies.

For additional information on transportation security:

Overall guidance to travelers with disabilities is located on the web site of the Department of Homeland Security's Transportation Security Administration at: <http://www.tsa.gov>. This guidance includes disability/medical conditions specific tips.

If you have additional concerns or questions you can also contact TSA's Call Center at 1-866-289-9673 or by email at tsa-contactcenter@dhs.gov

For concerns about potential civil rights violations, you can contact TSA's Office of Civil Rights at 1-877-336-4872, TTY 800-877-8339 or by email at tsa-contactcenter@dhs.gov

Warmly,



Sandra Cammaroto

Exhibit C - <http://www.tsa.gov/traveler-information/medically-necessary-liquids>

Medically Necessary Liquids

Travelers with Disabilities and Medical Conditions

□

Medically necessary liquids are allowed through a checkpoint in any amount once they have been screened. However, it is recommended that passengers limit the amount of liquid to what is reasonably necessary for his or her flight. Passengers should inform an officer if a liquid or gel is medically necessary and separate it from other belongings before screening begins.

Liquids, gels, and aerosols are screened by X-ray and medically necessary items in excess of 3.4 ounces will receive additional screening. A passenger could be asked to open the liquid or gel for additional screening. TSA will not touch the liquid or gel during this process. If the passenger does not want a liquid, gel, or aerosol X-rayed or opened for additional screening, he or she should inform the officer before screening begins. Additional screening of the passenger and his or her property may be required, which may include a patdown.

Accessories required to keep medically necessary liquids, gels, and aerosols cool - such as freezer packs or frozen gel packs - are permitted through the screening checkpoint and may be subject to additional screening. These accessories are treated as liquids unless they are frozen solid at the checkpoint. If these accessories are partially frozen or slushy, they are subject to the same screening as other liquids and gels.

Supplies that are associated with medically necessary liquids and gels - such as IV bags, pumps and syringes - are allowed through a checkpoint once they have been screened by X-ray or inspection. The passenger should declare these items to an officer and separate them from other belongings for screening.

Substantive claims

This complaint is written informally and without the assistance of counsel. The claims and reliefs sought here, and the legal justifications presented for them, are by no means exhaustive, and I reserve the right to make changes or additions.

1. The TSA agents conducted an illegal search by demanding private medical information. The TSA's current medical liquids policy is *prima facie* unconstitutional.

The TSA's current policy regarding liquids is, in essence, that any amount of non-flammable liquids are permitted, so long as either

1. it is packaged in 3 ounce bottles or smaller, or
2. a traveler declares it as a "medical liquid".

In declaring an item medical, the TSA says that it is "recommended (not required) that passengers bring along any supporting documentation (ID cards, letter from doctor, etc.) regarding their medication needs. It is recommended, not required, that the label on prescription medications match the passengers boarding pass. If the name on prescription medication label does not match the name of the passenger, the passenger should expect to explain why to the security officers. To ensure a smooth screening process, passengers are encouraged to limit quantities to what is needed for the duration of the flight."

In this "recommended but not required" language, the TSA is attempting to skirt clear judicial precedent⁷ that

⁷ 4th amendment - "The right of the people to be secure in their persons, ... papers, and effects, against unreasonable searches and seizures, shall not be violated..."

United States v. Davis, 482 F. 2d 893 - Court of Appeals, 9th Circuit 1973, "[A] screening of passengers and of the articles that will be accessible to them in flight does not exceed constitutional limitations provided that the screening process is no more extensive nor intensive than necessary, in the light of current technology, to detect the presence of weapons or explosives, that it is confined in good faith to that purpose, and that potential passengers may avoid the search by electing not to fly."

US v. Fofana, 620 F. Supp. 2d 857 - Dist. Court, SD Ohio 2009, quoting US v. Aukai, 497 F. 3d 955 - Court of Appeals, 9th Circuit 2007 quoting Davis as above, as well as stating: "The case law dealing with airport checkpoint searches teaches that a checkpoint search tainted by 'general law enforcement objectives' such as uncovering contraband evidencing general criminal activity is improper... That conclusion is further supported by the Supreme Court's repeated instruction that administrative searches may not be justified by a desire to detect "evidence of ordinary criminal wrongdoing... It is equally conceivable to the Court that a combination of x-ray screening and external manipulation would be sufficient to exclude the presence of weapons or explosives."

