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May 6, 2013

Transportation Security Administration
Sarah Dietch, Assistant Administrator
Office of Legislative Affairs
East Tower, Floor 11, TSA-5
601 South Twelfth Street
Arlington, VA 20598-6001

Ms. Dietch:

Thank you for your assistance in this matter. I am writing on behalf of my constituent, Sai, regarding his experience with Transportation Security Administration (TSA) officials.

Sai, a disabled traveler with episodic mutism, states that he has been subjected to repeated violations of his rights as a result of airport security staff not upholding TSA policies and United States law.

At San Francisco International Airport, my constituent claims that TSA officials refused to allow him to travel with medical liquids that had been tested clean by x-ray and explosive trace detection, citing the confiscation of juice as the primary infraction under the TSA's "Special Needs Memo" issued in September of 2006, which is listed as permissible in any amount on TSA's website:

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

It is my understanding that Sai addressed this matter by e-mail with the TSA on April 11th, 2013. The TSA has declined to resolve his complaint informally, and has initiated the formal resolution process. My office is respectfully asking the TSA to review Sai's concern and provide a response to my office when it is complete.

Thank you for your attention and assistance. Please contact Alex Lazar in my San Francisco district office at (415) 556-4862 if you have any questions.

Sincerely,



NANCY PELOSI
Member of Congress

NP: al
ENCL: Sai docs

U.S. Representative Nancy Pelosi
Attention: Constituent Services
235 90 7th Street, Suite 2-800
San Francisco, California 94103
Fax: (202) 225-8259

U.S. Senator Barbara Boxer
Attention: Casework Department
70 Washington Street, Suite 203
Oakland, California 94607
Fax: 202.228.6866

Dear Senator Boxer and Congresswoman Pelosi —

I am one of your constituents.

I have a rare neurological disorder which causes episodic mutism and serious muscle spasms (e.g. fairly painful sudden neck twisting jerks called "spasmodic torticollis"). Normally, this disability is not that much of an issue; I have ways to lessen its impact, and people around me work with me on alternative means of communication when I can't speak. Unfortunately, I recently have had multiple cases of abuse from the Transportation Security Administration, with which I would like your help.

I authorize you and your staff to access any and all of my records that relate to this problem, per Public Law 93-579 (Privacy Act of 1974).

Details are attached, but to summarize:

1. Boston Logan TSA conducted an illegal search of my xray-cleared documents (probably motivated either by my opting out or by my use of sign language to communicate), refused to give me access to pen and paper that I needed to communicate in a way they would understand, *took away* my pen and paper in direct retaliation for my using it to quote *US v Davis* and protest their illegal search (thereby *literally* depriving me of speech), and illegally detained me for about an hour on spurious, law enforcement motivated grounds¹.
2. San Francisco International TSA illegally refused to allow me to travel with medical liquids which had been tested clean by x-ray & explosive trace detection, and illegally detained me for about 50 minutes while dragging their heels on conducting screening that they are required to do by law and by TSA policy. This directly involved the most senior TSA officials at the airport, and the official on scene specifically acknowledged reading the Special Needs Memo². This was captured on my own video, and

¹ United States v. Davis, 482 F. 2d 893, "[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, quoting US v. Aukai, 497 F. 3d 955, 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, "We have affirmed that a person possesses a privacy interest in the contents of personal luggage that is protected by the Fourth Amendment."

² <http://cryptome.org/2013/01/tsa-special-needs-memo.pdf> - The official specifically acknowledged that it says that juice is a medical liquid and that there is no volume restriction on medical liquids:

is only the most recent in a long string of personal incidents of harassment, denial, or direct refusal to obey TSA's medical liquids policy.

I have filed formal complaints with the National TSA ADA coordinator, Logan TSA ADA coordinator, DoJ, MCAD, and MA AG, as well as FOIA / Privacy Act on Massport, TSA, and MA Police. So far, I have been stalled or brushed off (even contradicting clear statutory requirements, such as ADA grievance response requirements).

I would like your assistance with this. As it stands, the TSA's *formal* policy clearly supports my positions. However, the TSA's *de facto* policy, as enforced by the TSA's supervisors all the way to the level of airport Federal Security Directors, directly contradicts that — in a way that seriously infringes on my rights as a disabled traveler.

