IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REBECCA BROWN, *et al.*, *Plaintiffs*, v. TRANSPORTATION SECURITY ADMINISTRATION; *et al.*, *Defendants*.	Civil Action No. 2:20-cv-64-MJH-KT

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNTS I AND II

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules

Regulations

INTRODUCTION

Counts I and II of Plaintiffs' First Amended Complaint allege that the Transportation Security Administration (TSA) has a policy or practice of searching for bulk currency and seizing passengers when it is found by preventing them from proceeding even after transportation security screening has concluded, in violation of the Fourth Amendment and TSA's statutory authorities. These claims fail for both jurisdictional and merits-based reasons.

As an initial matter, Plaintiffs cannot carry their burden to establish Article III standing. Specifically, Plaintiffs cannot establish a real and immediate threat of repeated injury traceable to TSA's alleged policies, as Article III requires of claims for prospective relief. While the Court concluded at the motion-to-dismiss stage that Plaintiffs had offered sufficiently plausible allegations to confer standing, evidence uncovered during discovery has undercut those allegations and it is now clear that no Plaintiff is likely to be subject to the challenged policies. Indeed, one named Plaintiff testified that she currently has no reason to travel with large amounts of currency. Another named Plaintiff is now deceased and is no longer a party to this action. The two remaining named Plaintiffs asserted a need to travel with bulk currency (the desire to gamble and for acquiring used business vehicles), but acknowledged viable alternatives to flying with bulk currency that allow them to pursue their hobby and business. And in any event, the named Plaintiffs cannot establish that they face an immediate injury as a result of TSA's alleged unwritten policy—at most, Plaintiffs can speculate that a TSA official may incorrectly implement TSA's policies during a future screening in a manner that causes injury. Many courts have held that such a showing does not confer standing for the type of programmatic challenge that Plaintiffs bring here because any injury suffered would be traceable to the actions of the TSA official improperly applying otherwise lawful TSA policy, rather than TSA policy itself.

Even if Plaintiffs could carry their burden to establish Article III standing, this Court would still lack subject-matter jurisdiction because Congress granted exclusive jurisdiction to the United States Courts of Appeals over challenges to TSA orders. *See* 49 U.S.C. § 46110. And every court to have addressed the issue has held that TSA standard operating procedures and security protocols, like those at issue here, are TSA orders covered by that provision. To be sure, the Court held at the

motion-to-dismiss stage that § 46110 did not apply because Plaintiffs alleged that they were challenging an unwritten policy. But discovery has now made clear that, at a minimum, Plaintiffs' theorized policy would necessarily stand on and could not exist independently of TSA's written policies and procedures, such that the claims are inescapably intertwined with a review of TSA's written screening procedures. And it is settled law that § 46110 applies in those circumstances. Indeed, TSA has now adduced the very evidence that the Court stated was missing at the motion to dismiss stage when rejecting the applicability of § 46110—an affidavit attesting to the fact that TSA's written policies regarding bulk currency constitute TSA's final agency decision governing that issue. Accordingly, this Court should join the overwhelming majority of courts—at both the trial and appellate level—in holding that district courts lack subject-matter jurisdiction over as-applied challenges to TSA screening policies.

Plaintiffs' claims fare no better on the merits. Three settled legal principles are dispositive here. To start, it is well-established in the Third Circuit that the Fourth Amendment authorizes TSA to conduct administrative searches and seizures of passengers and their possessions at airport screening checkpoints. Likewise, Third Circuit law is settled that TSA may more closely scrutinize materials, such as bulk currency, that could conceal prohibited items that threaten transportation security, such as explosives. Finally, the law is clear that, where TSA uncovers potential evidence of criminality during an otherwise lawful administrative search, it may refer that potential evidence of criminality to law enforcement. TSA's written policies conform to all three principles: where a passenger travels domestically with bulk currency, TSA's Management Directive and Standard Operating Procedures direct that TSA screeners may neither detain the passenger longer than necessary to screen for prohibited threat items nor ask questions about the currency unrelated to transportation security. And those same written policies instruct that TSA screeners may only notify law enforcement if they uncover some potential evidence of criminality. These written policies are therefore fully consistent with TSA's obligations under its statutory authorities and the Fourth Amendment.

Accordingly, the only question is whether there exists some widespread but unwritten practice, contrary to TSA's written policies, of detaining passengers traveling with bulk currency. After years of discovery, it is clear that no such practice exists. Instead, the evidence adduced in discovery demonstrates that TSA headquarters repeatedly instructed TSA field offices *to comply with* TSA's written policies, and that TSA field offices clearly understood that administrative searches could not be extended for law enforcement purposes when bulk currency was discovered. The evidence further demonstrates that, where certain TSA officials or offices failed to adhere to TSA's written policies, those officials and offices were corrected. There can be no dispute of fact that both TSA's policies and TSA's practices therefore comply with the Fourth Amendment and TSA's statutory authorities.

For these reasons, detailed further below, the Court should dismiss Counts I and II for lack of jurisdiction or, in the alternative, grant summary judgment in TSA's favor on those Counts.

BACKGROUND

I. TSA Policies Regarding Cash at Checkpoints

TSA is a component of the Department of Homeland Security responsible for protecting domestic and international commercial travel in the United States. 49 U.S.C. § 114(a); *see also Ramsingh v. TSA*, 40 F.4th 625, 628 (D.C. Cir. 2022) ("Congress has charged the [TSA] with 'safeguarding this country's civil aviation security and safety.'") (quoting *Corbett v. TSA*, 19 F.4th 478, 480 (D.C. Cir. 2021)). To do so, TSA "has 'broad authority' to 'identify threats to transportation and take the appropriate steps to respond to those threats.'" *Ramsingh*, 40 F.4th at 628.[1]

Specifically, the Administrator of TSA is "responsible for security in all modes of transportation," including "carrying out chapter 449, relating to civil aviation security," 49 U.S.C. § 114(d)(1). Chapter 449, in turn, directs the Administrator of TSA to "provide for the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation." 49 U.S.C. § 44901(a). "All screening of

[1] Internal alterations, citations, and quotations are omitted unless otherwise stated.

passengers and property at airports in the United States where screening is required . . . shall be supervised by uniformed Federal personnel of the Transportation Security Administration." *Id.* § 44901(b). Congress additionally directed the Administrator of TSA to "prescribe regulations requiring an air carrier, intrastate air carrier, or foreign air carrier to refuse to transport (1) a passenger who does not consent to a search under section 44901(a) . . . or (2) property of a passenger who does not consent to a search of the property establishing whether the property unlawfully contains a dangerous weapon, explosive, or other destructive substance." 49 U.S.C. § 44902(a). With certain exceptions, the Administrator of TSA must "order the deployment of at least 1 law enforcement officer at each airport security screening location." 49 U.S.C. § 44901(h)(2).

To assist the Administrator of TSA, Congress directed the Administrator to "establish the position of Federal Security Director at each airport in the United States described in section 44903(c)" and to "designate individuals as Federal Security Directors for, and station Federal Security Directors at, those airports." 49 U.S.C. § 44933(a). The Federal Security Director (FSD) at each airport is responsible for "oversee[ing] the screening of passengers and property at the airport." *Id.* § 44933(b)(1).

Pursuant to these statutory authorizations, TSA promulgated a regulation stating that "[n]o individual may enter a sterile area or board an aircraft without submitting to the screening and inspection of his or her person and accessible property." 49 C.F.R. § 1540.107(a). The "sterile area" is the "portion of an airport . . . that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA[.]" *Id.* § 1540.5. Individuals and their property are inspected for, among other things, "weapons, explosives, and incendiaries." *Id.*

To implement the screening required by statute and regulation, TSA promulgated Management Directive 100.4, Transportation Security Searches (MD 100.4), Approved Jan. 25, 2012. *See* AR1-11.[2] MD 100.4 describes TSA's overarching principles for conducting administrative searches at airports: "A search conducted without a warrant as part of a regulatory plan in furtherance of a

[2] "AR" citations refer to the certified Administrative Record filed with this motion.

specified non-law enforcement government purpose, such as to determine compliance with TSA regulations or to prevent the carriage of threat items or entry of an unauthorized person into the sterile area, or to screen passengers entering any public conveyance." MD 100.4 § 4(A) (AR1). It explains that "TSA conducts all administrative and special needs searches in a manner designed to be minimally intrusive, in light of current technology, *to detect the presence of threat items*." *Id.* § 6(A)(1) (emphasis added) (AR6). Screening of passengers and property is carried out by Transportation Security Officers (TSOs), who are "trained, qualified, and authorized in accordance with applicable TSA standards and directives to screen individuals, accessible property, identification documents, and/or checked baggage for the presence of explosives, incendiaries, weapons, or other threats or threat items," and overseen by Supervisory TSOs (STSOs). *Id.* § 4(BB) (AR4). *See also Pellegrino v. TSA, Div. of Dep't of Homeland Sec.*, 937 F.3d 164, 168 (3d Cir. 2019) ("Under [the Aviation and Transportation Security Act, Pub. L. No. 107-71, 115 Stat. 597 (2001)], TSOs perform screenings at TSA checkpoints in airports in the United States.").

MD 100.4 also explains that "[a]dministrative and special needs searches may not be conducted to detect evidence of crimes unrelated to transportation security. However, if such evidence is discovered, TSA personnel shall refer it to a supervisor or a law enforcement official for appropriate action." MD 100.4 § 6(C)(1) (AR8). Examples of criminal activity that TSOs and STSOs might observe include "possession of illegal drugs, possession of child pornography, and money laundering (i.e., transferring illegally gained money through legitimate channels so that its illegal source is untraceable). *Id.* Referral of potential criminal evidence to law enforcement "satisfies a TSA employee's obligation to report known or suspected violations of Federal law." *Id.* However, where no transportation security threat is identified, the passenger may not be detained once security screening is completed. *See id.* ("Although an individual may be requested to wait until law enforcement arrives, he or she is free to leave the screening checkpoint once applicable screening requirements have been completed successfully.").