United States v. Place, 462 US 696 - Supreme Court 1983, "We have affirmed that a person possesses a privacy interest in the contents of personal luggage that is protected by the Fourth Amendment."

Bivens v. Six Unknown Fed. Narcotics Agents, 403 US 388 - Supreme Court 1971 "the Fourth Amendment operates as a limitation upon the exercise of federal power regardless of whether the State in whose jurisdiction that power is exercised would prohibit or penalize the identical act if engaged in by a private citizen. It guarantees to citizens of the United States the absolute right to be free from unreasonable searches and seizures carried out by virtue of federal authority. And where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.'... That damages may be obtained for injuries consequent upon a violation of the Fourth Amendment by federal officials should hardly seem a surprising proposition. ... Having concluded that petitioner's complaint states a cause of action under the Fourth Amendment ... we hold that petitioner is entitled to recover money damages for any injuries he has suffered as a result of the agents' violation of the Amendment."

prohibits them from conducting any search — which includes questioning — that is not very narrowly tailored to the detection of weapons and explosives.

However, the current policy does not do so, neither in theory nor in practice. Instead, it implicitly encourages TSA agents to violate the law by demanding "recommended but not required" private medical information.

This search is not motivated by any reasonably tailored security need. The TSA is completely capable of screening liquids by x-ray and explosive trace detection (ETD). Any further search⁸, such as questioning of travelers as to their medical issues (or even requiring disabled travelers to "out" themselves in order to be permitted to travel with medical liquids), is illegal⁹.

The TSA is strictly limited to the discovery of weapons and explosives — physical items — through the most minimally intrusive possible means. The fact that liquids can be cleared by x-ray and ETD should completely foreclose any further search, "recommended" demand for documentation, etc.

It is irrational to claim a liquid could be safe if transported in e.g. 8 separate 3 ounce bottles, along with an empty 24 ounce bottle (as is currently permitted by TSA policy of all travelers), but unsafe if transported in a single 24 ounce bottle (which is currently forbidden unless declared as a medical liquid). Either the liquid is safe or not; the current container's size and the liquid's medical utility are simply not relevant, and any requirement based on this is not rationally related to a legitimate state interest in aviation security.

Accordingly, this unconstitutional requirement should be struck down.

In its place, the TSA should have a uniform policy of routinely testing any liquids over a certain total volume (perhaps 1 quart, as with their current rule), without requiring or *pressuring* travelers to disclose any medical information whatsoever. This includes a mere disclosure that a passenger requires medical liquids, which singles out disabled travelers for unequal treatment, embarrassment, and emotional distress.

With such a policy, travelers would be free to decide whether the inconvenience of a small amount of extra screening time is worth having their liquids — without being required to suffer an intrusion into their privacy by TSA screeners, and without unlawfully forbidding *any* traveler, disabled or not, from traveling with liquids that are not "weapons or explosives".

This is illegal under 5 USC §§ 702 & 706, as an unlawful exercise of agency authority violating the 4th Amendment.

2. The TSA agents willfully refused to obey *current* TSA policy and other law mandating that they accommodate my disability.

Current TSA policy clearly states that medical liquids are permitted in any amount, and that no documentation

⁸ See e.g. *Fofana*, which specifically dealt with this kind of situation.

⁹ *Florida v. Bostick*, 501 US 429 - Supreme Court 1991 "We have consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure... Citizens do not forfeit their constitutional rights when they are coerced to comply with a request that they would prefer to refuse."

US v. Fuentes, 105 F. 3d 487 - Court of Appeals, 9th Circuit 1997 "Mere refusal to consent to a stop or search does not give rise to reasonable suspicion or probable cause. People do not have to voluntarily give up their privacy or freedom of movement, on pain of justifying forcible deprivation of those same liberties if they refuse."

US v. Freeman, 479 F. 3d 743 - Court of Appeals, 10th Circuit 2007 "Refusal to consent to a search—even agitated refusal—is not grounds for reasonable suspicion."

from passengers whatsoever is required; only that passengers are required to declare an item as a medical liquid, which I did.

