

**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

**PLAINTIFFS' CONSOLIDATED MEMORANDUM IN SUPPORT OF CROSS-
MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

Air travelers must comply with TSA's orders at screening checkpoints, or they may be prevented from flying, even arrested. They must answer questions, provide documents, and allow their persons and bags to be searched, trusting these intrusions must be necessary to prevent terrorism. TSA betrays that trust by regularly detaining travelers with "suspicious" cash or "large" amounts of cash at checkpoints pursuant to secret policies that have nothing to do with transportation security. Traveling with any amount of cash is completely legal and poses no threat to aviation. Nonetheless, attempting to fly with whatever cash a TSA screener decides is "suspicious," a "large" sum, or "bulk currency" independently triggers additional TSA detention during (mandatory) airport checkpoint screening. All this is purely to aid law enforcement. But TSA is not a law-enforcement agency. Worse, TSA requires screeners to make those additional detentions without reasonable suspicion, just cash.

TSA exists solely to advance transportation security. As such, it is permitted a limited exception to the Fourth Amendment: it may conduct suspicionless "administrative searches" of travelers and their luggage at airports solely for the limited purpose of ensuring bombs, weapons, and hazardous materials stay off planes. But using these limited-purpose administrative searches for reasons unrelated to aviation security—and to facilitate law-enforcement fishing expeditions—exceeds TSA's statutory authority and violates travelers' Fourth Amendment rights, including those of the named Plaintiffs in this litigation and the putative class they plan to represent.

TSA concedes its policies "may expose [Plaintiffs] to slightly longer questioning at TSA checkpoints," TSA Br. 16, and TSA admits these seizures, searches, questioning, and document collections have *no transportation security purpose*. Instead, these intrusions occur because TSA is abusing its unique access to conduct warrantless searches of travelers' persons, papers, and effects to aid law enforcement, including its sister DHS agencies, ICE and CBP. To do so, TSA has a secret set of formal, written screening policies that treat cash differently from any other legal item that is

allowed to be taken aboard a plane. TSA’s cash-screening policies uniquely target travelers with cash—treating the mere presence of “large” quantities of cash, without more, as “evidence of criminal activity”—and focus on collecting information from these travelers, including by taking photos of documents to provide to law enforcement for criminal investigations. Sometimes, TSA detains travelers’ carry-on luggage or directly detains travelers themselves until law enforcement arrives.

In practice, travelers have no way to know when the legitimate administrative search ends and a law-enforcement investigation begins. They reasonably believe they must cooperate with TSA screeners at a checkpoint and must therefore answer questions, produce documents, and allow searches of themselves and their possessions. TSA abuses that reasonable understanding to vitiate any concept of consent to the agency’s wildly unlawful and unconstitutional cash-screening policies.

TSA claims it does not seize or detain travelers because it *tells* screeners not to detain travelers. But TSA necessarily makes a *non-administrative seizure* when screeners “[m]aintain control of the suspicious item”—which can include cash or bags—for law enforcement under its screening policies on “Possible Evidence of Criminal Activity.” And it is also a non-administrative seizure when, under those same policies, screeners extend or prolong the screening of travelers with “bulk cash” to perform tasks unrelated to aviation security: (1) investigate whether they are traveling internationally, (2) collect boarding passes, IDs, and other information, and (3) make a series of notifications to at least (i) a supervisor, often followed by (ii) law-enforcement officers, (iii) TSA’s Coordination Center, (iv) ICE’s Bulk Cash Smuggling Center, and sometimes also (v) U.S. Customs and Border Protection.

Plaintiffs Rebecca Brown, Stacy Esposito, and Matthew Berger¹ (collectively, “Plaintiffs”), were each unlawfully searched and seized by TSA because they were flying with “large” amounts of cash for entirely lawful reasons. Each then had their cash seized by law enforcement for civil forfeiture.

¹ Plaintiff Stacy Esposito has changed her name from Stacy Jones-Nasr. Esposito Decl. ¶¶ 4–5. Plaintiff August Terrence Rolin passed away after this lawsuit was filed. Brown Decl. ¶¶ 4–5.

Because of these traumatic experiences, they have stopped flying with cash that could re-expose them to TSA’s unlawful practices until those practices cease. Thus, TSA’s policies are the reason Plaintiffs are refraining from this wholly lawful conduct that is critical to their business and their hobby.

FACTUAL BACKGROUND

I. TSA’s Policies Require Screeners to Seize and Search Travelers for Reasons Unrelated to Transportation Security, Extending or Prolonging the Administrative Search.

TSA conducts security screenings at checkpoints to control entry to the “sterile area” of an airport; these checkpoint screenings are warrantless administrative searches purportedly for the sole purpose of ensuring transportation security by detecting threat items or other prohibited items, such as most liquids over 3.4oz. SUMF ¶ 9.² Checkpoint screenings are conducted primarily by Transportation Security Officers (TSOs), overseen by Supervisory Transportation Security Officers (STSOs) (collectively “Screeners”), who are *not* law-enforcement officers. SUMF ¶ 10. These administrative searches are not supposed to be “conducted to detect evidence of crimes unrelated to transportation security.” SUMF ¶ 11. However, TSA maintains formal, written policies that require Screeners to (arbitrarily) assess cash for criminality during screening. SUMF ¶ 13.

It is legal to travel with large amounts of cash. SUMF ¶ 95. Cash is also not a prohibited item, nor a threat item. SUMF ¶¶ 96–97. Nonetheless, TSA has adopted a series of formal, written policies that require Screeners to assess “large amounts of currency”³ for non-transportation-security purposes. Those policies include in Management Directive (MD) 100.4, now-expired Operations Directive (OD) 400-54-6, and each version of its Screening Policies for Standard Operating Procedures (SOPs) (collectively, “TSA’s Cash-Screening Policies”). SUMF ¶ 15; *see* TSA Br. 4–9; AR Index Nos. 1–5.

² All citations to “SUMF” refer to the accompanying *Plaintiffs’ Concise Statement of Material Facts*.

³ TSA uses the terms “bulk currency,” “bulk cash,” and “large amounts of currency” interchangeably to describe large amounts of cash or currency. SUMF ¶ 16. Plaintiffs will do the same. Note that these terms are not defined in any formal TSA policy, and interpretations differ even within TSA, but the terms are often understood to mean \$10,000 or more in cash. *See* SUMF ¶¶ 2, 105–09, 115.

MD 100.4 is a high-level directive from the TSA Administrator about screening policies with two paragraphs specifically about “Possible Criminal Activity”; the first, ¶ 6.C(1), concerns discovery of “evidence of crimes unrelated to transportation security” (including money laundering), while the second, ¶ 6.C(2), is about assessing large amounts of currency. SUMF ¶ 17.

MD 100.4 is implemented by SOP Chapter 12 (formerly Chapter 16)⁴, “Possible Evidence of Criminal Activity,” which has two numbered sections corresponding to the two paragraphs in MD 100.4. SUMF ¶ 22; TSA SUMF ¶ 8. Section 1 (hereinafter “‘Suspicious’ Item SOP”) is titled “Evidence of Criminal Activity” and describes steps “if standard screening uncovers evidence of criminal activity,” including “[m]aintain control of the suspicious item.” SUMF ¶ 23. Section 2 (hereinafter “Cash SOP”) is titled “Discovery of Large Amounts of Currency,” and has step-by-step instructions for what Screeners must do when they encounter a “large” amount of currency, including collecting information and notifying law-enforcement officers (“LEOs”). SUMF ¶ 24; TSA SUMF ¶ 9.

If Screeners find whatever they decide is evidence of “criminal activity” under either section of SOP Chapter 12, they must notify a LEO, SUMF ¶ 25, which in turn requires them to gather information—including typically their boarding pass and ID—from the traveler to report to law enforcement and to complete an Incident Report for TSA record-keeping purposes. SUMF ¶¶ 26–29.

Part A below explains how, under TSA’s “Suspicious” Item SOP, if Screeners believe any item, including cash, is “evidence of criminal activity,” they must “maintain control of the suspicious item [and] notify a LEO.” Part B is an overview of the eight steps in TSA’s Cash SOP. Part C explains how the Cash SOP requires Screeners to take steps that extend the screening process for travelers with large amounts of cash *after* Screeners determine there is no transportation security threat or prohibited item, including requiring travelers to provide travel and ID documents and recording their

⁴ To avoid confusion, this brief will refer to the current location of the SOP chapters whenever they are cited, even though many of the depositions were taken using SOPs under the prior organization.

documents and other information via photos, photocopies/scans, or written notes—all of which serves no transportation security purpose yet extends or prolongs the duration of the traveler’s seizure.

A. TSA’s “Suspicious” Item SOP requires Screeners to seize any “suspicious item”—including cash—encountered during screening.

When “standard screening uncovers evidence of criminal activity,” the “Suspicious” Item SOP requires Screeners to “[m]aintain control of the suspicious item” and “[n]otify an STSO, who will notify a LEO.” Ex. 1 at AR161. This applies to *any item, including cash of any amount*. SUMF ¶ 48. The corresponding paragraph of MD 100.4, ¶ 6.C(1), includes “money laundering” as “criminal wrongdoing” that may be “evidence of crimes unrelated to transportation security.” Ex. 2 at AR8–9.

Thus, under the “Suspicious” Item SOP, if a Screener decides that a traveler’s cash is “evidence of criminal activity,” they must: “Maintain control of the suspicious item” (Step 1); “Not handle suspicious items further or look for additional evidence of criminal activity” (Step 2); and “Notify an STSO who will notify a LEO” (Step 3). SUMF ¶ 52; *see also* SUMF ¶¶ 131–34 (cash that is “artfully concealed”). Also under Step 3: “An individual may be asked to wait until a LEO arrives, but they are free to leave the screening checkpoint once screening is finished.” Ex. 1 at AR161. Notably, however, Step 3 says *nothing* about returning the “suspicious item,” which the Screener must “[m]aintain control of.” SUMF ¶ 53; *see* SUMF ¶¶ 56, 127.

TSA concedes this “Suspicious” Item SOP means TSA detains travelers’ carry-on bags or other “suspicious” possessions to prevent travelers from leaving the checkpoint with them. SUMF ¶¶ 54, 59, 128–29. TSA also admits that, per this “Suspicious” Item SOP, Screeners must wait for a LEO to arrive and investigate before they can complete the screening of the item. SUMF ¶ 55. And TSA concedes that it detains “suspicious” items (or bags containing them) to aid law enforcement and not for any transportation security purpose. SUMF ¶ 56, 137.

Because preparing to board an international flight with over \$10,000 in unreported currency is “evidence of criminal activity” (Cash SOP Step 3.a), and because “appears to relate to criminal

activity” (Cash SOP Step 3.b) mirrors “evidence of criminal activity” (“Suspicious” Item SOP Step 1), if a LEO notification is required under *either prong* of Cash SOP Step 3, *see infra*, then Screeners must “maintain control” of the cash until LEOs arrive. *See* SUMF ¶¶ 73, 110, 113–14, 131–34.