MD 100.4 also includes the following paragraph specifically applying these principles to the discovery of large amounts of currency:

> Traveling with large amounts of currency is not illegal. Sometimes currency discovered at the screening checkpoint will need to be screened to clear it to enter sterile areas (or other secure areas). For example, cash in very large quantities may shield explosive materials and other threat items. As a general matter, there should be no reason to ask questions of the passenger about currency, although there may be times when questions are warranted by security needs. When currency appears to be indicative of criminal activity, TSA will report the matter to the appropriate authorities. For all flights, factors indicating that cash is related to criminal activity include the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment. For international flights, currency that exceeds $10,000 may not be transported into or out of the United States unless it has been reported to U.S. Customs and Border Protection (CBP). TSA should notify CBP and/or law enforcement authorities pursuant to its local standard operating procedures that the individual possesses a sum of currency that appears to exceed $10,000. TSA may also note any factors related to criminal activity for purposes of notifying CBP and/or law enforcement. Although an individual may be requested to wait until law enforcement arrives, he or she is free to leave the screening checkpoint once applicable screening requirements have been completed successfully.

Id. § 6(C)(2) (AR9).

TSA has implemented MD 100.4 through a series of standard operating procedures that provide specific guidance to TSA employees and their supervisors and managers. Currently, the guidance is found in Version 4 of Screening Policies for Standard Operating Procedures (SOP). *See* AR112; *see also Durso v. Napolitano*, 795 F. Supp. 2d 63, 65 (D.D.C. 2011) ("TSA's operations are guided in part by Standard Operating Procedures ('SOPs'), which provide 'uniform procedures and standards' that TSA must follow."). The SOP directs that "All searches must be conducted in accordance with *TSA Management Directive (MD), 100.4, Transportation Security Searches*. The MD describes the legal authority for all TSA screening operations." SOP Ch. 1 § 1 (AR120); *see also id.* Ch. 6 § 1 ("Screen persons and property in compliance with all laws and regulations that apply, including anti-discrimination laws, regulations, Executive Orders, policies, and directives, and TSA MD 100.4, Transportation Security Searches.") (AR153). The SOP addresses the screening procedures "used when conducting an administrative airport security search to prevent threats from entering a sterile or secured area of an airport or aircraft." SOP Ch. 5, General (AR147). Once initiated, security screening must be completed. *See* SOP Ch. 5, General § (C) ("When an individual demonstrates a decision to enter a screening area, or to submit property for screening, screening of the individual must be

completed. Once that screening has been completed, an individual may return to the public area, or continue to the next screening area.") (AR147). Security screening includes use of "available screening techniques, technologies, and equipment" to mitigate any threats and "may include examination of individuals and all contents of their accessible property." SOP Ch. 6 § 1(2) (AR153). STSOs are required to "[e]nsure that all alarms are resolved and security screening has been completed before an individual or property is permitted into the sterile area of the airport." SOP Ch. 15 § 1(1) (AR171). TSA employees are instructed to "[u]se situational awareness and critical thinking skills to identify and resolve on person and in property alarms and possible threats to transportation." SOP Ch. 6 § 4(1) (AR155).

Chapter 12 of the SOP implements MD 100.4's provisions regarding the discovery of potential evidence of criminal activity during a TSA screening. It emphasizes that "[s]creening of property is conducted for security purposes. TSOs are *not authorized* to conduct searches for purposes of discovering illegal items such as drugs, drug paraphernalia, or child pornography, or to conduct searches that require warrants on behalf of law enforcement agencies, unless otherwise directed by a lawfully executed warrant specifically issued to TSA." SOP Ch. 12, Overview (emphasis added) (AR161). However, "[i]f suspected illegal items are discovered during the course of screening, TSA personnel must notify an STSO and/or LEO for appropriate action." *Id.* The SOP provides a step-by-step process for TSOs and STSOs where a large amount of cash is discovered.

First, a TSO's initial responsibility is to "notify an STSO" any time a large amount of cash is discovered. SOP Ch. 12 § 2(1) (AR161). Then the TSO is instructed to "[s]earch the currency for prohibited items" but not to "ask questions of the individual about the currency except as it relates to security." SOP Ch. 12 § 2(2) (AR161); *see also id.* § 2(5) ("The STSO must ensure that screening of the individual and their accessible property is completed once started.") (AR162). Discovery of any prohibited items requires that the TSO or STSO notify law enforcement. *See id.*

Second, where no prohibited item is located, the STSO must determine whether law enforcement must nonetheless be notified. SOP Ch. 12 § 2(3) (AR162). This is required in either of two situations: (a) "the currency appears to exceed $10,000" and "the individual's destination is a non-

U.S. location," or (b) "the currency appears to relate to criminal activity." *Id.* Examples of evidence of potential criminal activity involving cash include "the currency may be all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." *Id.*

Third, regardless of whether law enforcement is notified, security screening must be completed and neither the individual nor their property may be detained absent discovery of any prohibited items. Where no notification is made, "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and arrives before security screening is completed, the SOP instructs TSA employees to "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). Where law enforcement has been notified but has not yet arrived, the SOP instructs TSA employees to "return all property to the individual. The individual may be asked to wait until a LEO arrives, *but the individual is free to leave the screening checkpoint once screening is finished*." SOP Ch. 12 § 2(5)(a) (emphasis added) (AR162).

Fourth, where law enforcement notifications are made, the STSO must provide the individual's name and flight information to the TSA coordination center which in turn must notify appropriate law enforcement agencies. *See* SOP Ch. 12 § 2(6)-(8) (AR162-63).

These procedures have been essentially unchanged throughout the relevant time period,[3] although the format and organization of the SOPs have changed over time. The procedure was initially set out in Operations Directive 400-54-6 (Oct. 29, 2009). *See* AR12-13. Parallel language was subsequently incorporated into several successive screening SOPs in effect during the same time period. *See, e.g.*, Specialized Screening Standard Operating Procedures § 2.3.20 (Mar. 20, 2010) (AR26-27). In 2015, a general reorganization of the SOPs led to the creation of Version 1 of Screening

[3] Pursuant to the Court's July 14, 2022 decision, electronic discovery was limited to the six-year period from January 2014 to the filing of the complaint in January 2020. *See* Order, ECF No. 108 (W.D. Pa. July 18, 2022). The written polices discussed herein include directives and SOPs that went into effect before January 2014 if they remained in effect for all or part of the relevant period, as well as those directives and SOPs that are currently operative.

Policies for Standard Operating Procedures, and potential criminal activity was addressed in Chapter 16. *See* AR91-92. And in 2023, an update to the Screening Policies for Standard Operating Procedures caused Chapter 16 to be renumbered as Chapter 12 without any textual change. *See* AR161.

II. Procedural History

On January 15, 2020, Plaintiff Rebecca Brown (and her father, who is now deceased and no longer a party)[4] filed the original complaint in this case, bringing official capacity claims against both TSA and the TSA Administrator and the Drug Enforcement Administration (DEA) and the DEA Administrator, along with individual capacity claims against a DEA agent. *See* ECF No. 1. On July 17, 2020, Plaintiffs filed their First Amended Complaint, adding new plaintiffs Stacy Jones-Nasr (now Stacy Esposito) and Matthew Berger, seeking certification of a nationwide class under Rule 23(b)(2), and bringing three claims seeking declaratory and injunctive relief on behalf of the putative class. *See* ECF No. 43 (1AC).

On March 30, 2021, the Court dismissed Count IV (which sought interest on the currency that was seized and held by DEA) and Count V (which sought damages against DEA Agent Steven Dawkin under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), and the Fourth Amendment). *See* Opinion, ECF No. 78. The only counts that survived were therefore Counts I-III, alleging official capacity claims against DEA and TSA. *See* ECF No. 78. With regard to those counts, the Court concluded that Plaintiffs had sufficiently pled standing at the motion-to-dismiss stage of the case, that 49 U.S.C. § 46110 did not bar this Court's jurisdiction over challenges to an allegedly "informal TSA policy," and that Plaintiffs had plausibly alleged those claims. *See* ECF No. 78 at 3-4.

On April 22, 2021, the Magistrate Judge entered an initial scheduling order permitting discovery on certain of Plaintiffs' proposed topics. *See* Initial Scheduling Order, ECF No. 86. On August 9, 2022, the Magistrate Judge ordered discovery on Plaintiffs' remaining proposed topics. *See* Order, Video Status Conference, ECF No. 108. On November 4, 2024, Magistrate Judge Taylor entered a new scheduling order for completion of discovery and summary judgment briefing. *See*

[4] *See* Resar Decl., Ex. A, Brown Dep. Tr. 15:10-12. Unless otherwise specified, all Exhibits are Exhibits to the Declaration of Alexander W. Resar, submitted with this motion.

Scheduling Order, ECF No. 135. All told, TSA produced more than 9,000 pages of documents and produced seven individuals for deposition (including two Rule 30(b)(6) witnesses who testified twice). *See, e.g.*, Joint Discovery Status Report and Proposed Expedited Discovery Schedule, ECF No. 134 at 3-6.

On January 17, 2025, the Magistrate Judge stayed all deadlines regarding Claim III against DEA. *See* Order, ECF No. 147. On April 16, 2025, Defendants moved to dismiss Count III against DEA for mootness. *See* Defs.' Partial Mot. to Dismiss, ECF No. 155. That motion is now pending before the Court. *See* Pls.' Resp. in Opp'n to Defs.' Partial Mot. to Dismiss, ECF No. 160; Defs.' Reply in Supp. of Partial Mot. to Dismiss, ECF No. 167.

