

BDO Project Matrix – Anti-Discrimination Recommendations

Action	Recommendation	Status	Status
1a	The SOP provides that “SPOT must be conducted without regard to race, color, religion, national origin, ethnicity, sexual orientation, or disability except as directed by the FSD and provided such direction is based on specific intelligence threat information.” This will be amended to state that such direction must, in terms of timing and reach, constitute an appropriately tailored response to specific threat information.	Complete	The SPOT SOP has been revised and is currently in circulation for final signature; Assessor SOP will include the same language
1b	Policy and training will clarify that not only is profiling based on race or any other protected status unlawful and out-of-policy, but so is retaliation against those who complain about such profiling, whether they are complaining on their own or someone else’s behalf, and whether they are members of the public or TSA personnel.	Complete	All BDOs must take required online training addressing the concerns raised by OCRI, within the by 01/15/13. Effective January 1, 2013, SPOT Basic and Refresher training curriculum will include language addressing the Agency’s policy against unlawful profiling and retaliation. This is a one-hour instructor-led lesson integrated into the class schedule. The SPOT SOP has been revised and is currently in circulation for final signature
1c	Training materials already appropriately stress that there is no stereotypical “face of terrorism,” and we will continue to include sufficiently diverse examples in all future training developments.	Complete	All training materials will continue to include sufficiently diverse examples and use the 30 day implementation timeline up above.
1d	Training materials will not discuss constitutionally protected activity as suspicious (e.g., religious conversion, or non-criminal ideological associations)	Underway	A review of all SPOT related training materials is underway with the intent of identifying any instances and/or examples that may unintentionally touch on constitutionally protected rights.
1e	Training materials will be adjusted so as to not use terminology that takes a position on religious or ideological debates.	Underway	A review of all SPOT related training materials is underway with the intent of identifying any instances and/or examples so as to not use terminology that takes a position on religious or ideological debates.
2	TSA will provide routine annual anti-discrimination refresher training to BDOs relating to both SPOT and Assessor. This training will be coordinated with both TSA’s Office of Civil Rights & Liberties, Ombudsman and Traveler Engagement (OCRI/OLE) and DHS CRCL.	Complete	All BDOs must take required online training addressing the concerns raised by OCRI, by 01/15/13. Effective January 1, 2013, SPOT Basic and Refresher training curriculum will include language addressing the Agency’s policy against unlawful profiling, and retaliation. This is a one-hour instructor-led lesson integrated into the class schedule. Additionally, current BDO learning plans include Introduction to civil rights, Arab & Muslim cultural awareness training, Sikh American cultural awareness training, DHS No Fear Training, guidance on the use of race for law enforcement, and TSA workplace diversity training

3.	The Assessor training will stress the importance of racial, ethnic, and religious neutrality. Training documents will state the anti-discrimination point clearly wherever relevant, and also will demonstrate its importance by avoiding the current exclusive focus on examples on Arab/Muslim terrorists. (b)(3);49 U.S.C. § 114(n) (b)(3);49 U.S.C. § 114(n) (b)(3);49 U.S.C. § 114(n)	Pending	TSA is currently evaluating next steps for the Assessor concept of operations. If the concept of operations continues, training will be revised to include content addressing concerns raised by OCRI.
4.	By policy and training, TSA will avoid heavy-handed questions in this setting. The policy and the training will be clear, so that unwilling or uncomfortable passengers should not be pressured to answer questions. (b)(3);49 U.S.C. § 114(n) (b)(3);49 U.S.C. § 114(n)	Underway	The SPOT SOP has been revised and is currently in circulation for final signature. A review of all SPOT related training materials is underway with the intent of identifying any instances where TSA will be able to expand upon our policy that passengers who are unwilling or uncomfortable with participating in an interactive discussion and responding to questions will not be pressured to do so. Language is already present in the Assessor SOP that (b)(3);49 U.S.C. § 114(n) screening for those passengers who decline from answering questions. This language will also be incorporated into the SPOT SOP.
5.	Policy and training materials will be adjusted stressing questioning will be limited in duration to a period necessary for TSA personnel to engage and observe the passenger and to allow resolution of suspicious indicators, if any exist. Likewise, questions regarding travel and seeking identification will be for the purposes of identifying and resolving suspicious indicators and will not be overly intrusive or personal.	Underway	The SPOT SOP has been revised and is currently in circulation for final signature. A review of all SPOT related training materials is underway with the intent of identifying any instances where TSA may expand upon its policy that passengers who are unwilling or uncomfortable with participating in an interactive discussion and responding to questions will not be pressured to do so.
5.	The Assessor program will not be focusing on investigation; any (b)(3);49 U.S.C. § 114(n) TSA will adjust the policy and training to reflect that BDOs should (b)(3);49 U.S.C. § 114(n)	Complete	Per current training and policy, an Assessor would only ask for (b)(3);49 U.S.C. § 114(n)
6.	TSA will amend the relevant policy documents (in coordination with DHS CRCL) to ensure that each relevant document emphasizes that BDOs must stay focused on behaviors and aviation security, and that any non-security law enforcement results are a side benefit, not a goal.	Complete	The SPOT SOP has been revised and is currently in circulation for final signature; additionally mandatory online training reinforces point. Effective January 1, 2013, SPOT Basic and Refresher training will include language addressing these concerns.
7a	Within 30 days, TSA will communicate to BDO supervisors that performance appraisal will NOT depend on achieving either a high number of referrals, or on the arrest rate coming from those referrals, but rather from demonstrated vigilance and skill in applying the SPOT (and, where applicable, Assessor) protocols.	Complete	Through biweekly manager calls and messages, the Behavior Detection and Analysis Program Office has reinforced to all BDO managers that high performing employees are those that demonstrate vigilance and skill in applying SPOT procedures. Further communication to the Federal Security Directors and the workforce is forthcoming.