B. Overview of the Eight Steps in TSA’s Cash SOP.

TSA’s Cash SOP, Ex. 1 at AR161–163, has eight steps Screeners must follow, in order, when “a large amount of currency is discovered.” SUMF ¶ 60; TSA SUMF ¶¶ 9–12.

At **Step 1**, TSOs must notify an STSO of any “large” amount of currency. SUMF ¶ 61. What constitutes a “large amount of currency” or “bulk currency” is never defined by any formal TSA policy. At **Step 2**, Screeners must search the currency for “prohibited items.” SUMF ¶ 62.

If no prohibited item is found, Screeners must proceed to **Step 3**, where “the STSO must determine if the currency requires [LEO] notifications.” SUMF ¶ 63. Step 3 has two prongs, requiring independent Screener assessments. SUMF ¶ 64. First, under **Step 3.a**, if currency “appears to exceed \$10,000,” Screeners must check travel documents to “determine whether the individual is traveling outside the United States.” SUMF ¶ 65. If so, Screeners must notify a LEO. SUMF ¶ 66. Next, under **Step 3.b**, Screeners must notify a LEO if “the currency appears to relate to criminal activity.” SUMF ¶ 72. So, if either prong of Step 3 is satisfied, Screeners must make LEO notifications (triggering information-collection obligations per Steps 6–8). SUMF ¶ 73. TSA admits there is no transportation security purpose for Step 3.a or Step 3.b. SUMF ¶ 80. If there is “evidence of criminal activity,” as when Screeners decide either prong of Cash SOP Step 3 is satisfied, Screeners must “maintain control” of the item, per the “Suspicious” Item SOP. *See* SUMF ¶¶ 1, 47–48, 52, 73, 78, 126; Ex. 1, AR161–62.

Then, the steps split into two separate tracks: a no-notification track and a LEO-notification track. If no LEO notifications are required by either Step 3 prong, Screeners proceed to **Step 4**, the only step in the no-notification track. SUMF ¶ 82. At Step 4, the STSO “must return the individual’s property and clear the individual into the sterile area after successfully completing screening

requirements.” SUMF ¶ 83. Being “cleared” into the “sterile area” is the end of the TSA detention; only then is the traveler free to leave. SUMF ¶ 84.

However, if LEOs are notified under either prong of Step 3, Screeners bypass Step 4 and proceed to the LEO-notification track of Steps 5–7 and, for international travelers, Step 8. SUMF ¶ 87. **Step 5** discusses how to proceed with the screening after a LEO notification depending on whether law enforcement is present at the completion of the security screening. SUMF ¶ 88.

Next in the LEO-notification track are the notification and information-collection requirements of Steps 6–8 (which apply if a LEO was notified at Step 3).

Step 6 requires the STSO to notify TSA’s Coordination Center (TSA’s nerve center at each airport) and “[p]rovide the individual’s name and flight information.” SUMF ¶ 89. TSA admits Step 6 does not serve any transportation security purpose. SUMF ¶ 90; *see also* SUMF ¶ 80.

At **Step 7**, TSA’s Coordination Center must “immediately” call the ICE Bulk Cash Smuggling Center—a *second* LEO notification—and “provide the individual’s name, flight information, and airport code.” SUMF ¶ 91. Step 7 also serves the purpose of notifying LEOs of potential criminal activity, which TSA admits is not a transportation security purpose. SUMF ¶ 92; *see also* SUMF ¶ 80.

Finally, at **Step 8**, if the traveler’s destination is outside the United States, TSA’s Coordination Center must “immediately” notify CBP—a *third* LEO notification—and “provide the individual’s name, flight information, and airport code.” SUMF ¶ 93. TSA admits that notifying CBP in these circumstances serves no transportation security purpose. SUMF ¶ 94.

C. Step 3 of TSA’s Cash SOP requires Screeners to extend or prolong the administrative search *after* they have determined there are no prohibited items.

Step 3 of the Cash SOP starts: “**If there are no signs of prohibited items**, the STSO must determine if the currency requires notifications.” SUMF ¶ 63 (emphasis added). That means Steps 3.a and 3.b occur *after* the transportation-security assessment. And TSA admits that neither of the LEO notifications under Step 3.a or Step 3.b has a transportation security purpose. SUMF ¶ 80.

Further demonstrating the absence of any transportation security purpose for Step 3 is the fact that if no LEO notifications are required at Step 3, Screeners next proceed to Step 4, where Screeners simply “return the individual’s property and clear the individual into the sterile area after successfully completing screening requirements.” *See* SUMF ¶¶ 82–83. But no screening requirements remain if no signs of prohibited items are found at Step 2; as TSA admits, if no signs of prohibited items were found during Step 2 (and no notifications were required at Step 3), then travelers are “free to go” because “[a]t that point they would have completed screening requirements.” SUMF ¶ 81.

1. Cash SOP Step 3.a requires Screeners to check a traveler’s documents to determine if they are traveling internationally, which has no transportation security purpose.

If a Screener thinks a traveler’s cash exceeds \$10,000, Step 3.a of the Cash SOP requires determining if they are traveling internationally. SUMF ¶ 65. If so, Screeners must notify a LEO. SUMF ¶ 66. To make that determination, Screeners need the traveler’s boarding pass and ID. SUMF ¶¶ 67, 147. The traveler is only free to go once they have presented their documents and the Screener has verified the travel is domestic. *See* SUMF ¶¶ 65–66, 77, 81–85. Although not expressly stated in the SOP, if the traveler’s destination is international, the Screener must also ask if the traveler declared the cash with Customs. SUMF ¶¶ 70, 148. But TSA admits there is no transportation security purpose for determining whether a traveler with more than \$10,000 is traveling internationally. SUMF ¶ 71.

2. Cash SOP Step 3 requires Screeners to collect documents and record information for LEO notifications, which has no transportation security purpose.

When Screeners encounter a large amount of currency (Step 1) that does not contain any prohibited items (Step 2), TSA’s Cash SOP nevertheless requires them to notify a LEO if either prong of Step 3 is satisfied. *See* SUMF ¶ 73. To do so, Screeners must gather information from the traveler, including information on the traveler’s ID and boarding pass to provide to law enforcement as detailed in Steps 6–8.⁵ SUMF ¶ 74. Screeners do this by taking photos or scans of these documents to provide

⁵ This is *not* the same as presenting documents to enter the TSA checkpoint. SUMF ¶ 79. This extra

to TSA's Coordination Centers. SUMF ¶ 75. Screeners sometimes also photograph the cash. SUMF ¶ 76. At this stage, while a traveler's boarding pass and ID are being photographed, scanned, or read aloud to TSA's Coordination Center, that traveler is not free to leave because TSA does not consider the traveler to have completed the screening process. SUMF ¶ 77. None of this collection of documents and information serves any transportation security purpose. SUMF ¶ 78.

3. Collecting documents and/or recording information from travelers takes time and extends a traveler's detention by TSA.

To comply with Step 3 of the Cash SOP, Screeners must extend the duration of the detention of travelers with "large" amounts of cash for the added time it takes to collect identification and travel information. *See* SUMF ¶¶ 65, 67–70, 74–77. As Plaintiffs' expert in data collection and analytics explained, collecting and recording information always takes time. SUMF ¶¶ 176–77, 177–78, 190, 192. That information-collection time is further extended because it requires retrieving documents. Travelers divest all accessible property—including their boarding pass (which sometimes resides solely on their smartphone) and ID—onto the X-ray conveyor belt before walking through the metal detector or body scanner. SUMF ¶¶ 30, 68–69. Thus, travelers with "large" amounts of cash who are subjected to extra scrutiny under the Cash SOP do not have their travel documents on them when this process begins and must either retrieve them from their accessible property or show the Screener where they are located. *See* SUMF ¶ 68. Travelers must retrieve their carry-on bag or bin on the conveyor belt, locate their boarding pass and ID, and then hand them to the Screener, at which point the Screener must then spend the time necessary to record that information, before finally returning the traveler's boarding pass and ID. *See* SUMF ¶ 69. This cumulative process necessarily extends the time the traveler is detained at the checkpoint. SUMF ¶¶ 4, 190; *see, e.g.*, TSA Ex. J at 1 (AFSD directing

Cash SOP document check occurs *after* the traveler or their carry-on have "alerted" and Screeners encounter a "large" amount of currency. *Id.* TSA admits collecting information from travelers to provide to LEOs serves no transportation security purpose. *See* SUMF ¶ 78.

Screeners making notifications to first, “Get the passenger’s name and flight information,” before they “give it to the SOCC” and then “finish the screening”).

II. TSA Trains Screeners That “Bulk Cash” Is Evidence of Criminal Activity and Gives Them Broad Discretion to Detain and Search Travelers for Non-Security Reasons.

In addition to requiring the detention of travelers with “large” amounts of cash, TSA also trains Screeners that “large amounts of currency” is “evidence of criminal activity” and gives unfettered discretion to Screeners to detain travelers for reasons unrelated to transportation security. As Part A explains, TSA training instructs that “large amounts of currency” are an example of “evidence of criminal activity.” Next, as Part B details, no TSA policy defines key terms related to screening travelers with cash, including “large amount of currency,” “bulk currency,” “bulk cash,” “appears to relate to criminal activity,” or “evidence of criminal activity,” giving individual Screeners total discretion to define those terms for themselves. Part C notes that no TSA policy requires Screeners to have probable cause or even reasonable suspicion of criminal activity to notify a LEO or maintain control of a “suspicious” item, empowering Screeners to detain travelers arbitrarily. Finally, Part D explains that TSA’s Cash-Screening Policies indicate that the mere quantity of cash, by itself, is sufficient to satisfy TSA’s standard for “potential criminal activity,” enabling Screeners to extend or prolong the administrative search of any traveler with “bulk cash,” regardless of circumstances. And TSA then *requires* Screeners to “maintain control” of it under the “Suspicious” Item SOP.

A. TSA training: “large amounts of currency” equals “evidence of criminal activity.”

TSA training materials instruct Screeners that “[l]arge amounts of currency” (without qualification) is an example of “evidence of criminal activity” in a standard lesson plan. SUMF ¶ 113. TSA also admits that it *equates* a “large amount of currency” from Step 1 of the Cash SOP—which does not necessarily require a LEO notification—with currency that “appears to relate to criminal activity,” which *does* require a LEO notification at Step 3.b of the Cash SOP. SUMF ¶ 110.

B. Key terms and phrases in TSA’s Cash-Screening policies are undefined, giving Screeners tremendous discretion to detain and search travelers.

TSA’s Cash-Screening Policies leave undefined the terms that are essential for implementing them, including “large amount of currency,” “bulk currency,” and “appears related to criminal activity.” That means Screeners decide for themselves. And there are “no wrong answers.” *See* SUMF ¶¶ 105, 107, 122. So Screeners can’t reasonably be disciplined if they apply a standard that differs from what some TSA officials may consider “correct” or the “spirit” of the policies. In short, Screeners are empowered to arbitrarily extend or prolong travelers’ detention based on the mere presence of cash.