On April 28, 2025, at the request of the parties, the Magistrate Judge modified the schedule for summary judgment briefing on Counts I and II against TSA, ordering that Defendants' motion for summary judgment on those counts be filed on May 30, 2025. *See* Order, ECF No. 159. The instant motion follows.

LEGAL STANDARDS

A plaintiff bears the burden of demonstrating that the court has jurisdiction over the claim. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). If the plaintiff fails to carry that burden at any time, the court must dismiss the action, including at the summary judgment stage. Fed. R. Civ. P. 12(h)(3); *see Auster v. Ghana Airways Ltd.*, 514 F.3d 44, 48 (D.C. Cir. 2008) ("When a court lacks subject matter jurisdiction, it must dismiss the case and not grant summary judgment.").

On the merits, "[i]n challenges to agency action brought under the APA, summary judgment is the mechanism for deciding, as a matter of law, whether the agency action is supported by the administrative record and otherwise consistent with the APA standard of review." *La. Forestry Ass'n, Inc. v. Solis*, 889 F. Supp. 2d 711, 720 (E.D. Pa. 2012), *aff'd sub nom. La. Forestry Ass'n, Inc. v. Sec'y U.S. Dep't of Lab.*, 745 F.3d 653 (3d Cir. 2014). "The task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency decision based on the administrative record." *Id.* (quoting *Fla. Power & Light Co. v. Lorion,* 470 U.S. 729, 743–44 (1985)). Under 5 U.S.C. § 706(2), the reviewing court is to "hold unlawful and set aside agency action, findings, and conclusions" that

are, (1) "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;" (2) "without observance of procedure required by law;" or (3) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law."

That review is particularly deferential here: "because Congress has entrusted TSA with broad authority over 'civil aviation security,' it is 'TSA's job—not [courts']—to strike a balance between convenience and security.'" *Amerijet Int'l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014) (citing *Suburban Air Freight, Inc. v. TSA*, 716 F.3d 679, 683 (D.C. Cir. 2013)). "Therefore, in cases of this sort," courts "must defer to TSA actions that reasonably interpret and enforce the safety and security obligations of the agency." *Olivares v. TSA*, 819 F.3d 454, 462 (D.C. Cir. 2016).

ARGUMENT

I. The claims against TSA should be dismissed.

a. Plaintiffs lack standing to challenge TSA's policies or practices regarding air travelers with bulk currency.

To establish Article III standing, a plaintiff must seek relief for an injury that is: (1) "concrete, particularized, and actual or imminent"—i.e. an "injury in fact"; (2) "fairly traceable to the challenged action"; and (3) "redressable by a favorable ruling." *Clapper v. Amnesty Int'l*, 568 U.S. 398, 409 (2013). While the Court found that Plaintiffs had adequately alleged standing at the pleading stage, *see* ECF No. 78 at 3, "[a]t summary judgment, a plaintiff 'can no longer rest on . . . mere allegations, but must set forth by affidavit or other evidence specific facts' establishing standing.'" *Greenberg v. Lehocky*, 81 F.4th 376, 384 (3d Cir. 2023) (quoting *Clapper*, 568 U.S. at 412), *cert. denied*, 144 S. Ct. 1393 (2024). Plaintiffs cannot do so here. None of the named Plaintiffs can establish that they are likely to carry large amounts of cash through airport checkpoints in the future, that refraining from carrying such cash causes them any cognizable harm, or that a TSA screener would be likely to take any improper action attributable to TSA policies if a Plaintiff did carry large amounts of cash through an airport checkpoint. The named Plaintiffs therefore lack Article III standing, requiring dismissal.

i. The named Plaintiffs fail to show any real and immediate risk of future injury.

Because Plaintiffs seek only prospective relief in the form of an injunction and declaratory judgment, "they must face 'a real and immediate threat of repeated injury.'" *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 496 (1974)). Thus, "the threatened injury must be certainly impending to constitute injury in fact. And there must be at least a substantial risk that the harm will occur.'" *Thorne v. Pep Boys Manny Moe & Jack Inc.*, 980 F.3d 879, 893 (3d Cir. 2020) (cleaned up); *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) ("An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.").

The Supreme Court's decision in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), is illustrative. There, like here, the plaintiff challenged an alleged government policy—in that case, the use of a certain chokehold technique that rendered arrested individuals unconscious, *id.* at 97-98—that the plaintiff had been subjected to in the past, and that the plaintiff alleged was "routinely appl[ied]," *id.* at 105. The Supreme Court nonetheless held that the plaintiff lacked standing to sue because the mere fact that he had been subjected to the alleged policy in the past "does nothing to establish a real and immediate threat that he would again be . . . illegally choke[d]" in the future. *Id.* The Supreme Court recognized that, "among the countless encounters between the police and the citizens of . . . Los Angeles, there will be certain instances in which strangleholds will be illegally applied." *Id.* at 108. Nevertheless, "it is . . . no more than speculation to assert either that Lyons himself will again be involved in one of those unfortunate instances, or that he will be arrested in the future and provoke the use of [the] chokehold" technique that the plaintiff challenged. *Id.*

Here, too, each named Plaintiff fails to establish that there is a meaningful risk that each Plaintiff will be subject to the alleged TSA policies in the future. To start, the named Plaintiffs no longer travel with large amounts of currency and have no need to do so. Plaintiff Rebecca Brown alleged that she had traveled with bulk currency once in the past when she wanted to deposit cash that her father had stored at his house. *See* 1AC ¶¶ 135-146. But after her father's death, she testified that she had no reason to travel with cash. See Ex. A, Brown Dep. Tr. 88:2-4 ("Q. Do you currently have

any reason to travel by air with a large amount of cash? A. Not at – not at this moment."). In fact, Brown stated that "it is not" her "practice to travel with significant amounts of cash," and that she did not "anticipat[e] seeking to travel with a large amount of cash in the next year." *Id.* 88:22-89:9 ("Q. At this point in time, are you anticipating seeking to travel with a large amount of cash in the next year? A. I do not. I do not. Q. Do you have a practice like your father of keeping cash outside of a bank? A. I do not. Q. Is it your practice to travel with significant amounts of cash? A. It is not."). Brown further acknowledged that she had never traveled with more than $10,000 in cash apart from the August 2019 incident that gave rise to this action. *Id.* at 95:1-3 ("Q. Apart from this trip, have you ever traveled with more than $10,000 in cash? A. I have not, to my recollection."). Accordingly, Brown has not demonstrated *any* likelihood of future injury connected to TSA's alleged bulk currency policies, and therefore lacks standing to obtain the prospective relief sought. *Murthy*, 603 U.S. at 72 (plaintiff lacks standing where she "failed to establish a likelihood of future injury").

Plaintiff Stacy Esposito's asserted basis for Article III standing is similarly deficient. She alleged that she and her husband "are avid recreational gamblers" who "travel to gamble at casinos across the country" by plane, requiring flying with large amounts of currency. *See* 1AC ¶¶ 233, 278-283. But Esposito cannot establish that she continues to travel in a way that could subject her to TSA's alleged policies. For one, Esposito has not shown that she continues to travel by plane to casinos at all. Rather, she testified in February of 2025 that she did not "believe that [she] ha[d] flown to any [casinos] since [April 2023]," as she lacked "the time" to do so. Ex. B, Esposito Dep. Tr. 82:8-11 ("Q. You've continued to travel to casinos since April 2023? A. I don't believe that I have flown to any since then."); *id.* at 67:2-5 ("A. Okay. To be honest, I haven't – in this past year, I haven't really had time to fly to casinos. So no, not in this past year, I have not.").

And even if she were to resume travel by plane to casinos, Esposito acknowledged that she did not need to travel with large amounts of cash to pursue her hobby. She testified that she no longer carries "a cash bank roll with [her] when [she] travel[s] to the casinos" because "if [she] go[es] to Vegas, you can set up an account, and you can transfer the money. And the money is then given to you as markers when you get there. That's one way to have money without transporting it." *Id.* at

23:17-24:3. Accordingly, Esposito's indicates that even if she were to fly to casinos, she would not need to do so with a large amount of cash. *Id.* at 68:8-15 ("A. I'm much more careful when I do. I definitely don't carry a large amount of cash, no . . . I have kind of set a limit in my head that I'm not going to ever carry more than like $2,000. This is just a personal decision."). That is likely because, as she testified, she does not gamble "big money," and instead plays "penny slots" and "$5, $10 blackjack." *Id.* at 58:22-59:4; *id.* at 58:13-16 ("Sadly, it's rare that I win. But I don't win in large amounts. If I win a few hundred dollars, I'm happy and I walk away. So it's never been a windfall for me.").

In short, Esposito has not flown to a casino with a large amount of bulk currency in years, and her testimony indicates that there would be no reason for her to do so again in the future. She therefore cannot establish any real or immediate threat of repeated injury traceable to TSA's alleged bulk cash policies, and lacks standing.

Plaintiff Matthew Berger similarly fails to establish a substantial risk of any future injury. Berger generally alleges that he must fly with cash to acquire vehicles for his business, which rents out limousines and buses. *See* 1AC ¶¶ 306-320. But he, too, has not flown "with more than $10,000 in cash in [his] carry-on luggage after November 3, 2015." Ex. C, Berger Dep. Tr. 43:6-8; *see also id.* at 55:9-12 ("Q. Do you still limit the amount of cash you fly commercially with for business to amounts under $10,000? A. Yes."). Additionally, Berger acknowledged that there are alternative ways of acquiring the vehicles that he needs for his business: a purchaser could take out cash from a bank in the city in which the vehicle is acquired. *Id.* at 58:6-11 ("Q. Could you help me understand why an individual couldn't take cash out from a bank in the city they flew into? A. . . . Hypothetically speaking, I think that's a possibility."). And he acknowledged that purchases of vehicles for his business after he stopped flying with large amounts of cash could be, and in fact were, "made through bank loans, through financing." *Id.* at 65:5-6; *see also id.* at 67:16-18 ("Q. And how did Cali Tour Bus pay for each of those four new vehicles? A. Either wire transfer or bank loan."). Indeed, he testified that cash was being used less frequently to acquire equipment since he entered the industry. *Id.* at 69:3-8 ("Q. Based

on your personal experience, . . . have you used cash more or less to acquire or sell equipment over time? . . . A. My personal experience has been less.").

