NATIONAL SECURITY
PROJECT

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Re: Request

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programs on millions of travelers annually, the ACLU urgently seeks information on these programs through this FOIA request.

The TSA's primary behavior detection program, Screening Passengers
by Observation Techniques ("SPOT"), began in 2007. According to the TSA, the intent of the program is to screen passengers through observation of their behavior in order to identify anyone who "may pose potential transportation security risks."3 The program employs behavior detection officers, who are instructed to visually assess people in the screening areas at airports, scanning for individuals who display

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airports."9 The GAO concluded that the subjectivity of SPOT indicators and the wide variations in referral rates "raise questions about the continued use of behavior indicators for detecting passengers who might pose a risk to aviation security."10 The GAO recommended limiting future funding for the

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Honolulu International Airport. 14 One officer reportedly submitted an anonymous complaint stating that "the behavior detection program is no longer a behavior-based program, but it is a racial profiling program." 15

DHS and the TSA have investigated these allegations of racial
profiling, but the adequacy and extent of those investigations is unclear, and little of their results have been published. It does not appear that the investigations led to any changes in policies or practices. In the course of the GAO's recent review of racial profiling allegations-which occurred after the TSA and DHS investigations were concluded-five of 25 behavior detection officers the GAO interviewed said racial profiling was occurring based on their own observations. 16 Seven additional officers contacted the GAO independently to express concern about racial profiling that they had witnessed. 17 These complaints reinforce concerns that problems with racial and religious profiling by behavior detection officers have not been resolved. Any information retained by the TSA on the race, ethnicity, or national origin of passengers who are referred by behavior detection officers for additional screening could help substantiate or disprove allegations of racial profiling.

The SPOT program has been in place since 2007, and the TSA has
utilized behavior detection techniques for more than a decade, but the public knows little about the scope, effectiveness, or scientific basis for these programs. Nor has the TSA made public the results of investigations into persistent allegations of unlawful racial profiling by behavior detection officers. Specifically, Americans remain unaware ofthe policies governing the work of behavior detection officers; how the TSA determines that certain behaviors reflect deception or ill-intent; how the TSA trains behavior detection officers to recognize such behaviors; what, if any, safeguards are in place to account for variations in behaviors and mannerisms among genders, ages, cultures, and other demographic groups; and whether and how often the subjective nature of behavior detection leads to impermissible profiling. It is therefore imperative that the public gain a greater understanding of the scope and implementation of the TSA's behavior detection programs.

Requested Records

1. R that

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B. Whether humans can reliably, consistently, or objectively
interpret observable behaviors in other humans; and
C. Whether behavior detection techniques can reliably be used to
identify persons who may pose a risk to aviation security.

2. Policies, procedures, guidance, advisories, directives, memoranda, and
shift briefs created since January 1, 200718 pertaining to:
A.

B.

c.

D.

E.

F.

G.

The Screening of Passengers by Observation Techniques
(SPOT) program, the Assessor program, and/or other Transportation Security Administration programs that utilize behavior detection techniques;
Methods of behavior detection and analysis utilized by the
TSA;
The origins, uses for, and changes to the list of behavior indicators utilized by behavior detection officers;
The circumstances under which a passenger may be referred by a behavior detection officer for additional screening or for questioning by law enforcement officers;
The existence or use of quotas, targets, or other requirements for the amount of referrals by behavior detection officers for additional screening or law enforcement questioning;
Referral of passengers for additional screening or law
enforcement questioning by behavior detection officers based
on race, religion, ethnicity, and/or national origin; and
Evaluation and/or review of the performance ofbehavior
detection officers or other employees who utilize behavior
detection techniques.

3. Training and course materials for employees involved in behavior
detection activities, including materials related to initial, continuing,
and recurring training, and to racial, religious, ethnic, and/or national origin profiling.

4. Records created since January 1, 2007 concerning evaluations, tests,
audits, analyses, studies, and/or assessments of:
A. The implementation, effectiveness, and/or ineffectiveness of
the SPOT program, the Assessor program, or other
Transportation Security Administration programs that utilize
behavior detection techniques to identify potentially high-risk
passengers;

18 While the TSA's use of behavior detection predates 2007, this request focuses on behavior detection activities and programs during the period in which SPOT has been deployed at U.S. airports. The GAO reports that SPOT was formally initiated in fiscal year 2007. See GA0-14-159, supra note 5, at 1.

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5.

B. Compliance by behavior detection officers and/or other
employees who utilize behavior detection techniques with policies and guidelines;
C. The criteria for evaluating behavioral detection officers for
promotions; and
D. The consistency with which behavior indicators are applied
within individual airports and among all airports involved in
the SPOT program, the Assessor program, or other TSA
programs that utilize behavior detection techniques.

Records created since January 1, 2007 containing data related to:
A. The number of passengers referred for additional screening or
questioning by law enforcement by behavior detection officers
or other employees who utilize behavior detection techniques, including incident reports entered into the Transportation Information Sharing System;
B. The number of passengers who were arrested following referral
for additional screening or questioning by law enforcement by behavior detection officers or other employees who utilize
behavior detection techniques; and
C. The race, religion, ethnicity, and/or national origin of
passengers referred by behavior detection officers or other
employees who utilize behavior detection techniques to law
enforcement for additional screening or questioning.

6. Records related to the SPOT database, including but not limited to the substantive categories of information stored in the database, inclusion criteria, data retention periods, guidance documents, and audit reports.