Even though identifying whether a traveler has a “large amount of currency” (or “bulk currency”) is the threshold issue for determining whether Screeners must follow the steps in the Cash SOP, no formal TSA policy defines those terms, leaving it to Screeners to decide for themselves. SUMF ¶¶ 105–06. Even TSA’s own witnesses could not (or refused to) define these terms or said they needed to look at TSA’s Cash-Screening Policies for the definitions (which don’t define these terms). SUMF ¶ 108. When TSA’s witnesses did explain what they thought these terms meant, their views varied, and included \$2,000, or even a stack of 100 one-dollar bills. SUMF ¶ 109. One admitted there’s no way to determine what the correct interpretation of that policy is. SUMF ¶ 111.

Likewise, Step 3.b of the Cash SOP directs Screeners to determine whether “currency appears to relate to criminal activity” to know if a LEO notification is required. SUMF ¶ 72. However, this phrase is not defined, with only three examples provided in parentheses. SUMF ¶ 112. It is also not defined in TSA’s training materials. SUMF ¶ 113. This leaves it to Screeners to decide for themselves what qualifies. SUMF ¶ 121. As TSA’s subject matter expert, who oversaw the development of the SOPs, acknowledged, if Screeners disagree about how to define this term: “There would be no right or wrong. It’s a perception of what’s evidence of criminal activity.” *See id.* Thus, TSA’s subject-matter expert on employee disciplinary action testified she would not recommend discipline if a TSA employee failed to “correctly” interpret this undefined term. SUMF ¶ 122.

C. TSA’s Cash-Screening Policies require Screeners to detain and search travelers with cash without reasonable suspicion or probable cause.

TSA has no policy requiring probable cause or reasonable suspicion for the seizures and searches mandated by the Cash-Screening Policies, including the requirements that Screeners collect a traveler’s name and flight information, photograph/scan their travel documents, notify a LEO, or “maintain control” of a “suspicious” item. SUMF ¶¶ 164–65. TSA’s Cash-Screening Policies do not even mention probable cause or reasonable suspicion. So, other than the training and other materials discussed her that equate “large” amounts of cash with criminality, Screeners have no way to determine what is “evidence of crimes unrelated to transportation security” (MD 100.4, ¶ 6.C(1), AR8) or “evidence of criminal activity” (“Suspicious” Item SOP, AR161) and, for cash specifically, if “currency appears to be indicative of criminal activity” (MD 100.4, ¶ 6.C(2), AR9) or “the currency appears to relate to criminal activity” (Cash SOP Step 3.b, AR162). *See* SUMF ¶¶ 112–14, 122.

TSA does define “Articulable Belief” in SOP Chapter 3 (but not in MD 100.4); but it does not refer to making any determinations about currency or evidence of criminal activity. It is focused solely on evaluating whether “an individual or item may be a **threat to transportation security.**”⁶ SUMF ¶¶ 166, 168 (emphasis added). At least one TSA official claims TSA policy requires an “articulable belief” for determining whether “currency appears to relate to criminal activity,” but that official identified no supporting authority, and there is none. *See* SUMF ¶¶ 171–72.

D. Under TSA’s Cash-Screening Policies, the mere quantity of cash is sufficient to indicate “criminal activity” and thereby require the associated seizures and searches.

TSA’s Cash-Screening Policies identify the mere “quantity” of cash as a factor independently sufficient to indicate the cash is related to criminal activity. The policies require LEO notifications “[w]hen cash appears to be indicative of criminal activity.” MD 100.4 ¶ 6.C(2) at AR9. “For all flights,

⁶ TSA also defines “Suspicious Item” in SOP Chapter 3, but it simply reads: “Any item that does not appear to belong where it is located even if it may fit into the surroundings.” AR142.

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.” *Id.* (emphasis added). This is a disjunctive list, meaning that **any** of these factors satisfies the requirement. Thus, just as cash concealed in a “suspicious” manner may independently be “indicative” of criminal activity, so may quantity or packaging. TSA’s designated subject matter expert on these policies agreed that any one of these factors could be enough to indicate that the cash is related to criminal activity. *See* SUMF ¶¶ 19–20. Further, since “large amount” and “bulk” are undefined, this permits Screeners to deem virtually **any** amount of currency “suspicious” based merely on its quantum, whatever that may be. And because TSA draws no distinction between MD 100.4’s “indicative of criminal activity” standard and the “evidence of criminal activity” standard in the “Suspicious” Item SOP, the mere quantity of cash authorizes Screeners to “maintain control” of it. *See generally* AR Index Nos. 1–5.

III. TSA’s Formal Policies and Informal Customs or Practices Regularly Lead to Detentions of Travelers with “Large” Amounts of Cash.

A. TSA admits it detains *travelers*, not just their bags, if TSA suspects criminality.

1. TSA admits that under its “Suspicious” Item SOP, Screeners detain travelers when Screeners believe the traveler’s cash may be associated with criminal activity.

The “Suspicious Item” SOP directs Screeners to “[m]aintain control” of “suspicious item[s],” including cash and carry-on bags, if they consider them to be evidence of criminal activity. Paul Leyh, TSA’s 30(b)(6) witness on TSA’s screening policies, further testified that, pursuant to the “Suspicious” Item SOP, TSA **detains travelers**, not just items, when Screeners encounter potential criminal activity, including cash. SUMF ¶¶ 54, 56, 58–59.

2. Pursuant to Step 3.a of the Cash SOP, Screeners detain travelers’ carry-on bags.

TSA also detains travelers’ carry-on bags under the Cash SOP. The head of TSA’s screening operations at Washington Dulles International Airport testified that when TSA encounters an

international traveler with more than \$10,000 undeclared,⁷ TSA sometimes retains control of a traveler's bag until CBP arrives. SUMF ¶ 150. At Dulles, TSA will do so when "CBP can get there within a short amount of time," such as from "a Dunkin Donuts behind the checkpoint," from one minute up to possibly five minutes. SUMF ¶ 151. In addition, even when TSA does release a bag to an international traveler with undeclared cash exceeding \$10,000, TSA will regularly take photos of their boarding pass, ID, and cash, which extends the TSA detention. *See* SUMF ¶¶ 29, 178, 185.

B. TSA's Office of Chief Counsel approved Dallas Love Field's policy of reporting *every traveler* with "bulk cash" to LEOs, an overreach ongoing since 2011.

On September 4, 2015, Federal Security Director (FSD) Amy Williams, who oversees several airports in Dallas including Dallas Love Field (DAL), emailed Marsha Davis, an attorney in TSA's Office of Chief Counsel, requesting legal advice regarding TSA's bulk cash policies. SUMF ¶ 193. Four days later, FSD Williams forwarded that email to her top deputies, noting "I spoke with Marsha Davis on the bulk cash issue," and relaying Ms. Davis's legal advice. SUMF ¶ 194.

Prior to that email exchange, the Dallas Police Department (DPD) had requested TSA at DAL notify DPD every time bulk cash was discovered during TSA screening operations at DAL. SUMF ¶ 196. And, prior to that email exchange, TSA at DAL had a policy, since at least 2011, of notifying LEOs of every traveler with "any bulk cash, regardless of the amount." SUMF ¶¶ 197–205. TSA is unaware of any communications from TSA directing officials at DAL to change its policy on LEO notifications about bulk cash. SUMF ¶ 206. And TSA at DAL did not change their policies after that date up until possibly very recently, when, in preparation for his deposition, TSA's Paul Leyh called AFSD-S Tyler in March 2025 and learned DAL Screeners were *still* notifying a LEO if there was "[b]asically, any amount of currency." *See* SUMF ¶ 207. There is no evidence this practice has ceased.

⁷ Ascertaining whether cash is undeclared serves no transportation security purpose. SUMF ¶ 71.

C. TSA says at least six airports/regions have cash-screening procedures that TSA now deems “variances,” but TSA offers no evidence those procedures have changed.

TSA officials at airports across the country have different interpretations of the Cash-Screening Policies from the interpretation TSA has adopted as its “official” position in this litigation. TSA acknowledges some of these. *See* TSA Br. 34.⁸ In Paul Leyh’s March 18, 2025 Rule 30(b)(6) deposition, TSA produced a chart identifying several airports that it deemed to be in “variance” from TSA’s formal Cash-Screening Policies. SUMF ¶ 211. The chart identified six airports or regions engaged in three types of “variances” from TSA’s formal Cash-Screening Policies: (1) asking travelers questions about their cash (Iowa, PVD), (2) making LEO notifications based on different criteria or at different “threshold[s]” (Iowa, DAL, HOU, ELP), and (3) not resuming the traveler’s screening until LEOs arrived (HOU, SEA). SUMF ¶ 212. Mr. Leyh also testified about airports developing their own procedures without oversight from TSA HQ, SUMF ¶ 229, which sometimes might also be in “variance” with TSA’s formal Cash-Screening Policies. *See, e.g.*, SUMF ¶¶ 230–32. TSA’s “variance” chart indicates nearly 20 emails and other documents Mr. Leyh reviewed about the procedures at those airports, many of which were provided by Plaintiffs in advance of Mr. Leyh’s deposition. SUMF ¶ 215. Those emails indicate that the practices TSA labels “variances” are, in fact, documented back to at least 2015 (DAL, SEA), 2016 (ELP), 2018 (HOU, Iowa), and 2019 (PVD). SUMF ¶ 216.

D. The examples TSA highlights show top TSA officials endorsing informal always-notify-LEOs policies concerning “bulk cash.”

TSA cites several examples of emails sent by TSA’s top airport officials, Federal Security Directors (“FSDs”) and Assistant FSDs (“AFSDs”), to show its purported compliance with its litigation position interpreting its formal Cash-Screening Policies. TSA Br. 31–33. But several of these

⁸Mr. Leyh learned about these “variances” after Plaintiffs provided TSA with a list of 15 documents to be used in his Rule 30(b)(6) deposition, as directed by the Court. SUMF ¶ 215; *see* Ex. 25. This was not a comprehensive set of documents identified by Plaintiffs that indicate TSA officials interpret TSA’s Cash-Screening Policies differently from TSA’s litigation position in this case, so TSA’s chart of airports with “variances” is hardly comprehensive. *See, e.g.*, SUMF ¶¶ 215–16, 232–37.

examples really show those TSA officials endorsing informal always-notify-LEOs policies and directing subordinates to extend traveler detentions for no transportation security purpose.⁹ In fact, several of these airports were the subject of TSA’s long-belated 2025 attempt “to clean up some bulk currency issues.” AR Index No. 12 (sent to A. Williams at DAL, J. Babin at ELP).

1. *Dallas AFSD to Screeners: “immediately” notify LEOs of “ALL discovered bulk cash.”*

The first email TSA cites, TSA Br. 31, instructs Screeners at Dallas Love Field (DAL), to “immediately” notify LEOs about “ALL discovered bulk cash . . . regardless of amount.” SUMF ¶ 200; *see also* SUMF ¶¶ 197–202 (emails by AFSD Cennamo repeatedly endorsing this policy since 2011).