Defendants anticipate that Berger and Esposito will argue that they have changed their behavior by no longer flying with large amounts of cash in response to the alleged risk of cash seizures, and therefore incur injury in the form of costs associated with that change in behavior or lost business opportunities. *See, e.g.*, 1AC ¶¶ 306-320. But that does not absolve Plaintiffs of their obligation to show that seizures of their cash would be certainly impending if they were to fly with bulk currency. The Supreme Court has addressed plaintiffs that change their behavior in response to the possibility of future injury, and directly held that plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Clapper*, 568 U.S. at 416. Otherwise, "an enterprising plaintiff" could "secure a lower standard for Article III standing simply by making an expenditure based on a nonparanoid fear." *Id.* "Thus, allowing" Plaintiffs "to bring this action based on costs they incurred in response to a speculative threat would be tantamount to accepting a repackaged version of respondents' first failed theory of standing." *Id. See also Ass'n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 358 (5th Cir. 1999) (plaintiff "cannot obtain standing to sue . . . as a result of self-inflicted injuries").

Accordingly, Berger and Esposito—and any other named Plaintiff seeking to establish standing through self-inflicted costs or changes in behavior—must establish that their changes in behavior are an appropriate response to a real and immediate threat of repeated injury. They cannot do so. As an initial matter, Berger testified that he had travelled with cash "on numerous occasions" and "had never had the same experience that [he] had in Charlotte," where his cash was seized. Ex. C, Berger Dep. Tr. 42:9-20. Accordingly, there is no reason to believe that Berger would again have his cash seized—the vast majority of times in which he travelled with bulk currency did not result in any seizures. Moreover, the already-minimal likelihood of future injury that could justify a change in behavior is further reduced for all named Plaintiffs now that DEA has ceased its broader transportation interdiction program, *see* ECF No. 155; ECF No. 167. That significant reduction in the risk of any Plaintiff's cash being seized further undermines their claims to cognizable injury. *See*

Corbett v. TSA, 930 F.3d 1225, 1237 (11th Cir. 2019) ("Corbett's claim of future injury is weakened still further because, even accepting the small chance that Corbett may be randomly subjected to the new policy at some indeterminate time in the future, there's an even smaller chance that his random selection for participation in the mandatory screening program will result in a *constitutional injury*.").

At the very most, then, the named Plaintiffs can speculate that there is a potentially heightened risk that travelling with bulk currency may expose them to slightly longer questioning at TSA checkpoints. Any costs they incur to avoid that outcome are merely self-inflicted "expenditure[s] based on a nonparanoid fear," which the Supreme Court has unequivocally held insufficient to establish Article III standing. *Clapper*, 568 U.S. at 416; *see also Buchholz v. Meyer Njus Tanick, PA*, 946 F.3d 855, 865 (6th Cir. 2020) ("[A] plaintiff cannot create an injury by taking precautionary measures against a speculative fear."); *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015) ("Plaintiffs here cannot establish standing by incurring costs that 'are simply the product of their fear of'" the challenged action).

ii. Plaintiffs fail to establish that any speculative future injury is traceable to Defendants and redressed by a favorable decision.

Even if this Court were to credit Plaintiffs' speculative injury, Plaintiffs have not established that the perceived risk of currency seizures are traceable to TSA's policies and likely to be redressed by a favorable decision requiring modification to those policies, as required to show Article III standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). That is because there can be no dispute of fact that TSA's written policies comply with the Fourth Amendment. *Infra* Parts II.A-B. Thus, Plaintiffs at most can show that certain TSOs may fail in the future to properly adhere to those policies in a way that causes Plaintiffs harm. But these individual failures departures from TSA's lawful policies are not attributable to the policies themselves, and therefore cannot confer Article III standing for the programmatic challenge that Plaintiffs have brought here. *See Lyons*, 461 U.S. at 108 ("[I]t is no more than conjecture to suggest that in every instance of a traffic stop, arrest, or other encounter between the police and a citizen, the police will act unconstitutionally and inflict injury without provocation or legal excuse."). Accordingly, Plaintiffs can trace their asserted risk of future injury only to the actions

of individual TSA employees, not to actual TSA policies. *Ghedi v. Mayorkas*, 16 F.4th 456, 466 (5th Cir. 2021) ("At most [plaintiff's] allegations give rise to a reasonable inference that 'the independent action[s] of some third party not before the court,' individual TSA or CBP agents, will cause him future injury. Such a connection cannot support traceability for standing."); *cf. Danvers Motor Co. v. Ford Motor Co.*, 432 F.3d 286, 291 (3d Cir. 2005) (alleged injury cannot be "abstract or conjectural or hypothetical"); *Haase v Sessions*, 835 F.2d 902, 911 (D.C. Cir. 1987) ("[M]ore than a nebulous assertion of the existence of a 'policy' is required to establish standing.").

Indeed, appellate courts around the country have held that even where a general policy "may *permit* unconstitutional seizures in some circumstances," a plaintiff lacks standing "to seek injunctive or declaratory relief against the policy's continued usage" so long as the "policy does not *require* its officers to act unconstitutionally." *Kerr v. City of W. Palm Beach*, 875 F.2d 1546, 1554 (11th Cir. 1989); *see also Schirmer v. Nagode*, 621 F.3d 581, 588 (7th Cir. 2010) (where plaintiffs show only "isolated misuse" of challenged provision, plaintiffs lack standing to seek prospective relief); *Mitchell v. City of Sapulpa,* 857 F.2d 713, 720 (10th Cir. 1988) (plaintiff, who was unlawfully seized pursuant to an ostensibly unlawful Oklahoma statute, had no standing under *Lyons* to seek a declaratory judgment as to the statute's constitutionality).

Thus, to the extent Plaintiffs identify isolated instances where a particular TSA screener misapplied TSA's written policy, such evidence falls far short of creating a cognizable risk that named Plaintiffs—among millions of air travelers each year—would be likely to experience such an error, let alone that this error could be attributed to a TSA policy that could be redressed by a favorable decision in this case. *See, e.g.*, *Thorne*, 980 F.3d at 893 ("this threat consists of a highly speculative chain of future events that does not constitute a material risk of harm"). Plaintiffs cannot seriously contend that TSA's written policies *require* unconstitutional seizures, and therefore lack Article III standing.

b. The Court lacks jurisdiction over challenges to TSA policies.

Even if Plaintiffs could establish Article III standing, this Court lacks subject matter jurisdiction over Plaintiffs' challenges to TSA policies——Management Directive 100.4 and the

screening SOPs adopted by the TSA Administrator—because Congress has specified that jurisdiction for such claims lies exclusively with the United States Courts of Appeals.

With certain exceptions not applicable here, under 49 U.S.C. § 46110, a person "disclosing a substantial interest" in a covered order issued by TSA "may apply for review of the order by filing a petition for review" in an appropriate court of appeals, *id.* § 46110(a), and that court has exclusive jurisdiction with respect to such review, *id.* § 46110(c). It is well established that TSA's security protocols for airport security checkpoints constitute an order under § 46110. *See, e.g., Ruskai v. Pistole*, 775 F.3d 61, 65 (1st Cir. 2014) ("TSA's security protocol[s]" for airport security screening constitute a final order under 49 U.S.C. § 46110); *Durso*, 795 F. Supp. 2d at 69 ("[T]he Court concludes that TSA's failure to provide public notice of the Screening Checkpoint SOP or its contents prior to its effective date does not prevent the SOP from being an order under § 46110."); *Blitz v. Napolitano*, 700 F.3d 733, 740 (4th Cir. 2012) ("[T]he Checkpoint Screening SOP constitutes an order of the TSA Administrator under § 46110."); *Frey v. Town of Jackson*, No. 19-CV-50-F, 2019 WL 13260516, at *19 (D. Wyo. Dec. 2, 2019) (collecting authorities for the proposition that TSA's SOPs "are properly classified as 'orders' within the ambit of 49 U.S.C. § 46110"). Therefore, Plaintiffs cannot challenge TSA's written policies in this forum.

Indeed, the Courts of Appeals have exclusive jurisdiction not only over a claim in which a plaintiff directly challenges an order pursuant to 49 U.S.C. § 46110, but also over claims that challenge TSA actions that are "inescapably intertwined" with such an order. *See, e.g.*, *Merritt v. Shuttle, Inc.*, 187 F.3d 263, 270-71 (2d Cir. 1999) (holding that § 46110 deprived the district court of jurisdiction over *Bivens* claim because the claim was an improper collateral attack on an order falling within the scope of § 46110). Here, Plaintiffs' allegations about alleged practices that are in tension with TSA's written policies are, at the very least, "inescapably intertwined" with final orders over which the court of appeals has exclusive jurisdiction. *Id.* at 270-71. Accordingly, Plaintiffs cannot evade the application of § 46110 simply by conjuring unwritten policies or practices that concern TSA's promulgated policies related to airport security protocols.

