

November 19, 2015

VIA FIRST-CLASS MAIL

The Honorable Peter Neffenger
Administrator
Transportation Security Administration
U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 20598

Dear Administrator Neffenger:

The purpose of this letter is to request that the Transportation Security Administration (“TSA”) update its security screening process and personnel training to prevent discrimination against, and harassment of, transgender, intersex, and gender nonconforming individuals. We share the sentiments expressed in the October 8, 2015 letter authored by certain members of Congress,¹ and we offer our assistance in helping you craft policies that better serve and protect all passengers.

On September 21, 2015, Shadi Petosky was scheduled to fly out of Orlando International Airport.² When Ms. Petosky went through the TSA security line, she was stopped, harassed, and ultimately, detained because she is a transgender woman.³ As a result of the current TSA screening process that relies on assumptions made by Transportation Security Officers about a passenger’s gender based solely on their appearance,⁴ transgender travelers, like Ms. Petosky, as

¹ See Dominic Holden, “Congressional Dems Urge TSA To Change Screening Procedures For Transgender Passengers,” BuzzFeed News, <http://www.buzzfeed.com/dominicholden/congressional-dems-ask-tsa-to-change-screening-procedures-fo#.gpQXXyOV1M> (accessed Nov. 12, 2015).

² Dawn Ennis, “Her Tweets Tell One Trans Woman’s TSA Horror Story,” The Advocate, <http://www.advocate.com/transgender/2015/9/22/one-trans-womans-tsa-horror-story> (accessed Nov. 10, 2015).

³ At the time, Ms. Petosky was told that she was stopped because of an “anomaly” in her anatomy, however, the TSA has since stated that it will change its policy of labeling trans passengers bodies as “anomalies.” Sunnive Brydum, “TSA Says It Will Stop Calling Trans Bodies ‘Anomalies,’” The Advocate, <http://www.advocate.com/transgender/2015/10/13/tsa-says-it-will-stop-calling-trans-bodies-anomalies> (accessed Nov. 10, 2015).

⁴ Transportation Security Administration, Frequently Asked Questions, <https://www.tsa.gov/travel/frequently-asked-questions> (accessed Nov. 10, 2015) (“Transgender persons will be screened as he or she presents at the security checkpoint. The advanced imaging technology used to screen passengers has software that looks at the anatomy of men and women differently.”).

well as intersex⁵ and gender non-conforming travelers, are placed at a disproportionate risk of harassment, embarrassment, and stigmatization simply because of who they are.⁶

Unfortunately, Ms. Petosky's experience is not unique. Her story prompted other transgender people to share on social media their uncomfortable and discriminatory experiences at TSA screening check points. Accordingly, we join those calling on the TSA to: (1) adopt a suitable, non-discriminatory security screening process that respects the identity and privacy of all travelers, and (2) ensure that current and future TSA staff are trained to respect all travelers, including transgender, intersex, and gender nonconforming people. Doing so would not only prevent incidents like the one that happened to Ms. Petosky, but would also ensure that every traveler is treated with dignity and respect. While we recognize the need for security in air travel, this protection should not and need not come at the expense of those already vulnerable to discrimination.

TSA Security Screenings Should Not Create an Unsafe Environment.

Put simply, there is no reason that the TSA's security process should make someone feel *less* safe and secure, yet that is exactly what is happening for many transgender, intersex, and gender nonconforming travelers. Each time they book a flight, they must not only manage all of the standard worries of air travel (Will my flight be delayed? Did I pack everything? Did I leave the iron on?), but even more pressing, they must grapple with whether their anatomy will subject them to pat downs, inappropriate questions about their bodies, and invasive screenings.

Although there are currently two purported options for passengers to notify the TSA of potential screening issues prior to reaching the security checkpoint—calling in advance or using a Notification Card—neither option is satisfactory. Following Ms. Petosky's story, TSA Assistant Administrator Kimberly Walton stated that transgender passengers can contact the agency prior to their travel to inform the TSA of when they would be traveling, presumably so the TSA agents can be informed in advance and avoid misgendering⁷ the traveler.⁸ However, there is no evidence that this notification results in any action by the TSA, let alone a meaningful

⁵ Lambda Legal is currently challenging the U.S. State Department's refusal to allow intersex individuals to obtain a passport that contains neither a male or female gender marker. *See* Lambda Legal Sues U.S. State Department on Behalf of Intersex Citizen Denied Passport, http://www.lambdalegal.org/blog/20151026_zzyym-intersex-denied-passport (accessed Nov. 12, 2015).

⁶ Jos Truitt, "The TSA Makes It Dangerous to Fly While Trans," *Feministing*, <http://feministing.com/2011/08/18/the-tsa-makes-it-dangerous-to-fly-while-trans/> (accessed Nov. 10, 2015) ("Transgender travelers are disproportionately targeted for questioning and pat-downs as a result of Transportation Security Administration (TSA) policies that lead to us being "out[ed]" as trans. Outed in airports – big, crowded, public spaces.").