7. Records created since January 1, 2007 concerning complaints about, investigations of, and/or disciplinary actions related to the work of behavior detection officers or the misuse of behavior detection to

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A. Referral of passengers for questioning by law enforcement
officers through the SPOT program, the Assessor program, or
other TSA programs that utilize behavior detection techniques;
B. The sharing of records and data on passengers referred for
additional screening via the SPOT program, the Assessor
program, or other TSA programs that utilize behavior detection
techniques; and
C. The checking of passenger names against law enforcement or names 2360.035

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alone, ACLU national projects have published and disseminated dozens of reports, many of which include a description and analysis of government documents obtained through FOIA requests?2 The ACLU also regularly publishes books, "know your rights" materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely-read blog where original editorial
content reporting on and analyzing civil rights and civil liberties news is posted daily. See http://www.aclu.org/blog. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. See http://www.aclu.org/multimedia/. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU's website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA, and further in-depth analytic and educational multi-media features.

In the national security arena alone, the ACLU website includes many
features on information obtained through the FOIA.23 For example, the

22 See, e.g., ACLU, Eye on the FBI: Documents Reveal Lack of Privacy Safeguards
and Guidance in Government's "Suspicious Activity Report" Systems (Oct. 2013); ACLU,
Unleashed and Unaccountable: The FBI's Unchecked Abuse of Authority (Sept. 2013),
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ACLU's "Predator Drones FOIA" webpage, https://www.aclu.org/national-security/predator-drones-foia, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. Similarly, the ACLU maintains an online "Torture Database," a compilation of over 100,000 FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.24

The ACLU has also published a number of charts and explanatory
materials that collect, summarize, and analyze information it has obtained through FOIA. For example, through compilation and analysis of information gathered from various sources-including information obtained from the government through FOIA-the ACLU created an original chart that provides the public and news media with a comprehensive summary of index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition and surveillance.25 Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act, 26 and a chart of original statistics about the Defense Department's use ofNational Security Letters based on its own analysis of records obtained through FOIA.27

The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

Furthermore, the records sought are urgently needed to inform the
public about this controversial federal government activity. The records sought pertain to the scope and implementation of the TSA's behavior detection programs, which implicate core discrimination and privacy concerns, but the public knows little about the basis for the programs, the training and professionalism of those who implement them, their efficacy, and the extent to which they disproportionately impact minorities. Such

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http://www .aclu.org/ safefree/nationalsecurityletters/3 2140res20071 0 ll.html;

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security/aclu-v-department-defense.
25 https :/ /www .aclu.org/sites/ default/files/pdfs/ safe free/ olcmemos _ 2009 _ 03 05. pdf.
26 https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf.
27 The chart is available at https://www.aclu.org/files/safefree/nationalsecurity letters/released/nsl_ stats. pdf.

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information is of significant and urgent value to millions of Americans who travel by air each year. Without disclosure of the records sought, members of the public will remain in the dark about the operation of the TSA' s behavior detection programs, and will not be able to assess for themselves whether the programs are necessary, effective, or subject to sufficient limits and oversight.

Further underscoring the urgency of informing the public about the
TSA's behavior detection programs is the strong and sustained media interest that has been devoted to what little has been revealed publicly about the programs. See e.g., John Tierney, At Airports, a Misplaced Faith in Body Language, N.Y. Times (Mar. 23, 2014); Scott McCartney, Subtle Signs That May Mark You an Airport Security Risk, Wall St. J. (Jan. 22, 2014); Alison Grant, TSA behavior detection officers' ability to detect bad actors little better than chance, GAO study says, Cleveland Plain Dealer (Nov. 23, 2013); Aaron Cooper, TSA defends behavior detection program, CNN.com (Nov. 14, 2013); Mark Johanson, TSA Behavioral Detection Officers 'Not Effective,' Waste of $200M Annually: Report, Int'l Bus. Times (Nov. 14, 2013); Bart Jansen, GAO: TSA 's behavior detection program flawed, USA Today (Nov. 13, 2013); Stephen Dinan, TSA wasting money by profiling passengers' behavior, investigators say, Wash. Times (Nov. 13, 2013); Mike Ahlers and Rene Marsh, Government report slams TSA program to spot possible terrorists, CNN.com (Nov. 13, 2013); Nate Anderson, TSA 's got 94 signs to ID terrorists, but they're unproven by science, Ars Technica (Nov. 13, 2013); Alex Davies, Government Report: The TSA 's Behavior Detection Program Is An Unscientific Waste of Money, Bus. Insider (Nov. 14, 2013); Bart Jansen, Auditor: TSA can't justify costs of screening behavior, USA Today (June 5, 2013); Brian Ross, ABC Reports on TSA Behavior Detection Officers, ABC News (Jan. 25, 2011); Brian Ross, TSA 'Not Capable' of Detecting Moscow-Like Attack, Critics Say, ABC News (Jan. 25, 2011).

Similarly intense media attention has been devoted to allegations of profiling associated with the TSA' s behavior detection programs. See, e.g., Katie Johnston, Racial profiling controversy still roiling Logan, Boston Globe (Nov. 15, 2013); Bart Jansen, TSA defends behavior screening against profiling claims, USA Today (Nov. 14, 2013); Steve Strunsky, Report criticizes TSA behavior program linked to racial profiling, The Star-Ledger (June 5, 2013); Aaron Cooper, Jon Noah and Kristina Sgueglia, TSA behavior detection officers will be retrained after profiling complaints, CNN.com (Aug. 23, 2012); Behavior detection officers targeted Mexicans, African-Americans,

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Schmidt and Eric Lichtblau, Racial Profiling Rife at Airport, US. Officers Say, N.Y. Times (Aug.

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Thank you for your prompt attention to this matter. Please furnish all applicable records to:

Hugh Handeyside
National Security Project
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,

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