To be sure, the Court held that it had jurisdiction at the motion to dismiss stage on the ground that § 46110 "contemplates jurisdiction over formal administrative orders rather than informal policies or practices," and concluded that Plaintiffs were challenging "an informal TSA policy rather than any formal administrative order." ECF No. 78 at 4. But it is now clear following discovery that Plaintiffs' challenge is "inescapably intertwined" with review of TSA's written policies. At their core, Plaintiffs' claims allege that TSA has failed to faithfully implement its written policies regarding bulk currency at passenger screening checkpoints, and that its written policies contain ambiguities that permit unlawful searches and seizures. But this is "nothing more than an 'as-applied' challenge to the Security Directive, which, even if not a direct attack on the order itself, is clearly inescapably intertwined with a review of that order." *Amerijet Int'l, Inc. v. United States Dep't of Homeland Sec.*, 43 F. Supp. 3d 4, 19 (D.D.C. 2014) (holding district court lacked jurisdiction under 49 U.S.C. § 46110).

And courts around the country have applied § 46110 to dismiss "as-applied" challenges to TSA SOPs that assert that even if the SOPs are facially lawful, their application is not. *See Gilmore v. Gonzales*, 435 F.3d 1125, 1133 n.9 (9th Cir. 2006) ("Gilmore's other claims are as-applied challenges as opposed to broad facial challenges. Given that they arise out of the particular facts of Gilmore's encounter with Southwest Airlines, these claims must be brought before the courts of appeals."); *Ventura v. Napolitano*, 828 F. Supp. 2d 1039, 1041 (D. Minn. 2011) (applying § 46110 to bar claim where "Governor Ventura contends that he has been subject to such patdown searches, and that he will be subject to whole-body imaging"); *Amerijet Int'l, Inc.*, 43 F. Supp. 3d at 18 (dismissing for lack of jurisdiction claims where plaintiff challenges "a 'pattern or practice' of wrongful conduct in violation of the Constitution and the APA" that "is really a disguised attack on the TSA's interpretation, implementation, and enforcement of the Security Directive—not a separate and collateral attack on agency action"); *Thomson v. Stone,* No. 05–CV–70825, 2006 WL 770449, at *6 (E.D. Mich. Mar. 27, 2006) (finding that the district court lacked jurisdiction under § 46110(a) "[t]o determine whether the procedures performed by the [TSA] screeners on Plaintiff in the past and to determine whether Plaintiff's injunctive relief regarding the procedures violate[d] Plaintiff's Fourth Amendment rights" because to do so would "necessarily require a review of the statutes, regulations, policies, procedures

and programs established by the TSA to screen all individuals"); *Durso*, 795 F. Supp. 2d at 72 ("[P]laintiffs' constitutional claim is inescapably intertwined with a review of the Screening Checkpoint SOP because a court of appeals reviewing the SOP could rule on that claim and could, by setting aside or modifying the SOP, provide approximately the remedy that plaintiffs request."); *Frey*, 2019 WL 13260516, at *19 ("Because the SOP constitute an order under 49 U.S.C. § 46110, the Court is deprived of jurisdiction to review the constitutionality of 49 C.F.R. § 1540.105 or the TSA SOP under any theory Frey posits."). Accordingly, § 46110 requires dismissal even where a plaintiff claims to challenge agency orders that are "the result of informal agency action." *Ruskai*, 775 F.3d at 65.

The Court's motion-to-dismiss ruling was not to the contrary. The Magistrate Judge's recommendation that the Court adopted on this point distinguished the instant action on the basis that, in other cases where jurisdictional bar was applied, "the TSA Administrator submitted a Declaration providing the SOP's dates of revision and implementation, and affirming that the SOP . . . constituted 'TSA's final agency decision' governing the conduct at issue." *Brown v. TSA*, No. 2:20-CV-64, 2021 WL 1215819, at *5 (W.D. Pa. Jan. 7, 2021), *report and recommendation adopted in part, rejected in part*, No. CV 20-64, 2021 WL 1206537 (W.D. Pa. Mar. 30, 2021). Although TSA could not have made such a showing at the motion-to-dismiss stage, the certified administrative record on summary judgment makes clear that the SOPs constitute "TSA's policies final agency decisions" governing bulk currency at passenger screening checkpoints in airports. *See* Certification of Administrative Record ¶ 2; *see also* Ex. D, Leyh Dep. Tr. 263:18-22 ("Q. Okay. So, is – is this kind of a -- a complete list, as you see it, for the -- the policy documents relevant to this case? A. The Management Directive and . . . the SOPs, yes.").

Thus, because it is now clear that Plaintiffs' claims, at a minimum, require review of TSA's written policies, the Court must dismiss the counts against TSA for lack of subject-matter jurisdiction under § 46110. *See Roberts v. Napolitano*, 463 F. App'x 4, at *5 (D.C. Cir. 2012) (affirming dismissal for lack of jurisdiction because plaintiff's claims required review of TSA SOPs, which are an order under 49 U.S.C. § 46110).

II. TSA is entitled to summary judgment on the merits.

If this Court declines to dismiss Plaintiffs' claims against TSA for lack of jurisdiction, it should grant Defendants' motion for summary judgment on Counts I and II. Courts of Appeals, including the Third Circuit, have uniformly held that the Fourth Amendment authorizes TSA to conduct administrative searches and seizures of passengers and their possessions at airport screening checkpoints. The Third Circuit in a seminal decision authored by then-Judge Alito has likewise held that TSA's administrative searches may be extended lawfully where evidence of potential criminality is found, and that the extensions amount to "a single, warrantless search . . . initiated without individualized suspicion." *United States v. Hartwell*, 436 F.3d 174, 178 (3d Cir. 2006) (Alito, J.). Accordingly, the only question is whether TSA's policies or practices concerning the discovery of bulk currency impermissibly prolong that otherwise lawful administrative search and seizure. As explained in detail below, TSA's policies and practices concerning bulk cash are unambiguously lawful. They instruct TSOs and STSOs: (1) that traveling with large amounts of currency is not illegal, (2) that as general matter there should be no reason to ask questions of the passenger about the currency, (3) that a law enforcement officer must only be notified if the currency appears to relate to criminal activity, (4) that all property must be returned to the individual after completing screening, and (5) that screening may not be extended after a search of bulk cash establishes the currency does not contain or conceal a prohibited threat item. Summary judgment should therefore be granted for Defendants.

a. The Fourth Amendment authorizes TSA searches and seizures at airport passenger checkpoints.

Under the Fourth Amendment, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. "This provision limits government action in two ways. First, it requires that searches and seizures be reasonable, and second, it states that when a warrant is required—in circumstances not explicitly defined by the text—it must have certain characteristics." *Hartwell*, 436 F.3d at 177.

"[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness,'" *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006). While "[a] search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing," the Supreme Court has recognized "limited

circumstances in which the usual rule does not apply." *Hartwell*, 436 F.3d at 178. Accordingly, the Supreme Court has explained that, "where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable'—for example, searches now routine at airports and at entrances to courts and other official buildings." *Chandler v. Miller,* 520 U.S. 305, 323 (1997). These suspicionless searches and seizures have been termed "administrative" searches and seizures, including "suspicionless 'checkpoint' searches" and seizures. *Hartwell*, 436 F.3d at 178. Suspicionless "checkpoint" searches and seizures "are permissible under the Fourth Amendment when a court finds a favorable balance between 'the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.'" *Id.* at 178-79 (quoting *Illinois v. Lidster*, 540 U.S. 419, 427 (2004)).

It is well-established that airport checkpoint searches and seizures are permissible under the Fourth Amendment. The Supreme Court stated as much in dicta in *Chandler*, 520 U.S. at 323. And the Courts of Appeals have uniformly reached that conclusion in various holdings. *See, e.g.*, *Abdellatif v. United States Dep't of Homeland Sec.*, 109 F.4th 562, 571 (D.C. Cir. 2024) (""That balance clearly favors the government' for a typical airport search. . . . The public concern served by an airport search is self-evident. 'There can be no doubt that preventing terrorist attacks on airplanes is of paramount importance.'"); *Corbett v. TSA*, 767 F.3d 1171, 1182 (11th Cir. 2014) ("Airport screening is a permissible administrative search; security officers search all passengers, abuse is unlikely because of its public nature, and passengers elect to travel by air knowing that they must undergo a search."); *United States v. Aukai,* 497 F.3d 955, 961 (9th Cir. 2007) (en banc) ("[W]here an airport screening search is otherwise reasonable and conducted pursuant to statutory authority . . . all that is required is the passenger's election to attempt entry into the secured area."); *Elec. Priv. Info. Ctr. v. U.S. Dep't of Homeland Sec.*, 653 F.3d 1, 10 (D.C. Cir. 2011) ("screening passengers at an airport is an 'administrative search'" permitted under the Fourth Amendment); *see also United States v. Skipwith,* 482 F.2d 1272, 1275 (5th Cir. 1973); *United States v. Marquez*, 410 F.3d 612, 618 (9th Cir. 2005); *United States v. Yang*, 286 F.3d 940, 944 n.1 (7th Cir. 2002).

As then-Judge Alito explained for the Third Circuit, TSA searches and seizures at airport screening checkpoints are permissible under the Fourth Amendment because "preventing terrorist attacks on airplanes is of paramount importance," "airport checkpoints also 'advance the public interest,'" and the standard airport checkpoint procedures are "minimally intrusive" as "every air passenger is subjected to a search." *Hartwell*, 436 F.3d at 179-80. Moreover, "the entire procedure is rendered less offensive . . . because air passengers are on notice that they will be searched." *Id.* at 180.

It is similarly well-established in the Third Circuit that, when these administrative seizures are extended, they amount to "a single search under the administrative search [and seizure] doctrine." *Id.* at 178. The Third Circuit has therefore explained that it upholds "an airport screening search that involved an escalating level of scrutiny and intrusion where 'a lower level of scrutiny disclosed a reason to conduct a more probing search.'" *George v. Rehiel*, 738 F.3d 562, 576 (3d Cir. 2013). Other circuits are in accord. *See, e.g.*, *United States v. McCarty*, 648 F.3d 820, 838 (9th Cir. 2011), *as amended* (Sept. 9, 2011) ("Thus, the screener's review of the photographs in the packet occurred within the scope of the ongoing lawful administrative search. As a result, her discovery of their nature coincided with her search for explosives . . . . Accordingly, Andrade's viewing of the photographs from the envelope was justified by and part of the lawful administrative search."); *Aukai*, 497 F.3d at 963 (extended detention associated with airport screening search reasonable where "TSA's efforts to rule out the presence of a weapon . . . took no more than 18 minutes"); *Corbett v. TSA*, 568 F. App'x 690, 697 (11th Cir. 2014) ("Thus, a thorough screening of Corbett's bags was reasonable, even beyond the point of determining whether those belongings contained weapons.").

b. TSA's written policies comply with the Fourth Amendment and TSA's legal authorities.