⁷ Refers to someone using a word, especially a pronoun or form of address, that does not correctly reflect the gender with which they identify.

⁸ *Supra* note 4 ("The other thing is that they can call in to our call center to get information, if they have questions, if they have concerns, they can call in advance. We also have a protocol where, if a person has concerns, that we can even notify the airport in advance of their travel, and the travel itinerary, so they should absolutely call.").

step to prevent problems at the security checkpoint.⁹ Indeed, the process of being screened by the TSA during travel seems to vary dependent upon the airport, TSA staff, and time of day. This lack of consistency makes traveling unpredictable for transgender, intersex, and other gender nonconforming passengers and leaves them without a way to ensure that they will not face undue hardship when going through security.

The second option, using a Notification Card, purportedly gives travelers the option to “describe your condition” in writing rather than doing so verbally.¹⁰ Yet, the TSA’s information about the Notification Cards does not include suggestions or recommendations for transgender, intersex, or gender nonconforming passengers. In fact, to obtain a Notification Card, a person must go to a website designated for Disabilities and Medical Conditions, which includes information about twelve health conditions, disabilities, or medical devices, none of which apply here.¹¹

Most individuals would be uncomfortable sharing intimate details about their anatomy, and for transgender, intersex, and gender non-conforming people, this discomfort may be even greater due to the disproportionate levels of discrimination, stigma, and, at times, physical violence against them.¹² Doing so—whether verbally or with a Notification Card—without the assurance that the person they are communicating with will respond respectfully, or will be held accountable for discriminatory behavior, places these travelers in a precarious, and potentially harmful, situation.

Accordingly, we call on the TSA to address the root of the problem, which remains that individual members of the TSA staff are tasked with making a subjective decision about whether all travelers will be scanned as men or women. This process alone, without additional safeguards for travelers who may otherwise experience issues in the screening process, is simply not enough.

⁹ To test the suggestion of Assistant Administrator Walton, a reporter for The Advocate contacted the recommended hotline, but there was no indication that her notice did anything to mitigate discriminatory treatment. See Dawn Ennis, “What Happens When a Trans Woman Calls TSA’s Special Hotline?,” The Advocate, <http://www.advocate.com/transgender/2015/11/06/what-happens-when-trans-woman-calls-tsas-special-hotline> (accessed Nov. 10, 2015).

¹⁰ Transportation Security Administration, Disabilities and Medical Conditions, <http://www.tsa.gov/travel/special-procedures> (accessed Nov. 10, 2015).

¹¹ *Id.* The twelve situations are: Medications; External Medical Devices; Deaf or Hard of Hearing; Implants & Internal Medical Devices; Autism or Intellectual Disabilities; Mobility Disabilities, Aids & Devices; Prosthetics, Casts, Braces, Support Appliances; Radioactive Medication & Materials; Respiratory Equipment; Blind & Low Vision; Service Dogs & Animals; and, Alzheimer’s, Dementia, Aphasia, Brain Injury.

¹² See “Injustice at every turn: A Report of the National Transgender Discrimination Survey,” The National LGBTQ Task Force, http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_summary.pdf

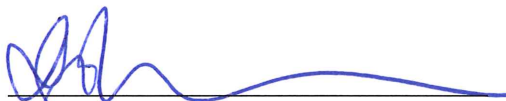
TSA Staff Should Receive Adequate Training on How to Respect All Passengers.

The TSA is uniquely situated as an agency that all people must interact with if they choose to travel by air. The security screening process can be time-consuming and stressful for any passenger, but for transgender, intersex, and gender nonconforming passengers, that stress may be heightened by a fear that TSA staff charged with viewing them at their most vulnerable will not treat them with respect and dignity.

Although we commend the TSA for having reached out to LGBT groups in the past in trying to educate its personnel, the time has come for sustained, meaningful change.¹³ Publically provided information on screening transgender passengers is limited to one portion of a webpage dedicated to Frequently Asked Questions on TSA's website.¹⁴ Search results reveal no information with respect to intersex or gender nonconforming passengers. Such limited information, combined with the anecdotal history of disparate treatment, demonstrates the need for more sustained, widespread training at all levels of the TSA.

The TSA must update its screening process and training procedures, which too often create an unsafe, denigrating atmosphere for transgender, intersex, and gender nonconforming travelers. We would be more than happy to work with you on updating these policies and to provide any additional helpful information. We are available to discuss any of the items above in more detail in person or by telephone. We look forward to hearing from you.

Lambda Legal Defense and Education Fund, Inc.



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¹³ Sunnive Brydum, "EXCLUSIVE: About That TSA 'Coalition' of LGBT Groups," *The Advocate*, <http://www.advocate.com/transgender/2015/10/27/exclusive-about-tsa-coalition-lgbt-groups> (accessed Nov. 12, 2015).

¹⁴ *Supra* note 4.