TSA agents, in turn, can screen declared medical liquids using the process the TSA calls "Liquid Container Screening" (LCS), which can be done using a combination of devices such as x-ray, ETD, and specialized LCS devices.

Despite that TSM Smith explicitly acknowledged this policy, and even that the necessary testing was performed, he willfully refused to obey it, unlawfully seizing my medical liquids and invading my privacy.

Furthermore, it is an insult to the most basic common sense to suggest that a liquid that I am asking to *drink* could possibly be a "weapon or explosive". Although I cannot be *required* to drink from it to prove that it is not a weapon or explosive, drinking from it *does* prove that it is not one.

The TSA agents' repeatedly preventing me from drinking from my open bottle of medical liquid constituted an actual harm to me that could not possibly have been motivated by any legitimate governmental interest.

This happened even though the agents were personally informed that I needed constant access to my medical liquids and were employed in a position federally mandated to be aware of disability needs.

This is illegal under the Americans with Disabilities Act¹⁰, the Rehabilitation Act of 1973¹¹, California disability

¹⁰ Americans with Disabilities Act, 28 CFR § 35

28 CFR § 35.160 "General.

(a)(1) A public entity shall take appropriate steps to ensure that communications with ... members of the public ... with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including ... members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

(2) The type of auxiliary aid or service necessary to ensure effective communication will vary ... In determining what ... aids ... are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective ... aids ... must be provided ... in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability."

28 CFR § 35.130 "General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. ...

(b)(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. ...

(g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association."

28 CFR § 35.134 "Retaliation or coercion.

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part."

28 CFR § 35.149 "Discrimination prohibited.

Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the

law, 4th Amendment, 42 USC § 1983, and 18 USC §§ 241-242¹².

3. The duration of this ordeal was longer than is reasonably acceptable for a routine administrative airport search, and constituted illegal detention and seizure by the TSA agents.¹³

The TSA agents were clearly detaining me, by preventing me, under color of law, from leaving or continuing on

services, programs, or activities of a public entity, or be subjected to discrimination by any public entity."

¹¹ 45 CFR 84.4 "Discrimination prohibited

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) Discriminatory actions prohibited.

(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

- (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others; ... or
- (vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. ...

(3) Despite the existence of separate or different aids, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aids, benefits, or services that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons. ...

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance..."

29 USC § 794 "Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705 (20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency..."

¹² 18 USC § 241 "Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person ... in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same ... They shall be fined under this title or imprisoned not more than ten years, or both..."

18 USC § 242 "Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person ... to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States ... shall be fined under this title or imprisoned not more than one year, or both..."

¹³ United States v. Place, 462 US 696 - Supreme Court 1983 "we have never approved a seizure of the person for the prolonged 90-minute period involved here and cannot do so on the facts presented by this case"

my flight with my medical liquids until they finished their impermissibly extensive and intensive search of my medical necessity. In doing so, the agents had no reasonable suspicion, let alone probable cause, of any crime whatsoever, and were clearly seizing my medical liquids — and by extension, my person.

The agents repeatedly refused to continue my screening in a prompt fashion, despite the fact that they could easily have screened my items, and were repeatedly asked to do so.

Courts have long upheld the notion that administrative searches are very limited in their permitted duration. This event far exceeded the minimum time necessary to conduct a *Davis*-permitted administrative search.

4. The TSA agents violated clearly established law as well as TSA policy¹⁴ and had an elevated responsibility to know all such policies¹⁵, and as such, are not entitled to any qualified immunity.

¹⁴ See all of the above mentioned clearly established law, as well as [TSA Management Directive 100.4, revised 24 September 2007](#):

§6.A.4 "Screening may not be conducted to detect evidence of crimes unrelated to transportation security."

§6.B.2 "All administrative or special needs searches are to be tailored to the transportation security purpose for which they are conducted. These searches should be designed to be minimally intrusive, in that they should be no more intensive or extensive than reasonably necessary to detect threat items, to prevent persons who may pose a threat to transportation security from entering the transportation system, or to determine compliance with TSA standards, regulations and applicable laws." (Quoting the *Davis* standard.)

§6.B.4 "All administrative or special needs searches should be conducted according to established procedures to ensure that the searches will be confined in good faith to their intended purpose..."