Applying this legal framework to TSA's written policies regarding bulk currency establishes that those policies are fully consistent with the Fourth Amendment as interpreted by the Supreme Court and Third Circuit. As set forth *supra* pp. 4-9, TSA's written policies regarding bulk cash are contained in MD 100.4 and the Screening SOPs that implement MD 100.4. Those written policies prohibit the extension of the administrative search or seizure on the basis of bulk currency except as

necessary to determine that the bulk currency does not contain or conceal a security threat. Longstanding law therefore authorizes these policies.

1. To start, MD 100.4 makes clear TSA administrative searches are not conducted "to detect evidence of crimes unrelated to transportation security." MD 100.4 § 6(C)(1) (AR6). But "if such evidence is discovered," TSA personnel have an obligation to "refer it to a supervisor or a law enforcement official for appropriate action." *Id.* § 6(C)(1) (AR8). MD 100.4 further specifies that examples of criminal activity that TSA employees might encounter include "possession of illegal drugs, possession of child pornography, and money laundering (i.e., transferring illegally gained money through legitimate channels so that its illegal source is untraceable)." *Id.* Referral of potential criminal evidence to law enforcement "satisfies a TSA employee's obligation to report known or suspected violations of Federal law." *Id.* Plaintiffs cannot dispute that this practice of referring potential criminal evidence uncovered during an administrative search comports with the Fourth Amendment: indeed, the Third Circuit has squarely held in the context of airport screening that "[e]ven assuming that the sole purpose of the checkpoint was to search only for weapons or explosives, the fruits of the search need not be suppressed so long as the search itself was permissible." *Hartwell*, 436 F.3d at 181 n.13. So, too, have other Courts of Appeals. *See, e.g.*, *Aukai*, 497 F.3d at 963 (extended detention associated with airport screening search reasonable where "TSA's efforts to rule out the presence of a weapon resulted in the discovery of drug paraphernalia").

TSA's policies are well within the limits that the Fourth Amendment imposes in this context. As then-Judge Sotomayor observed in *United States v. $557,933*, "[e]ven to the layman, untrained in the ways of narcotics traffickers and the details of currency transaction reporting requirements, the presence at the airport of a person carrying a briefcase full of blank money orders of small (at least relative to the total value of the money orders) denominations would give rise to a well-founded suspicion that some kind of 'criminal activity [was] afoot.'" 287 F.3d 66, 87 (2d Cir. 2002). Under those circumstances, "[d]etaining the briefcase briefly so that trained law enforcement personnel could investigate further w[ould be] completely proper, especially when one considers that failing to have done so would likely have resulted in claimant and his money orders disappearing altogether." *Id.*; *cf.*

United States v. Place, 462 U.S. 696, 704 (1983) (upholding as lawful investigative detentions of baggage and persons at airports "on reasonable suspicion of drug-trafficking" "[b]ecause of the inherently transient nature of drug courier activity at airports"). TSA's polices—which direct the release of the passenger and his or her property when security screening is complete—do not even approach the level of invasiveness that then-Judge Sotomayor explained would be lawful.

Indeed, MD 100.4 merely applies well-established legal principles to the discovery of bulk currency. In that context, MD 100.4 directs that "[t]raveling with large amounts of currency is not illegal," but clarifies that "currency discovered at the [] checkpoint will need to be screened to clear it to enter sterile areas" because "cash in very large quantities may shield explosive materials and other threat items." MD 100.4 § 6(C)(2) (AR9). Here, too, Plaintiffs cannot dispute that this additional screening is reasonable and therefore consistent with the Fourth Amendment. Numerous courts, including the Third Circuit, have held that TSA's inspections of materials that could contain or conceal threat items at airport screening stations is permitted under the Fourth Amendment. *See Hartwell*, 436 F.3d at 181 n.13 ("Since the object in Hartwell's pocket could have been a small knife or bit of plastic explosives, the TSA agents were justified in examining it."); *Marquez*, 410 F.3d at 617 ("The screening at issue here is not unreasonable simply because it revealed that Marquez was carrying cocaine rather than C–4 explosives."); *McCarty*, 648 F.3d at 838 ("[T]he screener's review of the photographs in the packet . . . coincided with her search for explosives . . . . Accordingly, [the screener's] viewing of the photographs from the envelope was justified by and part of the lawful administrative search"); *Corbett*, 568 F. App'x at 698 ("It was not unreasonable for a TSA screener to closely inspect Corbett's book . . . because 'thin, flat explosives called sheet explosives may be disguised as a simple piece of paper or cardboard, and may be hidden in just about anything, including a laptop, book, magazine, deck of cards, or packet of photographs.'").

The only question, then, is whether MD 100.4 directs TSOs to impermissibly extend the otherwise lawful administrative search and seizure when bulk currency is found. MD 100.4 unequivocally does not—rather, it repeatedly emphasizes that TSA searches must be limited to identification of threat items and it does not authorize the extension of a search or seizure beyond the

time necessary to clear those threat items. Section 6(C)(1) emphasizes generally that "[a]dministrative and special needs searches may not be conducted to detect evidence of crimes unrelated to transportation security." MD 100.4 § 6(C)(1) (AR8). Accordingly, that section further directs that, "[a]lthough an individual may be requested to wait until law enforcement arrives, he or she is free to leave the screening checkpoint once applicable screening requirements have been completed successfully." *Id.* In other words, where a TSA screener discovers evidence of criminality that does not relate to a transportation security threat, MD 100.4 directs that the passenger may not be detained beyond the time necessary to complete screening for transportation security threats.

The portion of MD 100.4 that concerns the discovery of bulk currency makes clear that these general principles apply with equal force in that context. It directs that "[a]s a general matter, there should be no reason to ask questions of the passenger about currency," prohibiting TSOs from prolonging the lawful administrative search and seizure for reasons that are not "warranted by security needs." MD 100.4 § 6(C)(2) (AR8-9). And the bulk-currency paragraph concludes by repeating the general instruction that "[a]lthough an individual may be requested to wait until law enforcement arrives, he or she is free to leave the screening checkpoint once applicable screening requirements have been completed successfully." *Id.*

Accordingly, there can be no dispute that MD 100.4 comports with TSA's obligations under the Fourth Amendment: it authorizes administrative searches and seizures only as necessary to determine whether a passenger poses a transportation security threat, and prohibits TSOs from extending those administrative searches and seizures beyond the time necessary to clear that transportation security threat. TSA's screening procedures are thus "minimally intrusive" and "well-tailored to protect personal privacy, escalating in invasiveness only after a lower level of screening disclosed a reason to conduct a more probing search." *Hartwell,* 436 F.3d at 180; *see also Aukai*, 497 F.3d at 962–63. TSA's procedures, as outlined in MD 100.4 and comporting with that directive, therefore comply with the Fourth Amendment.

2. TSA's written Screening SOPs similarly comply with the Fourth Amendment and all applicable legal authorities. As an initial matter, the screening SOP makes clear that the SOP cannot

override any instruction contained in MD 100.4: the SOP directs that "[a]ll searches must be conducted in accordance with *TSA Management Directive (MD), 100.4, Transportation Security Searches*. The MD describes the legal authority for all TSA screening operations," SOP Ch. 1 § 1 (AR120). Accordingly, because MD 100.4 is consistent with the Fourth Amendment and TSA's statutory authorities, *supra* pp. 24-26, so are the SOPs.

And where the SOPs provide additional detail, that detail comports with MD 100.4 and the Fourth Amendment. To start, Chapter 12 of the SOP addressing potential evidence of criminal activity re-emphasizes that "[s]creening of property is conducted for security purposes. TSOs are *not authorized* to conduct searches for purposes of discovering illegal items such as drugs, drug paraphernalia, or child pornography, or to conduct searches that require warrants on behalf of law enforcement agencies, unless otherwise directed by a lawfully executed warrant specifically issued to TSA." SOP Ch. 12, Overview (emphasis added) (AR161).

The SOP then provides a step-by-step set of directions for TSA screeners if they discover bulk currency. A TSO's first responsibility in those circumstances is to "notify an STSO." SOP Ch. 12 § 2(1) (AR161). Then the TSA screener is instructed to "[s]earch the currency for prohibited items" but not to "ask questions of the individual about the currency except as it relates to security." SOP Ch. 12 § 2(2) (AR161); *see also id.* § 2(5) (AR162) ("The STSO must ensure that screening of the individual and their accessible property is completed once started."). Any prohibited items require notification of law enforcement. *See id.* As explained *supra* pp. 22-23, black-letter law in the Third Circuit (and elsewhere) authorizes the extension of administrative searches at airport screening to confirm the absence of a prohibited threat item.

If no prohibited item is located, the STSO must determine whether law enforcement must be notified. SOP Ch. 12 § 2(3) (AR162). This is required in either of two situations: (a) "the currency appears to exceed $10,000" and "the individual's destination is a non-U.S. location," or (b) "the currency appears to relate to criminal activity." *Id.* Examples of evidence of potential criminal activity involving cash include "the currency may be all in the same denomination, packaged with rubber bands or plastic wrap, or carefully concealed in accessible property." *Id.* Again, black-letter law in the

Third Circuit authorizes TSA to refer evidence of criminality uncovered in a TSA screening to law enforcement. *See supra* pp. 21-23.