2. *Charlotte FSD: Notify LEOs for “mere quantity of cash over \$10k.”*

In another email TSA cites, TSA Br. 32, the FSD at Charlotte Douglas International Airport (CLT), one of the nation’s busiest airports, writes: “My interpretation is that **the mere quantity of cash** (over \$10k) – whether it is a domestic or international traveler – is an indicator of possible criminal activity **and therefore HSI and CMPD must be notified.**” SUMF ¶ 227 (emphasis added).

3. *El Paso AFSD: We refer \$10,000 or more to ICE Bulk Cash Smuggling Hotline.*

In another email TSA cites with approval, TSA Br. 33, a TSA official asks an El Paso AFSD via email: “What is the policy here if you come across a significant amount of money?” To which the AFSD responds: “If it looked to be a lot (10 grand or more) we would refer it to the ICE Bulk Cash Smuggling Hotline.” SUMF ¶ 228. Notably, there’s no reference to criminal activity, just the value.

E. TSA’s data confirms that Screeners following TSA’s Cash-Screening Policies regularly extend travelers’ detention to collect documents or information.

TSA’s data confirms the commonsense notion that it takes time for Screeners to collect and record a traveler’s information for the purpose of making a LEO notification pursuant to TSA’s Cash-

⁹ These examples also use revealing language about TSA’s attitude towards cash. *See, e.g.*, TSA Ex. O (Acting FSD refers to “when we identify **excessive amounts of cash** at the [checkpoint]”) (emphasis added); TSA Br. 33 (quoting same); *see also* Exs. 23–24 (noting 18 similar examples).

Screening Policies. TSA produced a dataset of 7,567 of selected data fields from incident reports where Screeners encountered travelers with “bulk cash” from January 15, 2014, to January 15, 2020 (the court-approved discovery period). SUMF ¶ 174. Plaintiffs retained an expert witness to analyze this data. SUMF ¶¶ 176–77. The data reveal Screeners collected at least one piece of information from travelers in at least 91.52% of these incidents. *See* SUMF ¶ 181. And in over 50% of the incidents, TSA collected 10 or more pieces of information. SUMF ¶ 183. In nearly 43% of incidents, TSA collected a field of information—phone number—that is not typically available on boarding passes or IDs. SUMF ¶ 184. Screeners took photos or other images of traveler IDs, boarding passes, and/or belongings 42.2% of the time. *See* SUMF ¶ 185.

Moreover, for travelers with “bulk cash,” the available data indicate delays in LEO response times were commonplace. For the 747 incidents in the TSA dataset for which there was reliable and complete LEO notification and response data, the data show that there was a delay between the incident start time and the LEO response time in 679 of the 747 total incidents (90.90%). SUMF ¶ 189. The data also show delays in 78% of those 747 incidents between when TSA notified a LEO and when the LEO responded. SUMF ¶ 188. Thus, the data show that notifying and waiting for LEOs to respond also takes time and therefore can also extend the time travelers spend at the checkpoint.

Plaintiffs’ expert also analyzed a randomized sample of 165 narrative fields from the overall TSA dataset of 7,567 incidents involving travelers with “bulk cash.” SUMF ¶ 157. In 164 out of those 165 incidents (99.39%), the narrative indicates that TSA either (1) collected personal identification information and/or travel information about the traveler, (2) TSA notified a law enforcement officer, *and* the officer responded while the traveler was still at the checkpoint, or (3) TSA collected information about the traveler’s currency. Shapiro Decl. ¶¶ 9, 30–32. Moreover, at least two of those three criteria were satisfied in nearly 85% of the sample narratives analyzed. *Id.*

Thus, TSA regularly collects information about travelers, their travel plans, and their currency

when Screeners encounter “bulk cash” at the checkpoint. SUMF ¶ 187. This collection process, moreover, necessarily extends the traveler’s time at the screening checkpoint; it takes time to request documents, for travelers to retrieve their documents or show Screeners where they are, present them to Screeners, and then wait while Screeners record and return the documents. *See* SUMF ¶¶ 3–4, 178, 190. Because collecting documents and information takes time, and is done while travelers are present, TSA is regularly (unlawfully) extending the time these travelers spend at TSA checkpoints. In other words, TSA’s data show that Screeners, operating under policies directing them to ***detain and search people*** traveling with “bulk cash” ***do detain and search people*** (by the thousands) with “bulk cash.”

F. The record is filled with examples of travelers needlessly detained, searched, questioned, and hassled about their cash pursuant to TSA’s Cash SOP.

Plaintiffs document an array of examples of TSA overreach, including Plaintiffs’ traumatic experiences, SUMF ¶¶ 252–59, 267–71, 278–84, and selected examples from the TSA Sampled Narratives, SUMF ¶¶ 238–249, 292–302; Shapiro Decl. ¶¶ 58–68.

G. TSA has no effective oversight to ensure compliance or correct abuses; it only disciplined one Screener for violating Cash-Screening Policies in six years.

TSA does not exercise meaningful oversight of its screening of travelers with cash, as shown by its failure to address airport policies at “variance” with its official litigation position ***for years*** after this lawsuit was filed. Damningly, TSA admits there is no official TSA HQ channel for correcting “variances,” nor a TSA HQ official for whom “the bucks stops here” to correct “variances.” SUMF ¶ 217. That leaves implementation—and travelers affected by these policies—up to hundreds of airport-level TSA officials and thousands of Screeners nationwide, with predictable results.

1. TSA’s belated recognition of policy “variances,” then sending two emails to “clean up some bulk currency issues” in 2025 are completely inadequate.

More than five years after being sued over its Cash-Screening Policies—and only after counsel for Plaintiffs provided examples of various TSA communications indicating airports interpreted these policies in “variance” from TSA’s litigation position in this case—TSA claims it took steps to correct

these so-called “variances.” TSA Br. 34–35; SUMF ¶¶ 211–15. Namely, Paul Leyh spoke with TSA personnel at these airports to inquire about their practices the week before his March 2025 Rule 30(b)(6) deposition, with a more senior TSA official following up with phone calls and two emails. SUMF ¶ 213. But TSA has introduced *zero* evidence that any of these airports have changed their practices.¹⁰ The current record indicates these airports (and many others) with divergent interpretations of TSA’s formal Cash-Screening Policies remain in “variance” today with TSA’s litigation position, with some evidently following these “varian[t]” practices for a decade or more even after TSA’s Office of Chief Counsel was notified about them *in 2015* and evidently approved them (*e.g.*, DAL “bulk cash” policy dated back to 2011). *See* SUMF ¶¶ 193–203, 206–07, 216, 231–32.

2. Discipline for violating TSA’s Cash-Screening Policies is non-existent, with just one example of a Screener being disciplined in a six-year period.

Despite the numerous examples of abuses and departures from TSA’s official written policy discussed *supra*, TSA only produced records involving a single Screener being disciplined for failing to follow TSA’s Cash-Screening Policies in response to Plaintiffs’ request for six years of disciplinary records related to TSA’s Cash-Screening Policies. SUMF ¶ 218. Both involved the same Screener who failed to “articulate” his or her reasons for thinking the cash was suspicious, a requirement that is not in any TSA Cash-Screening Policy. *Id.* Indeed, TSA admits it cannot reasonably discipline Screeners for “misinterpreting” key terms in those policies. SUMF ¶¶ 107, 122.

H. TSA praises Screeners for finding cash and promotes itself to Screeners as a partner to law-enforcement agencies, part of “One DHS” team with ICE and CBP.

TSA’s internal communications encourage a culture of targeting travelers with cash, including celebrating discoveries of cash as a “good catch,” among other kudos. SUMF ¶¶ 156–62 (*see, e.g.*,

¹⁰ Following Mr. Leyh’s March 2025 deposition, TSA supplemented its discovery related to compliance or noncompliance of TSA personnel with TSA policies. Ex. 18. On May 12, 2025, TSA produced the two emails from Michael Turner that appear as AR Index Nos. 11 and 12 and a short privilege log. Ex. 19. Plaintiffs have received no documents indicating any of the six airports identified on TSA’s “variances” chart have changed any of their cash-screening practices. Alban Decl. ¶ 37.

National Shift Brief for Screeners promoting a Break Room Bulletin entitled “**National Good Catch Bulk Currency Discoveries At MSP**”). TSA also promotes the idea of TSA as a “partner” to law-enforcement, with internal articles such as “**TSA and DEA: Partners Against Crime,**” and as a member of the “ONE DHS” team with ICE—with whom TSA has a MOA regarding “Cooperative Investigations” obligating TSA to notify the ICE HSI Bulk Cash Smuggling Center regarding bulk cash incidents (*see* Cash SOP Step 7) and CBP (*see* Cash SOP Step 8). SUMF ¶ 157. These “partner” agencies also lavish praise on TSA for notifying them of “bulk cash.” SUMF ¶ 158 (*e.g.*, ICE email after cash seizure: “**Without your initiation of these cases the program [would] not exist.**”).

TSA also encourages Screeners to treat finding “bulk cash” as a goal, such as by including the total number of “bulk currency” incidents on an “End Of Year Accomplishments” placemat for TSA’s annual awards banquet. *See* SUMF ¶ 161. TSA encourages Screeners to think of traveling with cash as improper, and certain amounts of cash as inherently suspicious, releasing internal articles such as: “**TSA Tracks Suspicious Bulk Cash Shipments**” (starting: “Heading to the airport with a huge wad of cash may not be a great idea,” and ending: “**What do you think of TSA’s efforts to help prevent illegal bulk cash and criminal activity?**”). SUMF ¶¶ 156, 159, 162 (emphasis added).

LEGAL STANDARD

“Summary judgment is proper when, viewing the evidence in the light most favorable to the nonmoving party and drawing all inferences in favor of that party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Auto-Owners Ins. Co. v. Stevens & Ricci Inc.*, 835 F.3d 388, 402 (3d Cir. 2016) (internal citations omitted). When “both parties move for summary judgment, the court must rule on each party’s motion on an individual and separate basis.” *Id.* (quotation omitted). Under the APA, courts “must exercise their independent judgment.” *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). “[A]gency interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference.” *Id.* at 392. So courts consider all

relevant evidence and are not limited to the agency’s administrative record. *See Mayor & City Council of Baltimore v. Trump*, 429 F. Supp. 3d 128, 138 (D. Md. 2019) (collecting cases “recogniz[ing] that extra-record discovery may be appropriate where the plaintiff mounts a constitutional challenge to agency action”); *see also Cook Cnty., Illinois v. Wolf*, 461 F. Supp. 3d 779, 792 (N.D. Ill. 2020); *Texas v. Biden*, 2021 WL 4552547, at *4 (N.D. Tex. July 19, 2021).

ARGUMENT

I. There Are No Procedural Obstacles to Granting Summary Judgment for Plaintiffs.

A. Plaintiffs have standing to bring their claims for prospective relief.

“Article III requires a plaintiff to show that she has suffered an injury in fact that is fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.” *Haaland v. Brackeen*, 599 U.S. 255, 291–92 (2023) (cleaned up). The Court previously concluded Plaintiffs have standing. ECF 66 at 3–7; ECF 78 at 3. TSA offers no basis to reverse course.