§6.D.3 "The only TSA personnel who should engage in law enforcement activities are TSA law enforcement officers..."

Furthermore, note that the above revision of TSA MD 100.4 was the result of settlement after a lawsuit by the ACLU for the TSA's violation of a traveler's 4th amendment rights (in *Bierfeldt v Napolitano*). The repetition of this violation demonstrates a willful or negligent failure by the TSA to actually cure the issues that led to that settlement.

¹⁵ [TSA Screening Management SOP, rev. 3 \(June 2008\)](#) "2.4. SUPERVISORY TRANSPORTATION SECURITY OFFICER (STSO) DUTIES

A. The STSO is responsible for implementing the uniform performance standards for security screening services set forth in this SOP, and the Screening Checkpoint and Checked Baggage Screening SOPs at all screening locations. STSOs must be knowledgeable in all the screening functions they supervise....

C. The STSO must:...

2) Observe TSOs, when staffing and workload permit, to ensure compliance with the Screening Checkpoint and Checked Baggage Screening SOPs.

3) Ensure the proper use of all screening equipment....

5) Conduct daily briefings and instruct TSOs on current requirements....

6) Ensure the SOP and other required documents are accessible to TSOs for their review....

8) Make every effort to ensure that TSOs are knowledgeable of all SOPs....

9) Allow TSOs to review the SOPs.

10) Ensure that TSOs are fit for duty in accordance with TSA Management Directive 1100.73-5, Employee Responsibilities and Conduct....

19) Represent TSA in handling complaints, respond to TSA security reviews, and immediately notify TSA management about incidents.

20) Provide a written summary of any incident to TSA management as soon as possible, but not to exceed 24 hours after the incident or as directed by the FSD.

21) Make every effort to resolve problems or conflicts and monitor individuals when appropriate, without using physical restraint and without jeopardizing the safety of the STSO, TSOs, the individual, or others....

37) Ensure chairs are available at checkpoints to accommodate Persons With disabilities (PWDs) before, during, and after

All TSA agents involved (except one) were supervisors, managers, or senior administrators — had a positive obligation not merely to know but to *teach* TSA policy, and thus any failure to follow its restrictions must be presumed either negligent or malicious.¹⁶

5. The TSA as an agency had an obligation to prevent and cure such incidents, and failed to do so.

The TSA agents, being supervisors (STSOs, managers, and deputy director), were in a position of responsibility for training and educating other agents in proper procedure and respect for civil liberties and disabilities. The TSA in turn is responsible for their behavior, even (perhaps *especially*) when that behavior violates the TSA's policies.

If the TSA claims in a memorandum to have one policy, but *de facto* operates in a completely different fashion through its senior agents, the TSA must be judged and held accountable for its *actual* operations.

6. The TSA is equally liable for its agents' actions, including those employed by Covenant.

This principle of agency liability is so well established under common law that it does not need citation — especially when it comes to the actions of high ranking supervisors and administrators. This responsibility is not limited because the agents disobeyed agency directives or acted illegally, nor is it limited because some of the agents were employees of Covenant; those employees are clearly acting as direct agents of the TSA, and as such, have all the duties and responsibilities thereof.

7. I have the right to prosecute these offenses.¹⁷

the screening process.

38) Ensure that the screening of all individuals is conducted without regard to a person's race, color, national origin, gender, disability, religion, parental status, or sexual orientation.

41) Ensure TSOs provide... their TSA nametag information when an individual requests a TSO's personal information during, or as a result of, the screening process."

¹⁶ Harlow v. Fitzgerald, 457 US 800 - Supreme Court 1982 "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate "clearly established" statutory or constitutional rights of which a reasonable person would have known... If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct."

¹⁷ See above, and also:

42 USC § 1983 "Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

5 USC § 702 "Right of Review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance."

5 USC § 706 "Scope of review

These offenses are prosecutable in California state and federal court, both in civil and criminal prosecution, against both the TSA itself and the individual TSA agents involved.

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

"28 CFR § 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State."