Regardless of whether law enforcement is notified, the SOPs make clear that the individual may not be detained after TSA has determined that the individual does not pose a security threat to transportation security. Specifically, where no law enforcement notification is made, "the STSO must return the individual's property and clear the individual into the sterile area after successfully completing screening requirements." SOP Ch. 12 § 2(4) (AR162). Where law enforcement has been notified and arrived before security screening is completed, the SOP instructs TSA employees to "return all property to the individual. Leave further action regarding the individual and their property to law enforcement." SOP Ch. 12 § 2(5)(b) (AR162). And where law enforcement has been notified but has not yet arrived, the SOP instructs TSA employees to "return all property to the individual. The individual may be asked to wait until a LEO arrives, *but the individual is free to leave the screening checkpoint once screening is finished*." SOP Ch. 12 § 2(5)(a) (emphasis added) (AR162). Therefore, after the security screening process is complete, TSA may not force an individual to remain at the screening checkpoint or retain any property that has been cleared.

Accordingly, the SOP, like MD 100.4, authorizes only lawful administrative searches for prohibited items that threaten transportation security. Where that search uncovers evidence of possible criminality, the TSO may inform law enforcement, but may not extend the administrative search and seizure beyond the time necessary to determine whether the passenger threatens transportation security. Those written policies are therefore fully consistent with the Fourth Amendment and TSA's statutory authorizations under settled Third Circuit precedent.

c. TSA lawfully implements its written policies.

Because TSA's written policies fully comport with TSA's obligations under the Fourth Amendment, summary judgment must be granted for Defendants absent evidence of an unwritten policy or widespread practice that implements those lawful written policies in an unlawful manner. As detailed below, Plaintiffs' multi-year fishing expedition for such evidence came up empty. Instead, the evidence adduced in discovery demonstrates that TSA field offices clearly understood that

administrative searches could not be extended for law enforcement purposes when bulk currency was discovered. The evidence further demonstrates that, where certain TSA officials or offices acted contrary to TSA's written policies, those agents and offices were corrected. In light of this evidence, there can be no dispute of fact that both TSA's policies and TSA's practices comply with the Fourth Amendment.

1. To start, discovery identified no evidence of any widespread misunderstanding of TSA's written policies, let alone evidence sufficient to support Plaintiffs' claim that there exists an official unwritten policy that, contrary to TSA's written policies, violates the Fourth Amendment or TSA's legal authorizations. Instead, communications between TSA field offices demonstrate that TSA repeatedly directed field offices to comply with TSA's written policies regarding bulk currency. These communications illustrate that TSA officials at all levels clearly understood that they could neither detain passengers when a TSO encounters bulk currency nor prolong the search of those passengers beyond the time necessary to conclude that the currency did not contain or conceal a prohibited threat item. Specifically, three different categories of evidence produced during discovery demonstrate TSA's adherence in practice to its written policies: (1) nationwide reminders; (2) airport-specific reminders; and (3) TSA officials' responses to specific questions and incidents.

First, TSA sent frequent reminders to all FSDs across the country directing compliance with TSA's written policies for screening passengers with bulk currency. For example, on January 8, 2014, TSA circulated to all FSDs a memorandum from Scott McShaffrey, the Director of Field Operations and Engagement, Security Operations, regarding the "Discovery of Bulk Currency During the Screening Process." Ex. E, TSA_ESI_00004741 (Email and Attachments from Office of Security Operations Communication to Federal Security Directors, dated Jan. 8, 2014). The memorandum instructed that "[t]raveling with large amounts of currency is not illegal," but acknowledged that bulk currency "can conceal a weapon, explosive, or other item that may pose a threat to transportation security." *Id.* It therefore directed that "large amounts of currency discovered at the checkpoint, either on [a passenger's] person or in accessible property, may need closer examination to ensure prohibited items are not secreted and to clear the person or property to enter the sterile area." *Id.*

The memorandum then directed that "the Screening SOP and Operations Directive . . . provide additional guidance to ensure nationwide consistency in the appropriate handling of incidents involving the discovery of large amounts of currency." *Id.* Further demonstrating that TSA encouraged compliance with its written policies, the memorandum attached the relevant Operations Directive. *Id.*

Roughly a year later, TSA circulated another "reminder" directing FSDs to the SOPs, which "provide procedural guidance to ensure nationwide consistency in the appropriate handling of incidents involving the discovery of large amounts of currency during screening operations." Ex. F, TSA_ESI_00004761 (Email and Attachments from Office of Security Operations Communication to Federal Security Directors, dated March 5, 2015). Again, this reminder emphasized that "[t]raveling with large amounts of currency is not illegal," directed TSOs to ensure that the currency does not conceal or contain "prohibited items" and reiterated that law enforcement must only be notified if the currency appears to exceed $10,000 and the passenger is flying internationally, or if the currency "appears to relate to criminal activity." *Id.* And the reminder also attached TSA's written policies, the specialized screening SOPs in place at that time, to maintain that nationwide consistency. *Id.*

These reminders continued. On February 9, 2016, TSA sent a reminder regarding "Discovery of Bulk Currency During the Screening Process" to all FSDs. Ex. G, TSA_ESI_00003322 (Email and Attachments from Office of Security Operations Communication to Federal Security Directors, dated February 9, 2016). That memo was sent in response to the fact that "screening checkpoints across the country have seen an increase in the discovery of large amounts of currency," and reminded the FSDs that "[t]raveling with large amounts of currency is not illegal." *Id.* at TSA_ESI_00003323. The memorandum directed FSDs to the SOPs, illustrating that TSA encouraged compliance with its written policies, and, again, attached the relevant SOP chapter for reference. *Id.* Similarly, on February 20, 2018, TSA sent a reminder regarding bulk currency to all FSDs. Ex. H, TSA_ESI_00004491 (Email and Attachments from Office of Security Operations Communication to Federal Security Directors, dated February 20, 2018). That memorandum also acknowledged that "screening checkpoints across the country have seen an increase in the discovery of large amounts of currency,"

emphasized that "[t]raveling with large amounts of currency is not illegal," directed TSOs to ensure the bulk currency is not concealing "a weapon, explosive, or other threat item," and directed TSOs and STSOs to the relevant SOP chapter, which was attached. *Id.*

The discovery record thus indicates that—far from encouraging some unwritten policy or practice—TSA sought to ensure compliance with its written policies through frequent reminders to the officials charged with overseeing airport screening.

Second, individual airports sent out reminders to their TSA employees that either reiterated TSA's written policies or expressly directed all TSOs to the written policies. For example, on January 28, 2015, the Assistant FSD at Dallas Love Field Airport sent an email reminder to TSOs and STSOs regarding bulk cash, directing that "[u]nder no circumstance should any TSA employee detain a passenger" as "[t]ransporting bulk currency in itself is not a crime unless the amount exceeds $10,000, is undeclared, and is being transported outside the United States." *See* Ex. I, TSA_ESI_00003412 (Email from James Cennamo, Assistant Federal Security Director, dated Jan. 28, 2015).

Likewise, on August 8, 2019, the Assistant FSD at Houston Hobby Airport sent out a "Weekly Broadcast" that contained reminders "[i]n the event you come across a large sum of cash in the course of screening." Ex. J, TSA_ESI_00003692 (Email from William Byrne, Aug. 8, 2019). Those reminders were: "1) we don't go looking for it. We have no authority to search for cash, drugs or other things . . . 3) Do not ask questions about the currency unless it relates to security. . . . <u>If the supervisor or SOCC calls for a [law enforcement officer] and they have not responded by the time the screening is complete release the passenger and/or bag</u>. Please do not go outside the SOP and this guidance." *Id.* These airport-specific reminders further illustrate that TSA officials sought consistent compliance with TSA's written policies concerning bulk currency.

Third, discovery also demonstrated that TSA required compliance with its written policies for bulk currency when specific questions and incidents arose. For example, a 2016 email exchange involving John Simpson, Federal Air Marshals Service Liaison to TSA Office of Security Operations, and an Assistant FSD in Illinois addressed a request from the United States Immigration and Customs Enforcement (ICE) that TSA report to ICE "every bulk cash encounter." Ex. K, TSA_ESI_00003849

(Email from John Simpson, Federal Air Marshals Service Liaison to TSA Office of Security Operations, dated May 16, 2016). TSA made clear in that email that "[t]he current wording in the SOP was chosen very deliberately and carefully to reflect TSA's role and authorities in this area. . . . TSA has made it clear that we will only [notify ICE] under the circumstances and conditions outlined in the referenced SOP." *Id.*

An email exchange from March 2015 further illustrates TSA officials' adherence to the written policies when confronted with specific questions. That exchange addressed an offer by a Special Agent in Charge of the United States Secret Service Little Rock Field Office to provide instruction on "credit cards, counterfeit, or anything from our end that [TSOs] might come across." Ex. L, TSA_ESI_00004170 (Email from Brian Marr to Mark Tabor, dated March 2, 2015). The FSD responded:

> If we do this we have to be very clear that TSA doesn't have the authority to assist in criminal investigation unless under certain very limited conditions approved by the FSD. We have to work under our legal authority as outlined in TSA MD 100.4 . . . . I am OK with the class as long as it is awareness, not to make TSM and STSO think they have authority to look for these types of items. Remember our job and mission is to look for weapons, explosives and incendiaries under our administrative search authority.

Id. Again, the reference to MD 100.4 illustrates that TSA officials understood TSA's written policies to be binding; there is simply no evidence of any contrary unwritten policy or practice.