7b	Systematically augment review of SPOT reports and SPOT implementation, in coordination with TSA CRL/OTE, to increase their ability to assess diligent and less-diligent performance. Within extant operational limitations, given coverage, picture quality, and the like, this will include regular review of Closed Circuit Television (CCTV) video related to some portion of referrals, to ensure that the noted behaviors actually were observable.	Complete	TSA has assessed using CCTV with the conclusion that it is not very viable on a large scale due to the limiting factors (e.g., quality, frame rates, availability, ownership). However, procedures may be piloted to assess the feasibility of using periodic and systematic random samples of referral videos where quality CCTV footage can be gathered to examine the referral details and to ensure that proper protocol was followed. The exact methodology or process for doing this across all SPOT airports is unknown at this time. Further testing is warranted to determine the appropriate reviewers and resources needed. Program Compliance Assessment visits are conducted to evaluate to what extent each airport is in compliance with SPOT SOPs, Training, and associated ODs and MDs.
8.	Periodic refresher training for BDOs will emphasize not only the non-discrimination requirements, but the importance of staying focused on behavior and on the aviation security (not law-enforcement) goals of the program.	Complete	All BDOs must take required online training addressing the concerns raised by OCRL by 01/15/13. Effective January 1, 2013, SPOT Basic and Refresher training include language addressing these points.
8.	In addition, for both SPOT and Assessor, in-briefs are conducted at the beginnings of shifts, and provide opportunities for less formal briefing/training. These too will be used periodically to ensure that BDOs stay focused on their actual mission: aviation security. Other job aids – posters, palm cards, etc. – will also be utilized for this purpose.	Complete	Daily in and/or out briefings are currently a requirement for all BDOs and STSMs, per the SPOT SOP. Effective 01/01/13, scenario drills modeled from those used for sustainment of the Coach and Engage principles will be available to BDO managers as a means to routinely highlight SOP requirements and solicit interactive discussions, to supplement and enhance the current daily briefing practice.
9.	Action will be taken to ensure that the TSA Assistant Administrator for CRL/OTE will be notified promptly when discrimination allegations are reported by travelers or employees through any of these mechanisms. This includes allegations that might be thought to be too imprecise for investigation, or involving only “customer service.” When a misconduct investigation relating to screening discrimination results in a finding of “unsubstantiated,” as well as a substantiated finding, TSA will consider non-disciplinary responses, such as augmented supervision or training. CRCL and TSA will work together on civil rights oversight mechanisms to improve complaint response.	Underway	With respect to ensuring that the TSA Assistant Administrator is notified when discrimination allegations are reported by travelers, the Operations Directive on processing passenger inquiries has been revised to address this recommendation, and it is in the clearance process.
10.	TSA should (with CRCL's coordination) conduct a data collection pilot at four or five airports, including both current Assessor airports, perhaps attempting several different approaches, to assess the best path forward.	Underway	TSA engaged an outside contractor and academic expert with extensive experience with racial profiling data collection. The Contractor has provided a concept paper (12/05/12) and is currently being reviewed for further consideration.