Relief sought

1. Two 50.7 ounce bottles of aloe juice, to replace those that were unlawfully seized.
2. Damages¹⁸ for the agents' intentional and negligent infliction of emotional distress on me.
3. Damages for the agents' repeated violation of my civil rights.
4. The above damages to be borne in part personally by the TSA agents involved, at a level sufficient to constitute both a strong punishment to them and a strong deterrent to other TSA agents who may think themselves free to engage in such illegal activity because of agency protection.
5. Immediate, formal, public disciplinary action against all TSA agents involved, *especially* DFSD Davis, TSM Smith, and ATM Champagne (at whose direction the other TSA agents acted).
6. A public apology both from the SFO Federal Security Director as well as from national TSA representatives, detailing and enacting an effective plan to change the manner in which TSA agents are trained; to ensure that agents do not violate civil liberties or disabilities rights; to ensure that those who do so are effectively retrained, punished, and/or fired; to ensure that victims of such violations are immediately and proactively compensated by the TSA without their having to exercise the privilege and effort that I have done in pursuing this matter; and to ensure that the TSA is held externally accountable for doing all of the above.

Another mere TSA memorandum of policy will not be sufficient to meet this relief, given the TSA's repeatedly demonstrated failure to actually enforce such memoranda.

7. Injunction against the TSA providing that any repeated offense of a similar nature against any person by any TSA agent, or any retaliatory action against me, will be treated with extra scrutiny and punishment.
8. An order requiring the TSA to notify any person who complains about similar offenses of the existence and content of the above injunction.
9. Recovery of all attorney's fees, costs, etc.¹⁹
10. Repeal of the TSA's current policy requiring disabled travelers with medical liquids to out themselves and forbidding travelers with safe, screenable, "non-medical" liquids from traveling with those liquids — to be replaced with a uniform policy of testing liquids over a given total volume, without any intrusive questions.

¹⁸ actual, punitive, statutory, etc., as applicable

¹⁹ 42 USC § 1988 "(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title ... [or] title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] ... the court, in its discretion, may allow the prevailing party ... a reasonable attorney's fee as part of the costs...

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee."

45 CFR 84.61 "Procedures

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part."

29 USC § 794a - "Remedies and attorney fees

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

Hollenbach, Zachary

From: Hollenbach, Zachary
Sent: Thursday, May 02, 2013 9:52 AM
To: Adams, James W. (James.Adams@tsa.dhs.gov); Sprouse, Kevin (Kevin.Sprouse@tsa.dhs.gov); Quioco, Gene R.; Jackson, Stephanie <TSA_OCC>
Subject: FW: Claims for damages arising from SFO medical liquids incident
Attachments: Sai's complaint against SFO TSA agents for violation of disabilities law.pdf

Please see attached document.

Thank you
Zachary Hollenbach
SFO - TSA
650-339-9298

-----Original Message-----

From: Nancy Coliz [<mailto:nancy.coliz@covenantsecurity.com>]
Sent: Thursday, May 02, 2013 9:34 AM
To: Hollenbach, Zachary
Cc: audrey.deane@covenantsecurity.com
Subject: FW: Claims for damages arising from SFO medical liquids incident

Per your conversation with Audrey.

-----Original Message-----

From: saizai@gmail.com [<mailto:saizai@gmail.com>] On Behalf Of Sai
Sent: Wednesday, May 01, 2013 7:31 PM
To: tsaclaimsoffice@dhs.gov; claims@covenantsecurity.com
Cc: TSA.ODPO
Subject: Claims for damages arising from SFO medical liquids incident

Please see attached.

Note that the last page has a list of relief sought. This includes:

- * two 1.5 liter ounce bottles of aloe juice
- * damages for intentional and negligent infliction of emotional distress by TSA agents (both Covenant employees and direct TSA employees)
- * damages under §1983 / Bivens for violations of my civil rights
- * legal costs and fees

Please note also that this incident is simultaneously being reviewed by the TSA ODPO for issues under §504 of the Rehabilitation Act of 1973.

- Sai

Hollenbach, Zachary

From: Hollenbach, Zachary
Sent: Thursday, May 02, 2013 9:58 AM
To: Bromer, Zachary
Subject: FW: Claims for damages arising from SFO medical liquids incident
Attachments: Sai's complaint against SFO TSA agents for violation of disabilities law.pdf

Importance: High

Here is the latest email we received concerning the passenger noted in the attachment.