TSA officials also repeatedly emphasized in their communications that the discovery of bulk cash does not provide justification to detain or prolong the search of any passengers beyond the time necessary to complete the screening. For example, the FSD in Charlotte, North Carolina, addressed "Bulk Cash" and expressly directed that TSA should not "detain" any passengers solely for traveling with bulk cash: "Whatever information we need . . . can be obtained at the same time the search is taking place and therefore there is no need to 'detain' the passengers until [law enforcement officers] arrive. If the [law enforcement officers] don't arrive by the time the search is concluded, we can ask the passengers to wait but they are free to go." Ex. M, TSA_ESI_00003930 (Email from Kevin Frederick, Federal Security Director, to Sterling Payne, dated Mar. 25, 2015).

Similarly, on March 17, 2017, the Assistant FSD for Utah emailed the Acting FSD regarding "a strong possibility that a female passenger may try to bring $50,000 of bulk cash through the checkpoint" and "[t]he cash is proceeds from illegal narcotics trafficking." Ex. N, TSA_ESI_00005210 (Email from Mark Lewis, Acting Federal Security Director, dated March 17, 2017). The Acting FSD responded stating that "we can't detain the passenger if there are no other screening issues. We can ask them to wait but they may proceed." *Id.*

A similar exchange in Alaska occurred in June of 2014. There, a United States Customs Officer contacted TSA and asked that certain individuals flying out of Anchorage should "not be allowed to fly" and "[i]f they arrive at the checkpoint" TSA should "not process them through and call [] immediately." Ex. O, TSA_ESI_00003594 (Email from Brian Cahill, Acting Federal Security Director, dated June 26, 2014). The Acting FSD responded to all Assistant FSDs, stating "[a]ll of us should have some concern with this request" because "TSA cannot refuse processing or detain anyone at the checkpoint for a non-TSA-related incident. Just as when we identify excessive amounts of cash at the [check point], all we can do is notify CBP, complete TSA screening, and allow the traveler to proceed into the sterile area." *Id.* at TSA_ESI_00003594. The email reiterated that "refusing to process or detaining travelers for reasons that fall outside the TSA's authority to conduct an Administrative Search cannot be done." *Id.*

An exchange in March 2016 involving the Assistant FSD at El Paso's airport further demonstrates that TSA took care to ensure compliance with TSA's written policies prohibiting the detention of passengers traveling with bulk currency. In this instance, an official asked "[w]hat is the policy here if you came across a significant amount of money?" Ex. P, TSA_ESI_00003705 (Email from Jared Babin, Assistant Federal Security Director, dated March 7, 2016). The Assistant FSD responded: "There's not much that can be done if it's domestical travel, and bulk cash fa[l]ls out of our purview under our administrative search authority." *Id.* The TSA employee responded that "I thought that's how it worked but we haven't had that here so far." *Id.* The Assistant FSD then emphasized: "It's a case by case thing. We can't detain anyone so they are free to go." *Id.*

2. To be sure, there were isolated incidents in which certain field offices or individual TSOs failed to adhere to TSA's written policies, as would be expected for an agency with tens of thousands of employees screening millions of passengers across the country. But discovery demonstrated these were exceptions that prove the rule—in each instance, TSA corrected field offices or individual TSA screeners that violated TSA's clear written policies that prohibit the extension of administrative searches for law enforcement purposes where bulk currency was discovered.

For example, Paul Leyh, the Senior Advisor to the Executive Assistant Administrator for TSA, learned of certain variances at certain airports in the application of TSA's written policies regarding the discovery of bulk currency during passenger screening. *See* Ex. D, Leyh Dep. Tr. 264:5-271:4. Upon discovery of those variances, TSA's acting Assistant Administrator for Domestic Aviation Operations, Michael Turner, followed up with the airports to "reinforce what the policy was, and what they needed to do . . . to follow the policy." *Id.* at 271:19-23.

To ensure the message was received, the Deputy Assistant Administrator for Domestic Aviation Operations sent an email directly to FSDs at the airports with variances in the application of TSA written policy. *See* AR231 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated March 14, 2025). That message provided a summary of TSA's policies regarding bulk currency and directed the FSDs at those airports to "ensure the screening workforce at [their] airport(s) adhere to the letter and the spirit of the SOP and TSA MD 100.4 going forward." *Id.*

That message was reinforced through an email sent to all FSDs on May 2, 2025. *See* AR222-24 (Email from Michael Turner, Deputy Assistant Administrator for Domestic Aviation Operations, dated May 2, 2025). That message explained to the FSDs that "some airports may not be fully adhering to both the letter and spirit of the SOP and TSA MD 100.4 when it comes to discoveries of bulk currency during screening," and directed that notifications should only be made for "[d]iscoveries that **appear to have a possible connection to criminal activity**" and where "[a]n international traveler appears to be carrying more than $10,000 in bulk currency." *Id.* The message reiterated that "[b]ecause traveling with bulk currency is not itself problematic, TSA's policies do not intend for notifications to

law enforcement to be made every time bulk currency discovery is found in an amount that appears to be over a certain threshold." *Id.* It also explained that "[s]creening personnel should not ask the passenger questions about the currency, except as it relates to security." *Id.* The message also made clear that, even if law enforcement is notified, "the screening process cannot be extended or delayed for law enforcement to arrive"; instead, if such a notification has been made but law enforcement officers "are not present at the conclusion of the security screening, the individual's property should be returned to them and they are free to leave the screening checkpoint." *Id.* Finally, and further demonstrating that TSA demands adherence to its written policies, the email directed that all FSDs should "ensure the screening workforce at [their] airport(s) adhere to the letter and the spirit of the SOP and TSA MD 100.4 going forward." *Id.*

TSA also made sure that individual TSOs and STSOs complied with the SOPs. For example, on October 11, 2018, a Senior Transportation Security Manager issued a Letter of Counseling[5] to a Transportation Security Manager at the Ted Stevens Anchorage International Airport. *See* Ex. R, TSA_02162 (Letter of Counseling, dated October 11, 2018). The letter was issued "to counsel" the Transportation Security Manager "regarding [his or her] failure to follow policy" in light of "an incident involving the discovery of bulk currency" that "was not handled in accordance with TSA Screening Policies for SOPs." *Id.* "Specifically, a passenger flying domestically within the borders of the United States, whose checked baggage . . . was discovered to contain approximately $50,000.00 in cash . . . was reported to the HSI Bulk Cash Smuggling Center." *Id.* The letter indicates that the report was made "because the bag appeared suspicious," but the offending Transportation Security Manager "could not articulate [his or her] suspicious and/or [his or her] rational was inadequate to justify reporting this." *Id.* The letter expressly directed the Transportation Security Manager to comply with TSA policies and procedures, including the Screening Policies for SOPs. *Id.* The

[5] A letter of counseling is a form of discipline that a TSA supervisor may issue for performance issues. It is "the lowest form of formal action," which must be entered into the Employee Relations database for TSA employees, and requires the supervisor issuing the letter "to work with their local HR person and get a case number assigned and provide them the documentation and then ultimately . . . a copy of any letter issued and the supporting documentation regarding that allegation." Ex. Q, Lambert Dep. Tr. 41:12-42:6; *see also id.* at 88:15-21.

Transportation Security Manager was advised "that any future incidents of misconduct may result in other corrective or disciplinary action, up to and including removal from Federal service." *Id.* at TSA02163.

At most, then, Plaintiffs can identify isolated incidents in which TSA officials failed to comply with the letter and spirit of TSA's written policies regarding bulk currency. But "isolated" or "sporadic" incidents of misconduct by rogue officers are insufficient to establish that the alleged practices were "the regular rather than the unusual practice." *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 (1977) (explaining that in Title VII context, the plaintiff "ultimately had to prove more than the mere occurrence of isolated or 'accidental' or sporadic discriminatory acts," and had to show that "racial discrimination was the company's standard operating procedure the regular rather than the unusual practice"); *see also Hohider v. United Parcel Serv., Inc.*, 574 F.3d 169, 178 (3d Cir. 2009) (same); *Reck v. Wexford Health Sources, Inc.*, 27 F.4th 473, 488 (7th Cir. 2022) (explaining that, in the context of municipal liability under 42 U.S.C. § 1983, "[i]solated acts of individual employees . . . are not actionable; something more is required to establish a widespread custom or practice"). And that is particularly true where, as here, the misconduct of any "single subordinate officer conflicts with" TSA's "official, written policy." *Glover v. City of Wilmington*, 966 F. Supp. 2d 417, 430 (D. Del. 2013).

* * *

In short, TSA's written policies regarding bulk currency are wholly consistent with the Fourth Amendment and TSA's statutory obligations under settled Third Circuit precedent. Moreover, discovery established that TSA consistently directed compliance with those written policies: TSA's Office of Security Operations repeatedly reminded field offices about TSA's written policies for bulk cash discovered during screening, and individual field office leadership repeatedly reminded their employees about those written and referred to those written policies when questions or incidents arose. When certain individuals or field offices failed to comply with TSA's written policies, local and national leadership directed those individuals or field officers to the policies and corrected any misunderstandings. Accordingly, there is no evidence of the widespread and unwritten policy or

practice that Plaintiffs alleged. If this Court reaches the merits of Count I and II, it should therefore grant summary judgment for Defendants.

CONCLUSION

For the reasons set forth above, Counts I and II should be dismissed for lack of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(h)(3). In the alternative, this Court should grant Defendants' motion for summary judgment on Counts I and II, and enter judgment on those counts for Defendants.

Dated: May 30, 2025

Respectfully submitted,

YAAKOV ROTH
Acting Assistant Attorney General

ANDREW WARDEN
Assistant Director, Federal Programs Branch

/s/ Alexander W. Resar
ALEXANDER RESAR (NY Reg. No. 5636337)
Trial Attorney
Federal Programs Branch
U.S. Department of Justice, Civil Division
1100 L Street, NW
Washington, DC 20005
Tel: (202) 616-8188
E-mail: alexander.w.resar@usdoj.gov

Counsel for Defendants