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Congress of the United States

November 19, 2010

Chair
Select Intelligence Oversight Panel
Committee on Appropriations

Committee on Education
and Labor

Permanent Select Committee
on Intelligence

Committee on Natural Resources

The Honoroable John Pistole
Administrator
Transportation Security Administration
TSA-1
601 South 12th Street
Arlington, VA 20598

Dear Administrator Pistole,

When Americans witness three year-old children being aggressively patted down by TSA screeners—as was the case this month—our airline security screening system is broken.

As a scientist and the chairman of the Select Intelligence Oversight Panel, I appreciate the challenges we face in trying to prevent terrorists from boarding American airliners. That same background also gives me an understanding of why TSA's current obsession with fielding body imaging technology is misguided, counterproductive, and potentially dangerous.

In March, the Congressional Biomedical Caucus (of which I am a co-chair) hosted a presentation on this technology by TSA, as well as a briefing by Dr. David Brenner of Columbia University on the potential health effects of "back scatter" x-ray devices. As Dr. Brenner noted in his presentation and in subsequent media interviews, the devices currently in use and proposed for wider deployment this year currently deliver to the scalp "20 times the average dose that is typically quoted by TSA and throughout the industry."

Dr. Brenner has pointed out that the majority of the radiation from X-ray backscatter machines strikes the top of the head, which is where 85 percent of the 800,000 cases of basal cell carcinoma diagnosed in the United States each year develop. According to Dr. Brenner, excessive x-ray exposure can act as a cancer rate multiplier, which is why our government should investigate thoroughly the potential health risks associated with this technology.

Additionally, it appears that these devices can detect explosives or other dangerous objects inside of body cavities. As the Government Accountability Office (GAO) noted in a March 2010 report on the Advanced Imaging Technology (AIT) program, "While TSA officials stated that the laboratory and operational testing of the AIT included placing explosive material in different locations on the body, it remains unclear whether

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the AIT would have been able to detect the weapon Mr. Abdulmutallab used in his attempted attack based on the preliminary TSA information we have received." A head-long rush to embrace fallible technology will only give the public the illusion of increased security at the expense of their privacy and dignity, with no assurance that the use of these machines will actually deter or detect terrorists before they act.

Further, news reports from earlier this year detailing how the U.S. Marshalls Service was inappropriately storing scanned body images at a U.S. court house raise clear concerns about the privacy protections needed to manage this technology. I am aware of at least one lawsuit pending against the Department of Homeland Security that alleges that the technology violates the Privacy Act, the Administrative Procedures Act, and the Religious Freedom Restoration Act.

I understand that TSA told GAO investigators that "the AIT's capability to store, print, transmit, or save the image will be disabled at the factory before the machines are delivered to airports, and each image is automatically deleted from the system after it is cleared by the remotely located security officer." However, I am not aware of any independent (i.e., non-TSA) inspection of the existing devices that confirms that they have been modified as described. Nor am I aware of any TSA directive prohibiting personnel who are operating AIT's from having personal videorecording devices (such as smartphones) on their person while operating the machines. Absent such a prohibition and independent confirmation that the AIT's ability to store and transmit images are disabled, I fail to see how the Congress and the flying public can have confidence that the very legitimate civil liberties and privacy concerns of passengers have been addressed.

Finally, let me return to the images of that little girl being frisked by a TSA screener. What behavioral indicator led the screener in question to believe that little girl needed such an invasive pat-down? If no valid behavioral or other threat indicator was present, why did the screener conduct the aggressive frisking? If the girl's mother or father were deemed a threat, why were they not segregated for further questioning, in private? The entire episode has served as a symbol of an invasive, technology-driven passenger screening process that is not making us safer, even as it humiliates, degrades, and enrages a public that deserves far better from those ostensibly seeking to protect them.

I've visited Israel many times in my life, including this fall. I have been impressed by how effective—and minimally intrusive—their airline passenger screening system is, particularly given the daily terrorist threat to Israel's citizens. Clearly, our government would learn much from their system. If a country as small and threatened as Israel can effectively protect their flying public, there is no reason why American children and their parents cannot be protected using the same layered, common sense-based system employed by Israel.

Like other members of Congress, I am hearing from my constituents about this issue, and as one of them observed to me, "Forcing us to choose between the new, body-scan machines which will subject us to possible risk of radiation, with strangers viewing our naked bodies; or being subjected to humiliating touching of our private parts is

unacceptable. We have traveled extensively in foreign countries, and their methods of using well trained personnel at layered checkpoints is less intrusive and far superior. How can Americans be treated this way?"

I agree, which is why I am asking you to meet with me to discuss:

1) Any reports from independent entities that have validated the effectiveness of the AIT systems currently being fielded to detect the full range of explosive threats known or anticipated to be employed by potential terrorists.

2) Whether any independent entity has verified that the AIT machines have been modified so as to ensure that no permanent record of a passenger scan is retained, retransmitted, or otherwise copied either directly from the AIT machine itself or by TSA or other personnel utilizing any form of videorecording technology.

3) The measures TSA has taken to address GAO's concerns and recommendations regarding the employment, cost-benefit analysis, and expected over all costs of fielding these AIT systems.

4) The measures TSA has taken to improve and validate its Screening of Passengers by Observation Techniques (SPOT) program, as discussed in GAO's May 2010 report on the program.

5) Why TSA does not systematically use watch list-derived intelligence information to screen passengers more selectively via AIT systems and the SPOT program.

6) Whether or not TSA has sought or received recommendations from the government of Israel about how TSA could improve its screening programs without invading the privacy of passengers.

Sincerely,

Rush Holt

RUSH HOLT
Member of Congress