Thank you
Zachary Hollenbach
SFO - TSA
650-339-9298

-----Original Message-----

From: Nancy Coliz [<mailto:nancy.coliz@covenantsecurity.com>]
Sent: Thursday, May 02, 2013 9:34 AM
To: Hollenbach, Zachary
Cc: audrey.deane@covenantsecurity.com
Subject: FW: Claims for damages arising from SFO medical liquids incident

Per your conversation with Audrey.

-----Original Message-----

From: saizai@gmail.com [<mailto:saizai@gmail.com>] On Behalf Of Sai
Sent: Wednesday, May 01, 2013 7:31 PM
To: tsaclaimsoffice@dhs.gov; claims@covenantsecurity.com
Cc: TSA.ODPO
Subject: Claims for damages arising from SFO medical liquids incident

Please see attached.

Note that the last page has a list of relief sought. This includes:

- * two 1.5 liter ounce bottles of aloe juice
- * damages for intentional and negligent infliction of emotional distress by TSA agents (both Covenant employees and direct TSA employees)
- * damages under §1983 / Bivens for violations of my civil rights
- * legal costs and fees

Please note also that this incident is simultaneously being reviewed by the TSA ODPO for issues under §504 of the Rehabilitation Act of 1973.

- Sai

Hollenbach, Zachary

From: Nancy Coliz <nancy.coliz@covenantsecurity.com>
Sent: Thursday, May 02, 2013 9:34 AM
To: Hollenbach, Zachary
Cc: audrey.deane@covenantsecurity.com
Subject: FW: Claims for damages arising from SFO medical liquids incident
Attachments: Sai's complaint against SFO TSA agents for violation of disabilities law.pdf

Per your conversation with Audrey.

-----Original Message-----

From: saizai@gmail.com [mailto:saizai@gmail.com] On Behalf Of Sai
Sent: Wednesday, May 01, 2013 7:31 PM
To: tsaclaimsoffice@dhs.gov; claims@covenantsecurity.com
Cc: TSA.ODPO
Subject: Claims for damages arising from SFO medical liquids incident

Please see attached.

Note that the last page has a list of relief sought. This includes:

- * two 1.5 liter ounce bottles of aloe juice
- * damages for intentional and negligent infliction of emotional distress by TSA agents (both Covenant employees and direct TSA employees)
- * damages under §1983 / Bivens for violations of my civil rights
- * legal costs and fees

Please note also that this incident is simultaneously being reviewed by the TSA ODPO for issues under §504 of the Rehabilitation Act of 1973.

- Sai

Hollenbach, Zachary

From: Jackson, Stephanie <TSA OCC>
Sent: Friday, May 17, 2013 10:28 AM
To: Quioco, Gene R. ; Barber, Brett <TSA OCC>
Cc: Sprouse, Kevin; Hollenbach, Zachary
Subject: RE: SAI Request

Brett,

We no longer have any copies of the CCTV footage; all copies have been sent to various TSA program offices. It is my understanding we sent a copy of the CCTV footage to Zachary Bromer at HQ. Perhaps you can reach out to Mr. Bromer to get a copy of the footage?

Stephanie M. Jackson

Assistant Chief Counsel Field Transportation Security
San Francisco (SFO, OAK, SJC, SMF, FAMS/SFFO, OOI)
700 Airport Blvd., Suite 200
Burlingame, CA 94010
650.581-2398 (desk)
202.744-5471 (cell)
650.558-1783 (fax)

Attorney Client Privileged/Attorney Work Product

Receipt of this information by other than the intended recipient does not constitute a waiver of this privilege. Do not release under FOIA or otherwise disseminate without prior approval of OCC. This communication might contain communications between attorney and client, communications that are part of the Agency deliberative process, or attorney work product, all of which are privileged and not subject to disclosure outside of the Agency or to the public. Please consult with OCC before disclosing any information contained in this email.

From: Quioco, Gene R.
Sent: Friday, May 17, 2013 8:11 AM
To: Jackson, Stephanie <TSA OCC>
Cc: Sprouse, Kevin; Hollenbach, Zachary
Subject: FW: SAI Request

Here is what we have in regards to SAI.