Injury in Fact. A violation of one’s constitutional rights is an injury in fact. *See Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). The Magistrate Judge concluded that an unlawful search or seizure of a person or their effects is an injury in fact, ECF 66 at 3, which is exactly what happened here. On the way back from a canceled trip to a casino, Ms. Esposito and her husband had about \$40,000 in cash that largely came from selling a car to a family friend. Esposito Decl. ¶¶ 12–26, 28–31. At the airport, a Screener pulled Ms. Esposito’s bag aside, questioned her about her cash, and instructed her to wait—even though Ms. Esposito (1) told the Screener that she sold a car to a family friend and planned to visit a casino; and (2) didn’t have any items that could threaten transportation security. *Id.* ¶¶ 31–43. Minutes later, a sheriff’s deputy arrived, interrogated Ms. Esposito about her cash, and instructed Ms. Esposito and her husband to follow him into an office, where Ms. Esposito was once again interrogated and missed her flight. *Id.* ¶¶ 44–52, 56. DEA seized the cash for civil forfeiture. *Id.* ¶¶ 53–55. Similarly, Mr. Berger was traveling with about \$55,000

in cash in his carry-on luggage to potentially purchase a bus for his tour company. Berger Decl. ¶¶ 4, 19–26. A Screener pulled Mr. Berger’s luggage to the side and called more Screeners before TSA interrogated him about his cash, photographed his belongings, and contacted law enforcement—even though Mr. Berger (1) explained his cash was for a potential purchase of a commercial tour bus; and (2) didn’t have any items that could threaten transportation security. *Id.* ¶¶ 28–51. Law enforcement then escorted Mr. Berger to a room, interrogated him, and seized his cash for forfeiture. *Id.* ¶¶ 60–63. It took months to get their cash back. Esposito Decl. ¶ 77; Berger Decl. ¶ 72.

Mr. Berger and Ms. Esposito have stopped taking large amounts of cash on flights because they (correctly) expect that similar treatment will follow from future attempts to travel with cash. Esposito Decl. ¶¶ 6, 10; Berger Decl. ¶¶ 6, 18. To prevent future violations during domestic air travel with bulk cash, Mr. Berger and Ms. Esposito seek an injunction, a declaratory judgment, and vacatur.¹¹ ECF 43 at 109–11. A plaintiff that seeks prospective relief must show she’s likely to suffer future injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983). A plaintiff can show she is likely to suffer a future injury if there’s a “substantial risk” that future injury will occur. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 n.5 (2013)).

First, there’s both an ongoing injury and a substantial risk of future injury because of Plaintiffs’ past injury, TSA’s ongoing policies and practices, and Plaintiffs’ inability to safely travel with cash. Past injury can show there’s a substantial risk of future injury. *See O’Shea v. Littleton*, 414 U.S. 488, 496 (1974). Mr. Berger and Ms. Esposito experienced a past injury when they were traveling and TSA seized them and their cash without a transportation security purpose. As the Magistrate Judge put it, “it is a reasonable inference that if Plaintiffs were to resume domestic air travel with large sums of cash, there would be an imminent, substantial risk that their persons, effects and cash would be

¹¹ Ms. Brown originally had standing to seek prospective relief but her father (who is also a named plaintiff) has since passed away. *See* Brown Decl. ¶¶ 4–5. This poses no obstacle to review because only one plaintiff needs standing for the suit to proceed. *Biden v. Nebraska*, 600 U.S. 477, 489 (2023).

subjected to seizure” once again. ECF 66 at 5; accord *Diamond Alternative Energy, LLC v. Env’t Prot. Agency*, 2025 WL 1716141, at *9 (U.S. June 20, 2025) (relying on “commonsense inferences” for standing). TSA’s ongoing policies and practices of targeting travelers with bulk cash only reinforce the Magistrate Judge’s commonsense assessment. And TSA’s unlawful searches and seizures in connection with bulk cash aren’t “a rare occurrence.” *Susan B. Anthony List*, 573 U.S. at 164. They’re a pervasive practice—harming more than a thousand travelers each year—that establish a “threat of repeated injury.” *Lyons*, 461 U.S. at 107 n.8; see also *LaDuke v. Nelson*, 762 F.2d 1318, 1326 (9th Cir. 1985), amended by 796 F.2d 309 (9th Cir. 1986) (class standing to raise Fourth Amendment claims under *Lyons* when an agency’s “systematic pattern” targeted class members “based on [] completely innocent behavior” and the district court found there was “likely recurrence”). So the ongoing injuries and future risks aren’t speculative or guesswork—they’re real.

Second, there’s also a substantial risk of future injury based on the costs that Plaintiffs incur. A plaintiff can show a substantial risk that future injury will occur by incurring “costs to mitigate or avoid that harm.” See *Clapper*, 568 U.S. at 414 n.5 (collecting cases). Put differently, there can be a cognizable injury when a plaintiff takes “affirmative steps to avoid the risk of harm,” *Meese v. Keene*, 481 U.S. 465, 475 (1987), including by “simply not doing what he claimed the right to do,” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 129 (2007). See also *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 668–69 (1993) (reversing dismissal for lack of standing when the plaintiff’s members would’ve acted had they been able). If TSA’s unlawful policies and practices with respect to “bulk cash” end, Mr. Berger and Ms. Esposito are ready and able to continue carrying “bulk” cash during air travel. Esposito Decl. ¶¶ 74–75; Berger Decl. ¶¶ 6, 18, 93–94. Until then, they’ve been “effectively coerced” into avoiding the risk of future harm. See *MedImmune, Inc.*, 549 U.S. at 129; Esposito Decl. ¶¶ 6, 10, 70–75; Berger Decl. ¶¶ 6, 18, 73–94.

Plaintiffs are also incurring other costs. For Ms. Esposito, instead of bringing a large amount

of cash with her when flying to a casino, she must (1) withdraw money at an ATM when she arrives (which can bring fees); (2) set up an account to which she transfers money (which can bring fees); or (3) drive to casinos (which is slower and more expensive, because she flies for free). Esposito Decl. ¶¶ 10, 74. For Mr. Berger, who works in an industry that commonly uses cash, he must turn away potential business partners who want to travel with over \$10,000 in cash. Berger Decl. ¶¶ 10–18, 76–87. Removing the option to fly with cash also decreases Mr. Berger’s negotiating leverage and eliminates cash discounts. *Id.* ¶¶ 11, 16, 80, 82–83. Even alternative payment methods come with downsides, such as extra fees. *Id.* ¶¶ 11–17. These aren’t self-inflicted harms, as TSA claims. They’re the direct and natural consequences, based on personal experience, of TSA’s widespread policy and practice.¹² And while TSA insists Plaintiffs don’t “need” to travel with bulk cash, TSA Br. 12–14, “a legally available ‘alternative’” isn’t a valid reason to force someone to forego exercising a right, *Fed. Election Comm’n v. Cruz*, 596 U.S. 289, 298 (2022).

Traceability. Next, there’s a traceable, causal connection between Plaintiffs’ injuries and TSA’s conduct. “Article III requires no more than de facto causality.” *Dep’t of Com. v. New York*, 588 U.S. 752, 768 (2019) (cleaned up). Here, TSA’s policies and practices (regarding bulk cash) predictably led to unlawful searches and seizures of Ms. Esposito and Mr. Berger (and their bulk cash). Step 1 of TSA’s “Suspicious Item” SOP requires Screeners to determine whether a traveler’s “bulk cash” is evidence of criminal activity (and Screeners are trained that it is), while Step 3 of TSA’s Cash SOP require Screeners to then “determine if the currency requires notifications” because either “the currency appears to exceed \$10,000” (Step 3a) or “the currency appears to relate to criminal activity” (Step 3.b). But “mere quantity” is enough to satisfy this standard, as are innocuous criteria like whether

¹² TSA argues that risk of future injury is reduced because DEA “ceased” its airport interdictions. TSA Br. 15. DEA, however, can reinstate an interdiction program at any moment. *See* ECF 160 at 23–27. In any event, Plaintiffs want to avoid unlawful searches and seizures *by TSA*. And TSA has other law-enforcement partners—ICE, CBP, and local police—in implementing its Cash-Screening Policies.

the currency is packaged with rubber bands. Accordingly, Screeners will predictably extend administrative searches and seizures for non-transportation security purposes to enforce a CBP requirement or investigate potential crimes. *Cf. Dep't of Com.*, 588 U.S. at 768 (concluding traceability was satisfied by “showing that third parties will likely react in predictable ways”). Indeed, TSA extended the search and seizure of Ms. Esposito, Mr. Berger, and their effects without their consent. Esposito Decl. ¶¶ 32–44, 65; Berger Decl. ¶¶ 28–51, 68.

The way TSA’s written policy works in practice reinforces the causal connection. After encountering bulk currency, TSA regularly extends administrative searches and seizures for non-transportation security purposes by doing exactly what the SOPs require: collecting information about individuals, their travel plans, and their currency. To determine if the cash exceeds \$10,000 or is related to criminal activity, a STSO must examine that cash. SUMF ¶¶ 101–02, 117, 142. Such investigations extend travelers’ time at TSA security screening checkpoints beyond a limited administrative search for transportation security. SUMF ¶ 4. So TSA is wrong to characterize the way Screeners act in practice as only causing harm when they “depart[] from” its “lawful” policies” TSA Br. 16. As detailed more fully below in part II, it’s TSA’s policies *as written* that cause the harms challenged here.

Redressability. Finally, Plaintiffs’ injuries would be redressed by a favorable decision. As the Magistrate Judge concluded, the prospect of an unlawful seizure of person or property is redressable by injunctive relief. ECF 66 at 4 & n.1; *accord All. for Hippocratic Med.*, 602 U.S. at 381 (“If a defendant’s action causes an injury, enjoining the action . . . will typically redress that injury.”). Further, a threat of future injury can be redressed by an injunction that prevents that injury. *See Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 185–86 (2000). Here, an injunction will prevent TSA Screeners from once again engaging in the unlawful and unconstitutional conduct at issue.

TSA nonetheless argues the Court can’t redress Plaintiffs’ injuries because TSOs’ individual departures from TSA’s written policies aren’t attributable to TSA policy. TSA Br. 16. But TSA badly

misses the mark. It's the agency's policies *as written* that are unlawful and unconstitutional, as detailed in part II below. At the very least, an injunction would reduce "to some extent" the risk that Plaintiffs are subject to an unlawful search or seizure during future travel with bulk cash, which satisfies redressability. *See Massachusetts v. E.P.A.*, 549 U.S. 497, 526 (2007).

In short: As the Court has already held, Plaintiffs have standing.