Given the TSA's repeated, high-level violation of even their own stated policies, another mere memo is not going to be adequate. For starters, please require the TSA to actually *obey* their policy and not harass travelers with disabilities, in a way stronger than merely issuing another memo that will be ignored on the ground.

As a more fundamental legislative matter, I would ask that you require the TSA to *change* their current policy about liquids. Currently, their policy encourages TSA screening agents — who are qualified neither to analyze nor even to possess medical information about travelers — to harass and question travelers about the medical necessity of their liquids. This in itself is already insulting and unnecessarily intrusive of travelers' right to privacy, especially about something as sensitive as a medical condition.

Worse, when a medically unqualified baggage screener thinks that something "isn't medical" because e.g. it's \$2.99 and bought in a general store, and prohibits it on that basis alone — as happened to me — it directly affects my health. This is clearly against TSA policy, but the policy encourages this kind of thinking by framing it as "medical liquids only". I should not have to submit to an invasion of my privacy in order to travel with liquids I need to stay healthy.

This policy is, to begin with, illegal on its face. *US v Davis* clearly established that the TSA may not search for anything other than "*weapons or explosives*" — which water or juice clearly is not — and furthermore that they must use the minimum intrusion possible with current technology. The plain fact is that the TSA is currently quite capable of screening *all* liquids — no matter their volume — using a combination of x-ray, explosive trace detection (ETD), and similar machines.

There simply is no justification for having a "medical vs non-medical" distinction to begin with, except as an exemption to things that would otherwise actually be dangerous (such as oxygen tanks).

Instead, all non-flammable liquids should be screened the same way. If a traveler wants to travel with liquids, they could be simply required to have the liquid x-rayed and ETD tested. It would then be up to them if the extra minute or so to do this testing is worth having the liquid along. More importantly, they would not be forbidden from travelling with liquids, and would not be questioned by medically ignorant screeners about the medical necessity of their liquids.

"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; ... 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."

The current "3 ounce" policy is an international joke and a PR disaster for the United States. That a senior TSA representative would tell a disabled traveler like me that taking medical liquids through would only be permitted if it was first separated into individual 3 ounce bottles is an insult both to disability rights and to plain common sense about security.

You are both in a position of considerable power to fix this, as House Minority Leader and as member of the Aviation Operations, Safety, and Security subcommittee of the Senate Commerce, Science & Transportation committee. I urge you to require that this policy be changed immediately.

Sincerely,

Sai

tsa@saizai.com

+1 510 394 4724

P.S. Please note that "Sai" is my full name; I am mononymic.

Dear Sai:

Thank you for your April 11, 2013, email regarding the complaints you filed with the Transportation Security Administration (TSA) on January 26 and March 15, 2013. Although your email includes information related to both of your complaints, TSA is treating these complaints as separate matters, because the incidents took place on different dates and at different airports and contain separate allegations.

You indicate in your April 11, 2013, email that you may be willing to resolve your complaints through the informal resolution process, and you provide a list of actions that TSA could take in order to resolve your complaint. However, the informal resolution process is voluntary for both you and TSA. At this time, TSA declines to resolve your complaint informally and has initiated the formal resolution process for each complaint, in accordance with Department of Homeland Security (DHS) Regulations implementing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended.ⁱ

Regarding the requests made in your email, please note that the formal resolution process for civil rights complaints based on disability does not provide compensatory or punitive damages or reimburse legal fees.ⁱⁱ Therefore, you will need to file a claim with TSA's Claims Management Branch in order to seek the following:

1. Damages for the alleged intentional and negligent infliction of emotional distress by TSA employees.
2. Damages for the alleged violations of your civil rights by TSA employees.
3. Recovery of all legal costs and fees.
4. Replacement of two 1.5 liter ounce bottles of aloe juice.

You may file a claim with TSA's Claims Management Branch at: tsaclaimsoffice@dhs.gov. Please visit <http://www.tsa.gov/travelers/customer/claims/index.shtm> for more information on how to file a claim. Any claim you file will be treated separately from your civil rights complaint.

You will receive further correspondence from TSA when we conclude the formal resolution process.

Thank you.

Transportation Security Administration

ⁱ "Enforcement of Non-discrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Homeland Security," 6 C.F.R. Part 15.

ⁱⁱ See *Lane v. Peña*, 518 U.S. 187, 200 (1996).