Gene R. Quioco Jr

San Francisco Int'l Airport
Dept. of Homeland Security
Deputy AFSD-Screening
gene.quioco@dhs.gov

From: Quioco, Gene R.
Sent: Monday, April 22, 2013 7:42 AM
To: Bromer, Zachary
Subject: FW: SAI Request

FYSA

Gene R. Quioco Jr
San Francisco Int'l Airport
Dept. of Homeland Security
Deputy AFSD-Screening
gene.quioco@dhs.gov

From: Quioco, Gene R.
Sent: Friday, April 19, 2013 12:53 PM
To: Lucas, Erika
Subject: RE: SAI Request

Okay Erika, attached are all the statements. Please email me the address you would like us to send the CCTV video to and I'll send that to you Monday April 22, 2013. Please use the previous TSA national password to open the documents.

Gene R. Quioco Jr
San Francisco Int'l Airport
Dept. of Homeland Security
Deputy AFSD-Screening
gene.quioco@dhs.gov

From: Lucas, Erika
Sent: Friday, April 19, 2013 11:11 AM
To: Quioco, Gene R.
Subject: RE: SAI Request

Hi Gene,

I need all of the witness statements and the video that you have available. How soon can I get this information?

Erika

From: Quioco, Gene R.
Sent: Thursday, April 18, 2013 6:24 PM
To: Lucas, Erika
Subject: SAI Request

Hello Erika, I'm writing you to touch bases and see how I can assist you with obtaining the statements/records you are requesting. Have you spoken to anyone from TSA/SFO on this matter? Has anyone sent you anything from TSA/SFO or HQ? I'll be in tomorrow at 0800 PDT. and would be glad to assist in any way.

Gene R. Quioco Jr
San Francisco Int'l Airport
Dept. of Homeland Security
Deputy AFSD-Screening
gene.quioco@dhs.gov

Gutkovsky, Kavita

From: Bromer, Zachary
Sent: Monday, September 16, 2013 10:49 AM
To: Gutkovsky, Kavita
Cc: Quioco, Gene R. ; Hollenbach, Zachary
Subject: RE: Sai update

Thanks for the information. Do you have any further specifics, such as what exactly the training included, when it was conducted, how it was conducted, etc.? Any additional information would be helpful. Thanks.

Zach Bromer

From: Gutkovsky, Kavita
Sent: Monday, September 16, 2013 1:46 PM
To: Bromer, Zachary
Cc: Quioco, Gene R. ; Hollenbach, Zachary
Subject: FW: Sai update

Good morning, please see below.

From: Hollenbach, Zachary
Sent: Friday, September 13, 2013 8:30 AM
To: Gutkovsky, Kavita; Quioco, Gene R.
Subject: Re: Sai update

Training was provided to the entire workforce on how to screen medical liquids. This included Covenant Aviation Security officers on the checkpoint all the way up to TSA screening managers.

From: Gutkovsky, Kavita
Sent: Monday, September 09, 2013 10:13 AM
To: Hollenbach, Zachary ; Quioco, Gene R.
Subject: FW: Sai update

Please see below question and let me know what the response is. I am not fully aware of this matter.

Thanks,
Kavita

From: Bromer, Zachary
Sent: Friday, September 06, 2013 11:35 AM
To: Gutkovsky, Kavita
Subject: Sai update

Kavita,

I am writing in regards to the complaint made by Sai about his screening experience at SFO on March 1. I have previously emailed with Gene Quioco, Sylvia Hernandez, and Zachary Hollenbach about his complaint, but I do not think I've discussed it with you.

Requested by Zach Bromer

Gutkovsky, Kavita

From: Araujo, Jose L
Sent: Monday, September 16, 2013 12:03 PM
To: Hollenbach, Zachary
Subject: FW: Medically Exempt Scenarios

From: Foster, Susie
Sent: Friday, April 05, 2013 1:25 PM
To: sfocoordinationcenter@dhs.gov; Araujo, Jose L ; Bigelow, Gina ; Smith2, David; Erickson, Rebecca; Gutierrez, Silvia; Gutkovsky, Kavita; Hollenbach, Zachary ; Kremka, Anthony; Lee, Peter V; Loew, John; Padilla, Griselda; Quiocho, Gene R. ; Rodriguez, Hector; Rogers O, Tristan; Rogge, Dave; Rossi, Anthony M; Sakamoto, Alan; Armstrong, Richard H; Baker, Douglas; Cross, Joseph; Delfino, Andrew; Hamilton, Brian ; Hickman, Kelly; Hietala, Martin; Powell, Jim; Thomas, Timothy N. ; Wilson, Timothy
Cc: Adams, James W.; Sprouse, Kevin; Daigle, Claudia; Quiocho, Gene R.
Subject: Medically Exempt Scenarios



Document1
[Compatibility ...]