B. Section 46110 does not strip this Court of jurisdiction over Plaintiffs' claims.

TSA renews its argument that this Court lacks jurisdiction per 49 U.S.C. § 46110, arguing that Plaintiffs must bring their claims via petitions for review in the courts of appeals. TSA Br. 17–20. TSA is wrong. Plaintiffs' challenges to TSA's Cash-Screening Policies do not seek "review of [an] order" "issued" in a "proceeding" based on "[f]indings of fact" to which Plaintiffs (or anyone) could raise "an objection." 49 U.S.C. § 46110. TSA cites nonbinding authority suggesting that some challenges to general TSA policies fall under § 46110, but leaves out contrary caselaw. And it ignores Supreme Court and Third Circuit precedent entirely. So Plaintiffs will do what TSA did not: analyze the statutory text and cite binding authority explaining why that text does not channel Plaintiffs' claims to the courts of appeals. Those statutory "[w]ords matter," especially since "Congress provided an expressly local definition" of the words at issue here. *Pellegrino v. TSA*, 937 F.3d 164, 178, 180 (3d Cir. 2019) (en banc).

1. TSA's argument that Plaintiffs seek review of an agency order subject to § 46110 "hits the immutable obstacle of [§ 46110's] text." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 814 (2024). Plaintiffs' challenges to TSA's Policies are not subject to § 46110's channeling to the courts of appeals "for review" of "an order issued by" TSA in "any proceeding" involving "[f]indings of fact" and opportunities for "objection[s]." Simply put, Plaintiffs are not challenging an "order," as Congress has defined that term in Chapter 461 (49 U.S.C. §§ 46101–46111), which includes § 46110.

"When a statute includes an explicit definition, we must follow that definition." *Digital Realty Trust, Inc. v. Somers*, 583 U.S. 149, 160 (2018). Here, that explicit definition says: "An order of the" TSA

“[1] shall include the findings of fact on which the order is based and [2] shall be served on the parties to the proceeding [3] and the persons affected by the order.” 49 U.S.C. § 46105(b). The Cash-Screening Policies challenged here lack every one of those defining elements. **(1)** The Policies do not include any findings of fact, let alone those on which they were based. *See* AR Exs. 1–12. Crucially, the Third Circuit treats “the findings of fact made by the TSA” as the defining feature of “such orders” under § 46110. *Vanderklok v. United States*, 868 F.3d 189, 208 (3d Cir. 2017). **(2)** The Policies were not served on the parties to a proceeding—because they were not the result of anything resembling what the statute *defines* as a “proceeding,” which requires an opportunity to “appear and be heard” by TSA and “shall be recorded.” 49 U.S.C. § 46102(b)–(c). And **(3)** the Policies were not served on the persons affected by it, namely Plaintiffs and the putative class members they seek to represent. SUMF ¶¶ 263, 275, 291. That means the Policies cannot be an “order issued” by TSA because “issued” in § 46110 means “officially made public” to the person it concerns—which the Policies were not. *Avia Dynamics, Inc. v. FAA*, 641 F.3d 515, 519 (D.C. Cir. 2011). Indeed, the Cash SOPs are *secret*, and TSA wants to keep them so, even on the public docket. ECF 158 at 3. All those features, of course, mean that Plaintiffs (and everyone else) could never raise an “objection” to TSA’s challenged Policies—yet another missing piece of the “order”-defining text. 49 U.S.C. § 46110(d).

In short, those “textual difference[s]”—between what Congress defines as an order and what Plaintiffs are challenging—“matter[.]” *Corner Post*, 603 U.S. at 814. “When Congress takes the trouble to define the terms it uses, a court must respect its definitions as ‘virtually conclusive.’” *Dep’t of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 59 (2024) (citation omitted). That means Congress’s definitions preclude treating Plaintiffs’ challenges to TSA’s Policies as seeking *review of an order, issued by TSA, in a proceeding, based on findings of fact, subject to objections* where there was no order, there was no issuance, there was no proceeding, there were no findings of fact, and there was no opportunity for objection. Section 46110’s text bears none of the weight TSA wishes.

2. Looking beyond Chapter 461 only reinforces the conclusion that no “order” is at issue here. **First:** “In interpreting the term ‘order’ as used in this section, some courts have looked to the use of the term in the [APA].” *Aerosource, Inc. v. Slater*, 142 F.3d 572, 577 n.8 (3d Cir. 1998). And the APA’s definition mirrors Chapter 461’s: “Orders’ are generally issued as a result of an adjudicatory proceeding.” *Shea v. Office of Thrift Supervision*, 934 F.2d 41, 43 (3d Cir. 1991)¹³; see 5 U.S.C. § 551(6)–(7); *Pension Ben. Guar. Corp. v. Saint-Gobain Corp. Benefits Comm.*, 2013 WL 5525693, at *3 n.2 (E.D. Pa. Oct. 4, 2013) (“An ‘order’ is formulated by an agency through an ‘adjudication.’”); accord 5 U.S.C. § 556(d). The lack of any adjudicatory proceeding takes Plaintiffs’ challenges to the Cash-Screening Policies out of § 46110’s reach. **Second:** Plaintiffs’ broadside challenges to TSA’s Policies are the kind of “general collateral challenges to unconstitutional practices and policies used by the agency” that fall outside statutory provisions for appellate review of individualized proceedings. *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 492 (1991); see also *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 56 (1983).

That is why the Ninth Circuit held an indistinguishable claim-channeling statute (concerning the FAA) distinguished between “claims, like those asserted in *McNary*, [that] are not based on the merits of [an] individual situation, but constitute a broad challenge to allegedly unconstitutional [agency] practices.” *Mace v. Skinner*, 34 F.3d 854, 859 (9th Cir. 1994). The latter “should logically take place in the district courts.” *Id.*; see *Aerosource, Inc.*, 142 F.3d at 577 (Third Circuit favorably citing *Mace*’s definition of “final orders”). Even if courts of appeals have jurisdiction over claims “inescapably intertwined” with an “order,” “a district court has subject matter jurisdiction over broad constitutional challenges to [agency] practices.” *Foster v. Skinner*, 70 F.3d 1084, 1088 (9th Cir. 1995). The latter is this

¹³ In *Shea*, the lack of a final order also happened to mean the lack of final agency action, which was unmet by an “investigative proceeding.” 934 F.2d at 43. No such finality concerns exist here. 5 U.S.C. § 704 (“agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order”). In other words, the Cash-Screening Policies are final agency *actions* subject to the APA, but not agency *orders* subject to § 46110.

case. There is no order *at all* for Plaintiffs’ claims to be intertwined *with*, so the claims are broadside challenges to agency practices, not the review of “findings of fact made by the TSA” in an individual case—which the Third Circuit says exemplifies a § 46110 order. *Vanderklok*, 868 F.3d at 208; *cf. Merritt v. Shuttle, Inc.*, 187 F.3d 263, 271 (2d Cir. 1999) (suggesting “a broad-based, facial constitutional attack on an FAA policy or procedure—in contrast to a complaint about the agency’s particular actions in a specific case—might constitute appropriate subject matter for a stand-alone federal suit”).

3. Plaintiffs acknowledge that TSA cites nonbinding authority suggesting that broadside challenges to TSA SOPs, even without any agency adjudication, can be subject to § 46110. To start, TSA’s very first citation is affirmatively and dispositively misleading. *Ruskai v. Pistole* did not say that “TSA’s security protocol[s]” constitute an order; it said that “TSA’s security protocol *and refusal to grant Ruskai’s requested accommodation* constitute a final order.” 775 F.3d 61, 65 (1st Cir. 2014) (emphasis added). The emphasized part that TSA selectively left out is what made *Ruskai* the individual agency-adjudication case that “[n]either party dispute[d]” was subject to § 46110. *Id.* As for the cases that do say generalized challenges to TSA SOPs are governed by § 46110: The statutory text—analyzed above—clearly says otherwise, as held directly by the Ninth Circuit, consistent with Supreme Court, Third Circuit, and Second Circuit law. Congress’s “[w]ords matter.” *Pellegrino*, 937 F.3d at 180. Congress defined “order”—and its necessary component, “proceeding”—within the very statutory chapter at issue here, in a manner wholly inconsistent with TSA’s proffered reading. 49 U.S.C. §§ 46105(b), 46102(b)–(c). That statutory definition controls. *Pellegrino*, 937 F.3d at 178.

And that textual conclusion is bolstered by the absurdity of requiring anyone potentially aggrieved by a secret SOP to challenge it “within 60 days or otherwise lose their right to challenge an agency’s interpretation of a statute” despite having no “knowledge of [the SOP’s] promulgation.” *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 2025 WL 1716136, at *7–8 (U.S. June 20, 2025). “It is hard to see how provisions governing when a party may challenge an order adjudicating her own

rights could set any kind of background rule for facial APA challenges to generally applicable regulations” like TSA’s Cash-Screening Policies. *Corner Post*, 603 U.S. at 816 n.4.

4. Finally, even if this Court holds, contrary to text and precedent, that § 46110 applies to Plaintiffs’ claims, the appropriate course is not dismissal; it is transfer to the court of appeals “in the interest of justice.” 28 U.S.C. § 1631; *Amerijet Int’l, Inc. v. DHS*, 43 F. Supp. 3d 4, 21 (D.D.C. 2014).

II. On the Merits, Plaintiffs are Entitled to Summary Judgment.

TSA’s Cash-Screening Policies (A) are unlawful and (B) violate the Fourth Amendment.

A. TSA’s Cash-Screening Policies exceed Screeners’ statutory authority.

This Court “shall . . . hold unlawful and set aside agency actions . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations.” 5 U.S.C. § 706(2)(C). So federal agencies must stay strictly within statutory lines. Here, Congress has defined Screeners’ authority. They can only conduct administrative searches limited to “a physical examination or non-intrusive methods of assessing whether cargo poses a threat to transportation security.” 49 U.S.C. § 44901(g)(4). That is not a general law-enforcement mandate. It is a strictly delineated transportation-security mandate. But the Cash-Screening Policies require Screeners to assess if cash is “evidence of criminal activity,” if a “large amount of currency” “appears to relate to criminal activity,” and if a traveler has international cash reporting requirements. No wonder TSA admits that merely “travelling with bulk currency may expose [Plaintiffs] to slightly longer questioning at TSA checkpoints.” TSA Br. 16. The only purpose of that questioning (i.e., extended seizure) is for Screeners to make general criminality assessments. And when it comes to cash, there is “no right or wrong answer” to those assessments. SUMF ¶¶ 105, 107, 121–22. In short: TSA admits that its Policies require Screeners to do general criminal law enforcement—not only untethered from transportation security, but unrestrained by any standards. That is unlawful.

1. Agency authority is strictly circumscribed. TSA “literally has no power to act . . . unless and until Congress confers power upon it.” *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986). So

TSA “may exercise only the powers granted by the statute reposing power in it.” *NLRB v. New Vista Nursing & Rehab.*, 719 F.3d 203, 211 (3d Cir. 2013) (citation omitted). The Third Circuit “‘rigorously appl[ies]’ the ‘statutory limits on agencies’ authority’ that Congress has drawn.” *Advanced Disposal Servs. E., Inc. v. NLRB*, 820 F.3d 592, 600 n.6 (3d Cir. 2016) (citation omitted). TSA’s “enabling legislation is generally not an open book to which the agency may add pages and change the plot line.” *W. Va. v. EPA*, 597 U.S. 697, 723 (2022) (cleaned up; citation omitted). That plot is based on “a careful examination of the statutory text.” *Henson v. Santander Consumer USA, Inc.*, 582 U.S. 79, 83 (2017).