Hello all, I have enclosed 3 scenarios that deal with "Medically Exempt Liquids" Please read them if you have any questions please come and see me. For the Screening Operations personnel we will get together and discuss these as a group. Also as you go out on the floor, talk to your Supervisors to ensure they are also aware of these scenarios. This will also be sent to CAS and included in the National Shift Brief.



Susie J. Foster | Training Manager | U.S. Department of Homeland Security |

Transportation Security Administration | San Francisco International Airport (SFO) | BB 650.400.1436 | susie.foster@dhs.gov

"The doors we open and close each day decide the lives we live."

Gutkovsky, Kavita

From: Bromer, Zachary
Sent: Wednesday, September 18, 2013 8:27 AM
To: Gutkovsky, Kavita
Subject: RE: Sai update

Thanks, Kavita. This is helpful.

Zach

From: Gutkovsky, Kavita
Sent: Monday, September 16, 2013 4:42 PM
To: Bromer, Zachary
Subject: FW: Sai update

Please see attached.

From: Hollenbach, Zachary
Sent: Monday, September 16, 2013 12:05 PM
To: Gutkovsky, Kavita; Quiócho, Gene R. ; 'Susie Foster'
Subject: RE: Sai update

See the attached email.

Scenarios sent out to TSMs, discussions during meetings, addition to National Shift Brief for the CAS TSOs.

From: Gutkovsky, Kavita
Sent: Monday, September 16, 2013 10:52 AM
To: Hollenbach, Zachary ; Quiócho, Gene R. ; 'Susie Foster'
Subject: FW: Sai update

Do you guys know?

From: Bromer, Zachary
Sent: Monday, September 16, 2013 10:49 AM
To: Gutkovsky, Kavita
Cc: Quiócho, Gene R. ; Hollenbach, Zachary
Subject: RE: Sai update

Thanks for the information. Do you have any further specifics, such as what exactly the training included, when it was conducted, how it was conducted, etc.? Any additional information would be helpful. Thanks.

Zach Bromer

From: Gutkovsky, Kavita
Sent: Monday, September 16, 2013 1:46 PM
To: Bromer, Zachary

Cc: Quioco, Gene R. ; Hollenbach, Zachary
Subject: FW: Sai update

Good morning, please see below.

From: Hollenbach, Zachary
Sent: Friday, September 13, 2013 8:30 AM
To: Gutkovsky, Kavita; Quioco, Gene R.
Subject: Re: Sai update

Training was provided to the entire workforce on how to screen medical liquids. This included Covenant Aviation Security officers on the checkpoint all the way up to TSA screening managers.

From: Gutkovsky, Kavita
Sent: Monday, September 09, 2013 10:13 AM
To: Hollenbach, Zachary ; Quioco, Gene R.
Subject: FW: Sai update

Please see below question and let me know what the response is. I am not fully aware of this matter.

Thanks,
Kavita

From: Bromer, Zachary
Sent: Friday, September 06, 2013 11:35 AM
To: Gutkovsky, Kavita
Subject: Sai update

Kavita,

I am writing in regards to the complaint made by Sai about his screening experience at SFO on March 1. I have previously emailed with Gene Quioco, Sylvia Hernandez, and Zachary Hollenbach about his complaint, but I do not think I've discussed it with you.

The Disability Branch is finalizing a formal response to Sai. We would like to include information about any measures that TSA has taken at SFO in response to his complaint. Can you please let me know what, if any, actions have been taken? If you'd like to discuss it further, I'd be happy to speak with you on the phone.

Thanks.

Zach Bromer
Disability Branch
Transportation Security Administration
(571) 227-3856