2. Here, that statutory text limits Screeners’ authority to seize and search for threats “relating to transportation security.” 49 U.S.C. § 114(f)(16). That “means a physical examination or non-intrusive methods of assessing whether cargo poses a threat to transportation security.” 49 U.S.C. § 44901(g)(4). *See* 49 U.S.C. §§ 114, 44901–44903 (detailing what is encompassed by transportation-security authority). To be sure, that “transportation security” authority may, in a vacuum, be somewhat capacious. But the statute fills the space. The traveler and their property are assessed for “a dangerous weapon, explosive, or other destructive substance.” 49 U.S.C. § 44902(a). That is not a general law-enforcement mandate. It is a strictly and carefully delineated transportation-security mandate that is only even constitutional “**because** TSA screeners are limited to the single administrative goal of searching for possible safety threats related to explosives,” weapons, and destructive substances. *United States v. McCarty*, 648 F.3d 820, 831 (9th Cir. 2011) (emphasis added). Indeed, Screeners “are not trained on issues of probable cause, reasonable suspicion, and other constitutional doctrines that govern law enforcement officers.” *Vanderklok*, 868 F.3d at 208. So any TSA policy requiring Screeners to assess criminality—outside their transportation-security mission—exceeds “the statutory limits on agencies’ authority that Congress has drawn.” *Advanced Disposal*, 820 F.3d at 600 n.6 (cleaned up).

3. TSA’s Cash-Screening Policies exceed Screeners’ statutory transportation-security authority because Screeners must assess cash for criminality, for no transportation-security purpose. Screeners

must assess if cash—absent a prohibited item or contraband—is “evidence of crimes unrelated to transportation security,” “indicative of criminal activity,” “evidence of criminal activity,” or “appears to relate to criminal activity.” SUMF ¶¶ 1, 13, 72. That all serves no transportation-security purpose. SUMF ¶ 80. That gives the game away. “The case law dealing with airport checkpoint searches teaches that a checkpoint search tainted by ‘general law enforcement objectives’ such as uncovering contraband evidencing general criminal activity is improper.” *United States v. Fofana*, 620 F. Supp. 2d 857, 863 (S.D. Ohio 2009) (collecting cases).

But it gets worse. TSA’s Policies are not even aimed at contraband. They are aimed at cash, which is not contraband. Screeners must ***assess cash for criminality unrelated to transportation security***—and ***whatever*** a Screener happens to deem a “large amount of currency” ***meets that standard***. SUMF ¶¶ 52, 80, 110, 113–14, 117–18, 204. And there is no right or wrong answer. SUMF ¶¶ 105, 107–09, 111. So Screeners must assess cash for criminality (1) unrelated to transportation security and (2) without guardrails. But “cash, in and of itself, is innocuous, even in large bundles and wrapped in rubber bands—only additional evidence creating a suspicious context can show that it is immediately apparent that such money is incriminating.” *United States v. Dyer*, 2019 WL 6218899, at *11 (M.D. Pa. Nov. 21, 2019), *aff’d*, 54 F.4th 155 (3d Cir. 2022) (citing *United States v. Lam*, 384 F. App’x 121, 122–23 (3d Cir. 2010)). So TSA cannot justify these off-mission detours by the “plain view” doctrine. The doctrine does not reach a “large amount of cash”—which is the precise and sole impetus for the off-mission detours Screeners must take. *Lam*, 384 F. App’x at 122.¹⁴

In sum: (1) Screeners must assess whether cash constitutes “evidence of crimes unrelated to transportation security.” SUMF ¶ 1. (2) That is facially beyond Screeners’ statutory transportation-security authority (and should end the legal inquiry). (3) Worse, Screeners are wholly unequipped for

¹⁴ The plain-view doctrine is why Plaintiffs’ arguments do not call into question Screeners’ ability to act if contraband is discovered during the screening process, such as illegal drugs or child pornography. A “large amount of currency,” on the other hand, is not contraband. *Dyer*, 2019 WL 6218899, at *11.

those criminality assessments; they are “not trained on issues of probable cause, reasonable suspicion, and other constitutional doctrines that govern law enforcement officers.” *Vanderklok*, 868 F.3d at 208.

(4) So, Screeners’ criminality assessments have no right or wrong answer. SUMF ¶¶ 105, 107–09, 111.

(5) Screeners simply *equate* “large amounts of currency” with currency that “appears to relate to criminal activity.” SUMF ¶ 110. (6) As little as \$100 can meet that wholly arbitrary standard. *Id.*

4. Those arbitrary, extra-statutory Policies are not an abstract problem. TSA’s self-appointed criminal-assessment mission means Screeners subject travelers with cash to actual seizures and searches that do not “advance a transportation security purpose.” SUMF ¶¶ 3–5, 56, 71, 78, 80, 90, 92, 94, 104, 136–37. If a Screener decides that cash is “evidence of criminal activity” (which, recall, just means the Screener’s assessment of “amount” or “packaging”), the Screener “must” “[m]aintain control of” the cash and begin a LEO notification, all while the traveler “may be asked to wait until a LEO arrives.” SUMF ¶ 52; Ex. 1 at AR161. But that cash seizure “does not advance a transportation security purpose.” SUMF ¶¶ 5, 56, 137. And even if a traveler, who has been asked by TSA to wait for a LEO, may technically be free to leave once their property is found to contain no prohibited item, “such a seizure can effectively restrain the person” because TSA has their money and perhaps other property and does “not make it absolutely clear how they plan to reunite” them, so they “must either remain on the scene or else seemingly surrender [their] effects permanently to the police.” *United States v. Place*, 462 U.S. 696, 708 & n.8 (1983) (citation omitted); *see* SUMF ¶¶ 256, 258–59, 269, 271, 284 (Plaintiffs explaining precisely such seizures).

In fact, that traveler is not just effectively seized even after their property shows “no signs of prohibited items”—they are actually seized, per the Cash SOP. SUMF ¶¶ 60–94. That is because once a Screener thinks cash is “evidence of criminal activity” or “appears to relate to criminal activity,” they must record the traveler’s name and flight information for LEO notifications. SUMF ¶¶ 65–69, 73–74, 100, 110. The only way they can do so is by making the traveler (whose property is already cleared

of prohibited items) re-present their travel documents. SUMF ¶¶ 68–69, 79. During that process, not only is the traveler’s cash indefinitely seized, but the traveler is seized and subject to additional searches of their documents, *all after* screening determined they have no prohibited items—all of which TSA admits serves no transportation-security purpose. *See* SUMF ¶¶ 4, 56, 78–80, 90, 92, 94.

Finally, even if a Screener has not made the (wholly subjective) assessment that cash relates to criminality, the Screener must also make the (wholly subjective) assessment of whether the “currency appears to exceed \$10,000.” SUMF ¶ 65. That assessment, like the criminality assessment, serves no transportation-security purpose. SUMF ¶ 80; *United States v. \$124,570*, 873 F.2d 1240, 1245–47 (9th Cir. 1989) (enforcing currency reporting requirement is not transportation-security purpose). And, based on a Screener’s guess as to \$10,000, that traveler remains seized and subject to additional searches of their travel documents, *after* screening has determined they have no prohibited items—which serves no transportation-security purpose. *See* SUMF ¶¶ 4, 78–80, 142, 146–47, 150.

In short, TSA’s Cash-Screening Policies exceed the agency’s statutory authority in purpose and effect. The mandatory conduct detailed above does what the agency admits is unlawful: “detain the passenger longer than [what is] necessary to screen for prohibited threat items.” TSA Br. 2.¹⁵ TSA trivializes all that as “slightly longer questioning at TSA checkpoints.” TSA Br. 16. That is both an admission that TSA’s Policies *do* impermissibly extend the administrative seizure and search, and a troubling admission of TSA’s contempt for the limits of its authority, not to mention travelers’ rights.

5. The constitutional underpinning of TSA’s authority to conduct suspicionless administrative seizures and searches is the requirement that “the procedure is tailored to advance [the transportation-security] interest.” *United States v. Hartwell*, 436 F.3d 174, 181 (3d Cir. 2006). Instead, TSA’s Cash-Screening Policies “add pages and change the plot line” that Congress wrote—demolishing the

¹⁵ TSA seems to think that limitation applies only to “domestic[]” travelers. TSA Br. 2. But that is simply wrong. And it is a further admission that TSA is systematically extending the detention of every traveler who a Screener guesses has over \$10,000 in cash, just to determine the traveler’s destination.

constitutional foundation of the agency’s administrative screening authority. *W. Virginia*, 597 U.S. at 723. TSA’s admissions of the myriad ways its Policies exceed statutory authority should end the inquiry. All Plaintiffs are asking the Court to do is ratify the agency’s own confessions of unlawfulness and end them. The Court need not worry about interfering with any transportation-security function; TSA *has already told us* these policies have *nothing* to do with transportation security.

B. TSA’s Cash-Screening Policies also violate the Fourth Amendment.

As detailed above, TSA’s Cash-Screening Policies exceed statutory authority by turning Screeners into untrained, unrestrained criminal-law enforcers (really, arbitrarily roving cash sensors). Those Policies also violate the Fourth Amendment, a second reason they “shall” be held “unlawful and set aside,” as “contrary to constitutional right.” 5 U.S.C. § 706(2)(B). They do so in five independent ways, detailed below. TSA sums up the constitutional defect well: The Policies require “slightly longer questioning at TSA checkpoints” for anyone traveling with what a Screener deems a large amount of currency—which is what TSA acknowledges happened to Plaintiffs. TSA Br. 16.

1. The Policies require Screeners to make general criminality assessments unmoored from transportation security, so they are an “impermissible programmatic secondary motive.”

“Airport screenings of passengers and their luggage constitute administrative searches and are subject to the limitations of the Fourth Amendment.” *Hartwell*, 436 F.3d at 177 (citation omitted). Those limitations mean TSA can have “no impermissible programmatic secondary motive for [Screeners’] search[es],” untethered to the tailored transportation-security purpose. *McCarty*, 648 F.3d at 835. Yet that is exactly what the Cash-Screening Policies are, because they require Screeners to make “criminal activity” assessments of cash for no transportation-security purpose. Screeners must assess if cash—absent a prohibited item or contraband—is “evidence of crimes unrelated to transportation security,” “indicative of criminal activity,” “evidence of criminal activity,” or “appears to relate to criminal activity.” SUMF ¶¶ 1, 13, 72. Really, that ends the inquiry. TSA’s creation of that systematic, secondary criminal-law-enforcement purpose demolishes the foundation on which the

constitutionality of administrative searches is built. *See Hartwell*, 436 F.3d at 181; *Fofana*, 620 F. Supp. 2d at 863 (collecting cases). And when it comes to Screeners assessing cash for criminality, TSA has built a house of sand. That criminality assessment has no right or wrong answer. SUMF ¶¶ 105, 107–09, 111. It is made by Screeners “not trained on issues of probable cause [or] reasonable suspicion.” *Vanderklok*, 868 F.3d at 208. And it serves no transportation-security purpose. SUMF ¶¶ 78, 136.

But it gets even worse. Once a Screener makes their arbitrary assessment that cash is indicative of criminality, the Screener must seize the cash and the traveler, and seize and search the traveler and their documents—with TSA admitting that each and every one of those actions serves no transportation-security purpose. *See* SUMF ¶¶ 4, 56, 78, 80, 90, 92, 94. In short: TSA is programmatically abusing the administrative-search exception to the Fourth Amendment in order to aid law enforcement. SUMF ¶¶ 5, 56, 157. That obliterates the screening checkpoint’s carefully “tailored” transportation-security exception to the Fourth Amendment. *McCarty*, 648 F.3d at 835; *Hartwell*, 436 F.3d at 181. Tellingly, law enforcement sees it the same way. SUMF ¶ 158 (ICE telling TSA: “[W]e appreciate the excellent support with Indy bulk currency investigations! **Without your initiation of these cases the program [would] not exist.**”) (emphasis added).

2. By equating the quantity or packaging of cash with criminality, the Policies require Screeners to seize cash and travelers without reasonable suspicion.

The Cash-Screening Policies also independently violate the Fourth Amendment based on *how they operationalize* the unconstitutional criminal-assessment program just discussed—by requiring seizures of property and persons with nothing approaching the “reasonable suspicion” required for such “investigatory” seizures. *Place*, 462 U.S. at 708–09.¹⁶ Whenever a Screener thinks cash evinces criminality, they “must” “maintain control of” the cash, and the traveler “may be asked to wait until a LEO arrives.” SUMF ¶ 52; Ex. 1 at AR161. That property seizure “can [also] effectively restrain the

¹⁶ Even if the Policies are misconstrued as requiring reasonable suspicion, they remain an impermissible, non-transportation-security program in violation of the Fourth Amendment.

person” because TSA has (at least) their money, with no indication of how, when, or where to get it back. *Place*, 462 U.S. at 708; see SUMF ¶¶ 256, 258–59, 269, 271, 284 (Plaintiffs describing such seizures). The collection and recording of the traveler’s identification and boarding pass—required after a criminality assessment or a \$10,000 assessment—are yet additional personal and property seizures. SUMF ¶¶ 4, 69, 74–75, 77, 79, 147, 184–85.

The Policies mandate all those seizures in circumstances demonstrably lacking reasonable suspicion. (1) Screeners are “not trained on issues of . . . reasonable suspicion.” *Vanderklok*, 868 F.3d at 208.¹⁷ (2) Screeners **are** trained that “[l]arge amounts of currency,” standing alone, is “evidence of criminality activity.” SUMF ¶ 110. (3) There is no right or wrong answer to the criminality assessment. SUMF ¶¶ 105, 107–09, 111. (4) The “quantity,” “packaging,” “circumstances of discovery,” “**or**” “method by which the cash is carried” each independently suffices for a criminality assessment. SUMF ¶¶ 14, 19 (emphasis added). (5) Traveling with \$100 suffices for a criminality assessment. SUMF ¶¶ 109–10. Simply put: the Policies **equate** whatever a Screener arbitrarily deems a “large amount of currency” with currency that “appears to relate to criminal activity” (and therefore mandates the seizures described above). SUMF ¶ 110. But “cash, in and of itself, is innocuous, even in large bundles and wrapped in rubber bands—only additional evidence creating a suspicious context can show that it is immediately apparent that such money is incriminating.” *Dyer*, 2019 WL 6218899, at *11 (citing *Law*, 384 F. App’x at 122–23); see *United States v. Sokolow*, 490 U.S. 1, 9 (1989) (traveling with a large amount of cash is not reasonable suspicion). In short, Screeners must seize cash, travelers, and other property without anything approaching “the agglomeration of facts present in either *Sokolow* or *Royer* . . . justifying reasonable suspicion.” *Ortiz*, 714 F. Supp. at 1576. Even if TSA could, consistent with the Constitution, conduct non-transportation-security criminality assessments or reporting-

¹⁷ Cf. *United States v. Ortiz*, 714 F. Supp. 1569, 1576 (C.D. Cal. 1989) (seizing official’s lack of reasonable-suspicion training contributed to holding that purchasing one-way tickets with cash immediately before a flight and acting nervous did not “justify[] reasonable suspicion”).

requirement assessments (which it cannot), the Policies still violate the Fourth Amendment because they mandate non-transportation-security seizures (and searches) without reasonable suspicion.

3. By requiring Screeners to keep the cash they seize after determining the traveler has no prohibited item, the Policies require Screeners to keep cash seized indefinitely.

To be sure, some cash seizures and accompanying personal seizures may occur in circumstances that happen to amount to reasonable suspicion. But that does not save the Cash-Screening Policies. First of all, the Policies *require* such seizures based on nothing approaching reasonable suspicion (as just explained), so they require, on their face, systematically unconstitutional conduct. Second, even if the Policies were amended to require reasonable suspicion for such seizures, they would still constitute a constitutionally “impermissible” criminal-enforcement “program[]” untethered to transportation security (as explained above). *McCarty*, 648 F.3d at 835. In any event, even when Screeners happen to seize cash based on reasonable suspicion, they must keep that cash seized indefinitely without probable cause. That is a third, independent way in which the Policies violate the Fourth Amendment. When a Screener seizes cash, they are required to “[m]aintain control of” it and, once the prohibited-item search is successfully completed, permit the traveler to leave *only without their cash*. That means TSA allows the traveler to leave only on the understanding that TSA will give the cash (and possibly luggage) to some law-enforcement agency—with no indication of how, when, or where the traveler (who is planning to get on a plane) can get it back. That systematic “failure of the [Screeners] to accurately inform [travelers] of the place to which they [are] transporting [their] luggage, of the length of time [they] might be dispossessed, and of what arrangements would be made for return of the luggage” renders the Policies unconstitutional yet again. *Place*, 462 U.S. at 710.

4. By requiring Screeners to record personal information for no transportation-security purpose and without probable cause, the Policies mandate unconstitutional searches.

The Cash-Screening Policies also require Screeners to conduct *searches* for no transportation-security purpose, without probable cause, further violating the Fourth Amendment.

When a Screener identifies (and seizes) what they (arbitrarily) deem cash evincing criminality or what they (arbitrarily) deem cash exceeding \$10,000, they must gather and document the traveler’s name and flight information for a series of LEO notifications. SUMF ¶¶ 26, 65–69, 73–74, 89, 91, 93, 100, 110. The only way Screeners can do so is by making the traveler (whose property is already cleared of prohibited items) re-present their travel documents. SUMF ¶¶ 68–69, 79. “Obviously, . . . this investigative procedure is itself a search requiring probable cause.” *Place*, 462 U.S. at 706. Because it is done without probable cause, this post-transportation-security-screening search is unconstitutional. Said differently, Screeners must “tak[e] action, unrelated to the objectives of the authorized intrusion [i.e., transportation security], which expose[s] to view concealed” personal information, thereby “produc[ing] a new invasion of [travelers’] privacy unjustified by the [transportation-security] circumstance that validated the” administrative search. *Arizona v. Hicks*, 480 U.S. 321, 325 (1987). That systemically-required recording of personal information without probable cause—which is conducted *after* determining “there are no signs of prohibited items”—is unconstitutional. *See* SUMF ¶ 63.

5. The Policies require Screeners to extend or prolong the seizure of travelers with cash “longer than is necessary to effectuate [the transportation security] purpose.” *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (cleaned up).

TSA’s administrative checkpoint “seizure remains lawful only so long as unrelated inquiries do not measurably extend the duration.” *Id.* at 355 (cleaned up; citation omitted). Anything that extends or prolongs the duration of that screening for any reason unrelated to transportation security is unconstitutional. “There is no *de minimis* exception to this rule.” *United States v. Clark*, 902 F.3d 404, 410 (3d Cir. 2018). Prolonging the seizure by even “20 seconds” for an “off-mission” reason violates the Fourth Amendment. *Id.* at 410 n.4. The Cash-Screening Policies do just that and more.

If a Screener thinks cash (any amount) evinces criminality (an unconstitutional assessment, recall), they “must” “[m]aintain control of” it, and the traveler “may be asked to wait until a LEO arrives.” SUMF ¶ 52; Ex. 1 at AR161. And the Screener must give the cash to a LEO. *Id.* None of

that serves a transportation-security purpose. SUMF ¶¶ 4, 56, 137. So from the very beginning, the Screener has necessarily extended or prolonged the person’s seizure for the off-mission purpose of making a LEO notification. And that process is doubly unconstitutional because taking a person’s cash and assuring them it is going to a LEO means that person is “effectively” seized with the cash—as they do not know how or where to get it back if they leave—for a wholly off-mission purpose. *Place*, 462 U.S. at 708–09; *see* SUMF ¶¶ 256, 258–59, 269, 271, 284 (Plaintiffs describing such seizures).

But the Policies are even more explicit in requiring Screeners to prolong or extend the seizure of travelers with cash for no transportation-security purpose. *After* Screeners determine “there are no signs of prohibited items,” they **must**: (1) take the time to assess whether “the currency appears to exceed \$10,000,” and, if so, take the time to collect and record documents and information; and (2) take the time to assess “whether the currency appears to relate to criminal activity,” and, if so, take the time to collect and record documents and information. SUMF ¶¶ 63, 65, 67–69, 72, 74–75. None of that serves a transportation-security purpose. SUMF ¶¶ 71, 78, 80, 136. Indeed, it necessarily happens *after* a Screener determines “there are no signs of prohibited items”—which is the only permissible scope of the transportation-security mission. All that takes some time, no matter how minimal. So all those steps—individually and together—systematically “impermissibly extend the” seizure of travelers with cash, or at least those deemed to have a large amount of cash. *Clark*, 902 F.3d at 411. No wonder TSA admits that anyone traveling with a large amount of cash should necessarily expect “slightly longer questioning at TSA checkpoints.” TSA Br. 16.

CONCLUSION

The Court should grant summary judgment for Plaintiffs (including provisionally on behalf of the putative class, pending class certification), deny summary judgment for TSA, set aside TSA’s Cash-Seizure Policies, and enjoin TSA from continuing the conduct required by those policies.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2025, a true and correct copy of the foregoing document was filed via the Court's CM/ECF System and served upon all counsel of record.

/s/ Dan Alban

CERTIFICATE OF COMPLIANCE

Counsel for Plaintiffs certifies that this Brief complies with this Court's font and typesetting rules as set forth at LCvR 5.1(B) of the Local Rules of Court. Specifically, this Brief was written in Garamond 12-point font, which complies with this Court's requirement that filings be written in font that is no "smaller than 12 point word processing font." LCvR 5.1(B).

/s/ Dan Alban